

# SOME REMARKS ON THE CJEU'S 'PANCHAREVO' DECISION WITH SPECIAL REGARD TO THE NEXUS BETWEEN THE PRIMACY OF EU LAW AND THE NATIONAL IDENTITY OF MEMBER STATES'

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## ABSTRACT

*This paper analyses same-sex marriage and adoption and the nexus between the primacy of EU law and national identity of the Member States in the light of the decision of the Court of Justice of the European Union (CJEU) in the Pancharevo-case delivered in December 2021. The CJEU ruled that the Bulgarian authorities were obliged to issue a child's birth certificate, which is a condition for the issuance of an identity document or passport under Bulgarian national law. A Member State may not rely on national law and identity in this respect. The CJEU relied on the principle of 'functional recognition', which it had first adopted in its judgment in the Coman-case.*

## KEYWORDS

*same-sex marriage  
adoption  
primacy of EU law  
functional recognition  
principle of effectiveness  
national identity*

## 1. Introduction

The rights of same-sex couples to marry and adopt can be considered a topical issue in contemporary life and politics. It is constantly being addressed in practice by national supreme/constitutional and supranational courts such as the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). This paper analyses the relevant jurisprudence of the latter two fora in the light of the CJEU's decision in the *Pancharevo* case,<sup>2</sup> which was delivered in December 2021. In this case, the CJEU had to decide whether the unconditional prevalence of the right of free movement of persons

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2 | CJEU case C-490/20, V.M.A. v Stoliczna obshtina, rayon 'Pancharevo', Judgment, 14. 12. 2021.



under the Founding Treaties over the traditional concept of the family in a given country would be contrary to the national identity of the Member State. The question at issue was whether, in the context of the exercise of rights deriving from EU law, such as the right to free movement, a national authority is obliged to recognise both members of a same-sex couple as the parents of a child, even if it is not possible under national law. The CJEU said that

[...] the Member State of which that child is a national is obliged (i) to issue to that child an identity card or a passport without requiring a birth certificate to be drawn up beforehand by its national authorities, and (ii) to recognise, as is any other Member State, the document from the host Member State that permits that child to exercise, with each of those two persons, the child's right to move and reside freely within the territory of the Member States.<sup>3</sup>

On 24 June 2022, the CJEU issued a 'Reply by reasoned order' under Rule 99<sup>4</sup> of its Rules of Procedure<sup>5</sup> in the *Rzecznik Praw Obywatelskich* case,<sup>6</sup> which had previously been suspended pending a decision in the *Pancharevo*-case, given that the facts and question posed were identical. In the *Rzecznik Praw Obywatelskich* case, the CJEU reiterated the decision in the *Pancharevo*-case, clarifying the direction of its case law.

The CJEU's response in the *Pancharevo*-case was predictable given the decision in the *Coman*-case,<sup>7</sup> which dealt with a similar issue in 2016. In his Opinion in the *Coman*-case,<sup>8</sup> Advocate General Melchior Wathelet, stressed that '[the case] provides the Court with the opportunity to rule, for the first time, on the concept of "spouse" within the meaning of Directive 2004/38<sup>9</sup> in the context of a marriage between two men'.<sup>10</sup> The CJEU concluded that where a marriage is contracted validly under the rules of another Member State, the other Member State (of which the EU citizen is a national) cannot deny the EU citizen's spouse the right of residence solely on the ground that the Member State in question does not recognise same-sex marriage.<sup>11</sup>

These issues are important as they involve a conflict between two exclusive competences: the rights relating to citizenship of the Union and the free movement of persons—which are the exclusive competence of the Union—and family law issues—which are the exclusive competence of the Member States—and also, if the given

3 | *Ibid.*, para. 69.

4 | *Ibid.*, Rule 99: 'Where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.'

5 | Rules of Procedure of the Court of Justice (OJ L 265, 29. 9. 2012, pp. 1–42).

6 | CJEU case C-2/21, *Rzecznik Praw Obywatelskich v K. S. and Others*, 24. 6. 2022.

7 | CJEU case C-673/16, *Coman*, Judgment, 5. 6. 2018. For a detailed analysis of the case, please see: Gyeney, 2018, pp. 149–171.

8 | CJEU case C-673/16, *Coman*, Opinion of Advocate General Melchior Wathelet, 11. 1. 2018.

9 | 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 [...] (OJ L 158, 30. 4. 2004, p. 77–123.)

10 | CJEU case C-673/16, *Coman*, Opinion, para. 2.

11 | CJEU case C-673/16, *Coman*, Judgment, para. 51.

Member State claims so, form part of national identity.<sup>12</sup> Although the CJEU stressed in both the Coman and Pancharevo cases that Member States enjoy a wide margin of appreciation under EU law, it decided that EU law should prevail. The reason for this interpretation can be found in the Opinion of Advocate General Julianne Kokott in the Pancharevo-case:

If the same-sex spouse of a Union citizen with whom that citizen has validly entered into a marriage pursuant to the legislation of a Member State is not classified as a “family member” on the ground that the law of another Member State does not provide for that possibility, this would risk a variation in the rights deriving from Article 21(1) TFEU<sup>13</sup> from one Member State to another, depending on the provisions of their national law.<sup>14</sup>

