

Reconciling Gender Identity and Legal Status in Cross-Border Family Relations

Conciliación de la identidad de género y la situación jurídica en las relaciones familiares transfronterizas

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Abstract: It is becoming increasingly evident that family relationships are undergoing a period of profound change, driven by social developments over recent decades. The freedom of thought enjoyed by modern individuals, the search for self-identity, and changing attitudes towards the structure of relationships are having a profound influence on concepts of family, gender, and the traditional roles assigned to them. In this social context, the institution of the family faces new challenges, including the legal recognition of gender identity. With the legal change of a person's sex and the recognition of their new status, a number of questions arise regarding family relationships, the continuity of marital status, and the effects on filiation. In a European space characterized by legislative diversity and freedom of movement of individuals, these cross-border situations test the limits of the principles of mutual recognition, protection of privacy, and non-discrimination.

Keywords: sex – gender, marriage, filiation, principle of equality, principle of non-discrimination.

Resumen: Cada vez es más evidente que las relaciones familiares están atravesando un periodo de profundos cambios, impulsados por la evolución social de las últimas décadas. La libertad de pensamiento de que disfrutaban los individuos modernos, la búsqueda de la identidad personal y los cambios en las actitudes hacia la estructura de las relaciones están ejerciendo una profunda influencia en los conceptos de familia, género y los roles tradicionales que se les asignan. En este contexto social, la institución de la familia se enfrenta a nuevos retos, entre ellos el reconocimiento legal de la identidad de género. Con el cambio legal del sexo de una persona y el reconocimiento de su nueva condición, surgen una serie de cuestiones relativas a las relaciones familiares, la continuidad del estado civil y los efectos sobre la filiación. En un espacio europeo caracterizado por la diversidad legislativa y la libre circulación de las personas, estas situaciones transfronterizas ponen a prueba los límites de los principios de reconocimiento mutuo, protección de la intimidad y no discriminación.

Palabras clave: sexo - género, matrimonio, filiación, principio de igualdad, principio de no discriminación.

Sumario: I. Introduction. II. Multiple perspectives on gender identity. 1. Key judgments and the evolution of the European Court of Human Rights Court's approach. 2. CJEU Perspectives:

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The Mirin Case. III. Challenges faced by transgender persons in establishing a family under private international law. 1. Marriage and cross-border recognition of civil status. 2. Filiation and parental rights of transgender persons in private international law. IV. Final remarks

i. Introduction

1. The free movement of persons is one of the four fundamental freedoms of the European Union. Citizenship and domicile—concepts that traditional law has operated with for decades—are now being redefined, both in practice and at the legislative and legal level, by more flexible notions such as belonging and residence. *Lex personalis*, the law of the state of which we are citizens, continues to be relevant; however, freedom of movement allows individuals to increasingly relate to their own desires and needs, choosing the legal framework and place of residence that best protects their rights and interests, including in matters of family and personal status. Traditionally, a person’s status is governed by national law; a person’s citizenship determines the law applicable to their personal status.

2. Citizens are entitled to fundamental rights and freedoms, as well as to the duties stipulated in the legal order of the state. In addition to national citizenship, citizens of European Union member states acquire European citizenship in accordance with Article 20 of the Treaty on the Functioning of the European Union, which stipulates that: ‘1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship’.

3. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, *inter alia*: a) the right to move and reside freely within the territory of the Member States; b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State; c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State; d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

4. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States¹ is based on the provisions of Article 21 TFEU, according to which: ‘(1) Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect².

5. Directive 2004/38/EC applies in all situations where a Union citizen, regardless of their country of origin, moves to or resides in a Member State other than that of which they are a national, and to their family members who accompany or join them’, namely: the spouse; the partner with whom the Union citizen has entered into a registered partnership, in accordance with the legislation of a Member State, if, according to the legislation of the host Member State, registered partnerships are considered equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004, pp. 77–123.

² G. L. ISPAS, *Dreptul afacerilor în Uniunea Europeană. Instituții și politici ale Uniunii Europene*, Hamangiu Publishing House, 2025, pp. 258.

host Member State; direct descendants who are under 21 years of age or who are dependent on him or her, as well as the direct descendants of the spouse or partner; direct ascendants who are dependent on him or her and those of the spouse or partner (Article 2(2)); the partner with whom the Union citizen has a duly attested stable relationship (Art. 3).

6. In this context, the increased mobility of citizens within the European Union can sometimes lead to difficult situations in terms of family relationships, and traditional concepts of family and gender are becoming increasingly flexible. To date, the European Union has not opted to harmonize the rules of private international law in matters such as personal status, marriage, adoption, filiation, etc. marriage, adoption, filiation, guardianship of adults, etc. In these matters, the rules of private international law provided for by the law of the court seised (*lex fori*) are applicable³.

7. Only in the field of parenting, the European Commission published a *Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood* (the Parenthood Proposal)⁴ on 7 December 2022, which provides for a number of common rules for the Member States such as: the applicable law to parenthood, jurisdiction in parenthood matters and the recognition of court decisions in parenthood matters⁵.

8. Currently, the existing conflict rules of the Member States on family relations (marriage, civil partnership, parenthood) differ considerably, creating disharmonies between the European legal systems⁶. With regard to gender and sex identity, several countries have recently opted to recognize a third gender in civil status documents, distinct from male and female. The distinction⁷ between *sex* (biological) and *gender* (social) raises a number of legal questions regarding who is entitled to decide on membership of this third category - doctors or state authorities, the criteria (biological or social) on which this distinction is based, as well as the extent to which, in terms of private international law, more conservative states, such as Romania, will accept non-binary persons and how they will treat them in cases of marriage and parenthood⁸.

