

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

FIRST SECTION

CASE OF A.P. AND R.P. v. POLAND

(Application no. 1298/19)

JUDGMENT

Art 8 • Private and family life • Refusal to register a foreign birth certificate of the child of a same-sex couple • Refusal relied primarily on considerations of public policy and the safeguarding of the traditional family model, defined as a union between a man and a woman • Refusal prevented second applicant from obtaining Polish identity documents despite having acquired Polish citizenship at birth • Art 8 applicable • Applicants' failure to demonstrate that the refusal prevented them from enjoying their right to respect for their family life in Poland • Parent-child relationship between the first and second applicant recognised from birth in the United Kingdom with no obstacle to continuing that relationship • Impugned decisions had no impact on the first applicant's right to respect for her private life • Insufficient analysis of the child's best interests and lack of consideration of the repercussions of the refusal on the second applicant's personal identity and placing him in a situation of legal uncertainty • Interests of the child cannot depend solely on the sexual orientation of their parents • Child's legal position must be safeguarded irrespective of the family structure into which they were born • Impugned interference disproportionate with the second applicant's right to respect for private life
Art 14 (+ Art 8) • Discrimination • Private and family life • Refusal created no practical difficulties in the enjoyment of applicants' family life and no impact on the first applicant's right to respect her private life
Art 14 (+ Art 8) • Discrimination • Private life • Unacceptable distinction based solely or decisively on considerations relating to the second applicant's birth into a same-sex family

Prepared by the Registry. Does not bind the Court.

STRASBOURG

2 July 2026

FINAL

02/10/2026

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of A.P. and R.P. v. Poland,

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

Ivana Jelić*, President*,
Erik Wennerström,
Frédéric Krenc,
Davor Derenčinović,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 1298/19) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two applicants, Mrs A.P. ("the first applicant") and R.P. ("the second applicant"), on 12 December 2018;

the decision to give notice of the application to the Polish Government ("the Government");

the decision not to have the applicants' names disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Commissioner for Human Rights of the Republic of Poland, Helsinki Foundation for Human Rights and Polish Society of Anti-Discrimination Law, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 23 September 2025 and 2 June 2026,

Delivers the following judgment, which was adopted on the latter date:

INTRODUCTION

1. The case concerns the refusal of Polish authorities to register the foreign birth certificate of the child of a same-sex couple. The applicants complained under Article 8 of the Convention alone and in conjunction with Article 14 of the Convention.

THE FACTS

2. The first applicant, Ms A.P., is a Polish national who was born in 1978 and lives in Northampton, United Kingdom. She is represented before the Court by Mr W. Koncewicz and Mr T.T. Koncewicz, lawyers practising in Wałbrzych, Poland. She also complains on behalf of her child, R.P. (the second applicant), who was born in 2014 and lives in Northampton, United

Kingdom. The Government confirmed that the second applicant is also a Polish national.

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

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

I. BACKGROUND TO THE CASE

5. The first applicant lives with E.K., also a Polish national, in a same-sex relationship in the United Kingdom.

6. On 27 November 2014 the first applicant, who is also the biological mother, gave birth to the second applicant at a London hospital.

7. The applicants submitted that the child's biological father was a man whom the first applicant and her partner, E.K., had met on an internet portal which matched sperm donors with women couples wishing to have a child. They further submitted that he did not want to and would not take part in the child's upbringing.

8. The child's original birth certificate gave the first applicant as his mother and E.K. as his parent.

II. PASSPORT APPLICATION

9. On 23 January 2015 the first applicant applied to the Polish Consulate in London for a Polish passport for the second applicant. She submits that her application was not accepted during the meeting and that she was informed she would receive a written reply, which however she never did.

10. On 1 April 2015 she again applied for a Polish passport for the second applicant. She was invited to produce a Polish birth certificate for her son. In reply, she submitted that she had already provided all necessary documents.

11. In a letter of 7 May 2015, the Polish Consul in London informed the first applicant that her passport application had been left unprocessed since she had not produced her child's Polish birth certificate. In reply to her further complaint, the Minister of the Interior stated in a letter of 29 July 2015 that it was unfounded.

12. On 16 May 2016 the Warsaw Regional Administrative Court rejected the applicants' complaint as inadmissible in law.

III. THE ADMINISTRATIVE PROCEEDINGS IN POLAND

A. The Myszków Civil Status Registry

13. On 28 July 2015 the applicants applied to the Myszków Civil Status Registry (*Urząd Stanu Cywilnego*) in order to have the particulars of the child's birth certificate registered in Poland (*wniosek o transkrypcję zagranicznego aktu urodzenia*).

14. On 18 August 2015 the Director of the Myszków Civil Status Registry refused the application. The director confirmed that when registering a foreign birth certificate in Poland an administrative authority did not examine the contents of that certificate. However, the Polish legal system did not recognise parents of the same sex. The director further stated that it was not possible to register the birth certificate in Poland as it was against the principle of public policy. 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 a man – regardless of how his paternity was established (Article 61^9 of the Family and Custody Code) (see paragraphs 35-37 below). It was therefore not possible to transcribe and register a birth certificate which indicated two women as the child's parents. The decision was based on section 7 of the Private International Law Act of 2011 (see paragraph 42 below).

15. The applicants appealed, relying in particular on Article 8 of the Convention. They referred to the child's best interests as a primary consideration and pointed out that the second applicant's legal situation remained uncertain.

B. The Śląski Governor

16. On 9 October 2015 the Śląski Governor (*Wojewoda Śląski*) upheld the first-instance decision. The Governor held that it was true that when entering the particulars of a foreign civil status certificate into the Polish Civil Status Register an administrative authority did not need to examine the contents of that certificate. However, it was possible to refuse transcription (the entry of an existing foreign birth certificate into the Polish civil status) if it contravened the fundamental rules of legal order in Poland (*sprzeczność z podstawowymi zasadami porządku prawnego RP)*.

17. The Governor confirmed that the first-instance authority had correctly applied the public policy exception since the foreign birth certificate in question was contrary to the provisions of the Polish Family and Custody Code. It was noted that in the Polish legal system a child's mother was the woman who gave birth to that child. As regards the child's father, regardless of how paternity was established the legal provisions always assumed that the father of a child was a man.

18. The law in force did not allow for the registration of same-sex unions or the adoption of a child by a same-sex couple. The Governor further relied on the Court's judgment in *Gas and Dubois v. France* (no. 25951/07, ECHR 2012).

19. Lastly, it was pointed out that there were no formal obstacles to the use of a foreign birth certificate in the Polish courts because it was evidence of the events stated in it. The evidential value of a foreign civil status document did not depend on its registration in the Polish Civil Status

Register. Under Article 1138 of the Code of Civil Procedure, foreign official documents had the same probative value as Polish official documents (see paragraph 31 below).

20. The first applicant appealed. She submitted that the Governor's decision was in breach of the Polish Constitution and numerous other legal acts. She relied on the obligation to put a child's best interests first and alleged that the second applicant was being discriminated against as a child brought up in a same-sex family.

C. The Gliwice Regional Administrative Court

21. On 6 April 2016 the Gliwice Regional Administrative Court dismissed the appeal. The court endorsed the reasoning of the administrative authorities. It reiterated that when registering a foreign birth certificate in Poland an administrative authority did not need to examine the contents of that certificate. However, it did have to check that that certificate did not contradict the principles of the Polish legal system. It further observed that had the foreign birth certificate been recorded in the Civil Status Register, the Polish birth certificate would have a woman's personal data entered into the field designated for the "father". Under the legal provisions in force, it was not possible to record a woman's forename in the field designated for "father". Moreover, it was not possible to register a same-sex relationship in Poland and there were no provisions for second-parent adoption where the parents would be of the same sex. "Parents" had always meant a man and a woman. Consequently, the authorities had been right to apply the public policy exception.

22. The court referred to "public order" and section 7 of the Private International Law Act on public policy and stated that foreign law should not apply where it would have effects contradictory to the fundamental principles of the legal order of Poland. It was stressed that the public policy clause was exceptional and should be used in the rare cases where decisions of the authorities of another country would be incompatible with the fundamental values of the Polish legal system.

23. The court also referred to various legal regulations none of which made it possible to record a woman's details on a child's birth certificate as those of a second parent alongside the child's mother. The only formulations that could be used on a birth certificate were those of "mother" and "father".

24. Lastly, the court noted that there was no need to transcribe the birth certificate as the second applicant could rely on his foreign birth certificate in any dealings with the Polish authorities.

25. The first applicant lodged a cassation appeal. She submitted that a Polish birth certificate was necessary in order to obtain a Polish passport for her child. She relied on the UN Convention on the Rights of the Child and the concept of the child's best interests. She maintained that the refusal to issue

a Polish birth certificate to her son constituted discrimination on the ground of his parents' sexual orientation.

26. On 18 June 2018 the Polish Human Right's Commissioner ("the Commissioner") intervened on the applicants' behalf in the proceedings in the Supreme Administrative Court. The Commissioner observed that pursuant to section 104(5) of the Law on Civil Status Records of 2014 (see paragraph 44 below), which applied in the present case, the registration of a foreign civil status document was required if a Polish citizen was applying for a Polish identity document or the personal identification number (PESEL). In the present case, the Regional Administrative Court had failed to take into consideration the child's best interests and the consequences for the child's private life of a refusal to register the birth certificate. Lastly, the Commissioner stressed that the authorities had applied the public policy principle automatically, without any consideration of the child's best interests.

D. The Supreme Administrative Court

27. On 20 June 2018 the Supreme Administrative Court dismissed the applicants' cassation appeal. The court held that the appeal was unfounded, and the lower courts had correctly found that registering a transcription of the second applicant's birth certificate would have contravened the domestic legal order.

28. The Supreme Administrative Court also observed that the best interests of the child were ensured by the evidential value of the foreign document under Article 1138 of the Code of Civil Procedure (see paragraph 31 below). In that regard the court referred to the Supreme Court's resolution of 20 November 2012 (III CZP 58/12) (see paragraph 49 below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Polish Constitution

29. 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."

B. Civil Code

30. Article 417^1 § 1 of the Civil Code reads as follows:

"Where damage has been caused by the delivery of a normative act, compensation may be sought after a determination in the relevant proceedings, that the act is inconsistent with the Constitution, a ratified international agreement or a statute."

C. Code of Civil Procedure

1. Foreign documents

31. 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..."

2. Recognition of foreign judgments and decisions

32. 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."

33. 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)."

34. Under Article 1148 of the CCP, anyone who has a legal interest in the issue may lodge an application with a court for a determination of whether a decision or judgment of a foreign court should be recognised.

D. Family and Custody Code

1. Child's mother

35. Article 61^9 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."

2. Paternity

36. 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.

37. 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 the termination or annulment of a marriage, 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 by the decision of a court in an action for denial of paternity."

38. 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 be challenged at any time by a prosecutor for reason of the child's best interests or the protection of the interests of the public.

3. Adoption

39. Only a married couple may adopt jointly (Article 115 § 1 of the FCC). Article 121 of the FCC concerns full adoption (*adoptio plenissima*) and provides:

> "§ 1. Through adoption, the relationship between the adopter and adoptee is that of parents and children.
>
> § 2. The adoptee acquires the rights and obligations of kinship in relation to the relatives of the adopter.
>
> § 3. The adoptee loses the rights and obligations arising from his or her relations with relatives, and his or her relatives lose their rights and obligations in relation to him or her.
>
> § 4. The effects of the adoption extend to the descendants of the adoptee."

40. Adoption of a spouse's child (second-parent adoption) is provided for under Article 121^1 of the FCC, which reads as follows:

> "§ 1. The provision of Article 121 § 3 will not apply in relation to a spouse whose child was adopted by the other spouse, or against relatives of the spouse, including where a child is adopted after the termination of a marriage by death.
>
> § 2. Where a spouse has adopted the child of his or her spouse after the death of the other parent of the adoptee, the provision of Article 121 § 3 will not apply towards the relatives of the deceased, if stated in the guardianship court's ruling."

41. There are no provisions relating to second-parent adoption for unmarried couples.

E. Private International Law Act

42. Section 7 of the Private International Law Act of 4 February 2011 *(ustawa Prawo prywatne miedzynarodowe*) 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."

F. Polish Citizenship Act

43. Acquisition of Polish citizenship is regulated by the Act of 2 April 2009 on Polish citizenship (*ustawa o obywatelstwie polskim* hereinafter the "the 2009 Act"), which entered into force on 15 August 2012. 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."

G. Civil Status Records

44. The Law on Civil Status Records of 28 November 2014 (*prawo o aktach stanu cywilnego*) ("the 2014 Law") entered into force on 1 March 2015. 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 personal 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.

H. Identity Cards

45. The rules governing the issuing of identity cards, the features of the identity document, and the related administrative procedures are set out in the Act of 6 August 2010 on Identity Cards (*ustawa o dowodach osobistych*). In particular, the relevant provisions read as follows:

Section 4

"1. An identity card is a document confirming the identity and Polish nationality of its holder within the territory of the Republic of Poland, as well as within the territories of other Member States of the European Union, the States of the European Economic Area that are not members of the European Union, and States which are not parties to the Agreement on the European Economic Area but whose nationals may exercise the freedom of movement of persons pursuant to agreements concluded between those States and the European Community and its Member States, or pursuant to unilateral decisions of other States recognising this document as sufficient for the purpose of crossing their borders.

2. The identity card entitles its holder to cross the borders of the States referred to in paragraph 1."

Section 5

"1. Every citizen of the Republic of Poland has the right to hold an identity card.

2. An adult citizen of the Republic of Poland residing within its territory is obliged to have an identity card."

Section 12

"1. The printed part of an identity card shall contain:

1) Data concerning the holder:

a) surname,

b) given name(s),

c) family name at birth,

d) parents' given names,

e) date and place of birth,

f) sex,

g) facial image,

h) PESEL number,

i) citizenship,

j) a reproduction of the holder's handwritten signature, if the holder is at least 12 years old, except where that person is unable to provide a signature.

