



[Pagina iniziale](#) > [Formulario di ricerca](#) > [Elenco dei risultati](#) > **Documenti**



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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

14 December 2021 (*)

(Reference for a preliminary ruling – Citizenship of the Union – Articles 20 and 21 TFEU – Right to move and reside freely within the territory of the Member States – Child born in the host Member State of her parents – Birth certificate issued by that Member State mentioning two mothers in respect of that child – Refusal by the Member State of origin of one of those two mothers to issue a birth certificate for the child in the absence of information as to the identity of the child’s biological mother – Possession of such a certificate being a prerequisite for the issue of an identity card or a passport – Persons of the same sex not recognised as parents under the national legislation of that Member State of origin)

In Case C-490/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia, Bulgaria), made by decision of 2 October 2020, received at the Court on the same day, in the proceedings

V.M.A.

v

Stolichna obshtina, rayon ‘Pancharevo’,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, K. Jürimäe, C. Lycourgos, E. Regan, N. Jääskinen, I. Ziemele and J. Passer, Presidents of Chambers, M. Ilešič (Rapporteur), J.-C. Bonichot, T. von Danwitz and N. Wahl, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 9 February 2021,

after considering the observations submitted on behalf of:

- V.M.A., by D.I. Lyubenova, advokat,
- the Bulgarian Government, by T. Mitova and L. Zaharieva, acting as Agents,
- the German Government, initially by J. Möller and S. Heimerl, and subsequently by J. Möller, acting as Agents,
- the Spanish Government, initially by S. Centeno Huerta and M.J. Ruiz Sánchez, and subsequently by M.J. Ruiz Sánchez, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by W. Ferrante, avvocato dello Stato,
- the Hungarian Government, by M.Z. Fehér and Z. Biró-Tóth, acting as Agents,
- the Netherlands Government, by C.S. Schillemans, acting as Agent,
- the Polish Government, by E. Borawska-Kędzińska, A. Siwek-Ślusarek and B. Majczyna, acting as Agents,
- the Slovak Government, by B. Ricziová, acting as Agent,
- the European Commission, initially by E. Montaguti, I. Zaloguín and M. Wilderspin, and subsequently by E. Montaguti and I. Zaloguín, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 April 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(2) TEU, Articles 20 and 21 TFEU and Articles 7, 9, 24 and 45 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between V.M.A. and Stolichna obshtina, rayon 'Pancharevo' (Sofia municipality, Pancharevo district, Bulgaria) ('the Sofia municipality'), concerning the latter's refusal to issue a birth certificate in respect of the daughter of V.M.A. and of her wife.

Legal context

International law

3 Article 2 of the Convention on the rights of the child, adopted by the General Assembly of the United Nations on 20 November 1989 (*United Nations Treaty Series*, Vol. 1577, p. 3), provides:

'1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or

her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.'

4 Article 7 of that convention provides:

'1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.'

European Union law

The EU Treaty

5 Article 4(2) TEU provides:

'The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.'

The FEU Treaty

6 Article 20 TFEU provides:

'1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

(a) the right to move and reside freely within the territory of the Member States;

...

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.'

7 Article 21(1) TFEU states:

‘Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.’

The Charter

8 Article 7 of the Charter, entitled ‘Respect for private and family life’, provides:

‘Everyone has the right to respect for his or her private and family life, home and communications.’

9 Article 9 of the Charter, entitled ‘Right to marry and right to found a family’, provides:

‘The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.’

10 Article 24 of the Charter, entitled ‘The rights of the child’, is worded as follows:

‘1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.’

11 Article 45 of the Charter, entitled ‘Freedom of movement and of residence’, states:

‘1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.’

Directive 2004/38/EC

12 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) provides in Article 2, entitled ‘Definitions’:

‘For the purposes of this Directive:

1. “Union citizen” means any person having the nationality of a Member State;

2. “family member” means:

(a) the spouse;

(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;

(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);

(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

3. “host Member State” means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.’

