



Press and Information

Court of Justice of the European Union

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Judgment in Case C-490/20

Stolichna obshtina, rayon 'Pancharevo'

Child, being a minor and a Union citizen, whose birth certificate was drawn up by the host Member State and designates as parents two persons of the same sex: the Member State of which the child is a national is obliged to issue an identity card or a passport to that child without requiring a birth certificate to be drawn up beforehand by its national authorities

It is also obliged to recognise the document from the host Member State that permits that child to exercise, with each of those two persons, the child's right to move and reside freely within the territory of the European Union

V.M.A., a Bulgarian national, and K.D.K. have resided in Spain since 2015 and were married in 2018. Their child, S.D.K.A., was born in Spain in 2019. The child's birth certificate, drawn up by the Spanish authorities, refers to both mothers as being the parents of the child.

Since a birth certificate issued by the Bulgarian authorities is necessary to obtain a Bulgarian identity document, V.M.A. applied to the Sofia municipality (Bulgaria) ¹ for a birth certificate for S.D.K.A. to be issued to her. In support of her application, V.M.A. submitted a legalised and certified translation into Bulgarian of the extract from the Spanish civil register relating to S.D.K.A.'s birth certificate.

The Sofia municipality instructed V.M.A. to provide evidence of the parentage of S.D.K.A., with respect to the identity of her biological mother. The model birth certificate applicable in Bulgaria has only one box for the 'mother' ² and another for the 'father', and only one name may appear in each box.

V.M.A. took the view that she was not required to provide the information requested, whereupon the Sofia municipality refused to issue the requested birth certificate because of the lack of information concerning the identity of the child's biological mother and the fact that a reference to two female parents on a birth certificate was contrary to Bulgarian public policy, which does not permit marriage between two persons of the same sex.

V.M.A. brought an action against that refusal decision before the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia), the referring court.

That court is uncertain as to whether the refusal by the Bulgarian authorities to register the birth of a Bulgarian national, ³ which occurred in another Member State and has been attested by a birth certificate referring to two mothers, issued in the latter Member State, infringes the rights conferred on that Bulgarian national by Articles 20 and 21 TFEU and by Articles 7, 24 and 45 of the Charter of Fundamental Rights of the European Union. ⁴ That refusal could make it more difficult for a

¹ Stolichna obshtina, rayon 'Pancharevo' (Sofia municipality, Pancharevo district, Bulgaria) ('the Sofia municipality').

² According to the Semeen kodeks (Bulgarian Family Code), in the version applicable to the main proceedings, parentage with respect to the mother is determined by birth, the mother of the child being defined as the woman who gave birth to that child, including in the case of assisted reproduction.

³ According to the referring court, it is common ground that, even without a birth certificate issued by the Bulgarian authorities, the child has Bulgarian nationality under, in particular, Article 25(1) of the Bulgarian Constitution.

⁴ 'the Charter'.

Bulgarian identity document to be issued and, therefore, hinder the child's exercise of the right of free movement and thus full enjoyment of her rights as a Union citizen.

In those circumstances, the referring court decided to ask the Court of Justice about the interpretation of Article 4(2) TEU,⁵ Articles 20 and 21 TFEU and Articles 7, 24 and 45 of the Charter. It asks, in essence, whether those provisions oblige a Member State to issue a birth certificate, in order for a Bulgarian identity document to be obtained, for a child, a national of that Member State, whose birth in another Member State is attested by a birth certificate that has been drawn up by the authorities of that other Member State in accordance with the national law of that other State, and which designates, as the mothers of that child, a national of the first of those Member States and her wife, without specifying which of the two women gave birth to that child.

In its judgment, delivered by the Grand Chamber, the Court interprets the provisions referred to above as meaning that, in the case of a child, being a minor, who is a Union citizen and whose birth certificate, issued by the competent authorities of the host Member State, designates as that child's parents two persons of the same sex, the Member State of which that child is a national is obliged (i) to issue to that child an identity card or a passport without requiring a birth certificate to be drawn up beforehand by its national authorities, and (ii) to recognise, as is any other Member State, the document from the host Member State that permits that child to exercise, with each of those two persons, the child's right to move and reside freely within the territory of the Member States.

