



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 30806/15
A.D.-K. and Others
against Poland

The European Court of Human Rights (First Section), sitting on 2 June 2026 as a Chamber composed of:

Ivana Jelić, *President*,

Erik Wennerström,

Frédéric Krenç,

Davor Derenčinović,

Alain Chablais,

Artūrs Kučs,

Anna Adamska-Gallant, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to the above application lodged on 16 June 2015,

Having regard to the decision to give notice of the application to the Polish Government (“the Government”);

Having regard to the decision by the United Kingdom Government not to exercise their right to intervene in case concerning the second and third applicants;

Having regard to the decision not to have the applicants’ names disclosed;

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

Having regard to the comments submitted by Prof. Robert Wintemute on behalf of certain non-governmental organisations, and comments by Ordo Iuris – Institute for Legal Culture, by the European Centre for Law and Justice and by the Institute of Psychology of the Polish Academy of Sciences, who were all granted leave to intervene by the President of the Section;

Having deliberated, decides as follows:

THE FACTS

1. The first applicant, Ms A. D.-K. and the second applicant, Ms S. D.-K. were both born in 1976. The third applicant, L. D-K, was born in 2011. The first applicant is a Polish national. The second and third applicants are British nationals. They all live in Essex, in the United Kingdom. They are represented before the Court by Ms D. Pudzianowska from the Helsinki Foundation for Human Rights.

2. The Government were represented by their Agent, Mr J. Sobczak of the Ministry of Foreign Affairs.

3. The facts of the case may be summarised as follows.

A. Background to the case

4. The first and second applicants are two women living together in a registered civil partnership in the United Kingdom.

5. On 19 December 2011 the second applicant, who is also the biological mother, gave birth to the third applicant at a London hospital.

6. The third applicant's original birth certificate gave the second applicant as her mother and the first applicant as her parent.

B. The administrative proceedings in Poland

1. *The Łódź Civil Status Registry*

7. On 7 August 2012 the first and second applicants applied to the Łódź Civil Status Registry (*Urząd Stanu Cywilnego*) to have the particulars of the third applicant's birth certificate registered in Poland (*wniosek o transkrypcję zagranicznego aktu urodzenia*).

8. On 5 October 2012 the Director of the Łódź Civil Status Registry refused their application. The director confirmed that when registering a foreign birth certificate in Poland in principle an administrative authority would not examine the merits of that certificate. However, it was open to them to refuse to register such a certificate if that would contravene the basic principles of the Polish legal system. The decision was based on section 7 of the Private International Law Act of 4 February 2011 (*ustawa Prawo prywatne międzynarodowe*) (see paragraph 33 below).

9. The director further held that according to the principles of the Polish legal system a child's mother was the woman who gave birth to that child and the child's father was the mother's husband, or, with respect to children born out of wedlock, a man who had intercourse with the mother no more than 300 and no less than 181 days before the birth of a child.

10. The fact that the first applicant, a Polish citizen, was registered on the third applicant's birth certificate as a "parent" was a consequence of her living in the UK in a registered civil partnership with the child's mother. However,

in Poland the legal framework endorsed a traditional family model. Pursuant to Article 18 of the Polish Constitution, marriage was a relationship between a man and a woman (see paragraph 23 below). There were no provisions in the Polish legal system which allowed for any registered civil partnership (be it same-sex or opposite sex) to be reflected on the national register. Moreover, the rules for civil status certificates allowed only the two formulations of “father” and “mother” to be used on birth certificates.

11. The director also informed the parties that registration was not required since in Poland it was possible to rely on a foreign birth certificate in any administrative procedures.

12. The applicants appealed. They asserted that the first-instance authority had failed to respect the rights of parents and children under domestic law and had discriminated against them, contrary to the principles of equal treatment and the best interests of the child. They referred to sections 14 and 16 of the Act on Polish Citizenship of 2 April 2009 (*ustawa o obywatelstwie polskim* “the 2009 Act”) (see paragraph 35 below), which related to the conditions for minors to acquire citizenship and submitted that parents were entitled to apply for citizenship on behalf of their children - a procedural right that had not been duly taken into account by the domestic authorities.

2. The Łódź Governor

13. On 13 November 2012 the Łódź Governor (*Wojewoda Łódzki*) upheld the first-instance decision.

14. The Governor held that when entering the particulars of a foreign civil status certificate in the Polish Civil Status Register an administrative authority did not need to examine the contents of that certificate. However, it was possible to decline to transcribe a certificate if that certificate contravened the fundamental rules of the legal order in Poland (*sprzecznosc z podstawowymi zasadami porzadku prawnego RP*).