2) Data concerning the identity card:

a) series and number of the identity card,

b) date of issue,

c) date of expiry,

d) designation of the authority issuing the identity card,

e) CAN number.

2. Where the place of birth is located within the territory of the Republic of Poland, it shall be entered on the identity card in the form of the officially valid name of the locality as of the date on which the identity card application is submitted."

I. Ministry of the Interior Guidelines

46. 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.

47. Therefore, if two women were shown as parents in a foreign birth certificate, the woman who was the child's mother should be named on the identity document, while the field concerning the father should be left blank. The same procedure would also apply when two men were shown as parents

on the foreign birth certificate. In that situation the man who was the child's father should be named on the identity card and the field concerning the mother should be left blank.

48. 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. As regards the assigning of a PESEL number, the Ministry indicated that in its judgment of 20 November 2020 (no. IV SA/Wa 1618/20 – see paragraph 56 below) the Warsaw Regional Administrative Court had held that the fact that the father's details were missing from a birth certificate did not constitute a legal obstacle to assigning a PESEL number and issuing an identity document. In such case, the father's details should remain blank. This procedure should also apply in a situation where two men were indicated as parents on a child's foreign birth certificate.

J. Relevant domestic practice

1. Supreme Court

49. 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.

50. 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.

2. Administrative courts' practice subsequent to the present case

51. 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) (see paragraph 44 above) to refuse registration, which was compulsory, under section 104(5), as that would be in breach of the child's best interests. Furthermore, compulsory registration under section 104(5) had the sole purpose of protecting the rights of a child by giving him or her the right to confirm his or her identity, which was not contrary to the fundamental principles of the legal order.

52. On 30 October 2018 the Supreme Administrative Court delivered four judgments (II OSK 1868/16, II OSK 1869/16, II OSK 1870/16,

II OSK 1871/16) in the cases of four children born through anonymous surrogates in the USA. Two birth certificates issued in the state of California gave the details of a Polish father and his male partner; the other two, issued in Texas, gave only the Polish father and an anonymous surrogate mother. In all four cases, the court found that the fact that the children had been born through surrogacy was of no relevance to whether they had Polish citizenship. The court held that a person was born with natural and inalienable dignity and was entitled to citizenship if one of the parents was a Polish citizen. Acquisition of citizenship was an issue of public law and the family law provisions relating to affiliation therefore did not apply.

53. On 2 December 2019, the Supreme Administrative Court, sitting as a bench of seven judges, made 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 giving persons of the same sex as [the child's] parents."

54. The court explained further that on a Polish birth certificate it was not possible to indicate "parent" instead of "father" when that parent was a woman, since that would contravene the fundamental principles of the Polish legal order. At the same time the court stressed that in pursuit of the child's best interests, the administrative authorities should apply the legal provisions so as to issue Polish documents and the PESEL number on the basis of a foreign birth certificate alone.

55. Following this resolution, in several judgments the Regional Administrative Courts confirmed that the transcription of a foreign birth certificate showing same-sex parents would contravene the fundamental rules of the legal order of Poland. The courts also reiterated that acquisition of Polish citizenship was not linked to the registration of a birth certificate (Łódź Regional Administrative Court's judgment of 5 February 2020 III SA/Łd 617/19, and the Szczecin Regional Administrative Court's judgment of 19 March 2020 II SA/Sz 1075/19).

56. 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. It noted, however, that under Polish law a person could have only one mother (a woman) and one father (a man). It further held that the child's Polish identity card – which normally contained the forenames of both parents – should give only the forename of the biological mother. This solution would allow for the protection of the child's rights and would not be incompatible with the fundamental rules of the Polish legal order. Following the applicants' cassation appeal, on 28 February 2024 the Supreme Administrative Court (II OSK 1303/21)

upheld the Regional Court's ruling. The court confirmed that the child had Polish nationality and therefore had the right to a Polish identity card and a PESEL number. It reiterated that under Polish law a person could only have one mother (a woman) and one father (a man). The law did not allow for same-sex parents and two persons of the same sex could not have parental rights over a child. It further agreed with the lower court that the child's best interests should be taken into account and should be a primary consideration in all decisions concerning the child. In line with the case-law of the Court of Justice of the European Union (see paragraphs 60 and 61 below), the child could exercise his free movement rights together with either of the parents on his British birth certificate, including his non-biological mother. Identity cards gave the forenames of parents only for identification purposes and they had no bearing on the determination of the card-holder's family relationships.

II. INTERNATIONAL LAW

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

57. 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."

B. The Council of Europe

58. In its Resolution 2239(2018) on private and family life: achieving equality regardless of sexual orientation, adopted on 10 October 2018, the Parliamentary Assembly of the Council of Europe noted as follows:

"2. Same-sex couples and other rainbow families exist throughout Europe, whether or not legislation recognises them. These families have the same needs as any other family, yet many are deprived of their rights on the grounds of the sexual orientation or gender identity of the partners or parents. It is crucial and urgent that our legal systems acknowledge this reality and that States work to overcome the discrimination experienced by both adults and children in rainbow families."

59. The Parliamentary Assembly further called on the Council of Europe member States to:

"4.5. protect the rights of parents and children in rainbow families, without discrimination based on sexual orientation or gender identity, and accordingly:

4.5.1. in line with the case law of the European Court of Human Rights, ensure that all rights regarding parental authority, adoption by single parents and simple or second-parent adoption are granted without discrimination on the grounds of sexual orientation or gender identity.

...

4.5.3. extend automatic co-parent recognition to the same-sex partner of the parent who has given birth in all cases where this would be extended to a mother's male spouse."

C. European Union law and practice

60. In its judgment of 14 December 2021 (Stolichna obshtina, rayon 'Pancharevo', C-490/20, EU:C:2021:1008) the Court of Justice of the European Union (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 Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004,

must be interpreted as meaning that, in the case of a minor child who is a Union citizen and who has a birth certificate issued by the authorities of a host Member State which shows two persons of the same sex as the child's parents, the Member State of which that child is a national must (i) issue that child with an identity card or a passport without requiring a birth certificate to be drawn up beforehand by its national authorities, and (ii) recognise, as in any other Member State, the document from the host Member State that permits that child to exercise her or his right to move and reside freely within the territory of the Member States with either of those two persons. The CJEU also confirmed that where the concept of public policy is used to justify a derogation from a fundamental freedom it must be interpreted strictly, and public policy could be relied on only if there was a genuine and sufficiently serious threat to a fundamental interest of society.

61. 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 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.

THE LAW

I. PRELIMINARY REMARKS

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

A. Victim status

1. The parties' submissions

63. The Government submitted that the applicants could not be considered "victims" for the purposes of Article 34 of the Convention because they had failed to provide any substantial or convincing evidence that they had been affected by the refusal to register the second applicant's birth certificate in Poland. There was no indication that the decisions of the Polish authorities had caused any hindrance to the applicants' lives or precluded them from enjoying their private or family life. As regards any potential risks which the applicants might face in future, in the Government's view they were based on mere suspicion and hypothesis. In support of their statements

the Government referred to the resolution of the Supreme Administrative Court of 2 December 2019 (II OPS 1/19) (see paragraphs 53 and 54 above).

64. The applicants disagreed. The first applicant referred to the efforts she had made to obtain a Polish passport for the second applicant (see paragraphs 9-12 above). She submitted that this process had confirmed that it was not possible to obtain either a passport or a PESEL number without first having a birth certificate registered in Poland. The applicants concluded that the situation in the present case was incompatible with the child's best interests.

2. The Court's assessment

65. The Court finds that the question of whether the applicants can be regarded as "victims" relates to the substance of their complaints. It therefore considers that this particular objection raised by the Government should be joined to the merits of the case.

B. Non-exhaustion of domestic remedies

1. The parties' submissions

66. The Government argued that the applicants had not exhausted the domestic remedies available to them, as required by Article 35 § 1 of the Convention. They submitted that the applicants should have obtained a ruling of the Constitutional Court, since a constitutional complaint constituted an effective remedy capable of challenging the provisions of domestic law. In their view the applicants should have made an application to the Constitutional Court challenging section 104 of the 2014 Law with reference to section 7 of the Private International Law Act and Article 1146 § 1 (7) of the Code of Civil Procedure as to its compatibility with Articles 32 and 47 of the Polish Constitution (see paragraphs 29, 33, 42 and 44 above).

67. In the event of a favourable judgment by the Constitutional Court, the applicants would have been entitled to reopen the proceedings in their case and seek compensation under Article 417^1 § 1 of the Civil Code for the damage caused by the enactment of unconstitutional laws (see paragraph 30 above).

68. The applicants disagreed with the Government. They argued that the Constitutional Court no longer served as an independent and impartial judicial authority and that the proceedings before it could not be considered an effective remedy for the purposes of Article 35 of the Convention. They referred to the Court's case-law, in particular the judgment in *Xero Flor w Polsce sp. z o.o. v. Poland* (no. 4907/18, 7 May 2021).

2. The Court's assessment

69. The relevant Convention principles concerning the requirement to exhaust domestic remedies are summarised in the Court's judgment in the case of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and most recently, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-45, 27 November 2023).

70. The Court reiterates that it has already held that in Poland a constitutional complaint is an effective remedy for the purposes of Article 35 § 1 of the Convention only in situations where the alleged violation of the Convention resulted from the direct application of a legal provision considered by the complainant to be unconstitutional (see, among other authorities, *Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003). In the circumstances of the present case the alleged breach of the applicants' rights under Article 8 cannot be said to have originated from the direct application of the legal provisions referred to by the Government. Rather, the Court observes that the legal basis for the decisions in the present case comprised a convergence of grounds. As well as the provisions relied on by the Government, this also included other provisions of the Family and Custody Code and certain provisions of the Law on Civil Status Records, and in general the public policy principle. Hence, the alleged breach did not result from the interpretation and application of a single provision which might be found objectionable from a constitutional point of view and challenged by way of a constitutional complaint. The breach was instead the result of the way several of those provisions were interpreted and applied to the applicants' case. The Court therefore finds that a constitutional complaint could not have served as an effective remedy in the present case (ibid.; *Bobek v. Poland*, no. 68761/01, §§ 71-73, 17 July 2007; and *Sosinowska v. Poland*, no. 10247/09, § 55, 18 October 2011). The Court would also point out that the Government have failed to submit any examples of the Constitutional Court offering redress in cases raising issues of a similar nature.

71. In consequence, the Court considers that in the present case a constitutional complaint cannot be found with a sufficient degree of certainty to have been a remedy offering reasonable prospects of success. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

C. Lack of significant disadvantage

1. The parties' submissions

72. Lastly, the Government submitted that the applicants had not suffered any significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention on account of the refusal to register the second applicant's

foreign birth certificate in Poland. In particular, they observed that the birth certificate had the sole purpose of giving evidence of a person's parentage and did not grant any rights of itself. The second applicant had had his birth registered in the United Kingdom, where he lived, and he had had his legal situation recognised there. Furthermore, the second applicant had acquired Polish citizenship by birth by operation of law, pursuant to section 14 of the Act of 2 April 2009 on Polish Citizenship (hereinafter "the 2009 Act") (see paragraph 43 above). The fact that his birth certificate had not been registered in Poland had not been an obstacle to having his Polish citizenship confirmed.

73. The applicants disagreed. They submitted that the failure to transcribe the birth certificate onto the register in Poland effectively prevented the non-biological parent from having a say in emergencies or in situations where the child's best interests would require her involvement with the authorities. Since the British certificate was not recognised in Poland the second applicant could not obtain a Polish identity card or passport that would reflect his family situation.

2. The Court's assessment

74. The Court finds that the objection of no significant disadvantage is closely linked to the substance of the complaint that the applicants' Convention rights were breached by the refusal to register the second applicant's birth certificate in Poland. Accordingly, it joins this objection to the merits.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

75. The applicants complained that the refusal to register the second 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."

A. Admissibility

76. The Court observes that the Government did not dispute the applicability of Article 8 to the facts of the case under both its "private life" and its "family life" aspects. The Court sees no reason to depart from the parties' view on this issue, for the reasons set out below.

77. The Court 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).

78. The Court further observes that the concept of "private life" is a broad one and it is not susceptible to an exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of a 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 *D.B. and Others v. Switzerland*, nos. 58817/15 and 58252/15, § 43, 22 November 2022).

79. In addition, 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 v. Ukraine* [GC], no. 76639/11, §§ 103-06, 25 September 2018) 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). Under the reason-based approach, complaints have been found to fall within the ambit of "private life" when the impugned measure was based on reasons encroaching upon the individual's freedom of choice in the sphere of private life (ibid., §§ 103-04, and the cases cited therein). Consequently, when the underlying reasons for the impugned measure may be linked to the individual's private life, these reasons themselves may render Article 8 applicable (ibid., § 106). Furthermore, in certain cases the Court found it appropriate to employ both approaches in combination, examining whether there is a private-life issue in the underpinning reasons for the impugned measure and, in addition, analysing the consequences of the measure (ibid., § 109).

80. In citizenship-related cases the Court has applied a two-pronged test to determine whether Article 8 is engaged and whether there has been an interference with the rights protected by that Article. The Court has examined the possible negative consequences of a disputed measure for the applicant and analysed whether the measure was arbitrary (see *Usmanov v. Russia*, no. 43936/18, §§ 53 and 58, 22 December 2020, and *Emin Huseynov v. Azerbaijan (no. 2)*, no. 1/16, § 51, 13 July 2023).

81. In *S.-H. v. Poland* ((dec.), nos. 56846/15 and 56849/15, 16 November 2021), which concerned a refusal by the Polish authorities to confirm the acquisition of Polish citizenship by descent of two applicants born through surrogacy who did not live in Poland and did not have any plans to move to

Poland imminently, the Court found it appropriate to employ a consequence-based approach. It declared the applicants' complaint inadmissible as incompatible *ratione materiae* with the provisions of the Convention because the applicants had not shown that they had suffered any practical difficulties as a result of that refusal and because any repercussions for their personal identity had not crossed the threshold of seriousness for an issue to be raised under Article 8 of the Convention (ibid., §§ 68-77).