9. Yogyakarta Principles (*Principles on the application of international human rights law in relation to sexual orientation and gender identity*)⁹, originally drafted in 2006 by a group of international human rights experts at an international meeting held in Yogyakarta, Indonesia, and subsequently ex-

³ P. J. BLANCO, "Movilidad transfronteriza de personas, vida familiar y Derecho internacional privado", *Revista electrónica de estudios internacionales*, no. 35, 2018, pp. 2-4; M. Á. S. JIMÉNEZ, "Tratamiento de la diversidad de estructuras familiares en los reglamentos europeos y continuidad del estatuto personal", in B. C. Díaz (coord.), *Derecho de familia internacional en un contexto de creciente migración: cuestiones vinculadas con el Reglamento 2019/1111*, Editorial Aranzadi, Madrid, 2024, pp. 29-51.

⁴ Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, COM (2022) 695 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0695>, accessed 17.11.2025.

⁵ See CH. BUDZIKIEWICZ, K. DUDEN, A. DUTTA, T. HELMS, C. MAYER, *The Marburg group's comments on the parenthood proposal*, Intersentia, Cambridge, 2024, pp.1-3. Also see B. C. Díaz, "La filiación en el dipr de la ue: entre la situación actual y las perspectivas de cambio", in B. C. Díaz (coord.), *op. cit.*, pp. 62-75.

⁶ N. K. ŠALAMON, *Mapping of studies on the difficulties for LGBTI people in cross-border situations in the EU*, November 2019, available at: https://commission.europa.eu/system/files/202005/mapping_of_studies_on_the_difficulties_for_lgbti_people_in_cross-border_situations_in_the_eu.pdf, accessed 17.11.2025.

⁷ See European Commission, "Legal Gender Recognition in the EU: The Journeys of Trans People towards Full Equality", June, 2020, available at: https://commission.europa.eu/document/download/bdffcbef-4c28-4c99-9c5a-b8207110d486_en?filename=legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf&prefLang=de, accessed 17.11.2025.

⁸ A. DUȚU, "France: technical impossibility of recognizing gender neutrality or "intersex" status in civil status documents", *Pandectele Române*, no. 2, 2023, pp. 235-239.

⁹ *Yogyakarta Principles*, available at: <https://yogyakartaprinciples.org>, accessed 17.11.2025. See P. Mitrai, K. Abhijeet, "The Yogyakarta Principles: A Legal Discourse on Rights of the LGBTI Community", *International Journal of Law Management & Humanities* no. 3, 2020, pp. 1730-1747.

panded in 2017, it is one of the reference documents on human rights as they apply to sexual orientation and gender identity. The preamble to the document defines *gender identity* as ‘referring to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms’.

10. According to principle 31 - *The Right to Legal Recognition* (YP+10)¹⁰: ‘Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them’. Although the Yogyakarta Principles are not binding, they enshrine the recognition of gender identity based on self-determination; therefore, applicants can change their legal gender via a declaration or request with a competent authority, such as the municipality civil status officer. The procedure does not require mental health diagnosis or any third-party intervention, compulsory medical intervention, surgery or sterilisation, or compulsory divorce. Member states that impose sterilization and surgery violate international human rights law.

11. On October 9, 2025, the European Commission adopted the new *LGBTIQ+ equality strategy 2026-2030*¹¹, after previously, in November 2020, the Commission adopted the *LGBTIQ Equality Strategy 2020-2025*¹², which was the first-ever Commission strategy on LGBTIQ equality and delivered on the European Commission’s commitment to building a Union of Equality. The new strategy aims to protect LGBTIQ+ people from all forms of violence, ensure equal opportunities and respect for their rights in all areas of life, and engage society as a whole in promoting freedom, diversity, and inclusion. To this end, a series of concrete measures are proposed, including assessing and supporting the prohibition of „conversion practices” in Member States; combating hate speech and online hate through the creation of a European monitoring center and a new EU action plan against cyberbullying, with a focus on protecting LGBTIQ+ youth.

12. Romania is among the last European countries that currently do not recognize any form of legal protection for same-sex couples, although there have been a number of legislative proposals to this effect over time. Not even the decision of the European Court of Human Rights in the case of *Buhuceanu and Others v. Romania*¹³ has brought about any change in the Romanian legislative landscape¹⁴. There is a deep attachment to the traditional family at the societal level, while the guarantee of equal treatment for European Union citizens, regardless of their sexual orientation or gender identity, is weak.

¹⁰ *Yogyakarta Principles plus 10*, available at: <http://yogyakartaprinciples.org/principles-en/yp10/>, accessed 17.11.2025. Also see M. O’Flaherty, “The Yogyakarta Principles at Ten”, *Nordic Journal of Human Rights*, vol. 33, no. 4, 2015, pp. 280-298.

¹¹ European Commission, *Union of Equality: LGBTIQ Equality Strategy 2026-2030, COM (2025) 725 final*, available at: https://commission.europa.eu/document/download/b4952371-4308-47ad-b995-02c539b75dda_ro?filename=JUST_template_comingsoon_standard.pdf, accessed 17.11.2025.

¹² European Commission, *Union of Equality: LGBTIQ Equality Strategy 2020-2025*, COM (2020) 698, 12 November 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0698>, accessed 17.11.2025. Also see K. EISELE, *LGBTIQ equality strategy. Implementation overview*, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/753174/EPRS_STU\(2023\)753174_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/753174/EPRS_STU(2023)753174_EN.pdf), accessed 17.11.2025.

¹³ ECHR, May 23, 2023, application no. 20081/19, *Buhuceanu and Others v. Romania*.