15. The Governor confirmed that the first-instance authority had been right to apply the public policy exception since the foreign birth certificate in question was contrary to the provisions of the Polish Family and Custody Code. The current legal provisions did not allow the registration of same-sex unions or the adoption of a child by a same-sex couple. Those provisions were reflected in the rules for the affiliation of a child. However, the fact that the third applicant’s birth certificate was not registered in Poland did not prevent her from lodging a separate application for confirmation of her status as a Polish national.

16. The applicants appealed. They submitted that the Governor’s decision was in breach of the 2009 Act. They referred to sections 14 and 16 (see paragraph 35 below). In reply to the Governor’s statement that marriage was a relationship between a man and a woman, they agreed that the argument would have been valid had they asked for registration of the certificate of

their civil partnership. They acknowledged the absence of specific procedures in Polish law regarding the registration of foreign birth certificates with same-sex parents but asserted that this procedural lacuna should not justify a failure to attribute substantive citizenship rights guaranteed by law.

3. *The Łódź Regional Administrative Court*

17. On 14 February 2013 the Łódź Regional Administrative Court dismissed their appeal. The court endorsed the reasoning of the administrative authorities and stressed that when registering a foreign birth certificate in Poland an administrative authority did not need to examine the merits of that certificate. Nevertheless, it had to assess whether the substance of the certificate contravened the fundamental rules of the legal order in Poland. The court further observed that had the birth certificate in question been registered in the Polish Civil Status Register, the new birth certificate would have shown a woman's personal data in the box designated for "father". Consequently, the authorities had been right to apply the public policy exception. The Polish legal provisions were clear in that respect. A child's mother was the woman who gave birth to that child and a child's father, notwithstanding how his paternity was determined, was always a man.

18. In this context the court observed that under the Law on Civil Status Records of 29 September 1986 (*prawo o aktach stanu cywilnego*) (hereinafter "the 1986 Law") (see paragraph 36 below), the box designated for "father" on the birth certificate of a child born out of wedlock could not be left blank, even if the child's paternity had not been determined. In that situation, the certificate should show a male name chosen by the mother or any other popular male name. Under the legal provisions in force, it was therefore not possible to register a woman as a second parent since the notion of parenthood referred solely to a man and a woman. There were no provisions in the Polish legal system giving same-sex couples the right to adopt a child.

19. The court also found that the refusal to register the third applicant's birth certificate did not interfere with the 2009 Act, since the parties could lodge an application to have the third applicant's Polish citizenship confirmed at any time.

20. The applicants lodged a cassation appeal. They repeated that they had not asked for registration of their civil partnership certificate as that might indeed have been in breach of fundamental rules of the Polish legal system. They maintained that the refusal to issue a Polish birth certificate to their daughter constituted discrimination on the grounds of their sexual orientation. They relied in this regard on the Court's case-law. Lastly, they submitted that the third applicant's legal situation was different in Poland and in the UK. In the UK she lived in a full family with two legal parents, while in Poland she had a mother and an unknown father.

4. The Supreme Administrative Court

21. On 17 December 2014 the Supreme Administrative Court dismissed the applicants' cassation appeal. The court found that if the birth certificate in question had been registered with the Polish Civil Status Registry, the director of the Civil Status Registry would have had to give the second applicant as the child's mother and the first applicant as the child's father, since the Polish forms did not allow for the use of the formulation "parent". Consequently, a document giving a woman as the child's father would have contained erroneous information. The court held that it would have contravened the relevant provisions of the 1986 Law (see paragraph 36 below). Furthermore, a birth certificate giving two women as a child's parents would have contravened the rules on family relationships and custody relating to affiliation and the joint adoption of a child, which was only available to a married couple consisting of a man and a woman. Lastly, the content of such a certificate would have been in breach of Article 18 of the Polish Constitution (see paragraph 23 below). A birth certificate giving two women as parents would therefore have been in breach of the fundamental rules of the Polish legal order.

22. In reply to the applicants' allegations of discrimination, the court stated that the principles of equal treatment required that the rights and obligations arising from the Polish legal system applied to all individuals on an equal basis. Introducing differential treatment either on the basis of rules which did not exist or on the basis of an erroneous interpretation of existing provisions would have resulted in arbitrary and unjustified preferential treatment.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law and practice

1. The Polish Constitution

23. The Constitution of the Republic of Poland of 1997 contains the following provisions relating to family and acquisition of Polish citizenship:

Article 8

"1. The Constitution shall be the supreme law of the Republic of Poland.

2. The provisions of the Constitution shall apply directly, unless the Constitution provides otherwise."

Article 18

"Marriage, being a union of a man and a woman, as well as family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland."

Article 32

“1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.

2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.”

Article 34

“1. Polish citizenship shall be acquired by birth to parents being Polish citizens. Other methods of acquiring Polish citizenship shall be specified by statute.

