

Case C-490/20

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

2 October 2020

Referring court:

Administrativen sad Sofia-grad (Bulgaria)

Date of the decision to refer:

2 October 2020

Applicant:

V.M.A.

Defendant:

Stolichna Obsthina, Rayon ‘Pancharevo’ (Sofia municipality, ‘Pancharevo’ district)

Subject matter of the case in the main proceedings

Proceedings at first instance before the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia, Bulgaria), initiated by an action brought by V.M.A. against the refusal of Sofia municipality, ‘Pancharevo’ district, to issue a birth certificate for the girl S.D.K.A., born on 8 December 2019 in Barcelona, Kingdom of Spain, whose birth was attested by a Spanish birth certificate which names V.M.A. and K.D.K., who are both female, as the girl’s mothers.

Subject matter and legal basis of the reference

Interpretation of EU law; Article 267(1) TFEU

Questions referred for a preliminary ruling

1. Must Article 20 TFEU and Article 21 TFEU and Articles 7, 24 and 45 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that the Bulgarian administrative authorities to which an application for a document certifying the birth of a child of Bulgarian nationality in another Member State of the EU was submitted, which had been certified by way of a Spanish birth certificate in which two persons of the female sex are registered as mothers without specifying whether one of them, and if so, which of them, is the child's biological mother, are not permitted to refuse to issue a Bulgarian birth certificate on the grounds that the applicant refuses to state which of them is the child's biological mother?
2. Must Article 4(2) TEU and Article 9 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that respect for the national identity and constitutional identity of the Member States of the European Union means that those Member States have a broad discretion as regards the rules for establishing parentage? Specifically:
 - Must Art. 4(2) TEU be interpreted as allowing Member State to request information on the biological parentage of the child?
 - Must Article 4(2) TEU in conjunction with Article 7 and Article 24(2) of the Charter be interpreted as meaning that it is essential to strike a balance of interests between, on the one hand, the national identity and constitutional identity of a Member State and, on the other hand, the best interests of the child, having regard to the fact that, at the present time, there is neither a consensus as regards values nor, in legal terms, a consensus about the possibility of registering as parents on a birth certificate persons of the same sex without providing further details of whether one of them, and if so, which of them, is the child's biological parent? If this question is answered in the affirmative, how could that balance of interests be achieved in concrete terms?
3. Is the answer to Question 1 affected by the legal consequences of Brexit in that one of the mothers listed on the birth certificate issued in another Member State is a UK national whereas the other mother is a national of an EU Member State, having regard in particular to the fact that the refusal to issue a Bulgarian birth certificate for the child constitutes an obstacle to the issue of an identity document for the child by an EU Member State and, as a result, may impede the unlimited exercise of her rights as an EU citizen?
4. If the first question is answered in the affirmative: does EU law, in particular the principle of effectiveness, oblige the competent national authorities to derogate from the model birth certificate which forms part of the applicable national law?

Legal provisions and case-law of the European Union

Articles 18, 20 and 21 of the Treaty on the Functioning of the EU (TFEU);

Articles 7, 9, 21, 24 and 45 of the Charter of Fundamental Rights of the European Union;

Article 4(2) of the Treaty on European Union (TEU);

Article 2(1) and (2)(a), Article 4 and Article 7(1)(d) and (4) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC;

Judgments of the Court of Justice of 25 July 2008, *Metock and Others*, C-127/08, EU:C:2008:449; of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, and of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385; of 20 November 2001, *Jany and Others*, C-268/99, EU:C:2001:616, and of 4 December 1974, *Van Duyn*, 41/74, EU:C:1974:133; of 2 October 2003, *Garcia Avello*, C-148/02, EU:C:2003:539; of 1 April 2008, *Maruko*, C-267/06, EU:C:2008:179, and of 14 October 2008, *Grunkin and Paul*, C-353/06, EU:C:2008:559; of 2 June 2016, *Bogendorff von Wolfersdorff*, C-438/14, EU:C:2016:401.

