

HOMOSEXUAL FAMILIES: THE RIGHT TO ADOPTION

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Abstract

19th of April 2005, the official newspaper of the Generalist of Catalunya published the law 3/2005, one of the most important legal reforms concerning family matters in a number of years. The reform grows from the general and international principal of the right of the child's supremacy, and from a modern conception of adoption as a civil institution of the protection of infants. As it couldn't be any other way the right to adoption only exists under the coordinates I have expressed, and in relation to the adopted person; who is the one with the right to grow up in a family environment in an atmosphere of happiness, love, understanding, and therefore consequently has the right to be adopted. Therefore the individual adult does not have the right to adopt a child.

The reform thus establishes couples of the same sex can be considered as families when applying for adoption. The law 3/2005 recognizes this right of homosexuals, and resulting with the end of discrimination between heterosexual and homosexual couples. According to our code both have the same opportunities when considered as families for adoption. This is done with consent of the European Parliament's resolution, council directives of the European Union and especially the fundamental rights of the EU. Furthermore 3/2005 follows the examples set by other provinces of the Spanish state such as Navarra and Aragón, and also other European countries such as Holland, Sweden and the United Kingdom. In these states they have predicted that homosexual couples expand they're possibilities set against the act, even though in some cases it is limited only to national adoption.

In Catalan law there are no limitations on a homosexual couple's possibilities during the initiation and following the adoption process, understanding that adoption can be done under the protection of the Catalan administration (national adoption), or with homeless children from other countries (international adoption). Therefore the reform recognizes that a homosexual couple should be considered a family, but not the right of these families to adopt, as heterosexuals and individuals do not have the right either. Subsequently the 'Congres de los Diputados' would also reform the family common civil right, under the law 13/2005 concerning marriage and adoption, and would proceed to allow couples of the same sex to be married and to adopt. With this the Catalan reform is reinforced and expanded with the right of homosexual couples to get married, which means an immediate recognition of their family status and therefore the right to adopt.

An aspect that was not included in the law 3/2005 which was pointed out in numerous allegations was to solve the discriminatory situation concerning IUF (assisted reproduction) between both heterosexual and female couples. In these cases when one woman chooses to undertake artificial insemination to pro-create, the other woman must wait until the birth to initiate the adoption process that will recognize her parental relationship and co-maternity. When a woman of a heterosexual couple is subject to the same practice (IUF), the man need only express his consent to the paternity to be automatically recognized as the father without need for adoption. The proposition of the modification of the civil court of Catalunya, created by the actual government finds a solution to the discriminated mentioned previously, although we must wait for the new the government legislator to verify approval and for the law to begin. The state as far as I'm concerned does not wish to delay the end of that clear discrimination.

I do not wish to finish this statement without emphasizing the work the gay and lesbians right defense committee have done with great enthusiasm during the process of the law's elaboration, and in the moment of its parliamentary approval.