¹⁴ See C. JUGASTRU, “Buhuceanu and Others against Romania. Lines of Consolidation and Dilemmas,” *Revista de Dreptul Familiei*, no. 2, 2023, p. 337354; C. M. Nicolescu, D. A. Deteșeanu, “The surprise of unsurprising case law: the ECHR case *Buhuceanu and Others v. Romania* (May 23, 2023), from the perspective of Romanian domestic law”, *Analele Universitatii din București: Seria Drept*, 2023, pp. 80-90.

II. Multiple perspectives on gender identity

1. Key judgments and the evolution of the European Court of Human Rights Court's approach

13. Over time, the European Court of Human Rights (ECHR) has ruled on both the legal recognition of gender identity and the concrete implications of transsexualism in areas such as family life, parental rights, social security, health insurance, and pensions. For the first time, the ECHR became aware of “the seriousness of the problems affecting transsexuals and their suffering” and recommended “the constant examination of appropriate measures, taking into account in particular the evolution of science and society” in the case of *Rees v. United Kingdom*¹⁵, in which it nevertheless ruled that Article 12 of the Convention had not been violated and found that the traditional concept of marriage was based on the union between persons of the opposite biological sex.

14. While the ECHR's position has long been not to recognize the possibility for transsexuals to marry in the case of *Christine Goodwin v. United Kingdom*¹⁶, it ruled that it is up to the state to decide the conditions and formalities for the marriage of transsexuals, but that it “sees no reason why a transsexual should be denied the right to marry in all circumstances.” The ECHR also stated that it was not “convinced that sex is determined by purely biological criteria.” Previously, in the case of *B v. France*, the ECHR had recognized for the first time that Article 8 of the Convention had been violated, since the French authorities' refusal to amend the civil registry had placed the applicant “in a daily situation that was incompatible with the respect due to her private life.”

15. One of the most frequently cited judgments handed down by the ECHR in this area is the case of *A.P., Garçon and Nicot v. France*¹⁷, in which it examined the provisions of French law on the modification of civil status documents of transgender persons, which required medical treatment leading to an irreversible change in appearance. The ECHR considered that forcing transgender persons to undergo such treatment against their will constitutes a condition on the full exercise of their right to respect for private life, as enshrined in Article 8 of the Convention. Making recognition of sexual identity in the case of transgender persons conditional upon prior surgical intervention to which they do not wish to submit may constitute a limitation of their right to respect for private life, as enshrined in Article 8 of the Convention.

16. In the case of *Y.T. v. Bulgaria*¹⁸, the ECHR was called upon to determine whether the refusal of the Bulgarian courts to grant the applicant's request to change his gender in the civil registry constituted a violation of his right to respect for his private life. We must highlight the conservatism and lack of vision of the Bulgarian courts in this case, which expressed their conviction that gender reassignment is not possible as long as the person presented the characteristics of a particular sex at birth. In addition, the national judges explicitly stated that they chose to ignore recent case law according to which a sex change can be recognized independently of medical treatment.

17. In another case highlighting freedom of movement, *Rana v. Hungary*¹⁹, the Hungarian authorities granted the applicant refugee status on the grounds that he had been persecuted in Iran because of his transsexualism. However, when the transgender man requested a change of name and gender from female to male, the same Hungarian authorities rejected his application on the grounds that he did not have a birth certificate issued by the Hungarian authorities. Currently, Hungary has a clear position on the issue of transgender people, in the sense that their legal recognition is unconstitutional.

¹⁵ ECHR, October 17, 1986, application no. 9532/81, *Rees v. United Kingdom*, hudoc.int.

¹⁶ ECHR, March 27, 1996, application no. 17488/90 *Christine Goodwin v. United Kingdom*, hudoc.int.

¹⁷ ECHR, April 6, 2017, application no. 79885/12, 52471/13, 52596/13, *A.P., Garçon and Nicot v. France*, hudoc.int.

¹⁸ ECHR, July, 9, 2020, application no. 41701/16, *Y.T. v. Bulgaria*, hudoc.int.

¹⁹ ECHR, July, 16, 2020, application no. 40888/17, *Rana v. Hungary*, hudoc.int.

18. In the case of *X v. the former Yugoslav Republic of Macedonia*²⁰, the Court found a violation of Article 8 of the Convention due to legislative gaps in domestic law. The Court thus examined whether the conditions for changing civil status records by transgender persons existed and, if so, what those conditions were, and whether there was consistent case law on the matter, finding that the Member State had failed to establish a quick, transparent, and accessible procedure for changing the civil status documents of transgender persons, and that the lack of such a procedure causes the applicant uncertainty regarding his private life and has long-term negative consequences for his mental health. It reinforced the Court's case law on the matter, stating that Member States must ensure swift, transparent, and accessible procedures for legal gender recognition, while excessive requirements or a lack of clear regulations violate Article 8 of the Convention.

19. Similarly, in the case of *X and Y v. Romania*²¹, the Romanian state was condemned by the European Court of Human Rights for violating its obligations towards transgender persons, because Romanian courts did not recognize the male sex of two women who requested this, but had not undergone sex reassignment surgery. Subsequently, one of the applicants underwent gender reassignment surgery, and the Romanian courts upheld the action seeking the change of civil status documents. As in previous cases, the Court noted once again that Romanian law does not provide for a specific procedure for requests for legal recognition of gender reassignment, as is the case in other countries. Although Romanian law does not expressly stipulate that these persons must undergo sex reassignment surgery, Romanian courts have rejected the plaintiffs' claims on this ground.

