

Queer and Trans Access to Assisted Reproductive Technologies (ART): A Comparison of Three EU-States - Poland, Spain and Sweden

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Abstract

This article is about the legal challenges and difficulties of queer and trans reproduction with ART in three purposely selected European states: Sweden, Poland and Spain, representing the north, east and west of Europe. Isabell Engeli and Christine Rothmayr Allison's (2017) continuum model of classifying countries according to their permissive, intermediate or restrictive regulations for ART access serves as an example how a national comparative analysis on ART policies is established. However, this framework needs to be adjusted to address the regulations pertaining to queer and trans people's reproductive, parenthood, and partnership opportunities. Thus, the queer and trans model I propose includes somewhat different concerns and criteria than Engeli and Rothmayr Allison's such as which terminologies for the parents are available on the birth certificate. The overall aim is to provide insights into the different regulations regarding ART in the three countries here discussed, and to suggest solutions for a more inclusive European legal framework for ART access.

Keywords

Queer and trans reproduction, Poland, Spain, Sweden, national comparative analysis.

Introduction

One ruled a US citizen, the other not: gay couple's twins face unusual battle. Government's decision to treat two sons differently based on their paternal DNA casts a harsh light on the treatment of LGBT immigrant couples: 'You're not fully equal'. (Levin, 2018, n.p.)

Could a US-headline such as this one be possible in Europe? Similar cases have occurred in Europe: for example, a Spanish trans woman was denied the adoption of her children born by a Ukrainian surrogate mother (Álvarez, 2018, n.p.). This example shows that 'fertility tourism' by trans and queer people such as commonly occurs across European countries (e.g. Jasanoff, 2005a) can fall foul of parenthood and fertility regulations that are configured differently in diverse countries so that only certain people are legally recognized as father, mother or parents. Such diverse legislations create difficulties for the intended parents. At the same time, certain surrogacy arrangements (especially if the surrogate mother is from a developing country) are heavily contested.² This contributes to an unwillingness to

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² Biocolonial exploitation exists in ART and in certain transnational surrogacy arrangements (see Leibetseder, 2018). One might argue that such transnational exploitation of surrogate mothers is a kind of queer necropolitics

make the legal situation less complicated. However, in times when some people (especially queer and trans) are forced into ‘fertility tourism’ and ‘medical border crossing’ and their numbers are increasing overall, and when stricter border controls are implemented all over the world, appropriate parenthood and kin-making related regulations and documentation become more and more important.

In this article, I undertake a comparative analysis of the legal challenges and difficulties of queer and trans reproduction using ART in three purposely selected European states: Sweden, Poland and Spain. These countries represent the north, east and west of Europe. I draw on Isabell Engeli and Christine Rothmayr Allison’s (2017) continuum model of classifying countries according to their permissive or restrictive regulations for ART access, but adjust this framework to address the regulations pertaining to queer and trans people’s reproductive, parenthood, and partnership opportunities. Thus, the queer and trans model I propose includes somewhat different concerns than Engeli and Rothmayr Allison’s. The overall aim is to provide insights into the different regulations regarding ART in the three countries here discussed, and to suggest solutions for a more inclusive European legal framework for ART access.

ARTs and Queer and Trans People

According to the International Committee for Monitoring Assisted Reproductive Technology and the World Health Organization, ART ‘includes the in vitro handling of both human oocytes and sperm, or embryos for the purpose of establishing pregnancy’(Zegers-Hochschild et al., 2009, p. 2685). One social group particularly affected by legal ART frameworks are queer and transgender people (James-Abra et al., 2015; Kalender, 2010, 2012; Mamo, 2007). This is because in most cases they need these technologies to be able to reproduce. Queer is here used as an umbrella term for LGBTQI people and others such as intersex people, drag kings and queens, who self-define as queer. Transgender or trans is someone ‘who does not feel comfortable in the gender role they were attributed at birth, or who has a gender identity at odds with the labels ‘man’ or ‘woman’ credited to them by formal authorities’(Whittle, 2006, p. xi).

