The Cross-Border Recognition of Changes in the Legal Sex of Transgender Persons: The Landmark Court of Justice ruling in the *Mirin* case

ECJ 4 October 2024, Case C-4/23, *M.-A.A. v Direcția de Evidență a Persoanelor Cluj, Serviciul stare civilă and others*

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Introduction

Transgender persons are among the most vulnerable and marginalised groups in the EU.[1] They face condemnation and exclusion not only from conservative, religious, and right-wing groups, but also from certain feminist circles and women's rights advocates.[2] Recent developments in several countries have revealed a worrying rollback in the protection of transgender rights, whether through new government policies, as in the US, or judicial decisions, as recently

[1]*See*, *inter alia*, 'Legal Gender Recognition in the EU: The Journeys of Trans People towards Full Equality' (European Commission, Directorate General for Justice and Consumers 2020) https://op.europa.eu/en/publication-detail/-/publication/7341d588-ddd8-11ea-adf7-01aa75ed71a1/language-en, visited 2 June 2025; Fundamental Rights Agency, 'LGBTIQ Equality at Crossroads: Progress and Challenges – EU LGBTIQ Survey III', 2024, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-lgbtiq-equality_en.pdf, visited 2 June 2025.

[2]A. Cardoso, 'Trans Rights in the European Union – "Sex" v. "Gender" on the Path towards Equality and Non-discrimination', 8 *UNIO – EU Law Journal* (2023) p. 51 at p. 52.

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seen in the UK.[3] Despite their precarious position, transgender persons remain notably absent from primary and secondary EU legislation: neither the EU Treaties nor any secondary legislation instruments make an explicit reference to them, and gender identity is not listed among the prohibited grounds of discrimination in the EU Treaties,[4] the Charter,[5] or the EU anti-discrimination directives.[6] Nevertheless, since the 1990s, the Court of Justice has progressively broadened the EU's prohibition on sex discrimination to cover discrimination on the ground of 'gender reassignment',[7] and earlier this year, it has been held to also include discrimination based on gender identity.[8]

Recently, the European Court of Justice had the opportunity to rule on another case involving a transgender applicant – *Mirin*.[9] Unlike the previous EU case law involving transgender persons, this case does not concern discrimination. Rather, it is best characterised as a free movement case with a (trans)gender dimension. The central issue in this case was whether EU member states are obliged to recognise a change in legal sex lawfully concluded in another member state. The objective of legal gender recognition is clear, and it is to ensure that transgender individuals can have their legal sex aligned with their gender identity. As will be seen, the Court in *Mirin* ruled that member states are required by EU law to fully recognise such a change in legal sex effected in another member state, by permitting its entry in the applicant's birth certificate – a development that marks a different approach from the one adopted by the Court in its earlier rulings in *Coman*[10] and *V.M.A.*,[11] where it required only recognition *of the effects* of same-sex marriages and parenthood established in another member state, and *solely for the purpose of enabling Union citizens to exercise their free movement rights*. The ruling, therefore, has rightly been hailed as a significant victory for transgender rights.[12]

[3]*For Women Scotland Ltd* v *The Scottish Ministers* [2025] UKSC 16.

[4]Consolidated Version of the Treaty on European Union, O.J. 2016, C 202/13; Consolidated Version of the Treaty on the Functioning of the European Union, O.J. 2016, C 202/47.

[5]Charter of Fundamental Rights of the European Union, O.J. 2016, C 202/2.

[6]S. Agius and C. Tobler, 'Trans and Intersex People: Discrimination on the Grounds of Sex, Gender Identity and Gender Expression', European Network of Legal Experts in the non-discrimination field, European Commission, Directorate General for Justice, 2011, p. 32, https://op.europa.eu/en/publication-detail/-/publication/9b338479-c1b5-4d88-a1f8-a248a19466f1, visited 2 June 2025.

[7]ECJ 30 April 1996, Case C-13/94, *P* v *S and Cornwall County Council*, ECLI:EU:C:1996:170.

[8]ECJ 9 January 2025, Case C-394/23, *Mousse*, ECLI:EU:C:2025:2, paras. 61-62.

[9]ECJ 4 October 2025, Case C-4/23, *M.-A. A.* v *Direcția de Evidență a Persoanelor Cluj, Serviciul stare civilă and others*, ECLI:EU:C:2024:845.

[10]ECJ 5 June 2018, Case C-673/16, *Coman*, ECLI:EU:C:2018:385.

[11]ECJ 14 December 2021, Case C-490/20, *V.M.A.*, ECLI:EU:C:2021:1008.

[12]*See* Joint Statement by ACCEPT, TGEU and ILGA-Europe: 'EU Court of Justice strengthens trans rights by calling for the automatic recognition in birth certificates of a new name and gender

This case note aims to analyse the *Mirin* ruling. It begins by presenting the facts of the case, the Advocate General's Opinion, and the Court's judgment. The analysis then focuses on the ruling's significance, exploring possible underlying reasons for the Court's different approach in this case from the more restrictive stance previously taken in cases involving the free movement of married same-sex couples and rainbow families under EU law. The broader implications of this ruling for the protection of transgender rights under EU law are considered, and some gaps in protection and points which have not been clarified by the ruling are also highlighted.

Before proceeding to the main analysis, I would like to provide an explanation regarding the terminology used in this case note. I am fully aware of the important distinction between sex – typically understood as a biological classification based on physical characteristics – and gender, which is a social and personal construct relating to an individual's deeply felt experience of identity, including their roles, expressions, and self-perception.[13] In legal contexts, the term 'sex' is most commonly used to refer to both the sex and the gender identity of a person *as officially recorded and recognised by law*. This is also reflected in EU primary law, secondary legislation, and the case law of the European Court of Justice, including anti-discrimination cases involving transgender applicants, which make reference to 'sex' and to discrimination 'based on sex'. For this reason, the term 'legal sex' is used throughout this case note to refer to the *officially recorded* sex of a person.[14]

Factual background

M.-A.A., a transgender man born in Romania in 1992, was assigned female at birth and registered as such on his birth certificate. In 2008, he moved to the United Kingdom, and in 2016, he became a British citizen by naturalisation, while also maintaining his Romanian nationality. In 2017, M.-A.A. legally changed his name and title from female to male through a deed poll in the UK, and in 2020, he obtained a UK gender recognition certificate, confirming his male gender identity

marker obtained in another Member State', 4 October 2024, https://tgeu.org/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/, visited 2 June 2025.

[13]A. Tryfonidou, 'EU Gender Politics and Law: The Case of Sexual Minorities', in R. Deplano et al. (eds.), *Interdisciplinary Research Methods in EU Law: A Handbook* (Edward Elgar 2024) p. 22-23.

[14]In its judgment in *Mirin*, the Court refers to 'a change in gender identity', rather than to a change in legal sex or legal gender. The terminology used by the Court is, with respect, mistaken, as it conflates two distinct concepts. When a transgender person seeks to change their legal sex, they do so *not* in order to alter their gender identity – which is an internal, deeply felt, sense of self – but to ensure that their legal sex aligns with that identity. The phrase used by the Court, therefore, does not accurately reflect the nature or purpose of legal gender recognition.

