

# Legal recognition of same-sex couples in Europe

Maks Banens

Centre Max Weber - University of Lyon

maks.banens@univ-lyon2.fr

Legal recognition of same-sex couples has drawn attention to the demographic reality of homosexuality in European societies. Same-sex couples became a demographic fact. National offices started publishing numbers of registered unions and estimates of all-male and all-female couples (Digoix and Festy, 2004; Festy 2006). Researchers started studying the characteristics and divorce probabilities of same-sex registered unions (Noack e.a. 2005; Andersson e.a. 2006). Patrick Festy (2006) noted significant differences in same-sex union frequencies between European countries. He suggested these could be related to social, legal and tax benefits that came with the new status. Higher union registration frequencies may be related to more legal benefits. Using Waaldijk's classification of legal benefits (Waaldijk, 2001 and 2004), Festy rejected the hypothesis though.

Banens (2011) suggested new hypotheses to explain same-sex registration diversity inside Europe. Low levels of traditional marriage values, indicated by high rates of out-of-marriage births, favored same-sex union recognition, but they also go with low union registration rates. Scandinavian countries combine low traditional marriage values with early same-sex union recognition and low frequencies. Oppositely, Switzerland combines high traditional marriage values (few out-of-marriage births), late recognition and high union registration rates. The correlating factor seems to work both ways. Another factor comes from lesbians' attitude to same-sex marriage and partnership, closely related to feminism. High lesbian and feminist opposition to same-sex union registration, as it was initially in most Scandinavian countries, lowers total registration frequencies. (Digoix, 2008; Rydstrom, 2008; Banens e.a., 2008). Women's registration rates were considerably higher right from the start in the Netherlands, Belgium and the UK. Though it went up in all countries after the initial years, women's registration frequency still remains a predictor of total same-sex union registration rates.

This contribution describes the major European discrepancies in European same-sex union registration and suggests hypotheses for better understanding the question why same-sex couples register so frequently in some countries, so rarely in others. It adds new arguments, based on quantitative and qualitative research.

## *Frequency discrepancy*

Registration rates vary widely from country to country. In 2010, the overall European rate was 8 registrations for 100 000 inhabitants, but rates ranged from 0.2 in Slovenia, to 14 in France. Frequency diversity was geographically located: France (14 for 100 000) was on top, before the North Sea region (UK, Denmark, Belgium, Netherlands: 10 for 100 000), North Scandinavia (Norway, Sweden, Iceland, Finland: 6 for 100 000) and Central Europe (Germany, Austria, Czech Republic, Hungary, Slovenia: 2 for 100 000). Same-sex registration contrasts were much larger than different-sex marriage contrasts and in no way related. They reflected important sociological differences in

homosexual lifestyles and experiences between European regions. Moreover, these differences seem to be rather constant over time.

### *Methodology*

In order to understand European diversities, this research follows two pathways. First, same-sex union registration rates are related to other demographic characteristics of marriage and family life: different-sex marriage rates, divorce rates, out-of-marriage births, legal status of same-sex partnership/marriage, degree of acceptance of homosexuality, etc. Different models measure variables' contributions to predict same-sex registration levels in order to uncover hidden or complex interrelations. Second, in-depth interviews with same-sex couples in twelve countries shed light on the question why couples decide to register their union or not. The interviews add elements of understanding how macro-sociological mechanisms end up into individual decisions on union registration.

### *Results*

Different factors seem to influence same-sex union registration practices. Mainstream ideology is one. The North Sea region, including Denmark and, more surprisingly, Switzerland, features triumphant homosexuality with highly visible scenes and conquering LGBT movements. This triumphant homosexuality produces major registration booms the first year of registration, largely covered by mainstream press and media. Same-sex union recognition is seen as a political victory. The LGBT community came out as the winner of a long fight for rights, and all of society chose to share the victory. It turned into national pride, actively supported by State initiatives and claimed by public opinion. All of the North Sea countries, including Denmark and Switzerland, think of themselves as world champion in same-sex union recognition: first legislation (Denmark), first marriage (Netherlands), first people's vote (Switzerland), best legal coverage (UK), etc. In this context, same-sex couples tend to identify with the pride. Couples see marriage as a symbolic turning point for their lives as it is for society. Even former critics of marriage may express their conversion to marriage as a symbolic conciliation with society. Consequently, same-sex union registration rates are high.

At the opposite, the Central European region features triumphant homophobia, with discrete gay scenes and major homophobic mainstream media. A significant consequence is the absence of published registration figures. The strong public opposition to same-sex union recognition is not related to high social homophobia. Indeed, homophobia is not stronger in Germany than in the UK. Inversely, some other countries, like the Scandinavian, have very low homophobia scores without featuring triumphant homosexuality. The difference is on visibility. The LGBT community is less, homophobia is more visible. Mainstream majority has not massively embraced LGBT issues. LGBT rights did not produce national pride. In this context, same-sex couples seem to wait and see. Many think of the existing same-sex partnerships as too far from marriage to consider registering their union. Very few reconsider former critics of marriage. Generally, same-sex couples say they wait for significant improvements. In reality, they might wait for social pride to share.

