



CIVIL STATUS RECOGNITION AND THE EXERCISE OF FREE MOVEMENT RIGHTS IN THE EU*

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ABSTRACT

A significant proportion of the civil status situations of European citizens contain a cross-border element. However, differences between national legal regimes in this field create obstacles to free movement, while raising the question of the extent to which a civil status legally established in one Member State must be acknowledged in others.

EU legislation mainly provide solutions concerning the effects of civil status situations, rather than their existence, creation, or recognition, which remain within the exclusive competence of the Member States. Nevertheless, the absence of unified rules in this area has a direct impact on the effective application of existing EU private international law rules and may hinder the effective exercise of fundamental rights derived from primary EU law.

In response, the Court of Justice of the European Union has developed extensive case law limiting Member States' autonomy in matters of civil status where the exercise of rights conferred by EU law is affected. The Court relies in particular on the principles of non-discrimination, EU citizenship and the free movement of persons, as enshrined in Article 21 TFEU and the Charter of Fundamental Rights of the EU.

The right of EU citizens to move and reside freely within the territory of the Member States is closely linked to their right to family life, especially in cases involving children and diverse forms of family unions, such as same-sex marriages, same-sex parenthood, surrogacy, and other non-traditional family arrangements. While free movement and family reunification should, in principle, be ensured for members of all families, the question arises as to whether, and to what extent, Member States may be required to give effect to civil status situations that are not recognised under their national law, solely for the purposes of ensuring the free movement of people.

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Given that EU instruments regulate only the effects of civil status, the CJEU has adopted a cautious approach, with respect of Member States' competence and intervening only where national rules interfere with the exercise of fundamental rights under EU law, particularly the right to free movement. This paper starts from the hypothesis that such an effects-based and limited approach may leave significant gaps in legal certainty for EU citizens whose civil status is not uniformly acknowledged across the Union, especially in cases concerning children and families in non-standard arrangements.

Keywords: *Cross-border recognition, EU law, Civil status, Free movement,, The CJEU*

1. INTRODUCTION

The concept of civil status concerns a range of legal issues and relationships, such as legal personality and capacity, but also the marital status, parenthood, the person's name and gender.¹ The continuity of civil status and the issuance of documents attesting to it produce legal effects in both public and private law. They are essential for the creation of a bundle of rights and obligations, both inter parties and vis-à-vis third parties and public authorities.² Accordingly, the inability to legally establish civil status may give rise to significant difficulties, including barriers to acquiring citizenship, accessing migration rights (such as family reunification), and determining parental responsibility or maintenance obligations. Still, situations persist in which certain Member States do not recognise civil status validly established abroad. As a result, an EU citizen who moves to a Member State other than the one in which their personal and family relationships were legally established may effectively lose that status.³

In this context, non-recognition of parentage emerges as a particularly significant legal issue, a problem mostly faced by so-called “alternative families,” including children born to unmarried parents, rainbow families, and those involving surrogacy.⁴ Judicial decisions and authentic instruments establishing or attesting to parenthood, even if validly issued in one Member State, may not be recognised

¹ Dutta, A., *Personal Status*, in: Basedow, J. et al. (eds.), *Encyclopedia of Private International Law*, Volume 2, Edward Elgar Publishing, p. 1346.

² Romano, G. P., *Conflicts and coordination of family statuses: towards their recognition within the EU?*, in: *Adoption: cross-border legal issues*, European Parliament, 2015, pp. 20, 21.

³ Deana, F., *Cross-border continuity of family status and public policy concerns in the European Union*, DPCE Online, Vol. 40, No. 3, 2019, pp. 1981, 1982.

⁴ Morel, S. et al., *Final report: Study to support the preparation of an impact assessment on a possible Union legislative initiative on the recognition of parenthood between Member States*, European Commission, 2022, p. 34, Available at:

[https://commission.europa.eu/system/files/2023-01/ICF%20Final%20Report%20-%20Recognition%20of%20parenthood%20between%20MSs%20-%20FINAL_.pdf], Accessed 17 March 2026.

or produce legal effect in another.⁵ This can lead to situations of “limping status,” in which a child is legally recognised as the child of their parents in one Member State but not in another, or faces uncertainty regarding their legal parenthood in cross-border situations.⁶

Moreover, such refusal to recognise a status acquired in another Member State can impede the freedom of movement, which is a fundamental EU value guaranteed by Article 21 of the Treaty on the Functioning of the European Union (TFEU)⁷ and the Charter of Fundamental Rights of the EU (Charter).⁸ The right to move and reside freely is closely linked to the right to family life, particularly in cases involving children and diverse family structures, since the effective exercise of free movement by EU citizens depends on the integration of their families into the host Member State.⁹ Union citizens are entitled to be accompanied by family members under Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Free Movement Directive).¹⁰ Since denial of this right constitutes an obstacle to free movement, cross-border continuity of civil status is essential for the effective exercise of Union citizens’ rights.

Against this background, the Court of Justice of the European Union (CJEU) has developed extensive case law, drawing on general principles of EU law, to limit Member States’ discretion in matters of personal status. Given that civil status traditionally falls within the competence of Member States and, considering the absence of a fully effective EU framework for cross-border recognition of personal status, this paper examines the evolution of the Court’s case law and assesses the extent to which EU law requires Member States to recognise civil status established in another Member State where this is linked to the exercise of free movement rights.

⁵ Tryfonidou, A., *Cross-border legal recognition of parenthood in the EU*, Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, European Parliament, 2023, p. 18.

⁶ *Ibid.*

⁷ Treaty on the Functioning of the European Union (consolidated version) [2012] OJ C 326/47.

⁸ Charter of Fundamental Rights of the European Union [2012] OJ C 326/391.

⁹ European Law Institute (ELI), Report on *Enhancing Child Protection: Private International Law on Filiation and the European Commission’s Proposal COM/2022/695 final*, 2026, p. 31, Available at: [https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Enhancing_Child_Protection_Report.pdf], Accessed 24 March 2026.

¹⁰ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158/77.

2. THE LEGAL FRAMEWORK GOVERNING CIVIL STATUS IN A BROAD SENSE

To date, the direct influence of EU law on civil status remains limited. The European Union has no competence in civil status matters,¹¹ nor in harmonising the Member States' substantive family law.¹² This was confirmed by the CJEU multiple times: "Civil status and the benefits flowing therefrom"¹³, including "rules governing a person's surname,"¹⁴ "rules on changing the gender identity of a person"¹⁵ and "rules on marriage and parentage, is a matter that falls within the competence of the Member States and EU law does not detract from that competence."¹⁶

Because of that, issues of the existence, creation or recognition of the civil status situations are left to national law of Member States, while the existing legal framework mainly provide for the effects of civil status situations.¹⁷ Conflict rules are also dealt with by reference to the relevant Hague conventions, which, however, will not be examined in this paper.¹⁸

2.1. Member State Competence and the Diversity of National Legal Systems

Matters of civil status fall within the scope of domestic law,¹⁹ and each Member State has developed its own concept of civil status, taking into account its history,

¹¹ Viarengo, I. *et al.*, *Defining Marriage and Other Unions of Persons in European Family Law*, in: Pfeiffer, T.; Lobach, Q. C.; Rapp, T. (eds.), *Facilitating Cross-Border Family Life – Towards a Common European Understanding. EUFams II and Beyond*, Heidelberg University Publishing, 2021, p. 160.