Thus, to ensure the application of EU law, Advocate Generals in the Coman and Pancharevo cases – Wathelet and Kokott respectively – and the CJEU, adopted the so-called ‘functional recognition’,<sup>15</sup> based on the principle of effectiveness,<sup>16</sup> stressing that the recognition of a family relationship registered in another country, but not recognised by the national law of the Union citizen's Member State of origin only serves to ensure the application of EU law and cannot result in a change in the national constitutional rules. The author raised two questions in this respect. First, to what extent is this form of mutual recognition – which, by analogy, is reminiscent of the ‘Cassis principle’<sup>17</sup> – appropriate in a case where, as Advocate General Wathelet pointed out in his Opinion in the Coman case, two exclusive competences are in conflict? In the Cassis case, there was no such conflict as the free movement of goods was already a community competence at the time of delivering the judgment. The second question was whether, given that EU law directly or indirectly impacts national legislation in several areas, ranging from tax to family laws, this functional recognition may not lead to a de facto change in national legislation, even if this does not occur de jure. If a Member State is eventually forced to functionally yield to the primacy of EU law in several areas, something that the 7 December 2022 statement of Věra Jourová, the European

12 | Some constitutions/basic laws contain *expressis verbis* reference to national or constitutional identity, namely an explicit ‘eternity clause’. Their mere existence and content is determined by the state organ commissioned with the task of interpreting the constitution. In some cases, a so called implicit ‘eternity clause’ is derived by the constitutional court – or the court empowered to interpret the basic norm – via various methods of interpretation (See Drinóczi, 2018, p. 5). Joseph H.H. Weiler and his fellow co-authors made a statement in 1995 – some 15 years before the issue became mainstream – that the demarcation between EU and national law – that is to say deciding what belongs to national identity – will be done by the supreme courts of the member states. See Weiler, Haltern and Mayer, 1995.

13 | Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26. 10. 2012, pp. 47–390.)

14 | CJEU case C-490/20 V.M.A. v. Stolichna obshtina, rayon ‘Pancharevo’, Opinion of Advocate General Julianne Kokott, 15. 4. 2021, para. 61.

15 | EAPIL Editorial, 2022.

16 | See CJEU case C-14/83, Von Colson and Kamann v. Land Nordrhein-Westfalen, Judgment, 10. 4. 1984, para. 28.

17 | CJEU case C-120/78, Rewe-Zentral A.g., Judgment, 20. 2. 1979.

Commission's Vice-President for Values and Transparency suggested,<sup>18</sup> will there be any room for manoeuvre left for the Member State even though its Constitution remains otherwise unchanged?

To put the second question in an alternative way, can we say that 'functional recognition' is another example of 'integration by stealth'?<sup>19</sup> The latter question is pertinent as the European Commission, in a 2020 document titled 'A Union for Equality: A Strategy for LGBTQ Equality',<sup>20</sup> stressed that it is planning to promote the mutual recognition of family relationships within the EU under the motto 'If you are parent in one country, you are parent in every country'.<sup>21</sup> This means two things according to the strategy: first, the Commission intends to hold dialogues with Member States on the implementation of the Coman-judgment.<sup>22</sup> The Commission has made it clear that it will take legal action to enforce the judgment if necessary.<sup>23</sup> Second, the Commission made it clear in the abovementioned document<sup>24</sup> that it intends to initiate a legislative act under Article 81(3) TFEU<sup>25</sup> to promote the mutual recognition of parenthood between Member States.<sup>26</sup> If this plan is implemented, the status of parents legally registered in one Member State will be subject to mandatory recognition in another. In preparation for the draft legislation, a public consultation was carried out in 2021, which showed that most EU citizens

18 | It is unthinkable that a parent in one Member State is not recognised as a parent in another Member State. This puts some children at risk, as they would not have guaranteed access to their rights, such as succession, maintenance or decisions on schooling and education'. European Commission, Equality Package: Commission proposes new rules for the recognition of parenthood between Member States. Press Release, 7 December 2022, Brussels (IP/22/7509).

19 | This extension of powers through 'integration by stealth' has become obvious following the 'notorious' decision of the German Federal Constitutional Court (*Bundesverfassungsgericht*, BVerfG) on 5 May 2020, which declared an element of the European Central Bank's crisis management strategy to be *ultra vires*. See Marinkás, 2021, pp. 328–329; see furthermore Schmidt, 2016, pp. 1–21.

20 | European Commission (COM/2020/698 final).

21 | State of the Union Address by President von der Leyen at the European Parliament Plenary (16. 9. 2020).

22 | 'The Commission has engaged into a dialogue with all Member States, including with Romania, following the issuance of the Comanjudgment. In addition, a separate dialogue with Romania is ongoing on the conditions for granting residence to spouses of returning Romanian citizens, but not specific to the situation of same-sex couples.' Answer given by Ms. Dalli on behalf of the European Commission on 1.3.2022 to Parliamentary question E-005164/2021 (17. 11. 2021). Parliamentary question – E-005164/2021.

23 | European Commission (COM/2020/698 final), p. 17.

24 | European Commission (COM/2020/698 final), p. 18.

25 | Article 81(3) TFEU: 'Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.'

26 | A similar initiative is being prepared at the international level by the Permanent Bureau of the Hague Conference on Private International Law (HCCH) with a focus on issues of the recognition of parenthood arising from international surrogacy arrangements. The final report of the expert group – commissioned with the task of elaborating on the issue – is expected to be presented to the Council on General Affairs and Policy of the HCCH in 2023. See Regulation on the recognition of parenthood between Member States. In 'A New Push for European Democracy' (As of 20/02/2023).

supported the proposal,<sup>27</sup> and a preparatory working group was set up.<sup>28</sup> It has met seven times so far, most recently on 22 February 2022.<sup>29</sup> The Justice and Home Affairs configuration of the Council met on 4 February 2022 and discussed the issue.<sup>30</sup> No agreement was reached among the ministers<sup>31</sup> as the Commission, relying on the principle of functional recognition enshrined in the aforementioned CJEU judgments, sought to extend EU competences into an area which, under the Treaties, remained the exclusive competence of the Member States.