20. In the case of *A.M. and others v. Russia*²², the ECHR examined how Russian courts had restricted the parental rights of the transgender applicant (who had undergone gender reassignment surgery), depriving him of the right to have personal relations with his child, whom he had given birth to before his transition. As an argument, the national judge invoked a possible negative impact on the health and psychological development of the children, although there was no evidence to support this. From our point of view, the ECHR's decision in this case represents significant progress in protecting the family life of transgender people. Whereas in previous cases, the Strasbourg judge had examined how national courts restricted their right to privacy, this time he had to go a step further and examine the restriction of the right to family life from the perspective of the parent-child relationship and the principle of the best interests of the child. The child's personal relationship with the parent is a right of both the child and the parent. The decision of the Russian courts is a clear example of discrimination, supported by a conservative view of the traditional family and fueled by prejudices about gender identity. Beyond the legal aspects, we cannot ignore the personal consequences of this restriction of the right to be a parent on the grounds of sexual conversion. Once again, this decision highlights the importance of uniform regulation in this area, as the right to exercise parental prerogatives, acquired as a result of filiation, cannot be limited or even denied following a gender transition. Uniform regulations would lead to stability in family relationships in all Member States and would underpin the right of free movement of European Union citizens throughout the territory.

21. The case *A.H. and Others v. Germany*²³ raised another sensitive issue that transgender people may face, namely establishing parentage between a transgender parent and their biological child. In this

²⁰ ECHR, January, 17, 2019, application no. 29683/16, *X v. the former Yugoslav Republic of Macedonia*, hudoc.int.

²¹ ECHR, January, 1, 2021, application no. 2145/16, 20607/16, *X and Y v. Romania*. See D.A. Popescu, "Reflections on gender identity and dual motherhood (fatherhood) in a multicolored world: in the world of Europe", in D. A. Popescu, S. Golub (coord.), *O familie pentru Europa. O Europă a familiilor. Studia Emese Florian dedicata*, Hamangiu Publishing House, Bucharest, 2022, p. 887-904; B. Ionescu, *Schimbarea de sex în actele de stare civilă*, Universul Juridic Publishing House, Bucharest, 2024, p. 127; S. Stoicescu, "Case of X and Y v. Romania. Gender identity. Implications and practical consequences", *Revista de Dreptul Familiei* no. 1, 2021, p. 527.

²² ECHR, November, 11, 2021, application no. 47220/19, *A.M. and others v. Russia*, hudoc.int.

²³ ECHR, April, 4, 2023, application no. 7246/20, *A.H. and Others v. Germany*, hudoc.int. Also see ECHR, February, 6, 2019, application no. 3568/18; 54941/18, O.H. și G.H. v. *Germany*, hudoc.int. for details, see M. Pirosikova, J. Fialova, T. Zdechovsky, "Mater Semper Certa Est - Should We Register Transsexual Woman-to-Man as a Father? Remarks on the ECHR Judgment O.H. and G.H. v. Germany", *Review of European and Comparative Law (RECoL)*, vol. 56, 2024, pp. 7-24.

case, the plaintiff, A.H., a transgender person, participated in the conception of the child born to his partner as the biological father. The German authorities registered A.H. as the father on the child's birth certificate, even though, at the time of birth, he had a legally recognized female gender identity. According to German law, if the child of a transgender person was conceived and born after the recognition of the new gender identity, the birth certificate of the child shall indicate the sex and former surname of the transgender parent. The ECHR ruled that there was no violation of Article 8 in this case, given that national authorities enjoy a wide margin of discretion in this matter. The Court reiterated that in such cases, the best interests of the child are paramount.

2. CJEU Perspectives: The Mirin Case²⁴

22. In this case, M.-A.A., a Romanian trans man with dual Romanian-British citizenship, requested the Civil Registry Office of the Directorate for Personal Records at place of birth to enter in his birth certificate the changes to his first name, sex, and personal identification number so that they reflect his male sex, and to issue him a new birth certificate containing these new entries. At birth, M.A. A. was registered as female, and his/her Romanian birth certificate showed a female first name, he/she was identified as female and had a personal identification number that also identified him/her as being of that sex. After moving with his/her parents to the United Kingdom, M.A. A. acquired British citizenship by naturalization. Subsequently, M.A. A. obtained in the United Kingdom a *Gender Identity Certificate*, a document confirming his/her male gender identity²⁵.

23. The Romanian authorities rejected M.A. A.'s application, inter alia, on the ground that, in accordance with Article 43(i) of Law No 119/1996, read in conjunction with Article 4 para. (2)(l) of Government Ordinance No. 41/2003 (now repealed), a reference to a person's change of gender identity may be entered in their birth certificate only when it has been approved by a final court decision. Consequently, M.A. A. applied to the court, requesting that the Romanian authorities be required to bring his birth certificate into line with his surname and gender identity legally acquired in the United Kingdom. In M.A. A.'s view, requiring him to initiate new legal proceedings in Romania for the approval of his gender change would have exposed him to the risk of obtaining a decision contrary to that adopted by the British authorities. In addition, he invoked the case of *X and Y v. Romania*, in which the ECHR ruled that this procedure lacks clarity and predictability²⁶.

24. In these circumstances, the Romanian court referred the matter to the Court of Justice of the European Union to clarify to what extent the non-recognition of the change of sex and surname in the civil status obtained by a Romanian citizen in another Member State, of which he is also a citizen, precludes the exercise of the right to European citizenship and/or the right to free movement and residence of a Union citizen, of which he or she is also a citizen, precludes the exercise of the right to European citizenship and/or the right to free movement and residence of a citizen of the European Union. At the same time, the court also wanted to clarify the extent to which the resolution of the main dispute is influenced by the United Kingdom's withdrawal from the Union.

