



6.5.2019

## NOTICE TO MEMBERS

**Subject: Petition No 0513/2016 by Eleni Maravelia (Greek) on the non-recognition of LGBT families in the European Union**

### 1. Summary of petition

The petitioner believes that LGBT families do not have the same rights across the European Union. She explains that she is married to a British lady and gave birth to a daughter in Spain in 2014. The Spanish birth certificate of her daughter indicates both her and her partner as mothers. Yet, outside of Spain they are not considered as family, as their daughter has only one parent. In the UK, where they applied for a British passport they were told that under UK family law, the petitioner's married partner is not recognised as the mother and consequently, if they ever decided to move to the UK, the petitioners married partner would have to adopt her own daughter. In Greece they were also told that only the birth mother is recognised as the parent, since there are no provisions in the Greek law for similar families. For the above reasons, for a long time the petitioner's daughter did not have a passport and the family was unable to travel. The petitioner believes that families like hers are being refused their right to free movement and their children are vulnerable, since their parents are not equally recognised across the EU. The petitioner urges that the EP and the Commission work towards making official civil status documents, such as birth certificates, to be accepted *de facto* across the Member States. She believes that the children of parents in similar situation deserve the same rights as all the children, with both their parents recognised.

### 2. Admissibility

Declared admissible on 4 October 2016. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 31 January 2017

The EU has adopted a number of instruments in the field of family law aimed at facilitating the free movement of citizens. Union regulations help citizens with certain procedural aspects

of their cross-border disputes, in particular to know which Member State's courts will be competent to deal with their case and which national law will apply to their case, and facilitates the recognition and enforcement in one Member State of judgments given in another Member State.

The matters covered by Union instruments are divorce, legal separation, the custody of children custody, visiting rights, parental child abduction, maintenance obligations, the property regimes of marriages and registered partnerships and succession. All these instruments are gender neutral.

Substantive matters of family law, however, fall within the competence of Member States and are thus governed by national law.

National law also governs civil status, which encompasses matters such as name, birth, death, sex, marriage, registered partnership, parenthood and adoption, as well as the recognition of civil status given in another Member State. The Commission is aware that citizens may encounter difficulties in having their civil status recognised in another Member State and that this lack of recognition can be an obstacle to free movement.

Possible obstacles to free movement can be addressed by case law directly under the Union Treaties or by legislative action.

With regard to case law, the Court has addressed the recognition of a person's name validly assigned under the legislation of another Member State in a number of cases.<sup>1</sup>

As regards case law on same-sex unions, the Romanian Constitutional Court announced in November that it intends to request a preliminary ruling to the Court of Justice of the European Union in a case of a same-sex couple who wish to be recognised as spouses in Romania. The Romanian Constitutional Court will seek clarification on whether a same-sex couple, a Romanian and a US citizen married in Belgium, can be recognised as spouses under Romanian law pursuant to Union law on family reunification.<sup>2</sup> The plaintiff before the Romanian court is challenging the constitutionality of the section of the Romanian Civil Code that excludes same-sex marriages concluded abroad from being recognised in Romania. This could be a test case on the recognition of same-sex marriages validly concluded in another Member State.

In parallel to ensuring the correct application by Member States of existing Regulations, a reflection process is ongoing on how to address the recognition of civil status between Member States. In this context, the Commission will for instance consider the relevant case law, developments in Member States frameworks and coherence with EU policies. The outcome of the request for a preliminary ruling would be important in view of the Commission's reflection on how to further facilitate the free movement of citizens.

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<sup>1</sup> C-168/91 *Konstantinidis*, C-148/02 *García-Avello*, C-353/06 *Grunkin-Paul*, C-208/09 *Sayn-Wittgenstein*, C-391/09 *Runevič-Vardyn et Vardyn*, Case C-438/14 *Bogendorff von Wolffersdorff*.

<sup>2</sup> Directive 2003/86 determines the conditions under which non-EU nationals residing lawfully in a Member State may exercise the right to family reunification with an EU national; Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12-18.

## Conclusion

The matters raised by the petitioner are currently governed by Member States' law and the Commission cannot therefore intervene in the petitioner's case.

### **4. Commission reply (REV), received on 6 May 2019**

The Commission is aware that citizens, including lesbian, gay, bisexual, transgender and intersex (LGBTI) citizens, may encounter difficulties in having their civil status recognised in another Member State. The Commission is also aware of difficulties that LGBTI citizens may experience when exercising their free movement rights across the EU.

The previous Commission communications explained that these difficulties can be addressed by case law directly under the Union Treaties or by legislative action.

