



PRESS RELEASE No 147/25

Luxembourg, 25 November 2025

Judgment of the Court in Case C-713/23 | Wojewoda Mazowiecki

Citizenship of the Union: a Member State has the obligation to recognise a marriage between two Union citizens of the same sex that has been lawfully concluded in another Member State where they have exercised their freedom to move and reside

Two Polish citizens who were married in Germany are requesting that their marriage certificate be transcribed in the Polish civil register so that their marriage would be recognised in Poland. The competent authorities refused their request on the ground that Polish law does not allow marriage between persons of the same sex. The Court of Justice, in answer to a question referred to it by a national court, finds that refusing to recognise a marriage between two Union citizens, lawfully concluded in another Member State where they have exercised their freedom to move and reside, is contrary to EU law because it infringes that freedom and the right to respect for private and family life. Member States are therefore required to recognise, for the purpose of the exercise of the rights conferred by EU law, the marital status lawfully acquired in another Member State. The Court emphasises, however, that that obligation does not require marriage between persons of the same sex to be introduced under domestic law. In addition, Member States have a margin of discretion to choose the procedures for recognising such a marriage. Nevertheless, when a Member State chooses to provide for a single procedure for recognising marriages concluded in another Member State, such as the transcription of the marriage certificate in the civil register, it is required to apply that procedure equally to marriages concluded between persons of the same sex.

In 2018, two Polish citizens residing in Germany, one of whom also has German nationality, were married in Berlin. Wishing to go to Poland and reside there as a married couple, they requested that their marriage certificate drawn up in Germany be transcribed¹ in the Polish civil register so that their marriage would be recognised in Poland. That request was refused on the ground that Polish law does not allow marriage between persons of the same sex. Transcribing the marriage certificate at issue would therefore be contrary to the fundamental principles enshrined in the Polish legal order.

The spouses are challenging that refusal. The Polish Supreme Administrative Court, which is hearing the case, made a reference to the Court of Justice. It is seeking to ascertain whether the national legislation which does not permit the recognition of a marriage between persons of the same sex concluded in another Member State or the transcription for that purpose of the marriage certificate in the civil register is in conformity with EU law.²

The Court recalls that, while rules relating to marriage come within the competence of the Member States, the Member States are required to comply with EU law in exercising that competence. The spouses in question, as EU citizens, enjoy the freedom to move and reside within the territory of the Member States and the right to lead a normal family life when exercising that freedom and upon returning to their Member State of origin. In particular, **when they create a family life in a host Member State, in particular by virtue of marriage, they must have the certainty to be able to pursue that family life upon returning to their Member State of origin.**

The refusal to recognise a marriage between two Union citizens of the same sex, lawfully concluded in another

Member State where they have exercised their freedom to move and reside, may cause serious inconvenience at administrative, professional and private levels, forcing the spouses to live as unmarried persons in their Member State of origin.

For that reason, **the Court holds that such a refusal is contrary to EU law**. It infringes not only the freedom to move and reside, but also the fundamental right to respect for private and family life.³

According to the Court, **the obligation to recognise** does not undermine the national identity or pose a threat to the public policy of the spouses' Member State of origin. It **does not require that Member State to provide for marriage between persons of the same sex in its national law**.

In addition, **the Member States enjoy a margin of discretion to choose the procedures for recognising such a marriage**, and the transcription of a foreign marriage certificate is just one of the possible procedures. Nevertheless, the Court emphasises that those procedures must not render such recognition impossible or excessively difficult or discriminate against same-sex couples on account of their sexual orientation, which is the case where national law does not provide, for same-sex couples, a procedure for recognition equivalent to that granted to couples of the opposite sex.

Accordingly, **given that transcription is the only means provided for by Polish law** for a marriage concluded in another Member State to be effectively recognised by the administrative authorities, **Poland is required to apply that procedure without distinction** to marriages between persons of the same sex and to those concluded between persons of the opposite sex.

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 European Union law or the validity of a European Union 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, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ The transcription of a foreign civil status document consists in a faithful and literal transfer of its content in the Polish civil register. Transcription thus gives rise to a Polish civil status record, detached from the original record, the probative value of which is the same as that of civil status records drawn up in Poland.

² 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.

³ Enshrined in Article 7 of the Charter of Fundamental Rights and with the same meaning and scope as the right guaranteed in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In that regard, the Court invokes, inter alia, the judgment of 12 December 2023 in *Przybylska and Others v. Poland*, in which the European Court of Human Rights held that Poland had failed to comply with its positive obligation to establish a legal framework for the recognition and protection of same-sex couples.