

THE SITUATION OF LGBT FAMILIES IN HUNGARY



Inter Alia Foundation
Háttér Support Society for LGBT People



Introduction

We can often hear and read in Hungary that being lesbian, gay, bisexual or transgender is “not a problem in itself,” and that LGBT people and same-sex couples should not be discriminated against, but only a man and a woman should be considered a family, and the word family should not be used to describe relations between LGBT people and their children.

In fact, many argue that LGBT people should not be related to children at all. In some cases this is linked to open homophobia: some people claim that LGBT people are not suitable to be parents, as they are incapable of maintaining lasting relationships. Others try to cover their prejudices by arguing that LGBT people should not raise children because children have to be protected from the homophobia prevalent in our society.

The idealization of the “family” and the expressly conservative notions about gender roles are still prevalent among the general public in Hungary. This appears to be a lasting impact of the state socialist era: during the decades when public life was held under strict supervision, it was often people’s family life which provided its counterpoint: a safe harbor where state socialist tendencies to erase differences cannot – and should not – enter.

Even though same-sex partnerships and parenting by same-sex couples do not automatically challenge the heterosexual distribution of power and traditional gender roles in families, they do generate changes in the long run. They reorganize gendered categories such as husband, wife, mother and father; it is this aspect that so many in contemporary Hungary are afraid of. What these people, however, fail to realize is that discriminatory laws will not prevent same-sex couples from having children, they only make their and their children’s life a lot more difficult.

This report aims at summarizing the current situation of LGBT families in Hungary, both from a legal and a social point of view. The legal analysis is complemented by a study of how LGBT parents themselves see their situation. Our interviews were made with a circle of lesbian mothers most of whom are members of a mailing list maintained by the NGO Inter Alia. The semi-structured interviews took 50-75 minutes. The interviewees were asked questions about their and their children’s history (how they had planned to have kids with their partner); their experiences with donors and/or doctors; their experiences at giving birth, with different institutions (e.g. paediatricians, health visitors, day-care workers, etc.); and about the attitudes of their family and friends as well as neighbours



and acquaintants. The full results of the study will be published by Inter Alia in a volume in November 2010 with the double objective of raising awareness in the media and the general public, as well as informing the LGBT community about this issue.

LGBT families: A social reality

During the past two decades the Hungarian LGBT community underwent a significant change. The first Hungarian LGBT organizations were founded at the end of the 1980s and the beginning of the 1990s. In this period a new generation of LGBT people appeared who lived more openly than their peers even a decade before. Some were lucky enough to be accepted by their family, colleagues and friends. As this “new LGBT generation” reached their thirties in recent years, many realized that they wanted to have children. More and more same-sex couples are raising kids or plan to do so in the near future.

Many of these people conceive through **assisted reproduction**. Since 2006 single women have had the right to apply for artificial insemination with anonymous donors. A growing number of lesbian women have used this opportunity, most of them by concealing that they lived with a partner, thus circumventing the discriminative law forbidding assisted reproduction for women living in lesbian partnerships.

There are also women and men who have kids from their **former heterosexual relationships**, but who raise these kids together with a same-sex partner. They are mostly (divorced) women, but there are also men (many of them widowers) who raise their children with a male partner.

Partly because of the restrictive regulation on assisted reproduction, many lesbian women arrange **artificial insemination at home** with a male friend. Since the majority of single women or lesbians who live with their same-sex partners do not have fertility problems, this procedure is

relatively simple and only requires a longer syringe to complete the intervention.

There are also women and men who **adopted children from foster care as individuals** and raise them together with their same-sex partners. Even though married couples are given preference in adoption procedures, since many of the heterosexual couples refuse to adopt elder children, especially those from ethnic minorities or with disabilities, some LGBT people were successful in getting children this way.

Despite the existence of such LGBT families, their existence is often disregarded by politicians, authorities and the society at large. Notions of marriage and family are taken as static categories hiding the fact that they keep changing constantly. The legal recognition of families, however, is not abreast with changes in society.

The legal situation

Despite positive developments in the field of gay rights in Hungary during the past decade, the issue of child raising by same-sex couples is still a taboo in current legislation. Even though Hungary recognizes cohabiting same-sex couples (*élettársi kapcsolatot*) since 1996 and since 1 July 2009 registered partnership (*bejegyzett élettársi kapcsolatot*), an institution very similar to marriage is available for same-sex couples, legislation concerning parental authority, adoption and artificial insemination completely disregard the situation of LGBT families and oftentimes openly discriminate against same-sex couples and their children.