Northern Scandinavia features a strong tradition of marriage contesting. The social position of married women has been valued over the 20<sup>th</sup> century, establishing social and financial independence inside marriage. Divorce facilities have been introduced and social rights individualized. As a consequence, marriage lost much of its material and symbolic values and this was claimed, rightly so, as a women's victory. Marriage critics were, and still are, important under women and even more so under lesbians and feminists. In this context, same-sex union recognition has split the LGBT movement for many years and lesbian union registration was rare at the beginning. Nowadays, lesbian couples register more than gay couples because of parenting facilities, but frequencies remain low, for lesbian as for gay couples. Again, couples show little interest for registering. The model of a private, individualized, non registered lifestyle is dominant, for same-sex as for different-sex couples. And through the featured individualist lifestyle, couples seem to adhere more to the social Scandinavian State than to the LGBT community.

More results will be presented at the conference.

### *Some references*

Andersson G., Noack T., Seierstad A., Weedon-Fekjaer H., 2006, "The demographics of same-sex marriages in Norway and Sweden," *Demography*, 43, 1, 79-98

Badgett L, 2009, *When gay people get married: What Happens When societies legalize same-sex marriage*, New York University Press

Banens M., 2011, "La reconnaissance légale du couple de même sexe en Europe », *Ex Aequo*, n° 23, pp. 113-129

Banens M., Mendes-Leite R., 2008, *New visibility - further discrimination?* Research Report Department of Employment, Social Cohesion and Housing and the Ministry of Health and Solidarity

Bech H., 1998, *When men meet*, Chicago, University of Chicago Press

Bech H., 1992, "Report from a rotten state:" Marriage "and" Homosexuality "au Danemark," in K. Plummer (ed.), *Modern Homosexualities: Fragments of lesbian and gay experience*, 134-147

Bernhardt E., 2002, "Cohabitation and Marriage Among Young Adults in Sweden: Attitudes, expectations and plans. Nordic demography: Trends and Differentials ", *Scandinavian Population Studies*, 13, 157-170

Digoix M., Festy P. (eds.), 2004, *Same-sex couples, same-sex partnerships and homosexual marriages: A focus on cross-national Differentials*, Paris, INED, paper

Digoix M., 2008, "The Nordic concept of equality. Between differentiation and universalism, "in V. Descoutures (ed), *Marriage and Homosexuality in the world*, Paris, Autrement

Festy, Patrick, 2006, "The legalization of same-sex couples in Europe," *Population*, 61, 493-531

Festy, Patrick, 2001, "PACS: an impossible evaluation ", *Population and Societies*, 369

Lubbers M., Jaspers E., Ultee W., 2006, "Het homohuwelijk bij de invoering: voor-en tegenstanders" *Mens en Maatschappij*, 81, 2, 100-120

Lützen, Karin, 1998, "Gay and lesbian politics: assimilation or subversion: A Danish perspective", *Journal of Homosexuality*, 35, 3-4, 233-243

Noack, Turid and Ane Seierstad, Harald Weedon-Fekjaerd, 2005, "A Demographic Analysis of Registered Partnerships (legal same-sex unions): The case of Norway", *European Journal of Population*, 21, 89-109

Rydström, Jens, 2008, "Legalizing Love in a Cold Climate: The History, Recent Developments and consequences of registered partnership in Scandinavia", *Sexualities*, 11, 193-226

Shipman C., Smart and Beccy, 2007, "" It's made a huge difference ": Recognition, Rights and the Personal Significance of Civil Partnership ', *Sociological Research Online*, 12, 1

Smart C., 2008, "" Can I Be Bridesmaid? "Combining the Personal and Political in Same-sex weddings," *Sexualities*, 11, 761-776

Waldijk K. (ed.), 2005, *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners. A comparative study of nine European Countries*, INED, Working Papers, 125

Waldijk, Kees, 2004, "Others May Follow: the introduction of marriage, quasi-marriage, and semi-marriage for same-sex couples in European countries", *New England Law Review*, 38, 569-589

Waldijk, Kees, 2001, "Small change: How the road to same-sex marriage got paved in the Netherlands", in Robert Wintermute, Mads Andenaes (ed), *Legal recognition of same-sex partnerships: A study of national and european international law*, Oxford, Hart Publishing, 437-464

Weeks J., Heaphy B., Donovan C., 2001, *Same Sex Intimacies. Families of Choice and Other Life Experiments*, London and New York, Routledge