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Prot. No. **Tirana ___/01/2022**

Subject: *Amicus Curia Opinion, on the request brought by the Administrative Court of First Instance of Tirana, for the lawsuit filed by the plaintiffs, Alba Ahmetaj, Edlira Mara, Hema Mara and Amea Mara*

To: **Judge Arbena Ahmetaj**
Administrative Court of First Instance of Tirana

Dear honorable presiding judge,

After familiarizing ourselves with the complaint filed by the citizens, Alba Ahmetaj, Edlira Mara, Hema Mara and Amea Mara, in the Administrative Court of First Instance, Tirana, with the object: ***"Amendment of the administrative act, return letter no. 2627/1 dated 15.04.2021 and the defendant's obligation to register the children Hema and Amea Mara, female twins, born on 18.01.2021 in Tirana, and to register as mothers the plaintiffs Alba Ahmetaj and Edlira Mara with equal maternity rights in the same family structure",*** where in the main claims presented in this complaint, we quote:

1. Plaintiffs Alba Ahmetaj and Edlira Mara have been related to each other in a de facto union for more than 10 years, of which they have been living together for more than 7 years. They had conceived of life and family together from the beginning, despite the absence of legislation recognizing the right to marriage, or same sex cohabitation.
2. During the actual cohabitation, the expansion of the family on their part was desired and realized with the birth of 2 twin children, girls, on 18.01.2021, from the pregnancy developed by the citizen Edlira Mara, through artificial insemination.
3. Although, the plaintiffs Alba Ahmetaj and Edlira Mara (Hema Mara and Amea Mara), have expressed their willingness to register the children born with artificial insemination by Edlira, simultaneously requesting that they be recognized and registered as "mother" , in the relevant registry of the civil status office, they have

been unable to complete this registration, as such a request was rejected with letter no. 2627/1 dated 15.04.2021, by the Civil Status Office, Administrative Unit no. .2, Tirana, on the grounds, among other things, *that children born to parents of the same gender cannot be registered as this is not expressly recognized by the law*.

- *The analysis of facts and evidence, as presented by the claimants:*

- According to the ***Convention on the Rights of the Child*** (Article 7 and Article 54), the child is registered as soon as he is born and from that time he has the right to have a name, the right to acquire a nationality and, as much as possible, the right to know his parents and to enjoy their care. This right, according to the plaintiffs, is denied to the minor plaintiffs Hema and Amea Mara, due to the lack of legal provisions for the recognition of families and same sex parents. This inability to register contradicts the Constitution and the principle of special protection that should be enjoyed by the state for children and young mothers.
- According to the ***European Convention on Human Rights***, everyone has the right to the respect of their private and family life (Article 8), while at the same time the Constitution (Article 53) sanctions that everyone has the right to marry and have a family. In these circumstances, the plaintiffs Alba Ahmetaj and Edlira Mara find themselves in a situation where none of the local laws provide legal security for the effective protection of their rights and respect for private and family life, and the right to have a family. They have "de facto" created their own family, given birth to children, but are not recognized as such by the law.
- ***Law no. 10129 dated 11.05.2009 "On civil status", as amended,*** in Article 8, provides that: *"Birth, gender, first and last name, relationships of paternity, motherhood and citizenship are recognized and can be removed, extinguished, changed or transferred to others only in the cases and in the manner expressly defined in this law, or in any other special law"*. However, this law does not provide for how the civil status components of the plaintiffs Hema and Amea, from two mothers, will be marked/recognized.
- Despite the definition given in Article 10, of Law no. 10129 dated 11.05.2009 "On civil status", as amended, and although the plaintiffs Alba Ahmetaj and Edlira Mara are faced with an already established fact, after having conceived their family, the law does not recognize this legal fact, i.e., the birth of plaintiffs Hema and Amea, from two mothers.
- Although the European Convention on Human Rights (Article 12), as well as the ***Family Code of the Republic of Albania*** (Article 7 and Article 163), connect the concept of marriage and cohabitation directly with the union between a man and of a woman, the ***European Court of Human Rights*** has oriented the case towards the principle of subsidiarity by suggesting an evolutionary interpretation of the Convention and by referring to the internal legislation of the countries of the Council of Europe, which have accepted in their internal legislation such unions.
- Although the plaintiffs' request is not related to their right to marry, the plaintiffs Alba Ahmetaj and Edlira Mara have created their "de facto" family and have given birth to their children, Hema and Amea.
- On this basis, the amendment of the administrative act is sought, namely letter no. 2627/1 dated 15.04.2021, by the Office of Civil Status, Administrative Unit no. 2, Tirana, and the obligation of this office to register the children Hema and Amea Mara, twins, born on 18.01.2021 and to register as mothers the plaintiffs Alba Ahmetaj and Edlira Mema, with maternity rights, in the same family composition.

- Similarly, since the legislation in force, of the Republic of Albania, which regulates the registration of maternity does not regulate the creation of maternity relationships due to the joint will of the biological mother with her cohabitant, the court is requested to evaluate the examination of the case in the light of Article 145 of the Constitution, suspending the trial and sending the case to the **Constitutional Court**.

- **Referring to the current legislation, the findings made on the basis of the claim-lawsuit, facts and evidence presented in the trial:**

- ***The Constitution of the Republic of Albania***, in articles 53 and 54, stipulates that:

Article 53
1. Everyone has the right to marry and have a family.
2. Marriage and the family enjoy the special protection of the state.
3. Marriage and dissolution of marriage are regulated by law.

Article 54
1. Children, young people, pregnant women, and new mothers have the right to special protection from the state.
2. Children born out of wedlock have the same rights as those born from marriage.
3. Every child has the right to be protected from violence, ill-treatment, exploitation and use for work, especially below the minimum age for child labour, which may harm health, morals or endanger his life or normal development.

In these articles, the Constitution recognizes and affirms the special protection for the institution of marriage (its beginning and end in case of dissolution regulated by law) and at the same time for the right that everyone has to marry. Likewise, the Constitution recognizes and affirms the family as an important social formation for society, reiterating the fact that the family also enjoys the special protection of the state.
In the following, the Constitution expresses the guarantee of a special protection for children and young mothers, recognizing and equating the rights of children born out of wedlock with the rights of children born out of marriage. Clearly, the Constitution does not directly state the prohibition of same-sex marriages, despite the fact that everyone's first, general and natural understanding remains that marriage is the union between a man and a woman. Meanwhile, the Constitution refers to the connection and dissolution of marriage in the Family Code, where the prohibitive provisions are made).

- ***European Convention on Human Rights,***

in Articles 8 and 12, provides respectively that:

Article 8 - *The right to respect of private and family life*

1. Everyone has the right to respect for his private and family life, home and correspondence.
2. The public authority may not interfere with the exercise of this right, except to the extent provided by law and, when necessary, in a democratic society, in the interest of public safety, for the protection of public order, health or morals, or for the protection of rights and freedoms of others.

Article 12 - *The right to marry*
Man and woman, who have reached the age of marriage, have the right to marry and create a family, according to the national laws that regulate the exercise of this right.

- ***Convention on the rights of the child,***

Article 1
In this Convention, the word child means any person under the age of 18, except for cases where the age of majority is reached earlier, in accordance with the legislation to which he is subject.

Article 3
1. In all actions related to children, whether taken by public or private institutions of social welfare, by courts, administrative authorities or legislative bodies, the best interest of the child must be the primary consideration.
2. States Parties undertake to provide the child with the necessary protection and care for his well-being, considering the rights and duties of his parents, legal guardians, or other persons legally responsible for him and, for this purpose, they take all the relevant legislative and administrative measures.
3. States parties ensure that the institutions, services, and centers responsible for the care and protection of children act in accordance with the norms set by the competent authorities, especially in the field of safety, health, the number, and skills of their personnel as well as proper oversight.

Article 5
States Parties shall respect the responsibilities, rights, and duties of parents or, as the case may be, members of the extended family or community, as provided by the custom of the country, guardians or other persons legally responsible for the child, to ensure that, in accordance with the development of his abilities, direction and proper leadership for the exercise of the rights recognized in this Convention be provided.

Article 7
1. The child is registered as soon as he is born and from then on, he has the right to have a name, the right to acquire a citizenship and, when at all possible, the right to know his parents and to enjoy their care.
2. Member States ensure the implementation of these rights in accordance with their national legislation and with the obligations from the relevant international instruments in this field, especially in cases where, in their absence, the child would remain stateless.

Article 8

1. Member States undertake to respect the right of the child to maintain his identity, including nationality, name, and family ties recognized by law without any unlawful interference.
2. If a child is unlawfully deprived of some or all the elements of his identity, member States shall provide him with appropriate assistance and protection, with a view to the speedy restoration of his identity.

Article 21
Adoption must be done in the best interests of the children.

- ***Family Law and the Family Code of the Republic of Albania***

*According to the Universal Declaration of Human Rights (Article 16/3): "**The family** is the basic and natural unit of society." According to this international treaty, in article 16/1, it is determined that: "**Man and woman**, at a certain age, regardless of race, nationality, or religion, **have the right to marry and create a family**". Therefore, the family is the basic unit of the society, the origin of which is not related to the existence of the state. It is the basic natural unit.*

Even the new modalities of conceptions on family life, not being limited to the family that is created by marriage, show the importance of this basic social unit. In its practical sense, but also in its theoretical sense, the family appears to us in its narrow sense as well as in its broad sense. There is currently no definitive legal definition of the family. This is understandable in the process of rapid transformation that society undergoes from time to time.

