

With a judgement of December 14th 2021, the Court of Justice of the European Union, sitting as the Grand Chamber, interpreted art. 452 TEU, art. 20 and 21 TFEU and art. 7, 24 and 45 of the Charter of Fundamental Rights of the European Union 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 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 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.

V.M.A, a Bulgarian national, and K.D.K have resided in Spain since 2015 and were married in 2018. Their child, S.D.K.A. was born in Spain in 2019: her birth certificate, drawn up by the Spanish authorities, refers to both mothers as being the parents of the child. The applicant, V.M.A., applied to the Sofia municipality to issue a birth certificate for her daughter in order to obtain a Bulgarian identity document. However, the request was rejected because the woman did not want to provide evidence on the filiation of her daughter, in relation to the identity of the biological mother: the Bulgarian authorities did not issue the birth certificate necessary for the subsequent obtaining of the identity document due to the lack of information regarding the identity of the biological mother of the minor concerned and in view of the fact that the mention in a birth certificate of two female parents was contrary to Bulgarian public policy, which does not permit marriage between two persons of the same sex. The applicant brought an action against that refusal decision before the Administrative Court of the City of Sofia which decided to question the CJEU regarding the interpretation of the aforementioned provisions, given that the refusal of the Bulgarian authorities could make it more difficult to issue a Bulgarian identity document to the child and, consequently, hinder the exercise of the her right of free movement and thus the full enjoyment of her rights as a Union citizen.

First of all, the CJEU recalled that Directive 2004/38/EC requires Member States, acting in accordance with their laws, to issue to their own nationals an identity card or passport stating their nationality in order to enable them to exercise their right to move and reside freely within the territory of the Member States, a right which every citizen of the Union enjoys under Article 21(1) TFEU. Accordingly, the Bulgarian authorities are required to issue to the applicant's daughter a Bulgarian identity card or passport stating her surname as it appears on the birth certificate drawn up by the Spanish authorities, regardless of whether a new birth certificate is drawn up: such a document, whether alone or accompanied by a document issued by the host Member State, must enable a child such as S.D.K.A. to exercise the right of free movement, with each of the child's two mothers, whose status as parents of that child has been established by the host Member State during a stay in accordance with Directive 2004/38/EC. Besides, the Court specified that, in the present case, the obligation for a Member State to issue an identity document to a child who is a national of that State, who was born in another Member State in which the birth certificate was drawn up and designates as 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. It does not require the Member State concerned 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 the 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. Lastly, it is contrary to the fundamental rights guaranteed by Articles 7 and 24 of the Charter of Fundamental Rights of the European Union for the child to be deprived of the relationship with one of her parents when exercising her right of free movement or for her exercise of that right to be made impossible or excessively difficult on the ground that her parents are of the same sex.

Riferimenti Normativi:

- art. 4, paragrafo 2 TUE
- art. 20 TFUE
- art. 21 TFUE
- art. 7 Carta dei diritti fondamentali dell'Unione Europea
- art. 24 Carta dei diritti fondamentali dell'Unione Europea
- art. 45 Carta dei diritti fondamentali dell'Unione Europea
- Direttiva 2004/38/CE del Parlamento e del Consiglio, 29 aprile 2004