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LGBTIQ rights in the EU

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PLAN

- introduction,
- sexual orientation, gender identity discrimination,
- legal gender recognition in the EU,
- same-sex marriage recognition,
- conclusions.

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Introduction

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Legal Framework

Charter of Fundamental Rights

Art. 7 - respect for private and family life

Art. 21 – non-discrimination

Art. 45 – freedom of movement

The Treaty on the Functioning of the European Union

Art. 20 – citizenship of the Union

Art. 21 (1) – freedom of movement

European Convention on Human Rights

Art. 8 – right to respect for private and family life

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Introduction

- focus on positive obligations of Member States - we're well beyond States' negative obligations to protect LGBTI persons against arbitrary interference by public authorities in their private and family life,
- CJEU recent case-law and its practical value,
- how is CJEU case-law implemented at the national level by the judiciary?

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Introduction

We'll discuss CJEU cases concerning MS with:

❌ no marriage equality,

❌ no recognition of same-sex parenthood,

❌ no legal gender recognition/legal gender recognition procedure violates ECHR.



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Introduction

What if national law – including judgments of supreme and constitutional courts in areas falling within the competence of the Member States – prevents the recognition of gender identity, marriage or parenthood required by EU law?

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Non-discrimination

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EU directives

Grounds/ Fields	Employment	Education	Housing	Social Protection & Healthcare	Goods and Services	Other
Gender	✓	✗	✓	✓	✗	✗
Sexual Orientation	✓	✗	✗	✗	✗	✗

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Recent Court of Justice of the European Union (CJEU) judgments

- J.K. v. TP S.A., 12 January 2023, C-356/21

EU law prohibits national rules that allow a person to refuse to contract with a self-employed person because of their sexual orientation.

- Mousse, 9 January 2025, C-394/23

SNCF cannot process customers' titles in order to personalise commercial communications based on their gender unless this is necessary for the contract or a legitimate interest.

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Positive obligations

Legal gender recognition

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Mirin, 4 October 2024, C-4/23

FACTS

- transgender man registered as female at birth in Romania,
- he moved to the UK – change of his first name and title to male (deed poll); Gender Recognition Certificate confirming his male gender identity,
- he requested the Romanian Civil Status Service to issue a new birth certificate reflecting those changes,
- refusal – under Romanian law, a final court decision was required,
- he challenged that refusal before a Romanian court, which referred the case to the CJEU for a

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Mirin, 4 October 2024, C-4/23

CJEU judgment

- a person's status (name, gender identity) falls within the competence of the Member States (MS),
- nevertheless – in exercising that competence, each MS must comply with EU law,
- refusal to recognise the name and gender identity „is likely to hinder" the exercise of the right to move and reside freely in the territories of the MS, it causes „serious inconvenience" at administrative, professional and private levels,

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Mirin, 4 October 2024, C-4/23

CJEU judgment

- neither the Romanian court nor the Government explained the reasons for requiring a transgender person to start new gender recognition proceedings in Romania, instead of recognising the change lawfully acquired in another Member State.
- the rights from art. 7 of the Charter = the rights from art. 8 of ECHR (ECHR judgment of 19 January 2021, X and Y v. Romania, no. 2145/16 and 20607/16).

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Mirin, 4 October 2024, C-4/23

EU law requires a Member State to recognise a change of first name and gender identity lawfully acquired in another Member State and to enter those changes in the person's birth certificate.

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Shipova, 12 March 2026, C-43/24

FACTS

- transgender woman registered as male at birth in Bulgaria,
- diagnosed with gender dysphoria, began hormone therapy and currently lives in Italy,
- she applied to the District Court to have her female gender legally recognised, to change her first name, patronymic and family name to female names, and to have those changes recorded in her birth certificate,
- despite medical opinions and expert evidence confirming her gender identity, her request was rejected,

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Shipova, 12 March 2026, C-43/24

FACTS

- the Supreme Court of Cassation referred the case to the Court of Justice,
- previously, **the Supreme Court of Cassation** had adopted an interpretative decision according to which Bulgarian law does not provide for the possibility of legal gender recognition,
- in 2021, **the Constitutional Court** held that ‘sex’ under the Bulgarian Constitution refers exclusively to biological sex, and that moral and religious principles prevail over the interests of transgender persons.