¹² Kohler, C., *Unification of Private International Law in Family Matters in the European Union: Cultural Issues*, in: Viarengo, I.; Villata, F. C. (eds.), *Planning the Future of Cross Border Families: A Path Through Coordination*, Bloomsbury Publishing, 2020, p. 4.

¹³ Case C-267/06 *Tadao Maruko v Versorgungsanstalt der deutschen Bühnen* [2008] ECLI:EU:C:2008:179, par. 59.

¹⁴ Case C-148/02 *Carlos Garcia Avello v Belgian State* [2003] ECLI:EU:C:2003:539 (*Garcia Avello*), par. 25.

¹⁵ Case C-43/24 *K. M. H. v Obshtina Stara Zagora (Shipov)* [2026] ECLI:EU:C:2026:183 (*Shipov*), par. 37.

¹⁶ Case C-673/16 *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* [2018] ECLI:EU:C:2018:385 (*Coman*), par. 37; Case C-490/20 *V.M.A. v Stolichna obshtina, rayon "Pancharevo"* [2021] ECLI:EU:C:2021:1008 (*V.M.A.*), par. 52.

¹⁷ Eliantonio, M.; Brunello, S.; von Freyhold, H., *Life in cross-border situations in the EU - A Comparative Study on Civil Status*, Policy Department C, European Parliament, Brussels, 2013, p. 38, Available at: [[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474395/IPOL-JURI_ET\(2013\)474395_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474395/IPOL-JURI_ET(2013)474395_EN.pdf)], Accessed 15 March 2026.

¹⁸ Espinosa Calabuig, R.; Carballo Piñeiro, L., *Child Protection in European Family Law*, in: Pfeiffer, T.; Lobach, Q. C.; Rapp, T. (eds.), *Facilitating Cross-Border Family Life – Towards a Common European Understanding. EUFams II and Beyond*, Heidelberg University Publishing, 2021, p. 50.

¹⁹ Župan, M., *Osobni statut u funkciji kontinuiteta fizičkih osoba*, in: Barbić, J.; Župan, M. (eds.), *Identitet u prekograničnim privatnopravnim odnosima*, HAZU, Zagreb, 2021, p. 78.

culture and legal system.²⁰ This is most evident in family matters. Member States seek to retain full control, as family law in matters of status is considered closely linked to national identity and to cultural and moral values.²¹ Historically, determining a child's parents was straightforward, leading to broadly consistent legal approaches across EU.²² In recent decades, however, evolving family structures and advances in medical science have created uncertainty. Divergent national rules on issues such as paternity disestablishment, assisted reproductive technology, surrogacy, same-sex marriages and parenthood²³ have prevented the emergence of an international consensus on establishing and recognising legal parenthood across borders.²⁴ Apart from this, other elements of civil status also fall within the competence of the Member States. One such example is personal names, the matter in which some states permit a greater number of given names and surnames, while others impose more restrictive limits.²⁵ Changes to personal names are often triggered by status-related events, such as marriage, divorce or adoption. In recent times, name issues have also been linked to gender changes. This frequently raises the question of which law is applicable in such cases.²⁶ Precisely the issue of a personal name was one of the first cases in which the CJEU ruled on the connection between civil status and freedom of movement.²⁷

Besides the fact that Member States have different substantive law rules regarding the establishment and recognition of civil status, the problem of non-recognition of civil status in a cross-border context arises also from the fact that they have different private international law (PIL) rules.²⁸ Civil status on the choice of law level requires differentiated conflict rules; in other words, different elements of the civil status (e.g. marriage, parenthood, names) are subject to special choice-of-law rules.²⁹ Such combination of legislative disparities and insufficient coordination between the conflicts systems of different States inevitably results in “limping”

²⁰ Tryfonidou, Cross-border..., *op. cit.*, note 5, p. 17.

²¹ Garayova, L., *Parenthood without borders – Judicial cooperation for cross-border family security in the EU*, in: Petrašević, T.; Duić, D. (eds.), *EU and Comparative Law Issues and Challenges Series (ECLIC)*, Strong and Secure Europe: Legal and Economic Aspects, No. 9, 2025, pp. 326-347, p. 336.

²² Tryfonidou, Cross-border..., *op. cit.*, note 5, p. 16.

²³ Viarengo *et al.*, *op. cit.*, note 11, p. 156.

²⁴ Tryfonidou, Cross-border..., *op. cit.*, note 5, p. 17.

²⁵ Medić, I., *Identitet i ime u prekograničnom pravnom prometu*, in: Barbić, J.; Župan, M. (eds.), *Identitet u prekograničnim privatnopravnim odnosima*, HAZU, Zagreb, 2021, pp. 115-139, p. 117.

²⁶ *Ibid.*

²⁷ See cases *Garcia Avello*, *Grunkin Paul*, *Sayn-Wittgenstein*, *Runević-Vardyn*, *Freitag* and *Bogendorff von Wolffersdorf*. More about them will follow later.

²⁸ Tryfonidou, Cross-border..., *op. cit.*, note 5, p. 15.

²⁹ Dutta, *op. cit.*, note 1, p. 1347.

situations. Some authors consider this to be one of the most visible deficiencies of the current system of private international law.³⁰

2.2. EU Private International Law Instruments Affecting Family and Civil Status Matters

Following the Treaty of Amsterdam, the EU has developed its own private international law policy, which, under the Treaty of Lisbon, has become a component of the judicial cooperation in civil matters within the Area of Freedom, Security and Justice.³¹ The legal basis for the adoption of PIL measures is provided in Article 81 TFEU. However, there is a distinction between the adoption of such measures in civil and commercial matters and those in family matters.³² In the field of family law with cross-border implications, Article 81(3) TFEU requires unanimity in the Council and grants each Member State a right of veto.³³

The unification of PIL in family matters in the EU has so far been achieved by regulations on the jurisdiction of courts and the recognition and enforcement of decisions. Uniform rules on the applicable law have been adopted in matters of divorce and legal separation, maintenance obligations, matrimonial property regimes, property consequences of registered partnerships, and in the field of succession.³⁴ But, a distinction should be made between existence, creation, or recognition of the civil status and the effects arising from that status or its dissolution.³⁵ The effects flowing from civil status are, to a significant extent, currently governed by a number of EU regulations.³⁶ However, as regards the creation or termina-

³⁰ Meeusen, J., *Cross-Border Mobility of European Union Citizens and Continuity of Civil Status – Balancing National and Individual Identities in an Open Society*, in: Bonomi, A.; Pretelli, I.; Romano, G.P., *Yearbook of Private International Law*, Vol. XXII – 2020/2021, Verlag Dr. Otto Schmidt KG, Köln and Swiss Institute of Comparative Law, Lausanne, 2022, p. 7.

³¹ European Law Institute, *op. cit.*, note 9, p. 31; Kohler, *op. cit.*, note 12, p. 4.

³² Luku, H., *Free Movement, Children's Rights and National Identity in the EU Parenthood Proposal*, in: Bonomi, A.; Pretelli, I.; Romano, G. P. (eds.), *Yearbook of Private International Law* Vol. XXIV – 2022/2023, Verlag Dr. Otto Schmidt, Köln, 2023, p. 357.

