



Poland - Provincial Administrative Court in Kraków, case III SA / Kr 1400/15

The Head of the Registry Office in Krakow denied transcription of the foreign birth certificate listing two women as mothers on the basis that transcription of such birth certificate would be contrary to the fundamental principles of the legal order of the Republic of Poland. The applicant (one of the mothers) appealed against such decision to the Małopolski Voivode, but the Maopolski Voivide upheld the decision of the Head of the Registry Office in Krakow. Subsequently, the applicant appealed against the Małopolski Voivode`s decision to the Provincial Administrative Court in Kraków. The Provincial Administrative Court in Kraków agreed with the argumentation presented by the lower-instance authorities and dismissed the applicant`s appeal.

Case name (in original language) : Wyrok Wojewódzkiego Sądu Administracyjnego w Krakowie z dnia 10 maja 2016 r., III SA/Kr 1400/15

Case status: Appealed

Case number: III SA / Kr 1400/15

Citation: Judgment of the Provincial Administrative Court in Kraków of 10 May 2016, III SA/Kr 1400/15

Date of decision: 10/05/2016

State: Poland

Court / UN Treaty Body: Provincial Administrative Court in Kraków

Language(s) the decision is available in: Polish

Applicant's country of residence: United Kingdom

Legal instruments: Convention on the Rights of the Child (CRC), European Union law

Key aspects: Birth registration, Childhood statelessness, LGBTIQ+ families

Relevant Legislative Provisions:

Convention on the Rights of the Child

Charter of Fundamental Rights of the European Union

European Convention on Human Rights and Freedoms

Constitution of the Republic of Poland (national)

Family and Guardianship Code (national)

Law on Civil Status Records (national)

Facts

A.Z. was born in 2014 in London, United Kingdom. A.Z.'s birth certificate listed I.Z. as mother and a second woman - A.B. as the other parent.

In 2015, the Head of the Registry Office in Krakow refused to transcribe A.Z.'s birth certificate listing two women as mothers into the Polish Civil Register on the grounds that it would be contrary to the fundamental principles of the legal order of the Republic of Poland. I.Z. (hereafter, the applicant) appealed against this decision to the Voivode.

The Voivode upheld the decision issued by the Head by the Registry Office in Kraków. The applicant appealed against the Voivode`s decision to the Provincial Administrative Court in Kraków.

Legal arguments by the applicant

The applicant argued that the Voivode`s decision needs to be repealed as it contradicts the following regulations:

- Article 18 of the Constitution of the Republic of Poland in connection with Article 8 of the European Convention on Human Rights and Fundamental Freedoms, by not taking into account that Article 18 of the Constitution distinguishes between "marriage" and "family", and, consequently, by refusing to protect the constitutional value in the form of applicant's family life, which is subject to such protection independently of the status of the relationship (marriage) in which the person remains;
- Article 47 of the Constitution of the Republic of Poland to the extent that it establishes the right to protect private and family life and to decide about one's personal life;

- Article 48 section 1 of the Constitution of the Republic of Poland to the extent the right of parents to raise children in accordance with their own beliefs is established, by which the applicant understands the freedom to create the content of documents relating to the child, as long as they are consistent with the actual state of affairs;
- Article 72 section 1, first sentence of the Constitution of the Republic of Poland, according to which the Republic of Poland ensures the protection of children's rights, and the state authority - the Voivode - by refusing to transfer the foreign birth certificate of a minor A. Z. to the civil register by transcription deprives the minor of the possibility of obtaining a Polish identity card;
- Article 104 section 2 of the Law on Civil Status Records, by refusing to comply with this provision;
- Article 107 section 3 of the Law on Civil Status Records, by assuming unfoundedly and violating administrative discretion that the transcription of a foreign civil status document would be contrary to the fundamental principles of the legal order of the Republic of Poland;
- prohibition of discrimination, respect for the right to privacy and European law binding on the Republic of Poland, including Article 6 of the Treaty and the rights contained in the Treaty on the Functioning of the EU (Article 20(2) (a), 21(1) - the right of citizens of the European Union to move and reside freely within the territory of a Member State) and the Charter of Fundamental Rights of the EU, including Article 7 (right to respect for private and family life), Article 9 of the Charter (right to found a family), Article 21 of the Charter (non-discrimination), Article 24 section 2 of the Charter (order to take into account the best interests of the child), Article 24 section 3 of the Charter (the right to maintain a permanent, personal relationship and direct contact with both parents);
- Article 8 of the European Convention on Human Rights and Freedoms to the extent that this article guarantees the right to respect for family and private life and the scope of this right also covers persons in civil partnerships.

Legal arguments by the opposing party

The Voivode did not agree with any of the legal arguments raised by the applicant.

According to the Voivode, due to the technical nature of registration, entries in civil status records do not create any rights or obligations, therefore none of the applicant`s rights have been violated by the decision to refuse the transcription.

The decision of the first-instance authority was based on the correctly cited and interpreted provisions of the Polish law, in particular the provisions of the Family and Guardianship Code, which do not provide for the possibility of recognizing a female person as the child's father - which would occur in the event of the transcription. Such action by the Head of the Registry Office, which would indicate not a man but a woman as the child's father, would be inconsistent with the legal order in force in Poland, and could also be considered as a public official's confirmation of untruth. The Head of the Registry Office correctly applied the provisions of generally applicable law, which cannot be deemed as a form of discrimination or inequality under the law.

