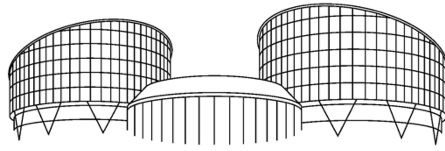

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 1928/19
S.W. and Others
against Austria

The European Court of Human Rights (Fourth Section), sitting on 6 September 2022 as a Chamber composed of:
Tim Eicke*, President,*
Gabriele Kucsko-Stadlmayer*,*
Faris Vehabović*,*
Iulia Antoanella Motoc*,*
Yonko Grozev*,*
Armen Harutyunyan*,*
Ana Maria Guerra Martins*, Judges,*
and Ilse Freiwirth, Deputy Section Registrar,

Having regard to the above application lodged on 3 January 2019,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,
Having regard to the comments submitted by the Ordo Iuris Institute for Legal Culture and by the European Centre for Law & Justice (ECLJ), as third--party interveners,
Having deliberated, decides as follows:

THE FACTS

1. A list of the three applicants is set out in the appendix.
2. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The first and third applicants are a same-sex couple living together under a registered partnership.

5. The second applicant is the first applicant's biological daughter born on 14 October 2014. The first applicant was recorded as the mother in the Central Civil Status Register (*Zentrales Personenstandsregister*), and a birth certificate was issued. The second applicant's biological father is unknown to the authorities.

6. The third applicant adopted the second applicant by agreement of 10 November 2014. The Meidling District Court (*Bezirksgericht*) approved the adoption by a decision of 15 December 2014.

7. On 17 November 2016 the applicants lodged an application with the Wien-Margareten Register Office (*Standesamt*), with the following three requests: 1) to have the adoption entered in the Central Civil Status Register so as to indicate that, as from 10 November 2014, the second applicant would have two mothers; 2) to have a birth certificate issued for the second applicant indicating both the first and the third applicants as the mothers of the second applicant; and 3) to provide them with the relevant birth record from the Central Civil Status Register (partial birth register extract – *Teilregisterauszug zur Geburt*).

8. On 1 June 2017 the Wien-Margareten Register Office dismissed the application. It referred, *inter alia*, to section 2 (3) of the Civil Status Act (*Personenstandsgesetz*) (see paragraph 14 below), pursuant to which the specific civil status data to be recorded at birth included the general personal civil status data of the "parents" (*Eltern*). As the law had been deliberately formulated in a gender-neutral manner, the organisation of the Central Civil Status Register, and thus the third applicant's entry in the column headed "father/parent" (*Vater/Elternteil*), was in compliance with the domestic legal provisions. Moreover, birth certificates had to be issued in accordance with the template set out in the Annexes to the Civil Status Act Implementing Regulation (*Personenstandsgesetzes-Durchführungsverordnung* – see paragraph 18 below), and a certificate containing other information could only be issued if a regulatory lacuna were ever to be identified. By giving the relevant column the heading "father/parent", the Implementing Regulation did not only take into consideration situations where the parents were a father and a mother. Therefore there was no regulatory lacuna in this instance. As regards the partial birth register extract, it had to be issued in an analogous manner to the birth certificate, as both showed the personal civil status data of the same person. It would otherwise be misleading if the partial birth register extract and the birth certificate contained columns with different headings.

9. On 5 July 2017 the applicants lodged a complaint against the above decision, while at the same time modifying their application as follows (see paragraph 7 above for the three original requests): they withdrew their request to have the adoption entered in the Central Civil Status Register with both the first and third applicants being indicated as mothers, while maintaining the two other requests, namely: a) to have a birth certificate issued for the second applicant indicating both the first and the third applicants as the mothers of the second applicant, and b) to provide them with the relevant birth record from the Central Civil Status Register (partial birth register extract).