Judgment of the European Court of Human Rights (ECtHR) of 26 June 2014, *Mennesson v. France* (Application no. 65192/11), and advisory opinion of the ECtHR in response to a request from the French Cour de Cassation (Court of Cassation) (Request no. P16-2018-001)

National legislation

Konstitutsia na Republika Balgaria (Constitution of the Republic of Bulgaria), Article 25 and Article 46(1);

Semeen kodeks (Family Code), Articles 60 and 61;

Zakon za grazhdanskata registratsia (Law on the Registration of Citizens), Articles 42, 45, 69, 70, 72;

Naredba No. RD-02-20-9 ot 21.05.2012 g. za funktsionirane na Edinnata sistema za grazhdanska registratsia (Regulation No. RD-02-20-9 of 21 May 2012 on the Operation of the Uniform System for the Registration of Citizens), Articles 7, 12, 13, 14;

Zapoved No. RD-02-14-2595 ot 15.12.2011 za utvarzhdavane na obraztsi na aktovete za grazhdansko sastoyanie, izdadena ot ministara na regionalното razvitie i blagoustroystvoto i ministara na pravosadieto (Regulation No. RD-02-14-2595

of the Minister for Regional Development and Public Works and of the Minister of Justice of 15 December 2011 on the Approval of Model Civil Status Certificates)

Brief summary of the facts and procedure

- 1 On 8 December 2019, in the city of Barcelona, Kingdom of Spain, the child S.D.K.A. was born, a birth certificate for whom was issued on which it was recorded that the mothers of the child were V.M.A., a Bulgarian national, designated ‘Mother A’, and K.D.K., a UK national, designated ‘Mother’, both persons being female.
- 2 By application of 29 January 2020, V.M.A., acting through her authorised representative, made a statement requesting that Sofia municipality, ‘Pancharevo’ district, issue a birth certificate for the child S.D.K.A. Attached to the statement was an officially certified translation into Bulgarian of an excerpt from the civil register of Barcelona and the birth certificate of S.D.K.A., which lists as the mothers of the child V.M.A., born in Sofia, Republic of Bulgaria, and K.D.K., born in Gibraltar, United Kingdom, both persons being female.
- 3 According to the information contained in the birth certificate, V.M.A. and K.D.K. entered into a civil marriage in Gibraltar, United Kingdom, on 23 February 2018.
- 4 On 7 February 2020, Sofia municipality, ‘Pancharevo’ district, instructed the applicant in writing to produce, within seven days, evidence of the child’s parentage with respect to her biological mother.
- 5 Referring to the instructions received, the applicant replied on 18 February 2020 that she could not provide such information and that she was not required to do so under the laws in force in the Republic of Bulgaria.
- 6 By letter dated 5 March 2020 and sent to the applicant on the same day, Sofia municipality, ‘Pancharevo’ district, refused to issue a Bulgarian birth certificate for the child S.D.K.A.
- 7 On 3 April 2020, the authorised representative of V.M.A. brought legal proceedings before the Administrativen sad – Sofia grad (Administrative Court of the City of Sofia) against the refusal by Sofia municipality, ‘Pancharevo’ district, expressed in the letter of 5 March 2020, to issue a Bulgarian birth certificate for the child S.D.K.A. in accordance with the Spanish birth certificate issued.

Main arguments of the parties in the main proceedings

- 8 According to the letter sent to the applicant on 5 March 2020 by Sofia municipality, ‘Pancharevo’ district, refusing to issue a Bulgarian birth certificate

for the child S.D.K.A., the grounds for that refusal are the lack of sufficient information regarding the child's parentage with respect to her biological mother. It was further pointed out that the registration of two female parents on a child's birth certificate was inadmissible, as same-sex marriages were currently not permitted in the Republic of Bulgaria and such a registration was contrary to public policy.

- 9 In her application to the Administrativen sad Sofia grad (Administrative Court of the City of Sofia) the applicant submits that the refusal to issue a Bulgarian birth certificate to the child S.D.K.A. infringes both substantive and procedural law and also infringes Directive 2004/38 and is contrary to the case-law of both the CJEU and the ECtHR. According to the applicant, not a single substantive legal act of the Republic of Bulgaria creates an obligation on the administrative authority to determine the parentage of the child before issuing her with a Bulgarian birth certificate. In addition, the applicant refers to the case-law of the CJEU, according to which the host State may not impose additional conditions for respecting the existence of a marriage and the rights of family members deriving from it (judgments of 25 July 2008, *Metock and Others*, C-127/08, EU:C:2008:449; of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, and of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385).
- 10 The applicant disputes that grounds of public policy can be relied on by Sofia municipality, 'Pancharevo' district, and refers to the provisions of the Bulgarian Kodeks na mezhdunarodnoto chastno pravo (Code of Private International Law) and the relevant case-law of the CJEU (judgments of 20 November 2001, *Jany and Others*, C-268/99, EU:C:2001:616, and of 4 December 1974, *Van Duyn*, 41/74, EU:C:1974:133).
- 11 The applicant also claims that the fact that Sofia municipality, 'Pancharevo' district, requires evidence of the child's biological parentage, on the absence of which the refusal to issue a Bulgarian birth certificate for the child S.D.K.A. is based, constitutes an unlawful interference with V.M.A.'s right to private life and with V.M.A. and K.D.K.'s right to family life and that those infringements were committed in a context of direct discrimination.