82. The Court finds the present case distinguishable from *S.-H. v. Poland* on certain key features. While the facts of both cases are to some extent similar, the proceedings instituted by the applicants in the present case did not concern the confirmation of the second applicant's citizenship nor did they raise any issues relating to surrogacy arrangements. Indeed, and contrary to *S.-H. v. Poland*, it was never in dispute between the parties that the second applicant had acquired Polish citizenship at birth by operation of law (see paragraph 142 below). It is therefore established that the second applicant was entitled to be provided with personal documents from the Polish authorities. In the instant case, the proceedings were focused on the transcription of his foreign birth certificate, even though the central issue was also the recognition by the domestic authorities of the parent-child relationship where the applicant parties were residing in a foreign jurisdiction.

83. Furthermore, the Court notes that the reasons relied upon by the authorities in *S.-H. v. Poland* to justify the refusal to confirm the acquisition of Polish citizenship by the applicants were predominantly based on considerations relating to surrogacy, in particular the fact that the applicants had been born through a surrogacy arrangement and that Polish law did not recognise such arrangements, rather than on an assessment of the family model chosen by the parents. In contrast, as regards the reasons for the impugned measure in the present case, the Court attaches weight to the fact that the domestic authorities' refusal was expressly grounded in considerations tied to the sexual orientation of the second applicant's parents, that is the first applicant and her same-sex partner. In particular, the authorities relied primarily on considerations of public policy and the safeguarding of the traditional family model, defined as a union between a man and a woman. They repeatedly stated that it was impossible to transcribe a birth certificate giving two women as the child's parents as this would run counter to the fundamental rules of the legal order in Poland (see paragraphs 14, 17, 18, 21 and 23 above).

84. In addition, as regards the consequences of the measure for the applicants' private life, the Court notes that despite the fact that the second applicant had acquired Polish citizenship at birth by operation of law (see paragraph 142 below), the refusal to register his birth certificate had prevented him from obtaining Polish identity documents and a Polish passport or obtaining the personal identification number – PESEL. It was only

because the family was subsequently able to confirm his British citizenship that he was not effectively rendered stateless (see paragraphs 87 and 142 below). Given that the domestic authorities' reasoning was so closely tied to the parents' sexual orientation and the family model chosen by them (see paragraph 79 above) and having regard to the consequences of the impugned measure on the applicants' private life the Court accepts that the refusal of the applicants' request was so intrinsically related to their private and family lives as to engage Article 8 under both approaches in combination (see, *Denisov*, cited above, § 109, and *mutatis mutandis, Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 143, 17 January 2023, and *Przybyszewska and Others v. Poland*, nos. 11454/17 and 9 others, §§ 39 and 40, 12 December 2023).

85. Having regard to the above considerations, the Court finds that Article 8 is applicable in the present case.

86. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

87. The applicants submitted that it was undisputed that the second applicant was a Polish national. He had acquired this status by birth to a Polish mother (the first applicant). He therefore had the right to a Polish passport and national identity card. However, the issuing of those documents was dependant on the prior transcription of a foreign birth certificate into the Polish Civil Status Register. Without those documents, a Polish national functioned *de facto* as a stateless person and could not benefit from freedom of movement or travel to third countries. Given that the request for transcription had been refused, the parents decided to apply for a British passport for the second applicant. Had the first applicant not met the stringent criteria for a British passport, the second applicant would not have been able to leave the UK at all.

88. The inability to have his birth certificate registered in Poland affected the second applicant in many ways, such as hindering his ability to attend a public creche or kindergarten or to access the health system. It would also continue to have negative consequences during his life, for example as regards the right to inherit from his second parent, E.K. If the first applicant died, the surviving parent would have no rights in Poland to care for him if he was still a minor.

89. The domestic decisions also interfered with the first applicant's right to respect for her private and family life in the context of her relationship with

her son and partner. This interference was particularly serious as it affected the very core of the child's identity. As a result of the interference, the second applicant found himself in a situation of legal uncertainty since he was not able to define his identity. This affected not only his bond with the first applicant but also the bond he had with his second parent – E.K.

90. The applicants also disputed the legitimate aim claimed by the Government.

91. As regards the child's best interests, the applicants stated that biological parentage was an important component of an individual's identity and it was not in the best interests of the second applicant to deprive him of a legal tie to his birth mother, when the biological reality of that tie had already been established abroad.

92. The applicants further referred to the Court's case-law on particularly important facets of an individual's existence or identity. Where such aspects of an applicant's private life were at stake, the margin of appreciation allowed to a State would be restricted. In the present case the measures had affected the most intimate and sensitive aspects of the applicants' life and identity and therefore had to be scrutinised from the perspective of reasonableness and objectivity.

93. The applicants maintained that the general refusal of the Polish authorities to register the second applicant's birth certificate in Poland had been arbitrary and disproportionate. It could not be justified by the requirements of the national legal order and public policy, or by alleging that the request was incompatible with the Polish definition of marriage. Protecting marriage did not exclude extending legal protection to same-sex parents and their children. Protecting marriage should never call into question the need to protect a child and that child's private and family life. The child's best interests should always be the central consideration in any balancing exercise.

94. Lastly, the applicants referred to the consequences of the refusal to register the birth certificate. They stressed that the second applicant felt Polish and spoke Polish and that the family spoke Polish together at home as their first language. Nevertheless, the second applicant did not have a personal identification number (PESEL) and that without one he could not obtain a Polish passport or national identity card. The PESEL number was required in Poland in a variety of daily situations, including for medical treatment. The applicants spent a significant amount of time in Poland and it was not uncommon for the second applicant to have a medical appointment while in Poland. On every occasion he had been asked about his PESEL number, which was required to deal with health care records or the national medical prescription system. They also often faced lengthy questioning about their legal situation when crossing national borders. The consequences of Brexit were uncertain, and the second applicant's options and opportunities had become limited because he did not have a Polish passport and therefore did

not have an EU passport. Furthermore, the family had not excluded the possibility of moving to Poland. Had the second applicant obtained his Polish documents they would have considered this option more seriously.

(b) The Government

95. The Government submitted that the refusal to register the second applicant's foreign birth certificate in the Polish Civil Status Register did not constitute an interference with the applicants' private and family life since it had not brought about any changes to their lives.

96. In any event, the interference had been "in accordance with the law". It particular, it had been based on sections 104 and 107 of the 2014 Law applied in the light of the public policy clause enshrined in section 7 of the Private International Law Act, Article 1146 § 1 (7) of the CCP and the relevant provisions of the FCC on affiliation (see paragraphs 33, 35-37, 42 and 44 above).

97. The Government maintained that the legitimate aims pursued in the present case were the prevention of disorder as well as protection of the rights and freedoms of others. The decisions were aimed at safeguarding the right of a child to know his or her parentage as well as maintaining the domestic authorities' prerogative of recognising the legal parent-child relationship and the objective of the civil status certificate system of ensuring legal certainty for registered events.

98. As regards the necessity of the interference, the Government observed that the Polish authorities had not in any way restricted the applicants' enjoyment of their right to respect for their private and family life. The applicants had based their complaint on potential risks or difficulties which they might face in future whereas the refusal to register the birth certificate had not caused any changes to their lives. The second applicant had been born in the United Kingdom where he enjoyed the right to respect for his private and family life with the first applicant and her partner (E.K.) and he had had his birth registered in the country of his residence.

99. The alleged difficulties which the applicants claimed they might face in Poland, such as E.K. being unable to receive information about the child or difficulties with inheritance rights, were highly hypothetical since the applicants were living not in Poland but in the United Kingdom.

100. Furthermore, as regards the general interests at stake, the Government stated that the refusal to register the second applicant's birth certificate stemmed from the State's prerogative of recognising a child's parentage and had been necessary since it corresponded to the pressing social needs of protecting public order and the rights of the child and of safeguarding the traditional family model embedded in the Polish legal system. The authorities had not had any discretion in the matter and could not have registered a birth certificate which contravened the basic principles of the Polish law.

101. The Government referred to the case of *Boeckel and Gessner-Boeckel v. Germany* ((dec.), no. 8017/11, 7 May 2013), submitting that there had been no factual presumption that the first applicant's same-sex partner was the child's parent. The British birth certificate could not have been registered giving E.K. as a parent on the basis that she and the first applicant lived in a civil partnership because that was a relationship which was not recognised in Polish law. In that context, the Government stressed, referring to *A.P., Garçon and Nicot v. France* (nos. 79885/12 and 2 others, § 132, 6 April 2017), that safeguarding the principle of the inalienability of civil status, ensuring the reliability and consistency of civil-status records and ensuring legal certainty was in the general interest.

102. The Government submitted that by opting for a traditional model of the family and by choosing a particular form of birth certificate the domestic authorities had acted within the margin of appreciation afforded to States in matters raising sensitive moral and ethical questions on which there was no consensus at the European level. Moreover, the legally binding international instruments did not require Poland to provide for registered civil partnerships, whether for partners of the same sex or different sexes, or to provide for joint adoption or the adoption of a partner's child in same-sex partnerships.

103. The Government asserted that the second applicant had had his birth certificate registered in the United Kingdom and both applicants had had their legal status recognised under British law. The child had acquired Polish citizenship by operation of law, based on his descent from a Polish mother. The refusal to register his birth certificate in Poland did not imply any breach of his rights or of the rights of the first applicant. Since they both lived in the United Kingdom, where they enjoyed family life, and there was no indication of any biological ties between the child and the first applicant's partner, the domestic authorities had no obligation to recognise a parent-child relationship between them or to register a birth certificate which contravened the fundamental principles of the Polish legal order.

104. The Government also referred to the judgment of the CJEU of 14 December 2021 in case C-490/20 (see paragraph 60 above). That case concerned a child who was a national of a Member State but who had been born in another Member State and whose birth certificate had been issued by the authorities of that other Member State. The birth certificate gave two persons of the same sex as the child's parents. However, although the relationship between the child and each of these two persons was recognised in the exercise of the child's rights under Article 21 TFEU and the related secondary legislation under European Union law, that did not oblige the Member State of which the child was a national to recognise in its own domestic law either same-sex parentage or the relationship ties between the child in question and the persons named as the child's parents on the birth certificate drawn up by the authorities of the host Member State.

105. The Government further stated that following the resolution of the Supreme Administrative Court of 2 December 2019 (II OPS 1/19) (see paragraph 53 above), the Ministry of the Interior had issued guidelines on how to proceed in situations where an application for an identity document concerned a child whose foreign birth certificate was not eligible for transcription onto the domestic register (see paragraphs 46-48 above). In the Government's view, if the first applicant applied again for a Polish passport or an identity card for the second applicant, a refusal to register the child's British birth certificate should not prevent him from being granted a PESEL number and then being issued with an identity document.

2. The third-party interveners

(a) The Commissioner for Human Rights of the Republic of Poland

106. The Commissioner considered that although it was beyond any dispute that there was a consensus among democratic societies on the acknowledgment and acceptance of a right to live in a same-sex relationship, Polish law did not provide legal protection for LGBTI families, even if they were legally recognised by third-party states when they applied to the Polish authorities to formalise their relationship in Poland. The Polish State did not provide any means of recognising a parent-child relationship with non-biological parents in families based on same-sex unions, even when one of the parents was a biological parent. Joint adoption by same-sex couples was also not possible under the Polish law.

107. Transcription and registration of a foreign birth certificate which indicated two parents of the same sex was not possible in Poland. Referring to the Supreme Administrative Court's resolution of 2 December 2019 (II OPS 1/19) (see paragraphs 53-54 above) the Commissioner stated that it was still difficult for minors who were the children of same-sex parents to obtain Polish identity documents and PESEL numbers on the basis of their foreign birth certificates. Administrative authorities had doubts about how to interpret and apply the relevant legal provisions. As a consequence, children who had acquired Polish citizenship by birth struggled with numerous daily difficulties in Poland, when moving within the EU or when travelling to third countries.

108. The Commissioner referred to the practice of Polish consulates refusing to issue Polish passports to Polish nationals whose birth certificates indicated same-sex parents. The refusal to register foreign birth certificates indicating parents of the same sex not only led to administrative difficulties with obtaining a Polish identity card or the PESEL number but undermined the legal and social ties between a child and his or her parents, especially with the non-biological parent, and excluded any possibility of recognising the parent-child relationship. The refusal endangered the child's security and his or her best interests.

(b) The Helsinki Foundation for Human Rights

109. The Helsinki Foundation for Human Rights ("the HFHR") provided information regarding the domestic courts' practice in cases concerning the transcription and registration of the birth certificates of children of same-sex couples. The intervener referred to the judgments of the Supreme Administrative Court of 10 October 2018 (II OSK 2552/16) and of 30 October 2018 (II OSK 1868/16, II OSK 1869/16, II OSK 1870/16 and II OSK 1871/16) (see paragraphs 51 and 52 above) and the resolution of the Supreme Administrative Court of 2 December 2019 (II OPS 1/19) (see paragraphs 53 and 54 above).

110. The HFHR stated that the situation of children of same-sex families should be assessed from the perspective of Article 3 (1) of the UN Convention on the Rights of the Child (see paragraph 57 above) and the principle of the best interests of the child. This principle functioned as a substantive right, a fundamental principle of legal interpretation and a rule of procedure. The intervener pointed to the consequences of not registering foreign birth certificates, in particular the refusal to accept the parental status of the persons named on the foreign birth certificate, which might constitute an interference with children's rights to private and family life.

111. In the intervener's opinion the terms "parents" and "family" should not be interpreted as limited only to persons linked by genetic ties. Furthermore, the issue of the legal recognition of same-sex relationships should be distinguished from the question of the status of children born to a LGBTI family. The parents' sexual orientation should not be used to discriminate against children or to limit their rights disproportionately.

