



C/2024/2729

29.4.2024

**Request for a preliminary ruling from the Varhoven kasatsionen sad (Bulgaria) lodged on 23 January
2024 – K.M.H. v Obshtina Stara Zagora**

(Case C-43/24, Shipov) ⁽¹⁾

(C/2024/2729)

Language of the case: Bulgarian

Referring court

Varhoven kasatsionen sad

Parties to the main proceedings

Appellant in cassation: K.M.H.

Respondent in cassation: Obshtina Stara Zagora

Questions referred

1. Do the principles of the equality of Union citizens and freedom of movement enshrined in Article 9 of the Treaty on the European Union (TEU) and in Articles 8 and 21 of the consolidated version of the Treaty on the Functioning of the European Union (TFEU), and reinforced in Article 7 of the Charter of Fundamental Rights of the European Union and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, preclude national legislation of a Member State which rules out any possibility of amending the entry concerning gender, name and identification number (EGN) contained in the civil status documents of an applicant who states that he or she is transsexual?
2. Do the principles of the equality of Union citizens and freedom of movement enshrined in Article 9 of the Treaty on European Union (TEU) and in Article 8 and Article 21 of the consolidated version of the Treaty on the Functioning of the European Union (TFEU), and the prohibition of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation laid down in Article 10 TFEU, which are reinforced in Article 7 of the Charter of Fundamental Rights of the European Union and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and the principle of an effective remedy, preclude national case-law (*in casu*, Interpretative Decision No 2/2023 of the Obshto sabranie na grazhdanskata kolegia [(General Assembly of Civil Chambers)] of the Varhoven kasatsionen sad [(Supreme Court of Cassation)]) to the effect that the material law applicable in the territory of a Member State of the European Union does not provide for any possibility of changing the gender, name and identification number recorded in the civil status documents of an applicant who states that he or she is transsexual, thereby placing him or her in a position different from that in which he or she would be in another Member State under whose case-law the opposite is the case?

Is it permissible for national case-law, on the basis of religious values and moral principles, not to permit a change of gender identity unless it is required by certain – intersex – persons for medical reasons?

Is it permissible for national case-law, on the basis of religious values and moral principles, to permit a change of gender for medical reasons only in certain cases and for certain (intersex) persons, but not in other cases of a change of gender identity for other, different medical reasons?

⁽¹⁾ The name of this case is fictitious and not the real name of any of the parties to the proceedings.

3. Does the obligation of the Member States of the European Union to recognise a person's civil status as established in another Member State under the law of that State, which is recognised in the case-law of the European Court of Justice (in the judgments in Cases C 673/16 ⁽²⁾ and C 490/20 ⁽³⁾) in relation to the application of Directive 2004/38/EC ⁽⁴⁾ and Article 21(1) TFEU, also apply in relation to gender as an essential element of the civil status entry, and does a change of gender, established in another Member State, on the part of a person who also has Bulgarian nationality, require that fact to be recorded in the corresponding registers of the Republic of Bulgaria?
 4. Is a binding interpretation of the [Bulgarian] constitution by a judgment of the Konstitutsionen sad (Bulgarian Constitutional Court) to the effect that the term 'gender' is to be understood exclusively in the biological sense, permissible in the light of the right to a fair trial arising from the Charter and the ECHR; is that interpretation compatible with the requirements of EU law; and is it capable of constituting a legal impediment to the registration of a change of gender?
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⁽²⁾ ECLI:EU:C:2018:385.

⁽³⁾ ECLI:EU:C:2021:1008.

⁽⁴⁾ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 2004, p. 77).