10. On 11 September 2017 the Vienna Administrative Court (*Verwaltungsgericht*) granted the second of the two maintained requests: as the first and third applicants did not request any changes to the headings of the data columns, the Administrative Court ordered the competent municipal authority to issue a partial birth register extract. It dismissed the remainder of the complaint, namely the issuance of the birth certificate indicating both the first and the third applicants as the mothers of the second applicant (see paragraph 9 above), essentially stating that a birth certificate disclosed only the legal but not the biological parents. It therefore follows that the birth certificate does not reveal who the biological mother is. In the case of both same-sex and opposite-sex legal parents, the woman entered under the heading “mother/parent” (*Mutter/Elternteil*) could (also) be the adoptive mother of a child. When amending the template set out in the Annexes to the Civil Status Act Implementing Regulation in 2015, the column entitled “mother/adoptive parent” (*Mutter/Wahlelternteil*) had been changed to “mother/parent” (*Mutter/Elternteil*) and the column entitled “father/adoptive parent” (*Vater/Wahlelternteil*) to “father/parent” (*Vater/Elternteil*). This amendment showed that both a biological as well as an adoptive parent could be entered in either column. It could not therefore be assumed that the parent entered in the column “mother/parent” was the biological mother, or – in the case of a same-sex partnership of two women – that the parent entered in the column “father/parent” was the adoptive mother. The entry under “father/parent”, in the present case, could not therefore lead to the automatic conclusion that the second applicant had been adopted by the third applicant.

11. On 1 January 2018 the applicants lodged an extraordinary appeal (*Revision*) with the Supreme Administrative Court (*Verwaltungsgerichtshof*). On 30 January 2018 the court dismissed the applicants’ appeal for lack of legal questions having any significant importance, as it had already decided on the questions at stake in a factually and legally similar case, namely in its decision of 15 December 2015 (Ro 2015/01/0011) (see paragraph 21 below). In that decision, the Supreme Administrative Court stated that it concurred with the reasoning given by the Constitutional Court (*Verfassungsgerichtshof*) in its decision of 28 September 2015 (E 1146/2015) (see paragraph 20 below), namely that, where the name of a woman who had adopted her registered partner’s child appeared in the column

"father/adoptive parent" or (from 2015) "father/parent" on the birth certificate, this should not be understood to mean that the woman in question was designated as the child's "father". This in turn meant that in the case of parents who were the biological mother and an adoptive mother, their respective names would be entered in the columns "mother/parent" or "father/parent".

12. On 2 November 2017 the applicants lodged a complaint with the Constitutional Court, alleging a violation of their constitutionally guaranteed right to confidentiality of their personal data under the Data Protection Act, their right to respect for private and family life under Article 8 of the Convention, and their rights to equal treatment and non-discrimination under the Basic Law on the General Rights of Nationals and under Article 14 of the Convention. They argued that in the case of same-sex couples – in contrast to an adoption by the biological parent's opposite-sex partner – the birth certificate revealed the existence of an adoption, or rather the identity of the adoptive parent. In their view, it was clear that a woman who appeared in the column "father/parent" on a birth certificate could not be considered as "father" and would therefore have to be a parent by adoption, i.e. a non-biological parent. It would be relatively easy to avoid this disclosure by, for example, designating the headings of both columns as "parent" or, in the case of two female parents, as "mother" or "mother/parent" (respectively, in the case of two male parents, as "father" or "father/parent").

13. On 26 June 2018 the Constitutional Court decided not to deal with the complaint owing to a lack of any prospect of success. It also referred to the reasoning of the Supreme Administrative Court in its decision of 15 December 2015 (see paragraph 21 below) and added that the slash in the column headings allowed alternative designations to be reflected.

B. Relevant legal framework and practice

1. *The Civil Status Act (*Personenstandsgesetz)

14. Under section 2(3) of the Civil Status Act, the specific civil status data to be registered upon birth are, in so far as relevant to the present case, the general civil status data of the parents (i.e., their names, date and place of birth and marital status).