³³ Yüksel, B., *An Analysis of the Effectiveness of the EU Institutions in Making and Interpreting EU Private International Law Regulations*, in: Beaumont, P. et al. (eds.), *Cross-Border Litigation in Europe*, Hart Publishing, Oxford and Portland, 2017, p. 38.

³⁴ Kohler, *op. cit.*, note 12, pp. 9, 10.

³⁵ Romano, *op. cit.*, note 2, p. 23.

³⁶ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations [2009] OJ L 7/1; Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession [2012] OJ L 201/107; Council Regulation (EU) 2016/1103 of 24 June 2016

tion of the status, EU law does not provide for common rules, with the exception of two regulations:³⁷ the Brussels II ter Regulation (recast)³⁸ and the Rome III Regulation,³⁹ which address the matters of divorce, separation or annulment of marriage. It is interesting to notice that in all above mentioned regulations, each of them has a reference to free movement in their recitals, serving as a foundation for the EU's competence. Some of them expressly mention the specific need to abolish obstacles to free movement, while others mention mobility as a means of justifying choices in relation to connecting factors.⁴⁰

The EU's general competence in the field of PIL has further led to the development of judicial cooperation aimed at facilitating the free movement of public documents,⁴¹ as reflected in Regulation (EU) 2016/1191 of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 (Public Document Regulation).⁴² The EU institutions had long recognised difficulties faced by EU citizens in cross-border recognition of their civil status, which the European Commission elaborated in its 2010 Green Paper "Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records."⁴³ That initiative envisaged ambitious measures including abolishing formalities for the authentication, enhancing administrative cooperation and limiting translations of public documents, as well as the introduction of

implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes [2016] OJ L 183/1; Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships [2016] OJ L 183/30.

³⁷ Romano, *op. cit.*, note 2, p. 17.

³⁸ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) [2019] OJ L 178/1.

³⁹ Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation [2010] OJ L 343/10.

⁴⁰ See more about this in: Lang, A., *Impact of the Regulations on the Free Movement of Persons in the EU*, in: Viarengo, I.; Villata, F. C. (eds.), *Planning the Future of Cross Border Families: A Path Through Coordination*, Studies in Private International Law, Oxford, Hart Publishing, 2020, pp. 347-370.

⁴¹ Župan, *op. cit.*, note 19, p. 81.

⁴² Regulation (EU) 2016/1191 of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 [2016] OJ L 200/1 (Public Documents Regulation).

⁴³ European Commission, GREEN PAPER Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records, COM (2010) 747 final [2010].

a European civil status certificate and establishing rules on the mutual recognition of civil status records.⁴⁴ However, the regulation ultimately adopted shifted focus from the “recognition of the effects of civil status records” provided for in the 2010 Green Paper to merely simplifying the presentation of public documents.⁴⁵ Consequently, its scope is limited to removing legalisation requirements and easing translation through multilingual standard forms.⁴⁶ But, as some authors predict, the pragmatic approach of Public Document Regulation is nevertheless remarkable and could induce the CJEU to favour the recognition of the family situations of EU citizens certified in their public documents, consolidating a practice that has already been initiated.⁴⁷

Having set aside, at least for now, the creation of a European civil status certificate, the European Commission is now considering the creation of a European certificate of parenthood.⁴⁸ In 2022 it adopted the proposal for a regulation concerning the private international law issues deriving from cross-border parenthood and envisaging rules on cooperation and the certificate of parenthood⁴⁹ (Parenthood Proposal). This is the first PIL instrument in civil matters which explicitly states the goal of protection of human rights as a priority.⁵⁰ Its purpose is to guarantee the recognition of parent-child relations not only for the strict free movement purpose, which is already guaranteed by the case law of the CJEU, but also for any other purpose. In other words, it aims to facilitate the recognition of filiation in all areas, beyond the rights under EU law.⁵¹ However, its adoption remains uncertain due to the unanimity requirement under Article 81(3) TFEU.

⁴⁴ Campiglio, C., *Circulation of Public Documents and Recognition of Civil Status Situations – Lights and Shadows*, in: Bonomi, A., Pretelli, I., Romano, G.P. (eds.), *Yearbook of Private International Law*, Vol. XXIII – 2021/2022, Verlag Dr. Otto Schmidt, Köln, 2022, p. 4.

⁴⁵ *Ibid.*, pp. 8, 11.

⁴⁶ González Beilfuss, C., *The recognition of foreign judgments and the acceptance of authentic instruments on parenthood matters*, in: Carpaneto, L.; Maoli, F.; Queirolo, I. (eds.), *Towards Universal Parenthood in Europe*, Editoriale Scientifica, Napoli, 2025, p. 89.

⁴⁷ Campiglio, *op. cit.*, note 44, p. 12.

⁴⁸ *Ibid.*, p. 21.

⁴⁹ Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in relation to parenthood and the creation of a European certificate of parenthood COM(2022) 695 final [2022].

⁵⁰ Carpaneto, L.; Maoli, F.; Queirolo, I., *The protection of rights of the children born following an international surrogacy agreement in (EU) private international law*, in: Carpaneto, L.; Maoli, F.; Queirolo, I. (eds.), *Towards Universal Parenthood in Europe*, Editoriale Scientifica, Napoli, 2025, p. 25.

⁵¹ González Beilfuss, C.; Pretelli, I., *The Proposal for a European Regulation on Filiation Matters – Overview and Analysis*, in: Bonomi, A.; Pretelli, I.; Romano, G. P. (eds.), *Yearbook of Private International Law* Vol. XXIV – 2022/2023, Verlag Dr. Otto Schmidt, Köln, 2023, pp. 275-308, pp. 276, 279.

3. AN OVERVIEW OF KEY CASES BEFORE THE COURT OF THE EUROPEAN UNION

Even in the absence of further legislative harmonisation, the CJEU plays a major role in addressing cross-border status problems through its interpretation of the effects of Union citizenship.⁵² In other words, the issues relating to, for example, same-sex couples and rainbow families in the EU, fall under the scope of EU law through the rules on fundamental rights protection and free movement, connected with EU citizenship status.⁵³

In a series of judgments since the mid-eighties, the CJEU has developed extensive case law assessing the compatibility of the rights deriving from EU law with the application of the Member States' legislation, both its substantive and choice-of-law rules, on various components of citizens' civil status.⁵⁴

3.1. Early Case Law on Free Movement and Civil Status in Relation to Personal Names

The right to maintain continuity of civil status across borders has been shaped by the CJEU through a series of cases, initially focusing on elements of personal identity, particularly civil status records and the determination of names.⁵⁵ One of the first cases in which the CJEU affirmed the principle of uniformity of status of Community citizens was case *Micheletti*,⁵⁶ where it held that a person's status, as determined by the competent authorities of their Member State, must be uniformly recognised by all other Member States and cannot be subject to divergent assessments.⁵⁷ In *Eftalia Dafeki v. Landesversicherungsanstalt Württemberg*⁵⁸ the CJEU was called upon to rule on the effects of foreign certificates of civil status, albeit for very limited purposes, with respect to the date of birth in proceedings concerning entitlement to social security benefits. It held that the effective exercise of free movement rights for workers requires the recognition of documents relat-

⁵² Meeusen, *op. cit.*, note 30, p. 7.

⁵³ Harasimiuk, D. E., *Rainbow families' rights in the EU – how the Court of Justice of the European Union is juggling fundamental rights, free movement and national identity clause*, Stosunki Międzynarodowe – International Relations 2025, Vol. 5, No. 4, 2025, pp. 1-14, p. 4.