Assisted reproduction

The law on health is openly discriminative: only those women are entitled to assisted reproduction who are married, have a different-sex partner, or are single and infertile or expected to become infertile soon due to their age. This means lesbian women have to apply as single women **concealing their relationship** and

“faking” their infertility. Even though the possibility to participate in assisted reproduction due to age eases this restriction, since public health insurance only covers the high costs of the treatment if it has a medical reason, this option is not used by many.

Even though not discriminatory per se, as not only lesbians but everyone applying have to **pay themselves for the hormonal products and medicines** often needed for conceiving through artificial insemination, this regulation adversely affects lesbians who can conceive only in this way.

Imagined father

According to the Family Code a pro forma, imagined father must be given for any child’s birth certificate. This means that if a woman does not name a father when her child is born, the authorities intervene and put a **pro forma father on the child’s birth certificate**. The personal data of this “father” cannot be identical with those of an existing person. This might be derogatory for a lesbian couple who have a child together and do not know the donor, or know the donor but do



not want to register him as a father (which would grant him full parental rights while the second parent does not have such rights).

Adoption by individuals

Although the law makes it possible for individuals regardless of family status (whether single, cohabiting, married or registered partner) to adopt children from foster care, since 2002 the law prescribes that **married couples should be given preference**. The amendment was adopted by the conservative government in direct response to a successful adoption by a well-known transvestite performer. As a result, same-sex couples (and non-married people in general) are given children very infrequently, and even if they are, only the adoptive parent will become the legal parent of the child.



The original version of the new Civil Code as drafted by experts would have eliminated the preference rule as legal practitioners found it unimplementable, but this restriction was readded to the bill upon request from the Ministry of Family Affairs.

This is so absurd. When our baby was born, I had to rush to the authorities as they wanted to put a pro forma, imagined person as a “father” on her birth certificate. It is required by the law. But why? We did not want to know the donor, she does not have a father. But her birth certificate says that she has. (...) But well, we at least exploited the only advantage it has: the surname of the pro forma father is the same as my partner’s, so I could arrange that our daughter has a double surname, one that contains both of ours. (Judit, 36)

Our case is quite special. An old family friend of ours works in a foster care institution, and it was through her that we met these kids. This is how we got to know Kati. She was 8 years old, never knew her parents, she was the smallest among the other kids, often maltreated, and she had learning difficulties, too. We began to visit her and talk to her a lot, and she got to like us, just like we liked her. So we decided that I should adopt her. My partner could not take part in this: not only because she is a woman, too, but also because she is from abroad, not a Hungarian citizen. (Ildikó, 42)

Joint adoption

Joint adoption by a couple is **only available for married couples**, registered same-sex couples and cohabiting different- or same-sex couples are not allowed to adopt jointly. The law on registered partnership contains a specific exemption for joint adoption, same-sex registered partners are not treated as married different-sex couples in this respect.

Second parent adoption

Second parent adoption – that is, adopting the biological child of the partner – is **only available for married couples**, registered same-sex couples and cohabiting different- or same-sex couples are not allowed to adopt each other's children. The law on registered partnership contains a specific exemption for second parent adoption; same-sex registered partners are not treated as married different-sex couples in this respect.

Interestingly, the new Civil Code adopted by the Parliament, but currently under revision by the new conservative government, would give the right of second parent adoption to cohabiting couples (regardless of gender), but not to same-sex registered partners. Registered partners would be forced to divorce, adopt and then enter into registered partnership once again. The future of this piece of legislation is uncertain.

Parental rights and responsibilities

Even though second parent adoption is not available for same-sex couples, the partner – whether cohabiting or registered – is **recognized as stepparent** in several contexts. The law makes a difference between legal stepchildren (*mostahagyermek*) and de facto stepchildren (*nevelt gyermek*). If the parents



entered into registered partnership, the children of either are considered legal stepchildren of the partner. Legal stepparents have a duty to contribute to the financial support of their children, but are **not recognized to have parental authority** over the children. Legal stepparents on the other hand are entitled to paid parental leave on the same footing as biological parents, and can take time off in case the child is ill (they are, however, not entitled to paid paternal leave after the child is born).



In case the parents have not entered into registered partnership (*de facto* stepchildren), the rights and **responsibilities of the non-biological parent are more restricted**: s/he has no duty to contribute to the support of the child and cannot go on parental leave. A further difference is that *de facto* stepparenthood ends when the child no longer lives together with the parents, while legal stepparenthood is ended only if the parents divorce.