2. A Polish citizen shall not lose Polish citizenship except by renunciation.”

Article 47

“Everyone shall have the right to legal protection of his private and family life, of his [or her] honour and good reputation and to make decisions about his or [her] private life.”

Article 71

“1. The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances - particularly those with many children or a single parent - shall have the right to special assistance from public authorities.

2. A mother, before and after birth, shall have the right to special assistance from public authorities to the extent specified by statute.”

2. Code of Civil Procedure

(a) Foreign documents

24. Article 1138 of the Code of Civil Procedure (“CCP”), in so far as relevant, reads:

“Foreign official documents shall have the same probative value as Polish official documents...”

(b) Recognition of foreign judgments and decisions

25. Article 1145 of the CCP reads as follows:

“Foreign judgments and decisions given in civil cases shall be recognised by operation of law, unless [the] obstacles referred to in Article 1146 exist.”

26. Article 1146 § 1 (7) of the CCP, in so far as relevant, reads as follows:

“... a judgment shall not be recognised if recognition would be contrary to the fundamental principles of the legal order of the Republic of Poland (public policy clause).”

27. Under Article 1148 of the CCP, anyone who has legal interest in the issue may apply to the court for a determination of whether a foreign court’s decision or judgment is to be recognised.

3. *Family and Custody Code*

(a) **Child's mother**

28. Article 61⁹ of the Family and Custody Code ("FCC"), reads as follows:

"The mother of the child is the woman who gave birth to him or her."

(b) **Paternity**

29. With respect to children born out of wedlock, under Article 85 of the FCC a man who had intercourse with the mother no more than 300 and no less than 181 days before the birth of a child is presumed to be the father.

30. As regards children born within marriage, Article 62 §§ 1 and 3 of the FCC provide, in so far as relevant:

"1. If a child is born within marriage, or within 300 days of its termination or annulment, it shall be presumed that he or she is the child of the mother's husband. This presumption shall not apply if the child was born more than 300 days after a judicial separation.

...

3. This presumption may only be rebutted as the result of an action for denial of paternity."

31. At the relevant time an action for denial of paternity could have been brought by the mother's husband (within six months of learning that his wife has given birth to the child and no later than the child's attainment of majority), the child (within three years of reaching majority) or by the mother of the child (within six months from the birth of the child). Paternity could have been challenged at any time by a prosecutor for reason of the child's best interests or the protection of the interests of the public.

(c) **Adoption**

32. Only a married couple may adopt jointly (Article 115 § 1 of the FCC). Adoption of the other spouse's child (second-parent adoption) is provided for under Article 1211 of the FCC. There are no provisions relating to second-parent adoption for unmarried couples.

4. *Private International Law Act*

33. Section 7 of the Private International Law Act of 4 February 2011 (*ustawa Prawo prywatne międzynarodowe*) provides as follows:

"Foreign law shall not apply where its application would have effects contradictory to the fundamental principles of the legal order of the Republic of Poland."

5. Polish Citizenship Act

34. At the material time the acquisition of Polish citizenship was regulated by the Act of 15 February 1962 on Polish citizenship (*ustawa o obywatelstwie polskim*– hereinafter “the 1962 Act”). The relevant provisions read as follows:

Section 4

“Polish citizenship is acquired at birth when:

1. both parents are Polish citizens, or
2. when only one of them is a Polish citizen and the other is unknown or his or her citizenship is undetermined or he or she has no citizenship.”

Section 6

“1. The child of parents one of whom is a Polish citizen and the other a citizen of another state acquires Polish citizenship at birth. However the parents can, within three months after the child’s birth, submit to a competent authority their agreed declaration stating that they have chosen for their child the citizenship of the foreign state of which one of the parents is a citizen for their child, if under the law of the foreign state that child will acquire its citizenship...”

Section 7

“1. Changes to a child’s affiliation to one or both parents or their citizenship shall be taken into account when deciding the child’s citizenship, if those changes occur within twelve months after the child’s birth...

2. Changes with regards to establishing paternity of a child resulting from the decision of a court on a claim for denial of paternity or a claim for the annulment of the recognition [of paternity] are to be taken into account when deciding the child’s citizenship, unless the child has reached majority. ...”

35. On 15 August 2012 the Act of 2 April 2009 on Polish citizenship (*ustawa o obywatelstwie polskim*, hereinafter the “the 2009 Act”) entered into force, repealing the 1962 Act. The 2009 Act contains similar provisions relating to the acquisition of Polish Citizenship. In particular, the relevant provisions read as follows:

Section 14

“A minor acquires Polish citizenship by birth when:

- 1) at least one of his or her parents is a Polish citizen;
- 2) [he or she] was born in the territory of the Republic of Poland and his or her parents are unknown or they have no citizenship or their citizenship is not defined.”