Summary of the grounds for referral

- 12 In support of the admissibility of its request for a preliminary ruling, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) sets out the following reasons: the factual and legal situation of the case unquestionably falls within the scope of EU law. The referring court refers to the case-law of the CJEU according to which the substantive aspects of the law on civil status fall within the competence of the Member States and that EU law does not detract from that competence but that, in exercising those powers, the Member States must comply with EU law and, in particular, with the Treaty provisions on the freedom of every citizen of the Union to move and reside freely within the

territory of the Member States. The Member States must therefore respect EU law in the exercise of that competence unless the case involves an internal situation which has no link with EU law (judgments of 2 October 2003, *Garcia Avello*, C-148/02, EU:C:2003:539; of 14 October 2008, *Grunkin and Paul*, C-353/06, EU:C:2008:559; of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385). Furthermore, the national court states that the CJEU has ruled that there is a link with EU law in the case of children who are nationals of one Member State and are also lawfully resident in the territory of another Member State (judgment of 2 October 2003, *Garcia Avello*, C-148/02, EU:C:2003:539, paragraph 27).

- 13 The child S.D.K.A. was born and resides in Barcelona, Kingdom of Spain; V.M.A., a Bulgarian national, and K.D.K, a United Kingdom national, were registered on the Spanish birth certificate as her mothers. At the same time, the applicant in the main proceedings is a Bulgarian national who exercised her right to freedom of movement and who married K.D.K. in Gibraltar, in the United Kingdom, and settled in Barcelona, Kingdom of Spain, where her daughter, S.D.K.A, was born.
- 14 In those circumstances, the applicant is justified in relying on the right to move and reside freely within the territory of the Member States, enshrined in Article 21 TFEU, in the context of her application for the certification of her daughter's birth in the Republic of Bulgaria by being issued with a Bulgarian birth certificate containing the same information as the child's Spanish birth certificate.
- 15 Moreover, the refusal to issue a Bulgarian birth certificate intended to be used to apply for a Bulgarian identity document would deprive the child of the possibility of making full use of her rights as an EU citizen. This is because the issue of Bulgarian identity documents requires a Bulgarian birth certificate. This issue is all the more important because the other parent of the child is a UK citizen. Therefore, any acquisition of UK nationality by the child would not allow the child to gain valid EU citizenship given the legal consequences of Brexit.
- 16 Finally, there is CJEU case-law in favour of the admissibility of questions on the interpretation of EU law by the CJEU. At the same time, the referring court cannot find a judgment ruling on issues identical to those in the present case which might help it to resolve the dispute before it.
- 17 The Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) gives the following main reasons for its request for a preliminary ruling. It is considered to be an established fact that a traditional marriage constitutes a fixed element of Bulgarian constitutional identity in accordance with the current state of social development and values of Bulgarian society; a traditional marriage is understood to mean as a voluntary union between a man and a woman, as expressly stipulated in the Bulgarian Constitution of 1991 (Article 46(1) of this Constitution). That legal rule is mandatory and does not provide for any exceptions. It can be found in Chapter II ('Fundamental rights and fundamental duties of citizens') of the Constitution. The current law of the Republic of

Bulgaria does not allow a marriage or any other form of partnership giving rise to any legal consequences to be entered into between persons of the same sex.