The new Civil Code adopted by the Parliament, but currently under revision by the new conservative government, would explicitly mention that stepparents can share parental authority of the children with the biological parent to the degree agreed upon by the partners. The future of this piece of legislation, however, is uncertain.

Death of the biological parent

In case the biological parent dies there is no guarantee that the child's non-biological parent can continue to raise him/her afterwards. At present, the child may be **taken to relatives or foster care** and the disintegration of the family may further traumatize the child who has just lost one of his/her parents.

Separation of the parents

The potential benefits of second parent adoption are even more obvious in case the parents separate. An adoptive parent has the duty to pay alimony and has the right to visitation even after separation; these rights and duties, however, are not guaranteed if the parents separate without previous adoption. This means that in case of the separation of a same-sex couple the biological parent and the child might suffer serious **financial difficulties** and the child can be negatively affected by **losing the emotional link** s/he has developed with the non-biological parent with whom s/he might have spent more time than with the biological parent.

The new Civil Code adopted by the Parliament, but currently under revision by the new conservative government, would extend the right of visitation to anyone who has spent substantial time raising the children, including the same-sex partner of the biological parent. The future of this piece of legislation, however, is uncertain.

Inheritance

If the non-biological parent dies without a will, the child **does not inherit his/her property**. If the parents have not entered into registered partnership, 50% of his/her property will be automatically inherited by the parents of the deceased, even if s/he named his/her stepchild as heir. Inheritance by non-biological and non-adopted descendants based on the last will of the deceased are taxed, while inheritance by

biological or adopted children are tax free. In case the parents have not entered into registered partnership, higher tax rates apply if the child(ren) no longer live with the stepparent.

Even though it is clear from the description above that the law provides several advantages for registered partners in relation to parenting as well, our interviews reveal that the vast majority of couples raising children **do not register their partnership**. Some of them are vary of having to fill in their spouse's name in official forms (e.g. in a kindergarten or school), while others are hindered by having to stay officially single to be able to apply for assisted reproduction. This means that it is exactly those that need the most

Zs.: We thought about it, yes, but we did not register our partnership. We are rather afraid of having to claim this on all kinds of forms. In the kindergarten, in the school... We should then always state that I am married or live in a registered partnership, but then the name of my spouse could be asked, too. That's how it goes in schools. It is simpler if they regard me as a single parent. We really don't know how we would be treated later in school.

Q: And what would your decision be if your partner could adopt your son if you lived in a registered partnership?

Zs.: Then we would do it immediately! Of course! That would be a real advantage and make it all worthwhile. But now, if she cannot be his parent legally, anyway, we think it is not worth it. (Zsuzsa, 38)

We cannot register our partnership until our second baby is on its way. I am going to doctors, we would like to have a second baby soon. But I have to be single to be eligible for assisted reproduction. So we cannot do it until I am finally pregnant. (Judit, 36)

protection (LGBT families with children) who cannot enjoy the higher level of protection the new institution aims to afford.

It is also obvious that it is not only the same-sex parents, but also the **children who suffer from the discriminatory provisions** outlined above. The non-biological parent, for example, cannot automatically arrange for the (sometimes urgent) medical treatment of the child. If the parents separate or one of them dies, the child may suffer from financial difficulties. In case the biological parent dies, the child's trauma could be worsened by having to leave his/her second parent.

Everyday discrimination

The situation of LGBT families is also affected negatively by the forms of discrimination and non-acceptance they suffer in their everyday life. As most of the lesbians interviewed have had children quite recently, during the last few years, their experience in this field is rather limited. Despite this, many of the interviewees live in a **constant fear of being rejected and discriminated against**. This fear is nurtured by legal discrimination and their limited experience mostly with health institutions.

As the children grow, they enter institutions (such as kindergartens, schools) and social ties with outsiders (such as neighbors, families of the kids' friends, etc) also develop. Many parents face the dilemma whether to publicly affirm their relationship or to hide it in order to **protect their children from harassment**.

Our experience is that if we are not worried, if we simply say that our daughter has two mums, people do not say anything. They simply take notice and that's that. ... Well, but till now she has gone to a private day-care, and that was different, much more open. She is going to attend a state-maintained day-care soon. We'll see how they react. We will not conceal it. That's not an option. Family is very important, and we cannot suggest that our daughter's family is not good enough, that she should conceal anything. We would never do that. (Judit, 35)

Even though equal treatment legislation offers protection against such forms of discrimination, these legal opportunities are hardly known and are not taken advantage of by those suffering discrimination.

