

JUDGMENT OF THE COURT (Grand Chamber)

4 October 2024 (*)

(Reference for a preliminary ruling – Citizenship of the Union – Articles 20 and 21 TFEU – Articles 7 and 45 of the Charter of Fundamental Rights of the European Union – Right to move and reside freely within the territory of the Member States – Union citizen who has lawfully acquired, during the exercise of that right and his residence in another Member State, a change of his first name and gender identity – Obligation on the part of that Member State to recognise and enter in the birth certificate that change of first name and gender identity – National legislation which does not permit such recognition and entry, obliging the party concerned to bring new judicial proceedings for a change of gender identity in the Member State of origin – Effect of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union)

In Case C-4/23 [Mirin], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Judecătoria Sectorului 6 București (Court of First Instance, Sector 6, Bucharest, Romania), made by decision of 11 August 2022, received at the Court on 3 January 2023, in the proceedings

M.-A. A.

v

Direcția de Evidență a Persoanelor Cluj, Serviciul stare civilă,

Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date din Ministerul Afacerilor Interne,

Municipiul Cluj-Napoca,

other parties:

Asociația Accept,

Consiliul Național pentru Combaterea Discriminării,

THE COURT (Grand Chamber),

composed of K. Lenaerts (Rapporteur), President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe, T. von Danwitz and O. Spineanu-Matei, Presidents of Chambers, J.-C. Bonichot, S. Rodin, I. Jarukaitis, A. Kumin, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: J. Richard de la Tour,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 23 January 2024,

after considering the observations submitted on behalf of:

- M.-A. A., by R.-I. Ionescu, avocată,
- the Municipiul Cluj-Napoca, by E. Boc, R. Lăpușan, A. Roman, A. Roșca and A. Rus, acting as Agents,
- the Asociația Accept, by A.-M. Baltac, consilier juridic, and R.-I. Ionescu, avocată,
- the Romanian Government, by E. Gane and O.-C. Ichim, acting as Agents,
- the German Government, by J. Möller and R. Kanitz, acting as Agents,
- the Greek Government, by T. Papadopoulou, acting as Agent,
- the Hungarian Government, by Zs. Biró-Tóth and M.Z. Fehér, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and C.S. Schillemans, acting as Agents,

- the Polish Government, by B. Majczyna, E. Borawska Kędzierska and A. Siwek-Ślusarek, acting as Agents,
 - the European Commission, by A. Biolan, H. Krämer and E. Montaguti, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 7 May 2024,
- gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2 TEU, Articles 18, 20 and 21 TFEU and Articles 1, 7, 20, 21 and 45 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request was made in proceedings between M.-A. A., a Romanian national, and the Direcția de Evidență a Persoanelor Cluj, Serviciul stare civilă (Civil Status Service of the Cluj Directorate for Personal Records, Romania), the Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date din Ministerul Afacerilor Interne (Directorate for Records of Persons and Management of Databases of the Ministry of the Interior, Romania) and Municipiul Cluj-Napoca (Municipality of Cluj-Napoca, Romania) concerning the recognition and entry in M.-A. A.'s Romanian birth certificate information relating to the change of first name and gender identity that were lawfully acquired in the United Kingdom.

Legal context

European Union law

The EU and FEU Treaties

- 3 Article 2 TEU provides:

'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

- 4 The first paragraph of Article 18 TFEU states:

'Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

- 5 Article 20 TFEU provides:

'1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

(a) the right to move and reside freely within the territory of the Member States;

...

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.'

- 6 Article 21(1) TFEU provides:

'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.'

The Charter

- 7 Article 1 of the Charter, entitled 'Human dignity' provides:

'Human dignity is inviolable. It must be respected and protected.'

- 8 Article 7 of the Charter, entitled 'Respect for private and family life', provides:

‘Everyone has the right to respect for his or her private and family life, home and communications.’

- 9 Article 20 of the Charter, entitled ‘Equality before the law’ states:

‘Everyone is equal before the law.’

- 10 Article 21 of the Charter, entitled ‘Non-discrimination’, provides, in paragraph 1 thereof:

‘Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.’

