



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-490/20
V.M.A. v Stolichna obshtina, rayon 'Pancharevo'

With regard to the recognition in the European Union of the parentage of a child of a married same-sex couple, Advocate General Kokott recommends that a balance be struck between the national identity of the Member States and the right to freedom of movement of the child and of his or her parents

More specifically, a Member State must recognise the parentage of a child for the purposes of the exercise of the rights conferred by EU law on European Union citizens. It may, by contrast, rely on its national identity and its concept of a traditional family in order to refuse to recognise that parental relationship for the purpose of drawing up a birth certificate in accordance with its national law

The dispute concerns a married couple consisting of two women, one of whom, V.M.A., is a Bulgarian national, while the other is a national of the United Kingdom; they had a child in Spain, their Member State of residence. In the birth certificate issued by the Spanish authorities, the two women are designated as 'mothers' of the child.

V.M.A. therefore applied to the competent Bulgarian authority to issue her with a birth certificate for her daughter, a document which is necessary for the issuing of a Bulgarian identity document, mentioning the two women as parents. The municipality of Sofia (Bulgaria), however, requested her to indicate which of the two spouses is the biological mother, stating that the model Bulgarian birth certificate provides only one box for the 'mother' and another for the 'father', and that each of those boxes may include only one name. Following V.M.A.'s refusal to supply the requested information, that authority rejected her application.

That rejection is based, according to the municipality of Sofia, on the absence of information concerning the biological mother and on the fact that the registration of two female parents in a birth certificate is contrary to the public policy of Bulgaria, which does not authorise marriages between persons of the same sex. V.M.A. brought an action against that decision before the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia).

That court essentially asks the Court of Justice whether the refusal of the national authorities to register the birth of a Bulgarian child which occurred in another Member State and is attested by a birth certificate in which that Member State designates two mothers is contrary to EU law.

As a preliminary point, Advocate General Juliane Kokott notes that, contrary to what the national court states, it cannot be asserted with certainty that the child is a Bulgarian national. That assertion was contested by the Bulgarian Government, given that Bulgarian nationality is acquired automatically by any person who has at least one Bulgarian parent, whereas in the present case the identity of the biological mother is not known.

The Advocate General states that, even if the child is not a Bulgarian national and is therefore not a European Union citizen, the situation does not fall outside the scope of EU law. In that case, the question remains whether a European Union citizen, V.M.A., who has exercised her right of free movement and has become the mother of a child with her wife pursuant to the law of another Member State, may request that her Member State of origin recognise that situation and issue a birth certificate designating the two women as the child's parents.

Next, Advocate General Kokott points out that EU law does not govern the rules relating to the establishment of a person's civil status and, in particular, his or her parentage. Member States must nevertheless exercise their powers in that regard in compliance with EU law. She notes that the right to freedom of movement in the European Union includes the right to lead a normal family life in both the host Member State and the Member State of origin of an EU citizen. In the present case, V.M.A. and her wife validly acquired the status of parents of the child pursuant to Spanish law and they lead an effective family life with their daughter in Spain. The absence of recognition of those family relationships would, however, create serious obstacles to a family life in Bulgaria, even to the point of deterring V.M.A. from returning to her country of origin.

The same considerations apply to the situation of the child, provided that she is Bulgarian and thus enjoys the status of an EU citizen. Moreover, pursuant to Bulgarian law, the issuing of a birth certificate is a prerequisite for the issuing of a Bulgarian identity document: a refusal to issue it would therefore undermine the effective exercise of the child's right to freedom of movement.

The Advocate General is therefore of the view that the refusal of the Bulgarian authorities to draw up the requested birth certificate constitutes an impediment to the rights which EU law confers on V.M.A. and, in so far as her child is a Bulgarian national, on that child.

Next, the Advocate General verifies whether the national identity relied on by Bulgaria may justify that refusal. According to that Member State, the adverse effect on the national identity lies in the fact that the requested birth certificate disregards the concept of a 'traditional' family affirmed by the Bulgarian Constitution, which, in that Member State's view, necessarily means that a child can have only one mother (or father). The Advocate General considers that family law is the expression of a State's self-image on both the political and social levels. The definition of family relationships for the purposes of domestic family law is therefore liable to form part of the fundamental expression of a Member State's national identity. This means that a restriction of the intensity of the Court's review is necessary in order to preserve the existence of areas of substantive powers reserved to the Member States. Consequently, in so far as that essence of national identity is at issue, reliance on that identity may not be subject to a review as to its proportionality.

Nevertheless, according to the Advocate General, **the obligation to recognise the family relationships established in Spain for the sole purpose of applying the EU secondary law¹ relating to the freedom of movement of citizens does not alter the concept of parentage or marriage under Bulgarian family law**; nor does it lead to the introduction of new concepts. Consequently, such an obligation does not threaten the fundamental expression of national identity, while removing a significant number of the obstacles to freedom of movement, such as the uncertainties surrounding the right of residence of the child's British mother or the possibility for that mother to move freely with the child. Having regard to the limited impact of that obligation on the Bulgarian legal order, the refusal to recognise the parentage of the child as regards V.M.A. and her wife for those purposes goes beyond what is necessary to preserve the objectives relied on by Bulgaria.

Bulgaria **thus may not refuse to recognise the parentage of the child** for the purpose of applying the EU secondary law relating to the free movement of citizens on the ground that Bulgarian law does not provide for either the institution of same-sex marriage or the maternity of the wife of a child's biological mother. If the child is a Bulgarian national, that means, in particular, that Bulgaria **must issue her with an identity document** or a travel document **referring to V.M.A. and her wife as the parents**, in order to allow the child to travel with each of her parents individually.

¹ In particular 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 Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

By contrast, Bulgaria **may**, by invoking national identity, **justify the refusal to recognise the parentage of the child**, as established in the Spanish birth certificate, for the purpose of drawing up a birth certificate determining the parentage of that child **within the meaning of domestic family law**.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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