

**Case C-789/23**

**Request for a preliminary ruling**

**Date lodged:**

21 December 2023

**Referring court:**

Lietuvos vyriausiasis administracinis teismas (Lithuania)

**Date of the decision to refer:**

20 December 2023

**Applicant at first instance and appellant:**

I. J.

**Defendant at first instance and respondent:**

Registrų centras VĮ

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[...]

**LIETUVOS VYRIAUSIASIS ADMINISTRACINIS TEISMAS  
(SUPREME ADMINISTRATIVE COURT OF LITHUANIA)**

**ORDER**

20 December 2023

[...]

The Chamber, in extended composition, of the Supreme Administrative Court of Lithuania [...] [composition of the court]

has examined at a sitting of the court under the written appeal procedure, the administrative case concerning the appeal lodged by the appellant, I. J., against the judgment of the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) of 29 June 2022 in the administrative case relating to the action brought by the appellant, I. J., against the respondent, the State enterprise Registrų centras (Registers Centre, Lithuania), seeking the annulment of a decision and an order requiring the performance of acts.

The Chamber, in extended composition,

has established as follows:

I.

- 1 The present case concerns a dispute between the appellant, I. J., ('the appellant') and the respondent, the State enterprise Registrų centras (Registers Centre) ('the respondent') which relates to the decision [...] on the fact of division of property ('the Decision') adopted by the respondent on 9 March 2002 refusing to grant the appellant's application of 15 February 2022 for the recordal in the Vedybų sutarčių registras (Register of Marriage Contracts) ('the Register') of a legal fact (the fact of division of property) concerning the legal regime of the property of I. J. and C. B.

*Legal context. European Union law*

- 2 According to Article 21(1) of the Treaty on the Functioning of the European Union (TFEU), 'every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect'.

*Legal context. National law*

- 3 The Vedybų sutarčių registro nuostatai (Regulations of the Register of Marriage Contracts) ('the Regulations') were approved by Lietuvos Respublikos Vyriausybės 2002 m. rugpjūčio 13 d. nutarimas Nr. 1284 „Dėl Vedybų sutarčių registro nuostatų patvirtinimo“ (Resolution No 1284 of the Government of the Republic of Lithuania of 13 August 2002 approving the Regulations of the Register of Marriage Contracts). The version applicable to the present case is that of 10 September 2015, as last amended on 8 July 2020 by Resolution No 773 of the Government of the Republic of Lithuania.
- 4 The Regulations are to determine the purpose and subject matter of the Register of Marriage Contracts, the manager and the administrator of the Register and their respective rights, obligations and functions, and are to govern the administration of the data and information in the Register ('the data in the Register'), and of the documents and/or the copies thereof submitted for recordal in the Register, the interaction of the Register with the other registers, the security of the data in the Register, the disclosure and use of the documents and the data in the Register, and the financing, reorganisation and winding up of the Register (point 1 of the Regulations). The purpose of the Register is to record the subject matter of the Register referred to in point 13 of the Regulations, to collect, compile, process, systematise, store and disclose the data in the Register and the copies of the documents submitted for recordal in the Register, and to perform other processing actions in respect of the data in the Register (point 2 of the Regulations).

- 5 The State enterprise Registrų centras (Registers Centre) is to be the administrator of the Register (point 8 of the Regulations).
- 6 The subject matter of the Register is to be marriage contracts (point 13.1 of the Regulations), cohabitation contracts for the division of jointly acquired and used property following the termination of the cohabitation (point 13.2 of the Regulations), and the facts of division of property as set out in the Civil Code (point 13.3 of the Regulations).
- 7 Data providers are to be notaries who have certified marriage contracts, cohabitation contracts or contracts for the division of property, as well as the amendments to or termination of such contracts (point 21.1 of the Regulations); courts that have ruled on the division of community property, on the restoration of the rights of the creditors of one or both spouses where the rights of those creditors have been infringed by the amendment to or termination of the marriage contract or cohabitation contract, or on the amendment to or termination of the marriage contract, cohabitation contract, or contract for the division of property (point 21.2 of the Regulations); persons who have entered into a marriage contract or cohabitation contract – only in the cases set out in point 68 of the Regulations (point 21.3 of the Regulations).
- 8 The notary who has certified the contract for the division of property or the court that has delivered the decision regarding the division of property is, within 3 working days after the contract has been certified or the decision has become final (or, in the case of an appeal to the court of appeal, after the case has been referred back to the court of first instance), to submit to the administrator of the Register a notice of the fact of division of the property, together with a digital copy of the certified contract or of the court decision that has become final. In the notice of the fact of division of the property, the data provider is to submit the data referred to in points 17.2 to 17.9 of the Regulations (point 45 of the Regulations).
- 9 A marriage contract or cohabitation contract concluded in a foreign State may be recorded in the Register if the marriage contract or cohabitation contract contains the personal identification number of at least one of the parties to the contract, as provided by the Lietuvos Respublikos gyventojų registras (Population Register of the Republic of Lithuania) (point 67 of the Regulations).
- 10 Where one of the spouses or cohabitants wishes to record a marriage contract or cohabitation contract certified in a foreign State, to record amendments to such a contract, or to record data concerning the termination of such a contract, he or she may submit the data for recordal in the Register personally or through an authorised person, by post or electronically, in accordance with the procedure laid down by the administrator of the Register (point 68 of the Regulations).