25. In other areas of law, European Union Member States commonly recognize each other's decisions without further proceedings. It should be noted that the national court framed the question in the light of European citizenship, the right to free movement and residence, dignity, equality before the law and non-discrimination, as well as private and family life (Articles 20 and 21 TFEU and Article 45 of the

²⁴ ECJ, 4 October 2024, Case C-4/23, *M.-A.A. v Direcția de Evidență a Persoanelor Cluj, Serviciul stare civilă and others* (ECLI:EU:C:2024:845).

²⁵ See A. Cardoso, "Trans rights in the European Union – "sex" v. "gender" on the path towards equality and non-discrimination", *UNIO - EU Law Journal*, vol. 8, no. 2, March 2023, pp. 51-62.

²⁶ See L. IRINESCU, *Dreptul familiei*, Hamangiu Publishing House, Bucharest, 2024, p. 93-95.

Charter of Fundamental Rights). The Romanian Government argued that the request for a preliminary ruling was inadmissible on the grounds that M.A. A. had not submitted his request to have his change of first name and sex, legally acquired in the United Kingdom, entered in his Romanian birth certificate, to the competent Romanian authorities.

26. The Court noted that the fact that the United Kingdom is no longer a Member State of the Union has no bearing on the case, since, as a Romanian national, M.-A. A. enjoys the status of Union citizen. The Court also ruled: ‘the refusal by the competent civil status authorities of a Member State to recognise and enter in the civil registers, and in particular in the birth certificate of a national of that Member State, a change of first name and gender identity lawfully acquired by that national in another Member State, on the basis of national legislation which does not allow such recognition and entry, with the result that the person concerned is obliged to bring new judicial proceedings for a change of gender identity in the first Member State, which disregard that change already lawfully acquired in that other Member State, is liable to restrict the exercise of the right to move and reside freely within the territory of the Member States’ (para. 57).

27. Unlike other cases concerning gender identity resolved by the ECHR, which the Strasbourg judge analyzed from the perspective of compliance with the principle of non-discrimination, the *Mirin* case raises a more complex issue from the perspective of the fundamental rights and freedoms of European Union citizens (the right to free movement) associated with fundamental human rights (the right to privacy, the right to family life)²⁷.

28. Sex, like name, is an element of identification of a natural person, but unlike a change of name, in the case of sex the consequences affect not only the civil status of the person but also their family status. This was also the argument put forward by Advocate General Jean Richard de la Tour in his conclusions: ‘as things stand under EU law, no provision or case law governs matters relating to the updating, in the Member State of birth of a Union citizen, of data in civil status records concerning sex or gender identity on the basis of documents drawn up or decisions taken in another Member State’. At the same time, it pointed out that the gender identity declaration changes both the personal and family status of the person concerned and has an impact on family relationships (marriage, filiation, exercise of parental rights) as well as on other rights that remain linked to gender differences (pension, health, sports competitions, etc.). In conclusion, Member States remain competent to determine in their national law the effects of such recognition and registration in other civil status records, as well as in matters of marriage and filiation.

29. Since in the *Mirin* case, the subject matter of the application was based on the provisions of Articles 20 and 21 TFEU, the Court had to apply the relevant provisions of European law, namely Articles 7 and 45 of the Charter of Fundamental Rights of the European Union, and to examine the extent to which the right of free movement and residence within the territory of the Member States of a citizen of the European Union is restricted when the Member State of origin refuses to recognize and record in the birth certificate the change of surname and gender identity obtained in another state. The importance of this ruling extends beyond the individual situation of the applicant and highlights the broader issue faced by transgender persons, who do not enjoy the same legal recognition of gender in all Member States of the European Union, preventing them from traveling freely, live, work, or study in another country²⁸.

30. The judgment in the *Mirin* case confirms the principle that rights lawfully acquired in one Member State must remain valid throughout the European Union. On the other hand, this will create

²⁷ M. A. PLAN, “Trans Rights and Gender Recognition before the CJEU: Reflections on the AG’s Opinion in the *Mirin* Case (C4/23)”, *VerfBlog*, 2024/6/05, <https://verfassungsblog.de/trans-rights-and-legal-gender-recognition/>, available at: <https://verfassungsblog.de/trans-rights-and-legal-gender-recognition/>, accessed 17.11.2025.

²⁸ A. TRYFONIDOU, “Introductory note to *Relu Adrian Coman and Others v. Inspectoratul General pentru Imigrari and Ministerul Afacerilor Interne* (C.J.E.U.) [notes]”, *International Legal Materials*, Vol. 58, Issue 4, August 2019, pp. 823-836.

problems with regard to the right to private and family life, as this solution places the applicant in situations where they are treated as a man for matters relating to cross-border activities, but as a woman for matters relating to marriage and filiation in their own state, as these matters fall within the competence of the Member States²⁹.

31. Equally, this decision may be a first step towards consolidating European law on the rights of transgender persons. This time, unlike in the *Coman v. Romania* case, the CJEU ruled that Member States are obliged to fully recognize a legal gender change performed in another Member State by registering it in the civil registry and amending the birth certificate of the Union citizen. In case *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*³⁰, the Court ruled that a same-sex marriage concluded in Belgium may be recognised in Romania, which does not offer any legal protection to same-sex couples, solely for the purpose of recognising the right of residence of the spouse of a Romanian citizen who has exercised his or her right to free movement.

32. In conclusion, as a result of the *Mirin* ruling, transgender persons who have completed a legal gender recognition procedure in one Member State will have their legal sex recognized in any EU country they travel to or settle in. It remains to be seen whether the Court's view on the cross-border recognition of same-sex marriages will change. As far as we are concerned, we believe that in conservative states such as Romania, where the church has an overwhelming influence on citizens and politics, reform can only come from the Court of Justice of the European Union. Otherwise, the protection of transgender people achieved as a result of the *Mirin* ruling is only half complete³¹.