⁵⁴ Meeusen, *op. cit.*, note 30, pp. 2, 6.

⁵⁵ Viarengo, I. *et al.*, *op. cit.*, note 11, p. 161.

⁵⁶ Case C-369/90 *Micheletti and others v Delegación del Gobierno en Cantabria* [1992] ECLI:EU:C:1992:295

⁵⁷ Opinion of Advocate General La Pergola in Case C-336/94 *Eftalia Dafeki v Landesversicherungsanstalt Württemberg* [1996] ECLI:EU:C:1996:462, par. 7.

⁵⁸ Case C-336/94 *Eftalia Dafeki v Landesversicherungsanstalt Württemberg* [1997] ECLI:EU:C:1997:579 (*Eftalia Dafeki*).

ing to civil status issued by the Member State of origin.⁵⁹ Consequently, national authorities are, in principle, obliged to accept such documents, unless their accuracy is seriously called into question by concrete evidence in the individual case.⁶⁰

In its subsequent case law, the CJEU addressed situations where host states refused to recognise surnames assigned in the Member State of origin and instead registered Union citizens under a different name based on the *lex fori*.⁶¹ The CJEU held that the obligation to recognise such surnames is inherent to the personal status of Union citizens and interpreted this obligation as a condition for the exercise of the fundamental rights and freedoms guaranteed to every EU citizen, as illustrated by *Garcia Avello*.⁶² It was a landmark case in the development of EU law, as it was in this case that the CJEU extended the scope of Community freedoms for the first time to questions of personal status in private international law.⁶³ In later cases, the focus shifted from Article 18 TFEU to Article 21 TFEU. While in *Grunkin and Paul*⁶⁴ the CJEU held that Member State must recognise the surname, in cases *Sayn-Wittgenstein*⁶⁵ and *Bogendorff von Wolffersdorff*⁶⁶ the Member State's refusal to recognise the surname could be justified on grounds relating to the public policy, even if such measure restricted Union citizens' freedom of movement.⁶⁷

3.2. The Evolving Jurisprudence on Recognition of Family Relationships and Parenthood

In more recent case law, the CJEU has gone a step further and examined the continuity of family status and parenthood. The first such case is *Coman*. It con-

⁵⁹ See the opinion of Advocate General La Pergola, *op. cit.*, note 57, par. 8.

⁶⁰ *Eftalia Dafeki*, par. 19, in: Campiglio, *op. cit.*, note 44, p. 14 and Viarengo, I. *et al.*, *op. cit.*, note 11, p. 161.

⁶¹ Deana, *op. cit.*, note 3, pp. 1983, 1984.

⁶² *Garcia Avello*, par. 36.

⁶³ Ní Shúilleabháin, M, *Cross-Border (Non-) Recognition of Marriage and Registered Partnership: Free Movement and EU Private International Law*, in: Scherpe, J.; Bargelli, E. (eds.), *The Interaction between Family Law, Succession Law and Private International Law: Adapting to Change*, Intersentia, 2021, p. 20.

⁶⁴ Case C-353/06 *Stefan Grunkin and Dorothee Regina Paul* [2008] ECLI:EU:C:2008:559 (*Grunkin and Paul*), par. 23.

⁶⁵ Case C-208/09 *Sayn-Wittgenstein v Landeshauptmann von Wien* [2010] ECLI:EU:C:2010:806 (*Sayn-Wittgenstein*), par. 95.

⁶⁶ Case C-438/14 *Bogendorff von Wolffersdorff v Standesamt der Stadt Karlsruhe* [2016] ECLI:EU:C:2016:401 (*Bogendorff von Wolffersdorff*), par. 84.

⁶⁷ Both cases examined the relationship between an individual's name and the Member State's decision on the abolition of nobility. However, while stating that the reason for refusal in *Sayn-Wittgenstein* might be justified, in the case *Bogendorff von Wolffersdorff*, the CJEU left it to the national court to assess proportionality by ascertaining whether a refusal of recognition is indeed appropriate and necessary.

cerned the recognition of a same-sex marriage concluded in Belgium between a Romanian and an American citizen. The CJEU based its decision on free movement and residence rights under Article 21 TFEU, which may be infringed by the refusal of a Member State to recognise the same-sex marriage that a Union citizen legally concluded during the period of their genuine residence in another Member State.⁶⁸ The CJEU also provided an interpretation of the concept of “spouse” within the meaning of Article 2(2) of the Free Movement Directive,⁶⁹ stating that the term is “gender-neutral and may therefore cover the same-sex spouse of the Union citizen concerned.”⁷⁰

A few years later, the CJEU once again provided an interpretation regarding Article 2(2) of the same Directive, this time in relation to the concept of “direct descendant.”⁷¹ In the *V.M.A.* case, the CJEU stated that a child: “...whose birth certificate, issued by the competent authorities of a Member State, designates as her parents two persons of the same sex, one of whom is a Union citizen, must be considered, by all Member States, a direct descendant of that Union citizen ... for the purposes of the exercise of the rights conferred in Article 21(1) TFEU.”⁷² Even more significant is the CJEU’s ruling that EU law requires the Member State of a child’s nationality to recognise documents issued by the State of birth, in order to enable the child to exercise free movement and residence rights with each parent across the EU⁷³ and to issue an identity card or passport without first requiring a domestic birth certificate.⁷⁴

The similar conclusion the CJEU brought in the case *Rzecznik Praw Obywatelskich v K.S. and Others*,⁷⁵ where the birth certificate issued in Spain mentioned the two women of Irish and Polish nationality as parents.⁷⁶ The CJEU had made the same decision as in *V.M.A.*, stating that Article 21 TFEU “precludes the authorities of a

⁶⁸ Meeusen, *op. cit.*, note 30, p. 13.

⁶⁹ Ní Shúilleabháin, *op. cit.*, note 63, p. 17.

⁷⁰ *Coman*, par. 35.

⁷¹ The CJEU has also addressed this topic in some other decisions. In the case C-129/18 *SM v Entry Clearance Officer, UK Visa Section* [2019] ECLI:EU:C:2019:248, the CJEU interprets that a child under the *kafala* guardianship regime cannot be considered a “direct descendant” like a biological child or an adopted child, but can be considered an “other family member”. Further, some authors predict that the next step will be the recognition as a “direct descendant” of the child born to a surrogate mother, Campiglio, *op. cit.*, note 44, p. 23.

⁷² *V.M.A.*, par. 68.

⁷³ Luku, Free Movement..., *op. cit.*, note 32, p. 348.

⁷⁴ *V.M.A.*, par. 69.

⁷⁵ Case C-2/21 *Rzecznik Praw Obywatelskich v K.S. and Others* [2022] ECLI:EU:C:2022:502 (*Rzecznik Praw Obywatelskich v K.S. and Others*).

⁷⁶ Luku, Free Movement..., *op. cit.*, note 32, p. 348.