Section 16

“A minor foreigner adopted by a person or persons holding Polish citizenship acquires Polish citizenship if the full adoption took place before the child turned sixteen years

old. In this case, it is assumed that the minor foreigner acquired Polish citizenship on the day of birth.”

6. *Civil Status Records*

(a) 1986 Law

36. Section 73(1) of the Law on Civil Status Records (*prawo o aktach stanu cywilnego*) (“the 1986 Law”) of 29 September 1986, as applicable at the material time, provided that a foreign civil status certificate could be registered in the Polish Civil Status Register *ex officio* or on an application to the court by a person with an interest.

(b) 2014 Law

37. On 1 March 2015 the Law on Civil Status Records of 28 November 2014 (*prawo o aktach stanu cywilnego*) (“the 2014 Law”) entered into force, repealing the 1986 Law. Pursuant to section 104(5) a Polish citizen with a foreign civil status certificate must have it transcribed, in particular, if he or she is applying for a Polish identity document or a national identification number (PESEL). However, under section 107(3) the Director of the Civil Status Registry must refuse to register a foreign civil status certificate if its contents would be contradictory to the fundamental principles of legal order of the Republic of Poland.

7. *Ministry of the Interior Guidelines*

38. On 22 September 2021 the Department of Civil Affairs of the Ministry of the Interior sent guidelines to the directors of the departments of civil affairs in all governors’ offices about issuing Polish identity cards to children born abroad who had a foreign birth certificate showing same-sex parents. It was noted that if the authority was provided with documents confirming a biological relationship of motherhood or fatherhood between a parent holding Polish citizenship and the child for whom the identity card was to be issued, in principle there should be no doubt that the child was a Polish citizen. Furthermore, where the registrar refused to transcribe a foreign birth certificate, that could not constitute grounds for refusing to issue an identity card. In those situations, a foreign birth certificate would constitute a good basis for issuing an identity document. On 7 and 13 December 2021 similar guidelines were sent to the directors of the departments of civil affairs in governor’s offices and to Polish consuls.

8. *Relevant domestic practice*

(a) Supreme Court

39. On 20 November 2012 the Supreme Court, sitting as a bench of seven judges, adopted a resolution (*uchwała*) (III CZP 58/12) holding that a foreign

civil status certificate was the sole evidence of the events stated in it, whether or not it had been registered in the Polish Civil Status Register.

40. In a decision (*postanowienie*) of 8 May 2015 (III CSK 296/14), the Supreme Court held that an accurate and literal transcription of the contents of a foreign civil status certificate had to take into account the meaning of all its individual elements. They should be recorded in the Polish Civil Status Register not only in accordance with their wording, but also their function. Entries on a foreign civil status certificate should therefore be transcribed so as to retain a meaning that is not only literal, but also functional.

(b) Administrative courts' practice subsequent to the present case

41. On 10 October 2018 the Supreme Administrative Court examined a cassation appeal (II OSK 2552/16) in the case of two women living in a same sex relationship. Both were Polish nationals seeking to register a foreign birth certificate in Poland, with one of them recorded as the “mother” and the other as the “parent”. The court held that the authorities could not use the public policy clause (section 107(3) of the 2014 Law) to refuse to carry out the transcription (the entry of an existing foreign birth certificate into the Polish civil status register) which was required under section 104(5), as that would be against the child’s best interests.

42. On 2 December 2019, the Supreme Administrative Court, sitting as a bench of seven judges, adopted the following resolution (II OPS 1/19):

“Section 104(5) of the 2014 Act, in conjunction with section 7 of the Private International Law Act of 4 February 2011, does not allow for transcription of a child’s foreign birth certificate which gives persons of the same sex as [the child’s] parents.”

43. On 20 November 2020 (IV SA/Wa 1618/20) the Warsaw Regional Court gave judgment in a case concerning the refusal to issue a national identity card (*dowód osobisty*) to a child whose British birth certificate indicated two women as his parents. The court acknowledged that the child was a Polish national and, as a consequence, had the right to a Polish identity card and a PESEL number – irrespective of whether his birth certificate could be registered in the Polish Civil Status Registry. Following the applicants’ cassation appeal, on 28 February 2024 the Supreme Administrative Court (II OSK 1303/21) upheld the Regional Court’s ruling.

B. International law

1. The United Nations Convention on the Rights of the Child

44. The relevant provisions of the United Nations Convention on the Rights of the Child read as follows:

Article 2

“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.”

Article 3

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures (...)”

Article 7

“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.”

Article 8

“1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”

2. European Union law and practice

45. In its judgment of 14 December 2021 (Stolichna obshtina, rayon ‘Pancharevo’, C-490/20, EU:C:2021:1008), the CJEU ruled that Article 4(2) of the Treaty on the European Union, Articles 20 and 21 of the Treaty on the Functioning of the European Union and Articles 7, 24 and 45 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 4(3) of the 2004 Directive, mean that where a minor Union citizen has a host Member State birth certificate listing two same-sex parents, the Member State of that child’s nationality must (i) issue an identity card or

passport without requiring a national birth certificate, and (ii) recognise the host Member State document so the child can exercise free movement with either parent.