13 Article 4 of that directive, entitled ‘Right of exit’, provides:

‘1. Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport shall have the right to leave the territory of a Member State to travel to another Member State.

...

3. Member States shall, acting in accordance with their laws, issue to their own nationals, and renew, an identity card or passport stating their nationality.

4. The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where the law of a Member State does not provide for identity cards to be issued, the period of validity of any passport on being issued or renewed shall be not less than five years.’

14 Article 5 of that directive, entitled ‘Right of entry’, states:

‘1. Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport.

...

4. Where a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence.

...’

Bulgarian law

15 Under Article 25(1) of the Konstitutsia na Republika Bulgaria (Constitution of the Republic of Bulgaria) ('the Bulgarian Constitution'):

'A person is a Bulgarian national if at least one of the parents is a Bulgarian national or if the person was born in the territory of the Republic of Bulgaria and provided that he or she does not acquire any other nationality by parentage. Bulgarian nationality may also be acquired by naturalisation.'

16 Under Article 8 of the Zakon za balgarskoto grazhdanstvo (Law on Bulgarian nationality) of 5 November 1998 (DV No 136 of 18 November 1998, p. 1), 'a person is a Bulgarian national by parentage if at least one of the parents is a Bulgarian national'.

17 The Semeen kodeks (Family Code) of 12 June 2009 (DV No 47 of 23 June 2009, p. 19) provides in Article 60, entitled 'Parentage with respect to the mother':

'(1) Parentage with respect to the mother is determined by birth.

(2) The mother of the child is the woman who gave birth to that child, including in the case of assisted reproduction.

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

18 V.M.A. is a Bulgarian national and K.D.K. is a United Kingdom national. K.D.K. was born in Gibraltar, where the two women were married in 2018. Since 2015, they have resided in Spain.

19 In December 2019, V.M.A. and K.D.K. had a daughter, S.D.K.A., who was born and resides with both parents in Spain. The daughter's birth certificate, issued by the Spanish authorities, refers to V.M.A. as 'Mother A' and to K.D.K. as 'Mother' of the child.

20 On 29 January 2020, V.M.A. applied to the Sofia municipality for a birth certificate for S.D.K.A. to be issued to her, the certificate being necessary, inter alia, for the issue of a Bulgarian identity document. In support of her application, V.M.A. submitted a legalised and certified translation into Bulgarian of the extract from the civil register of Barcelona (Spain) relating to the birth certificate of S.D.K.A.

21 By letter of 7 February 2020, the Sofia municipality instructed V.M.A. to provide, within seven days, evidence of the parentage of S.D.K.A. with respect to the identity of her biological mother. The municipality stated in that regard that the model birth certificate which is among the model civil status documents applicable at a national level has only one box for the 'mother' and another for the 'father', and that only one name may appear in each box.

22 On 18 February 2020, V.M.A. replied to the Sofia municipality that, under the Bulgarian legislation in force, she was not required to provide the information requested.

23 By decision of 5 March 2020, the Sofia municipality therefore refused V.M.A.'s application for a birth certificate to be issued for S.D.K.A. The reasons given for that refusal decision were 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 the public policy of the Republic of Bulgaria, which does not permit marriage between two persons of the same sex.

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

25 That court states that, under Article 25(1) of the Bulgarian Constitution and Article 8 of the Law on Bulgarian nationality, S.D.K.A. has Bulgarian nationality notwithstanding the fact that, to date, she does not have a birth certificate issued by the Bulgarian authorities. The authorities' refusal to issue such a certificate to her does not mean that she has been denied Bulgarian nationality.

26 The referring court has doubts, however, as to whether the refusal by the Bulgarian authorities to register the birth of a Bulgarian national which occurred in another Member State and has been attested by a birth certificate that mentions two mothers and was issued by the competent authorities of the latter Member State infringes the rights conferred on such a national in Articles 20 and 21 TFEU and Articles 7, 24 and 45 of the Charter. The Bulgarian authorities' refusal to issue a birth certificate – albeit that it would have no legal effect on the Bulgarian nationality of the child concerned and consequently on that child's Union citizenship – is liable to make it more difficult for a Bulgarian identity document to be issued and, therefore, to hinder that child's exercise of the right of free movement and thus full enjoyment of her rights as a Union citizen.