In the following I focus on two aspects of queer and transgender rights and ART use: first, on partnership recognition, and second, on gender and sexuality issues in the legal regulations of ART, and of family and kinship (Melhuus, 2009). I then provide a comparative analysis (Jasanoff, 2002, 2005a, b) of these dimensions, an outline of the reproductive challenges queer and transgender people face in Sweden, Poland, and Spain respectively. I also suggest ways of tackling these challenges. In discussing these challenges I consider who is allowed to reproduce and how; what laws exist regarding parental filiation for queer and transgender people; and how ART may be accessed (specifically, how it is financed). Each country’s socio-cultural, socio-economic, political and medical history has a significant impact on queer and trans people’s access to ART. In this context I refer to Engeli and Rothmayr Allison’s classification model of permissive, intermediate and restrictive European countries regarding ART. However, since their model is in some respects heteronormative, I adapt it for my focus on queer and trans people. This means that I begin with same-sex partnership regulations in the three countries since these influence who can be a parent. In relation to this Poland is very restrictive, Spain more permissive, and Sweden intermediate. The constraints regarding LGBTQI people’s same-sex partnerships and marriage are evident in each country’s regulations (see Table 1):

vitalizing (mostly white) queer and trans people and devitalizing ‘racialized, classed and gendered others’ (Haritaworn, et al., 2014, p. XVI and 2; Leibetseder, 2018; Nebeling Petersen, 2015, p. 78).

Table 1. Partnership regulations regarding queer and trans people's formal relationship registration in Poland, Sweden and Spain, 2018.

Country	Civil Partnership Possible	Same-sex Marriage Possible
Poland	No.	No.
Sweden	Not anymore.	Yes, since 2009 (SFS 1987:230, amended by SFS 2009:253, (ILGA-Europe Annual Review 2018, 2018)).
Spain	Yes, in some provinces.	Yes, since 2005 (Ley 13/2005).

I shall now discuss each country in turn.

Sweden

Swedish public discourse is strongly influenced by notions of equality. This determines many of its policies. The Swedish church and the state are also separate so that religion, unlike in Poland for example, has little influence on public discourse and legislative processes (Gunnarson Payne and Korolczuk, 2016, p. 1076). In 2001, the Swedish government recommended that registered partners should be able to apply for adoption and second-parent adoption, and that lesbians should have access to ARTs. The laws changed accordingly in 2003 and 2005 (Proposition 2001/02:123, 2002; Proposition 2004/05:137, 2005; SOU 2001:10, 2001, p. 15). However, only if ART is accessed through public healthcare, does no second-parent adoption have to be obtained (Malmquist, 2015, p. 36).

One can access ART in Sweden both publicly and privately, but until 2019 donated gametes can only be used in a public university hospital (Gunnarson Payne and Korolczuk, 2016, p. 1078; Lagrådsremiss, 2018, p. 33). Egg and sperm donations are non-anonymous; the child has the right to find out the donor's identity after the age of majority. Lesbians gained access to ART when the identity release of donors was introduced because 'the state authorities could maintain their control over and registration of the children's genetic origin' (Malmquist, 2015, p. 24; Proposition 2004/05: 137). However, the number of known sperm donors is low. This implies long waiting times for assisted insemination or IFV for lesbians in Sweden. *Barnlängtan (Longing for Children)* (Riksförbundet, 2018, n.p.), an organization fighting for equal access to reproductive technologies, does so because straight couples can ask for treatment in private clinics if, for example, the publically paid-for treatments prove insufficient, but lesbians who rely on donated sperm cannot access private clinics for these purposes until 2019 (Gunnarson Payne and Korolczuk, 2016, p. 1083; Lagrådsremiss, 2018, p. 33.). A study about the experiences of Swedish lesbians who used ARTs found that there are still 'heteronormative issues' to be solved (Malmquist and Nelson, 2014, pp. 61-62). These are, for example, ignoring the lesbian couple altogether or at least the social mother during the treatment, and using labels and certificates containing 'mother' and 'father' as designations (Ibid: pp. 62-66).