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and legally recognising his sex as male for all legal purposes. In 2021, he requested the Romanian authorities to record in his birth certificate, entries relating to his change of first name and legal sex effected in the UK, and to issue him a new birth certificate including those new particulars. The Romanian authorities rejected his request on the ground that Romanian law only allows the change of name and sex on a person's official documents if approval for this has been obtained by a final and irrevocable judicial decision before a Romanian court. This prompted M.-A.A. to challenge this rejection before the referring court, arguing that his inability to update these documents would restrict his right to free movement under EU law: the failure to bring his birth certificate into line with his name and legal sex as these were lawfully changed in the UK, would impede his right as a Union citizen to move freely between EU member states.

The Romanian court hearing the case considered that an interpretation of several EU law provisions was necessary and thus decided to make a reference for a preliminary ruling to the European Court of Justice. The questions referred asked, essentially, whether Articles 20 and 21 TFEU, read in the light of Articles 7 and 45 of the Charter,[15] preclude national legislation which requires the person concerned to bring new proceedings for a change of legal sex before the national courts, when that person has already successfully completed a procedure to that end in another member state of which he is also a national. The referring court also sought a clarification regarding the effects of Brexit on this question, given that the procedure for the change of legal sex was initiated in the UK before that state's withdrawal from the EU and was completed after Brexit but during the transition period.[16]

Advocate General's Opinion

Advocate General Richard de la Tour delivered his Opinion on 7 May 2024.[17] He began by explaining that since the applicant is a Union citizen who has exercised free movement rights under EU law, the situation falls within the scope of EU law

[15]Art. 20 TFEU is the core Treaty provision establishing Union citizenship and conferring on EU citizens a set of rights, including an indicative list. Art. 21 TFEU grants EU citizens the right to move and reside freely within the territory of the Member States. Art. 7 of the Charter of Fundamental Rights of the EU guarantees the right to respect for private and family life, while Art. 45 of the Charter affirms the freedom of movement and residence as a fundamental right.

[16]The question regarding Brexit will not be analysed in this note. Suffice it to say that both the A.G. (points 43-46) and the Court (paras. 36-46) considered that Brexit did not preclude the application of EU law in this case.

[17]For a detailed analysis of the Opinion *see* A.M. Plan, 'Trans Rights and Gender Recognition before the CJEU: Reflections on the AG's Opinion in the Mirin Case (C-4/23)', *Verfassungsblog*, 5 June 2024, https://verfassungsblog.de/trans-rights-and-legal-gender-recognition/#:~:text=The%

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and, thus, Romania's rules on updating civil status documents relating to sex or gender identity must comply with EU law.[18] When examining whether Romania's refusal to recognise the applicant's first name and legal sex – as these were lawfully changed in the UK – contravened EU law, the Advocate General recalled the main principles established in the Court's case law on the cross-border recognition of surnames.[19] Transposing that case law to the facts of the present case, he concluded that such a refusal constitutes an unjustified restriction on free movement contrary to Article 21 TFEU.[20] However, the Advocate General sought to distinguish between the extent of the obligation imposed by EU law on member states with regard to the cross-border recognition of names, from the one imposed with regard to the cross-border recognition of a change of legal sex. Drawing on *Coman*[21] and *V.M.A.*,[22] and mindful of the division of competences between the EU and the member states,[23] the Advocate General explained that as regards the cross-border recognition of the applicant's change in legal sex, the obligation imposed on the member states must be subject to certain limits.[24] In particular, Article 21 TFEU should be read as imposing an obligation of recognition only for '*the identification details of the person concerned* which are used in particular for his or her movement within the territory of the European Union, that is to say, with a view to the issue of an identity card or passport'.[25] The Advocate General further explained that such a:

> solution would mean that it would not be mandatory under EU law to update civil status documents concerning family members of the person concerned in so far as such updating would entail subsequent recognition in civil registers of the marriage of persons of the same sex or of parent-child relationships established in respect of parents of the same sex, which cannot be imposed on Member States by EU law.[26]

20Mirin%20case%3A%20a%20look,his%20gender%20before%20British%20authorities, visited 2 June 2025.

[18]A.G. Opinion 7 May 2024, Case C-4/23, *M.-A. A.* v *Direcția de Evidență a Persoanelor Cluj, Serviciul stare civilă and others*, ECLI:EU:C:2024:385, points 39-41.

[19]*Infra* n. 29.

[20]A.G. Opinion in *Mirin*, *supra* n. 18, points 57-81.

[21]*Supra* n. 10.

[22]*Supra* n. 11.

[23]A.G. Opinion in *Mirin*, *supra* n. 18, point 97.

[24]Ibid., points 88-92.

[25]Ibid., point 93.

[26]Ibid., point 94.

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The Court's ruling

The Grand Chamber of the Court delivered its ruling on 4 October 2024. The Court began by noting that '[a]s EU law currently stands, a person's status, which is relevant to the rules on changing a first name and gender identity, is a matter that falls within the competence of the Member States'.[27] However, 'in exercising that competence, each Member State must comply with EU law', in particular the free movement provisions, which require member states to recognise 'for that purpose, the civil status of persons that has been established in another Member State in accordance with the law of that other Member State'.[28]

The Court then repeated its well-established reasoning,[29] that a member state's refusal to recognise the name of a Union citizen who has exercised free movement rights, as determined in another member state, 'is likely to hinder the exercise of' the right to free movement stemming from Article 21 TFEU, as '[c]onfusion and inconvenience are liable to arise from a divergence between the two names used for the same person, since many daily actions, both in the public and in the private domains, require a person to provide evidence of his or her own identity'.[30] As regards the non-recognition of the change in legal sex made lawfully in another member state, the Court followed the same approach, holding that such non-recognition also amounts to a violation of EU free movement law: like a name, gender defines a person's identity and personal status. Consequently, the refusal to amend and recognise the gender identity which a national of one Member State has lawfully acquired in another Member State is liable to cause "serious inconvenience" for that national at administrative, professional and private levels, within the meaning of the Court's case law'.[31] This is because 'there is a real risk' – since the person will bear two different names and will be given two different identities – 'of having to dispel doubts as to his or her identity and the authenticity of the documents submitted or the veracity of their content'.[32] The Court then emphasised the nature of the freedom of movement of persons not only as a fundamental freedom (stemming from Article 21 TFEU) but also as a fundamental right (enshrined in Article 45 of the Charter)[33] noting, in line with

[27]Judgment in *Mirin*, *supra* n. 9, para. 53.

[28]Ibid., para. 53.

[29]ECJ 2 October 2003, Case C-148/02, *Garcia Avello*, ECLI:EU:C:2003:539, para. 36; ECJ 14 October 2008, Case C-353/06, *Grunkin Paul*, ECLI:EU:C:2008:559, paras. 23-28.

[30]Judgment in *Mirin*, *supra* n. 9, para. 54.

[31]Ibid., para. 55.

[32]Ibid., para. 56.

[33]*See also* ECJ 22 June 2021, Case C-718/19, *Ordre des barreaux francophones et Germanophone and others* v *Conseil des ministres*, ECLI:EU:C:2021:505, para. 54.