- 11 Article 45 of the Charter, entitled ‘Freedom of movement and of residence’, is worded as follows:

‘1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.’

The Withdrawal Agreement

- 12 The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7), which was adopted on 17 October 2019 and entered into force on 1 February 2020 (‘the Withdrawal Agreement’), was approved on behalf of the European Union and the European Atomic Energy Community (EAEC) by Council Decision (EU) 2020/135 of 30 January 2020 (OJ 2020 L 29, p. 1).

- 13 The fourth, sixth and eighth paragraphs of the preamble to that agreement state:

‘Recalling that, pursuant to Article 50 TEU, in conjunction with Article 106a of the Euratom Treaty, and subject to the arrangements laid down in this Agreement, the law of the Union and of Euratom in its entirety ceases to apply to the United Kingdom from the date of entry into force of this Agreement,

...

Recognising that it is necessary to provide reciprocal protection for Union citizens and for United Kingdom nationals, as well as their respective family members, where they have exercised free movement rights before a date set in this Agreement, and to ensure that their rights under this Agreement are enforceable and based on the principle of non-discrimination; ...

...

Considering that it is in the interest of both the Union and the United Kingdom to determine a transition or implementation period during which ... Union law, including international agreements, should be applicable to and in the United Kingdom, and, as a general rule, with the same effect as regards the Member States, in order to avoid disruption in the period during which the agreement(s) on the future relationship will be negotiated’.

- 14 Article 126 of that agreement, entitled ‘Transition period’, provides:

‘There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.’

- 15 Article 127 of that agreement, entitled ‘Scope of the transition’, provides:

‘1. Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period.

...

3. During the transition period, the Union law applicable pursuant to paragraph 1 shall produce in respect of and in the United Kingdom the same legal effects as those which it produces within the Union and its Member States, and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union.

...

6. Unless otherwise provided in this Agreement, during the transition period, any reference to Member States in the Union law applicable pursuant to paragraph 1, including as implemented and applied by Member States, shall be understood as including the United Kingdom.

...'

- 16 By virtue of Article 185, the Withdrawal Agreement entered into force on 1 February 2020.

Romanian law

- 17 Article 9 of the Legea nr. 119/1996 cu privire la actele de stare civilă (Law No 119/1996 on civil status documents) of 16 October 1996, as republished (*Monitorul Oficial al României*, Part I, No 339 of 18 May 2012), in the version applicable to the main proceedings ('Law No 119/1996'), is worded as follows:

'In the event that the civil registrar or the official performing civil status functions refuses to draw up a document or to record an entry falling within his or her competence, the injured party may bring proceedings before the court having jurisdiction, in accordance with the law.'

- 18 Article 41(1) to (3) of that law provides:

'1. Civil status documents of Romanian citizens, drawn up by foreign authorities, shall have probative value in Romania only if they are entered in the Romanian civil registers.

2. A Romanian citizen shall be required, within six months of the registration of the civil status act or event with the foreign authorities or of the date of acquisition or recovery of Romanian nationality, to request registration of the civil status certificates or extracts by the local public department for personal records or the town hall of the competent territorial administrative unit or the diplomatic mission or consular posts of Romania.

3. Civil status certificates/extracts/multilingual extracts shall be registered abroad with the agreement of the heads of diplomatic mission or consular posts and, in Romania, with the agreement of the mayor of the territorial administrative unit of the holder's or applicant's place of residence/last place of residence in the country, as the case may be, and with the assent of the head of the provincial community public service for personal records or the local community public service for personal records in the Bucharest Sector, and any reasons for their refusal shall be stated.'

- 19 Under Article 43 of that law:

'In birth certificates, and, where applicable, in marriage or death certificates, entries regarding changes in a person's civil status shall be recorded in the following cases:

...

(f) change of name;

...

(i) change of sex, after a final judicial decision;

...'

- 20 Article 57(1) of that law provides:

'Civil status documents and entries recorded therein may be annulled, supplemented or amended only pursuant to a final judicial decision.'

