

## Migration and legal family formats in Italy

by Matteo Winkler<sup>1</sup>

*The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 4 – Migration)

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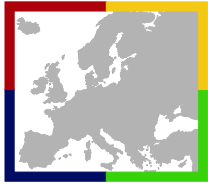


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# FamiliesAndSocieties

## Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

## The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

## Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu). There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

## About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), [www.familiesandsocieties.eu](http://www.familiesandsocieties.eu).

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

## About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

### The six papers about Italy

The answers concerning Italy can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)):

**Formalisation of legal family formats in Italy  
by Matteo Winkler (Section 1)**

**Income, troubles and legal family formats in Italy  
by Marco Gattuso (Section 2)**

**Parenting and legal family formats in Italy  
by Matteo Winkler (Section 3)**

**Migration and legal family formats in Italy  
by Matteo Winkler (Section 4)**

**Splitting up and legal family formats in Italy  
by Marco Gattuso (Section 5)**

**Death and legal family formats in Italy  
by Marco Gattuso (Section 6)**

So this paper is based on **Section 4 (Migration)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 4.1 Partner of national citizen**
- 4.2 Partner of national citizen (foreign status)**
- 4.3 Partner of (non-EU) foreigner**
- 4.4 Partner of EU citizen (foreign status)**
- 4.5 Foreign status as impediment to marry**
- 4.6 Foreign status and inheritance**
- 4.7 Citizenship**
- 4.8 Recognition of joint adoption**
- 4.9 Recognition of second-parent adoption**
- 4.10 General background regarding migration**

In the following pages of this paper, first the answer to question 4.10 is presented, followed by the answers to questions 4.1 to 4.9.

**4.10 - General background regarding migration (Open question)**

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding migration, then please do so here.

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Jurisdiction: **Italy**

Source: **M. Winkler, "Migration and legal family formats in Italy". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-Section4.pdf](#) (please use this full citation when citing any information from this table).**

Section: **4 - Migration**

Question: **4.01 - Partner of national citizen**

When one partner is a residing national citizen, while the other is a foreigner from another continent, will the foreign partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside. As to the meaning of 'residing', see section c of the [Guidance for experts answering questions in the questionnaire](#).)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 No 0000	2016 Yes 2010
			N/A 0000		No 0000
<b>References to legal sources:</b> Legislative Decree 25 July 1998, No. 286, Art. 30(1)(b) (entitlement to residence permit for the foreign spouse of an Italian citizen).		<b>References to legal sources:</b> Para. 20 of Law No. 76 of 20 May 2016.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Marriage entitles the foreign spouse to residence on the Italian territory.</p>		<p><b>Explanations and nuances:</b>                      Law No. 76 of 20 May 2016 establishing same-sex registered partnerships and de facto couples does not explicitly provide for the registered partner's right to obtain residence permit in Italy. However, paragraph 20 of the Law extends to same-sex registered partnerships all the rights of married couples, so residence rights can be considered included thereto.</p>		<p><b>Explanations and nuances:</b>                      Protection of family links such as those existing among partners of the same sex prevails over immigration controls. Cohabiting same-sex couples therefore may seek residence entitlement based on their fundamental right to family life under the case-law of the European Court of Human Rights (Schalk and Kopf v. Austria, 26 June 2010; see also Taddeucci and McCall v. Italy, 30 June 2016).</p> <p>Different-sex cohabiting couples enjoy no such right unless they marry.</p>	

Jurisdiction: **Italy**

Source: **M. Winkler, "Migration and legal family formats in Italy". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-Section4.pdf](#) (please use this full citation when citing any information from this table).**

Section: **4 - Migration**

Question: **4.02 - Partner of national citizen (foreign status)**

When one partner is a residing national citizen, while the other partner is a foreigner from another continent, and this couple married/registered in the country of the foreigner, will the foreign partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1998	2016 Yes 2016	2016 No 1998	2016 Yes 2016	X	X
Yes 0000	Yes 2010	N/A 0000	No 1989	X	X
	No 2001		N/A 0000	X	X
	N/A 0000			X	X
<b>References to legal sources:</b> Legislative Decree 25 July 1998, No. 286, Art. 30(1)(b) (entitlement to residence permit for the foreign spouse of an Italian citizen).		<b>References to legal sources:</b> Para. 28(b) of Law No. 76 of 20 May 2016.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Marriage entitles the foreign spouse to residence on the Italian territory.</p> <p>Marriage is limited to different-sex couples. Foreign partners in a same-sex relationship with Italian citizens are entitled to a residence permit for family reasons if married abroad under the Constitutional Court's ruling No. 138 of 15 April 2010 and the case-law of the European Court of Human Rights (Schalk and Kopf v. Austria, 24 June 2010; Taddeucci and McCall v. Italy, 30 June 2016).</p>		<p><b>Explanations and nuances:</b>                      Under the new Law No. 76/2016, a foreign same-sex marriage or a registered partnership with at least a partner as an Italian citizen is recognised in Italy as a registered partnership under Italian law, which includes residence permit under ordinary Italian rules. If both spouses or partners are foreigners, their union is recognised as marriage (see Marriage).</p> <p>Implementation decrees are needed in relation to same-sex registered partnerships, but they are expected to be adopted in early 2017.</p>			



