Joint statement: Landmark CJEU ruling demands Member States to ensure legal gender recognition to guarantee freedom of movement

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Today's judgment by the Court of Justice of the EU (CJEU) says all member states must provide for legal gender recognition procedures allowing their citizens who have exercised their right to move and reside freely in another member state to obtain identity documents matching their lived gender.

Today, the CJEU delivered its ruling in the case C-43/24 *Shipova*, marking a historic step forward for trans people's rights across the EU.

The Court stated that under EU law provisions on freedom of movement and fundamental right to private and family life, member states have an obligation to legally recognise the lived gender of their nationals who have exercised their right to move and reside in another member state in their civil status registers; i.e. they must have a functioning process for legal gender recognition ('LGR') in place. This is because, as the Court confirmed, identity documents and passports are key for EU nationals to enjoy freedom of movement, so in order to avoid "considerable inconveniences" in particular during identity checks or cross-border travel or in professional settings. Therefore, member states must provide identity documents and civil registry entries matching the person's lived gender. The Court also recalled that tolerating discrimination against trans persons breaches their dignity and freedom. It also decided that national courts are not bound by supreme court's decisions that run contrary to today's judgment and EU law.

Background

The case was brought by a Bulgarian trans woman currently living in Italy who had been denied recognition of her gender and name on Bulgarian documents by Bulgarian courts for nearly a decade.

Because her life in Italy also depended on her Bulgarian documents, the lack of documents reflecting her lived gender creates an obstacle to her right to move and reside within EU member states. This mismatch between her gender identity and expression and her gender marker in her official documents leads to discrimination in all areas of life where official documents are required. This includes everyday activities such as going to the doctor and paying for groceries by card, finding employment, enrolling in education, or obtaining housing.

The European Court of Human Rights had already ruled in 2020 in the case of Y.T. and again in 2022 in the case of P.H. that Bulgaria is breaching the European Convention on Human Rights by failing to provide quick, transparent and accessible LGR procedures. Since then, the situation for trans people in Bulgaria has deteriorated significantly.

On 20 February 2023, the Bulgarian Supreme Court adopted a binding interpretative decision. It established that Bulgarian law does not enable the courts to allow a change to the sex, name and personal identification number of trans people on the civil status register. Therefore, this decision introduced a general, automatic and universal de facto ban preventing Bulgarian courts from allowing LGR. Given this background, the Bulgarian Supreme Court halted the domestic proceedings of the applicant and asked the CJEU whether this ban is compatible with EU law.

On 4 September 2024, Advocate General Richard de la Tour delivered an Opinion finding that the member state of origin of a trans person is obliged to issue identity documents matching the person's lived gender.

What the Court said

In today's judgment, the Court ruled that the exercise of the right to move and reside freely across the EU, a right enshrined in Article 21 TFEU, is likely to be hindered by a member state's refusal to grant LGR. Indeed, like a family name or a first name, gender defines a person's identity and personal status, the Court said.

As a result, a member state's legislation, such as Bulgaria's, that does not permit LGR for nationals who have exercised their right to move and reside freely in another member state, is against EU law.

The Court noted that the discrepancy between a person's gender identity and the gender data in civil status registers and their identity card hinders the exercise of the person's right to freedom of movement. According to the Court, such a discrepancy may, in many everyday situations, oblige that person to dispel doubts as to their identity or the authenticity of their official documents, giving rise to "considerable inconveniences". The Court pointed out situations where the applicant has to identify herself to airline or hotel staff, but also to law enforcement authorities, particularly when crossing a border as well as many daily situations both in the public and private domains requiring a person to provide evidence of their identity.

In addition, the Court decided that Bulgaria's legislation is also contrary to the right to private life, guaranteed in Article 7 of the Charter of Fundamental Rights. It recalled that the ECtHR already found that States (and specifically Bulgaria in the above-mentioned judgments) have a positive obligation to provide for a quick, transparent and accessible procedure for LGR. The Court also updated its earlier interpretation of EU gender equality law and its applicability to trans people. The Court said that "to tolerate discrimination based on the difference between biological sex and gender identity" would violate trans persons' respect for their dignity and freedom, which the Court has a duty to safeguard.