- 21 Article 4(2) of Ordonanța Guvernului nr. 41/2003 privind dobândirea și schimbarea pe cale administrativă a numelor persoanelor fizice (Government Order No 41/2003 relating to the acquisition and change of names of natural persons by administrative means) of 30 January 2003 (*Monitorul Oficial al României*, Part I, No 68 of 2 February 2003) stated:

'Requests to change name shall be considered to be justified in the following cases:

...

(l) where the person has obtained approval for a change of sex by a final and irrevocable judicial decision and requests to bear a name corresponding to that sex, presenting a medical/legal document indicating his or her sex;

...'

- 22 Article 131(2) of the Metodologie cu privire la aplicarea unitară a dispozițiilor în materie de stare civilă (Methodology concerning the uniform application of civil status provisions), approved by Hotărârea Guvernului nr. 64/2011 (Government

Decision No 64/2011), of 26 January 2011 (*Monitorul Oficial al României*, Part I, No 151 of 2 March 2011), is worded as follows:

‘The personal [identification number] shall be assigned on the basis of the data entered in the birth certificate relating to sex and date of birth.’

- 23 Pursuant to Article 19(1)(i) of the Ordonanța de urgență a Guvernului nr. 97/2005 privind evidența, domiciliul, reședința și actele de identitate ale cetățenilor români (Government Emergency Order No 97/2005 concerning the records, domicile, residence and identity documents of Romanian nationals), of 14 July 2005, as republished (*Monitorul Oficial al României*, Part I, No 719 of 12 October 2011), the public service responsible for personal records is to issue a new identity document in the event of a change of sex.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 24 M.-A. A. was born on 24 August 1992 in Cluj-Napoca, in the județul Cluj (Cluj County, Romania), and was registered at birth as female. M.-A. A.’s Romanian birth certificate thus contains a female first name, identifies that person as female and attributes a personal identification number that also identifies that person as being of that sex.
- 25 After moving to the United Kingdom with his parents in 2008, M.-A. A. obtained British nationality by naturalisation on 21 April 2016.
- 26 On 27 February 2017, M.-A. A. changed his first name and title from female to male using the deed poll procedure, which enables British citizens to change their name or first name by making a simple declaration. Subsequently, he had certain official documents issued by the United Kingdom authorities changed, namely his driving licence and his passport, which were sent to him in his new name.
- 27 On 29 June 2020, M.-A. A. obtained a gender identity certificate, a document confirming his male gender identity, in the United Kingdom.
- 28 In May 2021, on the basis of the declaration made under the deed poll procedure and the gender identity certificate, M.-A. A. requested the Civil Status Service of the Cluj Directorate for Personal Records to record in his birth certificate entries relating to his change of first name, gender and personal identification number so as to reflect the male sex and to issue him a new birth certificate including those new particulars.
- 29 By decision of 21 June 2021, the Romanian authorities rejected M.-A. A.’s request on the ground, *inter alia*, that, in accordance with Article 43(i) of Law No 119/1996, read in conjunction with Article 4(2)(l) of Government Order No 41/2003, an entry relating to a person’s change of gender identity may be recorded in his or her birth certificate only when it has been approved by a judicial decision that has become final.
- 30 On 14 September 2021, M.-A. A. brought an action before the Judecătoria Sectorului 6 București (Court of First Instance, Sector 6, Bucharest, Romania), which is the referring court, against the Civil Status Service of the Cluj Directorate for Personal Records, the Directorate for Records of Persons and Management of Databases of the Ministry of the Interior and the Municipality of Cluj-Napoca, seeking those authorities be ordered to record in his birth certificate entries relating to his change of first name, gender and personal identification number so as to reflect the male sex and to issue him a new birth certificate including those new particulars.
- 31 In particular, M.-A. A. asks the referring court to order those authorities, through direct application of EU law, and in particular of the right of every citizen of the Union to move and reside freely within the territory of the Member States, to bring his birth certificate into line with his first name and gender identity lawfully acquired in the United Kingdom, so that he can exercise that right unhindered, by holding a travel document that reflects his male gender identity. According to M.-A. A., the obligation to initiate new judicial proceedings in Romania seeking authorisation of the gender identity change exposes him to the risk that the outcome of the proceedings will be contrary to the outcome before the United Kingdom authorities. Furthermore, in its judgment of 19 January 2021, *X and Y v. Romania* (CE:ECHR:2021:0119JUD000214516), the European Court of Human Rights held that those proceedings lacked clarity and foreseeability.
- 32 The referring court considers that the merits of M.-A. A.’s claims and, therefore, the outcome of the dispute in the main proceedings depend on the interpretation of provisions of EU law, in particular Article 2 TEU, Articles 18, 20 and 21 TFEU and Articles 1, 7, 20, 21 and 45 of the Charter. More specifically, it asks whether the status of citizen of the Union and the right to move and reside freely within the territory of the Member States preclude national legislation which requires the person concerned to bring new proceedings for a change of gender identity 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.
- 33 Despite referring to the relevant case-law of the Court on the matter, in particular to the judgments of 2 October 2003, *Garcia Avello* (C-148/02, EU:C:2003:539); of 14 October 2008, *Grunkin and Paul* (C-353/06, EU:C:2008:559); of 8 June 2017,