(c) The Polish Society of Anti-Discrimination Law

112. The Polish Society of Anti-Discrimination Law submitted that Polish law did not recognise same-sex relationships and that this had an impact on the parental status of persons in same-sex relationships. A child's birth certificate always included a "mother" – the woman who had given birth to the child – and a "father", a man. If a woman in a same-sex relationship did not provide details of the father, she would obtain full parental rights but a male forename, chosen by her, would have to be entered on the child's birth certificate.

113. Furthermore, under Article 115 of the FCC, only spouses could jointly adopt a child. Second-parent adoption was not possible in a same-sex relationship (Article 121^1 of the FCC) (see paragraphs 39-41 above). The non-biological parent in a same-sex partnership could not obtain parental responsibility for a child being brought up together by the partners in that relationship. The intervener submitted that the Polish courts, when examining cases of children born abroad to same-sex parents, were of the view that only persons of different sexes could be parents. For that reason, a person who was

not biologically related to a child and who lived in a same-sex relationship with a parent of the child would not be recognised as the child's legal parent in Poland.

114. The intervener further referred to the case-law of the Supreme Administrative Court, in particular its resolution of 2 December 2019 (II OPS 1/19) (see paragraphs 53 and 54 above) and submitted that the domestic administrative authorities continued to require a Polish birth certificate to issue a PESEL number, an identity card or a passport to a child born abroad to a same-sex couple.

115. The intervener stated that so far national identity cards had been issued to children born abroad to same-sex couples on the basis of their foreign birth certificates in only two cases. Particulars of the other, non-biologically related parents (who were women who had not given birth to the child) had not been entered in the Civil Status Register or noted on the children's identity cards.

3. The Court's assessment

(a) Whether the case concerns negative or positive obligations

116. The Court observes that the gist of the case is the refusal of the Polish authorities to recognise a legal parent-child relationship which had already been established abroad, a matter directly affecting the child's identity and legal status (see paragraph 79 above). The Court observes that cases relating to the legal recognition of the parental status of participants in surrogacy arrangements were examined from the perspective of a negative rather than a positive obligation (see *Mennesson*, cited above, §§ 48-49; *Labassee v. France*, no. 65941/11, §§ 49-50, 26 June 2014; see also *Wagner and J.M.W.L. v. Luxembourg*, no. 76248/01, § 123, 28 June 2007, and *Negrepontis-Giannisis v. Greece*, no. 56759/08, § 58, 3 May 2011, concerning the refusal to recognise an adoption that had been established abroad).

117. At the same time the Court also considered that a refusal to recognise the relationship between a child and a genetic mother fell within the sphere of positive obligations under the Convention because the applicants' complaints related specifically to deficiencies of German law which they asserted had led to the denial of their request (see *R.F. and Others v. Germany*, cited above, §§ 57-59). Likewise, in *C.E. and Others v. France* (cited above, §§ 80-82), which concerned the inability to establish a legal link between a child and the former partner of that child's biological mother, the Court considered it more appropriate to examine the case from the perspective of positive rather than negative obligations.

118. While the present case does not concern the registration of the birth certificate of a child born by surrogacy or the recognition of an adoption, nevertheless given its somewhat similar context and in view of the fact that

the applicants did not complain of any inaction on the part of the domestic authorities but rather raised the issue of the domestic authorities' refusal to recognise a parent-child relationship which had already been established abroad, the Court considers it appropriate to analyse the application as one concerning negative obligations rather than a failure by the State to fulfil a positive obligation.

119. The Court further considers that in the present case a distinction has to be drawn between the applicants' right to respect for their family life and their right to respect for their private life (see also *Mennesson*, cited above, § 86).

(b) Whether there was a violation of the applicants' right to respect for family life

120. The Court observes that the applicants mentioned a number of potential difficulties relating to their family life which they might face if they took up residence in Poland (see paragraphs 88 and 94 above). However, they did not point to any actual obstacles or practical difficulties in enjoying family life together caused by the refusal in question. In addition, it does not appear that to date the family has had to overcome any practical obstacles resulting from the Polish authorities' decisions. The applicants failed to demonstrate that they had indeed been prevented from the enjoyment of their right to respect for their family life in Poland.

121. In view of the above considerations, and having regard to the fact that the family does not live in Poland but in the United Kingdom, and does not have concrete plans to move to Poland, the Court finds that the practical difficulties that the applicants might face in their family life do not exceed the limits required by compliance with Article 8 of the Convention. It follows that there has been no interference with the applicants' right to respect for their family life (compare and contrast, *Mennesson,* §§ 48-50 and 87-95, and *Labassee*, §§ 49-51 and 66-73, both cited above; *Foulon and Bouvet v. France*, nos. 9063/14 and 10410/14, § 55, 21 July 2016; *Valdís Fjölnisdóttir and Others v. Iceland*, no. 71552/17, §§ 63 and 71-75, 18 May 2021; *D.B. and Others v. Switzerland*, cited above, §§ 70 and 93; *K.K. and Others v. Denmark*, no. 25212/21, §§ 42 and 49-50, 6 December 2022; and *R.F. and Others v. Germany*, cited above, §§ 57 and 69-73).

122. There has accordingly been no violation of Article 8 of the Convention with regard to the applicants' right to respect for their family life. The Court further considers it unnecessary to rule on the Government's preliminary objections relating to the applicants' victim status and the question of whether the applicants have suffered a "significant disadvantage" in relation to their right to respect for family life.

(c) The applicants' right to respect for their private life

(i) General principles

123. As regards the notion of "private life" under Article 8 of the Convention, the Court reiterates that it has already held that respect for private life requires that everyone should be able to establish details of their identity as individuals, which includes the legal parent-child relationship (see *Mennesson*, cited above, § 96).

124. The essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by public authorities. Any interference under the first paragraph of this provision must be justified in terms of the second paragraph, namely as being "in accordance with the law" and "necessary in a democratic society" in relation to one or more of the legitimate aims in that Article. According to settled case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to one of the legitimate aims pursued by the authorities (see, for example, *Tysiąc v. Poland*, no. 5410/03, § 109, ECHR 2007-I).

125. Furthermore, the Court reiterates that it has previously held in numerous cases that in all decisions concerning children their best interests must be the primary consideration (see, among many other authorities *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 134, ECHR 2010). This reflects the broad consensus on the matter, expressed notably in Article 3 of the UN Convention on the Rights of the Child (see paragraph 57 above).

126. The Court also reiterates that the State has a margin of appreciation as regards both its negative and its positive obligations, which varies depending on the nature of the issues at stake and the seriousness of the competing interests. In that regard the Court notes that the States must in principle be afforded a wide margin of appreciation regarding matters which raise sensitive moral and ethical questions on which there is no consensus at European level. The Court refers, in particular, to the nuanced approach adopted on the issue of assisted fertilisation in *S.H. and Others v. Austria* ([GC], no. 57813/00, §§ 95-118, ECHR 2011), and to the analysis conducted in 2014 in *Mennesson* (cited above, §§ 78-79) of the margin of appreciation in the context of surrogacy arrangements and the legal recognition of the parent-child relationship between the intended parents and children who have legally been conceived abroad.

127. Lastly, the Court reiterates that where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State is normally restricted (ibid., § 80, and 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, §§ 43-44, 10 April 2019, hereinafter "the *Advisory opinion*").

(ii) Application to the present case

(α) Interference

128. The Government contended that there was no interference with the applicants' rights under Article 8 since the refusal to register the second applicant's birth certificate in Poland had not caused any changes to their lives.

129. The applicants disagreed, pointing to a number of negative consequences of the authorities' decisions which in their view affected the core of the second applicant's personal identity. In particular, they referred to the impossibility of obtaining a passport or identity document without first having the birth certificate registered in Poland. They further stressed the difficulties relating to inheritance rights and the fact that if the first applicant died the surviving parent would have no rights in Poland to care for the second applicant (see paragraph 88 above).

130. With regard to the first applicant's situation, the Court observes that in her submissions concerning the alleged breach of her right to respect for her private life she relied on her relationship with the child (see paragraph 89 above). However, the Court observes that the parent-child relationship between the first applicant and the second applicant had been recognised from birth in the United Kingdom, where the family lives, and that there is no obstacle to continuing that relationship. The Court is therefore of the view that the decisions taken in the present case had no impact on the first applicant's right to respect for her private life. It follows that there has been no interference with the first applicant's right to respect for her private life under Article 8 of the Convention (compare, *D.B. and Others v. Switzerland*, cited above, § 70). Accordingly, the Court concludes that there has been no violation of Article 8 of the Convention in this respect and considers it unnecessary to rule on the Government's preliminary objections relating to the first applicant's victim status and the question of whether she has suffered a "significant disadvantage" in relation to the right to respect for her private life.

131. The Court further accepts that the refusal of the Polish authorities to register the second applicant's foreign birth certificate caused such a degree of legal uncertainty that it was capable of constituting an "interference" with his Article 8 rights.

(β) Lawfulness and legitimate aim

132. The Government submitted that the interference in the present case had been based on sections 104 and 107 of the 2014 Law applied in the light of the public policy clause in section 7 of the Private International Law Act

and in Article 1146 § 1 (7) of the Code of Civil Procedure and the relevant provisions of the FCC on affiliation (see paragraph 96 above). The applicants did not comment on these submissions and the Court sees no reason to question that interpretation. It concludes that the decisions in the present case had a basis in Polish law and the interference was therefore "in accordance with the law".

133. As regards whether the aim was legitimate, the Government maintained that the decisions in question were intended to ensure "the prevention of disorder" as well as "protection of the rights and freedoms of the others" (see paragraph 97 above). The applicants disagreed with the Government's submissions.

134. In the light of the above considerations, the Court is prepared to accept that the proceedings pursued the legitimate aim of protecting "the rights and freedoms of others", in accordance with the second paragraph of Article 8 of the Convention.

135. The remaining question is whether the proceedings and the decisions taken were "necessary in a democratic society" within the meaning of the second paragraph of Article 8 of the Convention.

(γ) Necessary in a democratic society

136. The Court notes at the outset that the first applicant is the second applicant's birth mother. Their legal parent-child relationship has been registered in the United Kingdom and the child's British birth certificate indicated two women as the child's parents – the first applicant and her same-sex partner E.K. (see paragraphs 7 and 8 above). Nevertheless, the Polish authorities refused to transcribe that British birth certificate. Therefore, even though the second applicant is identified as the first applicant's child on his foreign birth certificate, that status has not been confirmed by the Polish authorities.

137. Turning to the second applicant's right to respect for his private life, the Court finds that the decisions in the present case clearly had an impact on his personal identity. The family lives in the United Kingdom where their legal relationship is recognised. The first applicant and her partner are also both Polish nationals. As submitted by the applicants, the second applicant felt Polish and spoke Polish and the family spoke Polish at home as their first language. The family also spent a significant amount of time in Poland (see paragraph 94 above). Maintaining ties with Poland is therefore important for the second applicant's social and cultural identity. The Court reiterates that it has already found on many occasions that respect for private life requires that everyone should be able to establish details of their identity as individuals, which includes the legal parent-child relationship (see *Mennesson,* cited above, § 96). The fact that the second applicant has not been able to register his foreign birth certificate and consequently has not obtained Polish identity documents reflecting his relationship with his parents and confirming his

status as a Polish national (see paragraphs 87 and 103 above) places him in a position of legal uncertainty and makes his situation in Poland precarious.

138. As regards the reasons put forward by the domestic authorities, they referred mainly to public policy and to safeguarding the traditional family model, defined as a union between a man and a woman, embedded in the Polish legal system. In all their decisions the authorities consistently repeated that it was not possible to transcribe a birth certificate giving two women as a child's parents, as it was contrary to the fundamental rules of the legal order in Poland (see paragraphs 14, 16, 22 and 27 above). However, it would appear that the authorities had not conducted any meaningful analysis of the child's best interests and the consequences of the refusal to register the second applicant's birth certificate on his private life.

139. The Court reiterates in that context that it has already confirmed on many occasions that in all decisions concerning children, directly or indirectly, their best interests are a primary consideration (see, among many other authorities, *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 208, 24 January 2017). The child's best interests entail *inter alia* the legal identification of the persons responsible for bringing him or her up, meeting his or her needs and ensuring his or her welfare, as well as making it possible for the child to live and develop in a stable environment (see the *Advisory opinion*, cited above, § 42).

140. The Court further refers to the restriction of the margin of appreciation where a particularly important facet of an individual's identity is at stake, as is the case where the legal parent-child relationship is concerned (see the *Advisory opinion*, cited above, § 44, and paragraph 127 above), particularly where the individual is a minor (see *C.E. and Others v. France*, cited above, § 88).

141. It follows from the above considerations that the effects of the Polish authorities' refusal to transcribe the foreign birth certificate in the present case must be assessed from the standpoint of the second applicant's best interests (see *R.F. and Others v. Germany*, cited above, § 88) and taking into consideration the reduced margin of appreciation available to the State in similar matters.

142. The Court observes that in their pleadings in the domestic proceedings the applicants repeatedly relied on the child's best interests. They continually referred to the risk of keeping the second applicant in a condition of legal uncertainty and the fact that the domestic decisions had affected the core of his personal identity. They also stressed that not having his birth registered in Poland had prevented him from obtaining Polish identity documents (see paragraphs 15, 20, 25 and 87 above). Similar considerations were also highlighted by the third-party intervener – the Commissioner for Human Rights of the Republic of Poland – who noted that refusal to register foreign birth certificates indicating same-sex parents had created serious practical obstacles for children in obtaining identity documents and PESEL

numbers due to uncertainty in the interpretation of the relevant legal provisions. Such refusals undermined the child's legal and social ties with the non-biological parent and jeopardised the child's best interests and security (see paragraphs 107-108 above). Regrettably, the authorities' analysis of the child's best interests in the present cases appears insufficient. Not much consideration was given to the repercussions of the decisions on the substance of the second applicant's personal identity. The authorities referred extensively to public policy and, having examined his birth certificate, concluded that it was simply not possible to enter a woman's forename in the field for the "father". At the same time, the Court notes that it was not disputed between the parties that the second applicant had acquired Polish citizenship at birth by operation of law, through his Polish mother, yet the issuing of Polish identity documents was dependant on prior transcription of a foreign birth certificate (see paragraph 87 and 103 above). Only the family's subsequent ability to confirm his British citizenship prevented him from effectively being left in a position akin to statelessness.

