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Judgment of the Court in Case C-43/24 | [Shipova] ¹

Member State legislation which does not permit the amendment of the gender data of one of its nationals who has exercised his or her right to freedom of movement is contrary to EU law

A Bulgarian national was registered at birth as being male, with a name, ² personal identification number and identity documents corresponding to that sex. She currently lives in Italy, where she has begun hormone therapy, and now presents herself as a woman.

She instituted proceedings before the Bulgarian courts seeking a declaration that she is a female person and to have her civil status data amended on her birth certificate. Despite the medical opinions and legal assessments confirming the gender identity claimed, her request was rejected.

According to national legislation, as interpreted by the plenary assembly of civil chambers of the Bulgarian Supreme Court of Cassation, the term 'sex' must be understood in its biological sense, excluding any amendment of the particulars relating to sex, name and identification number. The public interest, based on the moral and/or religious values of Bulgarian society, thus prevails over the interests of transgender persons.

Hearing the dispute, the Bulgarian Supreme Court of Cassation has doubts as to the compatibility of that legislation with EU law and has referred the matter to the Court of Justice.

In its judgment, **the Court holds that EU law precludes legislation of a Member State which does not permit the amendment of the gender data in the civil status registers of one of its nationals who has exercised his or her right to move and reside freely in another Member State.**

The Court emphasises first of all that, while the issue of identity documents falls within the competence of the Member States, they must exercise that competence in compliance with EU law.

In that regard, the Court notes that the discrepancy between a person's lived gender identity and the gender data appearing on his or her identity card is such as to hinder the exercise of his or her right to freedom of movement. Such a discrepancy may, in many everyday situations – in particular during identity checks or cross-border travel or for professional reasons – oblige that person to dispel doubts as to his or her identity or the authenticity of his or her official documents. That situation gives rise to considerable inconveniences.

A restriction on freedom of movement only can be accepted, however, if it is based on objective public-interest considerations and complies with the proportionality principle in accordance with EU law and the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private life. That right protects gender identity and obliges Member States to provide for clear, accessible and effective procedures for the legal recognition of it.

Furthermore, the Court holds that **EU law precludes a court from being bound by its constitutional court's interpretation where that interpretation impedes the application of EU law as interpreted by the Court.**

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.

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

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

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² Composed of a first name, a patronymic and a family name.