27 Moreover, since the other mother of S.D.K.A., K.D.K., is a United Kingdom national, the referring court is uncertain whether the legal consequences arising from the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7, 'the Withdrawal Agreement'), and in particular the fact that that child can no longer enjoy the status of Union citizen by virtue of K.D.K.'s nationality, are relevant to the assessment of that question.

28 Furthermore, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) queries whether the obligation to which the Bulgarian authorities may be subject, when drawing up a birth certificate, to refer in that document to two mothers as being the parents of the child concerned, is liable to have an adverse effect on public policy and the national identity of the Republic of Bulgaria, since that Member State has not provided for the possibility of mentioning on a birth certificate two parents of the same sex for that child. The referring court notes, in that regard, that the legal provisions governing that child's parentage are of fundamental importance in the Bulgarian constitutional tradition and in the Bulgarian legal literature on family and inheritance law, both from a purely legal perspective and from the point of view of values, given the current stage of development of society in Bulgaria.

29 Therefore, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) considers that it is necessary to strike a balance between, on the one hand, the constitutional and national identity of the Republic of Bulgaria and, on the other hand, the interests of the child, and in particular the child's right to a private life and to free movement.

30 The referring court is uncertain whether, in the present case, such a balance could be achieved by applying the principle of proportionality and, in particular, whether mentioning under the heading 'Mother' the name of one of the two mothers included on the birth certificate drawn up by the Spanish authorities – who may be either the biological mother of the child or the person who became the child's mother by way of another procedure, such as adoption, for example – without completing the 'Father' section would constitute an appropriate balance between those different legitimate interests. It points out that while such a solution could also create certain difficulties due to possible differences between the birth certificate drawn up by the Bulgarian authorities and that drawn up by the Spanish authorities, it would allow a birth certificate to be issued by the Bulgarian

authorities, thus avoiding, or at least reducing, any obstacles to the free movement of the child concerned. The referring court queries, however, whether that solution would be compatible with the child's right to a private and family life affirmed in Article 7 of the Charter.

31 Finally, should the Court of Justice find that EU law requires both mothers of the child concerned to be mentioned on the birth certificate drawn up by the Bulgarian authorities, the referring court asks about the arrangements for implementing that requirement, since the referring court cannot replace the model birth certificate, which is one of the model civil status documents applicable at a national level.

32 In those circumstances, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Must Article 20 TFEU and Article 21 TFEU and Articles 7, 24 and 45 of the [Charter] 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 [European Union] 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] 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 Article 4(2) TEU be interpreted as allowing Member States 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 [the Withdrawal Agreement] in that one of the mothers listed on the birth certificate issued in another Member State is a United Kingdom 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 [a Union] 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 is one of the model civil status certificates] applicable [at a national level]?’

Procedure before the Court

33 In its request for a preliminary ruling, the referring court requests that the case be dealt with under the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice. The referring court states in particular that the Bulgarian authorities' refusal to issue a birth certificate to S.D.K.A., who is a Bulgarian national, makes it very difficult for that child to obtain a Bulgarian identity document and, therefore, to exercise her right to move and reside freely within the territory of the Member States, which is guaranteed in Article 21 TFEU.

34 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or, exceptionally, of his own motion, the President of the Court may decide, after hearing the Judge-Rapporteur and the Advocate General, that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure where the nature of the case requires that it be dealt with within a short time.

35 In the present case, on 19 October 2020, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to grant the request for an expedited procedure mentioned in paragraph 33 of the present judgment. The reason for that decision was that S.D.K.A., a young child, is currently without a passport but resides in a Member State of which she is not a national. In so far as the questions referred are intended to determine whether the Bulgarian authorities are required to issue a birth certificate for that child and it is apparent from the request for a preliminary ruling that such a document is necessary, according to national law, in order to obtain a Bulgarian passport, an answer from the Court within a short period of time could help to ensure that that child is able to obtain a passport more quickly (see, to that effect, order of the President of the Court of 3 July 2015, *Gogova*, C-215/15, not published, EU:C:2015:466, paragraphs 12 to 14).

