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Advocate General's Opinion in Case C-713/23 | Wojewoda Mazowiecki

### **Advocate General Richard de la Tour: EU law requires a Member State to recognise the marriage between persons of the same sex concluded in another Member State and does not require the transcription of the marriage certificate in a civil register**

*However, the situation is different where transcription proves to be the only way of recognising a marriage between persons of the same sex in a Member State which does not provide for such marriage*

Two Polish nationals, one of whom also holds German nationality, married in Berlin in 2018. They then requested the transcription<sup>1</sup> of their German marriage certificate in the Polish civil register. That request was refused on the ground that Polish law does not provide for marriage between persons of the same sex. Accordingly, transcribing the marriage certificate at issue would be contrary to the fundamental principles of the Polish legal order.

The spouses challenge that refusal, asserting their intention to move and reside in Poland while being recognised as married persons. Seised of that case, the Polish Supreme Administrative Court made a reference for a preliminary ruling to the Court of Justice. It seeks to ascertain whether a Member State's legislation or practice which permits neither the recognition of the marriage between persons of the same sex, nor the transcription of the corresponding marriage certificate into the civil register, is compatible with EU law.<sup>2</sup>

In his Opinion, Advocate General Jean Richard de la Tour recalls that **the status of persons, which includes the rules on marriage, falls within the competence of the Member States**. However, in exercising that competence, they are required to comply with EU law.

In that context, the Advocate General observes that the absence of any recognition of a marital relationship established in another Member State limits the freedom of Union citizens to move and reside, which is guaranteed to them by EU law. Moreover, not to recognise that relationship is liable to undermine the right to respect for private and family life.<sup>3</sup>

Accordingly, it is for the Member States which do not provide for same-sex marriage **to establish appropriate procedures to ensure that such marriages concluded in another Member State are made public with respect to third parties**. Such procedures are designed not to leave same-sex couples in a legal vacuum and to regulate fundamental aspects of their life, such as those concerning property, taxation or inheritance.

Each Member State is competent to define the arrangements for the recognition of same-sex couples. That recognition does not require the foreign marriage certificate to be transcribed into a civil register, provided that the marriage produces its effects without that formality. However, **in view of the absence of alternative solutions in Poland for enabling the marital status to be proven**, such as the submission of any other official document that may be recognised by the Polish authorities, **the Advocate General concludes that that Member State is under an obligation to transcribe the marriage certificate in question**.

**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, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

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<sup>1</sup> The transcription of a foreign civil status document consists in a faithful and literal transfer of its content onto the Polish civil register. Thus, transcription gives rise to a Polish civil status record, 'detached' from the original record.

<sup>2</sup> Article 20 and Article 21(1) TFEU, read in the light of Article 7 of the Charter of Fundamental Rights of the European Union.

<sup>3</sup> Enshrined in Article 7 of the Charter of Fundamental Rights and having the same meaning and scope as that guaranteed in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In that regard, the Advocate General refers, in particular, to the judgment of 12 December 2023, *Przybyszewska and Others v. Poland*, in which the European Court of Human Rights held that the Republic of Poland had failed to comply with its positive obligation to put in place a specific legal framework providing for the recognition and protection of same-sex unions.