The legalization of embryo/double (sperm and egg) donations was proposed by a governmental report in 2016 and implemented in 2019. Therefore ROPA (Receptions of Oocyte from Partner), where for example one woman in a lesbian couple provides her oocyte and the other carries the pregnancy, will be allowed in Sweden from 2019 (Malmquist, 2015, p. 24; Lagrådsremiss, 2018, pp. 24-34). As Zeiler and Malmquist (2014) have argued, the prohibition of ROPA was heteronormatively biased because a straight woman could receive a

donated egg, and gametes from her male partner. For lesbians ROPA is one way to reproduce, if they want to be genetic parents but do not want to become pregnant, or if there are spare embryos from a previous ART process. The Swedish Council for Medical Ethics (SMER) gave the go-ahead to embryo donation in 2013 (SMER, 2013; Gunnarson Payne and Korolczuk, 2016, p. 1085) and in 2018 the government decided to update their laws on ART and parenthood in their Lagrådsremiss. This change has been uncontroversial. However, surrogacy is still controversial (Ibid, p. 1086; Gondouin, 2014, pp. 109-110), but the 2018 update made it easier to obtain fatherhood by being genetically connected to the child after surrogacy abroad (Lagrådsremiss, 2018, 39-48). Surrogacy is still illegal in Sweden (Gunnarson Payne and Korolczuk, p. 1076).

Trans people face particular challenges when it comes to reproduction in Sweden. Until 2013 they were required to be sterilized if they wanted to transition. Although Sweden was the first country, in 1972, to allow gender confirmation (or reassignment), it insisted that sterilization was 'necessary to fully eliminate the risk of confusion in kinship relationships' (Proposition 1972:6, p. 50; Gunnarsson Payne and Erbenius, 2018, p. 1). In 2018, Sweden is paying compensation (225.000 SEK) to trans people whose reproductive organs were removed until 2013 (RFSL, 2018).

Years before the sterilization law changed a drop in numbers of trans people applying for legal gender confirmation occurred because keeping their reproductive capacity mattered so much that they procrastinated in applying for official transition (Gunnarsson Payne and Erbenius, p. 6). After 2013 a new medical care chain for keeping trans fertility was introduced, and language issues (e.g. the use of appropriate pronouns; in Swedish a gender-neutral pronoun 'hen' exists, which is important for non-gender binary trans people) were taken into account, the color of signs and of forms (earlier it was blue for sperm-freezing and pink for egg-freezing) and the drawings on the forms around the sex organs were changed, e.g. to not having a stereotypical female, curvy, body shape around the uterus (Ibid, p. 8 f.).

A challenge amongst others for trans people remains the long waiting time for gender affirmation treatment and fertility treatment, as there has been an approx. 40% increase in patients since 1999. Thus, opting for fertility preservation means prolonging the already long waiting time in the fertility treatment queue, which in itself creates further psycho-social difficulties for trans people (Dhejne, 2017; Dhejne and Öhberg, 2014). A further challenge is that in certain cases gynaecologists have to give trans people the advice to store gametes abroad, as according to the law in many cases the stored gametes cannot be used, e.g. if a transman has a transwoman as a partner (Gunnarsson Payne and Erbenius, 2018, p. 11 f.). In Sweden, only women are allowed to be treated with donated sperm.

Another problem is that Swedish family law is strictly organized around cis-normative understandings of kinship and family. The legal parental status for trans people (especially trans men after giving birth) is often unpredictable (Gunnarsson Payne & Erbenius, 2018, p. 12 f.; Zimmerman and Nordqvist, 2017). A court case decided that trans people should receive the parental status compatible with their legal sex, regardless of the contributed gametes. This also confirms that the person giving birth is always the legal parent (Nordqvist, 2017). However, the legislation includes the gender-neutral 'parent', but only for lesbian couples, as a mother and a parent, but not for a father (e.g. a trans man who gives birth) and a parent. This means that trans men giving birth cannot be named as the father on the birth certificate (and trans women as the mother). This creates unsafe legal situations for children until 2019. However, the updated ART and parenthood law in Sweden allows trans men to be named as father and trans women as mother on official documents (Lagrådsremiss, 2018, pp. 54-60). Still, one might argue that the legislation should focus on 'reproductive

functions' (e.g. giving birth) instead of sex and gender, and to find reproductive options for the increasing number of non-binary trans youth (Gunnarsson Payne and Erbenius, 2018, p. 14 f; SOU 2017:92, 2017).

