

Case C-4/23

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

3 January 2023

Referring court:

Judecătoria Sectorului 6 București (Romania)

Date of the decision to refer:

11 August 2022

Applicant:

M.-A. A.

Defendants:

Direcția de Evidență a Persoanelor Cluj

Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date din Ministerul Afacerilor Interne

Municipiul Cluj-Napoca

Intervening parties:

Consiliul Național pentru Combaterea Discriminării

Asociația Accept

Subject matter of the main proceedings

An action by which the applicant M.-A. A. requests (i) that the defendants be ordered to enter the following changes in his birth certificate: change of gender from female to male, change of first name and change of personal numeric code to reflect the male gender, and (ii) that a new birth certificate be issued

Subject matter and legal basis of the request for a preliminary ruling

Under Article 267 TFEU, interpretation is sought of Article 2 TEU, Articles 18 and 20 TFEU, as well as Article 21(1) thereof, and Articles 1, 7, 20 and 21 of the Charter

Questions referred for a preliminary ruling

(1) Does the fact that Article 43(i) and Article 57 of Legea nr. 119/1996 privind actele de stare civilă (Law No 119/1996 on civil status documents) do not recognise changes in civil status made in another Member State by means of the procedure for legal recognition of gender to entries concerning gender and first name by a transgender man who has dual nationality (Romanian and of another Member State) and require a Romanian citizen to bring, from the outset, separate judicial proceedings in Romania against the local Public Service for Personal Records and Civil Status – proceedings which have been held to lack clarity and foreseeability by the European Court of Human Rights (*X and Y v. Romania*, nos. 2145/16 and 20607/16, 19 January 2021) and which may lead to a decision contrary to that taken by the other Member State – constitute an obstacle to the exercise of **the right to European citizenship** (Article 20 of the Treaty on the Functioning of the European Union) and/or **the right of citizens of the Union to move and reside freely** (Article 21 of the Treaty on the Functioning of the European Union and Article 45 of the Charter of Fundamental Rights of the European Union) in conditions of dignity, equality before the law and non-discrimination (Article 2 of the Treaty on European Union; Article 18 of the Treaty on the Functioning of the European Union, and Articles 1, 20 and 21 of the Charter of Fundamental Rights of the European Union), respecting the right to private and family life (Article 7 of the Charter of Fundamental Rights of the European Union)?

(2) Does the departure of the United Kingdom of Great Britain and Northern Ireland from the European Union affect the answer to the above question, in particular where (i) the procedure for changing civil status was commenced before Brexit and was completed during the transition period, and (ii) the impact of Brexit means that the person cannot benefit from rights attached to European citizenship, including the right to free movement and residence, except on the basis of Romanian identity or travel documents in which that person appears with a female gender and first name, contrary to the gender identity that has already been legally recognised?

Provisions of European Union law and case-law relied on

Article 2 TEU; Articles 18 and 20 TFEU, as well as Article 21(1) thereof; Articles 1, 7, 20 and 21 of the Charter of Fundamental Rights of the European Union

Judgments of 14 December 2021, *Stolichna obshtina, rayon 'Pancharevo'* (C-490/20), paragraphs 41, 42, 44 to 48, 52, 54 and 56; of 8 June 2017, *Freitag* (C-541/15), paragraphs 36 to 39; of 14 October 2008, *Grunkin and Paul* (C-353/06), paragraphs 28 and 29; [and] of 2 October 2003, *Garcia Avello* (C-148/02), paragraphs 22 to 24

Provisions of national law relied on

Legea nr. 119/1996 privind actele de stare civilă (Law No 119/1996 on civil status documents)

Article 9: 'In the event that the civil registrar or the official performing civil status functions refuses to draw up a document or to record an entry falling within his or her competence, the injured party may bring proceedings before the competent court, in accordance with the law'.

Article 43(i): 'In birth certificates, and, where applicable, in marriage or death certificates, entries shall be recorded regarding changes in a person's civil status in the following cases: ...

(i) change of gender, after a final judicial decision ...'

Article 57(1): 'The annulment, supplementation or amendment of civil status documents and of entries recorded therein can be made only pursuant to a final judicial decision'.