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recent case law,[34] that 'any restriction on the rights provided for in Article 21(1) TFEU necessarily infringes Article 45(1) of the Charter'.[35]

The final part of the judgment examined whether Romania's refusal to recognise a change in name and legal sex lawfully made in another EU member state could be justified. The Court answered this in the negative, focusing, mostly, on the obligations imposed on member states by Article 7 of the Charter (which protects, *inter alia*, the right to respect for private life), read in the light of the relevant case law of the European Court of Human Rights on Article 8 ECHR.[36] The Court noted that no specific reasons were put forward to justify Romania's legislation and stressed that any justification would need to respect the Charter.[37] It recalled that according to Article 52(3) of the Charter,[38] Article 8 ECHR – as interpreted in the case law of the European Court of Human Rights – constitutes the minimum threshold of protection when interpreting Article 7 of the Charter. In the Court's words, according to European Court of Human Rights case law, 'Article 8 ECHR protects a person's sexual identity as a constituent element and one of the most intimate aspects of his or her private life'[39] and thus imposes positive obligations on states to protect transgender persons against arbitrary state interference. This includes an obligation to provide a clear and foreseeable procedure for legal recognition of gender identity, which allows for a change of sex on official documents, in a quick, transparent and accessible manner.[40] However, as held by the European Court of Human Rights in *X and Y* v *Romania*,[41] the procedure laid down by the contested Romanian legislation does not satisfy the above requirements and is thus incompatible with Article 8 ECHR.[42] With regard, in particular, to situations like the one at issue in the main proceedings, where a transgender person who has exercised free movement rights requests the cross-border recognition of the change in legal sex effected in another EU member

[34]ECJ 21 June 2022, Case C-817/19, *Ligue des droits humains ASBL* v *Conseil des ministers*, ECLI:EU:C:2022:491, paras. 274-279; ECJ 22 February 2024, Case C-491/21, *WA* v *Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date din Ministerul Afacerilor Interne*, ECLI:EU:C:2024:143, paras. 49-50.

[35]Judgment in *Mirin*, *supra* n. 9, para. 58.

[36]*See*, most fundamentally, ECtHR 11 July 2002, No. 28957/95, *Christine Goodwin* v *United Kingdom*; ECtHR 19 January 2021, Nos. 2145/16 and 20607/16, 19/1/2021, *X and Y* v *Romania*.

[37]Judgment in *Mirin*, *supra* n. 9, paras. 61 and 62.

[38]Art. 52(3) of the Charter provides: 'In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection'.

[39]Judgment in *Mirin*, *supra* n. 9, para. 64.

[40]Ibid., para. 66.

[41]*Supra* n. 36.

[42]Judgment in *Mirin*, *supra* n. 9, para. 67.

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state, the Court noted that the procedure laid down in the Romanian legislation, cannot 'constitute an effective means of enabling' such a Union citizen 'to assert his or her rights conferred' by Articles 21 TFEU and 45 of the Charter, read in the light of Article 7 of the Charter, 'since that procedure exposes that citizen to the risk that it may lead to an outcome contrary to the outcome before the authorities of the Member State which lawfully granted that change of first name and gender identity'.[43] Accordingly, the contested refusal amounted to a violation of Articles 20 and 21 TFEU, read in the light of Articles 7 and 45 of the Charter.

Thus, the Court held that, in circumstances such as those at issue in the main proceedings, member states are required to recognise a change in legal sex effected in another member state, *by permitting recognition and entry in the birth certificate of that change*. Accordingly, the Court in its ruling went further than it previously did in *Coman*[44] and *V.M.A.*,[45] where it imposed an obligation of mere *recognition of the effects* of a civil status established in another member state, without obliging member states to amend their national civil status records or transcribe foreign documents. In doing so, however, the Court did not impose any express limitation on the scope of that obligation. This approach stands in contrast to the more restrictive view of the Advocate General, who argued that the full recognition should be confined to the change of national documents *establishing the identity of the person concerned*, and should not extend to documents that establish or certify family relationships. Nevertheless, since the recognition sought in *Mirin* concerned identity documents only, it remains unclear whether the obligation to fully recognise a change in legal sex, and to enter that change into national civil status records, applies unconditionally, or whether it is implicitly limited to certain purposes – a point to which I shall return below.

Analysis

Placing the case in context: the protection of the rights of transgender persons under EU law prior to Mirin

2026 will mark the 30th anniversary of the Court's first ever ruling on transgender rights in *P v. S and Cornwall*.[46] In that case, which originated from a reference for a preliminary ruling made by a UK court, the European Court of Justice held that discrimination arising from the 'gender reassignment' of a transgender person

[43]Ibid., para. 68.
[44]*Supra* n. 10.
[45]*Supra* n. 11.
[46]*Supra* n. 7.

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constitutes discrimination based on sex.[47] According to the Court, the transgender applicant who was dismissed from her job on the ground that she intended to undergo 'gender reassignment' surgery was 'treated unfavourably by comparison with persons of the sex' to which she 'was deemed to belong before undergoing gender reassignment'.[48] The Court's relatively progressive stance in this decision has been widely praised, but is also often contrasted[49] with its disappointing ruling in *Grant*,[50] delivered two years later, where it focused on the 'equal misery'[51] argument, and declined to hold that discrimination based on sexual orientation is also a form of sex discrimination prohibited by EU law.[52]

Since *P v. S and Cornwall*, the Court has issued rulings in three more cases, also originating from the UK, all addressing the application of EU anti-discrimination law to transgender persons. In *K.B.*[53] and *Richards*,[54] at issue was, in essence, the UK's failure to provide a legal framework for the recognition of the gender identity of transgender persons who had undergone gender affirmation surgery. This lack of recognition resulted in the denial of entitlements – specifically, a survivor's pension in *K.B.* and a retirement pension in *Richards* – they could have enjoyed if they were legally recognised as belonging to the sex matching their gender identity. The Court held that the refusal of the entitlements amounted to discrimination based on sex prohibited under EU law. In *Richards*, in particular,

[47]*P* v *S and Cornwall County Council*, *supra* n. 7, para. 20.

[48]Ibid., para. 21.

[49]*See*, for instance, A. Koppelman, 'The Miscegenation Analogy in Europe, or Lisa Grant meets Adolf Hitler', in R. Wintemute and M. Andenæs (eds.), *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law* (Hart Publishing 2001) p. 623 at p. 632; M. Bell, 'Shifting Conceptions of Sexual Discrimination at the Court of Justice: from *P v S* to *Grant v SWT*', 5 *European Law Journal* (1999) p. 63; N.J. Beger, *Tensions in the Struggle for Sexual Minority Rights in Europe: Que(e)rying Political Practices* (Manchester University Press 2004) p. 128-131; J. McInnes, 'Annotation of Case C-249/96, *Lisa Jacqueline Grant v. South West Trains Ltd*', 36 *CML Rev* (1999) p. 1043.

[50]ECJ 17 February 1998, Case C-249/96, *Grant* v *South-West Trains Ltd*, ECLI:EU:C:1998:63.

[51]C. Denys, 'Homosexuality: A Non-issue in Community Law?', 24 *European Law Review* (1999) p. 419 at p. 423.