Freitag (C-541/15, EU:C:2017:432); and of 14 December 2021, *Stolichna obshtina, rayon 'Pancharevo'* (C-490/20, EU:C:2021:1008), the referring court considers that the answer to that question does not follow from that case-law with the necessary clarity.

- 34 In addition, in the event that that question is answered in the affirmative, the referring court is still uncertain as to the effect, for the outcome of the dispute in the main proceedings, of the withdrawal of the United Kingdom from the European Union. It observes, in particular, that, in the present case, the procedure for a change of gender identity was initiated in the United Kingdom before that State's withdrawal from the European Union but was completed after that withdrawal, during the transition period. It is therefore necessary to determine whether, in such circumstances, Romania is required to recognise the legal effects of that procedure for the change of gender identity conducted in the United Kingdom.
- 35 In those circumstances the Judecătoria Sectorului 6 București (Court of First Instance, Sector 6, Bucharest) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Does the fact that Article 43(i) and Article 57 of [Law No 119/1996] do not recognise changes in civil status made in another Member State by means of the procedure for legal recognition of gender to entries concerning gender and first name by a transgender man who has dual nationality (Romanian and of another Member State) and require a Romanian citizen to bring, from the outset, separate judicial proceedings in Romania against the local Public Service for Personal Records and Civil Status – proceedings which have been held to lack clarity and foreseeability by the European Court of Human Rights ([ECtHR, 19 January 2021, *X and Y v. Romania*, CE:ECHR:2021:0119JUD000214516]) and which may lead to a decision contrary to that taken by the other Member State – constitute an obstacle to the exercise of the right to European citizenship (Article 20 [TFEU]) and/or the right of citizens of the Union to move and reside freely (Article 21 [TFEU] and Article 45 of the [Charter]) in conditions of dignity, equality before the law and non-discrimination (Article 2 [TEU]; Article 18 [TFEU], and Articles 1, 20 and 21 of [the Charter]), respecting the right to private and family life (Article 7 of [the Charter])?'
- (2) Does the departure of the United Kingdom of Great Britain and Northern Ireland from the European Union affect the answer to the above question, in particular where (i) the procedure for changing civil status was commenced before Brexit and was completed during the transition period, and (ii) the impact of Brexit means that the person cannot benefit from rights attached to European citizenship, including the right to free movement and residence, except on the basis of Romanian identity or travel documents in which that person appears with a female gender and first name, contrary to the gender identity that has already been legally recognised?'