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Shipova, 12 March 2026, C-43/24

CJEU judgment

- the legal recognition of gender identity falls within the exclusive competence of the MS,
- nevertheless – in exercising that competence, each MS must comply with EU law,
- refusal to recognise the name and gender identity causes „serious inconvenience” at administrative, professional and private levels,

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Shipova, 12 March 2026, C-43/24

CJEU judgment

- the rights from art. 7 of the Charter = the rights from art. 8 of ECHR

ECHR judgments:

9 July 2020, Y.T. v. Bulgaria, no. 41701/16

(revised by the judgment of 4 July 2024)

27 September 2022, P.H. v. Bulgaria, no. 46509/20

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Shipova, 12 March 2026, C-43/24

CJEU judgment

- the national court must disregard the rulings of a higher national court if they are not consistent with EU law,
- the national court refuses to apply the national rule requiring it to comply with the decisions of that higher court
- that obligation applies also where an ordinary court is bound by a decision of a national constitutional court.

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Shipova, 12 March 2026, C-43/24

EU law precludes legislation of a MS which does not permit legal gender recognition of a national who has exercised their right to move and reside freely in another Member State.

EU law precludes a national court from being bound by the interpretation of national legislation, given by the constitutional court, if it prevents legal gender recognition contrary to EU law.

See also: Deldits, 13 March 2025, C-247/23

- a transgender refugee from Iran requested, under the GDPR, the rectification of her name and gender in the Hungarian asylum register.

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Positive obligations

Same-sex marriage recognition

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Cupriak-Trojan and Tro

25 November 2025

C-713/23



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Cupriak-Trojan and Trojan, 25 November 2025, C-713/23

Facts

- two men, Polish nationals (one also holding German nationality), married in Germany in 2018,
- one spouse's change of surname following the marriage was recognised in Poland,
- the request to transcribe their German marriage certificate into the Polish civil register – refused because Polish law does not provide for same-sex marriage,
- Polish authorities and courts: transcription would be contrary to the fundamental principles of the Polish legal order,
- the Supreme Administrative Court referred the case to

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Cupriak-Trojan and Trojan, 25 November 2025, C-713/23

National case-law before 2025

- no EU law violation - in order to travel in the EU there is no need to present marriage certificate but an identity document proving that the person is a national of one of the EU member states – marital status and family name do not matter when travelling within the EU (Provincial Administrative Court, Warsaw, 1 July 2020, IV SA/Wa 2982/19)
- since the applicant can enter Poland (cross the border) – there is no freedom of movement

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Cupriak-Trojan and Trojan, 25 November 2025, C-713/23

CJEU judgment

- the rights which nationals of MS enjoy include the right to lead a normal family life, together with their family members, including their spouse, both in the host MS and in the MS of which they are nationals when they return to that MS,
- the rules on marriage come within the competence of the Member States, and EU law cannot detract from that competence. The Member States are thus free to decide whether or not to allow marriage for persons of the same sex under their national law,
- nevertheless, in exercising that competence, each MS must comply with EU law (...) by recognising (...) the civil status of

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Cupriak-Trojan and Trojan, 25 November 2025, C-713/23

CJEU judgment

- the rights from art. 7 of the Charter = the rights from art. 8 of ECHR

ECHR judgments:

Przybyszewska and Others v. Poland, 12 December 2023, nos. 11454/17 and 9 others

Formela and Others v. Poland, 19 September 2024, nos. 58828/12 and 4 others

Andersen v. Poland, 24 April 2025, no. 53662/20

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Cupriak-Trojan and Trojan, 25 November 2025, C-713/23

CJEU judgment

- the choice of the procedures for recognising marriages entered into by Union citizens comes within the discretion of the MS in the exercise of their competence,
- the transcription of marriage certificates in the civil register is only one of a number of possible procedures,
- obligation to apply that procedure without distinction to marriages between persons of the same sex and to those between persons of the opposite sex,
- transcribing a marriage certificate is the only means

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Cupriak-Trojan and Trojan, 25 November 2025, C-713/23

Supreme Administrative Court judgment, 20 March 2026, II OSK 216/21

- refusal to recognise the marriage may hinder their right to return to Poland and continue their family life there with the same civil status,
- the right to marry in Poland, which is limited to a man and a woman, is a separate issue from the obligation to recognise a same-sex marriage concluded in the exercise of the right under Article 21(1) TFEU,

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Cupriak-Trojan and Trojan, 25 November 2025, C-713/23

Supreme Administrative Court judgment, 20 March 2026, II OSK 216/21

Article 18 of the Constitution, which gives marriage as a union between a woman and a man special protection, cannot be interpreted in isolation from other constitutional rights and freedoms:

- article 30 – human dignity as the source of human rights and freedoms,
- article 31(1) – protection of individual freedom,
- article 32(1) – equality before the law,
- article 47 – the right to respect for private and family life and to decide about one's personal life.