[52]Until 2000, when Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation O.J. 2000, L 303/16 and Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin O.J. 2000, L 180/22 were adopted, EU law prohibited discrimination solely on the grounds of sex and nationality. Consequently, in *Grant* (and earlier in *P* v *S and Cornwall County Council*), the parties sought to present the discrimination they experienced as sex-based, given the absence of broader anti-discrimination protections at the time.

[53]ECJ 7 January 2004, Case C-117/01, *K.B.* v *National Health Service Pensions Agency and Secretary of State for Health*, ECLI:EU:C:2004:7.

[54]ECJ 27 April 2006, Case C-423/04 *Richards* v *Secretary of State for Work and Pensions*, ECLI:EU:C:2006:256.

the Court considered that transgender persons were treated less favourably than cisgender persons who belonged to their post-operative sex.[55]

More recently, in *MB*,[56] the Court was again confronted with a reference for a preliminary ruling originating from the UK. However, unlike in the previous cases, at issue was not the lack of a national legal framework allowing the legal recognition of gender identity (since the UK had by then introduced such a framework), but rather one of the preconditions for legal gender recognition, namely, the requirement that transgender persons who were married, should apply to have their marriage annulled. On the facts of the case, this condition meant that a married transgender woman who had undergone gender affirming surgery but chose to remain married, was denied legal recognition in her post-operative sex and thus could not claim the entitlements that were granted to cisgender women who were in a similar position (i.e. they were also married). This, according to the Court, amounted to discrimination based on sex.[57]

The above case law is important,[58] as it takes a broader and more inclusive approach towards sex-based discrimination than that taken in the Court of Justice's earlier case law in this area, by effectively (though tacitly) replacing the narrow notion of sex with the wider one of gender.[59] This shift enables the Court to extend the prohibition of sex-based discrimination beyond cases involving differential treatment between men and women in comparable situations, to include instances where a person's gender identity (which differs from their legal and biological sex) is the cause of their less favourable treatment.[60] This case law also makes it clear that EU member states cannot completely evade EU scrutiny

[55]*Richards*, *supra* n. 54, para. 29.

[56]ECJ 26 June 2018, Case C-451/16, *MB* v *Secretary of State for Work and Pensions*, ECLI:EU:C:2018:492.

[57]*MB*, *supra* n. 56, paras. 37-38. For comments *see* G. Zaccaroni, *Equality and Non-Discrimination in the EU: The Foundations of the EU Legal Order* (Edward Elgar 2021) p. 74-76; J. Mulder, *EU Non-Discrimination Law in the Courts: Approaches to Sex and Sexualities Discrimination in EU Law* (Hart Publishing 2017) p. 49. This case represents one of the instances in which the ECJ went further in protecting LGBT rights than the ECtHR, given that in ECtHR 16 July 2014, No. 37359/09, *Hämäläinen* v *Finland*, the Strasbourg Court held that the requirement of a State that a transgender person convert their marriage into a civil partnership as a precondition for legal gender recognition does not amount to a violation of Art. 8 of the ECHR.

[58]For an excellent analysis of this case law *see* P. Dunne, 'Transgender Rights in Europe: EU and Council of Europe Movements towards Gender Identity Equality', in C. Ashford and A. Maine (eds.), *Research Handbook on Gender, Sexuality and the Law* (Edward Elgar 2020) p. 134 at p. 139-141.

[59]L. Flynn, 'Annotation of Case C-13/94, *P. v. S. and Cornwall County Council*, Judgment of the Full Court of 30 April 1996', 34 *CML Rev* (1997) p. 367 at p. 379-380.

[60]H. Lardy and A. Campbell, 'Discrimination against Transsexuals in Employment', 21 *European Law Review* (1996) p. 412 at p. 415. The Court, however, has continued employing the term 'discrimination based on sex' rather than 'discrimination based on gender', which remains the terminology used in EU legislation. For an explanation of the difference between sex discrimination

by claiming that the regulation of sex assignment at birth and legal gender recognition lie beyond the scope of EU competence: while member states do retain the freedom to regulate these matters, when their actions relate to situations falling within the scope of EU law, they must ensure compliance with its provisions. This adds an extra layer of European 'supervision', additional – and complementary – to the one emerging from the obligations imposed by the ECHR.[61] In particular, as will be seen in more detail below, the European Court of Justice in its case law appears to have built on the obligations that the European Court of Human Rights has imposed on ECHR signatory states (which include all EU member states), regarding the need to establish a national legal framework which allows the legal recognition of the gender identity of transgender persons and satisfies certain minimum procedural requirements.

Nonetheless, although the above European Court of Justice case law is undoubtedly positive from a transgender rights perspective, its scope remains somewhat limited.[62] Criticism has been directed at its 'medicalised and binary narrative',[63] which reinforces a rigid binary understanding of sex and gender. This is largely because the Court's anti-discrimination case law to date has focused on transgender individuals who have undergone medical transition and identify strictly within the male/female binary, thereby implicitly presenting medical intervention and binary gender identity as prerequisites for legal recognition and protection. Moreover, the Court's insistence in this case law on relying on a comparative approach has been identified as a key flaw, both due to the inherent difficulty in identifying a suitable comparator and the Court's specific choice of comparators in these cases.[64] Another significant limitation is that in all four cases mentioned above, the transgender applicants had undergone gender-affirming surgery. This raises the question whether the same principles would also apply in cases involving transgender persons who chose

and gender inequality *see* L. Bender, 'Sex Discrimination or Gender Inequality?', 57 *Fordham Law Review* (1989) p. 941.

[61]For an analysis of the ECtHR case law concerning the rights of trans persons *see* D.A. Gonzalez-Salzberg, *Sexuality & Transsexuality under the European Convention on Human Rights: A Queer Reading of Human Rights Law* (Hart Publishing 2019) ch. 2.

[62]P. Cannoot and S. Ganty, 'Protecting Trans, Non-binary and Intersex Persons against Discrimination in EU Law', 1 *European Equality Law Review* (2022) p. 37 at p. 45-47.

[63]S. Osella, 'The Court of Justice and Gender Recognition: A Possibility for an Expansive Interpretation?', 87 *Women's Studies International Forum* (2021) p. 1.

[64]Agius and Tobler, *supra* n. 6, p. 5-6 and 38-43. An area where the Court has dispensed with the requirement for a comparative approach in establishing sex discrimination is pregnancy discrimination: *see* ECJ 8 November 1990, Case C-177/88, *Dekker*, ECLI:EU:C:1990:383; ECJ 14 July 1994, Case C-32/93, *Webb*, ECLI:EU:C:1994:300.

not to – or are unable to – undertake a process of medical transition,[65] a question which, in light of the recent ruling in *Deldits*, is now likely to be answered in the affirmative.[66]

Ultimately, this case law can be viewed as a convenient yet incomplete solution for protecting (some) transgender persons from discrimination under EU law, as it addresses the issue without, however, explicitly acknowledging their position in legal texts. In other words, the drafters of the EU Treaties could have explicitly included gender identity and gender expression as prohibited grounds of discrimination, much as they did for sexual orientation in 1999.[67] Such a step would have ensured greater visibility for transgender persons and demonstrated a stronger EU commitment to protecting them from discrimination.[68] It has, nonetheless, not been taken to date, despite clear suggestions to this effect.[69]

Why Mirin is a landmark judgment: the obligation to afford full cross-border recognition to the change of legal sex by amending national civil status records

In *Mirin*, the European Court of Justice was called upon for the first time to examine the obligations imposed by EU law regarding the *cross-border recognition* of changes to legal sex effected in another member state. In that respect, it can be grouped together with *Coman*[70] and *V.M.A.*,[71] which addressed, respectively, the cross-border recognition of same-sex marriages and of the parenthood of children born to same-sex couples.