Admissibility of the request for a preliminary ruling

- 36 The Romanian Government considers that the request for a preliminary ruling is inadmissible on the ground that M.-A. A. did not make his application to the competent Romanian authorities to record in his Romanian birth certificate the change of first name and gender identity, lawfully acquired in the United Kingdom in 2017 and 2020, until May 2021, that is to say, after the end of the transition period fixed, in accordance with Article 126 of the Withdrawal Agreement, as 31 December 2020.
- 37 Thus, according to that government, at the time when the matter was referred to those authorities, the United Kingdom had the status of a third country in relation to the European Union, so that EU citizens and United Kingdom nationals could no longer rely on their rights under the Withdrawal Agreement. Referring to the judgment of 12 May 2011, *Runevič-Vardyn and Wardyn* (C-391/09, EU:C:2011:291, paragraphs 55 and 56), in which the Court held that the provisions of the FEU Treaty on citizenship of the Union were applicable to the present effects of situations arising prior to the accession of a Member State to the European Union, that government submits that, *mutatis mutandis*, those provisions can no longer be applied, after the withdrawal of a State, to the present effects of situations arising when it was still a member of the European Union. It is therefore a purely internal situation.
- 38 In that regard, it should be noted that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court of Justice is, in principle, bound to give a ruling (judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, paragraph 54 and the case-law cited).
- 39 The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, paragraph 55 and the case-law cited).

- 40 In the present case, the referring court asks the Court about the interpretation of, inter alia, the provisions of the FEU Treaty on citizenship of the Union, including Article 21(1) TFEU, in the context of a case in which a person who is a national of Romania, where he was born, and the United Kingdom, where he has resided since 2008, requests the competent Romanian authorities to update his birth certificate so that it complies with his new first name and gender identity, which were lawfully acquired in the United Kingdom before the end of the transition period on 31 December 2020.
- 41 In that regard, it must be noted, in the first place, that a national of a Member State who has exercised, in his or her capacity as a Union citizen, his or her freedom to move and reside within a Member State other than his or her Member State of origin, may rely on the rights pertaining to Union citizenship, in particular the rights provided for in Article 21(1) TFEU, including, where appropriate, against his or her Member State of origin (judgment of 14 December 2021, *Stolichna obshtina, rayon 'Pancharevo'*, C-490/20, EU:C:2021:1008, paragraph 42 and the case-law cited).
- 42 In the present case, the amendments relating to the civil status of M.-A. A. were made in the United Kingdom, for the change of first name, when that State was still a Member State of the European Union and, for the change of gender identity, during the transition period.
- 43 In the second place, although, on 1 February 2020, the date on which the Withdrawal Agreement entered into force, the United Kingdom withdrew from the European Union, thus becoming a third State, that agreement nevertheless provides, in Article 126, for a transition period between the date of entry into force of that agreement, namely 1 February 2020, and 31 December 2020. In accordance with Article 127(6) of that agreement, the United Kingdom must, during that period, be regarded, inter alia, for the purposes of the rules on citizenship of the Union and the free movement of persons, as a 'Member State', and not as a third country, with Article 127(1) stating, moreover, that EU law was applicable to the United Kingdom during that period (see, to that effect, judgments of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, paragraphs 47 and 48, and of 14 March 2024, *Commission v United Kingdom (judgment of the Supreme Court)*, C-516/22, EU:C:2024:231, paragraph 53).
- 44 Therefore, as the Advocate General observed, in essence, in points 44 to 46 of his Opinion, in so far as M.-A. A., in his capacity as a Union citizen, seeks in his Member State of origin recognition of the change of his first name and of his gender identity acquired, when exercising his freedom of movement and residence in the United Kingdom, before the withdrawal of that Member State from the European Union and before the end of the transition period, respectively, he may rely, against that Member State of origin, on the rights pertaining to that status, in particular those laid down in Articles 20 and 21 TFEU, including after the end of that period.
- 45 Accordingly, the situation at issue in the main proceedings cannot be treated in the same way as a purely internal situation on the sole ground that it was after 31 December 2020, the date set by the Withdrawal Agreement as being the end of the transition period, that M.-A. A. submitted to the competent Romanian authorities an application for the recording in his birth certificate of entries relating to the change of his first name and gender identity.
- 46 Consequently, the present request for a preliminary ruling is admissible.