For these reasons, even the Family Code of the Republic of Albania does not have a final definition for the family. What is inevitable in its meaning, is that the family is the group of persons connected to each other in a special relationship. ***The legal family is created on the basis of marriage.***

From the nature of the connection of these persons, we distinguish:
The family in the narrow sense, which originates from marriage as a legal bond between individuals who are qualified as "spouses", and blood (parents and children). Therefore, this is the family composed of spouses and their children.
The family in the broadest sense also includes, apart from members of the immediate family, persons who are related in a natural or legal way to their spouses, with the condition that marriage cannot be concluded within this grouping.
Natural family or de facto family, in which there are blood ties between parents and children, but this family was not created as a result of the parents' marriage.

The family is a unity of persons where the natural and legal ties are mixed with special feelings and affections which do not exist "a priori", but appear in the rights and obligations that these components exercise due to morality or the law, in relation to each other. The family is a social and legal unit. The concept of family is closely related to that of society, so the state also takes measures to create the necessary legal, social and economic basis for the family to be able to fully perform its functions (establishing emotional and social ties between spouses and of all family members; economic function;

reproductive sexual relations function between spouses in the given society; socialization and education of children and parents; protective functions of basic care; exchange of goods and services).

*As far as **family relations** are concerned, it should be specified that the Family Code of the Republic of Albania, in the content of its provisions, understands family relations as relations created by marriage, adoption, guardianship and in-laws.*

*When we talk about **family membership** it is difficult to talk about a stable family membership. As stated above, according to the definitions given by the Family Code of the Republic of Albania, the legal family is created on the basis of marriage, while this code also recognizes cohabitation without marriage as a source of family life. As it was mentioned above, the family is a set of persons related to each other based on natural or legal considerations. Taking into account the fact that it is the law that determines, according to special situations, who will be family members (e.g. the Law "For foreigners", the law "On the prevention of conflict of interests in the exercise of public functions", Labor Code, etc.), with members of the family according to the family law of the Republic of Albania, will be understood the whole circle of persons with such gender or legal relationship, which is considered as prohibited for marriage (family in the broad sense – communi iure). As for the family in the narrow sense - proprio iure, the family consists of spouses and their born or adopted children.*

*The concept of family and **family life** has seen developments that go hand in hand with social and legal changes. (Article 8 of the European Convention on Human Rights does not contain a right to create a family life, while Article 12 guarantees the right to marry and have a family). This is happening while formal, legal marriage is losing its primary importance and when the institution of cohabitation of couples without marriage is developing. This shows that the family based on marriage is not the only alternative to enjoy family life. However, we talk about the joy of family life even in the case of the relationship between a mother and her child, regardless of her marital status.[3] Unmarried couples enjoy family life together with their children. Family life exists even in cases where there is a lack of blood ties.*
The meaning of family life includes: the relationship between children and grandparents, the relationship between mother and nephew and nephew or niece, the relationship between adoptive parents and adopted children.

The right to family life and ***the right to have a family.*** *According to Article 53 of the Constitution of the Republic of Albania, everyone has the right to have a family, especially children, who, in order to have a complete and harmonious development of their personality, have the right to grow up in a family environment, in an atmosphere of joy, love and understanding (Article 5 of the Family Code). In case the natural family is unable to provide a family life, the legal framework provides for the "foster family", as an alternative family, established by the courts in cases where the parents of the children are unable to exercise parental responsibility. The issue of family life is a very fragile one.*

The principle of the best interest of the child. *According to Article 1 of the Convention on the Rights of the Child, "...a child shall be understood as any human being under the age of 18, except in cases where the age of majority is reached earlier".[4]*

According to the Civil Code of the Republic of Albania, when a child is born alive, it enjoys legal capacity from the time of occupation, thus effectively guaranteeing legal protection under these conditions.
The Constitution of the Republic of Albania does not have a special provision regarding the principle of the best interest of the child, although in its article 54/1 it is provided that children, like marriage and family, enjoy special protection from the state.

In Article 2 of the Family Code, this primary consideration of the best interest of the child is primarily the duty of the parents, as well as of the competent bodies and courts, which in all their decisions and actions must have at the center of attention, precisely this interest.

The Family Code draws attention to the regulation of the various institutes provided for in it and, more specifically, it emphasizes the principle of the highest interest of the child in cases of marriage dissolution and the problems arising from it; in actions and decisions of a property nature; in cases of abandonment, adoption, guardianship, etc. In fact, the assessment of compliance with the principle of the child's best interest presents a challenge that requires the simultaneous analysis of many objective and subjective elements and factors that contribute to this interest and establishing a balance between them case by case.

The right (of the child) to grow up in a family environment. *According to Article 5 of the Family Code, every child, for a complete and harmonious personality development, has the right to grow up in a family environment, in an atmosphere of joy, love and understanding. "Family environment" means the subjective and objective elements that compose the family, understanding here the members of the family not in its strict sense but also in the sense of a foster family (adoption of children left without parents).*

Marriage. *It is an important institute of family law; the premise of its implementation is the enjoyment of the right to marry by the individual who intends to marry. This right belongs to the category of social rights. According to the Constitution of the Republic of Albania (Article 53):*
"1. Everyone has the right to marry and have a family.
2. Marriage and family enjoy the special protection of the state.
3. Marriage and dissolution of marriage are regulated by law".
The pronoun "Anyone" in this case is related to the prohibition of discrimination within the right to marry. Therefore, it should not be understood and interpreted as a right and possibility of marriage between same sex couples.

Article 12, of the European Convention on Human Rights, provides that: "Man and woman, who have reached the age of marriage, have the right to marry and create a family, according to the national laws that regulate the exercise of this right". Therefore, this right is recognized only to a heterosexual couple who wants to get married and create a family. But the formal marriage is not the only one that can create such a family.
The essence of the right to marriage, according to this meaning and concept also borrowed from our family law legislation (especially from the Family Code), is the formation of binding legal relationships between a man and a woman. Even in the historical development of the institution of marriage and the right to marry in our country, an unchanging element has been the right to marry, only between a man and a woman,

i.e., a heterosexual couple, based on traditions, customs, mentality and general social opinion, in the primary consideration of the institution of marriage.

In article 7 of the Family Code, we find the definition that: "Marriage is a relationship between a man and a woman who have reached the age of 18". This connection is indisputably accompanied by the development of a common life, between the man and the woman bound in marriage.

From the study of the Family Code as a whole, it can be determined that marriage is a legal act, typical, solemn, personal, through which a man and a woman assume mutual obligations, giving marriage in this sense the nature of an ongoing legal relationship.

What are the principles of marriage according to our legislation?
According to our legislation, marriage, as a voluntary union between a man and a woman, must be a monogamous union; a heterosexual union; a free and voluntary association; a potentially eternal (indefinite) union; union between persons who have reached a certain age; a union performed publicly in front of the responsible state official and as a union that is supported as a moral, spiritual and material community, which is related to the free consent of the spouses. The diversity of the sexes is provided as a principle not only for marriage in our current legislation, but also for cohabitation.

It is worth focusing especially on the second principle above, since the diversity of the spouses' sexes is not specifically mentioned by the law, neither as a condition nor as a special prohibition (for marriage), in the institution of marriage. As we have pointed out above, heterosexuality is a principle of the institution of marriage and in this sense the principles are important since their violation loses the essence of the institution of marriage.

According to the law "On civil status", sex is one of the components of a person's civil status, which, unlike some other components such as birth, first and last name, paternity and maternity relationships, has several features. Birth, first name and last name, paternity and maternal relations are recognized components. With the exception of sex, all these components can be removed, extinguished, changed or transferred to others, according to the provisions of the Family Code and the law "On Civil Status". Sex change is not allowed by our legislation. Not only that, but it can be said that, ***by not foreseeing same-sex marriage as a possible legal obstacle, the legislator has completely ignored the existence and possibility of these types of marriages.***

De facto coexistence *is a new institute of family law in Albania. Cohabitation without marriage has increased and is now a normal phenomenon of our society. We have families even when the couple lives together, thus evidencing a new form of family life. Article 163 of the Family Code stipulates that: "Cohabitation is a de facto union between a man and a woman who live as a couple, characterized by a common life that presents a character of stability and continuity". So here too, as you can see, we are dealing with the prediction of a heterosexual and monogamous union.*

Maternity and paternity of the child (origin). *These together with the name, surname, citizenship, nationality, and other components of the civil status are personal data of the person, and non-property rights that can only be enjoyed by the human being who was born alive. Being included in the person's identity, they serve to create his own status, this*

status which is considered an interest and fundamental right of the highest rank, sanctioned as such in the Convention "On the Rights of the Child". Paternity and motherhood are important elements to determine the origin and family affiliation of a person, including parental relationships. Determining a person's family affiliation is related and should be considered as an integral part of the right to a normal family life. Apart from what our Constitution has provided regarding this consideration, Article 8/1, of the Convention "On the Rights of the Child", has determined that, "...family ties" are part of the child's identity". According to our family law, parental relationships are mother-son/daughter and father-son/daughter.