Member State, in applying their national law, from refusing to recognise a child's surname as determined and registered in a second Member State in which the child was born and has been resident since birth.⁷⁷ It also stated that, under Article 4(3) of the Free Movement Directive, Polish authorities must issue an identity card or passport to the child, irrespective of whether the Spanish birth certificate has been transcribed into the national civil status register.⁷⁸

3.3. Legal Gender Recognition and Free Movement

In its most recent case law, the CJEU examined the matter of gender identity. First, in case *Mirin*,⁷⁹ the CJEU decided that a gender reassignment follows the same path developed regarding recognition of names:⁸⁰ both the non-recognition of name and gender count as an obstacle to the right to free movement.⁸¹ The CJEU held that Articles 20 and 21(1) TFEU, read in light of Articles 7 and 45 of the Charter, preclude a Member State from refusing to recognise a change of first name and gender identity lawfully acquired in another Member State.⁸²

The case *Shipov*,⁸³ concerning the amendment of gender data in civil-status registers, pushes the boundaries even further. Unlike in *Mirin*, where the applicant had already completed a legal gender recognition procedure in another Member State, the applicant in *Shipov* has not undergone such a procedure anywhere.⁸⁴ A

⁷⁷ *Rzecznik Praw Obywatelskich v K.S. and Others*, par. 38.

⁷⁸ *Ibid.*, par. 39; the same decision the CJEU had in *V.M.A.*, par. 45.

⁷⁹ Case C-4/23 *M.-A.A. v Direcția de Evidență a Persoanelor Cluj and Others (Mirin)* [2024] ECLI:EU:C:2024:845 (*Mirin*); A Romanian citizen living in the UK and acquiring UK citizenship obtained a gender reassignment in the UK (then still an EU Member State) and requested the Romanian authorities to register this gender in registries. Romanian authorities rejected the request, as under Romanian law, gender reassignments can only be recognized if this change has been authorized by a final court decision (paras. 24-28).

⁸⁰ Gössl, S. L., 'Mirin' and beyond – gender identity, domestic private international law, and human rights in the EU, *International Journal of Law, Policy and The Family*, Vol. 40, No. 1, 2026, p. 16.

⁸¹ Luku, H., *The CJEU on the Recognition of a Union Citizen's Change of First Name and Gender Identity*, The EAPIL blog, 2024, Available at: [<https://eapil.org/2024/10/15/cjeu-rules-member-states-must-recognise-a-unions-citizen-change-of-first-name-and-gender-identity/>], Accessed 2 April 2026.

⁸² *Mirin*, par. 72.

⁸³ *Shipov*, *op. cit.*, note 15; A Bulgarian national, registered as male at birth but identifying as female, underwent hormone therapy in Italy, where she established a stable personal and family life. Bulgarian courts rejected her request to amend her civil-status data, relying on national law, which defines "sex" strictly in biological terms and provides no procedure for legal gender recognition.

⁸⁴ Tryfonidou, A., *Legal Gender Recognition and Free Movement in the EU: In Defence of the Advocate General Opinion in Shipov*, *VerfBlog*, 2025, Available at: [<https://verfassungsblog.de/ag-opinion-shipov/>], Accessed 2 April 2026.

Bulgarian national, registered as male at birth but identifying as female, underwent hormone therapy in Italy, where she established a stable personal and family life. Bulgarian courts rejected her request to amend her civil-status data, relying on national law, which defines “sex” strictly in biological terms and provides no procedure for legal gender recognition.⁸⁵ The CJEU held that refusal to recognise the change of gender may hinder the exercise of free movement⁸⁶ and Articles 21 TFEU and 4(3) of the Free Movement Directive, read in light of Article 7 of the Charter, preclude national legislation that prevents individuals who have exercised free movement from amending gender-related civil-status data.⁸⁷

At first glance, *Shipov* seems doctrinally distinct from earlier cases. Although not purely internal, since the applicant had lived in Italy, the cross-border element remained comparatively thin.⁸⁸ The dispute concerned amending national records and, unlike previous cases, did not involve recognising a status already established abroad. In essence, it deals with a situation where no formal recognition existed elsewhere, yet domestic rules still hindered free movement by preventing consistency between legal status and lived identity. The CJEU thus expands its approach, acknowledging that obstacles may arise not only from non-recognition but also from the lack of procedures to obtain amendments to civil-status records consistent with their gender identity.⁸⁹ The *Shipov* case therefore shifts the focus from mere recognition of statuses established abroad to the imposition of positive obligations on Member States where necessary for the exercise of EU citizenship rights.⁹⁰

4. ANALYSIS OF THE CJEU’S APPROACH TO CIVIL STATUS IN ITS CASE LAW

When addressing issues of civil status, the CJEU seeks to balance individual rights, Member States’ regulatory autonomy, and the requirements of EU law, which Member States are bound to respect. Therefore, when deciding on such cases, in particular those concerning the recognition of family relationships and

⁸⁵ Pasqua, M., *CJEU: Free Movement and Legal Gender in Shipov (C-43/24)*, The EAPIL blog, 2026, Available at: [<https://eapil.org/2026/03/18/cjeu-free-movement-and-legal-gender-in-shipov-c-43-24/>], Accessed 23 March 2026.

⁸⁶ *Shipov*, par. 38.

⁸⁷ *Ibid.*, paras. 56, 64.

⁸⁸ Belavusau, U., *Sexual Citizenship via Free Movement: Gender Identity and EU Citizenship after Shipov Case (C-43/24, 2026)*, VerfBlog, 2026, Available at: [<https://verfassungsblog.de/sexual-citizenship-via-free-movement/>], Accessed 23 March 2026.

⁸⁹ Pasqua, *op. cit.*, note 85.

⁹⁰ *Ibid.*

parenthood, the CJEU opted for a functional recognition of civil status, ensuring the effective exercise of Union citizenship rights and the protection of fundamental rights, while at the same time respecting Member States' competences and national identity.⁹¹

4.1. Relying on Free Movement and EU Citizenship Rights

The CJEU in its case law focuses on the outcome – the free movement of EU citizens – and, from that standpoint, seeks to ensure its effectiveness and prevent discrimination arising from differences between Member States' legislation.⁹² Before the introduction of EU citizenship, the CJEU was balancing the exercise of Member States' competences with free movement rights within the framework of the internal market.⁹³ In its later cases, the decisions were based on the principle of non-discrimination, Union citizenship and the right to freedom of movement. Although the CJEU acknowledges that a civil status falls within the competence of the States and EU law does not detract from that competence, it also emphasises that, in exercising that competence, Member States must comply with EU law, in particular the Treaty provisions on the freedom to move and reside in the territory of the Member States.⁹⁴

Therefore, cross-border mobility of EU citizens is decisive and it requires status continuity insofar as EU law rights are concerned, regardless of the nature of that status.⁹⁵ It is expected that Union citizens will be more inclined to fully exercise their free movement rights when they can preserve the personal status or family relationships acquired in their Member State of origin. What emerges is not a general obligation of recognition, but a requirement of functional continuity of civil status where this is necessary for the effective exercise of EU citizenship rights. Besides in Articles 20 and 21 TFEU, this approach is grounded in the prohibition of nationality-based discrimination (Article 18 TFEU) and the principle of sincere cooperation (Article 4(3) TEU).⁹⁶ Accordingly, national legislations cannot lead to a non-recognition where this would breach EU law. In other words, EU citizens should be able to legitimately expect that EU law prevents obstacles to free movement or discrimination arising from the application of the *lex fori*.⁹⁷

⁹¹ Luku, Free Movement..., *op. cit.*, note 32, p. 349.

⁹² Campiglio, *op. cit.*, note 44, p. 18.

⁹³ Meeusen, *op. cit.*, note 30, p. 8.