Poland

Differently from Sweden, religion (Catholicism) in Poland has a strong influence in politics and therefore on policy-making. The Catholic Church in Poland is very restrictive towards ART and LGBT rights (Wilson, 2016). Between the 1980s and 2015 ART access in Poland was regulated solely by the financial possibilities of the intended parents (Gunnarsson Payne and Korolczuk, 2016, p. 1076). Thus same-sex couples who had the money could use ARTs in licensed clinics until 2015. However, in 2015 the Polish parliament introduced the first bill restricting ART use. This is because the Catholic Church as a 'semi-political organization' (Gozdecka, 2012; Just, 2008; Korolczuk, 2016, p. 128), and the (extreme) right-wing government contested ART, comparing IVF and non-implanted embryos to a kind of 'sophisticated abortion'. The 2015 bill, in contrast to Swedish law, de facto prohibited ART access for single women and same-sex couples, as access is only allowed for treating the medical infertility of married or cohabiting couples (Korolczuk, 2016, p. 128). Surrogacy remains unregulated but is risky as the law favours the woman who gives birth. Anonymous gamete/embryo donation is allowed (Gunnarsson Payne and Korolczuk, 2016, p. 1078). The right-wing Law and Justice Party was against publicly financing ARTs and has discontinued ART funding by the state since 2016 (Mizielinska and Stasinska, 2017, p. 3; Gunnarsson Payne and Korolczuk, 2016, p. 1077). Although the Polish population accepts ART as a possibility to reproduce, the related media discourses are influenced by religious and right-wing groups (Ibid, p. 1078). The latter claim that babies born from IVF have high numbers of birth defects and carry an emotional and social burden (Ibid, p. 1087; Radkowska-Walkowicz, 2012, p. 20, 40). The terms 'monsters' and 'pollution' are employed here as well as in the debates on homosexuality (Graff, 2010, p. 591; Korolczuk, 2016, p. 131). The family is still ideally heterosexual and attitudes are mostly negative when it comes to homosexual parenting (Gunnarsson Payne and Korolczuk, 2016, p. 1083; Graff, 2014; Korolczuk, 2014, 2016, p. 131).

From the perspective of queer people, this situation circumscribes their reproductive possibilities. In her study of 'Families of Choice in Poland', Mizielinska asked non-heterosexual people about their reproductive plans and found that 16% of non-heterosexual people (24% women, 5% men) want to have children within 5 years. Queer women wanted to inseminate in fertility clinics (81%), or at home (60%); only 7 % considered sexual intercourse with a man and 57% would prefer that the biological father remain anonymous. 57% of queer men wanted to raise a child with their partner (and employ a surrogate mother), 32% would consider adoption, 8% would like to bring up the child with its mother and only 2% accepted limited contact with their child, as e.g. an uncle (Mizielinska and Stasinska, 2017, p. 5). However, adoption is legally impossible for same-sex couples and adoption as a queer single parent is very difficult. Trying this would mean hiding one's queer identity and any non-heterosexual relationship. To have one's own biological offspring would be the sole possible choice (Ibid, p. 6), but it is not easy for gay couples to find a surrogate mother in Poland.

Trans people face their own difficulties. In Poland, sterilization is not required as it is forbidden to interfere with a person's procreative capacities (Polish Criminal Code, 1997, Art.156, Paragraph 1, p. 2695; Trans-Fujza Foundation and Polish Society of Anti-discrimination Law, 2014, p. 6). Thus, the challenge for transmen is to find medical staff who will carry out a mastectomy (breast removal), as some physicians fear legal consequences.

However, transmen need to undergo this medical procedure, because otherwise the court will dismiss their case. All trans people also need to have a minimum of six months' hormonal treatment in order to 'resemble the gender they want to be assigned to' at the trial (Dynarski, 2011, p. 2; Klonkowska, 2015, p. 126 f.). Trans-Fuzja maintains that there are no (officially) known cases of trans people having children after transitioning. Trans people do not dare to admit that they would like to reproduce because they fear that their wish for gender re-assignment would not be believed. On the positive side, trans people in Poland can marry a person of the other gender. Doing this means that they can access ART legally.