Today, some general principles apply to the motherhood and fatherhood of children in the legal treatment of this matter in our family law:

- *The principle of equality of children born out of wedlock and those born from marriages.*
- *The right of the mother to request the recognition or opposition of paternity or maternity is a right independent and unconditional from the right of each parent to request them. According to this principle, the right of the child to recognize his motherhood and fatherhood competes with the right of each parent to claim his parental affiliation to the same child. Based on the best interest of the child, our legislation has provided* ***that the child's right to claim his motherhood and paternity is not prescribed****, unlike the right of his parents, for whom this right is prescribed after a period specified by law.*
- *The priority of the free will of the parents for the recognition of the motherhood and paternity of the child.*

According to Article 165, of the Family Code, "Maternity and paternity of a child born out of wedlock is proven by the birth certificate, registered in the civil registry". In Article 34 of the Law "On Civil Status", the declaration of the child's birth is the second action that conditions the compilation of the birth certificate. This law determines that as a rule, the declaration of the birth of the child is made by one or both of his parents, but the law provides that this declaration can be made by other persons, permitted by law. Regarding the competent office, to accept the declaration of the birth of a child, it is foreseen that this declaration is made at the civil status office where the child's parents have their registration, meaning here both married and single parents. The declaration of the birth of the child must be made as soon as possible (maximum period of 45 days), because in this way it will be possible as soon as possible to compile the act of the birth of the child and register it in the civil status registers.

In the law "On civil status", there is no solution for cases where the civil status clerk refuses to accept the declaration, compile the child's birth certificate, or even register it.[1]

A child born out of wedlock is considered to be a child who was born to a woman who, at the time of conception and birth, is not married in her civil status documents. A child born out of wedlock is also that child who, although he was born to a legally married woman, the presumed paternity of the mother's legal husband has been recognized by a final court decision, based on his objection. This grouping also includes those children who are

[1] Theoretically, the interested subjects can oppose the inaction of the registrar to the relevant higher administrative body and against the final administrative decision they can turn to the competent court for the resolution of disputes.

registered with unknown parents in the birth certificate and in the basic register of citizens. In a summary definition, according to our family law, it will be considered a child born of an unknown woman, of a woman who has never been legally married, or when more than 300 days have passed since her marriage and last, or when the paternity that was determined by the formal application of the law has not been recognized by a final decision. The fact of being a child born out of wedlock is not directly reflected in the acts of the child's civil status, in order not to create conditions for his discrimination.

According to Article 170, of the Family Code: "Maternity and paternity of a child born out of wedlock can be established through voluntary recognition or through a court decision...". The determination of the motherhood of a child born out of wedlock is related to the attitude of the mother and her willingness to accurately fulfill the necessary administrative procedures, necessary for the compilation of the basic birth document and the birth certificate.

With the completion of the compilation of the act of birth of a child and its registration in the basic register of citizens with unknown motherhood or when the 45-day period provided by the law "On civil status" for the declaration of birth and its registration has passed , and when the child remains unregistered, the mother does not lose the right to recognize that child and to give him her own name as mother. To realize her recognition as the mother of a child registered with an unknown mother, or not yet registered, the Family Code, in articles 169, 170, 176, has recognized the mother for life in two ways:

- the administrative route through a voluntary declaration before the registrar
- through the judicial way.
According to Article 181 of the Family Code: "The father of a child born out of wedlock is the adult who recognizes him as his own child".
Scientific developments in the field of health, such as artificial insemination, bring out the need not only for the most detailed legal regulation, regarding the ways of using these scientific discoveries in favor of citizens, but also for the ways of using them as facts and evidence in the process of determining or proving the motherhood and paternity of a child registered without a mother or father, of those born out of wedlock, as well as for their opposition.

*You become a **parent** for natural or legal reasons (adoption). For one reason or another, it is the law that recognizes you as a parent. The child's biological parents are not always also his legal parents. "Legal parent of the child" is defined as the person or persons (no more than two of opposite sexes), i.e. he/she (they), who has been recognized as such in a way determined by law. In this way, due to the best interest of the child, it is not for nothing that the relationship with the parent, parentage (being a parent) and **parental responsibilities** are created or arise from the moment of the birth of the child or the placement of the adoption, and with the passage of time these established relationships are strengthened. You become a parent not only because of marriage, but also because of marriage. You become a parent only by having children and legally recognizing them as such.*

Parental responsibility is closely related to institutions such as motherhood, fatherhood, and adoption, etc. According to Article 217, of the Family Code, "The child is under parental responsibility until the age of majority". Therefore, although not directly expressed, parental responsibility begins with the birth of the child. Our family legislation

has dimensioned the right to parental responsibility as the right of the child's parent(s) legally recognized as such. When we talk about parental responsibility, two moments are distinguished, firstly, to whom this responsibility belongs (this part is closely related to the institution of motherhood and fatherhood) and secondly, who exercises parental responsibility. The institution of parental responsibility is closely related to motherhood, fatherhood, and adoption.

*How should **parental affiliation be understood in the case of the application of assisted** medical reproduction techniques, which bring uncertainty about who the biological parents, and even more so, the legal parents of the child are.[6] The desire and right to have children is both natural and legal. The purpose of implementing these techniques, of assisted medical reproduction, is to respond to the request and the right of an individual or a couple, who does not achieve pregnancy, to have a child. According to the regulations of the law "On reproductive health", one of the techniques used for artificial insemination is what is known as "**extramarital insemination**". This case is known as such because it happens when it comes to giving a child to an unmarried couple, or to a single woman. While international practice also recognizes cases of this insemination for gay couples, our legal reality does not recognize and does not speak of giving a child to a gay couple. This is because marriage and cohabitation recognize the principle of heterosexuality.*
If the unmarried woman does this treatment alone, the sperm donor is not treated as the father of the child and according to the law this child is called "fatherless". In fact, there is no complete legal regulation in the current legislation regarding these cases.

- ***Law no. 10129 dated 11.05.2009 "On civil status", amended.***

Article 2 - Definitions
In this law, the following terms have the following meanings:
2. The "National Register" of 2010 (hereinafter the National Register) is the unique state document which reflects the civil status components of every Albanian citizen, foreign citizen, and every stateless person with temporary/permanent residence in the Republic of Albania.

4. "Components of civil status" are all the elements defined in this law, which serve to determine the identity of any Albanian citizen, foreign citizen, or any stateless person with temporary/permanent residence in the Republic of Albania.

Article 6 - Components and features of civil status of citizens
1. The components of the civil status are: first name and last name, personal number, date of birth, place of birth, gender, citizenship, paternity and maternity reports, civil status, death, missing person declaration, permanent residence, place of residence and other facts, provided by law.
2. Albanian citizenship, as a component of civil status, is the only element distinguishing foreign nationals and stateless persons.
3. Constituent elements in civil status service documents have priority over the same elements of any other act, state or private, and are required to be respected.

Article 7 - Personal number
1. The personal number is the unique, unrepeatable number assigned to every Albanian citizen, foreign citizen, as well as every non-citizen person, with temporary/permanent residence, with certain economic ties by the Civil Status Service.

2. The method of forming this number is determined by a separate law.

Article 8 - Features of some components of civil status
Birth, gender, first and last name, relationships of paternity, motherhood and citizenship are known and can be removed, extinguished, changed, or transferred to others only in the cases and in the manner expressly defined in this law or in any other law special.

Article 9 - Components derived from natural events
Birth, time of birth, gender, maternity, and death are regularly certified as legal facts by the persons and bodies to whom this right is known, in accordance with the legislation in force.

Article 10 - Components presumed or derived from the person's own actions
Legal facts presumed by law or derived from the person's own actions which are proven are relationships of paternity, motherhood, and family.

Article 27/1 - Acts on births, marriages, and deaths

1. The acts of birth, marriage and death are completed and reflected in separate acts, in electronic form and printed only by the official of the civil status service, after having administered, directly, the basic documents or personally received the declarations about the fact of birth, marriage or death, in accordance with the requirements of the legislation in force. These acts are kept, for each case, in chronological order.

Article 38 - Basic birth documents
1. Births as a fact, time, place, gender and maternity are certified with the birth assistance certificate and with a medical report or record drawn up at the time of birth, which is certified by the medical personnel present, or the train manager, the captain of the ship or the traveling aircraft, the head of the prison or the military department, the public order body, or officials of diplomatic missions abroad, in the absence of medical personnel.
2. In the absence of the documentation mentioned in point 1 of this article, proof of the fact of birth can also be proven through the court.
3. The above documents serve to complete the birth certificate.

Article 40 - Declaration of birth
1. The birth of the child is declared to the registrar by the parents, adult family members, legal representatives, or guardians, and, in their absence or inability, by the persons who have the right to certify the birth. The declaration can also be made by representatives of the mother, with a special power of attorney.
2. The declaration of the birth of the found child, whose parents are unknown, is made by the entities of the local government unit, the entity of public order, in whose jurisdiction the place where the child was found is located, based on the records kept at the time of finding the child.

Article 41 - Registration of birth
1. Registration of the child's birth is done in the civil status office of the parents' place of residence or in the place where the birth took place.
2. For the found child, whose parents are unknown, the registration is done in the civil status office of the country where he or she was found.