As extensively documented,[72] the Court adopted a rather cautious approach in both *Coman* and *V.M.A.*, limiting the obligation of recognition to situations

[65]For a discussion of this issue *see* Dunne, *supra* n. 58, p. 144-145; Osella, *supra* n. 63, p. 5; Agius and Tobler, *supra* n. 6, p. 43.

[66]ECJ 13 March 2025, Case C-247/23, *Deldits*, ECLI:EU:C:2025:172.

[67]For a strong view that discrimination against transgender persons should be considered as discrimination on the ground of gender identity and, as such, prohibited under EU law, *see* S. Lashyn, 'Transgender EU Citizens and the Limited Form of Union Citizenship Available to Them', 30 *Feminist Legal Studies* (2022) p. 201.

[68]A. Tryfonidou, 'Discrimination on the Grounds of Sexual Orientation and Gender Identity', in S. Vogenauer and S. Weatherill (eds.), *General Principles of Law: European and Comparative Perspectives* (Hart Publishing 2017) p. 365 at p. 394.

[69]*See* Address by ILGA-Europe to the Charter Convention on 27 April 2000, CHARTE 4246/00, CONTRIB 119, https://www.europarl.europa.eu/charter/civil/pdf/con119_en.pdf, visited 2 June 2025, suggesting that Art. 21 of the Charter should include gender identity among the prohibited grounds of discrimination.

[70]*Supra* n. 10.

[71]*Supra* n. 11.

[72]*See*, *inter alia*, J.J. Rijpma, 'You Gotta Let Love Move: ECJ 5 June 2018, Case C-673/16, *Coman, Hamilton, Accept v. Inspectoratul General pentru Imigrări*', 15 *EuConst* (2019) p. 324; A. Tryfonidou, 'The ECJ Recognises the Right of Same-sex Spouses to Move Freely between EU

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involving the exercise of free movement rights. In *Coman*, the Court held that a same-sex marriage contracted in Belgium had to be recognised in Romania, *solely for the purpose of granting a residence right* to the third-country national spouse of a Union citizen who had exercised free movement rights; i.e. Romania was not required to transcribe the marriage certificate or to recognise the marriage as valid, under its national law. Similarly, in *V.M.A.* the Court required Bulgaria to recognise *the contents* of a Spanish birth certificate listing a same-sex couple as the child's parents, *but only to the extent necessary to enable the child and/or the parent holding Union citizenship to exercise their free movement rights*; thus, EU law did not require Bulgaria *to issue a birth certificate* for the child recognising the parent-child relationship between the child and her two same-sex parents as established in Spain. In both cases, therefore, the obligation to recognise a family status created in another member state was narrowly framed as a functional requirement of EU free movement law, without requiring the transcription of foreign civil status documents or the updating of national civil registers.

The Court in *Mirin*, however, held that member states are required to fully recognise a change in legal sex effected in another member state, by recording it in its civil register and amending the Union citizen's birth certificate. *Mirin* thus marks a significant development in the Court's case law. Unlike *Coman* and *V.M.A.*, where the obligation of recognition was limited to ensuring the effectiveness of free movement rights, the Court in *Mirin* appears to require full and unconditional recognition of a change of legal sex effected in another member state. In particular, the Court held that the member state where recognition is sought must not only acknowledge the change but also record it in its civil register – thereby recognising its legal effects across the board and for all legal purposes. This goes beyond merely enabling the exercise of EU rights and entails substantive incorporation of the foreign civil status into the national legal order. The Court explicitly based this approach on its earlier case law concerning the recognition of surnames,[73] relying on the argument that non-recognition – and the resulting divergence in surnames, or in this case, legal sex – across member states, is liable to cause 'serious inconvenience' which can impede the effective

Member States: The *Coman* Ruling', 44 *European Law Review* (2019) p. 663; D.V. Kochenov and U. Belavusau, 'After the Celebration: Marriage Equality in EU Law Post-*Coman* in Eight Questions and Some Further Thoughts', 27 *Maastricht Journal of European and Comparative Law* (2020) p. 549; A. Tryfonidou, 'The ECJ Recognises the Right of Rainbow Families to Move Freely Between EU Member States: The *VMA* ruling', 47 *European Law Review* (2022) p. 543; L. Bracken, 'Recognition of LGBTIQ+ Parent Families across European Borders', 29 *Maastricht Journal of European and Comparative Law* (2022) p. 399; L. Křičková, 'Same-sex Families' Rights and the European Union: Incompatible or Promising Relationship?', 37 *International Journal of Law, Policy and the Family* (2023) p. 1.

[73] *Supra* n. 29.

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exercise of free movement rights.[74] *Mirin* thus signals a shift from the Court's previously cautious, functional, model of recognition to one rooted more firmly in the principles of mutual trust, legal certainty, and respect for individual identity within the EU legal order.

Mirin can thus be considered a landmark judgment, as transgender persons who have completed a legal gender recognition procedure in one member state are now assured that, wherever they move within the EU, their (new) legal sex will be recognised and recorded in civil status documents in the member state to which they move. This recognition applies regardless of the specific legal or procedural requirements governing legal gender recognition in the member state where it was originally acquired, and irrespective of whether those requirements differ – slightly or significantly – from those of the member state where recognition is sought. From the perspective of transgender rights, therefore, this represents a major advancement, offering unprecedented certainty and continuity of legal status across borders.

Why Mirin went further than Coman and V.M.A.: the (possible) impact of Strasbourg jurisprudence

The European Court of Justice's willingness in *Mirin* to impose an obligation on member states to recognise a change in legal sex effected in another member state – at least, as will be explained below, for the purposes of personal identification – marks a departure from the more cautious, effects-based approach adopted in *Coman* and *V.M.A.* In those earlier cases, the Court limited the obligation of recognition to what was strictly necessary to ensure the effectiveness of free movement rights, stopping short of requiring member states to amend

[74]For an explanation of the negative consequences of showing 'incongruent' gender markers on IDs, *see* L. Holzer, 'Legal Gender Recognition in Times of Change at the European Court of Human Rights', 23 *ERA Forum* (2022) p. 165 at p. 167-169. *See also* Lashyn, *supra* n. 67, for the difficulties that transgender persons who are EU citizens face when they exercise their EU free movement rights. It will be interesting to see how the ECJ will rule in the pending Case C-43/24, *Shipov*, which concerns whether national legislation which excludes any possibility of amending the entry concerning legal sex, name and identification number in a transgender person's civil status documents to reflect their gender identity is contrary to EU law. The case was brought by a transgender woman living in Italy who sought legal recognition of her female gender identity in Bulgaria – the Member State of her birth and nationality, which issued her birth certificate and all her identity documents. By contrast in *Mirin*, the applicant was a transgender man who had already obtained legal gender recognition in the United Kingdom – where he was resident and also a national – and then sought recognition of that male identity in Romania, his other Member State of nationality and birth. In *Shipov*, the applicant is asking for recognition directly in her Member State of birth/nationality, not for movement-related recognition of a change in legal sex acquired in another Member State.

their civil registers or to give full legal effect to statuses acquired abroad. By contrast, in *Mirin*, the Court appeared to require not just functional recognition, but formal and unconditional entry of the change in the national civil register of the member state where recognition was sought.