15. Under section 52(1), unless there is an overriding interest worthy of protection of the persons to whom the registration relates, the right to obtain civil status data or information from documents which form the basis of the registration and subsequent changes, as well as the right to the issuance of civil status certificates, is conferred upon persons to whom the registration relates and other persons whose civil status is affected by the registration, as well as to persons who credibly demonstrate a legal interest in the relevant information (see also paragraph 19 below).

16. In accordance with section 53(1) of the Civil Status Act, birth certificates must reflect the current (updated) data at the time of their issuance. Upon application, the Central Civil Status Register also issues birth certificates reflecting not the current civil status data but the historic data in respect of the specific date requested, for example the day of the child's birth.

17. Section 54(1)(4) provides that a birth certificate must include the parents' names. However, upon application, a birth certificate containing only the child's name, sex and date and place of birth may be issued, as provided in section 54(2).

2. *The Civil Status Act Implementing Regulation (*Personenstandsgesetzes-Durchführungsverordnung*)*

18. Pursuant to Article 28 § 1 of the Civil Status Act Implementing Regulation, birth certificates must be issued in accordance with the template set out in Annexes 4 to 5c of the Implementing Regulation. This template includes two columns to be filled in with the civil status data of the child's parents, one entitled "mother/parent" (*Mutter/Elternteil*), the other "father/parent" (*Vater/Elternteil*).

19. Under Article 31 § 1 of the Implementing Regulation, persons whose civil status is affected by the registration and who may therefore request information about the registration (section 52(1)(1) of the Civil Status Act) encompass only the spouse, the registered partner, and the direct relatives, in the ascending or descending line, of the person to whom the registration relates (see also paragraph 15 above).

3. *Domestic practice*

20. In its decision (*Beschluss*) of 28 September 2015 (E 1146/2015, unpublished), the Constitutional Court (*Verfassungsgerichtshof*) held that, where the name of a woman who had adopted her registered partner's child appeared in the column "father/adoptive parent" or (from 2015) "father/parent" on the birth certificate, this should not be understood to mean that the woman in question was designated as the "father" of the child.

21. In its decision of 15 December 2015 (Ro 2015/01/0011), the Supreme Administrative Court (*Verwaltungsgerichtshof*) quoted an extract of the above-mentioned decision of the Constitutional Court of 28 September 2015 (see paragraph 20 above) and held that it concurred with its reasoning.

COMPLAINTS

22. The applicants complained under Article 8, separately and in conjunction with Article 14 of the Convention, of a violation of their right to respect for their private and family life and of discrimination against them on account of the fact that the first and third applicants are a same-sex couple. In

particular, the applicants submitted that it was clear from the second applicant's birth certificate, which recorded the third applicant in the column headed "father/parent", that the latter was not the second applicant's biological mother. While it was obvious from their forenames that both the first and the third applicants were women, and therefore that at least one of them was not the second applicant's biological mother, the disclosure as to which of them was the adoptive parent constituted a violation of the family's strictly personal sphere (*höchstpersönlicher Lebensbereich*) and infringed their right to informational self-determination (*informationelles Selbstbestimmungsrecht*). Moreover, it was discriminatory in that the birth certificate of a child of different-sex parents, after a second-parent adoption, did not identify the biological or adoptive parent as such.

THE LAW

23. The applicants' complaint about the way the second applicant's birth certificate was set out after a second-parent adoption, and their allegation of discrimination in this respect against same-sex couples, relate to Articles 8 and 14 of the Convention, which provide as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Whether the first applicant has victim status

24. The Court must first determine whether the first applicant has victim status. The Government argued that it had not been shown how the first applicant was being discriminated against by the civil status data contained on the second applicant's birth certificate. The applicants insisted that all three of them were directly affected by the difference in treatment as a family.

25. The Court notes that in order to be able to lodge an application in accordance with Article 34, an applicant must be able to show that he or she was "directly affected" by the measure complained of (see *Tănase*

v. Moldova [GC], no. 7/08, § 104, ECHR 2010; *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008; and *Lambert and Others v. France* [GC], no. 46043/14, § 89, ECHR 2015). This is indispensable for the protection mechanism of the Convention to be set in motion (see *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 73, 13 November 2012).