For all other queer and trans couples, there is no marriage equality, no registered partnership, no cohabitation registration, no adoption or co-parent recognition, and no medically assisted insemination (for couples or singles). The current Polish birth certificate allows solely the option of *ojciec* (father) and *matka* (mother), which means no legal parenthood registration is possible for queer and some trans couples (if they are not a heterosexual couple). However, Poland's Supreme Administrative Court (SAC) ruled in October 2018, that the British birth certificate of a four-year-old boy of two female Polish citizens has to be entered in the Polish birth register (as mentioned in the introduction of this special issue). In 2015, a new law made the transcription of a foreign civil status act obligatory, if a Polish citizen applies for a passport, ID card or social security number. The refusal to transcribe would render the child illegal. Both mothers will be mentioned as parents in all these documents (Mazurczak, 2018, n.p.).

Spain

Spain, also a Catholic country, is one of the leading European countries regarding numbers of ART-treatment cycles (European Society of Human Reproduction and Embryology, 2017). It developed very quickly into one of the most permissive ART countries in the EU (Marre, et al., 2018, p. 160).

After the end of Franco's dictatorship in 1975, the influence of the Catholic Church in Spain weakened and during the Socialist government in 1988, the first ART law was implemented, reformed during the People's Party government in 2003. In 2005 same-sex marriage (Spain was the third country in the world for this) was introduced. In 2006 the current ART law came into force (Pichardo Galán, 2009, p. 144, 2011, p. 17 f.; Pichardo Galán, et al., 2015, p. 189). Spain was also the first state to allow adoption by same-sex married couples (Imaz, 2017, p. 6). The current legislation allows lesbian couples access to ART and to ROPA if they are married (as the law requires the consent of the unmarried male, but does not say anything about an unmarried female partner) (Ley 14/2006, 2006, p. Art. 6.1; 6.3; 7.3). Anonymous and altruistic egg and sperm donation (Ley 14/2006, 2006, p. Art. 6.5) are allowed and a national registry for donors is being implemented. However, due to budget cuts in public health the Spanish government excluded single and lesbian women from publicly funded ART services from 2012 on. They now have to turn to private clinics. This financial measure de facto discriminates between hetero- and homosexual citizens (Digoix et al., 2016, p. 18). However, in Catalonia a new law was introduced in 2014 (Ley 11/2014, Capítol II, Art. 16), allowing lesbians to have access to ART in the public health services, but this was only implemented in 2016 (Generalitat de Catalunya, 2016; Falguera, 2018, p. 4). The waiting lists at public health centres for ART are quite long, between 6 months and 2 years (Ibid, p. 19).

Gay couples can access adoption (but there are almost no national adoptees) and surrogacy abroad, as it is banned in Spain, but many point out the gender bias in the Spanish

ART law (Ley 14/2006) allowing ART access to all cis-women regardless of their civil status or sexual orientation (Smietana et al., 2014, p. 199).

However, Spanish surrogacy debates are changing. One reason for this is the sharp increase in surrogacy arrangements by Spanish citizens abroad (mostly in the US, Canada, India, Georgia and Russia). Many commercial surrogacy agencies have opened in Spain, several associations are advocating gay men's right to parenthood, and Cuidados, a political party (Blanco et al., 2017) is in favour of legalizing surrogacy (Imaz, 2017, p. 9; Marre et al., 2018, p. 166), despite feminist concern as seen in the manifesto *No somos vasijas* (*We Are Not Vessels*) (No somos vasijas, n.d.) from 2015, and in 2017's *#MiVentreNoSeAlquila* (*My Tummy Is Not for Rent*).

