

Request for preliminary ruling from Bulgaria: Recognition of foreign birth certificate

The Administrative Court of the City of Sofia, Bulgaria, has recently submitted a request for a preliminary ruling revolving around the recognition of a foreign birth certificate issued by another EU Member State (Case C-490/20):

The case concerns a refusal of a municipality in Sofia to issue a Bulgarian birth certificate to a child of two female same sex mothers of Bulgarian and UK nationality who entered into a civil marriage in Gibraltar, UK. The child was born in Spain, where a birth certificate was issued on which it was recorded that mothers of the child were both a Bulgarian national, designated 'Mother A', and a UK national, designated 'Mother', both persons being female. The municipality refused to issue the requested birth certificate because the applicants did not point out who was the biological mother, intending most probably to issue the certificate only for one mother. Bulgaria is one of the few EU Member States without access to either same sex marriage or any type of civil partnership.

The Bulgarian mother brought legal proceedings before the Administrative Court of the City of Sofia against the refusal by the Sofia municipality, where the court referred the following questions to the CJEU for a preliminary ruling:

1. Must Article 20 TFEU and Article 21 TFEU and Articles 7, 24 and 45 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that the Bulgarian administrative authorities to which an application for a document certifying the birth of a child of Bulgarian nationality in another Member State of the EU was submitted, which had been certified by way of a Spanish birth certificate in which two persons of the female sex are registered as mothers without specifying whether one of them, and if so, which of them, is the child's biological mother, are not permitted to refuse to issue a Bulgarian birth certificate on the grounds that the applicant refuses to state which of them is the child's biological mother?

2. Must Article 4(2) TEU and Article 9 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that respect for the national identity and constitutional identity of the Member States of the European Union

means that those Member States have a broad discretion as regards the rules for establishing parentage? Specifically:

- Must Art. 4(2) TEU be interpreted as allowing the Member State to request information on the biological parentage of the child?
- Must Article 4(2) TEU in conjunction with Article 7 and Article 24(2) of the Charter be interpreted as meaning that it is essential to strike a balance of interests between, on the one hand, the national identity and constitutional identity of a Member State and, on the other hand, the best interests of the child, having regard to the fact that, at the present time, there is neither a consensus as regards values nor, in legal terms, a consensus about the possibility of registering as parents on a birth certificate persons of the same sex without providing further details of whether one of them, and if so, which of them, is the child's biological parent? If this question is answered in the affirmative, how could that balance of interests be achieved in concrete terms?

3. Is the answer to Question 1 affected by the legal consequences of Brexit in that one of the mothers listed on the birth certificate issued in another Member State is a UK national whereas the other mother is a national of an EU Member State, having regard in particular to the fact that the refusal to issue a Bulgarian birth certificate for the child constitutes an obstacle to the issue of an identity document for the child by an EU Member State and, as a result, may impede the unlimited exercise of her rights as an EU citizen?

4. If the first question is answered in the affirmative: does EU law, in particular the principle of effectiveness, oblige the competent national authorities to derogate from the model birth certificate which forms part of the applicable national law?

Thank you, Boriana Musseva, for the tip-off!