Separately, the Court reminded that national courts are not bound by constitutional courts' interpretation of the law where that interpretation runs against EU law. It means that in Bulgaria, national courts must disregard the Bulgarian Supreme Court interpretative decision banning LGR as this decision is not compatible with today's ruling. The Court also calls on national courts to, if needed, disregard national law provisions in order to ensure the full effectiveness of EU law.

Why this matters

This judgment goes beyond one individual case and applies across the EU. Currently, there are three EU member States, Hungary, Bulgaria and Slovakia, that through laws, judgments and constitutional amendments, have made any access to LGR impossible. Without such recognition, basic rights, from crossing borders and accessing healthcare to applying for a job or enrolling at university, become daily struggles.

The CJEU now, for the first time, clearly states that having access to LGR is a prerequisite to enjoying fundamental rights within the EU and that EU member states have an obligation to ensure access to LGR for nationals who exercised their freedom of movement and reside abroad. The judgment confirms that the absence of any possibility to obtain LGR in a member state is incompatible with the EU Charter of Fundamental Rights and the Treaties provisions.

By affirming that every EU citizen has the right to move, live and work freely as themselves, the Court has strengthened not only trans people's rights but the very foundation of equality and free movement within the EU.

This ruling builds on a growing line of CJEU and ECtHR jurisprudence reaffirming that having identity documents

reflecting one's lived gender is not a privilege, but a prerequisite for living with dignity and equality.

Welcoming this decision, Adi Petrov, Project Coordinator at Bilitis Resource Center Foundation says: "For years, trans people in Bulgaria have had no real possibility to obtain documents reflecting their identity, creating constant barriers in everyday life. In this case, those obstacles directly undermined the applicant's right to live and move freely within the EU. Today's judgment is an important step toward restoring dignity and legal certainty, and Bulgaria must now bring its laws and practices into line with EU law."

Denitsa Lyubenova, lawyer at LGBTI organisation Desytvie, added: "This case concerns the dignity, equality, and legal certainty of trans people in Bulgaria. As a result of today's ruling, all pending cases in Bulgaria must be resumed without delay, and courts and authorities must issue judgments in accordance with EU law and the CJEU's ruling in the *Shipova* case. At the same time, a serious legal gap remains. Bulgarian citizens who have not exercised their right to free movement are still left without an effective legal pathway to change their personal data. This highlights the urgent need for legislative reform to ensure effective protection of trans people living in Bulgaria."

Marie Ludwig, Senior Strategic Litigation Advisor at ILGA-Europe, said: "Today's judgment is a huge step forward for the protection of trans persons' fundamental rights under EU law, in a context where three member states are now completely banning legal gender recognition. The Court said it clearly: a member state's refusal to grant LGR and issue functioning identity documents hinders the exercise of the right to free movement and residence attached to EU citizenship. The European Commission now has a strong legal basis to swiftly act against States that do not comply with this judgment."

Richard Köhler, TGEU Expert Advisor and litigation lead, comments: "Today, the EU Court of Justice has taken an important step towards a right to legal gender recognition in the EU. Member states must allow their nationals to change their gender data in public registries and identity cards to ensure they can fully enjoy their freedom of movement. National laws or courts cannot stand in their way. Thousands of trans people in the EU are breathing a sigh of relief today. We thank the plaintiff for her many years of commitment".

Bilitis, Deystvie, ILGA-Europe and TGEU – Trans Europe and Central Asia provided support to the applicant and her lawyers in this CJEU case.

What's next

We call on all EU member states to urgently review and reform their legal gender recognition procedures to ensure they are quick, transparent, and based solely on self-determination, in full compliance with their human rights obligation and the Court's ruling. Governments must remove any surgical, medical, or psychiatric requirements for recognition and guarantee accessible and non-discriminatory processes for all trans people.

We also urge the European Commission to monitor implementation closely, launch infringement procedures where necessary if Bulgaria fails to implement this judgment, and provide guidance to ensure consistent respect of trans persons' fundamental rights across the Union. We also call on the European Commission to immediately use all the tools at its disposal to act against Hungary and Slovakia, which introduced laws respectively in 2020 and 2025, effectively banning legal gender recognition, that run contrary to today's judgment.

Read the judgment here

Note: The case was previously known under the fictitious name “Shipov”, but has been changed by the CJEU to its female form “Shipova”.

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