Jurisdiction: **Italy**

Source: **M. Winkler, "Migration and legal family formats in Italy". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-Section4.pdf](#) (please use this full citation when citing any information from this table).**

Section: **4 - Migration**

Question: **4.03 - Partner of (non-EU) foreigner**

When both partners are foreigners from another continent, and one of them is residing in the country, will the other partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1998	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 No 0000	2016 No 0000
Yes 0000			N/A 0000		
<b>References to legal sources:</b> Legislative Decree 25 July 1998, No. 286, Art. 30 (entitlement to residence permit).		<b>References to legal sources:</b> Para. 20 of Law No. 76 of 20 May 2016.		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b> The spouse of an alien is entitled to residence permit for family reasons, but marriage is limited to different-sex couples.		<b>Explanations and nuances:</b> Same-sex registered partners have the same rights as married couples, so the registered partner of a foreigner residing in Italy is entitled to reside in Italy as well.		<b>Explanations and nuances:</b>	

Jurisdiction: **Italy**

Source: **M. Winkler, "Migration and legal family formats in Italy". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-Section4.pdf](#) (please use this full citation when citing any information from this table).**

Section: **4 - Migration**

Question: **4.04 - Partner of EU citizen (foreign status)**

When one partner is a foreign EU citizen who is residing in the country, while the other is a foreigner from another continent, and this couple married/registered/cohabited in the country of the EU citizen, will the non-EU partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1998	2016 Yes 2016	2016 No 1998	2016 Yes 2016	2016 No 0000	2016 Yes 2010
Yes 0000	Yes, but 2010	N/A 0000	No 1989		No 0000
	No 2001		N/A 0000		
	N/A 0000				

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>References to legal sources:</b>                      Legislative Decree 25 July 1998, No. 286, Art. 30(1) (entitlement to residence permit for foreigners).</p> <p>Law No. 76 of 20 May 2016, Art. 1, paras. 20 and 28(b), on civil unions between persons of the same-sex and cohabiting couples.</p>		<p><b>References to legal sources:</b>                      Art. 1, para. 20 of Law No. 76 of 20 May 2016.</p>		<p><b>References to legal sources:</b></p>	
<p><b>Explanations and nuances:</b>                      The spouse of an alien is entitled to residence permit for family reasons, but marriage in Italy is limited to different-sex couples. Same-sex couples are entitled as well to such benefit if one considers "marriage" as defined by the law of the place of celebration. This solution is now dictated by Art. 1, para. 20 of Law No. 76/2016, which establishes equal treatment of registered couples, and Art. 1, para 28(b) of the same Law, which establish the recognition of foreign same-sex marriages as civil unions under Italian law.</p>		<p><b>Explanations and nuances:</b>                      The new Law on same-sex registered partnerships extends to same-sex registered couples the same rights as married couples, which are entitled to residence.</p>		<p><b>Explanations and nuances:</b>                      Same-sex cohabiting couple are protected because of their family life recognised by the case law of the European Court of Human Rights (24 June 2016, Schalk &amp; Kopf v. Austria). Moreover, EU citizens are entitled to extend a permit to stay to their same-sex partners as Italian citizens do according to the EU principle of non-discrimination on the basis of citizenship.</p>	

Jurisdiction: **Italy**

Source: **M. Winkler, "Migration and legal family formats in Italy". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-Section4.pdf](#) (please use this full citation when citing any information from this table).**

Section: **4 - Migration**

Question: **4.05 - Foreign status as impediment to marry**

When the couple got married or registered abroad, will this relationship then be recognised as an impediment to marry someone else?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2016	2016 Yes 2016	2016 Yes 2016	X	X
	No 2001	No 1998	No 1989	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X
<b>References to legal sources:</b> Criminal Code, Art. 556 (Bigamy).  Civil Code, Art. 86 (requirements to marry).		<b>References to legal sources:</b> Art. 1, paras. 4(a) and 28(b) of Law No. 76 of 20 May 2016.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b> A requirement of marriage is celibacy. Marriage abroad is considered an obstacle to free status, both for different-sex and same-sex couples.</p>		<p><b>Explanations and nuances:</b> Registered partnership abroad is an obstacle to marry in Italy, as under the new Law No. 76/2016 foreign registered partnerships are recognised in Italy as civil unions under Italian law, so they impact the civil status of the person involved, who is impeded to marry.</p>			

Jurisdiction: **Italy**

Source: **M. Winkler, "Migration and legal family formats in Italy".** In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.06 - Foreign status and inheritance**