- 18 This concept of the traditional family, which is visibly enshrined in the Constitution, is also reflected in the Family Code, which explicitly states that from the parentage of the 'mother' is determined by the birth and that the 'mother' of the child is 'the woman' who gave birth to the child, even in the case of artificial reproduction (Article 60 of the Family Code [SK]). Article 61 SK also determines the parentage of the 'father'. In both cases the legislature uses the singular, which clearly indicates that the child's parentage is based on one mother and/or one father. The Bulgarian legislature does not provide for any case in which the parentage of a child is based on two mothers or two fathers. In addition, the Bulgarian Family Code defines the term 'mother' as 'the woman' who gave birth to the child, even in the case of artificial reproduction. Therefore, and obviously with the exception of particular legally recognised procedures such as adoption, a woman who has not given birth to the child is not considered a 'mother' of the child within the meaning of Article 60 SK. Given that Articles 60 and 61 SK are of key significance in Bulgarian family law and inheritance law, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) considers that those provisions also reflect the national identity and constitutional identity of the Republic of Bulgaria within the meaning of Article 4(2) TEU.
- 19 These rules are also reflected in the relevant provisions of the Law on the Registration of Citizens. According to Article 72(3)(1), the registrar is to draw up the Bulgarian birth certificate by entering the following details: the name of the person to be registered, the date and place of birth, the sex and 'the established parentage'. The term 'parentage' refers to 'parentage' as defined in Articles 60 and 61 SK. Under Article 12(1) of Regulation No RD-02-20-9 of 21 May 2012 on the Operation of the Uniform System for the Registration of Citizens, when registering a the birth of a person who was born abroad, data relating to the registered person's name, the date and place of birth, the sex and the 'established parentage' are entered on the birth certificate as set out in the copy that was produced or in the Bulgarian translation of the foreign document.
- 20 At the same time, however, according to the pre-defined model civil status certificates stipulated by the Order of the Minister for Regional Development and Public Works and the Minister for Justice Order of 15 December 2011, the birth certificate is to contains details about the parents of the child that are divided into two columns, namely 'mother' and 'father'. Aside from the legal arguments put forward by Sofia municipality, 'Pancharevo' district, which it set out in its letter rejecting the application, the latter was therefore not technically able to issue a birth certificate since, unlike the Spanish birth certificate, the model certificate does not provide for the registration of two mothers.
- 21 In those circumstances, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) is uncertain, first, as to whether the refusal to register the birth of a Bulgarian national abroad, whose birth certificate issued by another

Member State lists two mothers, infringes her rights under Articles 20 and 21 TFEU and Articles 7, 24 and 45 of the Charter. The refusal to issue a Bulgarian birth certificate could make it difficult for the child to exercise her right to free movement since the issue of Bulgarian identity documents requires a Bulgarian birth certificate. In the present case, the legal consequences of Brexit could also have an impact on the court's assessment since the other mother listed on the Spanish birth certificate can no longer be regarded as an EU citizen but as a third-country national. Thus, even if the refusal to issue a Bulgarian birth certificate has no legal effect on the child's Bulgarian nationality, the refusal is liable to give rise to serious administrative obstacles to the issue of Bulgarian identity documents and, thus, impede the free movement of the child within the EU and the full exercise of her rights as an EU citizen.

- 22 On the other hand, the *Administrativen sad Sofia-grad* (Administrative Court of the City of Sofia) is uncertain, however, as to whether reasons relating to the protection of public policy or national identity within the meaning of Article 4(2) TEU may justify such a restriction of the right to freedom of movement guaranteed by Article 21 TFEU and to what extent such a restriction requires an assessment of the proportionality of the infringement of the right to freedom of movement. According to the *Administrativen sad Sofia-grad* (Administrative Court of the City of Sofia), given the current state of development of social conditions in the Republic of Bulgaria, the legal rules that determine a child's parentage are of fundamental importance in Bulgarian constitutional tradition and in Bulgarian family and inheritance law, both from a legal perspective and with respect to values. Since, according to Article 4(2) TEU, the EU respects the national identity of the Member States, inherent in their fundamental structures, political and constitutional (judgment of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 73), the *Administrativen sad Sofia-grad* (Administrative Court of the City of Sofia) is uncertain as to whether an obligation imposed on the Bulgarian administrative authorities, when certifying a birth that has taken place abroad, to register two mothers on the Bulgarian birth certificate as the parents of the child, will not negatively affect the national identity of the Bulgarian State, which has not provided for the possibility of registering two parents of the same sex on the birth certificate.
- 23 In the opinion of the *Administrativen sad Sofia-grad* (Administrative Court of the City of Sofia) only the legislature is in a position to exercise its sovereignty and decide whether a child's parentage can be determined not only from one mother but from two mothers and/or fathers. As far as the *Administrativen sad Sofia-grad* (Administrative Court of the City of Sofia) is aware, EU is silent on this issue. In particular, Article 9 of the Charter expressly provides that the right to start a family is guaranteed according to national laws that actually reflect respect for national identity and the constitutional identity recognised in Article 4(2) TEU.
- 24 In that context, and having regard to the child's best interests, the *Administrativen sad Sofia-grad* (Administrative Court of the City of Sofia) takes account of the fact that it is necessary to find a solution at the level of the interests of the child,

who is not responsible for differences between EU Member States in the scale of values in social conditions. In the light of the foregoing, the Administrative Court of Sofia is uncertain as to whether Article 24(2) of the Charter obliges a Member State not to apply the fundamental rules of its national law.

