



Poland - Provincial Administrative Court in Kraków, case III SA / Kr 233/19

The public prosecutor appealed to the Provincial Administrative Court in Kraków (“Court”) against the transcription of A.Z.’s birth certificate by the Head of the Registry Office in Krakow into the Polish Civil Register, claiming that it is contrary to the fundamental principles of the legal order of the Republic of Poland because A.Z.’s birth certificate listed two women as parents. The appeal was dismissed.

The Court stated that due to the large number of states that have ratified the Convention on the Rights of the Child and because many states include similar provisions in their national legislation, legal experts argue that the right of a child to nationality is part of international customary law, therefore everyone should acquire a nationality at birth.

Case name (in original language) : Wyrok Wojewódzkiego Sądu Administracyjnego w Krakowie z dnia 4 czerwca 2019 r., III SA/Kr 233/19

Case status: Appealed

Case number: III SA / Kr 233/19

Citation: Judgment of the Provincial Administrative Court in Kraków of 4 June 2019, III SA / Kr 233/19

Date of decision: 04/06/2019

State: Poland

Court / UN Treaty Body: Provincial Administrative Court in Kraków

Language(s) the decision is available in: Polish

Applicant's country of birth: Poland

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:

Art. 3(1), Art. 7(1) and Art. 8(1) of the Convention on the Rights of the Child

Charter of Fundamental Rights of the European Union

The Constitution of the Republic of Poland ("Constitution of Poland") (national)

The Law on Civil Status Records (national)

Facts

A.Z. was born in May 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 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. appealed against this decision. After the appeal was dismissed by a lower instance court, the case was brought before the Supreme Administrative Court, which ruled in its judgment of 10 October 2018 (ref. no. II OSK 2552/16) that the decision constitutes a violation of children's rights as protected by the Constitution of Poland and the Convention on the Rights of the Child.

On the basis of the Supreme Administrative Court's judgment, the Head of the Registry Office in Krakow transcribed A.Z.'s birth certificate into the Polish Civil Register.

The public prosecutor appealed to the Provincial Administrative Court in Krakow against the transcription of A.Z.'s birth certificate.

Legal arguments by the applicant

I.Z. stated that the appeal is inadmissible since the transcription of the birth certificate is merely a technical activity and therefore cannot be subject to appeal under the Polish Administrative Code.

Legal arguments by the opposing party

The public prosecutor argued that the entry of a foreign birth certificate into the Polish Civil Register which lists same-sex parents is a violation of the fundamental principles of the Polish legal order.

The fundamental principles of the legal order should be understood as the fundamental principles of the socio-political system. According to the Supreme Court, the fundamental principles of the legal order also include the rules of social co-existence (decision of the Supreme Court, ref. no. II CR 248/78).

There are no judgments from the European Court of Human Rights or the European Court of Justice that require the application of another country's legal regulations regarding same-sex relationships and regulations regarding same-sex parents to the (Polish) national legal order.

Decision & Reasoning

The Prosecutor's appeal was dismissed.

The Court stated that under the Law on Civil Status Records, it is mandatory to transcribe the birth certificate of a Polish national in order to prevent situations in which his/her identity documents will not be issued, because this would lead to making it impossible to exercise the rights to which a Polish national is entitled - in this case, the exercise of rights by a minor (possession of Polish identity documents, access to the healthcare system, education, etc).

According to the Court, it is clear that a child who has not been entered in the Polish Civil Register, and therefore does not have a proven nationality, is only a potential and alleged national and, in fact, cannot exercise the rights enjoyed by a Polish national. Polish administrative authorities might not have any knowledge of the citizen concerned. Therefore, in this case, the obligation to transcribe a foreign certificate is part of the broad system of protecting the rights of the child established in the Constitution of Poland and the Convention on the Rights of the Child. The failure to enter the child in the Polish Civil Register is not only contrary to the interests of the minor, whose civil rights are limited, but also contrary to the interests of Poland.

The Court stated that under Art. 72 sec. 1 of the Constitution of Poland, the Republic of Poland ensures the protection of children's rights: "Thus, the best interests of the

child are recognised as an intrinsic constitutional value. "Child welfare" is a key concept, it is the essence all provisions on children's rights, which means that it should constitute a specific basis for the interpretation of international and national law. Thus, it should be the primary directive in the process of making and applying law, and the criterion of assessment in making decisions about the matters of the child and in resolving conflicts of interest between the child and other people, especially parents."

The Court noted that similar values are included in the Charter of Fundamental Rights of the European Union: "It is worth noting that Art. 24(2) of the Charter of Fundamental Rights of the European Union *expressis verbis* requires taking into account the "child's best interests", and that reference to "the child's welfare" as an intrinsic value is widely visible in the case law of the European Court of Human Rights."

The Court applied Art. 3(1), Art. 7(1) and Art. 8(1) of the Convention on the Rights of the Child, stating that: "It should also be mentioned that pursuant to Art. 3(1) of the Convention on the Rights of the Child, in all actions concerning children, whether taken 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. The provisions of the Convention on the Rights of the Child formulate postulates to be implemented by States Parties, including the overriding obligation to safeguard the rights of the child."

"According to Art. 7(1) of the Convention on the Rights of the Child, 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. A certain added value of this Convention is provided by Art. 8(1), according to which States Parties undertake to respect the right of the child to preserve his or her nationality."

"Due to the large number of states that have ratified this convention, and the fact that many states include similar provisions in their national legislation, there is a theory among legal experts that the right of the child - stateless person to nationality is part of international customary law. In other words, states agree that at birth everyone should acquire some form of nationality."

With regard to the violation of the fundamental principles of the legal order, the Court stated: "In the opinion of the Court adjudicating in the case at hand, failure to

enter the child in the Polish Civil Register and failure to transcribe the birth certificate would infringe the fundamental principles of the legal order and would lead to a situation in which a Polish national could not obtain documents proving his or her identity and thus would not be able to exercise his or her rights.”

Outcome

The judgment was appealed to the Supreme Administrative Court.

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

Article on the Polish Commissioner for Human Rights website:

<https://www.rpo.gov.pl/pl/content/sad-potwierdzil-wpis-do-akt-stanu-cyw...>

(in Polish).

Third party interventions

The Polish Commissioner for Human Rights requested the dismissal of the appeal, arguing that it would be contrary to the provisions of the law, including the provisions of the Constitution of Poland, the Convention on the Rights of the Child, the Law on Civil Status Records, and the Law on proceedings before administrative courts to refuse to transcribe such a certificate.

The Commissioner for Human Rights was also active in a previous case, leading to the Judgment of the Supreme Administrative Court of 10 October 2018 (ref. no. II OSK 2552/16). In this case, he stated that: “An identity card and a passport are the only documents that a Polish citizen is entitled to and that certify his/her identity and possession of Polish citizenship. A Polish citizen who does not have these documents (unless he is a citizen of another country) functions de facto as a stateless person, and he/she is also unable to take advantage of the freedom of movement of persons and cannot travel to third countries. In the opinion of the Commissioner, the applicant rightly points out that refusing to transcribe a child's birth certificate solely because of the legal status of his parents, i.e. being in a same-sex relationship registered abroad, constitutes discrimination, which is prohibited by the Convention on the Rights of the Child.”