3. Abrogated.
4. When the registration of births is carried out within 60 days, for births within the country, and within 90 days, for births abroad, the mother receives compensation in the amount of ALL 5,000 (five thousand).
5. The fund for the reward for birth registration within the deadline, according to the definition made in point 4 of this article, is covered by the State Budget. The procedures for benefiting from the reward are determined by the instruction of the minister covering the civil status service.
6. All health entities, state and private that have the right to certify the birth, are obliged, every Monday, to send the notification of the births that took place at their institutions to the civil status offices where the parents have their residence.
7. The operative units of the police in the field, in cooperation with the local government units, ascertain and confirm, in an official way, the cases of births and their registration by the persons provided for in point 2 of article 40 of this law, in the area that they cover.

Article 42 - Act of birth
1. The act of birth legally certifies the birth of the citizen.
2. The act of birth is the record, which is kept for each birth, signed by the registrar in the municipality/administrative unit and the declarant. It contains:
a) serial number, date of retention and civil status office;
b) full date and time of birth;
c) place of birth;
ç) name and surname, determined according to the legal provisions in force;
d) the child's personal number;
dh) gender;
e) Abrogated.
e) citizenship;
f) the fact whether he was born normal, twin or Siamese;
g) personal number and identity of the mother;
gj) personal number and identity of the father, when known, according to the legal provisions in force; h) identity, personal number and quality of the declarant.
i) personal number, name, and surname of the translator.

- ***Law no. 18/2017 "On the rights and protection of the child".***

Article 3 - Definitions
In this law, the following terms have the following meanings:
….
14. "Parent" is the person who gave birth to or adopted the child, couple or single, married or not, or who recognized the motherhood or paternity of the child born out of wedlock.

Article 5 - General principles in the realization and protection of the rights of the child is done by applying the following principles:
……
1. The best interest of the child is the primary consideration in any action concerning the child

Article 6 - Application of the best interest of the child

1. This law and other normative acts that regulate issues related to the implementation and protection of the child's rights, as well as any other individual acts which are issued on their basis, are subject to the principle of the child's best interest.
2. Public and non-public authorities, as well as the courts, have the child's best interest as a primary consideration in all actions and decisions taken regarding children.
3. The best interest of the child means the right of the child to have a healthy physical, mental, moral, spiritual, and social development, as well as to enjoy a family and social life suitable for the child.
In the implementation of this principle, the following are considered:
a) the child's needs for physical and psychological development, education and health, safety and stability as well as growth/belonging to a family;
b) the opinion of the child, depending on his age and ability to understand;
c) the history of the child, considering the special situations of abuse, neglect, exploitation, or other forms of violence against the child, as well as the possible risk that similar situations will occur in the future;
ç) the ability of parents or persons who take care of the child's well-being to respond to the child's needs;
d) continuity of personal relationships between the child and persons with whom he has gender, social and/or spiritual ties.

Article 8 - The right to have a name, citizenship, to know one's parents and to preserve one's identity
1. In accordance with the legislation in force, the child has the right:
a) to be registered for free, immediately upon his birth. Children born outside the territory of the Republic of Albania also have this right, at the request of the parent or guardian, according to the rules defined in the current legislation;
b) to have a name;
c) to acquire citizenship;
ç) to know the parents and enjoy the care of the parents, as much as possible.
2. The child has the right to preserve the identity, including the determination of the surname, the acquisition of citizenship and the recognition of family ties, in accordance with the legislation in force, without illegal interference.
3. If a child has been illegally deprived of one or several elements of his identity, he is provided with appropriate assistance to restore his identity to him, including the guarantee of the care of state institutions, to give him the opportunity to practice the religion, culture and language of origin. Assistance may include providing genetic information to assist in:
a) finding the parents;
b) finding relatives or family members of the child, refugee and asylum seeker, with the aim of family reunification;
c) registration of any change of the child's identity, such as name, citizenship, parental rights.
4. Registration and certification of the fact of birth is done in accordance with the criteria, rules and procedure provided in the legislation in force.
.....

- ***"Amicus Curiae" Opinion of Advocate General Kokott, (submitted on April 15, 2021), for Case C-490-20 (Court of Strasbourg), Case C-2/21, Rzecnik Praw Obywatelskich (case still pending).***

Should a member state of the Council of Europe issue a birth certificate giving two women as mothers, one of whom is a national of that member state, for a child born in another member state, in which the child is recognized (registered) with such a birth certificate?"

Case study: *Spanish law allows same-sex marriage. Two women, one of Bulgarian nationality and the other of British nationality, have been living in Spain and married together in 2018. In 2019, they had a daughter who was born in Spain and who lives there, together with her two parents. The birth certificate issued for the daughter of this married couple, by the Spanish state, defines the applicant in the main procedure as "Mother A" and her spouse as the "Mother" of the child. In 2020, the applicant of the main birth registration procedure applied in Sofia, Bulgaria, for the provision of her daughter's birth certificate, as a document required under Bulgarian law for the issuance of a Bulgarian identity document for the daughter. For this purpose, the applicant submitted a certified and legalized extract in the Bulgarian language of the civil status register of Barcelona, related to the child's birth certificate. The municipality of Sofia instructed the applicant to present within 7 days, the evidence of the child's parentage as it belongs to her biological mother. This is because the Bulgarian legislation provided for columns only for the child's mother and father, and under these conditions, only one mother's name could be entered in this column. The main applicant replied to the municipality that it could not comply with this request and that, under Bulgarian law, it was not required to do so.*

Subsequently, the Municipality of Sofia rejected this application, by decision, on the grounds that there was a lack of information regarding the biological mother of the child and the fact that the registration of two female parents on a birth certificate was contrary to the public policies of Bulgaria, where no marriage between two persons of the same sex is allowed. The main applicant appealed the case to the Administrative Court of Sofia. The court decided that the failure to issue such a document does not constitute a refusal to enjoy the Bulgarian nationality according to the Bulgarian legislation in force. The Court has reasoned, inter alia, that the legal provisions governing the descent of the child are of fundamental importance in the Bulgarian constitutional tradition and in the Bulgarian legal literature on the family and the right of inheritance, both from a purely legal perspective and from the point of view of values, considering the current stage of development of society in Bulgaria.

So, the court raised the issue of whether it is necessary to establish a balance between the different, legitimate interests involved in this case: on the one hand, the national identity of the Republic of Bulgaria and on the other hand, the interests of the child and, in particular, the right to privacy and free movement since the child has no responsibility for the differences in the levels of values in society between EU member states. More specifically, it wants to know if an acceptable balance between these different legitimate interests can be achieved if only one of the mothers given on the Spanish birth certificate is registered and if the "father" column remains blank.

What should be done to make the requirement for the registration of both mothers' mandatory, considering that the Bulgarian court is unable to replace the current model of the birth certificate that is valid.

The Bulgarian state has refused to issue such a certificate as Bulgarian legislation does not allow the registration of two mothers as parents of a child on a birth certificate, while the Spanish state has acted otherwise.

This is a very sensitive issue in the field of nationality and family law and for the great differences that exist within the EU regarding the legal status and rights granted to same-sex couples.

Article 46/1 of the Bulgarian Constitution provides for marriage as "a voluntary union between a man and a woman". Bulgarian law does not allow marriage or any other form of union with legal effects between persons of the same sex.

Ancestry is regulated by the Family Code (Bulgarian), in article 60/1/2, which states that;

- *Parentage in respect of motherhood is determined by birth.*
- *The child's mother is the woman who gave birth to the child, including in the case of assisted reproduction.*

Article 61 of the Family Code (Bulgarian), provides that:

- *The mother's husband is considered to be the father of the child born during the marriage or within 300 days of its dissolution.*
- *If the child was born within 300 days of the dissolution of the marriage but then the mother remarried, the husband in the new marriage will be considered to be the father of the child.*

In accordance with Article 64, of the Family Code, where the parentage (paternity or maternity) of the child for one of his parents is unknown, each parent can recognize his or her child. This recognition is made, in accordance with Article 65 of this code, by means of a unilateral declaration in a civil status office or a declaration signed and certified by a notary.

When the parent-child relationship, which belongs to one parent (mother or father) has not been established, when a birth certificate is issued by the Republic of Bulgaria, the corresponding field for data related to this parent will not be filled in and will be marked with a cross.

If the Constitution of the country provides that a person is Albanian if at least one of the parents is a Bulgarian citizen, then the enjoyment of Albanian citizenship is automatic and therefore there is no need to issue an administrative act to grant citizenship to the child.

If Bulgaria is free to determine parentage in accordance with its domestic law, this necessarily means that only one woman can be considered the mother of the child, whether it is the biological mother or the woman who accepted the child.

One of the recognized rights for citizens of EU member states is the right to have a normal family life, together with their family members, both in the host EU member state and in the member state of the EU of which they are a citizen, when they return to this country.

The Strasbourg Court has had the opportunity to specify in this context that "family members" are, in any case, those mentioned in Article 2(2) of Directive 2004/38. This definition refers inter alia to the "spouse" of an EU citizen (Article 2 (2) (a)) and his/her "direct descendants" (Article 2 (2) (c)). If the same-sex spouse of an EU national with whom that national has entered into a valid marriage is not, under the law of a Member State, classified as a "family member", on the basis that the law of another Member State does not foresee this possibility, this could risk a change in the rights deriving from Article 21(1) TFEU from one Member State to another, depending on the provisions of their domestic legislation.
Failure to recognize these family relationships established in Spain can create serious obstacles for the family life of that family in Bulgaria.