This doctrinal shift may reflect a deliberate choice by the Court, based on the broader European legal context and, in particular, on the standards already established under the ECHR. Since the landmark ruling in *Goodwin* v *United Kingdom*,[75] the European Court of Human Rights has made clear that ECHR signatory states – which include all EU member states – are under a positive obligation under Article 8 ECHR to provide access to legal gender recognition.[76] While the European Court of Human Rights allows member states a margin of appreciation regarding the specific procedures for recognition, it has also defined certain minimum substantive and procedural safeguards. In *A.P., Garçon and Nicot* v *France*[77] and *X and Y* v *Romania*,[78] the European Court of Human Rights held that legal gender recognition procedures must not require individuals to undergo sterilisation or gender-affirming surgery, and that they must be clear, foreseeable, and accessible in practice. In its judgment in *Mirin*, the Court even referred to *X and Y* v *Romania* to support its reasoning. It rejected Romania's argument that the applicant could re-initiate a legal gender recognition process before a domestic court, on the ground that such a procedure did not meet the minimum standards of clarity and accessibility required under the ECHR. In doing so, the European Court of Justice implicitly acknowledged the normative weight of Strasbourg case law and used it to reinforce its own conclusion that Romania could not avoid recognition of a legal status acquired abroad by referring the applicant back to an inadequate domestic process.

The existence of this ECHR-based minimum standard of equivalence across all EU member states may have provided the European Court of Justice with the normative foundation for adopting a more assertive approach in *Mirin*. Because all member states – through their Council of Europe membership – are already required to provide a legal framework for gender recognition, and because that framework must comply with defined minimum procedural and substantive safeguards, the European Court of Justice could reasonably assume a baseline level

[75]ECtHR 11 July 2002, No. 28957/95, *Christine Goodwin* v *United Kingdom*.

[76]Dunne, *supra* n. 58, p. 136-138.

[77]ECtHR 6 April 2017, Nos. 79885/12, 52471/13 and 52596/13, *A.P., Garçon and Nicot* v *France*.

[78]*Supra* n. 36. For comments *see* S. Schoentjes and P. Cannoot, 'X and Y v. Romania: The "Impossible Dilemma" Reasoning Applied to Gender Affirming Surgery as a Requirement for Gender Recognition', *Strasbourg Observers*, 25 February 2021, https://strasbourgobservers.com/2021/02/25/x-and-y-v-romania-the-impossible-dilemma-reasoning-applied-to-gender-affirming-surgery-as-a-requirement-for-gender-recognition/, visited 2 June 2025.

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of compatibility among national systems. As a result, the Court may have felt more 'comfortable' in imposing a robust obligation of mutual recognition in this context – an obligation that appears to operate without allowing member states to reassess or question the conditions under which gender recognition was granted in another member state.[79]

By contrast, no such equivalence exists with respect to same-sex marriage or parenthood by same-sex couples. While ECHR signatory states must offer some form of legal recognition of same-sex couples,[80] they are not required to permit same-sex marriage.[81] Similarly, the ECHR has to date been interpreted as not imposing any obligations on signatory states to allow two persons of the same sex to be recognised as the joint legal parents of a child.[82] This lack of a basic common standard across member states probably explains the European Court of Justice's more cautious stance in *Coman* and *V.M.A.*, where it confined recognition to the limited purpose of facilitating free movement rights, avoiding the deeper legal and political implications of requiring full domestic recognition of same-sex marriages or parenthood.

Recognition without limits? Interpreting Mirin and awaiting Cupriak-Trojan and Trojan

As explained above, the Advocate General in *Mirin* suggested that the obligation to recognise a Union citizen's change of legal sex effected in another member state, should be held to apply only to the individual's identification details used for the

[79]In other words, this may be the reason behind the Court's choice of a 'passive mutual recognition' approach in this context, rather than an 'active mutual recognition' approach. These terms have been coined by Kenneth Armstrong – he noted that '[b]y passive mutual recognition I mean that the host state is effectively only executing regulatory controls that have already been carried out in another state. Recognition in this sense tends to operate at the level of symbolic forms rather than direct comparisons of functions . . . the mere existence of the form is enough to provoke the national authority into executing it and giving it practical legal effect'; while '"active" mutual recognition occurs where national regulators are obliged to seek out functional equivalencies between the regulatory processes mandated by the host state and those which have already been carried out in respect of the person, good or service in some other jurisdiction': K.A. Armstrong, 'Mutual Recognition', in C. Barnard and J. Scott (eds.), *The Law of the Single European Market: Unpacking the Premises* (Hart Publishing 2002) p. 225 at p. 240-242.

[80]ECtHR 21 July 2015, Nos. 18766/11 and 36030/11, *Oliari and Others* v *Italy*; ECtHR 17 January 2023, Nos. 40792/10, 30538/14, and 43439/14, *Fedotova and Others* v *Russia*; ECtHR 23 May 2023, Nos. 20081/19 and 20 others, *Buhuceanu and Others* v *Romania*; ECtHR 1 June 2023, No. 75135/14, *Maimulakhin and Markiv* v *Ukraine*.

[81]ECtHR 24 June 2010, No. 30141/04, *Schalk and Kopf* v *Austria*; confirmed also in, *inter alia*, *Hämäläinen* v *Finland*, *supra* n. 57 and ECtHR 9 June 2016, No. 40183/07, *Chapin and Charpentier* v *France*.

[82]A. Tryfonidou, 'EU Free Movement Law and the Children of Rainbow Families: Children of a Lesser God?', 38 *Yearbook of European Law* (2019) p. 220.

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exercise of free movement within the EU. This includes, for example, the issuance of identity cards or passports, which are necessary for enabling Union citizens to move freely between member states, but does not include the updating of civil status documents of the family members of the person concerned (i.e. their spouse or their children) as 'such updating would entail subsequent recognition in civil registers of the marriage of persons of the same sex or of parent-child relationships established in respect of parents of the same sex, which cannot be imposed on Member States by EU law'[83] – an approach reaffirmed in his subsequent Opinion in *Cupriak-Trojan and Trojan*, issued following the delivery of the judgment in *Mirin*.[84] Hence, as explained by another commentator, the solution proposed by the Advocate General in *Mirin* meant that 'Romania must only account for the applicant's change of identity in relation to his free movement across the borders. In all other aspects, including marriage and child-parent relations, the applicant will remain registered as a woman'[85] – a solution which, the Advocate General admitted, is 'indeed not satisfactory'.[86]

One might have expected the Court to adopt a similar approach and transplant to *Mirin* the same cautious approach it had adopted in *Coman* and *V.M.A.*, especially since this was also the solution deemed most appropriate by its Advocate General. Had it done so, the Court would have explicitly confined the obligation to record the change in legal sex to civil registers concerning personal identification, without extending it to documents relating to family status. However, the Court chose not to take this path – or, at least, not in this instance.