⁹⁴ *Coman*, par. 38; also: *Garcia Avello*, par. 25; *Grunkin and Paul*, par. 16; *Bogendorff von Wolffersdorff*, par. 32; *V.M.A.*, par. 52; *Shipov*, par. 37.

⁹⁵ Meeusen, *op. cit.*, note 30, p. 21.

⁹⁶ Viarengo, I. *et al.*, *op. cit.*, note 11, p. 160.

⁹⁷ Deana, *op. cit.*, note 3, pp. 1984, 1985.

In the above-mentioned cases, the CJEU held that whenever a national measure affects the conditions in which Union citizens exercise or seek to exercise free movement rights, the measure may become subject to review, even if it lies within the exclusive competence of the Member States.⁹⁸ However, EU law does not impose automatic recognition. The CJEU has never left any doubt that restrictions to the freedom of movement can be justified, though only under very strict conditions: refusal of recognition is permissible if it's "based on objective public-interest considerations, proportionate to a legitimate objective pursued by national law and does not go beyond what is necessary in order to attain that objective."⁹⁹ Finally, "a national measure that is liable to obstruct the exercise of freedom of movement for persons may be justified only where such a measure is consistent with the fundamental rights guaranteed by the Charter."¹⁰⁰

The CJEU's position on the recognition of names has been guided primarily by the objective of ensuring the effective exercise of free movement rights conferred by Union citizenship, and less by the protection of civil status as such. However, this latter element emerges in *Coman*, where it serves as an additional, or alternative, basis for the Court's reasoning.¹⁰¹ The CJEU emphasised that the rights guaranteed by Article 7 of the Charter have the same meaning and scope as those in Article 8 European Convention on Human Rights (ECHR), and, referring to the case law of the European Court of Human Rights (ECtHR), recognised that the relationship of a homosexual couple may fall within the notion of 'private' and 'family life' in the same way as the relationship of a heterosexual couple in the same situation.¹⁰² This line of reasoning represents a notable development in the Court's case law.

In a similar vein, the CJEU has continued to invoke fundamental rights in cases such as *V.M.A.*¹⁰³, *Mirin*¹⁰⁴ and *Shipov*,¹⁰⁵ interpreting Article 20 TFEU in conjunction with Articles 7 and 45 of the Charter. In doing so, the CJEU draws heavily on Article 8 ECHR and the case law of the ECtHR, embedding its reasoning

⁹⁸ Tomkin, J., *Citizenship In Motion: The Development Of The Freedom Of Movement For Citizens In The Case-Law Of The Court Of Justice Of The European Union*, in: Guild, E.; Minderhoud, P. (eds.), *The First Decade of EU Migration and Asylum Law*, Martinus Nijhoff Publishers and VSP, Leiden, Boston, 2012, p. 33.

⁹⁹ Deana, *op. cit.*, note 3, p. 1988.

¹⁰⁰ *Coman*, par. 47; *V.M.A.*, par. 58.

¹⁰¹ Kohler, *op. cit.*, note 12, p. 9.

¹⁰² *Coman*, par. 49.

¹⁰³ *V.M.A.*, paras. 69, 70.

¹⁰⁴ *Mirin*, paras. 71, 72.

¹⁰⁵ *Shipov*, paras. 56, 65.

within a broader European human rights framework rather than presenting it as a purely EU-law innovation.¹⁰⁶ The *Shipov* case further reflects a shift towards a more individual-centred understanding of legal identity. It acknowledges that inconsistencies in civil-status records affect not only legal recognition but also the everyday lives of Union citizens. Civil status thus emerges as a key element of EU citizenship that must remain coherent across borders. From this perspective, the case illustrates an increasing alignment between the CJEU and the ECtHR.¹⁰⁷

4.2. The Court's Cautious Approach

The CJEU maintained rather cautious approach on the issue of civil status, by respecting the exclusive competences of the Member States to define its substantive concepts. This is particularly evident in later cases such as *Coman* and *V.M.A.*, where the Court limited recognition of civil status to what is strictly necessary for the exercise of EU citizenship rights and the protection of fundamental rights, notably the right to private and family life.¹⁰⁸ For example, in *Coman*, the CJEU, aware of the controversies that an obligation to recognise same-sex marriages might provoke in some states, sought to limit the perceived impact of its ruling.¹⁰⁹ It did so by emphasising that the obligation concerned “recognition for the sole purpose of granting a derived right of residence”¹¹⁰ and by explicitly confirming that Member States remain free to decide whether to permit same-sex marriage under their national law.¹¹¹ The case thus was not about legalising same-sex marriage in Romania, but about safeguarding an EU citizen’s freedom of movement. Refusal to recognise the spouse, even for residence purposes, would deter the exercise of those rights.¹¹² Accordingly, Romania was required to recognise the same-sex spouse for residence purposes only, without being obliged to recognise the marriage in its domestic law.¹¹³ The Court thus drew a clear distinction between full recognition of civil status and its functional recognition for the purposes of EU law.

The same approach was confirmed in *V.M.A.* Although Member States must recognise a parent-child relationship between a child and two same-sex parents for the purposes of EU law rights, they are not required to provide for such parent-

¹⁰⁶ Belavusau, *op. cit.*, note 88.

¹⁰⁷ Pasqua, *op. cit.*, note 85.

¹⁰⁸ Campiglio, *op. cit.*, note 44, p. 23.

¹⁰⁹ Meeusen, *op. cit.*, note 30, p. 13.

¹¹⁰ *Coman*, paras. 36, 40, 45, 46.

¹¹¹ *Ibid.*, par. 37.

¹¹² Opinion of Advocate General Wathelet in *Coman* [2018] ECLI:EU:C:2018:2, par. 38.

¹¹³ Meeusen, *op. cit.*, note 30, p. 21.

hood in their national law or to recognise it beyond what is necessary for the child to exercise those rights.¹¹⁴ This way the CJEU ensured that Union citizens can effectively exercise their free movement rights under Article 21 TFEU across the Member States, without requiring full recognition of same-sex marriages, partnerships, or parenthood for all other purposes.¹¹⁵

While the CJEU remains firmly committed to safeguarding free movement and the fundamental rights protected by the Charter, it also acknowledges the need to preserve Member States' competences and national identities, thereby avoiding the perception that it disregards them.¹¹⁶ Although this approach is to be expected, it raises additional questions, particularly that of dual identity.

Given that the CJEU requires recognition only to ensure rights under EU law, it does not oblige Member States to give full effect to such status in their domestic law. Thus, recognition does not extend to rights under national law, for example in matters of maintenance, matrimonial property regimes, or inheritance.¹¹⁷ As for the purposes of private law, the status deriving from foreign civil status documents, as well as its effects, remain subject to the traditional method of conflict of laws, including public policy limits.¹¹⁸

This can create paradoxical situations where a person is considered both married and single depending on the legal context.¹¹⁹ For example, a couple may be recognised as married for EU law purposes, yet treated as unmarried in areas within the host State's exclusive competence.¹²⁰

As a result, considering the same couple to be married for some purposes only creates a situation where the simple question of whether they are married cannot be answered by "yes" or "no". While "limping marriages" are known in private international law, they traditionally arise across different countries, not within the same State.¹²¹ In other words, the foundations have been laid for the emergence of a new form of limping legal relationships, which do not take place, as do the traditional ones, at a transnational level but precisely at a national level (in one

¹¹⁴ *V.M.A.*, par. 57.