33. Currently, the CJEU is called upon to rule on this matter in the case brought before it *Cupriak-Trojan and Trojan v. Poland*³². This time, the applicants, Jakub Cupriak-Trojan, who has dual Polish and German citizenship, and Mr. Mateusz Trojan, a Polish citizen, who were married in Germany and currently reside in Poland, requested the registry office in Warsaw to transcribe their German marriage certificate. The CJEU will have to determine whether the provisions of Articles 20 and 21 TFEU preclude the possibility that ‘the competent authorities of a Member State of which a Union citizen is a national, who has entered into marriage with another Union citizen (a person of the same sex) in a Member State, in accordance with the law of that State, to refuse to recognize and register that marriage in the national civil status registers, thereby preventing those persons from residing in that State with that civil status and with the same surname on the ground that the law of the host State does not provide for marriages between persons of the same sex?’³³ On November 25, the CJEU concluded that the refusal by a Member State of origin to recognise a marriage between two EU citizens, lawfully concluded in a host Member State, constitutes a breach of Article 20 and Article 21(1) TFEU, read in the light of Article 7 and Article 21(1) of the Charter of Fundamental Rights of the European Union; therefore, Member States, are obliged to recognize a marriage between two EU citizens of the same sex that was legally concluded in another Member State where they exercised their right to free movement and residence.

²⁹ L. IRINESCU, *op. cit.*, p. 95.

³⁰ ECJ, Case C-673/16, 5 June 2018, *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* (ECLI:EU:C:2018:385).

³¹ For a detailed analysis of the case, see A. TRYFONIDOU, “The Cross-Border Recognition of Changes in the Legal Sex of Transgender Persons: The Landmark Court of Justice ruling in the *Mirin* case. ECJ 4 October 2024, Case C-4/23, M.-A.A. v. Direcția de Evidență a Persoanelor Cluj, Serviciul stare civilă and others”, *European Constitutional Law Review*, vol. 1, issue 2, June 2025, pp. 333-355.

³² ECJ, Case C-713/23, 25 November 2025, *Jakub Cupriak-Trojan and Mateusz Trojan v. Wojewoda Mazowiecki*, (ECLI:EU:C:2025:917).

³³ A. G. Opinion 3 April 2025, Case C-713/23, *Cupriak-Trojan and Trojan* (ECLI:EU:C:2025:235). A.G. Richard de la Tour held that Articles 20 and 21(1) TFEU, in light of Article 7 of the Charter, do not require a Member State to transcribe a same-sex marriage certificate lawfully issued in another Member State, provided that alternative forms of recognition are available. Also see A. MARIOTTINI, “Opinion of AG de la Tour in C-713/23, *Trojan*: A step forward in the cross-border recognition of same-sex marriages in the EU?”, available at: <https://conflictoflaws.net/2025/opinion-of-ag-de-la-tour-in-c-713-23-trojan-a-step-forward-in-the-cross-border-recognition-of-same-sex-marriages-in-the-eu/>, accessed 18.11.2025.

In the case of Poland, as in the case of Romania, the only way of recognizing marriages concluded by Union citizens in the exercise of their freedom to move and reside within another Member State is the transcription of the marriage certificate in the civil register. At the same time, the CJEU reiterated that Member States are not required to regulate same-sex marriage in national law

III. Challenges faced by transgender persons in establishing a family under private international law

1. Marriage and cross-border recognition of civil status

34. Every individual has the right to marry. From a human rights perspective, the right to marry is based on fundamental principles such as equality, freedom of choice, and non-discrimination. From this perspective, the right to marry implies free and equal access for all persons to marry and found a family, without discrimination on the basis of sex, race, ethnicity, religion, nationality, or sexual orientation³⁴.

35. In private international law, the application of conflict rules attracts the incidence of different substantive laws. Romanian private international law distinguishes between the substantive conditions for marriage, for which the national law of each of the future spouses will be applied in principle (Article 2586 of the Romanian Civil Code), and the formal conditions, for which the law of the state where the marriage is celebrated will be taken into account in principle (Article 2587 of the Romanian Civil Code).³⁵

36. In the Romanian legal system, marriage is defined as “*the freely consented union between a man and a woman, concluded under the conditions provided by law*” (Art. 259(1) of the Romanian Civil Code)³⁶. In fact, marriage between persons of different sexes is the only form of civil union recognized in Romania. In this regard, the provisions of Article 277 of the Romanian Civil Code explicitly prohibit both *marriages between persons of the same sex*, concluded abroad, whether by Romanian citizens or foreign citizens, and *civil partnerships* between persons of different sexes or even between persons of the same sex, concluded abroad, whether by Romanian citizens or foreign citizens. Therefore, these provisions also have an effect in the sphere of private international law³⁷.

37. The Constitutional Court of Romania admitted, by majority vote, the exception of unconstitutionality and ruled that “*the provisions of Article 277(2) and (4) of the Civil Code are constitutional if they allow the right of residence in Romania, under the conditions provided for by European law, to spouses who are citizens of EU Member States and to their children under the age of 18.*” (2) and (4) of the Civil Code are *constitutional* if they allow the right of *residence on Romanian territory, under the conditions provided for by European law, to spouses who are citizens of EU Member States and/or citizens of third countries in marriages between persons of the same sex, concluded in an EU Member State*”³⁸. In these circumstances, the question arises in practice of the validity of marriages concluded by transgender persons and/or persons whose sex is not clearly determined (intersex persons).

³⁴ C. NICOLESCU, “Case law of the European Court of Human Rights regarding the holders and the limits of the right to marry and to start family”, *Dreptul*, vol. 20, no. 4, 2009, pp. 108-126.