The facts in *Mirin* involved a transgender man seeking recognition by Romania – his member state of nationality and birth – of a change in legal sex effected in the United Kingdom, his member state of second nationality and residence. The scenario was thus relatively straightforward, involving a request for recognition *solely for purposes of personal identification*. The case did not raise the more complex issues that would have arisen had recognition been sought in circumstances affecting family relationships: there is no indication that the applicant was married – where recognition of the change could have had the effect of converting an existing different-sex marriage into a same-sex one – nor that he was a parent, which might have led to a request to amend a child's birth certificate to reflect his new legal sex, potentially requiring the registration of two persons of the same sex as the child's legal parents. Accordingly, the facts in *Mirin* presented the Court with a rather uncomplicated scenario confined to identity

[83]A.G. Opinion in *Mirin*, *supra* n. 18, point 94.

[84]A.G. Opinion 3 April 2025, Case C-713/23, *Cupriak-Trojan and Trojan*, ECLI:EU:C:2025:235.

[85]Plan, *supra* n. 17.

[86]A.G. Opinion in *Mirin*, *supra* n. 18, point 96.

documentation and without the need to engage with the more complex and politically sensitive issues that may arise in the family law sphere.

This, however, means that one may argue that the Court's ruling is open to two possible interpretations. On a narrow reading, the Court's unqualified wording could be understood as limited to the factual circumstances of the case: it imposed an obligation to fully recognise changes in legal sex for purposes of identification documents, but left open whether the same obligation would extend to situations involving family relationships. Under this interpretation, the Court refrained from expressly limiting the obligation because it was unnecessary to do so on the facts, leaving such clarification for a future case involving more complex issues, such as the recognition of same-sex marriages or parent-child relationships following a change in legal sex. Alternatively, on a broader reading, the Court's judgment could be understood as establishing an unqualified obligation to fully recognise a change in legal sex *for all legal purposes*, by entering the change in both identity documents *and* documents that record family ties.

Judged from the perspective of whether an obstacle to free movement exists, the latter, broader, reading according to which EU law requires the cross-border recognition of changes in legal sex *for all legal purposes* is undoubtedly correct: refusing to recognise a person's (new) legal sex *for all legal purposes*, would lead to discrepancies not only across member states but *also within member states*, causing serious inconvenience in that person's daily life, which can, *inter alia*, impede their ability to exercise free movement rights.

At the same time, however, this broader obligation would put the Court in a difficult position. It would require – as acknowledged by the Advocate General – member states that do not permit same-sex marriages or the joint legal parenthood of a child by two persons of the same sex to recognise such statuses when validly established in another member state. In effect, even though same-sex marriage or same-sex parenthood would still not be able to be established under national law in these jurisdictions, member states would nonetheless be compelled to acknowledge and give legal effect to these statuses when 'imported' from other member states. This would expose the Court to criticisms of introducing recognition of same-sex marriages and same-sex parenthood 'through the back door', even though these are matters which concern substantive family law, which is an area that continues to fall within exclusive member state competence. Moreover, such a situation would create a stark asymmetry: a status – (same-sex) marriage or parenthood – unavailable to individuals in purely internal situations would nevertheless be recognised for those exercising free movement rights. Given that the recognition of family ties implicates fundamental rights, particularly the right to family life, this internal asymmetry could give rise to claims of discrimination under both European law and national constitutional guarantees.

The above analysis demonstrates why *Mirin* presented a difficult case for the Court, and why it may have opted to deliver a deliberately vague ruling, refraining from defining the precise extent of the obligation imposed and reserving a fuller articulation of its extent for a future case in which the facts would require such clarification. Such a case, however, is not merely a distant prospect but is already there on the horizon. The pending case of *Cupriak-Trojan and Trojan*, concerns the refusal of the Polish authorities to enter into the Polish civil registry a certificate of a same-sex marriage contracted in Germany between a Polish citizen and a dual Polish and German citizen. It therefore requires the Court to address directly whether a same-sex marriage lawfully contracted in one member state must be recognised in another, not only for the purpose of exercising free movement rights, but also for broader legal purposes, by including its entry in the national civil registry.[87] Should the Court – contrary to the view expressed by Advocate General de la Tour in his Opinion in that case – hold that EU law requires the cross-border recognition of same-sex marriages *as marriages* and without any limitations, this would also clarify that in *Mirin*, the obligation to recognise changes in legal sex likewise applies across all legal contexts, including for purposes requiring the amendment of civil status documents that record an individual's family ties. Such a ruling would represent a landmark advancement for the protection of LGBT rights within the EU legal order, and could be seen as the EU's own 'Obergefell moment'.[88]

Some points which have not been clarified in Mirin

Mirin involved a transgender EU citizen, who changed his name and legal sex in the member state where he resided and held his (second) nationality, who had exercised free movement rights, and who sought recognition of his (new) name and legal sex in the member state of his (first) nationality. It remains unclear, however, whether the ruling will have broader applicability and will benefit transgender persons whose circumstances do not align with this specific factual scenario.

First, it is almost certain that, given the free movement rationale underpinning the case, the obligations arising from this ruling will be limited to situations which involve EU citizens and the exercise of free movement rights within the EU. Thus, what will be the position of transgender *third-country nationals* who have undergone a legal gender recognition process in an EU member state? Will they still not be able to rely on EU law to require EU member states to recognise that change?

[87]ECJ (pending), Case C-713/23, *Cupriak-Trojan and Trojan*.

[88]From the United States Supreme Court judgment in *Obergefell* v *Hodges*, 576 U.S. 644 (2015), which held that same-sex couples have a fundamental right to marry under the US Constitution and that marriages lawfully contracted in one US state must be recognised in all other US states.

Second, and related to the above, it remains unclear whether the obligations established in *Mirin* would extend to cases where the change in legal sex was initially acquired in a third country rather than an EU member state. An obstable to free movement – based on the 'serious inconvenience' argument – would arguably arise if a change in legal sex, completed in an EU member state or recognised there following its completion in a third country, was not recognised in another member state. However, *Mirin*, concerned the first, simpler, scenario where the change in legal sex was first effected in an EU member state. As such, it leaves open the question whether the same obligation of recognition would arise if the change had originally occurred in a third country and was later merely recognised in an(other) EU member state.

