

As a French Professor of Law (Université Lumière Lyon 2 — benjamin.moron-puech@univ-lyon2.fr), working for more than 12 years on this topic, and having published 4 articles on the topic of transgender parenthood which have been taken into account by the French Cour de cassation in its decision of September 16th 2020, I would like to make the following suggestions.

Three general principles should be followed to solve this issue properly:

- Distinguish clearly the rule regulating the establishment of the parenthood from the rules governing the material inscription of the parenthood in all legal documents and the rules governing parental authority;
- Use the legal distinction between sex characteristics and gender to solve this issue by using sex characteristics for establishing the filiation, gender for parental authority, while for the inscription of the parenthood both sex characteristics and gender should be used;
- Establish equal rules for everyone and therefore no special rules for transgender persons.

Considering these principles, these are my concrete recommendations:

- Regarding rules governing the establishment of parenthood. No specific rules should be created to establish the parenthood of transgender people who should be able to benefit from the common law applicable to all citizen. If the current rules use gender expression like “mother” or “father”, they should be replaced by ungendered expression and ideally expression linked with sex characteristics, in order to protect the right of the child to have access to his origine, like gestational parents or non-gestational parents.

- Regarding rules governing the inscription of parenthood. The act of birth of a child should not be written through forms entry like “mother/father/parent1/parent2”, etc. In order to avoid specific rules for transgender people which would be discriminatory, I recommend going back to a literal writing in used in the past, saying for instance “On that day, this child was born from this person who gave birth and this other one who recognize it”. The grammatical gender used should be in accordance with the parent’s gender and not their sex characteristics

- Regarding rules governing the parental authorities. The rules should be written here in a neutral gender way, in order to avoid any stereotypes and any expression exclusive of gender minorities. The word “parent” should be therefore preferred. If it’s necessary to keep gender designation, the words “mother” and “father” should be given to people on the sole basis of their gender and not their sex characteristics, in order to avoid any discrimination based on gender identity or gender expression ; a name should be find for agender or non binary parents.