³⁵ D. A. POPESCU, E. A. OPREA, *Drept internațional privat*, Ed. Hamangiu, Publishing House, Bucharest, 2023, p. 356-367; C. JUGASTRU, “Încheierea căsătoriei în dreptul internațional privat. Evoluții și tendințe”, *Revista Română de Drept Privat* no. 5, 2015, p. 96.

³⁶ L. IRINESCU, *Dreptul familiei*, op. cit., p. 61.

³⁷ C. JUGASTRU, “Legea aplicabilă parteneriatului civil în dreptul român. Propuneri de lege ferenda (I)”, *Dreptul* no. 7, 2023, p. 15; C. JUGASTRU, “Legea aplicabilă parteneriatului civil în dreptul român. Propuneri de lege ferenda (II)”, *Dreptul* no. 9, 2023, p. 18.

³⁸ Decision No. 534 of July 18, 2018, Official Gazette of Romania, Part I, No. 842 of October 3, 2018.

38. There are no special regulations dedicated to intersex persons in the Romanian legal system. Transgender persons can only enter into a valid marriage if they have undergone sex reassignment surgery and subsequently obtained a court ruling on the basis of which changes have been made to their civil status documents, their name has been changed, and a new birth certificate has been issued in accordance with their new sex, a new personal identification number, and a new identity card. The marriage of a transgender person will be valid as long as all the substantive conditions required by Romanian law are met, namely valid consent, capacity to marry, and sexual differentiation. However, upon entering into marriage, the spouse who has undergone sex reassignment surgery must inform the other spouse of this fact, otherwise the marriage may be annulled on the grounds of fraud (dol).

39. If the change of sex takes place during an existing marriage, there is no established legal solution in Romanian law. The only solution that would be applicable at present would be the annulment of the marriage; however, the automatic termination of the marriage, without any other remedies for a couple who would like to maintain their legal status, could be considered a violation of Article 8 of the European Convention on Human Rights. With regard to the moment when the existing marriage will cease to have legal effect, we consider that this is the moment when the court decision granting the change of sex becomes final.

40. Transgender persons who have not undergone sex reassignment surgery cannot legally marry in Romania. However, we do not rule out the possibility of such marriages taking place, given that the registrar only checks the information in the civil status documents, which do not indicate that a sex change has taken place without prior surgical conversion.

41. In the sphere of private international family law, in the context of the dynamics of international legislation on the institution of marriage, challenges arise in a context where more and more states have enshrined new forms of conjugality and the lack of sexual differentiation in marriage has been abandoned. At the same time, in matters of filiation, some states have abandoned the terminology of mother and father, replacing it with „parent 1” and „parent 2”.

42. With regard to the recognition of the effects of marriage, the private international law of the states regulates the procedure. However, not all countries recognize same-sex marriage on their territory (as is the case with Romanian law). Civil partnerships between persons of the same sex do not enjoy full international recognition. At European level, the recognition of the property effects of civil partnerships is only achieved in Member States that have participated in enhanced cooperation in the area of jurisdiction, applicable law, and the recognition and enforcement of judgments concerning the property regimes of international couples, which include both matrimonial regimes and the property effects of registered partnerships—Regulation (EU) No. 1104/2016³⁹.

43. In countries where civil partnerships are not regulated, private international law contains rules of immediate application that override the conflicting rule on partnerships (as is the case with Romanian law). There remain countries that have rules regulating civil partnerships in domestic law and that also allow for their recognition in private international law⁴⁰.

44. At the same time, transgender people who have not undergone gender reassignment surgery can also opt for civil partnerships. In this regard, there are far fewer countries that regulate cohabitation. For example, under Romanian law, many heterosexual couples who do not wish to marry opt, in the

³⁹ J. M. SCHERPE, “Why registered partnership? A comparative overview”, in R. Probert, S. Thompson, (eds.) *Research handbook of marriage, cohabitation and the law*, Edward Elgar Publishing, 2024, pp. 225-237.

⁴⁰ L. IRINESCU, “Civil partnership a future institution in modern romanian law?”, *Revista de Dreptul Familiei* no. 2, 2024, pp. 149-174; C. Nicolescu, “Registered civil partnerships a normative necessity?”, *Revista Română de Drept Privat* no. 3, 2018, pp. 340-356.

absence of express regulations, for de facto unions, while also accepting the lack of legal effects. The Romanian Civil Code gives cohabitation limited effects in terms of filiation and adoption, even though it doesn't specifically recognize it. The property regime of cohabiting partners follows the common law regime in this area. In private international law, states that recognize the effects of cohabitation opt for various legal frameworks, ranging from civil union, contract, civil liability to unjust enrichment.

2. Filiation and parental rights of transgender persons in private international law

45. Transgender people, just like cisgender people, can be parents or want to become parents. Today, in the vast majority of states, filiation is subject to legal challenges arising from the diversity of families, sexual orientation, and transnational mobility of persons; thus, it is becoming increasingly difficult to establish filiation links based on existing legal norms. Transgender people, after gender transition, can become parents through assisted reproduction techniques or adoption⁴¹.

46. In Romanian law, as in most countries, filiation to the mother is established by birth⁴². At the jurisprudential level, there are currently no known cases in Romania in which transgender persons, who were female at birth and subsequently opted for a different gender identity without sex reassignment, have given birth to a child. In Romania, there are no specific provisions regarding these situations, therefore, any request will be resolved by Romanian courts with reference to ECHR case law. In fact, there are no specific regulations on surrogacy, and the few cases that have been settled in court have followed the direction dictated by the judges in Strasbourg. In general, they have opted to recognize the child's filiation to the intended parents only in cases where they were also the genetic parents⁴³.