On 7 December 2022, the European Commission issued a proposal<sup>32</sup> for a 'Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood.'<sup>33</sup> A key element of the proposal is that a legal parent-child relationship established in one EU Member State should be recognised in all other Member States without any additional legal procedures. The Commission proposed a harmonised template that would be compulsory to accept throughout the EU. It stressed that the regulation would not harmonise substantive family law, which remains a competence of the Member States. Given that Sebastian Kaleta – Secretary of State at the Ministry of Justice of Poland – stated<sup>34</sup> in December 2022 that Poland would veto the proposal,<sup>35</sup> it is unlikely that the proposal will be adopted in its recent form, as the legislative procedure under Article 81(3) of the TFEU requires the Council to make unanimous decisions. This procedure requires the Council to consult with the European Parliament, which is underway.<sup>36</sup> It became clear during the parliamentary debate on 15 March 2023<sup>37</sup> that the Commission's proposal is highly controversial: MEPs argued in favour and against the proposal. MEP Ernő Schaller-Baross<sup>38</sup> emphasised<sup>39</sup> that:

27 | European Commission, Initiative on the recognition of parenthood between Member States Factual summary of the Open Public Consultation. Brussels, October 2021 (No. 6847413).

28 | Expert Group on Recognition of parenthood between Member States (E-03765).

29 | Minutes: 7th Meeting of the Expert Group on the recognition of parenthood between Member States 22 February 2022 (via VTC).

30 | French Ministry of the Interior, 2022, p. 13.

31 | Ellena, 2022; Office of Communication and Promotion of the Polish Ministry of Justice, 2021.

32 | European Commission: Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood. (Brussels, 7.12.2022 (COM(2022) 695 final).

33 | For follow-up information on the proposal please see Procedure 2022/0402/CNS.

34 | 'As long as [this] government is at the helm in Poland, this document will never come into force', he said, adding that it could open the way to further regulations of family law, such as recognition of same-sex marriages or the idea there are 'dozens of genders.' Sowry, 2022.

35 | The Polish Constitution – just like the Fundamental Law of Hungary – *expressis verbis* stipulates that marriage is the union between man and woman. Furthermore, the Polish legal system does not grant homosexual couples the right to enter into a registered partnership. See Andrzejewski, 2021, pp. 162, 175–176. For a Central East European comparison please see Barzó, 2021, pp. 287–322.

36 | See on the website of the European Parliament.

37 | See European Parliament (2019–2024) Verbatim Report of Proceedings (15. 3. 2023).

38 | Non-attached Member (Fidesz-Magyar Polgári Szövetség-Kereszténydemokrata Néppárt).

39 | European Parliament (2019–2024) Verbatim Report of Proceedings (15. 3. 2023.), p. 213.

Our position, which is based on the provisions of the Fundamental Law of Hungary, is legally and ideologically clear. The mother is a woman, the father is a man, and the concept of family is a national competence. Please respect this!<sup>40</sup>

The Italian and French parliaments submitted a reasoned opinion under the Early Warning System<sup>41</sup> aimed at scrutinising the prevalence of the principles of subsidiarity and proportionality by the national parliaments. Both Parliament's upper houses, namely the '*Senato della Repubblica*' of the Italian Parliament (Parlamento italiano) and the '*Sénat*' of the French Parliament (*Parlement français*) stated that the proposed legislation does not comply with the principle of subsidiarity.<sup>42</sup> The senate of the Dutch Parliament (*Eerste Kamer der Staten-Generaal*) initiated political dialogue to inquire about the number of cases where the recognition of parental responsibility and rights of access, succession rights, and name met legal obstacles and to see if there were any alternative solutions to these problems that do not require the initiation of EU legislation.<sup>43</sup> In the meantime, some Member States' courts already 'surrendered' following the Coman-judgment. The Bulgarian Supreme Administrative Court (*Varhoven Administrativen Sad*) ruled that the Australian member of a same-sex couple of French and Australian origin qualifies as a spouse within the meaning of Directive 2004/38/EC in order to comply with the country's obligations under EU law.<sup>44</sup> The Polish Supreme Administrative Court (*Naczelny Sąd Administracyjny*, NSA), in its decision dated 2 December 2019,<sup>45</sup> ruled in line with the principle of functional recognition that was made part of the CJEU's case law by the Coman-case,<sup>46</sup> in a case concerning the registration in Poland of the birth certificates of two foreigners who were parents of a same-sex couple.<sup>47</sup> Although the decision bound the Polish administration, some authors doubt whether similar applications will be dealt as smoothly in practice.<sup>48</sup>

40 | The author's own translation.

41 | Art. 6 of the Protocol No. 2 of the TFEU on the application of the principles of subsidiarity and proportionality.

42 | Parlamento italiano, risoluzione della 4<sup>a</sup> commissione permanente (politiche dell'unione europea) doc. xviii-bis n. 2; Parlement français, N° 84 sénat session ordinaire de 2022–2023 (22 mars 2023).

43 | Vragen over voorstel voor een verordening betreffende wederzijdse erkenning van afstamming (COM(2022)695) 24 maart 2023 (172946.01U).

44 | Associated Press, 2019.

45 | NSA, II OPS 1/19 (2019/12/02).

46 | *Ibid.*, para. 10.

