



## PRESS RELEASE No 111/25

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Advocate General's Opinion in Case C-43/24 | [Shipov] <sup>1</sup>

### **Advocate General Richard de la Tour: the Member State of origin of a transgender person is obliged to issue identity documents consistent with the person's lived gender identity**

*Changes to the particulars of civil status must be made irrespective of any gender reassignment surgery*

A Bulgarian national was registered at birth as of male sex, with a name, <sup>2</sup> a personal identification number and identity documents corresponding to that sex. She has undergone hormone therapy and now presents herself as a woman. The discrepancy between her feminine appearance and her official identity documents as a person of the male sex causes problems she encounters on a daily basis, in particular looking for a job.

She brought an action before the Bulgarian courts seeking recognition of her female sex and changes to the particulars of her civil status in her birth certificate. Her request was refused.

Bulgarian law, as interpreted by the national courts, <sup>3</sup> does not provide for the possibility to change the sex, name or personal identification number recorded in the civil status documents in such a case.

The Bulgarian Supreme Court of Cassation before which the dispute has been brought doubts the compatibility of that legislation with EU law and made a reference for a preliminary ruling to the Court of Justice.

In his opinion delivered today, Advocate General Richard de la Tour proposes that the Court should rule that **EU law precludes national legislation, such as that interpreted by the national courts, that does not allow the legal recognition of gender identity for its nationals, including in the absence of gender reassignment surgery, or permit changes to their name or personal identification number to be legally recognised.** It also precludes national legislation that does not allow those changes to be entered in their birth certificate, since a change to the statements contained in their identity documents depends on such an entry.

The Advocate General takes the view that the indication of the person's sex in the identity document based solely on the birth certificate established by the competent Member State gives rise, due to the purpose of that document, to an obligation for that State to legally recognise the lived gender identity and to record it in that document. The Advocate General states that that purpose is to enable its holder to be identified, without giving rise to doubts about the authenticity of the documents presented or the veracity of the data contained therein.

Therefore, national legislation, as interpreted by the national courts, which, by failing to recognise the gender identity of a transgender person, prevents that person from enjoying a right guaranteed by EU law, such as obtaining an identity document enabling them to freely exercise their right to move and reside within the territory of the Member States, constitutes a restriction on that right. Such a restriction may only be justified by objective considerations that are proportionate to a legitimate aim, which is not the case here.

The Advocate General proposes that the Court should rule that, in principle, it is incumbent on the referring court, without waiting until the national legislation at issue is amended by legislation or other constitutional means, to interpret it in the light of EU law. That interpretation must, in particular, comply with the rules on freedom of movement and residence, respect for private life and the issue of identity documents or, if necessary, by disapplying that legislation.

Finally, the Advocate General takes the view that **the exercise, by a transgender person, of his or her right to legally register his or her transgender identity** for the purpose of obtaining an identity card or passport corresponding to his or her gender identity **cannot be subject to the production of evidence of gender reassignment surgery**. Such a requirement would undermine, in particular, the right to respect for private life.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision. That decision is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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Images of the delivery of the Opinion are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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<sup>1</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

<sup>2</sup> Consisting of a first name, a patronymic and a surname.

<sup>3</sup> Interpretive decision of the Bulgarian Supreme Court of Cassation No 2/2020 of 20 February 2023, which is binding on all judicial and administrative authorities. That decision is based on Judgment No 15 of 26 October 2021 of the Bulgarian Constitutional Court, according to which the term 'gender' in the Constitution is to be understood exclusively in the biological sense and that the public interest outweighs the interest of transgender persons, by virtue of the moral and/or religious rules and principles underlying the conceptions and values established in Bulgarian society.