- 25 The Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) therefore considers it essential to weigh up the various legitimate interests involved in the present case with a view to striking a balance: on the one hand, the constitutional identity and the national identity of the Republic of Bulgaria and, on the other, the interests of the child and, in particular, her right to private life and free movement. It is also necessary to examine whether such balance could be achieved by applying the principle of proportionality. In particular, the Administrativen sad Sofia-grad (Sofia City Administrative Court) is having difficulties in assessing whether the registration of one of the two mothers listed on the Spanish birth certificate in the 'mother' column, and who is either the child's biological mother or became a mother by way of another procedure (e.g. adoption), while the 'father' column remains empty (blank), would constitute a reasonable balance between the legitimate interests of Bulgarian society as a whole, on the one hand, and those of the child, on the other. It is clear that such a solution would create certain obstacles due to possible differences between the Spanish and Bulgarian birth certificates, but would at least allow the issuing of a Bulgarian birth certificate, thus avoiding or at least reducing any obstacles to the free movement of the child. However, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) is also doubtful whether such a solution would be consistent with the right to respect for private and family life enshrined in Article 7 of the Charter.
- 26 In the opinion of the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) the relevant case-law of the Court does not provide an answer to the questions referred for a preliminary ruling. In particular, contrary to the judgment of 5 June 2018, *Coman and Others* (C-673/16, EU:C:2018:385), the issue before the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) does not concern having a marriage concluded between same-sex persons in another Member State recognised, with a view to granting a derived right of residence for a third-country national, but relates to two persons of the same sex being recognised as mothers of a child of Bulgarian nationality born in another Member State by having their names included on the child's Bulgarian birth certificate. Unlike in *Coman*, this question is linked to the method of establishing the parentage of a Bulgarian national.
- 27 The circumstances of the dispute in the main proceedings can also be distinguished from those which gave rise to the judgment of 14 October 2008, *Grunkin and Paul* (C-353/06, EU:C:2008:559). The present case is not concerned with how the surname of the child is determined, but with how the child's parentage is established. According to the Administrativen sad Sofia-grad (Verwaltungsgericht der Stadt Sofia), the latter question is different in nature and has far greater consequences at the level of family and inheritance law.

Furthermore, in *Grunkin and Paul*, the question of compliance with Article 4(2) TEU did not arise.

- 28 The Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) also examined the relevant case-law of the ECtHR, in particular its judgment of 26 June 2014 in *Menesson v France* (Application no 65192/11). The national court adds that the case-law of the ECtHR cited above in the first advisory opinion delivered in response to a request of the French Cour de Cassation (Court of Cassation) (Request no P16-2018-001) was further developed in the context of a review of the same case following the first judgment of the ECtHR in *Menesson*.
- 29 According to the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia), it is clear from this case-law of the ECtHR that the condition applied by the ECtHR is whether at least one of the parents entered on the birth certificate issued abroad is the child's biological parent. In the present case, however, the applicant has refused to provide the defendant with details about the child's biological mother, which clearly distinguishes the present case from the case before the ECtHR. Furthermore, there is nothing on the file to suggest whether this is a case of surrogacy. In any event, the above-mentioned judgment of the ECtHR is not directly applicable to the present case since the applicant refuses to provide information about the child's biological parentage. In this case, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) questions whether the discretion which the European Convention on Human Rights confers on States should be interpreted more broadly than in the above-mentioned case. Similarly, the judgment referred to above expressly recognises that States may refuse to register birth certificates issued abroad in civil status registers where other means of recognition of parentage, such as adoption, are available. The latter consideration coincides to a certain extent with the above-mentioned imperative to strike a balance between the best interests of the child and the national identity and constitutional identity of the State within the meaning of Article 4(2) TEU. What is more, in this context, according to Article 110(2) SK, the adoption of a child of Bulgarian nationality who is habitually resident in another State is subject to the law of that State. In other words, the effectiveness and speed of the alternative remedy relied on by the ECtHR must be assessed in the light of Spanish law.
- 30 Another important factor, noted by the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia), is the lack of binding force of advisory opinions of the ECtHR, which are based on Protocol 16 to the European Convention on Human Rights (Article 5) and which, incidentally, has not been ratified by the Republic of Bulgaria. Unlike those advisory opinions, the judgments delivered by the CJEU under Article 267 TFEU are binding on the Bulgarian courts, which is an additional reason for the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) to make the present request for a preliminary ruling.