26. In the present case, the Court is ready to accept that the second and third applicants have been "directly affected" by the measure complained of in respect of the second applicant's birth certificate. As regards the first applicant, the Court notes the Government's objection in her respect raising the question whether she has been "directly affected" in her rights by the fact that she was described as "mother/parent" on the birth certificate of the second applicant, of whom she is the biological mother. The Court notes that the Government's argument suggests that the case is to be examined for each of the three applicants separately. However, it may also be argued, as the applicants do, that the impugned manner in which the second applicant's birth certificate is set out directly affects all three applicants as a family unit formed by a same-sex couple and their child who is the biological child of one woman and the adoptive child of the other (see, *mutatis mutandis*, *X and Others v. Austria* [GC], no. 19010/07, § 96, ECHR 2013). The Court considers that the issue can be left open in the circumstances of this case as the first applicant's complaints are inadmissible on other grounds which are set out below.

B. The parties' submissions

1. The Government

27. The Government pointed out that the data contained in the Central Civil Status Register, and therefore also the data included on birth certificates, showed the current legal parenthood, but not necessarily the biological parenthood. The entry under "mother/parent" or "father/parent" on a birth certificate did not necessarily mean that the parent concerned was a biological parent. Even a birth certificate issued in respect of the day of the child's birth could show the name of a non-biological mother if the biological mother was to remain anonymous. In other words, the birth certificate did not contain any indication as to whether the legal parenthood was based on biological parenthood, on adoption or on medically assisted reproduction.

28. As to the present case, the Government noted that the issuance of a birth certificate for the second applicant had only been requested after her adoption by the third applicant had been approved by the competent court. While the first applicant's name was entered in the column headed "mother/parent", this still only showed her legal relationship to the second applicant, not her biological relationship. Only by comparing the current birth certificate with a "historic" birth certificate issued in respect of the day of the

child's birth could anyone work out who the biological mother might be. However, the Government emphasised that a birth certificate would only be issued at the request of a person with legal standing to apply for one. As a rule, non-relatives were not entitled to request copies of birth certificates for others.

29. Consequently, the entry of the third applicant's name in the column headed "father/parent" did not give any indication as to whether she was a biological parent or not. As already clarified in 2015 by the Constitutional Court and the Supreme Administrative Court (see paragraphs 20 and 21 above), the presence of the name of a woman who adopted her registered partner's child in the column headed "father/parent" (or "father/adoptive parent" before the amendments introduced to the relevant template – see paragraph 10 above) on the birth certificate could not be taken as an indication that the woman in question was being designated as "father" of the child; where the biological mother and the adoptive mother were eligible for legal parenthood, their respective names were to be entered by the civil status authority in the columns "mother/parent" or "father/parent".

30. The appearance, alleged by the applicants, that the third applicant was the second applicant's adoptive mother did not stem from the birth certificate or any other civil status data, but from a number of accompanying factual circumstances. It was clear that if two women were entered as parents on a birth certificate, an adoption or a birth through medically assisted reproduction had taken place. However, if a birth certificate with the name of only one parent was issued in respect of a time other than the day of the child's birth, it did not allow any automatic conclusion about a biological relationship, nor did the order in which the two parents had been entered allow any automatic conclusion as regards a biological relationship. The same held true in situations of same-sex couples adopting a child jointly: while one parent had to be entered in the column entitled "mother/parent" and the other in the column entitled "father/parent", it did not give any indication about a biological relationship.

31. The Government also noted that there was no specific, or alternative, template for a birth certificate to be used in the case of second-parent adoption, nor for an adoption by one or two adoptive parents. However, they emphasised that it was in principle possible to avoid any indication of an adoption on the birth certificate, namely by omitting to fill in the columns concerning the parents. The applicants were free to request the issuance of such a birth certificate under section 54(2) of the Civil Status Act (see paragraph 17 above).