Third, the European Court of Justice in *Mirin* did not specify whether the EU citizen needs to have a genuine connection to the member state where the change in legal sex was completed, in order to trigger the obligation of recognition by another member state. In *Coman*, following established case law,[89] the Court held that for Union citizens to claim family reunification rights in their member state of nationality, they must have created or strengthened family life during a period of 'genuine residence' in the member state from which they return.[90] The Court in *Mirin*, however, did not impose any such requirement of a genuine connection to the member state where the change in legal sex was effected. The applicant in *Mirin* was both a national and a resident of the member state where the legal gender recognition was completed (the United Kingdom), leaving no question of seeking to circumvent restrictive national laws through strategic reliance on EU free movement rights. However, the judgment remains silent on whether such a requirement would apply in a case involving weaker or no ties to the member state where the gender recognition occurred.[91]

The absence of such a requirement of sufficient connection could be viewed as potentially problematic in this context, due to the significant divergence among member states in their legal frameworks for gender recognition.[92] Procedures range

[89]ECJ 12 March 2014, Case C-456/12, *O. and B.*, ECLI:EU:C:2014:135, paras. 54-56.

[90]*Coman*, *supra* n. 10, para. 24.

[91]H. Luku, 'The CJEU on the Recognition of a Union Citizen's Change of First Name and Gender Identity', *EAPIL Blog*, 15 October 2024, https://eapil.org/2024/10/15/cjeu-rules-member-states-must-recognise-a-unions-citizen-change-of-first-name-and-gender-identity/, visited 2 June 2025. The A.G. in *Mirin* suggested that 'in order to preclude the risk of abuse, for conditions of residence or nationality to be applied to determine the existence of close links with the Member State in which such a change took place': A.G. Opinion, *supra* n. 18, point 78.

[92]I am indebted to Peter Dunne for bringing this to my attention. *See* C. Santaló Goris, 'C-4/23, Mirin: At the Crossroads of Gender Identity and EU Citizens' Right to Freedom of Movement', *EIPA blog*, 15 November 2024, https://www.eipa.eu/blog/c-4-23-mirin-at-the-crossroads-of-gender-identity-and-eu-citizens-right-to-freedom-of-movement/, visited 2 June 2025. For an explanation of the legal frameworks governing legal gender recognition in some of the EU member states *see* the relevant chapters in J.M. Scherpe (ed.), *The Legal Status of Transsexual and Transgender Persons*

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from self-declaration systems to court proceedings, and include requirements for gender-affirming surgery, sterilisation, or termination of a pre-existing marriage, with some states lacking formalised laws altogether and relying on *ad hoc* or discretionary mechanisms. Moreover, in most member states non-binary persons have very limited or no access to legal gender recognition procedures. This diversity opens the door for transgender individuals with a genuine connection (e.g. residence or nationality) only to a member state with restrictive (or no) gender recognition laws, to exercise free movement rights, obtain recognition in a more favourable member state, and return to their home state seeking recognition of their new legal sex under the principles established in *Mirin*. This, however, is problematic for two reasons. First, such cases could be framed as an (ab)use[93] of free movement rights to bypass unfavourable or inexistent national laws.[94] Second, this approach may privilege those with the financial and logistical means to travel to another member state for gender recognition, creating an unjust disparity with those who lack the means to do so. That said, in practice, such concerns may be mitigated by the fact that most national legal frameworks on gender recognition already impose their own connection requirements, typically limiting access to those who hold their nationality or are lawfully resident in the member state concerned.

Conclusions

Undoubtedly, the European Court of Justice's ruling in *Mirin* is a landmark decision and marks a significant advancement in the protection of transgender rights within the EU. Its importance stems not only from the fact that, for the first time, the Court addressed the rights of a transgender person in a context beyond discrimination, but also from its bold departure from recent rulings involving similarly sensitive issues.

As a direct consequence of *Mirin*, all EU member states are now required to recognise a change in legal sex effected in another member state – at least for purposes of personal identification – and to amend their civil status records accordingly. Unlike in *Coman* and *V.M.A.*, where the Court limited the obligation of recognition to what was strictly necessary to ensure the effectiveness of free movement rights, in *Mirin* it appears to have gone further, imposing a more

(Intersentia 2015); and M. van den Brink and P. Dunne, 'Trans and Intersex Equality Rights in Europe – A Comparative Analysis' (Publications Office of the EU 2018) p. 34-35, https://op.europa.eu/en/publication-detail/-/publication/f63460ca-ebac-11e8-b690-01aa75ed71a1/language-en, visited 2 June 2025.

[93]For a discussion of the distinction between 'use' and 'abuse' of EU free movement law in the specific context of family reunification *see* H. Kroeze, 'Distinguishing between Use and Abuse of EU Free Movement Law: Evaluating use of the "Europe-route" for Family Reunification to Overcome Reverse Discrimination', 3(3) *European Papers* (2018) p. 1209.

[94]*See also* Santaló Goris, *supra* n. 92.

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robust and unconditional duty of formal recognition. In doing so, the Court has ensured that transgender individuals who have obtained legal gender recognition in one member state can rely on that recognition throughout the Union and for all legal purposes, thereby enabling them to exercise their free movement rights without facing discriminatory obstacles or legal uncertainties.

The Court's willingness to impose this stronger obligation may be explained by the existence of a minimum common standard in Europe with regard to legal gender recognition: all EU member states, as signatories to the ECHR, are already required to provide a legal framework for gender recognition and to respect certain minimum procedural and substantive safeguards defined by the European Court of Human Rights. This level of normative convergence – absent in the context of same-sex marriage or parenthood – may have enabled the Court to adopt a more confident stance. By contrast, the absence of such a common standard on same-sex marriage or parental recognition continues to limit the Court's scope for imposing stronger mutual recognition obligations in those domains.

Nevertheless, as this analysis has highlighted, several critical issues remain unresolved. First, given that *Mirin* is a free movement case and thus concerns the rights of transgender *EU citizens*, the position of transgender third-country nationals who have undergone legal gender recognition remains unclear. Second, while *Mirin* concerned a change in legal sex completed in an EU member state, it is uncertain whether the same obligation of recognition extends to situations where the change was initially effected in a third country. Moreover, the Court notably refrained from imposing any requirement of a genuine connection between the individual undergoing legal gender recognition and the member state in which that recognition took place. Such a requirement could serve to prevent instances where transgender persons from member states with restrictive or non-existent gender recognition procedures circumvent national laws by acquiring recognition in a more favourable jurisdiction before returning to their home state and invoking *Mirin* to demand recognition. However, the Court's silence on this issue may reflect its reliance on existing domestic safeguards, as most national legal frameworks already require applicants to demonstrate a sufficient connection – such as nationality or lawful residence – before allowing access to legal gender recognition procedures.

Perhaps the most intriguing question arising from *Mirin*, nonetheless, is whether the Court's expansive approach will prompt a reconsideration of its stance with regard to the cross-border recognition of same-sex marriages and rainbow families. In fact, as noted above, a case is currently pending (*Cupriak-Trojan and Trojan*) which will require the Court to determine whether EU member states are obliged to recognise same-sex marriages contracted in another member state *for all legal purposes*. Should the Court adopt a similarly expansive approach, this would not only clarify the scope of *Mirin* – confirming that the obligation of recognition of a change in legal sex applies beyond identity documents to family status – but would also represent a

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significant step towards equality in cross-border family recognition within the EU. However, such a ruling could provoke backlash, especially in member states where same-sex marriage remains constitutionally prohibited. Therefore, as the Court continues to navigate these evolving questions, striking a balance between individual rights and member state sovereignty will remain a central challenge.

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