The ruling of the Court of Justice of the European Union of 5 June 2018 in case C-673/15 *Coman* brought an important clarification to the interpretation of the right to free movement. The Court ruled that, while Member States are free to decide whether or not to allow same-sex marriage, the term 'spouse' within the meaning of Union law on free movement for Union citizens and their family members includes spouses of the same sex. In particular, the Court found that the obligation for a Member State to recognise a same-sex marriage concluded in another Member State, for the sole purpose of granting a right of residence to a non-EU national:

- does not undermine the institution of marriage in the first Member State;
- does not require that Member State to provide, in its national law, for the institution of same-sex marriage; and
- does not undermine the national identity or pose a threat to the public policy of the Member State concerned.

The Commission welcomes this ruling and is closely monitoring its application by Member States.

With regard to the recognition of names, the Court has consistently held<sup>1</sup> that although, as EU law stands at present, the rules governing the way in which a person's surname is entered on certificates of civil status are matters that fall within the competence of Member States, the latter must nonetheless, when exercising that competence, comply with EU law and, in particular, with the Treaty provisions on the freedom of every citizen of the Union to move and reside in the territory of Member States. According to settled case law, a link with EU law exists with regard to nationals of one Member State lawfully resident in the territory of another Member State<sup>2</sup>.

National legislation which places certain nationals of the Member State concerned at a

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<sup>1</sup> See case C-541/15 *Freitag*; case C-438/14 *Bogendorff von Wolffersdorf*; case C-391/09 *Malgożata Runevič-Vardyn*; case C-208/09 *Sayn Wittgenstein*; case C-353/06 *Grunkin and Paul* and case C-148/02 *García Avello*.

<sup>2</sup> See case C-541/15 *Freitag*, paragraphs 33-34, and the case law cited therein.

disadvantage simply because they have exercised their freedom to move and reside in another Member State is a restriction of such freedoms. A refusal by the authorities of a Member State to recognise the name of a national of that State who exercised his right of free movement in the territory of another Member State, as determined in that second Member State, is likely to hinder the exercise of the right to move and reside freely in the territories of the Member States. Confusion and inconvenience are liable to arise from the divergence between the two names used for the same person<sup>1</sup>. Therefore, the refusal by the authorities of a Member State to recognise and enter in the civil registers the name legally acquired by a national of that Member State in another Member State is likely to hinder the exercise of the right to move and reside freely in the territories of the Member States<sup>2</sup>.

In accordance with settled case law, an obstacle to the freedom of movement of persons can be justified only where it is based on objective considerations and is proportionate to the legitimate objective of the national provisions<sup>3</sup>. However, objective considerations relating to public policy must be interpreted strictly, so that their scope cannot be determined unilaterally by each Member State without any control by the EU Institutions. Public policy related objectives may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society<sup>4</sup>. Moreover, measures which restrict a fundamental freedom, such as the rights of freedom of movement and residence provided for in Article 21 TFEU, may be justified by objective considerations only if they are necessary for the protection of the interests which they are intended to secure and only in so far as those objectives cannot be attained by less restrictive measures<sup>5</sup>.

As regards the refusal by the Greek authorities to recognise the double-barrelled surname of the daughter of the petitioner as established by the Spanish authorities, the Commission has had a dialogue with the Greek authorities about this issue since January 2016. Several exchanges have been held with the Greek authorities, as the Commission has concerns whether the refusal in question is necessary and proportionate in the case of the petitioner's daughter. In April 2018 the Greek authorities informed the Commission that they have submitted a request to the State Legal Council for clarification about the attribution of surnames to children born to same-sex couples. According to information made available to the Commission in December 2018 and March 2019, the request is still pending with the State Legal Council. The Commission received the reply and additional information from the Greek authorities respectively on 27 March 2019 and on 24 April 2019, and is analysing it.

As regards possible legislative action, the Commission notes that, when considering proposals for legislative measures, it must assess the feasibility that such measures will be adopted by the legislator. Taking this into account, the Commission is not currently envisaging a legislative proposal on the recognition of same-sex marriages.

### Conclusion

The recognition of civil status is currently governed by Member States' law and the Commission cannot therefore intervene in the petitioner's case. However, when Member

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<sup>1</sup> Case C-541/15 *Freitag*, paragraphs 35 – 36, and the case law cited therein.

<sup>2</sup> See, for example, case C-541/15 *Freitag* and case C-353/06 *Grunkin and Paul*.

<sup>3</sup> See case C-438/14 *Bogendorff von Wolffersdorff*, paragraph 48, and the case law cited therein.

<sup>4</sup> Case C-438/14 *Bogendorff von Wolffersdorff*, paragraph 67, and the case law cited therein.

<sup>5</sup> Case C-438/14 *Bogendorff von Wolffersdorff*, paragraph 72, and the case law cited therein.

States apply their national law, they must respect Union law – as interpreted by the Court of Justice of the European Union –, including on the free movement of citizens within the European Union.