¹¹⁵ Luku, *Free Movement...*, *op. cit.*, note 32, p. 349.

¹¹⁶ *Ibid.*

¹¹⁷ Bogdan, M., *The relevance of family status created abroad for the freedom of movement in the EU*, Acta Universitatis Carolinae - Iuridica, Vol. 4, 2020, p. 92.

¹¹⁸ Campiglio, *op. cit.*, note 44, p. 23.

¹¹⁹ Oprescu, M. A., *The right to free movement and residence within the EU*, The International Conference, European Union's History, Culture and Citizenship, 14th edition, Pitești, 2022, p. 358.

¹²⁰ *Ibid.*, pp. 354, 355.

¹²¹ Bogdan, *op. cit.*, note 117, p. 91.

State, the same person may be considered married or a parent for the purposes of circulation within the EU, while unmarried or not a parent for civil purposes). This leads to a dual identity: a full national identity and the EU one, whose sole function is to confer on the EU national the rights granted under EU law. Such fragmentation raises concerns regarding compatibility with fundamental rights standards and may disrupt coherence within national legal systems, while also expanding free movement in ways that challenge national laws.¹²²

4.3. Protection of Member States' National Identity and Public Policy

In its case law, the CJEU has consistently held that Member States must recognise civil status established in another Member State in order to safeguard freedom of movement as a fundamental value of the Union. However, this obligation raises a central question: to what extent may Member States, on public policy grounds, restrict the legitimate expectations of individuals regarding the stability of a status acquired abroad without breaching EU law?¹²³ More specifically, do Member States retain discretion in this area, or are they required, under Article 21 TFEU and Free Movement Directive, to recognise family relationships lawfully created in another Member State?¹²⁴

Member States enjoy limited discretion to invoke “legitimate interests” as a counterweight to free movement, allowing them to rely on values considered particularly important at the national level, such as those protected by constitutional provisions or forming part of their national or cultural identity. Such justifications are recognised in EU primary law, notably in Article 4(2) TEU¹²⁵ which requires the EU to respect Member States’ national identity, inherent in their fundamental structures, both political and constitutional.¹²⁶

On this basis, Member States have sought to justify refusals of recognition, prompting the CJEU to assess whether such refusals align with national identity claims. However, from the examined case law, the impact of the respect that is due to national identity under Article 4(2) TEU appears relatively limited. It seems that the CJEU does not treat this provision as an independent or particularly strong ground of justification.¹²⁷ Only in two of the above-mentioned cases, *Sayn-Wittgenstein*

¹²² Campiglio, *op. cit.*, note 44, pp. 23, 24.

¹²³ Deana, *op. cit.*, note 3, p. 1990.

¹²⁴ Bogdan, *op. cit.*, note 117, p. 87.

¹²⁵ Meeusen, *op. cit.*, note 30, p. 17.

¹²⁶ The same is repeated by the CJEU in its case law: *Sayn-Wittgenstein*, par. 92; *Bogendorff von Wolffersdorff*, par. 73; *Coman*, par. 43; *V.M.A.*, par. 54.

¹²⁷ Meeusen, *op. cit.*, note 30, p. 19.

and *Bogendorff von Wolffersdorff*,¹²⁸ did the Court accept that a restriction to the right of free movement could be justified by reference to the national identity of the Member State concerned, at least in cases where the recognition of the surname acquired abroad would violate its constitutional public order.¹²⁹ It held that Austria's and Germany's constitutional abolition of nobility is an element of their national identity¹³⁰ and refusing to recognise noble titles could be justified on public policy grounds linked to national identity.¹³¹ Host Member States may refuse to recognise the civil status of an EU citizen on the basis of fundamental constitutional objectives, interpreted as public policy considerations,¹³² but only where "there is a genuine and sufficiently serious threat to a fundamental interest of society."¹³³

In other cases the CJEU did not accept reference to national identity as a justification for non-recognition.¹³⁴ Both in *Coman*¹³⁵ and *V.M.A.*,¹³⁶ it held that recognising same-sex marriages or parent-child relationships for the limited purposes of EU law does not undermine national identity or threaten public policy.¹³⁷ Institutions such as marriage and parenthood, even where constitutionally protected, cannot be relied upon under Article 4(2) TEU to override free movement rights.¹³⁸ This follows the limited effects of the CJEU's approach: Member States are required to recognise such relationships solely for the purposes of exercising EU law rights, without being obliged to provide for them in their national law. Consequently, such recognition does not affect national identity or public policy.¹³⁹

¹²⁸ Only in *Sayn-Wittgenstein* did the CJEU itself find the host Member State's restrictive measure - Austria's refusal to recognise nobiliary elements in a surname - compatible with Article 21 TFEU. It held that the measure was proportionate to the legitimate objective of protecting equality, in line with Article 20 of the Charter and Article 4(2) TEU, given that the republican form of the State forms part of Austria's national identity (paras. 84-94). By contrast, in *Bogendorff von Wolffersdorff*, the CJEU left the assessment of proportionality to the national court, Meeusen, *op. cit.*, note 30, p. 22.

¹²⁹ Kohler, *op. cit.*, note 12, p. 9.

¹³⁰ *Sayn-Wittgenstein*, para. 95.

¹³¹ Luku, Free Movement..., *op. cit.*, note 32, p. 360.

¹³² Viarengo, I. *et al.*, *op. cit.*, note 11, p. 161.

¹³³ *Bogendorff von Wolffersdorff*, par. 67; *Coman*, par. 44; *V.M.A.*, par. 55.

¹³⁴ In the most recent case, *Shipov*, the issue of national identity and public policy was not raised.

¹³⁵ In *Coman*, the referring court did not invoke Article 4(2) TEU; however, several governments relied on national identity and public policy, arguing that marriage, in some Member States, is constitutionally protected as a union between a man and a woman (par. 42).

¹³⁶ By contrast, in *V.M.A.*, the referring court expressly invoked Article 4(2) TEU in its questions, asking whether the obligation to recognise could have a negative effect on the public policy and national identity of Bulgaria, since that Member State did not foresee the possibility of listing two parents of the same sex on the birth certificate for the child (par. 32).

¹³⁷ *Coman*, par. 46; *V.M.A.*, par. 56.

¹³⁸ Viarengo, *et al.*, *op. cit.*, note 11, p. 163.

¹³⁹ Campiglio, *op. cit.*, note 44, p. 16.