Consideration of the questions referred

36 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether EU law obliges a Member State to issue a birth certificate, in order for an identity document to be obtained according to the legislation of that State, 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. If the answer is in the affirmative, the referring court asks whether EU law requires such a certificate to state, in the same way as the certificate drawn up by the authorities of the Member State in which the child was born, the names of those two women in their capacity as mothers.

37 The referring court also wishes to know whether the fact that the other mother of the child concerned is a national of the United Kingdom, which is now no longer a Member State, has any bearing on the answer to be given to that question.

38 As a preliminary point, it must be noted that it is for each Member State, having due regard to international law, to lay down the conditions for acquisition and loss of nationality, and that in situations covered by EU law, the national rules concerned must have due regard to the latter (judgments of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraphs 39 and 41, and of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189, paragraph 30).

39 According to the findings of the referring court, which alone has jurisdiction in that regard, S.D.K.A. has Bulgarian nationality by birth, in accordance with Article 25(1) of the Bulgarian Constitution.

40 Under Article 20(1) TFEU, every person holding the nationality of a Member State is to be a citizen of the Union. It follows that, as a Bulgarian national, S.D.K.A. enjoys the status of Union citizen under that provision.

41 In that regard, the Court has held on numerous occasions that Union citizenship is destined to be the fundamental status of nationals of the Member States (judgments of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458, paragraph 31, and of 15 July 2021, *A (Public health care)*, C-535/19, EU:C:2021:595, paragraph 41).

42 As is apparent from the Court's case-law, a national of a Member State who has exercised, in his or her capacity as a Union citizen, his or her freedom to move and reside within a Member State other than his or her Member State of origin, may rely on the rights pertaining to Union citizenship, in particular the rights provided for in Article 21(1) TFEU, including, where appropriate, against his or her Member State of origin (judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 31 and the case-law cited). Union citizens who were born in the host Member State of their parents and who have never made use of their right to freedom of movement can also rely on that provision and the measures adopted to give it effect (judgment of 2 October 2019, *Bajratari*, C-93/18, EU:C:2019:809, paragraph 26 and the case-law cited).

43 Under Article 21(1) TFEU, every citizen of the Union is to have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. In order to enable their nationals to exercise that right, Article 4(3) of Directive 2004/38 requires Member States, acting in accordance with their laws, to issue to their own nationals an identity card or passport stating their nationality.

44 Accordingly, since S.D.K.A. is a Bulgarian national, the Bulgarian authorities are required to issue to her an identity card or a passport stating her nationality and her surname as it appears on the birth certificate drawn up by the Spanish authorities, the Court having previously had occasion to rule that Article 21 TFEU precludes the authorities of a Member State, in applying their national law, from refusing to recognise a child's surname as determined and registered in a second Member State in which the child was born and has been resident since birth (see, to that effect, judgment of 14 October 2008, *Grunkin and Paul*, C-353/06, EU:C:2008:559, paragraph 39).

45 It must also be made clear that Article 4(3) of Directive 2004/38 requires the Bulgarian authorities to issue an identity card or a passport to S.D.K.A. regardless of whether a new birth certificate is drawn up for that child. Thus, in so far as Bulgarian law requires a Bulgarian birth certificate to be drawn up before a Bulgarian identity card or passport is issued, that Member State cannot rely on its national law as justification for refusing to draw up such an identity card or passport for S.D.K.A.

46 Such a document, whether alone or accompanied by others, where appropriate by a document issued by the host Member State of the child concerned, must enable a child in S.D.K.A.'s situation to exercise the right to move and reside freely within the territory of the Member States, guaranteed in Article 21(1) TFEU, with each of the child's two mothers, whose status as parent of that child has been established by their host Member State during a stay in accordance with Directive 2004/38.