*Relevant facts*

- 11 In the present administrative [case] it has been established that the appellant (data redacted) in the town of (data redacted) (in Italy) and C. B., an Italian national,

entered into a marriage. The marriage was recorded in the Register of Marriage Certificates of the Municipality of (data redacted) in 2006. The extract from the marriage certificate contains a note indicating that the regime of separation of property chosen by the spouses is declared in the marriage certificate.

- 12 On 15 February 2022, the appellant applied to the respondent for the recordal in the Register of Marriage Contracts of a legal fact (the fact of division of property) concerning the legal regime of the property of the appellant and C. B.
- 13 After examining the appellant's application, the respondent adopted the decision of 9 March 2022 ('the Decision') which is contested in the present administrative case. Pursuant to points 13, 21, 45, 67 to 68 of the Regulations, by the Decision, the respondent refused to record in the Register a legal fact (the fact of division of property) concerning the legal regime of the property of the appellant and her spouse. In addition, the respondent explained that the extract from the marriage certificate (data redacted) submitted by the appellant could be recorded in the Register as a marriage contract if the appellant submitted an addendum (annex) to the marriage certificate, certified by a notary or by any other competent official in Italy, containing the personal identification number of at least one of the parties to the marriage contract, as provided by the Population Register of the Republic of Lithuania. Furthermore, the respondent stated that natural persons are not data providers for the purpose of recording facts of division of property in the Register and, therefore, the fact of division of property cannot be recorded on the basis of the appellant's application.
- 14 The appellant has submitted a copy of an e-mail to the case file, from which it is apparent that she applied to the Register Office of (data redacted) for the issuance of a copy of the marriage certificate including the appellant's personal identification number as it appears on her identity card. However, the Register Office of (data redacted) refused to issue such a copy, stating that it could not enter the Lithuanian personal identification number in the marriage certificate, since such data is not certified. The appellant has also submitted the certificate of 16 February 2021 issued by L. B., notary of (data redacted) (Province of Savona, Italy), in which the notary indicated that, pursuant to Article 162(2) of the Italian Civil Code, the choice of the regime of separation of the spouses' property may also be declared in the marriage recordal deed.
- 15 Objecting to the respondent's Decision, the appellant brought an action before the Regional Administrative Court, Vilnius, which dismissed the action brought by the appellant as unfounded by decision of 29 June 2022. In its decision, the Regional Administrative Court, Vilnius, stated, inter alia, that point 67 of the Regulations clearly sets out the requirements for the recordal of a marriage contract or cohabitation contract concluded in a foreign State. In the view of the Regional Administrative Court, Vilnius, having established that the marriage contract or the cohabitation contract does not include the personal identification number of at least one of the parties to the contract, as provided by the Population

Register of the Republic of Lithuania, the respondent not only had the right, but was also under an obligation, to refuse to grant the appellant's application.

- 16 The appellant brought an appeal against the judgment of the Regional Administrative Court, Vilnius, before the Supreme Administrative Court of Lithuania.