J.: We chose a midwife and told her that we were a couple, two mothers. And then she called me right before the end of my pregnancy to tell that she would not be free. I thought I would tell everything to the doctor, and also ask her to recommend a midwife who supported natural birth. We did not want automatic surgical interventions or unnecessary medication. She said yes, that is, she would find someone. And then when I called her she said she had talked to every single midwife in the hospital and asked them, revealing our "special circumstances."

Q: Did she say that?

J: Yes. And the midwives told no. That they would not undertake it. I don't know what the doctor thought. She is not a talkative woman. But I really missed her distancing herself from the midwives. Anyway, we had a very short time left at that point. And then the delivery went very well. The midwife who was on duty must have realized that we were a couple, that we were *that* couple, but she acted completely normally, and was very skillful. Gabi was asked to cut the naval chord – she was treated as a father, that is, as the other parent. (Judit, 35)

LGBT parents are also often wounded by the **lack of recognition and acceptance from their families and friends.**

Public discourse: politicians, the media and the NGOs

Szilvi's mother cannot cope with it. Her parents cannot. They have been out of touch ever since our son was born. They wire some money for his birthday, but they hardly see him, and he is already 3. (Zsuzsa, 38)

I really can't stand that so many people question my relationship with our daughter. Even our lesbian friends do that: many say that I should also bear a baby, I should bear our second kid, as then "I would have one, too." Of course I know that they would both be my kids, even if it is not me who bears them. But I don't like hearing this. (Gabi, 35)

A specific problem of lesbian women who live in a marriage and have children is that very often they are afraid that during the divorce proceedings their sexual orientation might be used against them, either by the authorities or by their husbands. The fear of losing their children being perceived as unfit mother forces many lesbians to **remain married** and not to divorce officially.

The question of LGBT families has not surfaced in public discussions in Hungary until very recently. Debates on registered partnership and the new Civil Code, however, brought the issue to the forefront of political debates. The Christian Democrats (KDNP) who have since then become part of the government and responsible for family issues within the relevant ministry, wrote several submissions to the Constitutional Court claiming the unconstitutionality of the law. At the center of their reasoning was the argument that **same-sex couples should not be considered family** and that the state should not promote childraising by such couples.

Although the Constitutional Court refused these submissions and ruled that the law on the registered partnership for same-sex couples was not unconstitutional, it also emphasized that certain **"natural differences"** must be observed and kept between registered partnership and marriage – without specifying what those differences should be.

The largest party in government, FIDESZ, who in opposition also voted against the legislation on registered partnership, criticized the institution on similar grounds arguing that





registered partnership is too close to marriage and the question of same-sex couples should be settled as a **civil law, rather than a family law** matter.

Soon after their election to power, FIDESZ and KDNP announced that they intend to **revise and rewrite the new Civil Code** containing the most important provisions affecting families. The Code was adopted by the socialist-liberal majority in the Parliament in 2009, but has not entered into force yet. This law would incorporate the currently separate law on registered partnership and would include smaller steps answering some of the problems identified above. Although the governing parties have not published any concrete details on how they would amend the text of the Civil Code, based on their opinions voiced before they might cut back on the rights of same-sex couples and even if they keep the status quo, positive legislative developments in the coming years cannot be expected.

Hostile attitudes towards LGBT families, however, are not limited to conservative politicians, but are also shared by experts and high level officials in the state bureaucracy. In the debate on second parent adoption in the new Civil Code, a high level official of the Ministry of Social and Labor Affairs claimed that **adoption by same-sex couples is not in line with international tendencies and expectations**, completely disregarding the fact that more and more countries open up adoption for same-sex

couples and that the new version of the European Convention on the Adoption of Children explicitly contains that states are free to extend the right of adoption to same-sex couples.

Unfortunately, current discussions on LGBT families are still **framed around the issue of adoption**. When considering children being brought up by same-sex parents, most people think that LGBT people would like to adopt children from foster care and that the only question is whether the state should allow this or not. It is obvious that there are LGBT people who would like to adopt in such a manner – it is a viable solution for a childless couple to raise children abandoned by their parents. However, it is seldom mentioned that LGBT people are **already raising children** and that for the majority the real issue is second parent adoption – that is, the ability to provide legal recognition for both of the parents who raise the children together.