The transnational movement of babies creates legal challenges for parenting rights and the citizenship of the baby (Smietana, 2015, p. 50). In Spain a lengthy legal process is required to transfer parental rights, involving in some cases even Supreme Court appeals (Smietana et al., 2014, p. 199 f.). Thus, in 2010 a directive to facilitate the recognition of transnational surrogacy was issued by the Spanish Ministry of Justice, but was vetoed by the Spanish Supreme Tribunal in 2015 (Smietana, 2015, p. 51). One of the organisations in favour of surrogacy, *Son Nuestros Hijos* (*They Are Our Sons/Daughters*), argues that the best solution to avoid abuses would be to legalize surrogacy (Blanco, 2017). According to a Catalan opinion poll in 2017, 73% citizens are in favour of legalizing surrogacy (*El Periódico*, 2017a). Since 2017 the Catalan government (Generalitat de Catalunya) allows paid paternal leave for public-sector employees (also for gay parents) who use surrogacy (*El Periódico*, 2017b). Thus, there are regional differences concerning ART access, with autonomous provinces such as Catalonia having their own regulations (Generalitat de Catalunya, 2016).

Access to trans fertility preservation depends on the province you live in: semen can be cryopreserved in authorized banks and used during the life of a trans person because there is no time limit to cryopreservation. However, the use of cryopreserved oocytes and ovarian tissue requires authorization by the corresponding health authority (Ley 14/2006, 2006, Art. 11.2.). Catalonia has an inclusive approach to this authorization, but according to the Spanish Fertility Society a lack of agreed guidelines hinders access to this (Generalitat de Catalunya, 2016; San Román, 2018). In 2010, the Spanish National Commission for Assisted Human Reproduction (Comisión Nacional de Reproducción Humana Asistida) was consulted to declare officially that a transman is allowed to cryopreserve oocytes before transitioning, but the Commission decided that the demand to preserve oocytes contradicts the wish to become a man (Boada et al., 2014, p. 29 f.). The situation for transmen in Spain is similar to that in Poland, as their reproductive desires are officially not recognized and seen as contradicting their gender confirmation request. However, a Spanish study shows that 65% of trans people would like to be parents (Báez, et al., 2010, p. 449 f.) and since 2007 gender reassignment surgery has not been necessary to transition legally. Thus, it would improve the reproductive possibilities of trans people in Spain, if the ART-law (Ley 14/2006) stated that ART could be used in cases where fertility preservation is needed (Boada et al., 2014, p. 30).

Re-thinking National Comparisons of ART Policies for Queer and Trans People

Engeli and Rothmayr Allison's (2017) comparison of different ART policies classified diverse regulations along a continuum of 'permissive', 'intermediate', and 'restrictive' (p. 89). The authors used three analytical dimensions to define their scale of permissiveness: 1) the relative autonomy of the medical community vis-à-vis ART regulations; 2) access to ART (single or post-menopausal women, same-sex couples); 3)

financial coverage for treatment (Ibid, p. 88 f.). To understand specifically ART-assisted queer and trans reproduction in Sweden, Poland and Spain during early 2018, I used instead three partly analytical dimensions: 1) the laws concerning queer and transgender kinship; 2) laws regarding ART access for LGBTIQ-people; 3) funding possibilities for queer and trans people for treatment. These criteria are different from Engeli and Rothmayr Allison's model because they articulate more directly legal issues around queer and trans reproduction and parenthood. Table 2 below summarizes my findings.

Table 2. Comparison of the Relative Restrictiveness of Regulations Concerning Queer and Trans People in Poland, Sweden and Spain, 2018.

Regulations:	Poland	Sweden	Spain
Legal registration of parents.	No adoption possibilities. No automatic co-parent recognition.	Joint and second-parent adoption, but no automatic co-parent recognition.	Automatic co-parent recognition. Joint and second-parent adoption.
Birth certificate terminology for parents.	Father Mother	Mother (birth mother, or mother whose semen was used); since 2019: Father (birth father). Father/Parent	Father/Progenitor A Mother/Progenitor B
ART: allowed for queer people?	No, only for married or cohabitating couples (which is only legally possible for heterosexual couples).	Yes, for singles and lesbian (cis & trans) couples.	Yes, for singles and lesbian couples.
ART: surrogacy	Surrogacy is unregulated, but the birth mother is legal mother by Polish law.	All surrogacy is banned, but a Stockholm-based international surrogacy agency exists (<i>Yle Utiset</i> , 2018).	All surrogacy is banned, but international surrogacy is used. Legal parenthood and Spanish citizenship for the child demands lengthy legal processes.
ART: State funded/reimbursed?	No state-funded ART since 2016.	ART with donated sperm only possible in public clinics until 2018, but with long waiting times. However, if publicly paid procedures are not successful, lesbians can access private institutions from 2019.	Legally yes, but due to budget cuts lesbians and single women have been excluded from publicly funded ART since 2012. In Catalonia, lesbians can access ART publicly.