In accordance with Article 4(2) of the Treaties of the European Union, the EU must respect the national identities inherent in the basic political and constitutional structures of the member countries. However, the exact content of this concept is likely to vary from one member country to another, but its true nature cannot be determined without considering member countries' concepts of their national identities. In this sense, the EU's obligation to respect the national identities of the Member States can be understood as an obligation to respect the plurality of views and, likewise, the differences that characterize each Member State. National identity thus guarantees the motto of the EU, as underlined for the first time in Article 1-8 of the draft Treaty establishing a Constitution for Europe (Constitutional Treaty), literally "United in diversity".

There is currently no consensus within the European Union on the preconditions for access to the basic institutions of family law. National laws governing marriage (or divorce) and descent (or even reproduction) define the family relationships that lie at the heart of this field.
In the case of divorce, for example, insurmountable differences were found during the drafting of a regulation on the law applicable to this institute, thus leading to the failure of the Commission's legislative initiative and the implementation of enhanced cooperation instead.

As for marriage, only 13 of the 27 EU member states have already extended this institution to same-sex couples. Furthermore, of these 13 member states, only a few provide for the "automatic" parentage of the wife of the biological mother of a child.

Family law is a sensitive legal field that is characterized by a plurality of concepts and values at the level of member states and societies within them. Family law - whether based on traditional values or more on "modern" values - is the expression of the state's image at both political and social levels. It can be based on religious ideas or mark the renunciation of these ideas by the state in question. For this purpose, however, in any case it is an expression of national identity embodied in the basic political and constitutional structures.

Moreover, the rules that define family relations are of great importance for the functioning of the state community in general. So, when a state applies the principle of "ius sanguinis", in this sense, the origin of a person determines the nationality (citizenship) and thus the very fact that a person belongs to a certain state.

The legal definition of what a family, or one of its members, is thus affects the basic structure of society. This definition thus can be included within the scope of the national (state) identity of a member country within the meaning of Article 4 (2) of the Treaties of the European Union.

The determination of parentage for the purposes of family law falls within the exclusive competence of the Member States.

In this consideration, it should be noted at the beginning that the concept of "family life" within the meaning of Article 7 of the Charter is in accordance with the definition developed by the Strasbourg Court, in its jurisprudence on Article 8 of the European Convention on Protection of the Fundamental Rights and Freedoms of Man, signed in Rome on November 4, 1950, depending on the real existence in practice of close personal ties. The Court of Justice has stated that Article 7, of the Charter, includes family relationships that are developed in the context of a relationship between persons of the same sex, regardless of their legal classification in a certain member state. It is also apparent from a combined reading of Article 24(2) and (3) of the Charter that the best interests of the child compel, as a rule, the keeping of the family together.

In relation to the case in question, it must be concluded that the Republic of Bulgaria cannot reject the applicant and his wife as the parents of the child for the sole purpose of applying the EU secondary law, on the free movement of citizens, on the basis that the law Bulgarian law does not provide for the institution of marriage between persons of the same sex or for the maternity of the wife of the biological mother of a child. (part/recognition of origin for the purpose of exercising the rights derived from the relevant EU legislation, for the free movement of citizens, point 108).

Banning same-sex marriage and allowing only one woman to be the mother of a child undeniably creates a difference in treatment between heterosexual couples and homosexual couples. However, as far as marriage is concerned, it should be noted that there is currently no consensus within the EU that this difference in treatment cannot be justified. Thus, the Court has found, until today, in its jurisprudence that member states are not required to foresee and regulate by law the institution of marriage between persons of the same sex in their domestic legislation.
It should also be noted that the Strasbourg Court has held, so far, that a contracting state is not required to authorize the simple adoption of a child by the same-sex partner of the child's biological mother.

The right to respect family relations is characterized, in essence, by the possibility of living together in conditions broadly comparable to those of other families. In other words, what is important in order to respect the essence of this right is to guarantee an effective family life.
As stated above, even if family relations are not recognized for the purposes of domestic family law, in practice it is guaranteed that the applicant in the main proceedings and his wife will be able to live together with their daughter in Bulgaria and in other EU member countries, under conditions which are comparable to those of other families, since in any case they must be treated as family members for the purposes of applying, in particular, Directive 2004/38 and Regulation no. 492/2011.

Bulgaria's reliance on national (state) identity as regards the determination of ancestry for the purposes of implementing, in particular, family law and Bulgarian heritage, does not violate Article 2 of the Treaties of the European Union. Therefore, it can determine, in the case in question, the limit of the EU's integrative action in this sense, implying that the Republic of Bulgaria is not obliged, according to Article 21 (1) of the Treaties of the European Union, to recognize the parent relationship - children for the purposes of family law, since this relationship is established in Spain.

Reliance on state identity within the meaning of Article 4(2) of the Treaties of the European Union may justify the refusal to recognize that a couple of two women are the parents of a child, as established in the birth certificate issued by the member country of residence, in order to issue a birth certificate in the child's member country of origin, or the member country of origin of one of these two women, determining the origin of this child for the purposes of family law of this member country.

- ***Regarding the validity and content of the lawsuit filed by the plaintiffs, Alba Ahmetaj, Edlira Mara, Hema Mara and Amea Mara:***

In the object of the aforementioned lawsuit, the plaintiffs, Alba Ahmetaj, Edlira Mara, Hema Mara and Amea Mara, have asked the Administrative Court of First Instance, Tirana:
*"**Amendment of the administrative act, return letter no. 2627/1 dated 15.04.2021 and the obligation of the respondent to register the children Hema and Amea Mara, female twins, born on 18.01.2021 in Tirana, and to register as a mother, plaintiffs Alba Ahmetaj and Edlira Mara with equal maternity rights in the same family composition".***

Based on the object of the research, it is concluded that:
1. Letter no. 2627/1 dated 15.04.2021, "Return of answer", of the Office of Civil Status, Administrative Unit no. 2, Tirana, is an individual administrative act.
In order to be accurate in determining the relevance of this official document compiled by the civil status office cited above, we must refer to the definitions given in law no. 44/2015 "Code of Administrative Procedures of the Republic of Albania".
More specifically, in article 3, point 1, letter "a", of this code it is expressly stated that: an "Individual administrative act" is any expression of will by the public body, in the exercise of its public function, against one or more subjects of individually determined law, which creates, changes, or extinguishes a concrete legal relationship".
Meanwhile, in Article 90 of the Code of Administrative Procedures, it is expressly stated that:
"1. The administrative procedure, started with a request, ends with a final decision on the matter, namely an administrative act or an administrative contract. In the final decision on the case, the public body decides on all the issues raised by the parties during the procedure, and which have not been resolved during it.
2. The conclusion of the administrative procedure, initiated mainly, is at the discretion of the public body, except when otherwise provided by law.
3. The administrative procedure, initiated by request or mainly, is declared completed without a final decision on the case, in the cases provided for in articles 93-96 of this Code. ***The declaration of the end of the administrative procedure, without a final decision on the case, constitutes an administrative act".***

Effectively, in this case, we are not dealing with a final administrative act for the settlement of the request submitted by citizens Alba Ahmetaj and Edlira Mara. In

analyzing the situation created by the object of the request submitted by citizens Alba Ahmetaj and Edlira Mara, in the Office of Civil Status, Administrative Unit No. 2, Tirana, the provision made in Article 95 of the Code of Administrative Procedures comes to our aid where it is stated that: "The public entity declares the administrative procedure completed without a final decision on the case, when the object for which the procedure was started or its purpose has become impossible".

The inability of reaching the object defined in the request and for which the procedure has been initiated in advance by the Office of Civil Status, Administrative Unit no. 2, Tirana, as well as the impossibility of the goal expressed by the petitioners to be achieved through the administrative procedure set in motion, in front of the above-mentioned civil status office, they come from the family legislation, in force, in the Republic of Albania.
The direct analysis that is made in this case is whether we are dealing with existing rights of the plaintiffs which have been denied or violated by the relevant public administration body, or whether these rights do not exist in the context presented by the plaintiffs, either during administrative procedures, or even in the lawsuit request that set the trial in motion, in the Administrative Court of First Instance, Tirana!

The object or purpose of the procedure has become impossible when the performance of an administrative action has lost its current relevance due to a change in circumstances that may be factual or legal. In fact, and in essence, the legal circumstances do not foresee or enable the administrative action, as requested by the petitioners, namely citizens Alba Ahmetaj and Edlira Mara.
However, this situation presented has a solution, as the law enables the administrative action to be taken to register the newborn children, namely Hema and Amea Mara, in the registry of civil status, with the recognition and registration of their biological mother and with the non-declaration of their paternity.

- *As was analyzed at the beginning of this opinion, the plaintiffs Alba Ahmetaj and Edlira Mara, in their claims, have admitted that although they have been in a union for about 10 years and they have been living together for 7 years, they are aware that the family legislation in Albania does not recognize the right to marriage or cohabitation between persons of the same sex.*

Without prejudice at all to the right of the plaintiffs to build a common life, as we have analyzed above, the Family Code as well as the family legislation in the Republic of Albania, does not recognize the right of marriage between two persons of the same sex, or even the actual coexistence that may occur between them. It can even be said that the lack of provision in the law, even as a possible obstacle to the conclusion of marriage or the recognition of cohabitation under these conditions, can be considered as a complete lack of legal possibility that legitimizes in the least such a life event between two persons of the same gender. The legislator, not foreseeing as a possible legal obstacle same-sex marriage, has completely ignored the existence and the possibility of these types of marriages.