47 | The NSA concluded that the refusal to register a birth certificate in Poland on public policy grounds does not prevent authorities from registering the child's *Powszechny Elektroniczny System Ewidencji Ludności* (PESEL) number directly based on the foreign document. PESEL functions as an electronic identity number and is used to issue identity cards, passports, and other official documents. See Kruger, 2020.

48 | Wysocka-Bar, 2020.

## 2. A brief introduction of the ECtHR and CJEU case laws vis-à-vis the Coman case

### 2.1. A brief introduction of ECtHR and CJEU case laws

To understand the logic of the judgments delivered in the Coman- and Pancharevo-cases, it is worth summarising the ECtHR's and CJEU's case law. The ECtHR case-law – which is richer than those of the CJEU – is relevant because, according to Article 6(3) of the Treaty on European Union (TEU):<sup>49</sup> 'Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.' Accordingly, Advocate Generals Wathelet and Kokott in the Coman- and Pancharevo-cases also referred to the ECtHR's case-law. The author of this paper summarises the substance of the cases cited by the Advocate Generals.

In the 2017 *Orlandi v. Italy*<sup>50</sup> – in line with *Schalk and Kopf v. Austria*<sup>51</sup> – the ECtHR held that the relationship of same-sex couples living together as stable, de facto partners falls not only within the scope of private life, but also within the scope of family life<sup>52</sup> within the meaning of Article 8 of the European Convention on Human Rights (ECHR).<sup>53</sup> According to *K. and T. v Finland*,<sup>54</sup> the existence of family life is a question of fact. The Court argued as follows: '[...] the existence or non-existence of "family life" is essentially a question of fact depending upon the real existence in practice of close personal ties'.<sup>55</sup> The ECtHR arrived at a similar finding in *Eriksson v. Sweden*.<sup>56</sup> In the *Oliari* case,<sup>57</sup> the ECtHR deduced from Article 8 of ECHR that State Parties to the Convention are obliged to grant legal recognition to same-sex couples, as their relationship falls under the right to family life.<sup>58</sup> The ECtHR confirmed its position in *Taddeucci and McCall v. Italy*<sup>59</sup> a year later.

Under the case law of the ECtHR, State Parties to the Convention are obliged to legally recognise same-sex couples. However, as explained in this paragraph, the decision as to how to do so – that is, whether to introduce same-sex marriage or not – is a matter for the discretion of the State, having considered that – based on the well-established case law of the ECtHR<sup>60</sup> – it is for the national legislature to assess and respond to the needs of the

49 | Consolidated version of the Treaty on European Union (OJ C 326, 26. 10. 2012, pp. 13–390).

50 | ECtHR case *Orlandi v. Italy*, No. 26431/12; No. 26742/12; No. 44057/12 and No. 60088/12, Judgment, 14. 12. 2017.

51 | ECtHR case *Schalk and Kopf v. Austria*, No. 30141/04, Judgment, 24. 6. 2010, para. 94.

52 | ECtHR case *Orlandi v. Italy*, para. 143.

53 | Convention for the Protection of Human Rights and Fundamental Freedoms (European Treaty Series – No. 5, Rome, 4 November 1950).

54 | ECtHR case *K. and T. v Finland*, Judgment, 12. 7. 2001.

55 | *Ibid.*, paras. 150–151.

56 | ECtHR case *Eriksson v. Sweden*, No. 60437/08, Judgment, 12. 4. 2012, para. 58.

57 | ECtHR case *Oliari and others v. Italy*, No. 18766/11 and No. 36030/11, Judgment 21. 7. 2015.

58 | *Ibid.*, para. 165.

59 | ECtHR case *Taddeucci and McCall v. Italy*, Judgment, 30. 6. 2016, paras. 83–95, 98–99.

60 | See among others: *Oliari*-case, para. 191; *X and Other v. Austria*, No. 19010/07, 19. 2. 2013, para. 86. and the cases cited there.



State's society in the most appropriate manner.<sup>61</sup> In the *Schalk and Kopf* case, the Court was not convinced by the argument of the complainants that the institution of marriage had undergone significant changes since the adoption of the Convention. As the Court noted, there was no consensus at the European level on the right of same-sex couples to marry. Only 6 of the 47 Member States of the Council of Europe guaranteed the right to marry for same-sex couples at the time of deliberating the case.<sup>62</sup> The ECtHR noted that it is clear from a historical interpretation that, when the Convention was drafted, the concept of marriage clearly meant the union of two persons of opposite sexes. No other interpretation had been considered. The grammatical interpretation also supports these findings: it is not accidental that, while other articles use the neutral terms 'everyone' and 'no none', Article 12 of the ECHR<sup>63</sup> refers *expressis verbis* to the sex of the beneficiaries of the right to marry. Consequently, Article 12 cannot be interpreted as creating any obligation for the State to recognise same-sex marriages.<sup>64</sup> In the *Gas and Dubois* judgment,<sup>65</sup> the majority held that there was no discrimination contrary to Article 14 of the ECHR, given that the applicants were not in a comparable situation to married couples, since '[...] marriage confers a special status on those who enter into it.'<sup>66</sup> As Judge *Sicilianos* wrote in his partly dissenting opinion in the *Taddeucci*-case, if the majority position in the said case is upheld in this respect, that is, the invocation of a breach of Article 14 in such cases would be accepted by the Court, it would render the special protection null and void.<sup>67</sup> Summarizing the above two paragraphs, while CoE Member States are obliged to grant legal recognition to same-sex couples, the choice of the method of legal recognition is left to the discretion of the State; it does not follow from the Convention that the State is obliged to guarantee same-sex couples the right to marry.<sup>68</sup>

Finally, some of the ECtHR's jurisprudence on surrogacy deserves to be highlighted, as they are relevant to the topic at hand. The ECtHR in its first Advisory Opinion – a type of procedure introduced into the European human rights mechanism by Additional Protocol No. 16 to the Convention<sup>69</sup> –, in Case No. P16-2018-001<sup>70</sup> at the request of the Court of Cassation (*Cour de Cassation*) examined how the French legislation 'adapted' following

61 | See de Groot, 2021.