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How was the judgment implemented?

New format of the marriage certificate

Instead of referring to a women and a men, the new marriage certificate may identify two women or two men as of 23 August 2026



Rzeczpospolita Polska

USC/OZ/2

AA 0000000

Województwo
Urząd Stanu Cywilnego

Oznaczenie aktu:
Data sporządzenia: Miejsce sporządzenia:

Odpis zupełny aktu małżeństwa*

1. Dane osób, które zawarły małżeństwo

	Mężczyzna/Kobieta**	Mężczyzna/Kobieta**
Imię pierwsze		
Imię drugie		
Imiona kolejne		
Nazwisko		
Nazwisko rodowe		

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How was the judgment implemented?

The CJEU judgment refers not only to the obligation to transcribe the marriage certificate, but also to the obligation to recognise the marriage “for the purpose of enabling such citizens to exercise the rights they enjoy under EU law”.

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How was the judgment implemented?

E.g. the recognition of same-sex marriages for social security purposes.

NFP Notes from Poland

NEWS INSIGHTS PO POLSKU TOPICS PODCASTS ABOUT

"An important step towards marriage equality"

Maja Heban, LGBT+ advocacy group Miłość Nie Wyklucza

Couples who obtain a Polish marriage certificate through transcription now have strong grounds to apply for the various rights to which married couples are entitled. How this will work in practice depends on ministers and the institutions under their authority, and ultimately on lower-ranking officials.

ZUS and the NFZ have already announced that they will recognise same-sex marriages in the context of social security and health insurance. Other issues remain unresolved, and there has been no communication from the government on this matter.

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Conclusions

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European Commission v. Hungary, 21 April 2026, C-769/22

Facts

- in 2021, Hungary adopted legislation presented as being aimed at “protecting children”,
- it introduced, across several pieces of legislation, restrictions on content depicting or “promoting” homosexuality, gender transition, or a gender identity that does not correspond to the sex assigned at birth,
- the restrictions applied, among other areas, to the media, advertising, information society services and sex education.

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European Commission v. Hungary, 21 April 2026, C-769/22

"It must be held that the amending law is in breach, in a way that is both manifest and particularly serious, of the rights of non-cisgender persons – including transgender persons – or non-heterosexual persons, as well as the values of respect for human dignity, equality and respect for human rights, including the rights of persons belonging to minorities, as referred to in Article 2 TEU, with the result that it is contrary to the very identity of the Union as a common legal order in a society in which pluralism prevails".

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Conclusions

- the core issue - assumption that same-sex couples, transgender and intersex persons should not be treated equally,
- respect for the rights of LGBTI persons is a measure of respect for the fundamental values on which the EU is founded,
- where EU law imposes obligations on the MS, judgments of national supreme courts or constitutional courts cannot take precedence over EU law or justify a failure to comply with those obligations,

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Conclusions

- national law cannot be used to avoid obligations under EU law, including obligations to protect the rights of LGBTI persons,
- the principle of non-discrimination is a fundamental principle of EU law. It cannot be treated as carrying less weight than other legal rules or interests invoked to restrict the rights of LGBTI persons.

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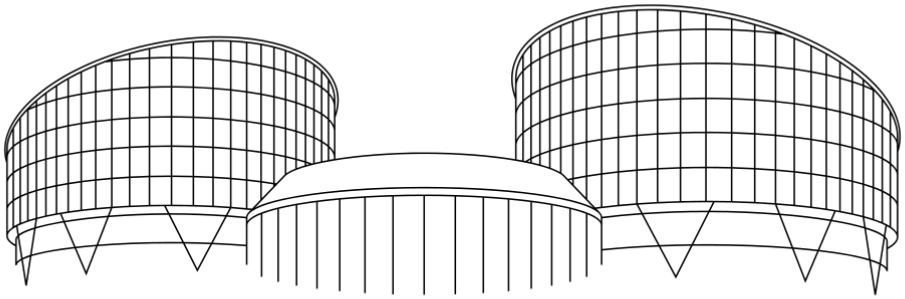

EUROPEAN COURT OF HUMAN RIGHTS

Maymulakhin and Markiv v. Ukraine, 1 June 2023, no. 75135/14

(c) Conclusion

80. The Court concludes that the difference in treatment in the present case, which consisted in the unjustifiable denial to the applicants as a same-sex couple of any form of legal recognition and protection as compared with different-sex couples, amounts to discrimination against the applicants on the grounds of their sexual orientation.

81. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 8.

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Q&A

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