143. The Court also points out that the present case does not concern a surrogacy arrangement. While in the context of surrogacy arrangements the child's best interests do not merely involve respect for different aspects of his or her right to respect for his or her private life but include other fundamental components that do not necessarily weigh in favour of the recognition of a legal parent-child relationship with a non-biological parent, such as protection against the risks of abuse which surrogacy arrangements entail – seeking to avoid commercial exploitation of surrogate mothers and the risk of children being turned into a commodity (see *Paradiso and Campanelli*, §§ 202-203, and the *Advisory opinion*, § 41, both cited above), there are no such risks in the present case. The first applicant is the second applicant's birth mother and no special protective measures are therefore warranted.

144. For all the above reasons the Court finds that the impossibility of obtaining the registration of a foreign birth certificate which gives the name of the child's birth mother is incompatible with a child's best interests and constitutes a disproportionate interference with the right to respect for private life of the second applicant. In reaching this conclusion, the Court attaches particular weight to the fact that the decisions in question affected a fundamental aspect of the second applicant's identity and civil status, thereby placing him in a situation of legal uncertainty.

145. In their submissions, the Government relied mainly on the need to protect public order and safeguard the traditional family model (see paragraphs 100, 102 and 103 above). However, the Court is not persuaded by those arguments. While the support and encouragement of the traditional family is in itself legitimate (see *Marckx v. Belgium*, 13 June 1979, § 40, Series A no. 31), the concept of family is necessarily an evolving one (see *Mazurek v. France*, no. 34406/97, § 52, ECHR 2000-II), as shown by the changes it has undergone since the Convention was adopted (see *Fedotova*,

cited above, §§ 207-09, and *Przybyszewska and Others*, cited above, § 120). In that regard the Court agrees with the applicants (see paragraph 93 above) that protecting families constituted in the traditional way should not call into question the need to protect the children of same-sex couples. As the Court has already held – the interests of a child cannot depend solely on the sexual orientation of his or her parents (see *D.B. and Others v. Switzerland*, cited above, § 85). It follows that a child's legal position must be safeguarded irrespective of the family structure into which he or she was born.

146. The Court further observes that the Government confirmed that the second applicant had acquired Polish nationality by virtue of law based on his descent from a Polish mother (see paragraph 103 above). In view of this statement, the refusal to register the foreign birth certificate solely with reference to the establishment of his parentage is even more unjustified as it denied the second applicant access to the identity documents which are essential for him to evidence his Polish nationality.

147. Finally, the Court reiterates that as it already held in the context of surrogacy agreements when the relationship between a child and the intended mother had become a practical reality, an effective mechanism should exist enabling that relationship to be recognised (see the *Advisory opinion*, cited above, § 54,). However, as confirmed by the third-party interveners, there is currently no legal mechanism in Poland enabling the recognition of the relationship between a child and intended same-sex parents and Polish law does not provide any such mechanism. The Court observes that joint adoption is not available for same-sex couples. Furthermore, second-parent adoption is not possible where the parents are in a same-sex relationship and there is also no way for a same-sex partner to obtain parental responsibility (see paragraphs 21, 39-41, 102, 106, 113 above).

148. The Court takes note of the fact that in several recent cases the administrative courts stressed that, in view of their obligations to act in the child's best interests, the administrative authorities should have applied the legal provisions so as to issue children with Polish identity documents and PESEL numbers on the basis of their foreign birth certificates (see paragraphs 54 and 56 above). Guidelines reflecting that approach were subsequently circulated by the Ministry of the Interior to the relevant administrative authorities and Polish consuls (see paragraphs 46-48 above). These developments have, however, no bearing on the second applicant's situation, as his case was decided before those materials were made available.

149. In view of the foregoing, the Court considers that the respondent State failed to attach sufficient weight to the child's best interests and that there was an absence, in a situation such as in the present case, of an effective mechanism under Polish law for the recognition of the parent-child relationship – despite the first applicant being the second applicant's biological parent and being left in a situation of prolonged uncertainty without access to Polish identity documents. Therefore, the Court dismisses

the Government's preliminary objections relating to the second applicant's victim status and the question of whether he has suffered a "significant disadvantage" in regard of his right to respect for his private life (see paragraphs 65 and 74 above) and finds that there has been a violation of the second applicant's right to respect for his private life under Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARICLE 8 OF THE CONVENTION

150. The applicants complained that they had suffered discrimination contrary to Article 14 taken in conjunction with Article 8 of the Convention because of the first applicant's sexual orientation, by the domestic authorities' refusal to register the second 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."

A. Admissibility

151. The Court has already concluded that the facts of the present case fall under the concepts of private and family life and therefore within the ambit of Article 8 of the Convention (see paragraphs 82 and 85 above). The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicants

152. The applicants submitted that the refusal to register the second applicant's birth certificate amounted to discrimination on the grounds of the first applicant's sexual orientation. According to them, the first applicant's sexual orientation had been a decisive factor in the domestic authorities' decisions.

153. The first applicant further stated that the requirement to produce a copy of her son's Polish birth certificate in order to obtain a Polish passport had resulted in treatment different from that of married Polish nationals or opposite-sex civil partners whose children had been born in the United Kingdom and who were able to obtain a Polish passport for their children on the basis of a British birth certificate alone. The applicants claimed that this

amounted to discrimination against children depending on the type of relationship in which they were being brought up.

(b) The Government

154. The Government submitted that the applicants had failed to substantiate their complaint under Article 14 taken together with Article 8, as they had not shown that the domestic authorities had treated them less favourably than another couple in a comparable situation. They maintained that the first applicant had not been in a situation analogous to that of a parent in an opposite-sex married couple, and that any difference in treatment had been based on objective and reasonable grounds linked to the subject matter and legal context of the case.

155. They further relied on the Court's decision in *Boeckel and Gessner-Boeckel v. Germany* ((dec.), no. 8017/11, 7 May 2013), where two women in a registered partnership had not been considered to be in a relevantly similar situation to a married husband and wife for the purpose of birth-certificate registration. The Government submitted that no discrimination had arisen in the present case, as the applicants had not been subjected to different treatment because of their sexual orientation. The sole reasons for the refusal to register the second applicant's birth certificate had been the incompatibility of the British certificate with domestic law and fact that domestic law did not allow two women to be registered as the parents of the same child.

2. The Court's assessment

156. The general principles relevant to the Court's assessment of the applicants' complaint under Article 14 of the Convention in conjunction with Article 8 are set out in, among other authorities, *Biao v. Denmark* ([GC], no. 38590/10, §§ 88-92, 24 May 2016).

157. In addition, the Court reiterates that it has repeatedly held that, just like differences based on sex, differences based on sexual orientation require "particularly convincing and weighty reasons" by way of justification (see, for example, *Hämäläinen v. Finland* [GC], no. 37359/09, § 109, ECHR 2014). Differences based solely on considerations of sexual orientation are unacceptable under the Convention (see *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, § 36, ECHR 1999-IX, and *E.B. v. France* [GC], no. 43546/02, § 96, 22 January 2008).

158. The Court observes that the applicants' principal argument is that the refusal to register the second applicant's birth certificate in Poland was based on the first applicant's sexual orientation and the family structure into which the second applicant was born (see paragraph 152-153 above). The first issue is therefore whether the applicants – a mother seeking to register in Poland her biological child's birth certificate indicating two women as parents, were

in an analogous or relevantly similar situation to that of a woman seeking to register in Poland the foreign birth certificate of her child indicating herself as the mother and her opposite-sex partner as the father. The Court notes that the Government disputed that these situations were comparable, maintaining that the first applicant was not in a position analogous to that of a parent in an opposite-sex married couple (see paragraph 154 above). However, the Court is prepared to accept that the situations are sufficiently similar in the relevant respects. As established above, the authorities' decisions at every stage of the administrative and judicial proceedings were expressly based on considerations linked to the first applicant's sexual orientation (see paragraph 82 above). Accordingly, there was a difference in treatment in the present case on the ground of the first applicant's sexual orientation.

159. The Court has already found that the decisions taken in the present case had not created any practical difficulties in the enjoyment of both applicants' family life (see paragraphs 120-122 above) and had no impact on the first applicant's right to respect for her private life, given that the parent-child relationship between her and the second applicant had been recognised from birth in the United Kingdom, where the family lived, and that there was no obstacle to continuing that relationship (see paragraphs 130 and 131 above). The Court further observes that, when alleging discrimination, the applicants essentially reiterated the submissions made under Article 8. In these circumstances, and in view of the reasons set out above in respect of Article 8, the Court finds that there was no breach of Article 14 taken in conjunction with Article 8 of the Convention in respect of the first applicant and also no violation of Article 14 taken in conjunction with Article 8 in respect of the second applicant's right to respect for his family life. Therefore, it is unnecessary to rule on the Government's preliminary objections relating to the applicants' victim status and the question of whether they have suffered a "significant disadvantage" in that regard.

160. Turning to the second applicant's remaining complaint, concerning discrimination in respect of his private life, the Court notes, as already observed above, that in all their decisions the domestic authorities repeatedly stated that it was not possible to transcribe a birth certificate listing two women as a child's parents, as this was considered contrary to the fundamental principles of the Polish legal order. At the same time, no meaningful analysis of the child's best interests or the consequences of refusing to register his birth certificate in Poland was carried out (see paragraph 138 above). The Court has further established that the first applicant's sexual orientation and the need to safeguard the traditional family model were decisive factors in the domestic decisions (see paragraphs 82 and 142 above). It has also held that protecting families constituted in the traditional way should not call into question the need to protect the children of same-sex couples since the interests of a child cannot depend solely on the

sexual orientation of his or her parents and a child's position must be safeguarded irrespective of the family structure into which he or she was born (see paragraph 145 above). It follows that, in refusing to register the second applicant's birth certificate in Poland, the authorities made a distinction based solely or decisively on considerations relating to the circumstances of his birth into a same-sex family and to his parents' sexual orientation – a distinction that is not acceptable under the Convention (compare *E.B. v. France,* cited above, § 96, and *X v. Poland*, no. 20741/10, § 92, 16 September 2021).

161. It follows that the Government's preliminary objections relating to the second applicant's victim status and the question of whether he has suffered a "significant disadvantage" in relation to his discrimination complaint must be dismissed.

162. Accordingly, there has been a breach of Article 14 of the Convention taken in conjunction with Article 8 in respect of the second applicant.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

163. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

164. The applicants claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

165. The Government submitted that the claim was entirely unsubstantiated and exorbitant.

166. The Court finds that the second applicant sustained non-pecuniary damage on account of the violation of Article 8 taken alone and in conjunction with Article 14 of the Convention (see paragraphs 149 and 162 above). Making its assessment on an equitable basis as required by Article 41 of the Convention, it awards the second applicant EUR 5,000 under this head.

B. Costs and expenses

167. The applicants also claimed 2,500 pounds sterling (GBP) for costs and expenses, without specifying whether those costs were incurred before the domestic courts or before the Court.

168. The Government submitted that the applicants' representatives did not provide any copy of the legal service agreement. In addition, no invoices were provided.

169. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses.

FOR THESE REASONS, THE COURT,

1. *Joins*, unanimously, to the merits the Government's preliminary objections concerning the applicants' victim status and lack of significant disadvantage and decides that it is *unnecessary to rule* on them in so far as they relate to the applicants' right to respect for their family life and their right not to be discriminated against in the enjoyment of that right, as well as to the first applicant's right to respect for her private life and her right not to be discriminated against in the enjoyment of that right, and *dismisses* them in so far as they concern the second applicant's right to respect for his private life and his right not to be discriminated against in the enjoyment of that right;

2. *Declares*, by a majority, the application admissible;

3. *Holds*, by 5 votes to 2, that there has been no violation of Article 8 of the Convention with regard to the applicants' right to respect for their family life;

4. *Holds* unanimously, that there has been no violation of Article 8 of the Convention with regard to the first applicant's right to respect for her private life;

5. *Holds*, by 5 votes to 2, that there has been a violation of Article 8 of the Convention with regard to the second applicant's right to respect for his private life;

6. *Holds,* by 4 votes to 3, that there has been no violation of Article 14 of the Convention taken in conjunction with Article 8 of the Convention with regard to the applicants' right to respect for their family life;

7. *Holds*, by 6 votes to 1, that there has been no violation of Article 14 of the Convention taken in conjunction with Article 8 of the Convention with regard to the first applicant's right to respect for her private life;

8. *Holds,* by 4 votes to 3, that there has been a violation of Article 14 of the Convention in conjunction with Article 8 with regard to the second applicant's right to respect for his private life;

9. *Holds*, by 5 votes to 2,
   (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 July 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Ivana Jelić
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Partly concurring, partly dissenting opinion of Judge Krenc;
(b) Partly concurring, partly dissenting opinion of Judge Chablais;
(c) Partly concurring, partly dissenting opinion of Judge Adamska-Gallant;
(d) Joint partly dissenting opinion of Judges Wennerström and Derenčinović;
(e) Partly dissenting opinion by Judge Kučs

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE KRENC

1. I voted with the majority on all points of the operative provisions of the present judgment, except for points 3 and 6.

2. In my view, since the refusal by the Polish authorities to register the second applicant's birth certificate issued in the United Kingdom was based on the sexual orientation of his parents, the present case goes beyond the mere question of respect for the child's identity. It also concerns the recognition of the applicants' family as such. Against this background, and for the reasons that I wish to explain below, I consider that there has been a violation of Article 8 of the Convention with regard to the applicants' right to respect for their family life. I also consider that there has been a violation of Article 14 of the Convention in conjunction with Article 8, as the applicants were discriminated against in the enjoyment of their right to respect for their family life. While sharing the views expressed by my esteemed colleague Judge Adamska-Gallant in her separate opinion, I would like to provide further clarification on my position.

