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**CHALLENGES AND OPPORTUNITIES FACED BY EUROPEAN WELFARE
STATES: THE CHANGING CONTEXT FOR CHILD WELFARE**

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THE HOMOSEXUAL PARENT

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Abstract

The concept of the family as conceived after the second world war, has changed dramatically. It is not my intention to question the excellence of these changes, but reality is stubborn and continues to point out to legislators that what laws reflect is not reality; even if they did, changes take place so quickly that regulations do not keep up with reality for long.

One of the most obvious aspects of this evolution is still the need to offer a regulation to same-sex couples who have decided to make it known that they live together. Based on this option, what should legislators do? Should they offer them the possibility of marriage? Should they be offered another solution, since they cannot be technically speaking, married? If marriage is not finally allowed for same-sex couples, a new question will arise: is this situation contrary to article 20 of the EU Human Rights Charter, which provides that all persons are equal under the law?

If we wish to refer solely to the homosexual parent, the consideration related only to marriage would be incorrect, since it only focuses the problem on the right to marriage for these couples, and there are other more complex issues, which do not only refer to the way the same-sex relationship is organised, but the matter affects other areas, such as the relationships they have or may have with third parties, such as minors. And this is the matter which I will try to analyse in this paper.

The issue must be focused on two related issues: adoption by a homosexual couple and the custody of the children that two people of the same sex who are living together may have, whether from a previous marriage or as a consequence of artificial insemination. There are two principles involved: first, the best interest of children, always mentioned as the basis of the court ruling, although its precise content is never fully developed. Secondly, a hypothetical right to adopt, which is an argument constantly used by homosexual groups. These are the two main principles used as a basis of this paper. To focus the debate I must say that when speaking of homosexual parents I include all those situations in which minors or legally incompetent persons are under the care of a same-sex couple or a homosexual person. Therefore I exclude the debate about whether or not a right exists for gays or lesbians to get married. These issues cannot be mixed, since we are referring to family matters, and family does not equal marriage, even though this still is the most usual of forming a family.

In this paper I will analyse three issues:

- i) adoption by homosexuals, making a distinction between different cases, such as joint adoption by both members of the couple, whether they are married or not, step-parent adoption and single adoption, ie adoption by one person only, regardless of their sexual orientation.
- ii) custody of the children from a previous marriage or from a previous relationship.
- iii) assisted reproduction treatments.