Consideration of the questions referred

- 47 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 20 and Article 21(1) TFEU, read in the light of Articles 7 and 45 of the Charter, must be interpreted as precluding legislation of a Member State which does not permit recognition and entry in the birth certificate of a national of that Member State of a change of first name and gender identity lawfully acquired in another Member State when exercising his or her freedom of movement and residence, with the result that he or she is obliged to bring new judicial proceedings for a change of gender identity in the first Member State, which disregard that change already lawfully acquired in that other Member State.
- 48 The referring court also wishes to know whether the fact that the State in which the change of first name and gender identity was lawfully obtained, in this case the United Kingdom, is no longer a Member State of the European Union has any bearing on the answer to be given to that question.
- 49 In that regard, it should be noted at the outset that it follows from the considerations set out in paragraphs 41 to 45 of the present judgment, relating to the admissibility of the request for a preliminary ruling, that the fact that the United Kingdom is no longer a Member State of the European Union has no bearing on the answer to be given to the first question referred, since M.-A. A.'s situation falls within the scope of Article 20 and Article 21(1) TFEU.
- 50 In those circumstances, it should be recalled that, as a Romanian national, M.-A. A. enjoys the status of a Union citizen under Article 20(1) TFEU.
- 51 According to the Court's settled case-law, Union citizenship is destined to be the fundamental status of nationals of the Member States (judgments of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 30, and of 14 December 2021, *Stolichna obshtina, rayon 'Pancharevo'*, C-490/20, EU:C:2021:1008, paragraph 41 and the case-law cited).

- 52 Article 20(2) and Articles 21 and 22 TFEU attach a series of rights to that status. Citizenship of the Union confers, in particular, in accordance with Article 20(2)(a) and Article 21(1) TFEU, on each Union citizen a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the FEU Treaty and the measures adopted for their implementation (judgment of 9 June 2022, *Préfet du Gers et Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraph 50 and the case-law cited).
- 53 As 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 and EU law does not detract from that competence. Nevertheless, in exercising that competence, each Member State must comply with EU law, in particular the provisions of the FEU Treaty on the freedom conferred on all Union citizens to move and reside within the territory of the Member States, by recognising, 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 (see, to that effect, judgments of 26 June 2018, *MB (Change of gender and retirement pension)*, C-451/16, EU:C:2018:492, paragraph 29, and of 14 December 2021, *Stolichna obshtina, rayon 'Pancharevo'*, C-490/20, EU:C:2021:1008, paragraph 52 and the case-law cited).
- 54 In that respect, as regards a refusal by the authorities of a Member State to recognise the name of a national of that State who exercised his or her right of free movement in the territory of another Member State, as determined in that second Member State, the Court has held that such a refusal is likely to hinder the exercise of the right, enshrined in Article 21 TFEU, to move and reside freely in the territories of the Member States. Confusion 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 (see, to that effect, judgment of 8 June 2017, *Freitag*, C-541/15, EU:C:2017:432, paragraphs 36 and 37 and the case-law cited).
- 55 Such a hindrance may also result from the refusal by those authorities to recognise the change of gender identity made pursuant to the procedures laid down for that purpose in the Member State in which a Union citizen exercised his or her freedom of movement and residence, whether or not that change is linked to a change of first name, as in the present case. 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 (see, to that effect, judgment of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 38 and the case-law cited).
- 56 Thus, for a Union citizen who, like the applicant in the main proceedings, has exercised his or her freedom to move and reside in another Member State and who, during his or her period of residence in that other Member State, has changed his or her first name and gender identity in accordance with the procedures laid down for that purpose in that other Member State, there is a real risk, because he or she bears two different first names and has been 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, which is such as to hinder the exercise of the right which flows from Article 21 TFEU (see, to that effect, judgments of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 40 and the case-law cited, and of 8 June 2017, *Freitag*, C-541/15, EU:C:2017:432, paragraph 38).
- 57 Consequently, the refusal by the competent civil status authorities of a Member State to recognise and enter in the civil registers, and in particular in the birth certificate of a national of that Member State, a change of first name and gender identity lawfully acquired by that national in another Member State, on the basis of national legislation which does not allow such recognition and entry, with the result that the person concerned is obliged to bring new judicial proceedings for a change of gender identity in the first Member State, which disregard that change already lawfully acquired in that other Member State, is liable to restrict the exercise of the right to move and reside freely within the territory of the Member States.
- 58 Such a restriction must also be found to exist as regards the right enshrined in Article 45(1) of the Charter. That right corresponds to that guaranteed in Article 20(2)(a) TFEU, and is to be exercised, under the second subparagraph of Article 20(2) TFEU and Article 52(2) of the Charter, in accordance with the conditions and the limits defined by the Treaties and by the measures adopted thereunder. Therefore, any restriction on the rights provided for in Article 21(1) TFEU necessarily infringes Article 45(1) of the Charter, since the right of every citizen of the Union to move and reside freely within the territory of the Member States, provided for in the Charter, reflects the right conferred by Article 21(1) TFEU (see, to that effect, judgment of 22 February 2024, *Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date*, C-491/21, EU:C:2024:143, paragraphs 49 and 50).
- 59 In accordance with settled case-law, national legislation, such as that at issue in the main proceedings, which restricts the exercise of that right, enshrined in Article 21 TFEU, can be justified only where it is based on objective considerations and is proportionate to the legitimate objective of the national provisions (judgment of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 48 and the case-law cited).
- 60 In that context, it should also be recalled that, according to settled case-law, national legislation which prevents a transgender person, in the absence of recognition of his or her gender identity, from fulfilling a requirement which must be met in order to