The Chamber, in extended composition,

finds as follows:

## II.

- 17 The appellant applied to the respondent for the recordal in the Register of Marriage Contracts of a legal fact (the fact of division of property) concerning the legal regime of the property of I. J. and C. B.
- 18 According to the version of the Regulations applicable to the present case, the following may be recorded in the Register of Marriage Contracts: (1) marriage contracts, (2) cohabitation contracts for the division of jointly acquired and used property following the termination of cohabitation, (3) the facts of division of property as set out in the Civil Code. A marriage contract is understood in that context as an agreement between the spouses defining their property rights and obligations during the marriage, as well as after divorce or separation. The fact of division of property is understood in that context as the agreement between the parties or the court decision dividing the community property [...].
- 19 Chapter IV of the Regulations governs the recordal of the subject matter of the Register. The content of points 21 and 68 of that Chapter implies a legal rule according to which natural persons have the right to apply to the administrator of the Register of Marriage Contracts, as data providers, for the sole purpose of recording a marriage contract or cohabitation contract certified in a foreign State, of recording amendments to such a contract, or of recording the termination of such contract. In other words, the rule established does not confer on the appellant the right to apply to the respondent for the recordal of the fact of division of property, which is the subject matter of the Register referred to in point 13.3 of the Regulations. The content of point 21 of the Regulations reveals that data providers for the purpose of recording the fact of division of property in the Register are confined to notaries who have certified contracts for the division of property, and amendments to or termination of such contracts (point 21.1 of the Regulations), and courts that have delivered the decisions listed in point 21.2 of the Regulations.
- 20 From the arguments set out in the appellant's appeal, which define the subject matter of the present case (for example, that the spouses, when they entered into the marriage, *de jure* and *de facto* made a declaration corresponding to the concept of a marriage contract, which was recorded at the Register Office of (data redacted) (in Italy), or that the entry in the marriage recordal deed constitutes in fact a marriage contract, since the parties have agreed in that document on the

legal regime governing their matrimonial property), the present Chamber concludes that the appellant did indeed seek the recordal in the Register of Marriage Contracts of the marriage contract, which, in turn, determines the scope of the spouses' property rights and obligations. Given that the appellant's marriage was concluded in the foreign State and that the marriage recordal certificate contains information on the legal regime of separation of property chosen by the spouses, the appellant's legal situation is comparable to the one provided for in point 68 of the Regulations, that is to say, where one of the spouses wishes to record a marriage contract certified in a foreign country.

- 21 For the recordal of marriage contracts or cohabitation contracts concluded in a foreign State in the Register, point 67 of the Regulations establishes a clear imperative: the marriage contract or cohabitation contract must contain the personal identification number of at least one of the parties to the contract, as provided by the Population Register of Residents. In that respect, it is important to underline that the administrator of the Register, as a public administration entity, is to act only within the scope of the powers conferred on it by law and is not entitled by law to collect data and evidence confirming the presence or absence of certain facts on its own. Thus, although the universally important principle of good administration binds the administrator of the Register as a public administration entity, it does not have the right to take an independent decision on the existence of any factual circumstances or to assess them, since its obligation is confined to verifying whether the documents submitted to it comply with the requirements of the legislation. Consequently, in the circumstances of the present case, the respondent is under an obligation to refuse to record the extract from the marriage certificate submitted by the appellant as a marriage contract, since the document submitted does not comply with the requirement laid down in point 67 of the Regulations, that is to say, it does not contain the personal identification number of at least one of the parties to the marriage contract, as provided by the Population Register of the Republic of Lithuania.
- 22 On the other hand, the appellant entered into a marriage in another Member State of the European Union, the Italian Republic. Under the legislation in force in that country, the marriage certificate may also include the legal regime chosen for the matrimonial property. The extract from the marriage certificate of the appellant and her spouse reveals that such a document does not contain personal identification numbers to identify the persons concerned. Moreover, the competent authority of the Italian Republic refused to enter such identifying information in the extract from the marriage certificate, even after the appellant had specifically applied for it.
- 23 It should also be noted that the data on the appellant's marriage, recorded in the Italian Republic, was recorded in the Republic of Lithuania with the Register Office, and the fact that the appellant's personal identification number has not been included in the extract from the marriage certificate was not considered to be an obstacle in that respect. In that context, the present Chamber observes that the legislation on the issue of the recordal of marriages recorded in a foreign State,

which is *ratione temporis* applicable to the present administrative case, did not in fact lay down any mandatory requirement that the document submitted for recordal, issued by an authority of a foreign State and certifying the recordal of the marriage, should contain the personal identification number of at least one of the spouses who entered into the marriage in question, as provided by the Population Register of the Republic of Lithuania. However, as already mentioned, such a requirement applies for the purpose of recording a marriage contract concluded in a foreign State in the Register of Marriage Contracts.