I. Distinction with cases concerning surrogacy

3. At the very outset, I believe it is necessary to make a clear distinction between the present case and cases concerning surrogacy arrangements. Surrogacy constitutes a particular mode of procreation that remains prohibited in several Contracting States and raises, as the Court has itself noted, "sensitive ethical questions" (see *Mennesson v. France*, no. 65192/11, § 79, ECHR 2014 (extracts); see also *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, § 59, 10 April 2019, and *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 202, 24 January 2017).

4. While in *Mennesson* (cited above) and *D.B. and Others v. Switzerland* (nos. 58817/15 and 58252/15, 22 November 2022), the refusal to transcribe birth certificates established abroad was grounded in the fact that the children had been born through surrogacy – a practice prohibited under the domestic legal systems of the respondent States concerned –, the present case is fundamentally different. It does not concern the manner in which the child was conceived or born. The refusal to transcribe the second applicant's birth certificate established abroad is based – and based exclusively – on his parents' sexual orientation, namely the fact that his parents are of the same sex. Equating the two situations therefore risks obscuring the distinction between them and diluting the core issue at stake in the present case.

II. The interference with the second applicant's right to respect for his private life

5. I concur with the majority that there has been a violation of Article 8 of the Convention with regard to the second applicant's right to respect for his private life. In this regard, I wish to stress in particular the following points.

A. The existence of an interference

6. For the reasons set out in the present judgment, the case at hand must be distinguished from the case of *S.-H. v. Poland* ((dec.), nos. 56846/15 and 56849/15, 16 November 2021), in which the Court found Article 8 of the Convention to be inapplicable.

7. *S.-H. v. Poland* (ibid.) concerned a refusal to confirm the acquisition of Polish citizenship by descent for twin brothers born through surrogacy in the United States. As emphasised above, the present case does not concern a surrogacy arrangement. Secondly, and more crucially, it is not disputed in the present case that the second applicant is a Polish national by birth by operation of law, on the basis of his descent from a Polish mother.

8. Although he is a Polish national – which has been expressly acknowledged by the Government before the Court – the second applicant was made invisible to the Polish legal order. Since the birth certificate was not recognised in Poland, the second applicant could not obtain Polish identity documents. Because of this, and in order to avoid statelessness, the second applicant's parents decided to apply for a British passport on his behalf.

9. In this specific situation, it cannot be said that the child was only faced with a situation of discomfort. It has not been contested that he regularly stays in Poland with his parents and has strong ties to that country. In addition, one could not ignore the difficulties arising from the absence of issuance of identity documents concerning the child, particularly as these documents are necessary for exercising the rights and benefits attached to European Union citizenship (Articles 18 to 25 of the Treaty on the Functioning of the European Union (TFEU), OJ 2016/C 202/01, p. 47). Moreover, the second applicant can no longer rely on his British nationality in order to enjoy the status of citizen of the European Union. This circumstance further illustrates the practical consequences of the refusal at stake in the present case.

B. The justification for the interference

10. Once an interference with the child's right to respect for his private life has been found, it has to be examined whether this interference is justified under Article 8 § 2 of the Convention, that is, whether the requirements of legality, legitimacy and proportionality have been met.

11. While I may subscribe, in essence, to the different arguments set out in paragraphs 136-149 of the present judgment, I have, however, some doubts concerning the legitimate aim alleged to justify the refusal in the present case. The judgment states that "the Court is prepared to accept that the proceedings pursued the legitimate aim of protecting 'the rights and freedoms of others', in accordance with the second paragraph of Article 8 of the Convention" (see paragraph 134 of the judgment). This leaves me, I must say, somewhat perplexed. What exactly are these "rights and freedoms of others" that are supposed to justify the impugned refusal? Who are these "others" whom the refusal seeks to protect (compare, for instance, *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 272, 8 April 2021)? And which of their "rights" and "freedoms" are said to require protection? The judgment passes over these issues rather quickly, although it forms the basis for the proportionality assessment – which requires that the means employed be suitable and necessary to achieve the intended aim.

12. In my view, the question of the "legitimate aim" should have led to a more thorough examination (compare, regarding Article 10 of the Convention, *Macatė v. Lithuania* [GC], no. 61435/19, §§ 187-218, 23 January 2023).

III. The interference with the applicants' right to respect for their family life

13. The present case cannot be reduced to the sole issue of the child's private life. The applicants' family life is also at stake.

14. The majority readily acknowledged that the relationship between the second applicant and his parents constituted a "family life" within the meaning of Article 8 of the Convention (see paragraphs 76-77 of the judgment).

15. Nevertheless, the majority found that there had been no interference with the applicants' right to respect for their family life (see paragraph 121 of the judgment). With all due respect for my esteemed colleagues, I am not totally convinced by this approach.

A. A methodological issue

16. As a preliminary point, it appears to me that the Court's approach is not entirely consistent. In the present judgment, the Court concludes on the merits that there has been no interference with the applicants' right to respect for their family life (see paragraphs 120-122 of the judgment), after finding at the admissibility stage (see paragraphs 76-86) that there existed a "family life" (see paragraphs 76-77) and ruling that Article 8 of the Convention was therefore applicable (see paragraph 85).

17. This approach departs from that adopted in *S.-H. v. Poland* (cited above). In that case, the Court held that there had been no interference with the right to respect for family life and ruled that Article 8 of the Convention was not applicable (ibid., §§ 74-75). The application was accordingly declared inadmissible. In other words, the Court's conclusion in both cases was the same: there was no interference with the right to respect for family life. However, whereas in *S.-H. v. Poland* the Court examined that question at the admissibility stage, in the present case it addressed the same issue on the merits.

18. This inconsistency in the Court's case-law becomes even more striking when the present judgment is compared with *A.D.-K. and Others v. Poland* ((dec.), no. 30806/15), in which the same Chamber adopted an inadmissibility decision on the same day. In that case, the question of the impact on family life resulting from a similar refusal to register a birth certificate was again examined at the admissibility stage, for the purpose of determining whether Article 8 of the Convention was applicable (ibid., §§ 78-79).

B. The existence of an interference

19. Apart from this methodological remark, which is nevertheless an important one1, I consider that the present case should have been distinguished from the two aforementioned cases as regards the existence of an interference with the applicants' family life under Article 8 of the Convention.

20. First of all, the applicants and E.K. are all Polish nationals. They speak Polish at home, and the family regularly spend time in Poland – their extended family live there. They explained that they primarily feel Polish. They form a family who have deep and undeniable Polish roots.

21. Furthermore, unlike in the other cases mentioned above, the applicants have pointed out and demonstrated the practical difficulties in enjoying family life together that resulted from the refusal to register the second applicant's birth certificate in Poland (see, in particular, paragraphs 88 and 94 of the judgment; compare, on this point, *A.D.-K. and Others v. Poland*, cited above, § 78). These practical difficulties have been confirmed by the Commissioner for Human Rights of Poland (see paragraphs 106-108 of the judgment), who sought leave to intervene in the present case.

22. The majority stressed the fact that the applicants lived primarily in the United Kingdom, and not in Poland (see paragraph 121 of the judgment). In this regard, it is unclear why the argument based on the applicants' place of residence – assuming it is relevant – was not invoked in assessing the

[1] This is not a purely academic discussion. By way of illustration, the fact that a decision of inadmissibility has been issued concretely implies that the case cannot be referred to the Grand Chamber under Article 43 of the Convention.

interference with the child's private life. It seems indeed paradoxical to consider that the parents' "family life" is not pursued in Poland, while simultaneously accepting that the child pursues a "private life" there.

23. The applicants submitted before the Court that they were considering a return to Poland, particularly in the wake of Brexit, but that the difficulties resulting from the impugned refusal had compromised those plans. There is no element to cast doubt on the applicants' assertions in that respect. Moreover, the impugned refusal and the practical obstacles stemming from it can hardly be regarded as encouraging the family's return to Poland. It may indeed be argued that it is precisely the lack of legal recognition and the resulting administrative hurdles that deter the family from moving to Poland. To use the family's main residence in the United Kingdom as a justification for finding no interference amounts to circular reasoning: it may penalise the applicants for a situation that stems directly from the domestic authorities' refusal.

24. In the light of the above, I cannot share the view that in the concrete circumstances of the case the consequences of the refusal for the applicants' family life were purely theoretical or speculative.

C. The justification for the interference

25. As a result of the refusal to transcribe the second applicant's birth certificate, the applicants' family have been denied legal recognition as a family in Poland, their country of nationality. The sole reason for this is that the child's parents are of the same sex, which can hardly be justified under the Convention.

26. On this point, let me highlight that the present case is fundamentally different from the case of *D.B. and Others v. Switzerland* (cited above). In that case, the refusal to register the birth certificate, which had been established in the United States, was not based in any respect on the fact that the first and second applicants were a same-sex couple, but solely on the fact that they had entered into a surrogacy agreement (see, in particular, the judgment delivered by the Swiss Federal Supreme Court in that case, summarised in *D.B. and Others v. Switzerland*, cited above, § 14). In finding no violation of the right to respect for family life, the Court specifically emphasised the fact that the first and second applicants had acted in such a way as to present the competent authorities with a "*fait accompli*" (see *D.B. and Others v. Switzerland*, cited above, § 92).

27. A situation quite similar to the present case gave rise to the judgment delivered by the Court of Justice of the European Union (CJEU) on 14 December 2021 in *Stolichna obshtina, rayon "Pancharevo"* (C-490/20, EU:C:2021:1008 – see paragraph 60 of the judgment). In that case, the Bulgarian authorities had refused to issue a birth certificate to a child – the daughter of a Bulgarian mother and a British mother – who was born in Spain

and had been issued a Spanish birth certificate mentioning the names of both mothers, on the ground that they could only recognise parents of different sexes. The CJEU found that "it would be contrary to the fundamental rights which are guaranteed to the child under Articles 7 [respect for private and family life] and 24 [rights of the child] 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 [were] of the same sex" (see the CJEU judgment, cited above, § 65). It is noteworthy that the reasoning of the Court of Justice is centred less on the child's private life than on the protection of family life.

28. It follows from that judgment that in the case of a child who is a Union citizen and whose birth certificate, issued by the authorities of the host EU member State, designates as that child's parents two persons of the same sex, the EU 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 the document from the host EU 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 EU member States.

29. To be sure, that judgment from the Court of Justice of the European Union is grounded in EU law, which ensures the right to move and reside freely within the territory of the member States. However, that does not mean that it is devoid of any relevance in the present case. In my view, it is equally difficult to justify under the Convention why a family with well-established Polish roots should be prevented from leading an effective family life in their country of nationality, even occasionally – about three months per year according to the applicants' submissions –, solely on the basis of the parent's sexual orientation. The Strasbourg Court would allow such a situation, whereas the Luxembourg Court would not. Of course, things have changed since Brexit. However, I fail to see how that could affect the Court's reading of the Convention.

IV. Discrimination issue

30. As already highlighted, the refusal of the domestic authorities to register the foreign birth certificate of the second applicant was based – and based solely – on the sexual orientation of the parents. I agree with the majority that there has been a violation of Article 14 of the Convention taken together with Article 8, with regard to the second applicant's right to respect for his private life. As far as the child is concerned, that discriminatory treatment stems from the circumstances of his birth, not from sexual orientation. Through the refusal to register his birth certificate, the second

applicant has been discriminated against not for any choice or action of his own, but simply for having two parents of the same sex.

31. Unlike the majority, I further consider that there has also been a violation of Article 14 of the Convention taken together with Article 8 with regard to the applicants' right to respect for their family life. As emphasised above, the applicants' family are not recognised as a family in Poland, solely because of the parents' sexual orientation. It has not been disputed that such a refusal would not have occurred if the parents were of opposite sex.

V. Beyond the case: the essence of democratic values

32. I wish to make a final point to conclude. I agree that the issue in this case differs from the one in *Fedotova and Others v. Russia* ([GC], nos. 40792/10 and 2 others, 17 January 2023). *Fedotova* concerned the impossibility for same-sex couples to obtain adequate recognition and protection of their relationship, while the present case concerns the refusal of the Polish authorities to recognise same-sex parents – specifically, a legal parent-child relationship established abroad.

33. I do not, however, consider the two questions to be completely unrelated. I observe in this regard that the domestic authorities in the present case expressly relied on the fact that the legal provisions in force did not allow for the registration of same-sex relationships, in order to refuse transcription (see, in particular, paragraphs 18 and 21 of the judgment).

34. In *Fedotova and Others* (cited above), the Court linked the protection afforded to same-sex couples to the fundamental values of a democratic society, which cannot be reduced to the views of the majority (ibid., in particular §§ 216-18; see also, concerning Poland, *Przybyszewska and Others v. Poland*, nos. 11454/17 and 9 others, 12 December 2023). While it clearly held that the required protection under the Convention for same-sex couples did not have to take the form of marriage (see *Fedotova and Others*, cited above, §§ 165 and 188) – this is a matter falling within the States' margin of appreciation – , the Court emphasised that "a democratic society within the meaning of the Convention reject[ed] any stigmatisation based on sexual orientation" and was "built on the equal dignity of individuals and ... sustained by diversity, which it perceive[d] not as a threat but as a source of enrichment" (ibid., § 180).

35. Those principles are equally compelling in the present case. It may be recalled that not so long ago, the Court was called upon to examine the criminalisation of homosexual relations (see *Dudgeon v. the United Kingdom*, 22 October 1981, Series A no. 45, and *Modinos v. Cyprus*, 22 April 1993, Series A no. 259). Over time, its case-law evolved from safeguarding individuals against discrimination and interference in their private lives to recognising and protecting the family life of same-sex couples (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09,

ECHR 2013 (extracts), and *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, 21 July 2015). In so ruling and in interpreting the Convention as a "living instrument" reflecting greater respect for sexual minorities, did the Court exceed the limits of its judicial function by imposing standards harmful to society and threatening the social order and peace? The question answers itself.