46. On 24 June 2022 the CJEU essentially repeated this ruling, in a case arising from a question referred to it by the Kraków Regional Administrative Court (Rzecznik Praw Obywatelskich, C-2/21, EU:C:2022:502). It held that the requirement to issue an identity card or a passport to the child concerned should be fulfilled without requiring prior registration of that child's foreign birth certificate in the national register of civil status.

COMPLAINTS

47. The applicants complained under Article 8 of the Convention that they had been unable to register the third's applicant's foreign birth certificate in Poland. They further alleged that they had suffered discrimination contrary to Article 14 taken in conjunction with Article 8 of the Convention.

THE LAW

A. Complaints under Article 8 of the Convention

48. The applicants complained that the refusal to register the third applicant's birth certificate in Poland amounted to a breach of their right to respect for their private and family life as provided for by Article 8 of the Convention, which reads, in so far as relevant, as follows:

“1. Everyone has the right to respect for his private and family life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

1. *The parties' arguments*

(a) **The Government**

49. The Government made several preliminary objections as to the admissibility of the application. They argued that the applicant had not complied with the rule of exhaustion of domestic remedies. They further maintained that the application was *incompatible ratione personae* with the provisions of the Convention because the applicants could not claim to be victims. They also submitted that the applicants had not suffered significant disadvantage.

50. The Government further submitted that the Polish authorities had not interfered with the applicants' right to respect for their private and family life

in any way. The applicants had failed to identify any specific circumstances pointing to the fact that their right to respect for private and family life had indeed been breached. They had based their application on the potential risks or difficulties which they might encounter in future whereas the refusal to register the British birth certificate in Poland had not caused any changes to their lives. The third applicant had been born to a British citizen, had British citizenship and resided in the United Kingdom, where she enjoyed the right to private and family life with the first and second applicant. The applicants' legal ties were recognised in the United Kingdom. Apart from the refusal to register the British birth certificate the applicants had not faced any negative consequences in Poland, nor had they been confronted with any difficulties or obstacles because there was no Polish birth certificate.

51. The Government stressed that the child's birth had been registered in the country where she had been born and only registration of that birth certificate in a third country – Poland – had been sought. Moreover, the difficulties alleged by the applicants, such as the first applicant not being able to receive information concerning the child, the third applicant being unable to inherit or the risk of separation of the third applicant from the first applicant if the second applicant were to die, were hypothetical because the applicants were not living in Poland. Consequently, the applicants had not had to overcome any practical obstacles because of the failure to register the third applicant's birth certificate in Poland.

52. Moreover, in the present case the best interests of the child had been taken into account and the decisions given by the Polish authorities had not affected her negatively as she was living in the United Kingdom and had British citizenship.

53. The Government also pointed out that the present case should have been distinguished from the case examined by the Supreme Administrative Court on 10 October 2018 (II OSK 2552/16 – see paragraph 41 above), since in that case the child's biological mother was a Polish national. Thus, the child had therefore been entitled to acquire Polish nationality by virtue of the *ius sanguinis* principle.

(b) The applicants

54. The applicants submitted that there was an interference with their right to respect for their private life as a consequence of the refusal of the Polish authorities to recognise the third applicant's birth certificate. Firstly, the failure to recognise the legal parent – child relationship in Poland had a bearing on the inheritance rights of the third applicant. Secondly, the refusal to register the birth certificate prevented the applicants from obtaining documents confirming the Polish nationality of the third applicant. The applicants claimed that there had been also an interference with the right to respect for the private life of the first and second applicants given that the

issue of whether a person was a parent or not was undoubtedly an element of personal identity.

55. The applicants also argued that there had been an interference with their right to respect for their family life as they had to make decisions about their family life they would otherwise have made differently because they could not obtain legal recognition of the parent-child ties in Poland.

56. Moreover, the applicants stressed that while there was no right to acquire a particular nationality, where a person was to be barred from acquiring the nationality of a particular country, that bar could not be discriminatory. They observed that under section 14(1) of the 2009 Act (see paragraph 35 above) every child who had at least one Polish parent acquired Polish nationality. If parents of different sexes were named on a birth certificate it sufficed to ask a Polish Consulate to issue a Polish passport for the child. However same-sex parents were refused a Polish passport for their children.

57. Lastly, the applicants submitted that second-parent adoption was not available to them in Poland and therefore the first applicant could not have chosen this way of establishing a legal relationship with the child.