Many say that LGBT families should not be recognized because children would then have to cope with **discrimination in a hostile society** – however, this is not a relevant argument in the case of existing families, in which children do live with their same-sex parents, living together as a family even if they are not considered as such by laws. It is exactly the lack of legal recognition for these families that creates emotional and financial insecurity for the child.

The issue of parenting by same-sex couples have been often disregarded by LGBT civil

society actors as well. During the debates on the registered partnerships there have been voices claiming that LGBT advocates **should not deal with the issue of parenting** as the opposition is too strong and that advocating for parenting rights could undermine support for registered partnerships altogether. Even though at the end Hungarian LGBT NGOs came out with a common standpoint calling for full adoption and parenting rights to be included in the law, many LGBT parents felt disappointed by the lack of positive developments in the field that affect them the most.



Main findings of the research

1. Legislation on assisted reproduction and adoption is openly discriminative against same sex couples.
2. LGBT people are forced to conceal their sexual orientation during adoption and assisted reproduction.
3. Same sex parents are hesitant to officially come out when dealing with authorities and institutions such as kindergartens, schools and medical institutions.
4. Non-biological parents are hindered by administrative difficulties in practicing their parental rights and responsibilities.
5. Social service providers (including schools, hospitals and social workers) are not prepared to deal with same sex parents.
6. LGBT families are largely invisible, their existence and problems are disregarded by decision makers and the society at large.
7. Conservative politicians and religious actors intensify hostile social attitudes towards LGBT families.

Ending discrimination: the way forward

With the adoption of the current legislation on registered partnership the only key area of gay rights where **open discrimination still prevails** is that of parenting. In the coming years Hungarian LGBT groups should focus on this issue: raise awareness of the existence and problems faced by LGBT families; help service providers to better respond to the needs of these families; and advocate for changing discriminatory legislation.

This struggle is made more difficult by the fact that there is **not yet any association** or other organization that brings together LGBT families in Hungary. Many parents have friends and form friendly circles to discuss their experiences, but the fear of being exposed as an LGBT parent hinders any efforts to establish a formal organization.

It is in this context that the NGOs **Inter Alia Foundation** and **Háttér Support Society for LGBT People** undertake the task of filling this vacuum.

Inter Alia Foundation focuses on bringing together LGBT families and giving them a voice of their own. The Foundation maintains a **mailing list** for LGBT families and a blog that regularly reports on issues affecting LGBT families. In November 2010 the Foundation will publish **two booklets**: a report on the situation

of LGBT families in Hungary aimed at policy makers; as well as a volume of interviews with LGBT families including lesbian mothers, donors, as well as gay fathers who raise or participate in raising children. These publications are funded by the Global Fund for Women.

Háttér Support Society for LGBT People on the other hand focuses on creating a more favourable legal framework and raising awareness to the issue among service providers.

As part of this endeavour Háttér is in the process of preparing a **complex training material** for professionals working with families, including social workers and family consultants. The two day training program will sensitize participants to the issue of LGBT families, and provide them the necessary knowledge and skills to deal with such clients. The project is part of the project “Together for Equality 2009-2010” co-funded by the PROGRESS fund of the European Union.

In our work we are guided by the principle that all forms of discrimination in the field of partnership and parenthood should be eliminated. Parents living in marriage, registered partnership or cohabiting should be **treated equally**: all restrictions regarding adoption, assisted reproduction, as well as parental rights and responsibilities based on sexual orientation, gender identity or gender expression should be abolished. All laws, regulations and policies should be based on the **social, emotional and economic realities of family ties**, and should apply an inclusive definition of families. Children should be regarded equal and treated equally, independent of the fact whether their parents are or were married, whether they are adopted or whether they have a biological relation to their parents.

Legal changes are important, but not enough in themselves. Same-sex couples and their families should get the **same psychological, symbolical and social support** as heterosexual couples do. The state should organize and fund trainings aimed at relevant service providers; revise educational materials and methods used in schools; and organize consciousness raising campaigns to increase the visibility and acceptance of the diversity of family forms.





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The **Inter Alia Foundation**, founded in 2007, publishes a blog on gender and LGBT issues and works on research and publications promoting equality, focusing on parenting by same-sex couples.

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Háttér Support Society for LGBT People, founded in 1995, is the largest LGBT NGO in Hungary. It operates a telephone hotline, a legal aid service, an HIV/AIDS prevention program and an archive documenting the history of the LGBT movement in Hungary. Besides its core activities Háttér regularly participates in research and training projects and is actively involved in lobbying for advancing the rights of LGBT people through legal change.

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