This type of factual cohabitation, considered as such by the plaintiffs, but not by the law, has served, according to the plaintiffs' understanding, to create a certain family and family life between them. The family legislation in force foresees and regulates only the rights of individuals and the consequences that come from a heterosexual and monogamous union between them, whether this is in the legal form of marriage, or even

de facto cohabitation recognized under the conditions provided for in the law. The recognition of cohabitation by family legislation, as a de facto union between a man and a woman living as a couple, is complemented by the law with several other conditions, but always qualifying heterosexuality in the relationship.
The plaintiffs have parallelized the meaning of a de facto relationship, in these conditions, not recognized by family legislation, giving this relationship all the attributes of a de facto cohabitation recognized by law, to seek and claim the rights and legitimize the consequences that the law provides in these cases. When we talk about the law, we mean the internal family legislation of the Republic of Albania.
According to this conceptualization used by the plaintiffs, their relationship has already created a family and a family life.

In the analysis carried out, we emphasized that, although we do not have a given definition for the family, in our legislation today we have the following definitions of it:
The family in the narrow sense, which originates from marriage as a legal bond between individuals who are qualified as "spouses", and blood (parents and children). Therefore, this is the family formed by spouses and their children.
The family in the broadest sense includes, apart from members of the immediate family, also persons who are related in a natural or legal way to their spouses, with the condition that marriage cannot be concluded within this grouping.
Natural family or de facto family, in which there are blood ties between parents and children, but this family was not created because of the parents' marriage.
And in fact, regarding the meaning of family relations, we have clarified the fact that, in the content of its provisions, the Family Code of the Republic of Albania understands family relations as relations that are created by marriage, adoption, guardianship and in-law relations.

The issue of family life is a very fragile issue, since as provided in the Constitution, everyone has the right to have a family. However, the discussion in this case is related to the ***separation of the concept of the legal right to create a family and the right to be part of a family.***

Both plaintiffs, namely the citizens Alba Ahmetaj and Edlira Mara, before the period of cohabitation (or maybe even during this period), have been members of other families, in the narrow or broad sense of them, from which they are descended and with whom they have established a continuous family relationship. Having this factual as well as legal approach, the legal mechanism that has worked for the creation, preservation and continuation of the family relationship in the respective families from which the plaintiffs are descended, does not automatically work for the creation of a family in the strict sense between citizens Alba Ahmetaj and Edlira Mara, and even more so for maintaining and continuing a close family relationship between them, according to the conditions defined by our legislation.

- *The plaintiffs have argued in the lawsuit that during the actual cohabitation, the expansion of the family on their part was desired and realized with the birth of 2 twin children, girls, on 18.01.2021, from the pregnancy developed by the citizen Edlira Mara, through artificial insemination.*

Considering the creation of a family from a de facto union under the conditions analyzed above, citizens Alba Ahmetaj and Edlira Mara, have wished for the birth of children, members of "their family in the strict sense". In other words, and in the sense of the family legislation, the plaintiffs wanted to be the parents of these children and acquire parental responsibility towards them.

As we explained above: if the world practice also recognizes cases of insemination for homosexual couples, our legal reality does not recognize and does not talk about giving a child to a homosexual couple, since marriage and cohabitation recognize the principle of heterosexuality. As I mentioned, for issues of insemination in same-sex couples, there is no legal regulation in the current legislation, so it cannot be said that this type of insemination is recognized as a right of same-sex couples.

If you look carefully, in the case of extramarital insemination, as a technique used in this case by the citizen Edlira Mara, only the consent given by this citizen would be enough to perform this technique. This is because the law itself in its definitions uses terminology such as "individual", and "spouse", leaving no room for handling such a request from a same-sex couple.

- *As stated in the claim-lawsuit, although the plaintiffs Alba Ahmetaj and Edlira Mara have expressed their willingness to register the children born with artificial insemination by Edlira, simultaneously requesting that they be recognized and registered as "mother", in the relevant registry of the civil status office, they are unable to complete this registration, since such a request was rejected with letter no. 2627/1 dated 15.04.2021, by the Civil Status Office, Administrative Unit no. 2, Tirana, on the grounds, among other things, that children born to parents of the same gender cannot be registered, as this is not expressly recognized by the law.*

By asking this, before the employees of the Office of Civil Status, Administrative Unit no. 2, Tirana, beyond the technical act of registering the child, as an obligation arising from the law to the parent/s, the plaintiffs wanted to legitimize data related to the origin of the children and their family affiliation, including parental reports.

Our family legislation recognizes only fatherhood and motherhood as basic elements of the child's descent. *These together with the name, surname, citizenship, nationality, and other components of the civil status are personal data of the person, and non-property rights that can only be enjoyed by the human being who was born alive. By being included in the person's identity, they serve to create his own status, this status which is considered an interest and a fundamental right of the first rank, sanctioned as such in the Convention "On the Rights of the Child".*

Paternity and motherhood are important elements to determine the origin and family affiliation of a person, including parental relationships. Determining a person's family affiliation is related and should be considered as an integral part of the right to a normal family life.

Apart from what our Constitution has provided regarding this consideration, Article 8/1, of the Convention "On the Rights of the Child", has determined that, "...family ties" are

part of the child's identity". According to our family law, parental relationships are mother-son/daughter and father-son/daughter.

***A child born out of wedlock** is considered a child who was born to a woman who, at the time of conception and birth, is not married in her civil status documents. A child born out of wedlock is also that child who, although he was born to a legally married woman, the presumed paternity of the mother's legal husband has been recognized by a final court decision, based on his objection. This grouping also includes those children who are registered with unknown parents in the birth certificate and in the base registry of citizens. In a summary definition, according to our family law, it will be considered a child born of an unknown woman, of a woman who has never been legally married, or when more than 300 days have passed since her current marriage and her last, or when the paternity that was determined by the formal application of the law has not been recognized by a final decision. The fact of being a child born out of wedlock is not directly reflected in the acts of the child's civil status, in order not to create conditions for his discrimination.*

*According to Article 170, of the Family Code: "Maternity and paternity of a child born out of wedlock can be established through voluntary recognition or through a court decision...". **The determination of the motherhood of a child born out of wedlock is related to the stance of the mother and her willingness to accurately fulfill the necessary administrative procedures needed for the compilation of the basic birth document and the birth certificate.***

With the completion of the compilation of the act of birth of a child and its registration in the base registry of citizens with unknown motherhood or when the 45-day period provided by the law "On civil status" for the declaration of birth and its registration has passed, and when the child remains unregistered, the mother does not lose the right to recognize that child and to give him her own name as mother. In order to realize her recognition as the mother of a child registered with an unknown mother, or not yet registered, the Family Code, in articles 169, 170 and 176, has recognized the mother for life in two ways:
- the administrative route through the voluntary declaration before the civil status officer
- through the judicial way.
According to Article 181 of the Family Code: "The father of a child born out of wedlock is the adult who recognizes him as his own child". Scientific developments in the field of health, such as artificial insemination, bring out the need not only for the most detailed legal regulation regarding the ways of using these scientific discoveries in favor of citizens, but also for the ways of using them as facts and evidence in the process of determining or proving the motherhood and paternity of a child registered without a mother or father, of those born out of wedlock, as well as for their opposition.

Will the children Hema Mara and Amea Mara be considered children born out of wedlock? Of course not! In these circumstances, when our family legislation in the data that make up the person's identity and that serve to create his personal status, recognizes "motherhood" - in the singular number and "paternity" - in the singular number and when we are in the conditions of conception and birth of two children on the basis of assisted medical reproduction methods, the request submitted by the plaintiffs would be rejected by the employee of the relevant civil status office.

- *Does our current legislation constitute an obstacle for the registration of Hema and Amea, with the parent/parents recognized as such by the law? We believe it does not.*

As mentioned above, the determination of the motherhood of a child born out of wedlock is related to the attitude of the mother and her willingness to accurately fulfill the necessary administrative procedures necessary for the compilation of the basic birth document and the birth certificate. The impossibility to register "double motherhood" does not mean that the law does not allow the administrative action to be taken to register the newborn children, namely Hema and Amea Mara, in the registry of civil status, with the recognition and registration of their biological mother (Edlira Mara) not declaring their paternity. Who are the child's parents and does the refusal by the registrar to deny parental care? The discussion should be divided into two aspects, as a matter of fact both plaintiffs can exercise "de facto" parentage, especially this one, for the plaintiff who is not the biological mother. As a matter of law, parentage for the plaintiff who is not the biological mother of the children is a matter not recognized as a right under these circumstances. This is clear even for the plaintiffs themselves when they state that this happens: "...due to the lack of legal provisions for the recognition of families and parents of the same sex". Does this conflict with the Constitution and the principle of special protection that children and new mothers should enjoy from the state? We think that although at first sight it seems not to, this matter needs to be dealt with more widely and should create new and more inclusive balances in our society. The rights of babies are clearly better protected if they have a family relationship due to the law with 2 parents than only one parent, specifically that of the safe blood relationship that is the biological mother. This principle is balanced for children who are born during marriage (presuming paternity), or even those born for a certain period of time after the dissolution of the marriage, similarly presuming paternity of the ex-husband of the mother. These provisions in the code aim at the child's growth and his best interest, to have parental care from two parents, as this constitutes for them an added guarantee for their present life but also in the future. Whereas, the two plaintiffs were or are conscious of their rights and their obligations, with the potential risk of a way of life which cannot be formalized according to the current legislation in force, the same is not true <u>for the minors Amara and Hema as far as they have the right to be legally guaranteed the relationship with the mother's partner as a contributor to their well-being, as long as she seeks to take on such a role.</u>

Will the fact that the plaintiffs have given birth to children be taken for granted? This is a debatable thesis, in the context of the whole picture of this issue. These children have actually been brought to life by their biological mother, by means of artificial reproduction methods. This fact would not change even if the citizen Edlira Mara was not in an emotional relationship with another person of the same gender, but for him to be a contributor of joint responsibility for the babies, his declaration in the civil status would be enough, without the need for any other formality.