58. They submitted that while each country could choose different means of recognition of a legal parent-child relationship, some mechanism must be available. If Poland did not allow the transcription of a birth certificate, it had to provide another way of obtaining recognition of a child's legal relationship with a second parent.

2. The third-party interveners

- (a) **Prof. Robert Wintemute on behalf of the non-governmental organisations FIDH (Fédération Internationale des ligues des Droits de l'Homme), PSAL (Polish Society of Anti-Discrimination Law), ILGA-Europe (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), NELFA (Network of European LGBTIQ* Families Associations), and ECSOL (European Commission on Sexual Orientation Law)**

59. Those intervening submitted that the UN Convention on the Rights of the Child required that in all actions concerning children the best interests of the child should be a primary consideration. It was further in the best interests of children being brought up by same-sex couples that they should enjoy the same opportunities as children being brought up by married different-sex couples to establish a legal relationship with the two adults who were bringing them up.

- (b) **Ordo Iuris – Institute for Legal Culture**

60. The intervener submitted that pursuant to the provisions of the Polish Constitution marriage was a relationship between a man and a woman.

Family and marriage were particularly important in the hierarchy of the constitutional values.

61. Furthermore, the transcription and registration of a foreign birth certificate was not necessary in order for a Polish citizen to obtain the national identification number (PESEL) which was itself necessary in order to obtain a national identity card.

(c) The European Centre for Law and Justice (“the ECLJ”)

62. The intervener submitted with reference to the Court’s case-law (*Paradiso and Campanelli v. Italy* [GC], no. 25358/12, 24 January 2017) that member States had an exclusive competence to recognise a legal parent-child relationship.

63. The intervener maintained, relying on Article 7 (1) of the UN Convention on the Rights of the Child (see paragraph 44 above) that it was in the best interests of a child to have a birth certificate based on biological reality and reflecting the true origin of the child. To accept the transcription and registration of a British birth certificate would have amounted to denying the child’s right to have her paternal affiliation established and therefore to know her father.

(d) The Institute of Psychology, Polish Academy of Sciences (“the PAS”)

64. The intervener presented the results of “Families of Choice in Poland” – a research project on same-sex families conducted in Poland between 2013 and 2016. The researchers surveyed a group of more than 3,337 respondents, 9% of whom were bringing children up in Poland. However, the majority of the same-sex couples had created “stepfamilies”, where their children had been born in a previous heterosexual relationship of the respondent biological parent. The results of the study showed that the children had contact with various members of their families of origin and that they had usually stayed in touch with their other biological parent. The PAS stressed that there was no way of legally formalising same-sex relationships in Poland. The survey respondents had undertaken various attempts to solve their problems using the existing legal regulations or by making informal agreements.

3. The Court’s assessment

65. Before examining the Government’s objections (see paragraph 49 above), the Court will first consider its jurisdiction *ratione materiae*.

(a) General principles

66. The Court reiterates at the outset that the question of the applicability of a Convention right falls within the Court’s jurisdiction *ratione materiae* and that the relevant analysis should normally be carried out at the admissibility stage unless there is a particular reason to join the question to

the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018). It finds no such reason in the present case.

67. The Court further reiterates that, the relationship between on the one hand two women living together in a registered partnership and on the other hand the child one of them has given birth to and is bringing up jointly with her partner amounts to “family life” for the purposes of the Convention (see *X and Others v. Austria* [GC], no. 19010/07, § 95, ECHR 2013; *C.E. and Others v. France*, nos. 29775/18 and 29693/19, § 49, 24 March 2022; and *R.F. and Others v. Germany*, no. 46808/16, § 40, 12 November 2024).

68. Furthermore, the concept of “private life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person’s physical and social identity and includes the legal parent-child relationship, which is an essential aspect of an individual’s identity (see *Mennesson v. France*, no. 65192/11, §§ 46 and 96, ECHR 2014 (extracts), and *Labassee v. France*, no. 65941/11, §§ 38 and 75, 26 June 2014).

69. Lastly, the Court reiterates that there are normally two ways in which it has examined the applicability of Article 8 under the notion of “private life” in certain contexts: either because of the underlying reasons for the impugned measure (in that event the Court employs the reason-based approach) (see *Denisov*, cited above §§ 103-06) or – in certain cases – because of the consequences it has for private life (in that event the Court employs the consequence-based approach (*ibid.*, §§ 107-09). Where a consequence-based approach is at stake, a certain threshold of severity must be attained, and the applicant has to present evidence substantiating the consequences of the impugned measure (*ibid.*, §§ 110-14). The Court will then only accept that Article 8 is applicable where these consequences are very serious and affect the applicant’s private life to a very significant degree (*ibid.*, § 116).

