

# GMS Flash Alert

Immigration Edition

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## European Union - ECJ Decides on Free Movement of LGBTQ Families

The European Court of Justice (ECJ) delivered a ruling<sup>1</sup> that a member state must issue an identity card or a passport to a child who is a national of that member state and whose parents are two persons of the same sex. The member state must recognise the child's right to move and reside freely within the territory of the European Union (EU) with each of those parents.

The ruling confirms that same-sex parents and their children must not be prevented from exercising their rights that derive from EU law, such as the right to travel freely and take residence in another member state.

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### WHY THIS MATTERS

Freedom of movement is one of the fundamental principles in EU law. However, as this case demonstrates, parents of the same sex can experience obstacles that can prevent them from travelling and relocating because a member state does not recognise them as legal parents to their children and refuses to issue travel documentation to their children. These obstacles are now removed.

The ruling has established that when the rights of persons derive from EU law, a member state cannot rely on its own national legislation to derogate from EU law. Irrespective of their national policies, member states must recognise attested parenthood in another member state when the persons are exercising their rights under EU law.

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### Background of the Case before the ECJ

Two parents of the same sex have resided in Spain since 2015. One parent is a Bulgarian national and the other is a Gibraltar-born U.K. national. They married in 2018 and had a child in 2019. The Spanish authorities issued a birth certificate for the child stating both mothers as parents of the child.

The child could not become a Spanish national as neither of the parents are Spanish citizens. The U.K. denied citizenship to the child because the British Nationality Act of 1981 does not allow the Gibraltar-born parent to transfer British citizenship to the child. In principle, the child was stateless.

The parents filed for a Bulgarian ID card where one of the conditions is that there be a birth certificate issued by the Bulgarian authorities.

The parents filed a legalised and certified translation in Bulgarian of the extract from the Spanish civil register relating to the Spanish birth certificate. The Bulgarian authority then requested the parents provide evidence with respect to the identity of the biological mother. The birth certificate in Bulgaria has only one box for the mother and another for the father and in each of the boxes it is possible to insert one name only.

The parents rejected the request and the Bulgarian authorities denied the child's right to a Bulgarian birth certificate. The rejection from the Bulgarian authority was based on the lack of information about the identity of the biological mother and because two female parents was contrary to Bulgarian public policy that does not allow marriage between persons of the same sex.

## ECJ Findings

The ECJ reminded that according to EU law, all member states are required to issue ID cards or passports to their own nationals stating their nationality. Therefore, the child who is a Bulgarian national must receive an ID card or a passport stating her surname as it appears on the birth certificate drawn up by the Spanish authorities. Such document must enable the child to exercise her right to free movement with each of her parents whose status as parents is established in Spain.

The Spanish authorities have lawfully established that there is a parent-child relationship between the child and her two mothers, which is attested in a birth certificate. This attestation of the parent-child relationship must be recognised by all member states in such a way that the child can exercise her right to free movement and to be accompanied by each of her parents as her primary caregivers when she travels and resides within the EU.

The Court noted that Bulgaria is not required to provide for the parenthood of persons of the same sex in their own legislation or to recognise the parent-child relationship of the persons in the birth certificate for any other purpose other than the rights which they derive from EU law.

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## KPMG NOTE

The ruling of the ECJ in this case removes certain obstacles for the rights of dependent family members in LGBTQ families. If parental status is recognised in the host member state, regardless of whether it is legal or biological, it must be respected by all member states when a person exercises her rights that derive from EU law. Such rights include the right to travel, to take residence in a member state, and to receive social security benefits, among others.

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## FOOTNOTE:

1 Judgment of the Court of Justice of the European Union: [Case C-490/20 Stoliczna obshtina, rayon 'Pancharevo'](#), (14 December 2021).

## Contact us

For additional information or assistance, please contact your local GMS or People Services professional\* or the following professional with the KPMG International member firm in The Netherlands:



**Daida Hadzic**  
**EMA Head of Quality**  
Tel. +31 6 532 54 599 (m)  
[Hadzic.daida@kpmg.com](mailto:Hadzic.daida@kpmg.com)

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