From this it follows that the CJEU limits public policy in two ways: Member States must prove that the values invoked are sufficiently important (*Sayn-Wittgenstein*), and public policy control does not apply in cases within the scope of EU law (*Coman and V.M.A.*).¹⁴⁰

In this context, it is also important to look at the case law of the ECtHR. The non-recognition or downgrading of a civil status interferes with the right to private and family life under Article 7 of the Charter, interpreted in light of Article 8 of the ECHR, and therefore requires justification.¹⁴¹ In *V.M.A.*, Bulgaria relied on public policy and national identity to refuse recognition of a same-sex marriage. While both the CJEU and the ECtHR accept that Member States are not obliged to introduce same-sex marriage,¹⁴² the ECtHR has made clear that same-sex couples enjoy the right to family life and cannot be arbitrarily denied legal recognition and protection (*Schalk and Kopf*¹⁴³; *Oliari and Others*¹⁴⁴). Consequently, although States retain formal competence in family law, they are under a positive obligation to ensure some form of legal recognition for same-sex couples, such as a registered partnership, including those married abroad.¹⁴⁵ Refusing any recognition therefore breaches Article 8 ECHR. As a result, a Member State cannot rely on Article 4(2) TEU where its national legislation - or lack of it - violates the ECHR.¹⁴⁶ The CJEU, referring in its decisions to the jurisprudence of the ECtHR, confirmed that the rights of the individual may be opposed to the Member States' invocation of its national identity: the cultural identity of the individual takes precedence over the cultural identity of the Member States concerned.¹⁴⁷

5. CONCLUSION

Within the EU legal order, an implied rule has emerged from the combination of internal market principles and the special status of EU citizens, requiring Member States to recognise civil statuses established in another Member State, insofar as necessary to ensure the effective exercise of EU law rights.¹⁴⁸ In other words, it can

¹⁴⁰ Gössl, *op. cit.*, note 80, p. 15.

¹⁴¹ Deana, *op. cit.*, note 3, pp. 1988, 1989.

¹⁴² Harasimiuk, *op. cit.*, note 53, p. 4.

¹⁴³ Judgment *Schalk and Kopf v Austria* (2010) 51 EHRR 3, par. 94.

¹⁴⁴ Judgment *Oliari and Others v Italy*, (2015) 71 EHRR 1, paras. 165-167.

¹⁴⁵ De Groot, D., *Special Report, EU law and the mutual recognition of parenthood between Member States: the case of V.M.A. v Stolichna Obshtina*, GLOBALCIT and Robert Schuman Centre for Advanced Studies, European University Institute, 2021, p. 12.

¹⁴⁶ *Ibid.*

¹⁴⁷ Kohler, *op. cit.*, note 12, p. 9.

¹⁴⁸ Carpaneto; Maoli; Queirolo, *op. cit.*, note 50, p. 24.

be considered that the existing Union law obliges the Member States to recognise established civil statuses for the purpose of the rights deriving from EU law, in particular on free movement.¹⁴⁹ Through its case law on civil status, the Court of Justice of the European Union has developed important criteria, establishing that such status must be recognised whenever necessary to ensure the effective exercise of free movement and the rights deriving from EU citizenship. A closer look at the Court's jurisprudence reveals a gradual but clear expansion of its role. From initially addressing relatively straightforward issues, such as personal names, the CJEU has extended its reasoning to far more complex matters, including same-sex relationships, parenthood, and gender identity. In doing so, it has interpreted Free Movement Directive expansively, extending key concepts such as "spouse" (*Coman*) and "direct descendant" (*V.M.A.*) to include same-sex family relationships, thereby bringing these situations within the scope of EU law despite the absence of explicit legislative regulation.¹⁵⁰ In more recent cases, it has also relied on the case law of the ECtHR and fundamental rights under ECHR and Charter. By doing so, the CJEU provided certain protection of fundamental rights, especially the right to private and family life, within the scope of free movement. However, the impression is that the Court is not sufficiently focused on fundamental rights, which it interprets only through the prism of Article 21.

In more sensitive and controversial areas the CJEU has adopted a cautious approach, with respect of Member States' competence and intervening only where national rules interfere with the exercise of fundamental rights under EU law. Member States are required to recognise established relationships solely for the purposes of exercising EU law rights, without being obliged to provide for them in their national law. This functional approach has both strengths and limitations. Most notably, it has served as a ground for public policy limitation. From the Court's case law, it follows that, although recognition may be subject to public policy considerations, it cannot be arbitrarily refused by Member States.¹⁵¹ The CJEU has interpreted Member States' reliance on national identity as a ground for refusal narrowly, consistently favouring the continuity of civil status. While respect for national identity, often expressed through public policy, remains a core principle of the Treaties, its practical impact in this field is limited. Restrictions on free movement based on national identity must remain exceptional. In practice,

¹⁴⁹ Musseva, B.; Dimitrova, T.; *Applicable Law to Parenthood*, in: Carpaneto, L.; Maoli, F.; Queirolo, I. (eds.), *Towards Universal Parenthood in Europe*, Editoriale Scientifica, Napoli, 2025, p. 53.

¹⁵⁰ Harasimiuk, *op. cit.*, note 53, p. 5.

¹⁵¹ Župan, M.; Drventić Barišin, M., *The role of public policy in the private international law rules on parenthood*, in: Carpaneto, L.; Maoli, F.; Queirolo, I. (eds.), *Towards Universal Parenthood in Europe*, Editoriale Scientifica, Napoli, 2025, pp. 95-116, p. 109.

the CJEU's case law favours the acceptance of legal and social diversity arising from cross-border mobility, with the protection of individual rights taking precedence over claims of national identity.¹⁵² From all this, the conclusion emerges that the Court established certain criteria under which individuals can expect the continuity of their status, and that Member States, as a rule, have no justified reason to refuse recognition for the purposes of EU law. Although the existing body of case law on civil status remains relatively limited, and the CJEU has yet to address several important issues, such as surrogacy, it is reasonable to expect that it will increasingly be called upon to rule in this field. Based on its current trajectory, it is likely to continue prioritising the interests and rights of individuals over those of Member States.

As already mentioned, this case law-based approach is not without shortcomings. Besides the possible occurrence of mentioned “dual identity” situations, it remains contingent on the existence of a cross-border element linked to the exercise of free movement. The former is particularly problematic as it may lead to significant gaps in legal certainty for Union citizens whose civil status is not uniformly recognised across the EU, especially in cases involving children and families in non-traditional arrangements. Reliance on case-by-case litigation is neither efficient nor fair to individuals, who are often required to engage in costly and lengthy proceedings to vindicate their rights. Further, the Court's protection remains conditional on the existence of a cross-border element. Only individuals who have exercised free movement can rely on EU law; “static” citizens remain dependent on national law and, where applicable, the ECHR. As a result, protection is inherently uneven.¹⁵³ The limitation of the right of free movement to EU nationals limits the potential of the CJEU's jurisprudence based on article 21 TFEU to liberalise PIL more generally, i.e. with equal extension to nationals of third countries.¹⁵⁴

The CJEU operates within the limits of EU primary and secondary law. Given the Union's minimal competences in matters of civil status, the Court has consistently relied on Articles 20 and 21 TFEU as its principal legal basis. While the CJEU's practice is valuable, it still does not provide a uniform solution for ensuring the cross-border continuity and stability of civil status. The persistence of divergent national substantive rules and conflict-of-law approaches continues to hinder such continuity. For the time being, these obstacles have been addressed primarily by

¹⁵² Meeusen, *op. cit.*, note 30, p. 25.

¹⁵³ Harasimiuk, *op. cit.*, note 53, pp. 5, 7.

¹⁵⁴ Van Loon, H., *Ensuring continuity of personal status and family relations across borders: the interaction between private international law and human rights*, in: Muir Watt, H. *et al.*, *Global Private International Law: Adjudication without Frontiers*, Cheltenham, UK; Northampton, MA, USA: Edward Elgar Publishing, 2019, pp. 530-538, pp. 530, 531.

limiting the discretion of national authorities and prohibiting restrictions on free movement. A more comprehensive and coherent solution would therefore require legislative action at the EU level, through regulations or directives. The proposed Parenthood Regulation represents a step in the right direction, although its adoption remains uncertain.

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