2. The applicants

32. The applicants maintained that the Civil Status Act Implementing Regulation prescribed that the biological mother (that is, the mother who had given birth to the child) must be recorded in the Central Civil Status Register

and on the birth certificate in the "mother/parent" column, and the other parent in the "father/parent" column. While it was clear in a situation such as the present one – that is, with two legal mothers – that only one of them could be the biological (birth) mother, it was unnecessary and discriminatory to indicate on the birth certificate which one was the biological mother and which one was not. Even if such a disclosure were compatible with Article 8 of the Convention, it would still be in breach of Article 14 in conjunction with Article 8 of the Convention because it only occurred in cases concerning same-sex couples but not of opposite-sex couples.

33. The applicants referred to the decision of the Vienna Administrative Court of 30 December 2014 (VGW-101/073/26484/2014; unpublished but submitted by the applicants to the Court) in another case of same-sex parents in which it noted that using the then template for a birth certificate (with the columns at the time headed "mother/adoptive parent" and "father/adoptive parent") would indisputably indicate the fact of the adoption by the adoptive parent. Moreover, it was also obvious that this would not be the case with opposite-sex couples, as it was not clear from the text of the headings whether a parent was the mother/father or an adoptive parent. In cases concerning same-sex couples, in contrast to those of opposite-sex couples, the adoptive parenthood, and thus a difference between same-sex and opposite-sex couples, was undoubtedly discernible.

34. The applicants further argued that a biological mother would never be recorded on a birth certificate in the column headed "father/parent" and that women entered in that column were always either adoptive mothers or co-mothers after donor insemination. They stated that they were not comparing their situation with an opposite-sex couple having a child together but rather with an opposite-sex couple having entered into second-parent adoption.

35. As regards the option of requesting a birth certificate without any indication as to the identity of the parents, the applicants submitted that in the vast majority of cases this was not done and that this would usually cause astonishment and assumptions about the reasons for presenting such a birth certificate. They further considered that they should not be obliged to have recourse to such a birth certificate in order to avoid having to disclose personal and intimate aspects of their private and family life.

36. The applicants concluded by stating that they were not arguing for a right under the Convention to have the third applicant (the adoptive mother) named as "mother" on the second applicant's birth certificate. Rather, they took issue with domestic legislation that prescribed the issuance of birth certificates in a manner which, in the case of second-parent adoption by same-sex couples, revealed, in their view, the identity of the biological and of the non-biological/adoptive parent. Again in their view, that was not the case for second-parent adoption by opposite-sex couples.

3. The third-party interveners

(a) Ordo Iuris Institute for Legal Culture

37. The third-party intervener Ordo Iuris Institute for Legal Culture submitted that a distinction had to be made between the right to legal recognition of an existing relationship between an adoptive parent and a child on the one hand, and the adoptive parent's right to be called the child's mother or father on the other hand. A person might be recognised as the child's parent and enjoy the same parental rights as the child's biological parent, but that person did not need to be formally designated as "mother" or "father". In other words, although Article 8 of the Convention granted a right to legal recognition of an existing stable relationship between a child and the biological parent's partner, it did not guarantee the particular designation of his or her status, that is, recognition under domestic law not only as a "parent" but also as a "mother" or "father". The third-party intervener further referred to the wide margin of appreciation in determining the form in which the legal status of a parent was to be given.

(b) European Centre for Law and Justice (ECLJ)

38. The third-party intervener European Centre for Law and Justice (ECLJ) submitted that the mention of "father/parent" on the adopted child's birth certificate served the purposes and functions of adoption and civil status and that it was in the best interests of the child, without prejudice to the family life of same-sex partners and their children.