be entitled to a right protected by EU law must be regarded as being, in principle, incompatible with EU law (see, to that effect, judgment of 27 April 2006, *Richards*, C-423/04, EU:C:2006:256, paragraph 31 and the case-law cited).

- 61 In the present case, neither the referring court nor the Romanian Government has provided any information concerning the objectives pursued by the national legislation at issue in the main proceedings, which does not allow the recognition and entry in the birth certificate of a change of first name and gender identity, lawfully acquired in another Member State, and which thus obliges the person concerned to initiate before the national courts new proceedings for a change of gender identity, which disregard that change already lawfully acquired in that other Member State.
- 62 Moreover, even if that national legislation pursues a legitimate objective, it can, in any event, be regarded as justified only where it is consistent with the fundamental rights guaranteed by the Charter, it being the task of the Court to ensure that those rights are respected (judgment of 14 December 2021, *Stolichna obshtina, rayon 'Pancharevo'*, C-490/20, EU:C:2021:1008, paragraph 58 and the case-law cited), and, in particular, with the right to respect for private life referred to in Article 7 of the Charter.
- 63 In that regard, as is apparent from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), in accordance with Article 52(3) of the Charter, the rights guaranteed in Article 7 thereof have the same meaning and the same scope as those guaranteed in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR') (judgment of 14 December 2021, *Stolichna obshtina, rayon 'Pancharevo'*, C-490/20, EU:C:2021:1008, paragraph 60), the latter provision constituting a minimum threshold of protection (see, by analogy, judgment of 29 July 2024, *Alchaster*, C-202/24, EU:C:2024:649, paragraph 92 and the case-law cited).
- 64 According to the case-law of the European Court of Human Rights, 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. Thus, that provision encompasses the right to establish details of their identity as individual human beings, which includes the right of transsexual people to personal development and physical and moral integrity and to respect for and recognition of their sexual identity (ECtHR, 11 July 2002, *Christine Goodwin v. the United Kingdom*, CE:ECHR:2002:0711JUD002895795, §§ 77, 78 and 90; ECtHR, 12 June 2003, *Van Kück v. Germany*, CE:ECHR:2003:0612JUD003596897, §§ 69 to 75 and 82; and ECtHR, 19 January 2021, *X and Y v. Romania*, CE:ECHR:2021:0119JUD000214516, §§ 147 and 165).
- 65 To that end, Article 8 imposes positive obligations on States, in addition to negative obligations to protect transsexual persons against arbitrary interference by public authorities, which also entails the establishment of effective and accessible procedures guaranteeing effective respect for their right to sexual identity. Furthermore, in view of the particular importance of that right, States have only limited discretion in this area (ECtHR, 19 January 2021, *X and Y v. Romania*, CE:ECHR:2021:0119JUD000214516, §§ 146 to 148 and the case-law cited, and ECtHR, 1 December 2022, *A.D. and Others v. Georgia*, CE:ECHR:2022:1201JUD005786417, § 71).
- 66 It thus follows from the case-law of the European Court of Human Rights that, under Article 8, States are required to provide for a clear and foreseeable procedure for legal recognition of gender identity which allows for a change of sex and thus of name and digital personal code, on official documents, in a quick, transparent and accessible manner (ECtHR, 19 January 2021, *X and Y v. Romania*, CE:ECHR:2021:0119JUD000214516, § 168).
- 67 The European Court of Human Rights held, in its judgment of 19 January 2021, *X and Y v. Romania* (CE:ECHR:2021:0119JUD000214516, §§ 157 and 168), that the procedure laid down by the national legislation at issue in the main proceedings must be regarded as incompatible with Article 8 ECHR, in so far as that procedure does not satisfy the requirements imposed by that provision for the examination of a request for a change of gender identity made for the first time before a national court.
- 68 Nor can that procedure constitute an effective means of enabling a Union citizen who, while residing in another Member State and, therefore, when exercising the right guaranteed in Article 21 TFEU and Article 45 of the Charter, has already lawfully acquired the change of his or her first name and gender identity pursuant to the procedures laid down for that purpose in that Member State, effectively to assert his or her rights conferred by those articles, read in the light of Article 7 of the Charter, especially 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.
- 69 According to settled case-law, in order for national legislation such as that relating to the entry in civil registers of a change of first name and gender identity to be capable of being regarded as compatible with EU law, it is necessary that the provisions or national procedure allowing such a request for such entry to be made do not render impossible or excessively difficult the implementation of the rights conferred by Article 21 TFEU and, in particular, the right to recognition of that change. The exercise of that right may be called into question by the discretion enjoyed by the competent authorities in the context of the procedure for recognition and recording of an entry of a first name and gender identity, to which persons who have lawfully acquired the change of that first name and that identity in another Member State are subject. The existence of such discretion is liable to lead to a divergence between two names and two genders used for the same person as evidence of his or her identity and to the 'serious inconvenience' at administrative, professional and private levels referred to in paragraphs 54 and 55 of the present judgment.