62 | ECtHR case, *Schalk and Kopf*, para. 58.

63 | Art. 12 of the ECHR: 'Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.'

64 | ECtHR case, *Schalk és Kopf*, Judgment, paras. 55, 63.

65 | ECtHR case *Gas and Dubois v. France*, No. 25951/07, Judgment, 15. 3. 2012.

66 | *Ibid.*, para. 68.

67 | It should be recalled at this point, however, that *Sicilianos* himself notes that the ECtHR should consider reviewing its jurisprudence in the light of recent changes in the way in which same-sex couples are perceived and their legal position. ECtHR, *Taddeucci and McCall v. Italy*, partially dissenting opinion of Judge Linos-Alexandre *Sicilianos*, paras. 13, 18–19.

68 | An exception to this is the case of transsexual persons: according to the ECtHR judgment in *Christine Goodwin v. United Kingdom*, the state has an obligation to guarantee the right to marry persons who have undergone sex reassignment surgery and are legally recognised as the opposite sex to their birth sex, if they wish to marry a person of the opposite sex to their new acquired sex. ECtHR case *Christine Goodwin v. United Kingdom*, Judgment, 11. 7. 2002, paras. 97–104.

69 | Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 214).

70 | ECtHR, Press Release, No. 132/2019, 10. 4. 2019.



*Mennesson v. France*.<sup>71</sup> In its advisory opinion, the ECtHR concluded that, under Article 8 ECHR, a State Party to the Convention must grant domestic legal recognition to a legally recognised parent-child relationship established abroad based on a surrogacy agreement between the child and the prospective mother. This does not mean that the State is obliged to register the 'mother-to-be' as the mother in the national civil register based on the information contained in the birth certificate issued by the foreign authority. A State Party to the Convention has wide discretion *vis-à-vis* the form of such legal recognition, as long as the legal instrument granting recognition is properly and effectively functioning and coincides with the best interests of the child. The ECtHR referred *expressis verbis* to adoption as such a legal instrument.<sup>72</sup> In paragraph 47 of its advisory opinion, the ECtHR stressed<sup>73</sup> that, although in the main proceedings which gave rise to the advisory opinion, it was not the prospective mother's own *ovum* that was used for implantation, if such a scenario – that is to say the implantation of own ovum – comes into reality, the obligation of the State to provide for the possibility of recognition of the parent-child relationship will be even more pronounced.<sup>74</sup> Given that Bulgaria has not ratified the Additional Protocol,<sup>75</sup> it is not bound by the Advisory Opinion. However, in two judgments following the Advisory Opinion, in *C and E v. France*<sup>76</sup> and *D v. France*,<sup>77</sup> the ECtHR reiterated the findings of the Advisory Opinion, made them part of its case law, which was thus binding on Bulgaria.<sup>78</sup>

Following an overview of ECtHR case law, it is worth reviewing some of the CJEU cases relevant to the Pancharevo-case. Having regarded that the European Union does not have the competence to regulate family law relationships in a binding way, there are no decisions of the CJEU that have directly addressed the issue of family relations. However, it has indirectly touched upon the question of the recognition of family relationships. On the one hand, from the direction of the right to free movement of workers, as in the 1992 *Singh-case*.<sup>79</sup> In the said judgment the CJEU held – in line with the Advocate General's opinion<sup>80</sup> – that where a Member State does not guarantee the same rights of residence to the spouse and children of a worker, it constitutes a serious obstacle to the free movement of labour. On the other hand, Advocate General Niilo Jääskinen in the CJEU's *Römer-case*<sup>81</sup> approached the issue from the perspective of non-discrimination. The Advocate General stressed that

[...] it seems to me to go without saying that the aim of protecting marriage or the family cannot legitimise discrimination on grounds of sexual orientation. It is difficult to imagine what causal relationship could unite that type of discrimination, as grounds, and the protection of marriage, as a positive effect that could derive from it.<sup>82</sup>

71 | ECtHR case *Mennesson v. France*, No. 65192/11, Judgment, 26. 6. 2014.

72 | ECtHR, P16-2018-001, Advisory Opinion, 10. 4. 2019, paras. 46, 53, 55.

73 | *Ibid.*, para. 47.

74 | The Court had the opportunity to rule on such a case a year later.

75 | Chart of signatures and ratifications of Treaty 214 (Status as of 29. 1. 2023).

76 | ECtHR case *C. and E. v. France*, No. 1462/18 and No. 17348/18, Judgment, 19. 11. 2019.

77 | ECtHR case *D. v. France*, No. 11288/18, Judgment, 16. 7. 2020.

78 | de Groot, 2021, pp. 5–6.

79 | CJEU case C-370/90. *Singh*, Judgment 7. 7. 1992.

80 | CJEU case C-370/90. *Singh*, Opinion of Advocate General Giuseppe Tesaurò, 20. 5. 1992, paras. 5, 7, 9, 10–12, 14.

81 | CJEU case C-147/08, *Römer*, Opinion of Advocate General Niilo Jääskinen, 15. 7. 2010.