- 24 In those circumstances, in the view of the present Chamber, the situation in the present administrative case may, in principle, be assessed under Article 21 TFEU. Article 21(1) TFEU, which has direct effect, guarantees every citizen of the Union the right to move and reside freely within the territory of the Member States (judgment of the Court of Justice of 17 September 2002, [*Baumbast and R*], C-413/99, EU:C:2002:493, paragraph 94). Having regard to the fact that, in accordance with the Court's settled case-law, Article 21 TFEU contains not only the right to move and reside freely in the territory of the Member States but also a prohibition of any discrimination on grounds of nationality (judgment of the Court of Justice of 8 June 2017, *Freitag*, C-541/15, EU:C:2017:432, paragraph 31 and the case-law cited), the present Chamber assumes that there is no need to assess the question at issue separately under Article 18 TFEU, which provides that, within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality is to be prohibited.
- 25 First of all, it should be noted that the appellant's legal position is determined by the consequences of her status as a Union citizen who has exercised her right to freedom of movement: the appellant seeks to record in the Republic of Lithuania the marriage contract that she concluded when recording her marriage in another Member State of the European Union. Thus, the dispute under consideration does not concern a purely domestic situation that would not fall within the scope of EU law. The situations falling within the scope *ratione materiae* of EU law include those which involve the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 21 TFEU (judgment of the Court of Justice of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 62 and the case-law cited).
- 26 According to the case-law of the Court of Justice, a citizen of the Union must be granted in all Member States the same treatment in law as that accorded to the nationals of those Member States who find themselves in the same situation, and it would therefore be incompatible with the right of freedom of movement if a citizen, in the Member State of which he or she is a national, were to receive treatment that is less favourable than that which he or she would enjoy if he or she had not availed himself or herself of the opportunities offered by the Treaty in relation to free movement (aforementioned judgment of the Court of Justice, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 67). The

Court of Justice has also made it clear that a national law which places certain nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State constitutes a restriction on the freedoms conferred by Article 21(1) TFEU on every citizen of the European Union. Indeed, the opportunities offered by the Treaty in relation to freedom of movement for citizens of the Union cannot be fully effective if a national of a Member State could be dissuaded from using them by obstacles resulting from his or her stay in another Member State because of legislation of his or her State of origin penalising the mere fact that he or she has used those opportunities (judgment of the Court of Justice of 26 May 2016, [*Kohll and Kohll-Schlessler*], C-300/15, EU:C:2016:361, paragraphs 42 to 43 and the case-law cited). Thus, as is apparent from the Court's case-law, a national of a Member State who has exercised, in his or her capacity as a citizen of the Union, his or her freedom to move and reside within a Member State other than his or her Member State of origin may rely on the rights pertaining to Union citizenship, in particular the rights provided for in Article 21(1) TFEU, including, where appropriate, against his or her Member State of origin ([order] of the Court of Justice of 24 June 2022, *Rzecznik Praw Obywatelskich*, C-2/21, EU:C:2022:502, paragraph 36).

- 27 In the light of the case-law of the Court of Justice referred to above, the present Chamber has doubts as to whether the rules laid down in the Regulations can be regarded as liable to affect, that is to say, to restrict the freedom of movement of citizens of the Union within the meaning of Article 21 TFEU.
- 28 The present Chamber notes that the Republic of Lithuania does not participate in the enhanced cooperation under Council Decision (EU) 2016/954 of 9 June 2016 authorising enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples, covering both matters of matrimonial property regimes and the property consequences of registered partnerships. Accordingly, Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes [...] [repeated information] is not applicable to the Republic of Lithuania.
- 29 Accordingly, in the absence of any applicable EU legislation on the question under consideration, in the opinion of the present Chamber, it is for the domestic legal system of the Republic of Lithuania to determine the detailed rules laid down by national law and intended to safeguard the rights which individuals derive from EU law, provided, first, that those rules are not less favourable than those governing rights which originate in domestic law (principle of equivalence) and, second, that they do not render impossible or excessively difficult in practice the exercise of rights conferred by the EU legal order (principle of effectiveness) (see, by analogy, judgment of the Court of Justice of 8 June 2017, [*Freitag*], C-541/15, EU:C:2017:432, judgment of the Court of Justice of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, Joined Cases C-129/13 and C-130/13, EU:C:2014:2041 [...]).