(b) Application of the above principles to the present case

70. The Court notes at the outset that it has already dealt with a similar case, *S.-H. v. Poland* ((dec.), nos. 56846/15 and 56849/15, § 67, 16 November 2021), which concerned a refusal by the Polish authorities to confirm the acquisition of Polish citizenship by descent of the two applicants who were born through surrogacy and who also neither lived in Poland nor had any imminent plans of moving there. In that case, the Court found it appropriate to follow the consequence-based approach to the applicability of Article 8 laid down in *Denisov v. Ukraine* (cited above, § 115), requiring it to establish whether the measure complained of had reached the required threshold of severity. It therefore examined whether the disputed decisions had sufficiently serious negative consequences for the applicants for the case to be considered by the Court and concluded that it had not been established that the applicants had suffered any practical difficulties as a result of the refusal. Any repercussions for the applicants’ personal identity had not

crossed the threshold of seriousness for an issue to be raised under Article 8 of the Convention. The Court therefore declared the applicants' complaint inadmissible as incompatible *ratione materiae* with the provisions of the Convention (see, *S.-H. v. Poland*, cited above, §§ 68-77).

71. Thus, the first question to be determined by the Court in the present case is whether the refusal to register the third applicant's birth certificate in Poland affected the applicants' private life, therefore engaging Article 8.

72. In that regard the Court notes that the circumstances of the present case are indeed closely comparable to those examined in *S.-H. v. Poland* (cited above). While, in the case of hand the proceedings instituted by the applicants in Poland concerned the registration of a foreign birth certificate and were not strictly citizenship-related as in *S.-H. v. Poland*, the central issue was also the recognition of a parent-child relationship by domestic authorities where the applicants were resident in a foreign jurisdiction. For that reason, as in that case, in order to answer the question of whether Article 8 is applicable, the Court considers it appropriate to employ a consequence-based approach and to examine whether the disputed decisions had sufficiently serious negative consequences for the applicants for the Court to consider their applications (*ibid.*, § 67, and see *Denisov*, cited above, §§ 107-09, and *mutatis mutandis Usmanov v. Russia*, no. 43936/18, §§ 58-71, 22 December 2020). It is further for the applicants to show convincingly that the threshold was reached in their case (see *Denisov*, cited above, § 114).

73. The Court notes that the applicants pointed to a number of consequences arising from the third applicant's foreign birth certificate not being registered in Poland. Among other issues, the applicants submitted that the refusal to register the third applicant's birth certificate had prevented her from obtaining a Polish identity card and a Polish passport, despite the fact that pursuant to section 14(1) of the 2009 Act (see paragraph 35 above) every child who had at least one Polish parent acquired Polish nationality at birth (see paragraphs 54 and 56 above). However, in that regard, the Court observes that it does not appear that the applicants have ever submitted an application to have the third applicant's Polish citizenship formally confirmed (see paragraphs 15 and 19 above). It is therefore not possible to conclude whether the third applicant is entitled to Polish citizenship on the basis of section 14 of the 2009 Act.

74. The Court further observes that despite the Polish authorities' refusal to register the foreign birth certificate, the third applicant has not been deprived of a legal relationship with her parents. Most importantly, since birth she and her parents have been living as a family in the United Kingdom, where their legal parent-child relationship is recognised. They have never taken up residence in Poland on any permanent basis, and it does not appear that they have any plans to relocate there imminently. The third applicant therefore benefits from the legal parent-child relationship with her parents in

the State where she lives, and it cannot be said that the decisions of the Polish authorities have left her in a legal vacuum.

75. In this respect, the Court finds that the present case is distinguishable from other cases where the transcription and registration of foreign birth certificates has been in issue, where the non-biological parents had no legal relationship whatsoever with the child in the country where they resided (see *Labassee, Mennesson*, both cited above; *Foulon and Bouvet v. France*, nos. 9063/14 and 10410/14, 21 July 2016; *D.B. and Others v. Switzerland* nos. 58817/15 and 58252/15, 22 November 2022; *K.K. and Others v. Denmark*, no. 25212/21, 6 December 2022; and *C v. Italy*, no. 47196/21, 31 August 2023). While the underlying issues may appear comparable, those cases concerned families who were resident in the respondent State at the time they sought recognition of the parental link. By contrast, the applicants in the present case reside outside that State, in a jurisdiction where the legal relationship was originally, and continues to be, recognised.

76. The Court appreciates that the domestic decisions may have some repercussions on the third applicant's personal identity (see, *mutatis mutandis*, the *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC], request no. P16-2018-001, French Court of Cassation, § 40, 10 April 2019). At the same time, given that the family does not reside in Poland, many of the legal and administrative consequences that might otherwise arise from the failure to transcribe and register her foreign birth certificate do not directly affect her. Any repercussions of the domestic decisions on her day-to-day life and legal status remain largely theoretical or indirect. It follows that the negative impact of those decisions on her private life does not appear to have reached the threshold of seriousness required to raise an issue under Article 8 of the Convention.