47 It should be borne in mind that 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 (judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 32 and the case-law cited).

48 It is common ground that, in the case in the main proceedings, the Spanish authorities lawfully established that there was a parent-child relationship, biological or legal, between S.D.K.A. and her two parents, V.M.A. and K.D.K., and attested this in the birth certificate issued in respect of the child of those two parents. V.M.A. and K.D.K. must, therefore, pursuant to Article 21 TFEU and Directive 2004/38, as parents of a Union citizen who is a minor and of whom they are the primary carers, be recognised by all Member States as having the right to accompany that child when her right to move and reside freely within the territory of the Member States is being exercised (see, by analogy, judgment of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraphs 50 to 52 and the case-law cited).

49 Accordingly, the Bulgarian authorities are required, as are the authorities of any other Member State, to recognise that parent-child relationship for the purposes of permitting S.D.K.A. – since she has, according to the referring court, acquired Bulgarian nationality – to exercise without impediment, with each of her two parents, her right to move and reside freely within the territory of the Member States as guaranteed in Article 21(1) TFEU.

50 In addition, in order to enable S.D.K.A. to exercise her right to move and reside freely within the territory of the Member States with each of her two parents, V.M.A. and K.D.K. must have a document which mentions them as being persons entitled to travel with that child. In the present case, the authorities of the host Member State are best placed to draw up such a document, which may consist in a birth certificate. The other Member States are obliged to recognise that document.

51 It is true, as the referring court has noted, that Article 9 of the Charter provides that the right to marry and the right to found a family are to be guaranteed in accordance with the national laws governing the exercise of these rights.

52 In that regard, as EU law currently stands, a person's status, which is relevant to the rules on marriage and parentage, is a matter that falls within the competence of the Member States and EU law does not detract from that competence. The Member States are thus free to decide whether or not to allow marriage and parenthood for persons of the same sex under their national law. Nevertheless, in exercising that competence, each Member State must comply with EU law, in particular the provisions of the FEU Treaty on the freedom conferred on all Union citizens to move and reside within the territory of the Member States, 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 (see, to that effect, judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraphs 36 to 38 and the case-law cited).

53 In that context, the referring court asks the Court of Justice whether Article 4(2) TEU could serve as justification for the Bulgarian authorities' refusal to issue a birth certificate in respect of S.D.K.A, and thus an identity card or a passport for that child. The referring court explains, in particular, that any obligation on the part of those authorities to draw up a birth certificate mentioning two female individuals as the child's parents could have an adverse effect on public policy and on the national identity of the Republic of Bulgaria, since the Bulgarian Constitution and Bulgarian family law do not provide for the parenthood of two persons of the same sex.

54 In that regard it must be recalled that, under Article 4(2) TEU, the European Union is to respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional.

55 Moreover, the Court has repeatedly held that the concept of public policy as justification for a derogation from a fundamental freedom must be interpreted strictly, with the result that its scope cannot be determined unilaterally by each Member State without any control by the EU institutions. It follows that public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society (judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 44 and the case-law cited).

56 As the Advocate General noted in essence in points 150 and 151 of her Opinion, the obligation for a Member State to issue an identity card or a passport to a child who is a national of that Member State, who was born in another Member State and whose birth certificate issued by the authorities of that other Member State designates as the child's 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.

57 Such an obligation does not require the Member State of which the child concerned is a national 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 that 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 (see, by analogy, judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraphs 45 and 46).

58 It should be added that a national measure that is liable to obstruct the exercise of freedom of movement for persons may be justified only where such a measure is consistent with the fundamental rights guaranteed by the Charter, it being the task of the Court to ensure that those rights are respected (judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 47).

59 In the situation with which the main proceedings are concerned, the right to respect for private and family life guaranteed in Article 7 of the Charter and the rights of the child guaranteed in Article 24 of the Charter, in particular the right to have the child's best interests taken into account as a primary consideration in all actions relating to children, and the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, are fundamental.