47. The filiation of a child born in wedlock to the father is established on the basis of the law, the presumption of paternity, in the person of the mother's husband. In the case of a child born outside of marriage, filiation is established as a result of recognition by the biological father in the forms provided by law (authentic document, declaration to the civil registry office, or will) or, in the absence thereof, through legal action.

48. If we refer to Romanian private international law, Article 2603(2) of the Romanian Civil Code expressly states that the filiation of a child born during marriage shall be governed by the law applicable to the effects of the parents' marriage at the time of birth. These legal provisions may also apply to the establishment of the filiation of a child born of a valid marriage between two persons of the same sex concluded abroad. However, they cannot be invoked when the child is born in a civil partnership concluded abroad. In this case, the law applicable to the effects of the parents' marriage at the time of the child's birth will be applied.

49. When transgender people resort to surrogacy, they choose to submit to a range of legal possibilities regarding the establishment of the filiation of the child conceived in this way. From the perspective of private international law, some states refuse to recognize parentage based on assisted human reproduction techniques as contrary to their public policy of private international law, while other states

⁴¹ V. GRUBEN, S. CARSLY, A. CZARNOWSKI, "Surrogacy, feminism and LGBTQ2S+ family building", in K. TRIMMINGS, S. SHAKARGY, C. ACHMAD (eds.), *Research handbook on surrogacy and the law*, Edward Elgar Publishing, 2024, pp. 169-186; N. DETHLOFF, K. KASLING, F. LEVEN, "From marriage to family: plurality of family forms from a comparative perspective", in N. DETHLOFF, K. KAESLING (eds.), *Between Sexuality, Gender and Reproduction. On the Pluralisation of Family Forms*, Intersentia, Cambridge, 2023, pp. 1-24

⁴² C.C. Hageanu, *Dreptul familiei*, 3rd edition, Hamangiu Publishing House, Bucharest, 2023, p. 164; C. Nicolescu, "The purely biological concept of filiation with regard to the father – the limit of the principle of the best interests of the child?", *Revista de Dreptul Familiei*, Supplement 2020, p. 259.

⁴³ L. IRINESCU, "Surrogate Motherhood: Between Reproductive Rights and the Best Interests of the Child," *Athens Journal of Law (AJL)*, vol. 11, no. 3, July 2025, pp. 265-276.

implicitly recognize parentage as a result of recognizing a birth certificate issued abroad, while others refuse to transcribe the certificate in the civil registry, invoking *lex fori*⁴⁴. This often leads to absurd solutions, such as the situation where, in the country where the child was born, the intended parents are recognized as the parents, while in the country where the birth certificate is requested to be transcribed (as is the case under Romanian law), the woman who gave birth is recognized as the mother, and her husband as the father, based on the legal presumption of paternity⁴⁵.

IV. Final remarks

50. In a world where human diversity and the complexity of relationships raise more and more questions, the right of transgender people to start a family remains a sensitive area, straddling the boundary between the right to private and family life guaranteed by Article 8 of the ECHR and states' attachment to traditional family law criteria.

51. However, it should be noted that most European countries have made significant progress and have stopped making gender identity recognition conditional on individuals undergoing medical treatment and sex reassignment surgery. Nevertheless, as is the case with Romanian law, many countries do not have specific regulations in this regard. In terms of marriage and civil partnership, some countries make the exercise of the right to marry by transgender persons conditional on surgical sex reassignment, so that they can subsequently marry in accordance with their new sex.

52. In terms of parentage and parenthood, transgender people continue to face discrimination. Some Member States assign parental roles to transgender people in the civil status documents of their biological children according to their biological sex, rather than their legal gender. Other countries have no specific legislation in this regard⁴⁶. Consequently, limiting the margin of appreciation of states regarding the means they must use to ensure respect for the right to private and family life of transgender persons would be a fair solution.

53. In CJEU case law, there is recognition of the family status of transgender persons from the perspective of the right to free movement of persons, and less so from the perspective of the right to marriage and parenthood.

54. In conclusion, it can be said that the current protection of the right of transgender persons to start a family remains insufficient. In the absence of a minimum level of harmonization at the European Union level, transgender persons' access to legal family institutions (marriage, civil partnership, filiation, parenthood) continues to be legally vulnerable..

⁴⁴ M. J. C. RUIZ, "Denegación del exequatur de la sentencia extranjera sobre filiación de los menores nacidos mediante gestación por sustitución. A propósito de la Sentencia del Tribunal Supremo de 4 de diciembre de 2024", *Cuadernos Derecho Transnacional*, vol. 17, no. 2, 2025, pp. 1126-1148; M. J. C. RUIZ, "Case by Case in Surrogacy: Regarding to the Judgement of the Islas Baleares Provincial Court of 27th April 2021", *Cuadernos de Derecho Transnacional*, vol. 14, no. 2, October 2022, pp. 1053-1068; A. DURÁN AYAGO, "Nota a la Instrucción de 28 de abril de 2025, de la Dirección General de Seguridad Jurídica y Fe Pública, sobre actualización del régimen registral de la filiación de los nacimientos mediante gestación por sustitución: entre lo anodino y lo lesivo", *Cuadernos de Derecho Transnacional*, vol. 17, no. 2, 2025, pp. 1155-1163.

⁴⁵ M. J. C. RUIZ, "Surrogacy: international public policy vs. european public policy", *Cuadernos de Derecho Transnacional*, vol. 13, issue 2, October 2021, pp. 971-1002.

⁴⁶ A. Tryfonidou, "The cross-border legal recognition of parenthood under European law: current law and future prospects," *Journal of Social Welfare and Family Law*, vol. 46, no. 2, 2024, pp. 267-285.