36. A democratic society has room for everyone, regardless of their sexual orientation.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE CHABLAIS

(Translation)

1. With the exception of point 8, I agree with all of the Court's findings in the operative provisions of the present judgment, particularly the finding that there has been a violation of Article 8 of the Convention with regard to the second applicant's right to respect for his private life (point 5).

2. Before expanding on the reasons which prevent me from joining the majority in finding a violation of the prohibition of discrimination (Article 14) with regard to the second applicant's right to respect for his private life (point 8), it seems necessary first to place this case in its general context, then to return to the considerations which have led me, with the majority, to hold that there has been a violation of the second applicant's right to respect for his private life (point 5).

I. General context

3. It appears from the facts of the case that the first applicant is a Polish citizen who is resident in the United Kingdom, where she lives with a person of the same sex in a civil union, recognised under the law of that State. She gave birth there to a child, the second applicant, who is Polish by birth and whose British citizenship was subsequently confirmed. The British birth certificate refers to the first applicant as his "mother" and to her same-sex partner as his "parent".

4. This is a situation that is increasingly common in Europe, namely one in which individuals live, work, travel and build private and family lives in countries that are not necessarily those in which they were born, or of which they are nationals. It is therefore unsurprising that the courts are increasingly confronted by issues arising from those changes in mobility and lifestyles, including issues which involve respect for human rights and fundamental freedoms. Moreover, such disputes are also arising on the basis of European Union law, particularly with regard to the right to respect for private and family life (Article 7 of the EU Charter of Fundamental Rights) and the principle of non-discrimination (Article 21 of the Charter) as a result of the free movement of persons (see, for example, the judgment of the Court of Justice of the European Union CJUE of 25 November 2025 in the case of *Jakub Cupriak-Trojan and Mateusz Trojan v. Wojewoda Mazowiecki* [C-713/23], in which the CJEU concluded that there existed an obligation to recognise and transcribe in the Polish civil register the marriage certificate of a homosexual couple, despite the fact that Polish law did not permit such recognition or transcription on the grounds that same-sex marriage was not authorised in that State; see also the CJEU's judgment of 5 June 2018 in the

case of *Coman and Hamilton v. Inspectoratul General pentru Imigrări, Ministerul Afacerilor Interne* [C-673/16], in which the CJEU held that same-sex spouses of EU citizens were entitled to freedom of residence on the same basis as different-sex spouses).

5. As the Court has reiterated, respect for private life requires that everyone should be able to establish details of their identity as individual human beings, which includes the legal parent-child relationship. An essential aspect of the identity of individuals is at stake where the legal parent-child relationship is concerned (see *Mennesson v. France*, no. 65192/11, § 96, 26 June 2014). The child's best interests entail, among other things, the legal identification of those responsible for raising him or her, meeting his or her needs and ensuring his or her welfare, together with the child's ability to live and develop in a stable environment (Advisory Opinion P16-2018-001, § 42).

6. In the present case, the mother and child are both applicants, and it is undisputed that their interests overlap. That being said, it should not be overlooked that the main question in the present case concerns the transcription of the second applicant's birth certificate and, in consequence, recognition of the parent-child relationship (see paragraph 82 of the judgment). The case does not therefore concern the possible need for legal recognition and protection of same-sex couples: it is the best interests of the child – namely, the second applicant –, which are at the heart of this case, interests which should be assessed in the light of the relevant principles of the United Nations Convention on the Rights of the Child. The Court was not therefore called upon to express an opinion on the form of shared life chosen by his parents in the light of Polish law, which it has had occasion to do in other circumstances (see *Przybyszewska and Others v. Poland*, no. 11454/17 and 9 others, 12 December 2023). Indeed, the applicants understood this, in that they specifically focused their arguments before the national courts on the best interests of the child (see paragraphs 15, 20 and 25 of the judgment).

II. The second applicant's right to respect for private life

7. The Chamber began by examining carefully the question of the applicability of Article 8, which it explored at length (see paragraphs 76-86 of the judgment). Although clearly not decisive, it is nonetheless interesting to note that, unlike, for example, in the case of *S.H. v. Poland* ((dec.), nos. 56846/15 and 56849/15, § 53, 16 November 2021), the Government never disputed the applicability of Article 8 to the facts of the case, with regard either to the "private life" or to the "family life" limb of that provision.

8. The approach followed by the majority, who have opted for a combined application of the reason-based and consequence-based approaches in respect of the measure complained of, strikes me as perfectly relevant in this case. It enables the Court to begin by taking into consideration the grounds for refusing to allow the transcription, which explicitly referred to the need to

preserve the traditional family model, and thus, at least indirectly, to the first applicant's sexual orientation. In my opinion, this element is sufficient to attain the threshold enabling Article 8 to be brought into play in respect of the first applicant.

9. Further, the majority's approach makes it possible to assess the consequences of the measure, which entailed the impossibility for the second applicant, over a period of several months, to obtain Polish identity documents (passport, identity card) and a personal identification number (PESEL). In my opinion, these are completely tangible practical consequences, the existence of which has also been confirmed by the Commissioner for Human Rights of the Republic of Poland (see paragraphs 107-108 of the judgment). The fact of living lawfully abroad, in this instance in the United Kingdom, is not sufficient to eradicate those effects for the individual concerned. On the contrary, and although the Government never formally called into question the second applicant's Polish nationality, the impossibility of obtaining such documents, which are used to certify citizenship, to travel and to access healthcare services, seems to me to justify in full the applicability of Article 8 in his regard.

10. Admittedly, the extension of the application of the reason-based approach to the second applicant can legitimately be called into question. However, it should not be overlooked that the facts at the origin of the complaints submitted by the two applicants are identical, and that the family unit formed by them with the first applicant's partner has been affected, as such, by the measure. It also seems to me that the consequence-based approach is sufficient, in itself, to justify the applicability of Article 8 in respect of the second applicant.

11. More generally, while this combination of the two approaches is not necessarily habitual, it is nonetheless not a first in the case-law; the Court has already had recourse to it in the past (see, for example, *Denisov v. Ukraine* [GC], no. 76639/11, § 109, 25 September 2018, and *Manjani v. Albania*, no. 32283/23, § 31, 10 March 2026). In fact, I see no reason that would necessarily support the use of one method rather than the other with regard to the issues surrounding establishment of the parent-child relationship. On the contrary, it is the circumstances of a given case which must determine the use of one or the other method, or a combination of the two. In any event, the fact that the Court chose, in the above-cited *S.H. v. Poland* decision (§ 67), to use the consequence-based method rather than the reason-based approach in ruling on the applicability of Article 8 does not strike me as decisive. That choice resulted more from the fact that the proceedings in issue in that case were of another type, since they concerned a procedure to confirm citizenship. In cases concerning citizenship, the Court is more likely to use a test based on the consequences of the measure. Indeed, it frequently applies this test as part of its analysis, on the merits, of whether there has been an interference, without necessarily limiting it to the question of applicability

(see, for example, *Elmi Abo v. Estonia* (dec.), no. 29295/22, §§ 72 et seq., 17 September 2024, and *Usmanov v. Russia*, no. 43936/18, §§ 52 et seq., 22 December 2020).

12. In line with the majority (paragraphs 82 et seq. of the judgment), I also consider it useful to highlight some important differences which distinguish the present case from previous ones. Those differences point clearly towards the applicability of Article 8. The first element, to which I will not return, concerns the reasons underlying the refusal to transcribe the birth certificate, reasons which do not appear as such in the other cases. The second element is related to the fact that the Government have acknowledged that the second applicant acquired, pursuant to the law, Polish citizenship at birth, it being noted that his biological mother is herself a Polish citizen. This element was not present in the above-cited case of *S.H. v. Poland*, in which the children's Polish citizenship was not established. In the case of *A.D.-K and Others v. Poland* ((dec.), no. 30806/15, 2 June 2026), the child did not have Polish nationality, since only the intended mother was a Polish national. However, the absence of established Polish citizenship is clearly not irrelevant in determining whether the threshold for applicability of Article 8 has been reached, particularly when using the consequence-based test: the practical difficulties and the time taken to obtain identity papers are necessarily more hypothetical, if not purely virtual, where nationality has not even been established. Thus, it is ultimately quite logical that the *S.H. v. Poland* and *A.D.-K and Others v. Poland* cases resulted in inadmissibility decisions on the grounds of incompatibility *ratione materiae* with Article 8.

13. The present judgment, read in parallel with the above-cited decision in *A.D.-K and Others v. Poland*, adopted on the same date by the same judicial formation, encourages a nuanced approach to the scope of Article 8, one that takes into consideration the circumstances of each case: it is not a matter of extending the scope of that provision in such a way that the doors would henceforth be open to any identity-based claim from persons living within another jurisdiction from that of the respondent State whose nationality they hold, or claim to hold. Conversely, the applicability of Article 8 cannot be denied in a general manner on the sole ground that the applicants live and develop their private and family life in a foreign jurisdiction: only a careful examination of the circumstances of the individual case can determine if the reasons for and/or the consequences of a decision issued with regard to the parent-child relationship are genuinely such as to affect the essential elements of the applicant's identity. However, citizenship undoubtedly expresses much more than a legal tie with the State: it also includes a political, cultural and social dimension, and therefore, in practice, encompasses one's identity. The practical impossibility of being able to prove citizenship, and to benefit from the advantages that it entails, is therefore far from a trivial matter.

14. On the merits, once the applicability of Article 8 is established and the existence of an interference has been recognised in respect of the second applicant, the finding of a violation in his regard is hardly open to dispute. It results from the failure to take his best interests into consideration in any meaningful way when deciding to refuse the transcription, and the limited consideration given to the repercussions of that refusal on his personal identity (see paragraphs 142 and 149 of the present judgment).

15. Further reflection is required with regard to the implications of this finding of a violation beyond the specific case before us. The text of paragraph 144 of the judgment might suggest that the impossibility of obtaining registration of the birth certificate, as it results from the legal provisions in force and the requirement to give priority to the fundamental principles of the Polish legal order as set out in section 7 of the Private International Law Act, is in itself incompatible with Article 8 of the Convention. Transcription of the foreign birth certificate in cases of this type would then represent the only solution allowing the situation to be remedied.

16. This approach seems to me to be too categorical. I note, first, that the Court has recently accepted that the national legislature could validly wish to avoid situations of split motherhood, with exclusive attribution of the role of legal mother serving to assign the child, unequivocally and immediately, to his or her legal mother and to protect his or her well-being in a scenario of possible conflict between the two partners claiming the role of mother (see *R.F. and Others v. Germany*, no. 46808/16, §§ 83 and 89, 12 November 2024). I further note that the Court has never held that the intended parents must be immediately and automatically recognised as such by law (see *H. v. the United Kingdom* (dec.), no. 32185/20, § 56, 31 May 2022). Lastly and most importantly, I consider that paragraph 144 of the present judgment should be read in conjunction with paragraphs 147 and 149. The latter two paragraphs clearly emphasise that it is the absence under Polish law of an effective mechanism for recognition of the parent-child relationship between the child and the intended parent, or of the possibility for the latter to obtain a form of parental responsibility, which makes the refusal to transcribe the certificate incompatible with Article 8.

17. In this context, the principles set out by the Court in its Advisory Opinion no. P16-2018-001 are worth reiterating. The Court held that the States Parties were not obliged to opt for registration of the details of the birth certificate legally established abroad. It noted that there was no consensus in Europe on this issue: where the establishment or recognition of a legal relationship between the child and the intended parent was possible, the procedure varied from one State to another. It then observed that an individual's identity was less directly at stake where the issue was not the very principle of the establishment or recognition of his or her parentage, but rather the means to be implemented to that end. Accordingly, it considered that the choice of means by which to permit recognition of the legal

relationship between the child and the intended parents fell within the States' margin of appreciation. In addition to this finding regarding the margin of appreciation, the Court considered that Article 8 of the Convention did not impose a general obligation on States to recognise *ab initio* a parent-child relationship between the child and the intended mother. What the child's best interests – which had to be assessed primarily *in concreto* rather than *in abstracto* – required was for recognition of that relationship, legally established abroad, to be possible at the latest when it had become a practical reality. Lastly, the Court considered that the child's best interests, thus construed, could not be taken to mean that recognition of the legal parent-child relationship between the child and the intended mother, required in order to secure the child's right to respect for private life within the meaning of Article 8 of the Convention, entailed an obligation for States to register the details of the foreign birth certificate in so far as it designated the intended mother as the legal mother. Depending on the circumstances of each case, other means could also serve those best interests in a suitable manner, including adoption, which, with regard to the recognition of that relationship, produced similar effects to registration of the foreign birth details (see the Advisory Opinion, cited above, §§ 50-53 and points 1 and 2 of the operative provisions; see also *D v. France*, no. 11288/18, § 54 , 16 July 2020).

18. Admittedly, those principles were set out by the Court in a somewhat different context, namely that of a surrogacy case. It is undeniable that surrogacy, which is prohibited in many States, is a practice entailing risks of abuse. In my opinion, however, the above-cited principles, set out by the Court in its Advisory Opinion, are equally relevant in the present case, given that they place the best interests of the child at the centre and do not impose any obligation on the State to transcribe (or register) birth certificates legally established abroad. It seems to me that there is also no European consensus on the transcription of a relationship between a child and the intended parent in situations other than that of surrogacy (see, to this effect, the Annual Index of the association ILGA-Europe (www.ilga-europe.org), which indicates that in 2026 ten European States provide for automatic recognition of joint parenthood – that is, they do not impose any barrier to the legal recognition of children, from birth, by their cohabiting parents, whatever the sexual orientation or gender identity of the partners – compared with 39 States which do not provide for such recognition; see also *R.F. and Others v. Germany*, cited above, § 64, which emphasises the absence of consensus, but in the context of whether and how a genetic mother who did not carry a child can be registered as his or her [second] mother). In other words, it is not the refusal of automatic transcription of the parent-child relationship that poses in itself a problem of compatibility with Article 8, but rather the practical consequences of this refusal, in view of the absence of any possibility to create such a relationship under Polish law, through adoption or other judicial procedures.