82 | *Ibid.*, para. 175.

Another observation made by Advocate General Jääskinen in this case was that marriage and its constitutional protection cannot be invoked as a basis for unequal treatment, because, especially as it comes from Germany's Federal Constitutional Court's (*Bundesverfassungsgericht, BVerfG*)<sup>83</sup> case law – in which the Court consistently held and ruled-out the initially existing differences as unconstitutional – registered partnerships had the same legal effect as marriage.<sup>84</sup>

It is worth emphasizing here that the decisions of the CJEU vis-à-vis family life, referred to in the above paragraph, were not taken in the context of the rights of same-sex couples, but were intended to uphold the right of workers – later referred to as persons – to freedom of movement. Although the CJEU's statements in the above cases, namely that family members have the right to live as a family in another Member State may at first sight appear as a convincing foundation for the CJEU's novel case law, namely the Coman- and Pancharevo-cases, one should remember that the *Singh* case, for example was related to a so-called 'traditional' family, that is, a family formed by opposite-sex spouses.

The principle of effectiveness, which was analysed in the *Impact*<sup>85</sup> and *Dansk Industri*<sup>86</sup> cases of the CJEU, argue in favour of implementing the provisions of Directive 2004/38. According to this principle, the national court must interpret domestic law in such a way as to ensure that EU law is enforced, while taking into account all possible solutions. However, the CJEU has articulated, *inter alia*, in the *Impact* and *Dansk Industri* cases, that the limitation of the principle of effectiveness is the prohibition of *contra legem* application. That is, the principle of effectiveness cannot lead to an interpretation that contradicts national legislation, including the breach of the non-retroactivity rule.<sup>87</sup>

In the *Erzberger*-case<sup>88</sup> the CJEU aligned with the opinion of Advocate General *Henrik Saugmandsgaard Øe*<sup>89</sup> and noted that

[...] in the absence of harmonisation or coordination measures at Union level in the field concerned, the Member States remain, in principle, free to set the criteria for defining the scope of application of their legislation, to the extent that those criteria are objective and non-discriminatory.<sup>90</sup>

In a non-harmonised area, any legislation of the host Member State which would be less favourable than the legislation of the EU citizen's Member State of origin cannot be interpreted as an obstacle to free movement. According to the Advocate General:

83 | See particularly: BVerfG, Urteil des Ersten Senats vom 19.2.2013 – 1BvL1/11 –, Rn. 1-110; BVerfG, Beschluss des Ersten Senats vom 07. Juli 2009 – 1 BvR 1164/07 –, Rn. 1-127.

84 | As Michael Grünberger wrote, the two institutions were 'different but equal.' See Grünberger, 2010, pp. 203–208.

85 | CJEU case C-268/06. *Impact*, Opinion of Advocate General Juliane Kokott, 13. 11. 2007, para. 183; CJEU case C-268/06. *Impact*, Judgment, 15. 4. 2008, paras. 51–66.

86 | CJEU case C-441/14. *Dansk Industri (DI)*, Opinion of Advocate General Yves Bot, 25. 11. 2015, para. 43; CJEU case C-441/14. *Dansk Industri (DI)*, Judgment, 19. 4. 2016, paras. 30–32.

87 | In this regard – among others – see the Opinion of Advocate General Kokott in the *Impact*-case (para. 143) and the *Dansk Industri* Judgment (para. 32).

88 | CJEU case C566/15, *Konrad Erzberger v. TUI AG*, Judgment, 18. 7. 2017.

89 | CJEU case C566/15, *Konrad Erzberger v. TUI AG*, Opinion of Advocate General Henrik Saugmandsgaard Øe, 4. 5. 2017, paras. 75–78.

90 | CJEU case *Konrad Erzberger*, Judgment, para. 36.

Article 45 TFEU does not grant that worker the right to “export” the conditions of employment which he enjoys in his Member State of origin to another Member State [...] the migrant worker must take the national employment market as he finds it.<sup>91</sup>

This aligns with the practice of the German Federal Labour Court (*Bundesarbeitsgericht*),<sup>92</sup> cited by the Advocate General, and with the preparatory documents of the German law in question,<sup>93</sup> according to which ‘the German social order may not extend to the territory of other States.’<sup>94</sup> Advocate General Saugmandsgaard Øe reiterated the above train of thought in his Opinion<sup>95</sup> in the Eurothermen case a year later, which was accepted by the CJEU.<sup>96</sup> Although the above cases dealt with issues concerning Article 45 of the TFEU, that is, the freedom of employment, they can be applied by analogy to the Pancharevo-case, given that the ‘mother right’ of free movement of persons is the free movement of workers.<sup>97</sup>

## 2.2. A brief introduction to the Coman case

In the Coman-case, the question was whether

[...] the term “spouse” in Article 2(2)(a) of Directive 2004/38, read in light of Articles 7, 9, 21, and 45 of the Charter, includes a same-sex spouse, from a non-EU-Member State, of a citizen of the EU to whom that citizen is lawfully married in accordance with the law of a Member State other than the host Member State.<sup>98</sup>

The Advocate General’s opinion rested on two pillars, namely the interpretation of the concept of spouse in EU law and the importance of uniform interpretation of EU law.