Findings of the Court

In reaching that conclusion, the Court recalls first of all that, in order to enable nationals of the Member States to exercise their right to move and reside freely within the territory of the Member States,⁶ a right which every citizen of the Union enjoys under Article 21(1) TFEU, Directive 2004/38⁷ requires Member States, acting in accordance with their laws, to issue to their own nationals an identity card or passport stating their nationality.

Accordingly, since S.D.K.A. has Bulgarian nationality, the Bulgarian authorities are required to issue to her a Bulgarian identity card or passport stating her surname as it appears on the birth certificate drawn up by the Spanish authorities, regardless of whether a new birth certificate is drawn up.

Such a document, whether alone or accompanied by a document issued by the host Member State, must enable a child such as S.D.K.A. to exercise the right of free movement, with each of the child's two mothers, whose status as parents of that child has been established by the host Member State during a stay in accordance with Directive 2004/38.

The rights which nationals of Member States enjoy under Article 21(1) TFEU include the right to lead a normal family life, together with their family members, both in their host Member State and in the Member State of which they are nationals when they return to the territory of that Member State. Since the Spanish authorities have lawfully established that there is a parent-child relationship, biological or legal, between S.D.K.A. and her two parents, attested in the birth certificate issued in respect of the child, V.M.A. and K.D.K. must, pursuant to Article 21 TFEU and Directive 2004/38, be recognised by all Member States as having the right, as parents of a Union citizen who is a minor and of whom they are the primary carers, to accompany that child when she is exercising her rights.

⁵ Under which, in particular, the Union is to respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional.

⁶ 'the right of free movement'.

⁷ Article 4(3) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigendum OJ 2004 L 229, p. 35).

It follows, first, that the Member States must recognise that parent-child relationship in order to enable S.D.K.A. to exercise, with each of her parents, her right of free movement. Second, both parents must have a document which enables them to travel with that child. The authorities of the host Member State are best placed to draw up such a document, which may consist in a birth certificate and which the other Member States are obliged to recognise.

Admittedly, a person's status is a matter which falls within the competence of the Member States, which are free to decide whether or not to allow marriage and parenthood for persons of the same sex under their national law. In exercising that competence, each Member state must comply with EU law, in particular the Treaty provisions on Union citizens' freedom of movement and of residence, by recognising, for that purpose, the civil status of persons that has been established in another Member State in accordance with the law of that other Member State.

In the present case, the obligation for a Member State to issue an identity document to a child who is a national of that State, who was born in another Member State in which the birth certificate was drawn up and designates as parents two persons of the same sex, and, moreover, to recognise the parent-child relationship between that child and each of those two persons in the context of the child's exercise of her rights under Article 21 TFEU and secondary legislation relating thereto, does not undermine the national identity or pose a threat to the public policy of that Member State. It does not require the Member State concerned to provide, in its national law, for the parenthood of persons of the same sex, or to recognise, for purposes other than the exercise of the rights which the child derives from EU law, the parent-child relationship between that child and the persons mentioned on the birth certificate drawn up by the authorities of the host Member State as being the child's parents.

Lastly, a national measure that is liable to obstruct the exercise of freedom of movement for persons may be justified only where it is consistent with the fundamental rights guaranteed by the Charter.⁸ It is contrary to the fundamental rights guaranteed by Articles 7 and 24 of the Charter for the child to be deprived of the relationship with one of her parents when exercising her right of free movement or for her exercise of that right to be made impossible or excessively difficult on the ground that her parents are of the same sex.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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⁸ Relevant rights in the situation with which the main proceedings are concerned are the right to respect for private and family life guaranteed by Article 7 of the Charter and the rights of the child guaranteed by Article 24 of the Charter, in particular the right to have the child's best interests taken into account and the right to maintain on a regular basis a personal relationship and direct contact with both parents.