



Refusal of authorities to recognise a legal parent-child relationship established abroad failed to take account of Polish child's best interests; complaints of other applicants inadmissible or did not breach Convention

The cases of [A.P. and R.P. v. Poland](#) (application no. 1298/19) and [A.D.-K. and Others v. Poland](#) (application no. 30806/15) concerned the refusal by the Polish authorities to recognise a legal parent-child relationship established abroad.

In both cases, a same sex couple living in the United Kingdom in a civil partnership asked to have their child's birth certificate registered in Poland. The Polish authorities refused in both cases, referring to public policy grounds. In *A.P. and R.P.* the birth (and biological) mother and her partner were both Polish nationals; they spoke Polish at home and spent a significant amount of time in Poland. The Government confirmed that R.P. had acquired Polish citizenship at birth. In *A.D.-K. and Others* the birth (and biological) mother was a British national and her partner was Polish.

In today's **Chamber judgment**¹ in the case of *A.P. and R.P. v. Poland*, the European Court of Human Rights held that there had been no violation in respect of most of the complaints but a violation of the right to respect for private life and the prohibition on discrimination in respect of the child, as follows:

- by 5 votes to 2, that there had been **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights in respect of both the birth mother and the child's right to respect for family life;
- unanimously, that there had been **no violation of Article 8 (right to respect for private and family life)** in respect of the birth mother's right to respect for private life;
- by 5 votes to 2 that there had been a **violation of Article 8 (right to respect for private and family life)** in respect of the child's right to respect for private life;
- by 4 votes to 3, that there had been **no violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life)** in respect of both the birth mother and the child's right to respect for their family life;
- by 6 votes to 1, that there had been **no violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life)** in respect of the birth mother's right to respect for her private life; and
- by 4 votes to 3, that there had been a **violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life)** in respect of the child's right to respect for his private life.

In *A.D.-K. and Others v. Poland*, the Court declared the application inadmissible. The negative impact of the refusal to register the foreign birth certificate on the child's private life did not appear to have been serious enough to raise an issue under Article 8 and the family had not pointed to any particular obstacles or practical difficulties in enjoying family life.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants in application no. 30806/15 are A.D.-K., a Polish national who was born in 1976, S.D.-K., a British national who was born in 1976 and L. D.-K., a British national who was born in 2011. S.D.-K. is L.D.-K's birth (and biological) mother. A.D.-K. and S. D.-K. are two women in a registered civil partnership who live together with L. D.-K in Essex (the United Kingdom). L.D.-K.'s original birth certificate gives S.D.-K. as her mother and A.D.-K. as her parent.

The applicants in application no. 1298/19 are A.P. and R.P., Polish nationals who were born in 1978 and 2014 respectively. A.P. is R.P.'s birth (and biological) mother. A.P. is in a civil partnership with E.K., a woman, and also a Polish national. The three of them live together in Northampton (the United Kingdom). R.P.'s original birth certificate gives A.P. as his mother and E.K. as his parent.

Both couples applied to have the particulars of their child's birth certificate registered in Poland. A.D.-K. and S.D.-K. applied to the Łódź Civil Status Registry in August 2012 in respect of L.D.-K. and A.P. and R.P. applied to the Myszków Civil Status Registry in August 2015 in respect of R.P. Both applications were refused, in October 2012 and August 2015 respectively, and those refusals were subsequently upheld.

In refusing the applications, the directors of the Civil Status Registries in both cases referred to the principles of the Polish legal system, under which a child's mother was the woman who had given birth to that child and the child's father was a man – regardless of how his paternity was established. It was therefore not possible to transcribe and register a birth certificate that indicated two women as the child's parents.

The Supreme Administrative Court dismissed cassation appeals lodged by the applicants, in December 2014 in the case of L.D.-K. and in June 2018 in the case of R.P., finding, among other things, that a birth certificate giving two women as parents would have been in breach of the fundamental rules of the Polish legal order.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination), the applicants complain that they have been unable to register the foreign birth certificates in Poland and allege that they have suffered discriminatory treatment.

The applications were lodged with the European Court of Human Rights on 16 June 2015 and on 12 December 2018.

The judgment and the decision were given by a Chamber of seven judges, composed as follows:

Ivana Jelić (Montenegro), *President*,
Erik Wennerström (Sweden),
Frédéric Krenc (Belgium),
Davor Derenčinović (Croatia),
Alain Chablais (Liechtenstein),
Artūrs Kučš (Latvia),
Anna Adamska-Gallant (Poland),

and also Liv Tigerstedt, *Deputy Section Registrar*.