60 In that regard, as is apparent from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), in accordance with Article 52(3) of the Charter, the rights guaranteed in Article 7 thereof have the same meaning and the same scope as those guaranteed in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

61 It is apparent from the case-law of the European Court of Human Rights that the existence of 'family life' is a question of fact depending upon the real existence in practice of close personal ties, and that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life (ECtHR, 12 July 2001, *K. and T. v. Finland*, CE:ECHR:2001:0712JUD 002570294, §§ 150 and 151). In addition, as the Court of Justice has had

occasion to find, it follows from that case-law that the relationship of a homosexual couple may fall within the notion of ‘private life’ and that of ‘family life’ in the same way as the relationship of a heterosexual couple in the same situation (judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 50 and the case-law cited).

62 Accordingly, as the Advocate General noted in point 153 of her Opinion, the relationship between the child concerned and each of the two persons with whom she leads a genuine family life in the host Member State and who are mentioned as being her parents on the birth certificate drawn up by that Member State’s authorities is protected under Article 7 of the Charter.

63 In addition, as has been recalled in paragraph 59 of the present judgment, the right to respect for family life, as stated in Article 7 of the Charter, must be read in conjunction with the obligation to take into consideration the child’s best interests, recognised in Article 24(2) of the Charter. Since Article 24 of the Charter, as the Explanations relating to the Charter of Fundamental Rights note, represents the integration into EU law of the principal rights of the child referred to in the Convention on the rights of the child, which has been ratified by all the Member States, it is necessary, when interpreting that article, to take due account of the provisions of that convention (see, to that effect, judgments of 14 February 2008, *Dynamic Medien*, C-244/06, EU:C:2008:85, paragraph 39, and of 11 March 2021, *État belge (Return of the parent of a minor)*, C-112/20, EU:C:2021:197, paragraph 37).

64 In particular, Article 2 of that convention establishes, for the child, the principle of non-discrimination, which requires that that child is to be guaranteed the rights set forth in that convention, which include in Article 7 the right to be registered immediately after birth, the right to a name and the right to acquire a nationality, without discrimination against the child in that regard, including discrimination on the basis of the sexual orientation of the child’s parents.

65 In those circumstances, it would be contrary to the fundamental rights which are guaranteed to the child under Articles 7 and 24 of the Charter for her to be deprived of the relationship with one of her parents when exercising her right to move and reside freely within the territory of the Member States or for her exercise of that right to be made impossible or excessively difficult in practice on the ground that her parents are of the same sex.

66 Last, the fact that one of the parents of the child concerned is a national of the United Kingdom, which is now no longer a Member State, is irrelevant in that respect.

67 Furthermore, if checks should reveal that S.D.K.A. did not have Bulgarian nationality, it must be noted that, irrespective of their nationality and whether or not they themselves are Union citizens, K.D.K. and S.D.K.A. must be regarded by all Member States as being, respectively, the spouse and the direct descendant within the meaning of Article 2(2)(a) and (c) of Directive 2004/38, and, therefore, as being V.M.A.’s family members (see, to that effect, judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraphs 36 and 51).

68 A child, being a minor, whose status as a Union citizen is not established and whose birth certificate, issued by the competent authorities of a Member State, designates as her parents two persons of the same sex, one of whom is a Union citizen, must be considered, by all Member States, a direct descendant of that Union citizen within the meaning of Directive 2004/38 for the purposes of the exercise of the rights conferred in Article 21(1) TFEU and the secondary legislation relating thereto.

69 Having regard to all of the above considerations, the answer to the questions referred is that Article 4(2) TEU, Articles 20 and 21 TFEU and Articles 7, 24 and 45 of the Charter, read in conjunction with Article 4(3) of Directive 2004/38, must be interpreted 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.

Costs

70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 4(2) TEU, Articles 20 and 21 TFEU and Articles 7, 24 and 45 of the Charter of Fundamental Rights of the European Union, read in conjunction with 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, must be interpreted 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.

[Signatures]

* Language of the case: Bulgarian.