Succinct presentation of the facts and procedure in the main proceedings

- 1 The applicant M.-A. A., who identifies as a transgender male and goes by the pronoun 'he', was born on 24 August 1992 in the municipality of Cluj-Napoca (Romania), and was registered with the female gender at birth.
- 2 After moving to the United Kingdom with his parents, the applicant obtained nationality of that State on 21 April 2016. As the applicant identified as male, on 21 February 2017, by means of the Deed Poll procedure, he changed his name and title in that State from female to male, namely from Ms. M.-A. A. to Mr. M.-A. A.
- 3 Following the initiation of that procedure, the applicant changed a number of documents issued by the United Kingdom authorities, namely a driving licence and a British passport.
- 4 On 29 June 2020, the applicant also obtained in the United Kingdom a Gender Recognition Certificate confirming the male gender identity.
- 5 After the completion of those procedures in the United Kingdom, in May 2021 the applicant contacted the Romanian authorities, namely the Direcția de Evidență a Persoanelor Cluj – Serviciul stare civilă (Cluj Directorate for Personal Records –

Civil Status Service), requesting, directly on the basis of documents already obtained in the United Kingdom (the Deed Poll and the Gender Identity Certificate), that the change of gender and first name be entered in the birth certificate, that the appropriate change be made to the personal numeric code to reflect the male gender, and that a birth certificate, corresponding to the other first name, which (i) indicates the male gender, and (ii) includes the personal numeric code beginning with the number 1, be issued.

- 6 That request was rejected because the Romanian authorities considered that, under national legislation, a change of gender can be recorded only when the person's change of gender has been authorised by a final judicial decision, and not on the basis of a certificate regarding the recognition of gender identity.
- 7 By an action brought on 14 September 2021 before the referring court (the Judecătoria Sectorului 6 Bucureşti (Court of First Instance, Sector 6, Bucharest)), M.-A. A. requests that the defendants be ordered to make those changes to his birth certificate and to issue him with a new birth certificate which reflects those changes.
- 8 The Consiliul Național pentru Combaterea Discriminării (National Council for Combating Discrimination) has been called upon to intervene in the case, and Asociația Accept's ancillary application for leave to intervene in support of the applicant has been granted.

The essential arguments of the parties in the main proceedings

- 9 M.-A. A. emphasises that he is not asking the [referring] court to authorise the change of gender, but rather (i) to apply EU law directly and as a matter of priority, and (ii) to order the defendants to make changes to the birth certificate so as to bring the entries relating to gender, first name and personal numeric code into line with his gender identity, which was already definitively recognised in the United Kingdom when it was still a Member State of the European Union. This would enable him to exercise the right to move and reside freely within the European Union, using a travel document that corresponds to his male gender identity.
- 10 In addition, the obligation to bring new judicial proceedings in Romania directly concerning the authorisation of the change of gender exposes the applicant to the risk of obtaining a solution contrary to that chosen by the United Kingdom authorities. The European Court of Human Rights has already classified proceedings in Romania as lacking clarity and foreseeability (judgment [of the European Court of Human Rights] of 19 January 2021, *X and Y v. Romania*, nos. 2145/16 and 20607/16).

Succinct presentation of the reasoning in the request for a preliminary ruling

- 11 According to the referring court, the outcome of the case before it depends on the interpretation of EU law, which takes precedence over national law, given that the right to European citizenship and the right of citizens of the Union to move and reside freely preclude an outcome under national law which requires the person concerned, who has dual nationality, to bring new judicial proceedings in one of the States of which that person is a national, even though that person has already successfully completed proceedings (regardless of whether those proceedings are of an administrative or a judicial nature) in another Member State of which that person is a national.
- 12 The outcome of the case before the referring court also depends, according to that court, on determining the consequences of the departure of the United Kingdom of Great Britain and Northern Ireland from the European Union. Thus, in the event that the Court answers the first question in the affirmative, given that the first procedure for recognition of gender identity was commenced in the United Kingdom before that State's departure from the European Union and was completed after that event, it is necessary to clarify whether the Member State to which a request is made is obliged to recognise the legal effects of the procedure for changing gender identity carried out in a State which was a Member State at the time the procedure was commenced but which had already left the European Union at the time that procedure was completed.