III. Prohibition of discrimination and the second applicant's right to respect for his private life

19. With all due respect, I have found no violation of Article 14 taken in conjunction with Article 8 of the Convention with regard to the second applicant's right to private life (point 8 of the operative provisions). In my view, it would have been justified to have recourse to the so-called *Câmpeanu* formula for the complaint alleging a violation of Article 14 taken in conjunction with Article 8, raised by both applicants, as the Court has already done on several occasions in other cases, including with regard to allegations of discrimination based on sexual orientation (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, [GC], no. 47848/08, § 156, ECHR 2014; *Mennesson v. France*, no. 65192/11, § 108, 26 June 2014; *D.B. and Others v. Switzerland*, nos. 58817/15 and 58252/15, § 101, 22 November 2022; *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 230, 17 January 2023; and *Kolivova and Babulkova v. Bulgaria*, no. 40209/20, § 68, 5 September 2023). The main issues raised in this case had already been examined under Article 8, so that it was unnecessary to re-examine them under Article 14.

20. The majority having nonetheless decided to examine this complaint separately, I voted with them in finding that there has been no violation of Article 14 with regard to the applicants' right to respect for their family life (point 6) and with regard to the first applicant's right to respect for her private life (point 7). However, I voted against the finding of a violation of Article 14 with regard to the second applicant's right to respect for his private life (point 8), for three main reasons.

21. First, in support of their complaint alleging a breach of the prohibition of discrimination, the applicants – and thus also the child – merely repeated the arguments that they had already submitted in relation to their complaint alleging a violation of Article 8 (see paragraph 159 of the judgment). As no additional material had been submitted, the case did not really lend itself to a separate examination of the complaint alleging discrimination.

22. Secondly, the majority justify the finding of a violation in respect of the second applicant in the light of the sexual orientation of the first applicant, or even of the first applicant and her same-sex partner (paragraphs 152 and 160 of the judgment). As this ground corresponds to the Court's assessment of the complaint raised by the first applicant, I find it difficult to see how it could be transposed to the second applicant in order to justify a finding of a violation in his regard. The precedents cited in the judgment are not in my opinion relevant (namely, *E.B. v. France*, no. 43546/02, § 96, 22 January 2008, and *X. v. Poland*, no. 20741/10, § 92, 16 September 2021). In reality, those were cases in which the parents, as applicants, were victims of the discriminatory measure as a result of their sexual orientation, rather than their children, who did not even have applicant status.

23. Thirdly and lastly, and unlike my distinguished colleagues in the majority (see paragraphs 158 and 160 of the judgment), I do not consider that the applicants have shown that they were in an "analogous or relevantly similar situation" to that of a different-sex couple who would also have requested the transcription of the birth certificate of a child born abroad. In another case that contained numerous similarities to the present one, the Court refused to consider that the intended mother (in a same-sex partnership with the biological mother) and the father and mother (who were married) formed comparable groups: it considered that, in any event, it was impossible, from a biological perspective, for the child to be descended from the intended mother, in contrast to the husband's situation (see *Boeckel and Gessner-Boeckel v. Germany* (dec.), no. 8017/11, 7 May 2013). The same reasoning led the Court to find the complaint alleging a violation of Article 14 taken in conjunction with Article 8 manifestly unfounded in the *R.F.* case (*R.F. and Others v. Germany*, cited above, § 107 read with §§ 101-102). Irrespective of the legal and societal developments that have taken place in recent years, it seems to me that this biological argument has lost none of its relevance. In a same-sex partnership, the child's genetic relationship can only be established in respect of one of the partners, which inevitably distinguishes this situation from that of a different-sex couple.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE ADAMSKA-GALLANT

Together with my esteemed colleague Judge Krenc, I voted with the majority on all but points 3 and 6 of the operative provisions of the present judgment.

The essence of the Convention lies in respect for human dignity and freedom. In particular, the notion of personal autonomy is a fundamental principle that guides the interpretation of the guarantees of Article 8. This principle ensures the protection of each individual's personal sphere, including the right to define his or her identity as a human being (see *Pretty v. the United Kingdom*, no. 2346/02, § 62, 29 April 2002, and *Mikulić v. Croatia*, no. 53176/99, § 53, 7 February 2002).

These principles apply with equal, if not greater, force where the individual concerned is a child. In all actions concerning children, their best interests must be a primary consideration (Article 3 of the United Nations Convention on the Rights of the Child). Furthermore, States Parties are obliged to respect the child's right to preserve his or her identity, including his or her nationality, name and family relations, without unlawful interference (Article 8 of the United Nations Convention on the Rights of the Child).

In the light of the foregoing considerations, in my view, the central issue in the present case is the respect due to R.P.'s human dignity and personal identity as a Polish child born to a Polish mother and raised within a family composed of Polish citizens residing in the United Kingdom. Like any individual, he is entitled to have his identity duly recognised by Poland, as his State of nationality, irrespective of the family model chosen by his parents. A fundamental component of this identity is the legal recognition of his parentage, including the recording of his parents' names in his official identity documents, as already established within the legal system of his country of birth.

JOINT PARTLY DISSENTING OPINION OF JUDGES WENNERSTRÖM AND DERENČINOVIĆ

1. We regret that we cannot subscribe to the majority's position that Article 8 of the Convention has been violated to the detriment of the second applicant. In our opinion, as the threshold for the application of that provision has not been reached, the present judgment departs from the consequence-based approach established in the Court's case-law in Article 8 cases. Likewise, we cannot agree with the finding of a violation of Article 14 in conjunction with Article 8.

2. Elements of a consequence-based approach under Article 8, which were thoroughly detailed in *Denisov v. Ukraine* ([GC], no. 76639/11, 25 September 2018) in an employment-related context, have subsequently been applied in many other areas. These include environmental issues (see *Hudorovič and Others v. Slovenia*, nos. 24816/14 and 25140/14, §§ 112-15, 10 March 2020), reputation and image issues (see *Vučina v. Croatia* (dec.), no. 58955/13, §§ 42-51, 24 September 2019), sexual harassment (see *C. v. Romania*, no. 47358/20, §§ 50-54, 30 August 2022) and racial-profiling cases (see *Basu v. Germany*, no. 215/19, §§ 25-27, 18 October 2022; *Muhammad v. Spain*, no. 34085/17, §§ 49-51, 18 October 2022; and *Wa Baile v. Switzerland*, nos. 43868/18 and 25883/21, §§ 71 and 102, 20 February 2024).

3. Most relevantly to the present case, the Court applied a consequence-based approach in *S.-H. v. Poland* ((dec.), nos. 56846/15 and 56849/15, 16 November 2021). That case concerned two children born through surrogacy to a same-sex couple living in Israel. The Polish authorities had refused to confirm that they had acquired Polish citizenship by descent. The Court focused on whether that refusal had serious negative consequences for the children. It noted that the applicants, who had lived in Israel since birth and already held dual US and Israeli citizenship, faced no practical difficulties or challenges to their parent-child relationship in Israel. As a result, the Court concluded that the impact on their personal identity was not serious enough to trigger Article 8 of the Convention and declared the complaint inadmissible.

4. The rationale for the consequence-based approach is to establish a severity threshold that prevents the scope of Article 8 from expanding indefinitely as part of the tendency towards "overfertilisation" of that provision (see the partly dissenting opinion of Judge Pavli in *Vainik and Others v. Estonia*, nos. 17982/21 and 3 others, 4 November 2025). Exceptionally, the Court might use an alternative standard – a reason-based approach – but this is limited to very particular circumstances and applies only when the impugned measure encroaches on the applicant's freedom of choice in private life (see paragraphs 13-14 below).

5. Preliminarily, we note that the Court's case-law has clearly established that birth registration not only is crucial to the exercise of the right to private life but also constitutes a self-standing right under the Convention. The Court reached this conclusion in *G.T.B. v. Spain* (no. 3041/19, 16 November 2023), which concerned an applicant who was born in Mexico and who, soon after his birth, came with his mother to Spain following an earthquake that hit that first country. Because the relevant documentation in Mexico was destroyed in the earthquake, his birth was not registered in Spain for a very long time. During that period, the applicant was in a very vulnerable position, without access to education or training, or any possibility of employment. Those uncertainties also seriously affected his health.

6. Based on those findings, the Court concluded that the lack of birth registration and access to related identity documents could have important repercussions for him and found a violation of Article 8 of the Convention. The Court established that "obstacles in obtaining birth registration and the lack of access to identity documents resulting from those obstacles [could] have a serious impact on a person's sense of identity as an individual human being" (ibid., § 118) and concluded that "the right to respect for private life ... should be seen as including, in principle, an individual's right to have one's birth registered and as a consequence, where relevant, to have access to other identity documents" (ibid.).

7. However, unlike the applicant in the Spanish case, who had been seriously affected and had been left at risk of statelessness for a very long time owing to the authorities' failure to discharge their positive obligations and to issue him a birth certificate and identity documents without delay, it is very difficult to understand what the important repercussions were for the second applicant in the present case after the authorities refused to transcribe his foreign birth certificate.

8. The second applicant has lived abroad since birth. He was registered in the birth register of his place of residence, he holds all identity documents issued there and his parent-child relationship with his biological mother and her partner (registered as "parent") is recorded in that register, as is his personal identity, including language, sense of belonging, relationship and family life with his mother and her partner, and other relevant aspects of his family and private life. At the same time, that applicant – whose centre of vital interests with his biological mother and her partner is in his place of residence, that is, the United Kingdom, and not in Poland – failed to prove the existence of concrete plans for relocation, real-estate investment or similar specific undertakings indicating that he planned to move and live in Poland.

9. We can accept that the decision of the domestic authorities might have caused the second applicant some discomfort, but his vague arguments about the hypothetical future consequences of that decision (for instance, longer waiting times at border crossings because the United Kingdom left the

European Union), without any substantiation whatsoever of real and actual consequences for his private life at the time of lodging the application with the Court, fail to reach the threshold for the applicability of Article 8.

10. The aforementioned Spanish case and the standards established therein have not been mentioned in the present judgment. This is not surprising, as there have been no arguments to support the claim that the second applicant was seriously affected by the domestic authorities' refusal to transcribe his foreign birth certificate. Consequently, following the logic of *G.T.B. v. Spain* (cited above), a violation cannot be justified in the absence of serious consequences for the applicant's private life.

11. In any event, the gist of the complaint in the present case is somewhat different from that in the Spanish case and focuses not so much on the individual's registration and access to identity documents (which is rather a side argument) but more on the recognition of a parent-child relationship established abroad. But again, given the scope of the complaint in the present case, it would be very difficult, if not impossible, to depart from the consequence-based approach taken unanimously in *S.-H. v. Poland* (cited above). That is why the majority have made an effort to explain how the present case is substantively different from *S.-H. v. Poland*. We do not think it is.

12. It is true that the facts of the present case are somewhat different from those in *S.-H. v. Poland* (ibid.). While the present case concerns the non-transcription of a birth certificate obtained abroad, *S.-H. v. Poland* concerned the acquisition of citizenship for a child born through surrogacy abroad. However, the central issue in both cases is the same. This is evident from the judgment itself, which recognises that "[i]n the instant case, the proceedings were focused on the transcription of his foreign birth certificate, even though the central issue was also the recognition by the domestic authorities of the parent-child relationship where the applicant parties were residing in a foreign jurisdiction" (see paragraph 82 of the judgment). There was therefore no valid ground or convincing argument for departing from the consequence-based approach taken in *S.-H. v. Poland* (cited above).

13. Nevertheless, the majority have decided to take that path. The formula used appears to be a hybrid, borrowing elements from both reason-based and consequence-based approaches. In this regard, the question remains how any element of a reason-based approach can be applied in the case of the second applicant. Specifically, according to one strain of the Court's case-law, under the reason-based approach, complaints have been found to fall within the ambit of "private life" when the impugned measure was based on reasons that encroached upon the individual's freedom of choice in the sphere of private life (see paragraph 79 of the judgment). This approach has been applied in cases where personal choice (religious beliefs or sexual orientation) influenced the authorities' underlying decision to restrict access to employment.

14. In the present case, it is unclear how the "personal choice" requirement concerning the first applicant's and her same-sex partner's choice could be transposed and extended to the second applicant. This element is strictly personal and cannot be stretched to applicants who had nothing to do with the personal choice of others. By extending this element in the present case, the majority have departed from standards rooted in a consequence-based approach and have left the door open to a further broadening of the scope of Article 8 in cases concerning personal identity.

15. We are very concerned that the present judgment not only diverges from the Court's well-established case-law but also calls into question its competences. We note with concern that the majority, aware of the absence of serious consequences for the applicant, have chosen to conduct an *in abstracto* review of a systemic issue that significantly affects the constitutional and public order of a State Party.

16. Finally, the approach adopted by the majority in the present judgment appears to depart from the Convention's subsidiary role as an instrument intended to address situations where the requisite threshold of applicability has been met. In our view, careful observance of that threshold remains an important condition for the exercise of the Court's jurisdiction *ratione materiae* and for the maintenance of coherence and predictability in the Court's case-law. Where the threshold is not clearly established, there is a risk that the scope of Article 8 may be extended beyond the limits previously recognised in the Court's case-law.

PARTLY DISSENTING OPINION OF JUDGE KUČS

I fully agree with the majority's finding of a violation of Article 8 of the Convention in the present case, as well as the finding of a violation of Article 14 of the Convention when considered alongside Article 8, regarding the second applicant's right to respect for his private life.

I voted with the majority on all points of the operative provisions of the present judgment, except for points 6 and 7.

Unlike the majority, I believe that the crux of the present case is not only about the best interests of the child and the child's identity, but also about the different treatment by the authorities in terms of recognising the bond between parents and child – a difference based solely on the parents' sexual orientation.

I therefore respectfully disagree with the majority that there has been no violation of Article 14 of the Convention in conjunction with Article 8 with regard to both applicants' right to respect for their family life. Similarly, I disagree that there has been no violation of Article 14 of the Convention in conjunction with Article 8 with regard to the first applicant's right to respect for her private life.