As for the interpretation of the term ‘spouse’, Advocate General Wathelet rejected the position of the Romanian, Latvian, Hungarian, and Polish governments that the concept should be defined based on the law of the host State. The starting point of the Advocate General’s argument – in line with the opinion of the plaintiff of the domestic case, the government of the Netherlands and the European Commission –, was that the concept of spouse was a *sui generis* EU concept, as Directive 2004/38/EC, unlike registered partnerships, made no reference to the law of the Member States vis-à-vis marriage. As the Advocate General stated, it follows from the need for the uniform application of EU law and the principle of equality – as established in the CJEU’s case law<sup>99</sup> – that terms contained under EU law that do not make any express reference to the laws of the Member States as to their meaning and content must, as a general rule, be interpreted independently and uniformly

91 | CJEU case Konrad Erzberger, k. TUI AG, Opinion, para. 75.

92 | See the case-law cited in endnotes Nos. 7 and 9 of the Advocate General’s Opinion.

93 | Ausschuss für Arbeit und Sozialordnung des Bundestages, No. BTDrucksache 7/4845, p. 4.

94 | CJEU case Konrad Erzberger, Opinion, para. 18.

95 | CJEU case C-437/17, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach GmbH*, Opinion of Advocate General Henrik Saugmandsgaard Øe, 25. 7. 2018, paras. 51, 58.

96 | CJEU case C-437/17, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach GmbH*, Judgment, 13. 3. 2019, para. 37.

97 | For the most important CJEU in this regard see Gellénné, 2020, pp. 61–73.

98 | CJEU case Coman, Judgment, para. 17.

99 | The Advocate General referred to para. 28 of the CJEU judgment of 18. 10. 2016 in Case C-135/15 *Nikiforidis* and the case law cited therein.

throughout the EU.<sup>100</sup> The Advocate General recalled that the Directive refers to a spouse, that is, the choice of terminology does not determine the sex of the spouses. This is the result of a deliberate legislative intention,<sup>101</sup> as the Council did not support the European Parliament's proposal to define the concept of spouse in a manner that would expressly apply to same-sex spouses, given that only two Member States legislated to allow same-sex marriages at the time.<sup>102</sup> At this point, it is worth taking a digression towards a 2018 decision of the German Federal Supreme Court (*Bundesgerichtshof*, BGH),<sup>103</sup> the Council of Judges pointed out that it is clear from the wording of the preparatory documents<sup>104</sup> of the law in question that the legislator did not forget to regulate the issue, but rather deliberately did not extend the regulations to cover same-sex couples. The BGH pointed out that the law provides for the possibility for married same-sex couples to adopt stepchildren. Thus – in its view – the right to family life was not violated.<sup>105</sup> Returning to the Advocate General's opinion in the Coman-case, an examination of the legislative intent revealed that the Commission did not intend the concept of spouse to be definitively fixed and completely separated from the evolution of society.<sup>106</sup> The Advocate General added that the definition of the term 'spouse' that would be limited to the marriage of persons of different sexes would inevitably lead to discrimination on the grounds of sexual orientation, as a consequence of the preambular paragraph 31 of Directive 2004/38/EC.<sup>107</sup> In the case, the CJEU adopted the Advocate General's suggestions,<sup>108</sup> and ruled according to them, but went further by referring to the ECtHR's decision in the *Orlandi*-case to establish that the relationship of homosexual couples also falls within the ambit of family life.<sup>109</sup>

The other pillar of the Advocate General's opinion in the Coman-case concerned the application of the principle of 'portability of personal status' – as developed in the literature<sup>110</sup> – to Directive 2004/38/EC.<sup>111</sup> The Advocate General referred to a study by

100 | CJEU case Coman, Opinion, paras. 31, 33, 50.

101 | In this respect, see the endnotes Nos. 26–28 of the Advocate General's Opinion and the documents cited therein.

102 | CJEU case Coman, Opinion, paras. 32, 49, 51.

103 | BGH, Docket No. XII ZB 231/18.

104 | Deutscher Bundestag, Gesetzentwurf (19. Wahlperiode) 12. 6. 2018 (Drucksache 19/2665).

105 | Library of Congress (2018).

106 | European Commission, COM (2003) 199.

107 | CJEU case Coman, Opinion, para. 75.

108 | CJEU case Coman, Judgment, paras. 51, 56.

109 | CJEU case Coman, Judgment, para. 50.

110 | The principle is mainly used in the literature in the context of migration and articulates the need for family ties established in one country to be recognised in another. The principle is limited by the public policy of the host state: the host state is not obliged to recognise child marriages or polygamy. The principle also obliges the State to recognise the right of transsexual persons to marry a person of the opposite sex of their new sex. The latter was also articulated by the ECtHR in the case of *Christine Goodwin v. United Kingdom*. See Den Haese, 2021.

111 | As a counter-argument to the application of this principle, it is worth considering the *Erzberger* case, in which the CJEU took the view that in a non-harmonised area, any legislation from the host Member State of an EU citizen that would be less favourable than that of his/her Member State of origin cannot be interpreted as an obstacle to free movement.

Silvia Pfeiff,<sup>112</sup> and the principle elaborated there, as he believed that the application of the principle avoided the infringement of national identity under TEU 4(2). A potential infringement would result from a Member State being forced to change its 'traditional concept of the family' as enshrined in constitutional and legal rules to fulfil its obligations under EU law.<sup>113</sup> The questions raised by the referring court fall exclusively within the ambit of the application of Directive 2004/38. It is thus merely a question of clarifying the scope of the obligation arising from EU legislation. An interpretation of the concept of 'spouse' limited to the scope of application of Directive 2004/38 on the right of citizens of the EU and their family members to move and reside freely within the territory of the Member States does not call into question the margin of appreciation by the Member States to legalise same-sex marriages<sup>114</sup> and therefore does not infringe its national identity.

