

*Council for the Administration of Criminal Justice
and Protection of Juveniles*

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To the Minister of Justice
Mr. E.M.H. Hirsch Ballin
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Contact person : Ms. M.L.H. Gelauff
Direct tel. number : 070-3619350
Email : m.gelauff@minjus.nl
Date : 19 March 2010
Our ref : CR35/1068225/2010/MG/TvV
Re : legislative proposal on lesbian parenthood

Dear Mr. Hirsch Ballin,

By letter of 12 December 2009 you requested the Council for the Administration of Criminal Justice and Protection of Juveniles (hereinafter: the Council) to render advice on the legislative proposal on lesbian parenthood. Further to your request I inform you as follows.

As usual, the Council has put together an advisory committee to prepare the recommendation. The legislative proposal has been discussed and examined in detail by this committee. Extensive discussions have been held in all of the Council's sections and the final conclusion was that it is at this point not possible to submit a recommendation. Below, the Council will gladly elaborate on this conclusion.

The legislative proposal is in line with developments in society; the past years have shown a growing diversity in relationships. As a consequence, children are no longer born exclusively during the marriage of a man and a woman. This is why the House of Representatives has repeatedly emphasised the need for new legislation¹.

The legislative proposal is based on the report "Lesbian parenthood" of the Lesbian Parenthood and Inter-Country Adoption Committee (Kalsbeek Committee), which recommended to allow the co-parenting woman to acknowledge the child, at the very least. At the time, the committee made a conscious choice not to discuss the question whether legal parenthood should

¹ Parliamentary Papers II 1999-2000, 26 672, no. 9 and 2006-2007, 30 800 VI, no. 60 and 2009-2010, 32 123 VI, no. 57.

arise by operation of the law if lesbian parents have made their relationship official through marriage or registered partnership, as there are various controversial aspects to such a regulation.

Although it is not mentioned in the Explanatory Memorandum, the recommendation made by Ms. C.J. Forder, “Acknowledgement of the child by the mother’s female partner”, was taken into consideration when the legislative proposal was drawn up, as the Council understands from the State Secretary of Justice’s letter to the House of Representatives of 19 May 2009. This recommendation focuses on the question to what extent the biological father is entitled to acknowledge the child, what the effect is of the prenatal acknowledgement in this context and to what extent the child of co-parenting women is legally entitled to information on its biological descent with a view to the European Convention on Human Rights (ECHR) and the International Convention on the Rights of the Child (UNCRC).

The Council agrees that it is important to also implement appropriate legal and social regulations for children who are not born during a marriage between a man and a woman. The Council has therefore read the report referred to above and the recommendation with interest, but feels that, before new legislation is implemented, a broader investigation should be performed on this important subject matter, both from a legal perspective and from a psychological and social viewpoint. Not only the circumstances of a child being born in a relationship of two women should be considered, but also other kinds of relationships within which children grow up.

So far, no such broad investigation has been performed and, consequently, there is no over-all view on how to deal with this issue within the legal framework. Moreover, no investigation has been carried out in which the desires and needs of all people involved in these cases have been taken into account, especially the desires and interests of the child. The Council is of the opinion that the rights and interests of the child as enshrined in the UNCRC should be a guiding principle in this respect.

Therefore, the Council feels that it is too early to implement far-reaching legislation which is seriously interfering with the right of descent and the consequences of which cannot yet be grasped, regardless of the question of whether or not the proposal for such legislation is initiated by political pressure. The Council considers it well possible that other options, like introducing a new legal concept, extending the rules for acquiring custody by operation of the law or adjusting adoption law would be a more logical course. The Council will gladly contribute to such an investigation and make a recommendation on the basis thereof.

Yours sincerely,
on behalf of the Council for the Administration of Criminal Justice and
Protection of Juveniles,

[signature]

Prof. dr. P.B. Boorsma, general chairman