Decision of the Court

Article 8 – Admissibility in both cases

In both cases the Court referred to [S.-H. v Poland](#), 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. In that case, the Court had employed a consequence-based approach and found the application inadmissible as the applicants had not suffered any hardship or been left in a legal vacuum. The Court noted that the two cases before it did not relate to surrogacy. However, the facts in A.D.-K. and Others were similar to those in *S.-H. v. Poland*, the central issue being the recognition of a parent-child relationship by the national authorities where the applicants were resident in a foreign jurisdiction. To determine whether Article 8 was applicable, the Court considered the consequences of the refusal to register the child's birth certificate in Poland (the consequence-based approach), as it had in *S.-H.*

The Court held that it was not possible to conclude whether the child was entitled to Polish citizenship under the national law, as no application had been made to have her Polish citizenship confirmed. Despite the Polish authorities' refusal to register the foreign birth certificate, the child had not been deprived of a legal relationship with her parents. Since birth she and her family had been living as a family in the United Kingdom, where their parent-child relationship was recognised. The family had never taken up Polish residence on any permanent basis, and it did not appear that they had any plans to relocate there imminently. Any repercussions of the decisions on her day-to-day life and legal status remained theoretical.

It followed that the consequences of those decisions on the child's private life did not appear to be serious enough to raise an issue under Article 8. The decisions taken had had no consequences for the applicant parents' private life. As regards family life, it did not appear that there were any obstacles or practical difficulties enjoying family life together.

Article 8 was not therefore applicable in the A.D.-K. and Others case

On the other hand, the Court distinguished the A.P. and R.P. case from *S.-H. v. Poland* as it had not been disputed that the child R.P. had acquired Polish citizenship at birth. It was therefore established that he had been entitled to be provided with personal documents from the Polish authorities.

As regards the reasons (the reason-based approach) for the measure in question, the Court began by applying this approach and attached weight to the fact that the national authorities' refusal had been expressly grounded in considerations tied to the sexual orientation of the child's parents. In particular, the authorities had 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. In addition to the reasons for the measure, the Court went on to consider the consequences for the applicants' private life. The refusal to register the child's birth certificate had prevented him from obtaining Polish identity documents, a Polish passport or a personal identification number. The refusal of the applicants' request was so intrinsically related to their private and family life so as to engage Article 8 both in relation to the reasons for the decision and the consequences that stemmed from it.

Article 8 was therefore applicable in the A.P. and R.P. case.

Article 8 – Merits in the A.P. and R.P. case

Having regard to the fact that the family lived in the United Kingdom and had no concrete plans to move to Poland, the Court found that the practical difficulties that they might face in their family life did not exceed the limits required by compliance with Article 8.

There had therefore, been no violation of Article 8 in respect of family life.

As regards the birth mother, A.P.'s, right to respect for private life, the Court found that decisions taken in the case had had no impact on her right to respect for private life.

There had therefore been no violation of Article 8 in respect of A.P.'s private life.

As regards the child, R.P.'s, right to respect for his private life, the Court noted at the outset that A.P. was his birth mother and their legal parent-child relationship had been registered in the United Kingdom. The child's British birth certificate indicated two women as his parents, A.P. and her same-sex partner. Therefore, even though A.P. was identified as his mother on his foreign birth certificate, that status had not been confirmed by the Polish authorities.

The decisions in the case had had an impact on R.P.'s personal identity. Both his parents were Polish nationals. R.P. felt Polish and the family spoke Polish at home as their first language. The family also spent a significant amount of time in Poland. Maintaining ties with Poland was important for R.P.'s social and cultural identity. The fact that he had not been able to register his foreign birth certificate and consequently had not obtained Polish identity documents placed him in a position of legal uncertainty.

The authorities' analysis of the child's best interests had been insufficient. They had concluded that it was simply not possible to enter a woman's forename in the field for "father". R.P. had acquired Polish citizenship at birth, through his Polish mother, yet the issuing of Polish identity documents was dependent on prior transcription of a foreign birth certificate. The impossibility of obtaining the registration of a foreign birth certificate which gave the name of his birth mother was incompatible with his best interests. The decision in question affected a fundamental aspect of his identity and civil status, thereby placing him in a situation of legal uncertainty. There had been no effective mechanism under Polish law for the recognition of the parent-child relationship despite A.P. being R.P.'s birth mother.

There had therefore been a violation of R.P.'s right to respect for his private life.

Article 14 taken in conjunction with Article 8

The Court accepted that a mother seeking to register in Poland her biological child's birth certificate indicating two women as parents was 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.

In the A.P. and R.P. case, in view of the reasons set out under Article 8, the Court found that there had been no breach of Article 14 taken in conjunction with Article 8 with regards to the mother and no violation of Article 14 taken in conjunction with Article 8 with regard to the child's right to respect for his family life.

Concerning discrimination in respect of R.P.'s private life, no meaningful analysis of the child's best interests or the consequences of refusing to register his birth certificate in Poland had been carried out. In refusing to register his birth certificate in Poland, the authorities had made a distinction based solely or decisively on considerations relating to the circumstances of his birth in a same-sex family and to his parents' sexual orientation – a distinction that was not acceptable under the Convention.

There had therefore been a breach of Article 14 taken in conjunction with Article 8 with regard to the child in the A.P. and R.P. case.

The complaints in the A.D.-K. and Others case did not fall within the ambit of Article 8 and therefore Article 14 was inapplicable.

Application no. 30806/15 was therefore inadmissible.

Just satisfaction (Article 41)

The Court held that Poland was to pay R.P. 5,000 euros in respect of non-pecuniary damage.