- 30 In that respect, it should first be noted that, in accordance with the provisions of the Regulations, the requirement that the marriage contract must contain the personal identification number of at least one of the parties to the marriage contract, as provided by the Population Register of the Republic of Lithuania, is applicable only in the case of marriage contracts concluded in foreign States. Thus, the aforementioned requirement is not *expressis verbis* laid down in the Regulations for marriage contracts concluded in the Republic of Lithuania.
- 31 On the other hand, it may be assumed that the difference in approach regarding the requirement to indicate the personal identification number in the marriage contract is due to the rule that data concerning marriage contracts concluded in the Republic of Lithuania are provided for recordal in the Register only by notaries who have certified the relevant contracts (point 21.1 of the Regulations), while natural persons do not have the right to provide such data. In other words, that rule implies that when marriage contracts are concluded in the Republic of Lithuania under the notarial procedure (and data on such contracts is provided for recordal in the Register by notaries), the precise identification of the persons who have concluded such contracts is guaranteed. However, in the case of marriage contracts concluded in foreign States, the data are provided for recordal in the Register by the natural persons who concluded such contracts. Therefore, having regard, *inter alia*, to the very limited nature of the powers available to the administrator of the Register (paragraph 21 of the present order), it must be considered that the requirement to identify precisely the persons who have concluded the marriage contract in question is not only of indisputable importance, but is also fundamentally necessary in the public interest.
- 32 However, it should be noted that the Regulations do not provide for any other alternative to the identification of the parties to a contract concluded in a foreign State. Thus, if a marriage contract is concluded in a foreign State where personal identification numbers are not used for the purpose of concluding such a contract, the requirement laid down in point 67 of the Regulations directly prevents the recordal of the relevant contract in the Register. Accordingly, where it is not possible to obtain from the competent authorities of such a State an addendum (annex) to the contract containing the personal identification number of at least one of the parties to the marriage contract, persons who have entered into a marriage contract in that State would have to apply to a notary in the Republic of Lithuania for the conclusion of a new marriage contract and its recordal in the Register. In other words, the situation in question results either in the costs (financial, time, and so on) incurred by Union citizens on account of the double administrative procedure (in a foreign State that does not use personal identification numbers and subsequently also in the Republic of Lithuania) for the purpose of concluding a marriage contract, or in the rational and logical decision to avoid concluding a marriage contract in a foreign State on account of such undesirable consequences.
- 33 In that context, the present Chamber wishes to emphasise that the right to freedom of movement is reflected in the right of a Union citizen to move temporarily to a

Member State other than his or her Member State of origin for work, study or leisure purposes. However, that right also includes the right to settle in another Member State in the long term and to build his or her life there (Opinion of Advocate General H. Saugmandsgaard Øe of 11 February 2021 in *A (Public health care)*, C-535/19, EU:C:2021:114, point 146). In those circumstances, the present Chamber harbours doubts as to whether the legislation in question should not be regarded as a disincentive for Union citizens to exercise the freedom of movement conferred on them by Article 21 TFEU. In particular, the present Chamber seeks to ascertain whether Article 21(1) TFEU should be interpreted as precluding national legislation under which a marriage contract concluded in another Member State of the European Union may not be recorded in the Register of Marriage Contracts if the contract does not contain the personal identification number of at least one of the parties to that contract, as provided by the Population Register of the Republic of Lithuania, where, in circumstances such as those of the present case, the competent authorities of the Member State in which the marriage contract was concluded refuse to provide an extract from that contract supplemented by the relevant personal identification data.

### III.

34 [...] [obligation to make the request pursuant to the third paragraph of Article 267 TFEU]

35 In those circumstances, in order to dispel the doubts that have arisen as to the interpretation and application of the provisions of EU law relevant to the legal relationships at issue in the present dispute, it is appropriate to request the Court of Justice to interpret Article 21(1) TFEU. An answer to the question set out in the operative part of the present order is crucial for the present case, because it would make it possible, while ensuring in particular the primacy of EU law, to take an unequivocal and clear decision on the requirement applicable in the present case to the recordal of marriage contracts concluded in foreign States in the Register of Marriage Contracts, and would also make it possible to guarantee uniform national case-law.

In the light of the foregoing considerations [...] [reference to provisions of procedural law], the present Chamber

orders as follows:

[...] [standard procedural wording]

The following question is referred to the Court of Justice of the European Union for a preliminary ruling:

‘Must Article 21(1) of the Treaty on the Functioning of the European Union be interpreted as precluding national legislation under which a marriage contract concluded in another Member State of the European Union may not be recorded in the Register of Marriage Contracts if the marriage contract does not contain the

personal identification number of at least one of the parties to that contract, as provided by the Population Register of the Republic of Lithuania, where, in circumstances such as those of the present case, the competent authorities of the Member State in which the marriage contract was concluded refuse to provide an extract from that contract supplemented by the relevant personal identification data?’

[...]

[...]

[...]

[standard procedural wording and composition of the court]

WORKING DOCUMENT