77. With regard specifically to the first and second applicants' situation, the Court observes that in their submissions they only observed that being a parent was an element of personal identity (see paragraph 54 above). However, the Court notes that the parent-child relationship among the applicants has been recognised from the birth of the third applicant by the United Kingdom, where the family lives, and there is no obstacle to continuing that relationship. The Court therefore finds that the decisions taken in the present case had no consequences for the first and second applicants' right to respect for their private life.

78. Like in *S.-H. v. Poland* (cited above, § 74), the applicants in the present case also alleged that the domestic decisions had also affected their family life. The Court observes that these arguments are, in essence, the same as those advanced in relation to their complaints concerning respect for their private life. The Court further notes that the applicants submitted that the lack of legal recognition of the parent-child relationship in Poland had a direct

impact on the decisions they were required to make regarding their family life (see paragraph 55 above). However, they did not point to any particular obstacles or practical difficulties in enjoying family life together that had been caused by the refusal to transcribe the third applicant's birth certificate into the Polish Civil Status Register. In addition, it does not appear that the family has yet had to overcome any practical obstacles resulting from the Polish authorities' decisions and it appears that any potential risk to their family life could materialise only if they took up residence in Poland.

79. The Court therefore finds that Article 8 of the Convention is not applicable. The complaint is therefore incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4.

80. In view of this conclusion the Court considers it unnecessary to examine the Government's preliminary objections concerning non-exhaustion, victim status and the question of whether the applicants had suffered a "significant disadvantage".

B. Complaint under Article 14 in conjunction with Article 8 of the Convention

81. The applicants complained that they had suffered discrimination contrary to Article 14 taken in conjunction with Article 8 of the Convention on the grounds of the first and second applicants' sexual orientation because of the domestic authorities' refusal to register the third applicant's foreign birth certificate in Poland. Article 14 provides as follows:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1. The parties' arguments

(a) The Government

82. The Government maintained that the applicants had not demonstrated that the domestic authorities had treated them less favourably than any other couple in a comparable situation. They had not suggested any group with which they should have been compared in the present case.

83. The Government stated that the first and the second applicant had not been in a situation similar to opposite-sex couples and therefore the differences in their treatment had been based on objective and reasonable grounds. Had the third applicant's birth certificate been registered in Poland by the domestic authorities this would have put the applicants in a more favourable position than a Polish same-sex couple bringing up the children of one of the partners together in Poland.

(b) The applicants

84. The applicants submitted that they had been discriminated against on the ground of the first and second applicants' sexual orientation because they had been treated differently in respect of registering the third applicant's birth certificate from the way an opposite-sex couple would have been treated regardless of their status (married, unmarried or in a registered partnership). They maintained that had the first and second applicants been an opposite-sex couple the birth certificate of their child would have been registered.

85. They stated that depriving same-sex couples of access to the procedure for transcription of the birth certificate of the child amounted to discrimination on the basis of the sexual orientation of the same sex parents.

2. The Court's assessment

86. In order for Article 14 of the Convention to be applicable, it is both necessary and also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 63, ECHR 2010, and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 124, ECHR 2012 (extracts)). In this regard, the prohibition of discrimination enshrined in Article 14 extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, under any Convention Article which a State has voluntarily ratified (see *Beeler v. Switzerland* [GC], no. 78630/12, § 48, 20 October 2020, with references therein).

87. The Court observes that it has already found the applicants' complaint to be incompatible *ratione materiae* with Article 8 of the Convention (see paragraph 79 above). It further notes that it had previously found Article 14 of the Convention to be applicable in cases where the substantive Article, standing alone, might not have been applicable (see, for example, *Konstantin Markin*, cited above, §§ 129-30, and *Yocheva and Ganeva v. Bulgaria*, nos. 18592/15 and 43863/15, §§ 71-73, 11 May 2021). However, in these cases the respondent State had elected to provide for rights beyond those required by the Convention Article in question. In the present case the applicants' complaint under Article 8 of the Convention, taken alone, was not found inadmissible *ratione materiae* because the facts of the case went beyond the rights guaranteed by Article 8, but rather because the applicants did not demonstrate that the consequences of the domestic decisions crossed the threshold of seriousness required for an issue to be raised under Article 8 (see paragraph 78 above, and compare *Ahmed v. the United Kingdom* (dec.), no. 28540/20, §§ 90-91, 27 August 2024).

88. Accordingly, the applicants' complaint does not fall "within the ambit" of Article 8 of the Convention and Article 14 of the Convention is not

applicable. It must therefore be dismissed as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 2 July 2026.

Liv Tigerstedt
Deputy Registrar

Ivana Jelić
President