- 31 Last but not least, if the CJEU concludes that EU law requires Member States to enter the birth certificate in the civil status register as it was drawn up in another Member State, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) would like to know how this can be implemented in practice. In particular, the model birth certificate which binds the administrative authorities, as mentioned above, provides for two columns: the 'mother' column and the 'father' column. More specifically, how can EU law and, in particular, the principle of effectiveness, be taken into account in these circumstances, where the model certificate is applicable, given that, in the present case, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) does not have jurisdiction to review the legality of the order that established that model certificate.
- 32 The established model birth certificate is applicable law, and in the present case the court is not concerned with the question whether the Order of the Minister for Regional Development and Public Works, and the Minister for Justice Order of 15 December 2011, and Regulation No RD-02-20-9 of the Minister for Regional Development and Public Works of 21 May 2012 on the Operation of the Uniform System for the Registration of Citizens are lawful in view of higher-ranking provisions of Bulgarian or European law. Nor does the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) have jurisdiction, in the pending proceedings, to rule of its own motion on the validity of those legal instruments. Therefore, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) cannot replace this approved model certificate with another for the purposes of the case, nor could the registrar replace that model with another. Should the CJEU conclude that EU law requires the registration of two mothers of the child on the birth certificate, how is such a ruling to be applied?
- 33 In addition, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) points out that the question of the new-born child's right to citizenship does not arise in the present case. The child acquires Bulgarian nationality by virtue of Article 25(1) of the Constitution of the Republic of Bulgaria ('A person is a Bulgarian national if at least one of their parents is a Bulgarian national or if they were born in the territory of the Republic of Bulgaria and provided that they do not acquire any other nationality by parentage. Bulgarian nationality may also be acquired by naturalisation') and under Article 8 of the Zakon za balgarskoto grazhdanstvo (Law on Bulgarian Nationality) ('A person is a Bulgarian national by parentage if at least one of their parents is a Bulgarian national'). The failure to issue a Bulgarian birth certificate does not constitute a refusal of Bulgarian nationality. The minor is a Bulgarian national by operation of law notwithstanding the fact that she is currently not being issued with a Bulgarian birth certificate. The failure to issue such a birth certificate, however, will certainly impede the exercise of her rights as a Bulgarian national or EU citizen in practice simply because no identity document can be issued to her.
- 34 Finally, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) has requested that the reference for a preliminary ruling be dealt with under

the expedited procedure provided for by Article 105 of the Rules of Procedure of the Court of Justice.

- 35 According to the *Administrativen sad Sofia-grad* (Administrative Court of the City of Sofia), the nature of the case requires that it be examined quickly, since the person concerned is 10-month-old minor, S.D.K.A., of Bulgarian nationality, born in the Kingdom of Spain and whose parents, according to the birth certificate issued by the Spanish authorities, are a Bulgarian national and a United Kingdom national. The case pending before the *Administrativen sad Sofia-grad* (Administrative Court of the City of Sofia) concerns the refusal of the Bulgarian municipal authorities to issue the child with a birth certificate in the Republic of Bulgaria on the grounds mentioned in the reference for a preliminary ruling. That refusal impedes the issue of a valid Bulgarian identity document. Since the child is living in a Member State of which she is not a national, the contested refusal will thus make it considerably more difficult for the child to reside and move freely within the European Union (and elsewhere) and to exercise effectively her rights as an EU citizen. The *Administrativen sad Sofia-grad* (Administrative Court of the City of Sofia) points out that, in a similar case the Court of Justice previously decided to apply the expedited procedure (see order of the President of the Court of 3 July 2015, *Gogova*, C-215/15, not published, EU:C:2015:466).
- 36 There is also a second reason for examining the case under the expedited procedure. The other parent of the child to whom the birth certificate issued by the Spanish authorities relates is a national of the United Kingdom. In view of the legal consequences of Brexit, even if the child had in the meantime obtained a birth certificate issued by the United Kingdom authorities and, where appropriate, British nationality, the child would not be guaranteed the full and effective exercise of her rights as an EU citizen. Therefore, the clarification of the child's legal status cannot be delayed given the consequences of Brexit.