Opinion from European court: same-sex parented families should be officially recognised in all EU member states

News, Legal Protection, Children, Court of Justice of the European Union, Family, Freedom of Movement

Advocate General of the Court of Justice of the European Union's opinion says that Bulgaria's lack of recognition for same-sex parented families cannot justify a violation of EU freedom of movement law

Leading LGBTI rights organisations in Europe are very encouraged by the Advocate General of the Court of Justice of the European Union's (CJEU) opinion, published yesterday in the case of V.M.A. v Stolichna obshtina, in which a same-sex couple who were refused a birth certificate in Bulgaria for their newborn daughter claim the Bulgarian authorities are violating the rights of a European citizen on the grounds of sexual orientation, namely to free movement, and to private and family life. This constitutes a breach of the fundamental principles of the EU.

The Advocate General (AG) clearly states 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 that child.

According to the AG, the obligation to recognise the family relationships, which are established in Spain, for the sole purpose of applying the EU right to freedom of movement of citizens does not alter the concept of parentage or marriage under Bulgarian family law, and thus 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.

According to Katrin Hugendubel, Advocacy Director of ILGA-Europe: "The opinion is pointing in the right direction, as it clarifies that parentage established in one member state must be recognised for reasons of freedom of movement across the EU, and all EU citizens and their families equally enjoy freedom of movement. As already confirmed in Romanian Coman case, arguments on "national identity", namely that Bulgaria does not recognise rainbow families, cannot justify a violation of EU law."

Eleni Maravelia, President of NELFA, the Network of LGBTIQ* Families Associations, says: "NELFA is very pleased with the opinion of the AG, who is giving a clear answer to Bulgaria and all EU member states that EU law has to be respected at all times when dealing with cross-border issues, even when it comes to rainbow families with children who might not be covered by the national legislation. We are hoping the final decision by the court will take under consideration the AG opinion and build on it so to include the protection of the rights of the child."

According to attorney, Denitsa Lyubenova, legal representative of the family and member of the Legal Programme of LGBTI Organisation, Deystvie: “We are still awaiting the ruling of the Court of Justice of the European Union, but we believe that the Advocate General’s opinion is a step forward recognising same-sex families across Europe. Law changes slowly, with small steps and a lot of perseverance. A ruling in the direction set by the Advocate General will bind Bulgaria to establish the family relationship between the child Sara and her two mothers. Maybe it all starts now.”

Further information:

- Read more about the case here.