C. The Court's assessment

1. The applicants' complaint under Article 8 of the Convention

39. As regards the notion of "private life" under Article 8 of the Convention, the Court reiterates that it is a broad concept not susceptible to exhaustive definition (see, for example, *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B; *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III; and *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-I). The Court has already held that respect for private life requires that everyone should be able to establish details of their identity as individual human beings, which includes the legal parent-child relationship (see *Mennesson v. France*, no. 65192/11, § 96, ECHR 2014 (extracts). The existence or non-existence of "family life", on the other hand, is essentially a question of fact depending upon the existence of close personal ties (see *Marckx v. Belgium*, 13 June 1979, § 31, Series A no. 31, and *K. and T. v. Finland* [GC], no. 25702/94, § 150, ECHR 2001-VII). While Article 8 does not guarantee either the right to found a family or the right to adopt, nor does it safeguard the mere desire to found a family, it does presuppose the existence of a family, or, among other possible situations, the relationship that

arises from a lawful and genuine adoption (see, for example, *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, §§ 140-41, 24 January 2017, with further references).

40. The essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by public authorities. Any interference under the first paragraph of this provision must be justified in terms of the second paragraph, namely as being "in accordance with the law" and "necessary in a democratic society" in relation to one or more of the legitimate aims listed therein. According to settled case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to one of the legitimate aims pursued by the authorities (see, for example, *Tysiąc v. Poland*, no. 5410/03, § 109, ECHR 2007-I, and *Olsson v. Sweden (no. 1)*, 24 March 1988, § 67, Series A no. 130).

41. Furthermore, Article 8 does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private and family life (see *Lozovyye v. Russia*, no. 4587/09, § 36, 24 April 2018, and *Kroon and Others v. the Netherlands*, 27 October 1994, § 31, Series A no. 297-C). These positive obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific measures (see, among other authorities, *Tysiąc*, cited above, § 110, and *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91).

42. However, the boundaries between the State's positive and negative obligations under Article 8 of the Convention do not lend themselves to precise definition (see *Lozovyye*, § 36, and *Kroon and Others*, § 31, both cited above). The applicable principles are nonetheless similar. In both the negative and positive contexts, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts, the State enjoys a certain margin of appreciation (see, among other authorities, *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290, and *Różański v. Poland*, no. 55339/00, § 61, 18 May 2006).

43. Turning to the circumstances of the present case, the Court first observes that the issue in dispute concerns the way in which, following her adoption by the third applicant, the second applicant's birth certificate has been set out. The parties have not disputed, and the Court sees no reason to hold otherwise, that this issue falls under the concepts of private and family life within the meaning of the Court's case-law and therefore under the scope of Article 8 of the Convention (see also *Gözüm v. Turkey*, no. 4789/10, §§ 44-54, 20 January 2015, which concerned the inability under Turkish law

for an adoptive mother to have her forename entered in the civil status register and recorded on her child's identity papers in place of the biological mother's forename, and *Boeckel and Gessner-Boeckel v. Germany* (dec.), no. 8017/11, § 27, 7 May 2013, which concerned a dispute about the domestic authorities' refusal to issue a birth certificate in the manner requested by the child's same-sex parents).

44. In this context, the Court notes that the second and third applicants encountered no obstacles in establishing their legal parent-child relationship: barely four weeks after the birth of the second applicant, she was adopted by the third applicant, which in turn was approved by the competent court a mere five weeks later (see paragraphs 5-6 above). In other words, it took only two months for the parent-child relationship to be established in law. The Court further observes that the applicants' subsequent application to the Register Office, submitted almost two years later, originally included three requests (see paragraph 7 above). One of these requests was subsequently withdrawn (namely, to have the adoption recorded in the Central Civil Status Register in such a way so as to indicate both the first and the third applicants as mothers of the second applicant – see paragraph 9 above), while another request was granted at first instance by the Vienna Administrative Court (namely, to be provided with a partial birth register extract – see paragraph 10 above). Consequently, the only request which was met with a refusal by the authorities and the domestic courts concerned the issuance of a birth certificate for the second applicant, following her adoption by the third applicant, in a manner that would henceforth indicate both the first and the third applicants as "mother".