- *In their request-lawsuit, the plaintiffs state that, although the European Convention on Human Rights (Article 12), as well as the **Family Code of the Republic of Albania** (Article 7 and Article 163), link the concept of marriage but also cohabitation directly with a union between a man and a woman, the **European Court of Human Rights** has oriented the case towards the principle of subsidiarity by suggesting an evolving interpretation of the Convention and*

referring to the internal legislation of the countries of the Council of Europe, that have accepted such unions in their internal legislation.

Without wanting to prejudge, it seems as if the opportunity or request to enjoy the right to have a family life on the part of the two plaintiffs who request to be simultaneously registered in the civil status as mothers of the two newly born daughters, is balancing the interest of the child to be registered in the registry of civil status, even if only with the recognition of descent from their biological mother. The fact that the newborn child is represented in these procedures by his parents, according to the legal meaning given to the parent in this case, cannot give the parent (biological mother) the right to override and give priority to the realization of the goal of cohabitation with another person, even if of the same sex, to the child's best interest related to the child's right to registration immediately after birth, by the parent/parents, or other persons authorized by law, within the legal deadlines.

This conclusion is even more obvious if we consider the fact that the biological mother of the two newborn children understands clearly and is fully aware that the current legislation in force in our country does not recognize cohabitation between persons of the same sex and, moreover, only acknowledges as parents two individuals, who by heterosexual affiliation enjoy the possibility of "motherhood" and "fatherhood".

In this sense, the legal rights of parents must be treated in a balanced manner with the legal rights of children, and care must be taken in prioritizing the rights of children. This is related to the correct application of the principle of the best interest of the child.
Legislative interventions in this case must be done respecting two principles, and simultaneously two important rights:

- *Respecting the right of parents to have children,*
- *Respecting the rights, interests and well-being of the child, but also the right to have parents so as to secure a life that better guarantees their future until they become adults.*

where the second grouping can be considered the most important, at least in this case.
Even in the context of family legislation in force in the Republic of Albania, it is accepted that the right of parents to have children cannot be respected while violating the principles and rights of children, since reproductive techniques would worsen human lives much more than they would make parents lives better by helping them "enjoy" having children.

Should the registration of the newborn child necessarily relate to the forced recognition of "double motherhood", as requested by the plaintiffs?

We think that in the case under consideration, regardless of the right and equal opportunities that our society should give to children to have 2 parents, their interests would be better protected by registering them in the form that is possible and opposed it partially only in relation to the non-guarantee of registration as a family due to the law of the partner of the biological mother. It is important that in this consideration, a fair relationship is established between the rights of the child, (the highest interest of the child), the parental right of the biological mother and the legitimate interests of individuals aiming to create a family, family life and family relationship.

Our family legislation does not allow the registration of two mothers as parents of a child in the registry of civil status, so in this context it should be taken into account the fact that the court does not create a new norm but interprets and applies the relevant legislation in force for the regulation of the case at trial. In this context, we think that the gender-based approach to family ties should be re-evaluated in our society to include the realities of people who would not like to identify their gender identity in the register in relation to the child. The exclusion of the possibility to be identified without specifying gender, but only with the word parent is a right that emphasizes the affective reality that members of a legal family or de facto family create with children and the affection and obligations they assume towards the child. Our society has evolved and as we said above in the evolution of the conception of the child, the parent, parenting and the responsibility for their well-being, taking over the well-being of the state when they don't have parents or when the parents can't take care of them. Meanwhile, in the case under trial, the Albanian society, for an artifice, risks guaranteeing this right to babies Amara and Hema.

The exclusion of same-sex couples from marital status (the right to marry) or even the right to de facto cohabitation from the Family Code also excludes them from all those rights and responsibilities that come exclusively with being married. or even in actual cohabitation.

- ***Other general assessments***

The two plaintiffs have requested from the court, the amendment of the administrative act, namely letter no. 2627/1 dated 15.04.2021, from the Office of Civil Status, Administrative Unit no. 2, Tirana, and the obligation of this office to register the children Hema and Amea Mara, twins, born on 18.01.2021 and to register as mothers the plaintiffs Alba Ahmetaj and Edlira Mema, with maternity rights in the same family structure.

What should be underlined is the fact that the refusal that occurred on the part of the Office of Civil Status, Administrative Unit No. 2, Tirana, is based on the provisions of the law "On Civil Status", which in its provisions does not introduce a detached and fragmentary regulation of the institutes provided for and regulated as a whole, in our family law. Here we are talking about a body of law that in its entirety provides for and regulates these institutes. Therefore, if we were to assume for a moment that the law "On civil status" violates the legal rights of the plaintiffs, we would have to assume that this entire body of law is in the same situation of violation.

The issue in question should be analyzed in consideration of the legal rights that "same-sex" couples enjoy today. Undoubtedly, through the institution of marriage, family law in many European countries, as well as in our country, has given rights and responsibilities to heterosexual couples. By excluding same-sex couples from marital status (the right to marry), they are also excluded from all the rights and responsibilities that come exclusively with being married.

The trend that has appeared in European countries in recent years has been to reduce this type of exception, and on the one hand, this has been done by offering same-sex couples the opportunity to formalize their relationship in marriage, or at least as a registered partnership. On the other hand, more and more rights are being granted to same-sex couples who live together in an informal cohabitation and/or who formalize their relationship (by marrying each other or registering their partnership). These

developments have initially found a place in the internal legislation of European countries, but also in the international law on human rights, the law of the European Union having also played its role.

The observed trend in European countries is that the recognition of marriage for same-sex couples almost always comes after the recognition of the same-sex partnership registration. Meanwhile, in many countries where same-sex couples gained the right to family status (registered partnership or marriage), before this happened, some rights were recognized for same-sex couples living together informally. This means that, apart from "Partnership before marriage" also "rights before status", are a typical sequence in the process of legal recognition of same-sex couples in European countries.
For same-sex couples, rights and responsibilities are often recognized before formal status, and these rights and responsibilities say more about one's actual legal status than the marital status or other recognized status through which they are recognized as such.

The question is, which rights and responsibilities typically come first? From a scientific paper published by "European Studies of Population", on these issues, it is found that the grouping of rights and responsibilities recognized in these circumstances to same-sex couples (on the basis of the definition: "same-sex legal recognition consensus"), are the rights otherwise known as "rights of sad times" and related to situations when one of the partners dies (continuation of the rental relationship, wrongful death compensation, family pension, inheritance, exemption from inheritance tax), or when one of the partners is hit hard "by bad times", (accident, illness, family violence, criminal proceedings, divorce). Other well-known rights, but already related to the concept of "good times", have to do with keeping the common name or common citizenship, the division of assets or tax advantages, and the division of responsibilities for children.

Referring to this paper, we see that medically assisted insemination and the various ways for a child to have two legal parents of the same sex are even more debatable as rights. However, there now seems to be a closer consensus on at least allowing same-sex partners to take some responsibility for each other's children. Moreover, the issues of parental leave and parental authority came into focus only for the situation where only one of the two partners is the legal parent of the child. The three parental rights that do not involve the legal status of the parent (such as parental leave, parental authority, and assisted insemination) are among the most primary parental rights granted to same-sex couples, even before civil partnership was recognized. In some countries, such as Greece, Ireland, the Netherlands, and Great Britain, this began with the non-prohibition of medically assisted insemination of women in same-sex relationships.

According to the study mentioned above, in the process of legal recognition of the rights and responsibilities of same-sex couples, 5 typical sequences can be distinguished that characterize this ongoing process:

- *Rights before status*
- *Partnership before marriage*
- *The rights of sad times before the rights of good times*
- *The rights of the individual partner before the rights of the couple*
- *Responsibilities before benefits*

According to this scheme, it is emphasized that the legal recognition of same-sex families did not come only when a registered form of partnership was recognized for same-sex

couples, or when marriage was recognized for them, but also in the period before all this, in the period between these two moments, or even after all this. So often, the rights and responsibilities for same-sex partners came and were recognized during the five periods.

In a certain group of European countries, starting with the Netherlands, Sweden, Belgium, Ireland, Finland, Greece, etc., it is legally possible for a woman in a same-sex relationship to become pregnant through medically assisted insemination. The result is that, in most of these countries, same-sex couples are already allowed to create a family with children and to formalize their relationship with these children. In 2003, Sweden became the first European country where, when a woman gives birth to a child, her female partner can also become the child's legal parent from the moment of birth. Such a possibility now excites a significant minority of European countries. The recognition of these rights through family legislation not only highlights the fact of the importance of the legislation beyond being symbolically important, but in this case the legislation becomes practically important for the lives of the persons in question.

Politically, the entry into force of laws is often seen as the end of a process, but the sociological findings of the field make us aware that laws are often only a "first step" in a social process and essential for the beginning of social inclusion.