Decision & Reasoning

The applicant`s appeal was dismissed.

According to the Court, the lower-instance authorities examining the application for transcription correctly assumed that the legal basis for the decision was the Law on Civil Status Records. The Court stated that the Head of the Registry Office, pursuant to Article 107 point of the Law on Civil Status Records, is obliged to assess whether the content of the Polish civil status act, which would be created as a result of transcription, will not violate the basic principles of the legal order in the Republic of Poland.

The Court noted the public policy clause ("*ordre public*") is of an exceptional nature and may be used in cases in which decisions of another State's authorities would be irreconcilable with values considered fundamental by the Polish legal system. The basic principles of the legal order should be understood as the fundamental principles of the socio-political system, i.e. rules of a constitutional nature. These principles also mean the main rules governing individual areas of law (civil, commercial, family, and also procedural).

In the light of the above, the Court held that the transcription of a foreign birth certificate in Polish civil status books, which, in addition to the child's mother, lists a woman as the second parent, as a result of which the child's parents are persons of the same sex, would constitute a violation of the basic principles of the Polish legal order. In the present case, when determining the basic principles of the legal order of the Republic of Poland, for the purposes of the public policy clause, it was necessary to take into account primarily the provisions contained in the Family and

Guardianship Code. The Family and Guardianship Code clearly defines issues related to the origin of a child - it states that the mother of a child is the woman who gave birth to it, while the provisions on paternity, regardless of the method of establishing it, always mention a man as the child's father. The Law on Civil Status Records is aligned with these regulations as it only provides for the possibility of entering a woman as the child's mother and a man as the child's father. Moreover, the terms "parenthood" and "parents" always refer to people of different sexes, i.e. women and men, which is also clearly indicated in Article 18 of the Constitution of the Republic of Poland, which defines marriage as a union between a man and a woman.

Furthermore, according to the Court, the administrative authorities have not breached the EU law cited by the applicant. The Court pointed out that none of these provisions requires the adoption in the national legal order of another country's regulations regarding same-sex relationships or regulations that include two people of the same sex as parents of a child. The Court rejected also the applicant's discrimination allegations on the basis that breach of Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, regarding the principle of equal treatment, occurs when there is a difference in the treatment of persons in comparable situations. Such a difference is discriminatory when it is not objectively and reasonably justified. It is emphasized that the Contracting States enjoy a certain margin of appreciation in determining whether and to what extent differences in otherwise analogous situations justify different treatment, including different treatment under law.

Finally, according to the Court the allegation that the refusal to perform transcription would prevent the child from effectively demonstrating and establishing before the Polish authorities and courts the element of his identity in the form of a relationship with one of his parents should be considered unjustified given that Polish law grants foreign official documents the same evidentiary value as Polish official documents, without introducing any additional requirements in this respect, in particular in the form of transcription of these documents. Therefore, regardless of whether the content of the child's British birth certificate would be "placed" in Polish civil status records or not, both the minor and his legal guardian have the opportunity to effectively refer to this document in legal transactions and use it as evidence.

Decision documents

[Judgment of the Provincial Administrative Court in Kraków of 10 May 2016, III SA/Kr 1400/15](#)

Outcome

The applicant`s appeal was dismissed in this case before the Provincial Administrative Court in Kraków.

The judgment was appealed to the Supreme Administrative Court. The judgement of the Supreme Administrative Court was rendered on 10 October 2018 (file no. II OSK 2552/16) and sided with the applicants.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

<https://thelegalculture.com/legal/article/view/63/114>

<https://ruj.uj.edu.pl/server/api/core/bitstreams/f761a65a-25ea-4969-9794-812cf6d9bb83/content>

<https://bibliotekanauki.pl/articles/558276>

<https://journals.indexcopernicus.com/api/file/viewByFileId/980071>

Note: all articles are in Polish; these articles mention case no. III SA / Kr 1400/15 amongst other cases concerning the Polish transcription of a foreign birth certificate of a child of same-sex parents

Third party interventions

The Polish Commissioner for Human Rights requested the repeal of the contested decision of the Voivode and the preceding decision of the first instance authority.

The Polish Commissioner for Human Rights pointed out that Article 104 section 5 of the Law on Civil Status Records introduces the obligation to transcribe the birth certificate of a person applying for a Polish identity document - a Polish passport document or a Polish identity card. An identity card and a passport are the only documents a Polish citizen is entitled to that certify his identity and Polish citizenship. A Polish citizen who does not have these documents (unless he is a citizen of another country) functions as a stateless person. According to the Polish Commissioner for Human Rights, the applicant rightly argues that the refusal to transcribe a child's birth certificate solely because of the legal status of its parents - i.e. being in a same-sex partnership registered abroad - is a manifestation of discrimination, prohibited by the Convention on the Rights of the Child.

According to the Commissioner, the refusal to transcribe the child's birth certificate leads to his statelessness, which is a gross violation of the rights guaranteed by the Convention on the Rights of the Child. The Polish Commissioner for Human Rights also pointed out that the refusal to transcribe the birth certificate, resulting in the inability to issue the child an identity document confirming Polish citizenship, leads to limitation of further rights under the Convention.