When the couple got married or registered abroad, will this relationship then be recognised as regards inheritance in the absence of a testament?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2016	2016 Yes 2016	2016 Yes 2016	X	X
	No 2001	No 1998	No 1989	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X
<b>References to legal sources:</b> Civil Code, Article 542 (succession of the spouse).		<b>References to legal sources:</b> Art. 1, para. 28(b) of Law No. 76 of 20 May 2016.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Couples married abroad have the usual inheritance rights provided to spouses by Italian law.</p> <p>For same-sex married couples, validity as marriage depends on the citizenship of the spouses. If one of them is an Italian citizen, the union is recognised in Italy as a civil union under Italian law, while if both spouses are foreigners, their union is recognised as marriage. In both cases, inheritance rules are the same.</p>		<p><b>Explanations and nuances:</b>                      Foreign registered partnerships are recognized as registered partnerships under Italian law, pursuant to which the registered partner can inherit.</p> <p>Different-sex partnerships are recognised, when the foreign partnership is accessible to both different-sex and same-sex couples, under the general principle of non-discrimination.</p>			

Jurisdiction: **Italy**

Source: **M. Winkler, "Migration and legal family formats in Italy". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-Section4.pdf](#) (please use this full citation when citing any information from this table).**

Section: **4 - Migration**

Question: **4.07 - Citizenship**

Does a relationship of this type make it easier for a foreign partner to obtain citizenship?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 No 0000	2016 No 0000
			N/A 0000		
<b>References to legal sources:</b> Law No. 91 of 5 February 1992, Article 5 (acquisition of citizenship by marriage).		<b>References to legal sources:</b> Para. 20 of the Law No. 76 of 20 May 2016.		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b> The spouse acquires the Italian citizenship after six months of residence in the country or after three years of marriage, provided that no separation or divorce has occurred.		<b>Explanations and nuances:</b> Under the new Law No. 76/2016, same-sex registered couples are extended the rights of married couples.		<b>Explanations and nuances:</b>	



Jurisdiction: **Italy**

Source: **M. Winkler, "Migration and legal family formats in Italy". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-Section4.pdf](#) (please use this full citation when citing any information from this table).**

Section: **4 - Migration**

Question: **4.08 - Recognition of joint adoption**

When the partners have jointly adopted a child while residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1983	2016 N/A 0000	2016 N/A 0000	2016 No, but 2016	2016 No 0000	2016 No 0000
Yes 0000			N/A 0000		
<b>References to legal sources:</b> Law No. 184 of 4 May 1983, Article 35 (recognition of foreign adoption).		<b>References to legal sources:</b> Sec. 20 of Law No. 76 of 20 May 2016.		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b> Foreign adoption is recognised only if it is not contrary to the fundamental principles of Italian law, including the interest of the children involved.		<b>Explanations and nuances:</b> The new Law No. 76/2016 on same-sex civil unions and cohabitation excludes the extension of rights and duties of married couples to registered partners under the adoption law. Same-sex partners' adoption abroad would hardly be recognised under this new law. However, petition for recognition are pending before courts.		<b>Explanations and nuances:</b> Foreign adoptions by unmarried couples are not recognised under Italian law.	

Jurisdiction: **Italy**

Source: **M. Winkler, "Migration and legal family formats in Italy". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-Section4.pdf](#) (please use this full citation when citing any information from this table).**

Section: **4 - Migration**

Question: **4.09 - Recognition of second-parent adoption**

When one partner has become the second parent of a child of the other partner, by way of adoption while the partners were residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2016	2016 N/A 0000	2016 N/A 0000	2016 Doubt 2016	2016 Yes 2007	2016 Yes, but 2014
Yes 1983			N/A 0000	Doubt 0000	Doubt 0000
Yes 0000					
<b>References to legal sources:</b> Law No. 184 of 4 May 1983, Article 44(1)(b) (adoption in particular cases).		<b>References to legal sources:</b> Sec. 20 of Law No. 76 of 20 May 2016.		<b>References to legal sources:</b> Law No. 184 of 4 May 1983, Article 44(1)(b) (adoption in particular cases).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Second-parent adoption is statutorily recognised in Italy as an adoption in particular cases. Foreign second-parent adoptions are recognised under the same rules. For same-sex couples, in particular, courts deploy the fact that a marriage has been entered into abroad as evidence of the stability of the relationship. At any rate, courts must verify that adoption reflects the best interest of the child involved.</p>		<p><b>Explanations and nuances:</b>                      Law No. 76/2016 excludes second-parent adoption from the regime of same-sex civil unions. Given the restrictive statutory language regarding adoption by same-sex couples, it is in doubt whether a second-parent adoption by a same-sex couple abroad would be recognised in Italy.</p>		<p><b>Explanations and nuances:</b>                      Foreign second-parent adoptions are recognised under the same rules under Italian law. Adoption in particular cases does not require marriage. Unmarried couples may access second-parent adoption as well, and courts so far deploy same-sex marriage abroad as evidence of the stability of the couple's relationship. The first court decision allowing second-parent adoption by the same-sex partner of the child's biological mother dates back to 2014.</p>	