Whether practical or symbolic, the social importance of legal recognition of the family life of same-sex couples is already recognized as such in European law. Many EU regulations now refer to registered partnership, non-marital partners, persons living in a committed intimate relationship, etc., while both the EU Court of Justice and the European Court of Human Rights have recognized this change. between partners of the same sex and partners of different sexes, summed up in discrimination based on sexual orientation. Recently, the court has stated that non-marital partnerships are also covered by the right to respect "family life" and that this includes same-sex partnerships. The court has also stated that, for a same-sex couple, "an officially recognized alternative to marriage has an intrinsic value", apart from its legal effect [2] and that such recognition would further bring "a sense of legitimacy" to same-sex couples".[3]

The European Court of Human Rights has repeatedly spoken about "the essential rights of a couple in a committed and stable relationship".[4] And the court has shown in many cases that the consideration of being or not as a limitation, or whether the exception or difference is justified according to the European Convention of Human Rights, this would be seen in the detailed studies of the situation in the member countries of the Council of Europe. [5]

Perhaps in some countries it is still very difficult to think about such a thing, outside the context of marriage. Legal recognition of same-sex partners is almost always a process. And this process has to start from somewhere. Before and at the beginning of this process, countries are typically reluctant to include same-sex couples in the rights and responsibilities that come from the marriages of heterosexual couples. This necessitates

[2] European Court of Human Rights, Vallianatos v. Greece, 7 November 2013, 29381/09 & 32684/09, paragraph 81.
[3] European Court of Human Rights, Oliari v. Italy, 21 July 2015, 18766/11 & 36030/11, paragraph 174.
[4] European Court of Human Rights, Oliari v. Italy, 21 July 2015, 18766/11 & 36030/11, paragraph 172, 174, 185.
[5] European Court of Human Rights, X and Others v. Austria, 19 February 2013, paragraph 54.

a long legal and political struggle. However, an initial legal recognition can already have a positive effect on the social attitudes and social legitimacy of same-sex families.

The Strasbourg Court has had the opportunity to specify in this context that "family members" are in any case those mentioned in Article 2(2) of Directive 2004/38. [6]

We want to bring to your attention once again the findings made in the "Amicus Curiae" opinion of Advocate General Kokott, for Case C-490-20, Case C-2/21, Rzecnik Praw Obywatelskich.

There is currently no consensus within the European Union on the preconditions for access to the basic institutions of family law. National laws governing marriage (or divorce) and descent (or even reproduction) define the family relationships that lie at the heart of this field. As for marriage, only 13 of the 27 EU member states have already extended this institution to same-sex couples. Furthermore, of these 13 member states, only a few provide for the "automatic" parentage of the wife of the biological mother of a child.

Family law is a sensitive legal field that is characterized by a plurality of concepts and values at the level of member states and societies within them. Family law - whether based on traditional values or more on "modern" values - is the expression of the state's image at both political and social levels. It can be based on religious ideas or mark the renunciation of these ideas by the state in question. For this purpose, however, in any case it is an expression of national identity embodied in the basic political and constitutional structures.

Moreover, the rules that define family relations are of great importance for the functioning of the state community in general. So, when a state applies the principle of "ius sanguinis", in this sense, the origin of a person determines the nationality (citizenship) and thus the very fact that a person belongs to a certain state. The legal definition of what a family or one of its members is, thus affects the basic structure of society.

Great steps have been taken and the situation has evolved significantly regarding the rights of LGBTIQ persons and their children. Some children suffer indirect discrimination due to the sexual orientation of their parents. The Parliamentary Assembly of the Council of Europe has adopted a resolution by which the member states of the Council of Europe are asked to work to adapt their domestic legislations to avoid discrimination against both LGBTIQ persons and their families.

- Proposals to prevent such situations:

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[6] Article 2/2 of the directive states that: "For the purposes of this directive;
2. Family members are:

a) Wife
b) The partner with whom the citizen of the Union has entered a registered partnership, based on the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions defined in the relevant legislation of the host Member State.
c) Direct descendants who are under the age of 21 or are under care and those of the spouse or partner as defined in point (b),
d) Direct relatives dependent on the descending line and those of the spouse or partner as defined in point (b)".

- *The proposal to start the process of legal recognition of the parental rights and responsibilities of same-sex couples, including the right to register the female partner of the woman who gives birth to a child through artificial insemination, as the legal parent of this child from the moment of his/her birth*
- *Changing the legislation that will recognize marriages for same-sex couples and registration of partnership (cohabitation) of same-sex couples.*
- ***Putting the Constitutional Court into motion:***

In article "49, of the law "On the organization and functioning of the Constitutional Court, the entities that set the Constitutional Court in motion are foreseen. According to this legal provision:
1. The right to set in motion the Constitutional Court for the compatibility of the law or other normative acts with the Constitution or with international agreements has the following: the President of the Republic, the Prime Minister, not less than one fifth of the deputies and the People's Advocate."
2. The President of the Republic and no less than one-fifth of the deputies have the right to set in motion the Constitutional Court for the control of only compliance with the procedure provided for by the Constitution, according to Article 131, point 2, and Article 177 of the Constitution of deputies.
3. The right to start a check on the compatibility of the law or other normative acts with the Constitution or international agreements also is enjoyed by:
a) Chairman of the Supreme State Audit Office;
b) local government bodies, when they claim that their rights provided for in the Constitution or their constitutional position have been violated;
c) commissioners established by law for the protection of fundamental human rights when, during their activity they find that the law or normative act violates the fundamental rights and freedoms of individuals;
ç) The High Judicial Council or the High Prosecution Council, when they claim that the law or normative act violates their constitutional activity, or the legal position of judges and prosecutors;
d) bodies of religious communities, political parties, organizations, when they claim that the law or normative act infringes their activity and the rights and freedoms of their members;
dh) courts of all levels, when during the trial of a case they find that the law or normative act contradicts the Constitution or international agreements;
e) individuals, when they claim that their rights and freedoms provided for in the Constitution are violated in a direct and real way, after they have exhausted all legal remedies for this purpose, as well as when the act they object to is directly applicable and not provides for the issuance of by-laws for its implementation.
4. The subjects provided for in point 3, of this article, have the obligation to prove in any case that the issue is directly related to the rights and freedoms provided by the Constitution or to the goals of their activity".

The deadline for the submission of such a request by the court exercising the right of incidental review is provided for in Article 50 of this law, which states that:

"1. Requests to the Constitutional Court for the compatibility of the law or other normative acts with the Constitution or with ratified international agreements, according to point 1

and point 3, letters "a", "b", "c", "ç" and "d'', of Article 49, of this law, can be presented within two years from the entry into force of the act.
2. Requests for the constitutionality of the law for the revision of the Constitution, in terms of procedure, can be submitted within 60 days from the entry into force of the law.
3. Courts may present the request at any time, when, during the examination of a specific judicial case, according to Article 145, point 2, of the Constitution, they assess the unconstitutionality of the law or normative act.
4. Individuals can submit a request for the incompatibility of the law or other normative acts with the Constitution or with ratified international agreements within 4 months from the finding of the violation".

Next, Article 68 of the law details this right that the courts have, expressly providing that: "1. When the court or judge during a judicial process and at any time, mainly or at the request of the parties, considers that the law is unconstitutional and when there is a direct connection between the law and the solution of the concrete case, does not apply it, deciding the suspension of the examination of further investigation of the case and sending its materials to the Constitutional Court to express its opinion on the constitutionality of the law.
2.In its decision, the court or judge must determine the provisions of the law that they consider to be incompatible with concrete norms or other principles of the Constitution, which the law did not respect or violated, as well as the reasons for which its abrogation is requested".

After presenting the above, the question naturally arises: What is the fundamental right violated in the context of family legislation, in the Republic of Albania, and which law or normative act violates it in its provisions, in this case? In our assessment, we think that the current legislation in force violates the claimed right to establish maternity relationships. It also violates the right of children Hema and Amara to have a legal parent alongside their biological mother. Our legislation in the evolution of the rights of the child or human rights has accepted in principle the right of a child to grow up in a family and guarantees them the right by presumption to have a legal father, or even an adoptive family, or adoptive parents. Children born by insemination from a single mother with a female partner do not benefit from the same guarantees, and under this point of view, we think that there is a need to have an incidental judgment in relation to this matter, as in terms of the right to have the care of legal parent, as well as the equal treatment of children with the characteristics of the plaintiffs Hema and Amara compared to any other child born with or without a biological father.

Even referring to the right to family life, its respect as well as a context of discrimination in the treatment of same-sex couples, we are of the opinion that the Strasbourg Court has a dynamic assessment still in process regarding these issues, as far as respect is concerned of Article 8 and Article 14 of the European Convention on Human Rights. Referring to the specifics of the case that we have analyzed, we are of the opinion that the decision that this court will issue for Case C-490-20, Case C-2/21, Rzecnik Praw Obywatelskich, will be a reference "milestone" for courts in our country.
In assessing this case, the court will have to confront the arguments of the plaintiffs who essentially demand the acceptance of new social realities, confront the arguments of the public interest in a democratic society and consider finding a fair and proportional balance between them. We think that there is a need for an evolving interpretation of the rights of the child to guarantee them effectively.

THE PEOPLE'S ADVOCATE

Erinda BALLANCA