45. Before the Court the applicants no longer claim that the authorities should have provided a birth certificate for the second applicant in which both the first and third applicants are indicated as "mother" (see paragraphs 22 and 36 above). In fact, they allege in particular, as they had already done in their complaint to the Constitutional Court (see paragraph 12 above), that the second applicant's birth certificate disclosed the identity of the adoptive mother. The Court therefore finds it appropriate to approach this case as one concerning the State's negative obligations (contrast *Gözüm*, cited above, § 46, in which the Court chose, in view of the judicial reaction to the issue at stake, to analyse it as a case concerning the State's positive obligations). It must therefore, as a next step, determine whether there has been an interference with the applicants' right to respect for their private and family life.

46. The Government emphasised that, as also held by the domestic courts (see paragraphs 10, 11 and 13 above), a birth certificate always showed the current legal parent-child relationship, not the biological parent-child relationship. The Court agrees with this for the following reasons. Under section 53(1) of the Civil Status Act (see paragraph 16 above), a birth certificate reflects the civil status data as it stands at the time of its issuance,

although a "historic" birth certificate indicating the civil status data in respect of a specific point in time in the past can also be requested. Consequently, only a birth certificate issued in respect of the day of the child's birth itself could indicate the biological relationship between the mother and her child, as it would normally indicate the woman having given birth to him or her in the "mother/parent" column. The only exception to this would be if the child had been given up for adoption immediately after birth. In contrast, the "father/parent" column on a birth certificate issued in respect of the day of the child's birth would still only indicate the legal parenthood. Consequently, only by comparing a "historic" birth certificate with a current, or up-to-date, birth certificate could it be seen who the biological mother was.

47. Furthermore, in cases of same-sex parents, it is always known that at least one of them is not genetically related to the child and, if mentioned on the child's birth certificate as a parent, must have adopted the child. However, one cannot automatically conclude that the third applicant is the adoptive mother of the second applicant merely because her name is listed in the "father/parent" column. She could in fact also be the genetic mother, for example, in the case of a previous egg donation to the woman who gave birth to the child. Another possibility is that both mothers could be adoptive mothers (who have adopted a child as a married couple). Moreover, the Court cannot but agree with the Constitutional Court that the slash used in the headings "mother/parent" and "father/parent" indeed indicates alternative designations (see paragraph 13 above).

48. Moreover, as rightly pointed out by the Government (see paragraph 31 above), the applicants could also, under section 54(2) of the Civil Status Act (see paragraph 17 above), request the issuance of a birth certificate which does not mention the personal civil status data of the parents. The applicants' response to this, that such birth certificates are somewhat unusual and would cause astonishment and assumptions (see paragraph 35 above), cannot rebut the Government's view, as it will normally be clear in the case of same-sex couples that at least one parent, if not both, is not genetically related to the child.

49. As regards the applicants' contention that the Civil Status Act Implementing Regulation requires the biological mother to be entered in the "mother/parent" column, the Court points out that no such obligation follows from the text of the Implementing Regulation. Already the first instance court rejected the applicants' assertion in that regard. As pointed out by the domestic courts, this has become even clearer since the amendments introduced in 2015 to the template for birth certificates set out in the Annexes to the Implementing Regulation changed the headings of the columns from "mother/adoptive parent" and "father/adoptive parent" to "mother/parent" and "father/parent" (see paragraphs 10 and 11 above). In fact, the applicants did not even allege that they had tried to have the third applicant recorded in the "mother/parent" column and that this had been rejected.

50. While not decisive in itself, the Court nonetheless finds it significant to further note that under section 52(1) of the Civil Status Act (see paragraph 15 above) and Article 31 § 1 of the Civil Status Act Implementing Regulation (see paragraph 19 above), the information on the civil status data contained in the Central Civil Status Register is not available to the general public: a right to obtain such data only pertains to those persons to whom the registration relates and to other persons whose civil status is affected by the registration, as well as those who can credibly demonstrate a legal interest in the data (that is, in the case of an application for a birth certificate, the child concerned and the parents or, in the case of an adoption, the adoptive parents). In this context the Court reiterates that the applicants withdrew their request concerning the record in the Civil Status Register (see paragraph 9 above).