- 70 Therefore, national legislation, such as that at issue in the main proceedings, which does not permit a first name and gender identity, lawfully acquired in another Member State, to be registered and which obliges the person concerned to bring new judicial proceedings for a change of gender identity in the Member State of origin, which disregard the fact that the Union citizen has already lawfully acquired the change of his or first name and gender identity in his Member State of residence and has been subject to the procedures laid down for that purpose in that Member State, infringes the requirements under Article 21 TFEU.
- 71 In the light of all the foregoing considerations, the answer to the questions referred is that Article 20 and Article 21(1) TFEU, read in the light of Articles 7 and 45 of the Charter, must be interpreted as precluding legislation of a Member State that does not permit recognition and entry in the birth certificate of a national of that Member State of a change of first name and gender identity lawfully acquired in another Member State, when exercising the right to free movement and residence, with the consequence that that person is obliged to initiate, before a court, new proceedings for a change of gender identity in the first Member State, which disregard the change that was previously lawfully acquired in that other Member State. In that regard, it is irrelevant that the request for recognition and entry of the change of first name and gender identity was made in that first Member State on a date on which the withdrawal from the European Union of the other Member State had already taken effect.

Costs

- 72 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.


On those grounds, the Court (Grand Chamber) hereby rules:

Article 20 and Article 21(1) TFEU, read in the light of Articles 7 and 45 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding legislation of a Member State that does not permit recognition and entry in the birth certificate of a national of that Member State of a change of first name and gender identity lawfully acquired in another Member State, when exercising the right to free movement and residence, with the consequence that that person is obliged to initiate, before a court, new proceedings for a change of gender identity in the first Member State, which disregard the change that was previously lawfully acquired in that other Member State.

In that regard, it is irrelevant that the request for recognition and entry of the change of first name and gender identity was made in that first Member State on a date on which the withdrawal from the European Union of the other Member State had already taken effect.

[Signatures]

 Language of the case: Romanian.

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