

LGBT organization Deystvie, Bulgaria and attorney-at-law Denitsa Lyubenova with referral to the ECJ regarding birth certificates of children of same-sex parents

On the 8th of December 2019 in [city], Kingdom of Spain, the child S.D.K.A. was born and a birth certificate was issued, which identified as mothers of the child V.M.A, a Bulgarian citizen, registered as “mother A’ and K.D.K., citizen of the United Kingdom, registered as “mother”, both are female.

With an application V.M.A., via her attorney Denitsa Lyubenova, applied to Sofia Municipality, district “P.”, for an issuance of a Bulgarian birth certificate of the child S.D.K.A. In support of the application was provided a legalized and certified translation in Bulgarian of the extract of the civil register.

According to the data of the birth certificate, V.M.A and K.D.K got married on the 23.02.2018 in G., United Kingdom.

On 07.02.2020 Sofia Municipality, district “P.” instructed the applicant to provide in 7 days evidence of the origin of the child, regarding its birth mother.

On 18.02.2020 the applicant via her lawyer Denitsa Lyubenova answered that she cannot provide such and is not obliged to provide such information according to the current legislation of Bulgaria.

On 05.03.2020 Sofia Municipality declined to issue a Bulgarian birth certificate of the child S.D.K.A. as there was not sufficient information about the origin of the child, regarding its birth mother.

Furthermore, according to the defendant it is impermissible to register female parents, as same-sex marriages are not allowed in Bulgaria and such registration would contradict the public order.

On 03.04.2020 Denitsa Lyubenova as attorney to V.M.A lodged a complaint in Administrative court – Sofia city against the refusal of Sofia Municipality to issue a Bulgarian birth certificate of the child S.D.K.A. in accordance with the issued Spanish birth certificate. The applicant complains that this refusal violates substantive and procedural laws as well as it violates 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, as well as it contradicts the case law of the Court of Justice of the European Union and the European court of Human rights. The refusal also is direct discrimination as per art. 4 of the Anti-discrimination law in Bulgaria.

Questions referred to ECJ (sent on 2 of October 2020):

Q1: Should art. 20 and art. 21 of the Directive 2004/38, and art. 7, 24, 45 of the Charter of Fundamental rights be interpreted as meaning that they don’t allow the Bulgarian administrative authorities, upon a request to certify the birth of a child, Bulgarian citizen, that took place in another member state and which is certified by a Spanish birth certificate, that identifies two females as mothers, without mentioning which one is the biological mother of the child, to refuse to issue a birth certificate on the ground that the applicant refuses to disclose which one is the biological mother of the child?

Q2: Should art. 4 §2, D. and art. 9, C. of fundamental rights be interpreted as meaning that the respect for national and constitutional identities of the Member States suggests that the latter have a wide discretion regarding the rules of establishment of origin. In particular:

Q2.1. – Should art. 4 §2, D. be interpreted as meaning that it allows Member States to require information about the biological origin of the child?

Q2.2. – Should art. 4 §2, D. and art. 7, 24 §2, C. be interpreted as meaning that it is necessary to seek for balance between the national and constitutional identity of a Member State, considering that, currently there is no consensus, both in terms of values and legislation, regarding the possibility to register as parents in a birth certificate persons of the same sex, without specifying if and which one is the biological parent of the child, and the best interest of the child? If the answer is positive, how exactly could this balance be achieved?

Q3: Are the legal consequences of Brexit relevant to the answer to the first question as one of the mothers registered in the birth certificate that was issued in another Member State is a citizen of the United Kingdom, and the other mother is an EU citizen, having regard in particular to the fact that the refusal to issue a Bulgarian certificate prevents the issuance of an EU identity document of the child and hence prevents the child to fully exercise his rights as a EU citizen?

Q4: In case that the answer to the first question is positive, does EU law, and specifically the principle of effectivity, oblige the competent national authorities to deviate from the model for drawing up a birth certificate, which is part of the applicable national law?