51. The foregoing considerations are sufficient to enable the Court to conclude that, in the circumstances of the present case, there has been no interference with the applicants' right to respect for private and family life under Article 8 of the Convention on account of the way in which the birth certificate issued for the second applicant, after her adoption by the third applicant, was set out. Accordingly, the Court considers that the applicants' complaint in this respect is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. The applicants' complaint under Article 14 of the Convention taken in conjunction with Article 8

52. Turning to the applicants' complaint under Article 14 in conjunction with Article 8 of the Convention that they have been discriminated against on account of the fact that the first and third applicants are a same-sex couple, the Court reiterates that Article 14 complements the other substantive provisions of the Convention and the Protocols thereto. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see *Carson and Others v. the United Kingdom*, no. 42184/05, § 63, 4 November 2008, with further references). The Court has already noted that the facts of the present case fell under the concepts of private and family life within the meaning of the Court's case-law and therefore within the ambit of Article 8 of the Convention (see paragraph 43 above).

53. The Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 of the Convention. Moreover, for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. Article 14 lists specific grounds which constitute "status" including, *inter alia*, race, national or social origin and birth. However, the

list is illustrative and not exhaustive, as is shown by the words “any ground such as” and the inclusion in the list of the phrase “any other status”. Those words have generally been given a wide meaning and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (see *Biao v. Denmark* [GC], no. 38590/10, § 89, 24 May 2016, with further references). Furthermore, not all differences in treatment – or failure to treat differently persons in relevantly different situations – constitute discrimination, but only those devoid of an “objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised” (see *Molla Sali v. Greece* [GC], no. 20452/14, § 135, 19 December 2018; *Fabris v. France* [GC], no. 16574/08, § 56, ECHR 2013 (extracts); and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV).

54. The question therefore arises whether there has been a difference in treatment in the present case of persons in relevantly similar situations on the basis of an identifiable “status” and if so, whether that treatment pursued a legitimate aim. The applicants alleged that they were discriminated against as the first and third applicants are a same-sex couple. The Court has repeatedly included sexual orientation among the “other grounds”, or “status”, protected under Article 14 of the Convention and held that, just like differences based on sex, differences based on sexual orientation require particularly serious reasons by way of justification or, as is sometimes said, particularly convincing and weighty reasons (see, for example, *X and Others v. Austria*, cited above, § 99, with further references). The Court has also held that same-sex and opposite-sex couples are in a relevantly similar situation as regards second-parent adoption (ibid., § 112).

55. However, as regards the present case and the question whether there has been a difference in treatment between same-sex and opposite-sex couples in so far as the birth certificates of their children after second-parent adoption are concerned, the Court notes that it is not discernible on the child’s birth certificate whether there has been a second-parent adoption in a given case or not. This is the situation for children of both a same-sex and an opposite-sex couple. In this context, the Court also finds it significant that in 2015 the columns “father/adoptive parent” and “mother/adoptive parent” were changed to “father/parent” and “mother/parent” on the birth certificate (see paragraphs 10 and 11 above). As far as the entry of a same-sex couple as “parents” indicates that at least one of them must be an adoptive parent, this situation is not comparable to that of an opposite-sex couple.

It follows that the applicants’ complaint does not disclose any appearance of a breach of Article 14 in conjunction with Article 8 of the Convention and must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention as manifestly ill-founded.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2022.

Ilse Freiwirth Deputy Registrar	Tim Eicke President

Appendix

List of applicants (application no. 1928/19)

No.	Name	Year of birth	Nationality	Represented by
1.	S.W.	1983	Austrian	H. Graupner
2.	E.W.	2014	Austrian	H. Graupner
3.	I.W.	1974	Austrian	H. Graupner