My comparison of ART and related policies for queer and trans people in the three countries indicates the complexity of the many dimensions of these regulations transnationally. Even within one nation different partnership regulations may pertain, e.g. in Spain (see Table 1). Thus the patterns of restrictivity or permissiveness more generally may not be uniform within the same country. The most restrictive of the three countries in this study, Poland, still has no clear laws on surrogacy whilst Sweden and Spain ban surrogacy altogether. Thus, degrees of permissiveness in queer and trans ART and family laws differ sometimes even within one state, or their implementation does not fully occur (e.g. in Spain the budget restriction for lesbian ART), or vague legal formulations or heteronormative categories leave LGBTQI-people in a limbo. This raises questions regarding categories (e.g. ‘parent’ vs. ‘mother’) and I return to these in the conclusion.

Conclusion

First, the comparison of the regulations of the 3 EU-states indicates that not only do diverse European countries have different regulations, but also that the laws in a given country may not be internally consistent or necessarily implemented at national level. Permissive legislation on one issue of regulation (e.g. same-sex marriage) does not guarantee access to ART for all queer and trans people. Second, these differences in regulations indicate complex contradictions at national level. Third, many of these legislations have a temporal dimension, allowing some legal possibilities before others (eg. civil partnership generally happens before same-sex marriage is allowed and before queer ART-access is legalized).

In more restrictive countries such as Poland, vague or prohibitive laws concerning the access of LGBTQI-people to ART and un-implemented or not-existing partnership and kinship regulations have the ‘advantage’ of making legal discrimination not obviously visible in the laws themselves; it is therefore difficult to call them out in the European Court of Justice. This is problematic for queer and transgender people as they navigate ways to legalise their family structures in official documents. However, they might be left in a legal limbo. To avoid categorising queer and trans people as such in Polish ART-laws might be better for LGBTQI-people, as such categories further stigmatization and explicit exclusion. An improvement for the queer and trans community in Poland would be for at least LGBTQI organisations to provide clear information on how to use ART in a safe, legal and not too expensive way (for example using ART in the Czech Republic), how to navigate the administrative maze to obtain parenthood after birth, and to advocate that the court should officially recognize that trans people may have reproductive desires.

Some of these challenges do not only exist in restrictive countries, but also in intermediate and progressive countries such as Sweden and Spain, where bureaucratic obstacles to legal parenthood exist. Here equal rights for queer and transgender people are often stuck at a symbolic level, meaning that in the media and in public discourse Swedish society is presented as progressive. However, this does not trickle down (or if it does just very, very slowly) to medical and legal situations, as the long waiting lists for queer and trans people in ART-clinics in Sweden and Spain show. Here more public financing and staff training might help the LGBTQI-community.

As seen in more permissive countries such as Spain, using heteronormative family structures as a basis for enabling different forms of legal kinship creates its own difficulties, as it does not necessarily reflect the reproductive realities of queer and transgender people. It might be useful to rethink gender, sexuality and kinship (to what extent is the genetic link important or not) and to set up different and more up-to-date definitions of gender, sexuality and kinship, which serve as the basis for ART and parental regulations. However, I would also like to propose an additional concluding point. The fact that the various European countries have gradually introduced more liberal legislation regarding

access to formal partnership recognition and access to ART is no guarantee that this will last or that the relevant legislation will continue to become more progressive. This is evident in the repeated attempts in Poland in 2018 to repeal legislation on abortion and in the exclusion of LGBTIQ people from ART-access since 2015. Continued vigilance is required for all minority groups.

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