Joint statement: EU Court of Justice strengthens trans rights by calling for the automatic recognition in birth certificates of a new name and gender marker obtained in another Member State

article, legal gender recognition, freedom of movement, legal gender recognition, non-discrimination

ACCEPT, TGEU and ILGA-Europe welcome today's decision of the Court of Justice of the EU (CJEU) in case C-4/23 Mirin, strengthening the rights of trans people. The Court said that the refusal of an EU Member State to recognise changes of forename and gender acquired in another Member State is contrary to the rights of EU citizens.

The case concerns Arian Mirzarafie-Ahi, a Romanian trans man, with dual Romanian-British citizenship. Arian began the legal process to change his legal gender and name in 2017 and was granted a gender recognition certificate by UK authorities in 2020. At that time, the UK was in the Brexit transition period and still treated as a Member State of the EU. Subsequently, Romania refused to register the name and legal gender recognition of the applicant obtained in the UK and demanded that he go through Romania's judicial legal gender recognition procedure. However, the European Court of Human Rights had already found that Romania does not have a procedure for change of name and gender marker that satisfies the standards of the European Convention of Human Rights of being quick, transparent and accessible.

The Romanian court asked the EU's top court to clarify whether EU law required Romania to recognise another Member State's decision acknowledging the name and gender marker of the applicant or if it could enforce its own procedures for legal gender recognition. In other areas of law, EU Member States commonly recognise each other's decisions without further procedures. As such, this case marks a pivotal moment in addressing the mutual recognition of legal gender recognition decisions across EU Member States.

The CJEU Decision

The CJEU ruled in favour of Arian, stating that Romania must recognise the legal gender recognition granted in the UK. The Court emphasised that the refusal to acknowledge changes of forename and gender acquired in another Member State is contrary to the fundamental rights of EU citizens, particularly the principles of free movement and non-discrimination. The Court highlighted that mutual recognition of legal decisions among Member States is essential for upholding the rights of individuals within the EU, and that personal identity, including gender, is a fundamental element of one's identity, protected under Article 7 of the Charter of Fundamental Rights and Article 8 of the European Convention on Human Rights. This landmark ruling reinforces the obligation of Member States to respect and recognise the legal gender identity of individuals as granted by other EU countries.

Impact

The importance of this judgement extends beyond the applicant's individual circumstance, and underscores the broader issue faced by trans people whose legal gender recognition in one Member State is not acknowledged elsewhere in the EU, preventing them to travel freely, live, work or study across the EU, or even to vote, as any other citizen is able to. The judgement confirms the principle that rights legally obtained in one Member State must

remain valid throughout the EU.

Reactions

According to Arian's legal counsel, human rights lawyer Iustina Ionescu: "Today's verdict has shown us that trans people are equal citizens of the European Union. When you have rebuilt a life in another part of the European Union because you are not welcome in your own country, it is normal to ask to be treated with dignity when interacting with the authorities in your home country. The fact that today the Court ruled on the mutual recognition of LGR decisions, no matter how different the procedures are in the Member States, should determine Romanian authorities to also adopt a fast, transparent and accessible national procedure, as requested by existing ECHR jurisprudence."

TGEU Expert Advisor, Richard Köhler, said: "The CJEU's ruling in the Mirin case is a monumental victory for trans people in Europe! Arian was forced to navigate a legal nightmare, facing the prospect of conflicting passports and demands for sterilisation to match his legal gender on Romanian and UK documents. Member States must recognise each other's decisions—this is about equality and dignity. Romania, it's time to act: Arian deserves his passport now, and the country needs a legal framework for recognising foreign gender identities."

ILGA-Europe's Senior Strategic Litigation, Marie-Hélène Ludwig added: "Today's ruling confirms that without mutual recognition of legal gender recognition from one Member State to another, the right to freedom of movement and residence is not guaranteed for trans people in the EU. It is a great victory that shows the power of strategic litigation in the EU. This judgement will have an immensely positive impact, increasing legal protection for all trans people in the EU, all the more as certain EU countries like Romania still do not provide a legal framework for legal gender recognition conforming with European Court of Human Rights' standards."

Romanian NGO ACCEPT is a plaintiff in the case alongside Arian. TGEU and ILGA-Europe supported ACCEPT throughout the case, and joined Arian's legal team at the Oral Hearing before the CJEU in January 2024.

More info

Romania's refusal to recognise trans man's identity violates fundamental human rights, says top EU legal advisor

Trans man's legal gender recognition case in Romania is referred to CJEU

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