While the part of the Advocate General's argument concerning the uniform interpretation of the concepts of EU law is sufficiently supported by the case law of the CJEU, the applicability of the principle of the portability of personal status to the present issue is rather weak.<sup>115</sup> First, at the time of writing these lines<sup>116</sup> only three States that had ratified<sup>117</sup> the Convention<sup>118</sup> adopted by the Hague Conference on Private International Law (HCCH) in 1978 undertook to accept as valid a marriage contracted in another State party if it met the requirements of the Convention. Second, the Convention, in line with the social attitudes at the time of its adoption, was silent on same-sex marriages. Third, as explained above, the State Parties to the ECHR were not obliged to ensure the portability of personal status by recognising same-sex marriages. In the ECtHR's decision in the Oliari-case, it was held that they were obliged to provide legal protection at least by recognising their marriage concluded abroad as a registered partnership. Fourth, Regulation 2016/1191/EU, which obliges Member States to accept official documents issued by another Member State as valid without any further formality, does not create an obligation to recognise rights not recognised by their national law. It was not applicable<sup>119</sup> when the Coman-case was decided. Last, but not least, it is worth reiterating the findings of the CJEU in the Erzberger-case and the Opinion of Advocate General Saugmandsgaard Øe,<sup>120</sup> namely that, in a non-harmonised area, any legislation of the host Member State of an EU citizen that is less favourable than that of his Member State

112 | Pfeiff argued that: 'the main argument against recognition of the homosexual marriage relates to the desire to protect traditional marriage. However, recognition of the foreign homosexual marriage does not directly undermine traditional marriage in the forum State. It does not prevent heterosexual couples from marrying. Nor does it allow couples of the same sex to marry in the host State. The effect of recognition of the foreign homosexual marriage is therefore confined to the couples concerned and does not undermine the superstructure' Pfeiff, 2017, p. 718. Cited by Advocate General Wathelet in endnote No. 21. of his opinion. (Emphasis added by the advocate general.)

113 | CJEU case Coman, Opinion, para. 41; CJEU case Coman, Judgment, paras. 45–46.

114 | See especially the Schalk and Kopf case of the ECtHR.

115 | See Den Haese, 2021.

116 | 26 March 2023.

117 | See Status Table of Convention of 14. 3. 1978 on Celebration and Recognition of the Validity of Marriages.

118 | 26: Convention of 14. 3. 1978 on Celebration and Recognition of the Validity of Marriages (Entry into force: 1. 5. 1991.)

119 | The Regulation – as a general rule – applicable only from 16. 2. 2019, pursuant to Art. 27(2).

120 | CJEU case Konrad Erzberger, Opinion, paras. 75–78.

of origin cannot be interpreted as an obstacle to free movement, are worth reiterating.<sup>121</sup> Advocate General Saugmandsgaard Øe, in his Opinion in the Eurothermen-case a year later, reiterated the above line of reasoning,<sup>122</sup> which was also accepted by the CJEU in that case.<sup>123</sup>

### 3. The Pancharevo-case

Summarising the statement of facts<sup>124</sup> of the Pancharevo-case, the plaintiff in the domestic proceedings was a woman of Bulgarian nationality. She and her spouse – a UK citizen – had been living in Spain since 2015. They got married in Gibraltar in 2018. Their daughter was born in Spain in 2019. The birth certificate issued by the Spanish authorities identified the parties as the mothers of the child. On 29 January 2020, the plaintiff applied to the competent Bulgarian authority (*Stolichna obshtina*) for a birth certificate for her daughter, which was necessary for the issuance of her Bulgarian identity document. In support of this request, she attached a certified Bulgarian translation of the birth certificate issued by the Spanish authorities. In its written reply, the authority requested the plaintiff to prove the origin of the child by naming the biological mother, that is, the woman who gave birth to the child under a Bulgarian legal provision, which is considered by the literature to be somewhat outdated,<sup>125</sup> as under the national law in force, the birth certificate reserves one heading for ‘mother’ and another for ‘father’. The applicant refused to provide this information on the grounds that she could not provide it and she was not obliged to do so under Bulgarian law anyway. Following the reply, the authority refused to issue the birth certificate in its decision. The authority – after receiving the reply – refused to issue the birth certificate in its decision. The reasons given for the refusal were that (i) there was no information available on the biological mother of the child; and (ii) the inclusion of two female parents on the birth certificate was contrary to public policy in Bulgaria, as the country’s law did not allow same-sex marriage. The plaintiff in the main proceedings brought an action against the decision refusing the application before the Sofia Administrative Court (*Administrativen sad Sofia-grad*), which referred the question to the CJEU. The referring court explained that under Article 25(1) of the Bulgarian Constitution (*Konstitutsia na Republika Balgaria*) and Article 8 of the Bulgarian Law on Bulgarian Citizenship (*Zakon za balgarskoto grazhdanstvo*), a child is a Bulgarian citizen even if he/she does not have a Bulgarian birth certificate, as a child whose ancestor is a Bulgarian citizen is considered a Bulgarian citizen. However, the absence of a Bulgarian birth certificate may constitute a serious administrative obstacle to the issuance of Bulgarian identity documents and may consequently make it difficult for the child to exercise his/her right to free movement and thus the full rights of EU citizens. In essence, the referring

121 | CJEU case Konrad Erzberger, Judgment, paras. 34–36.

122 | CJEU case Eurothermen, Opinion, para. 51.

123 | CJEU case Eurothermen, Judgment, para. 37.

124 | CJEU case Pancharevo, Opinion, paras. 16–27.

125 | The criticism is based on the fact that the principle of *mater semper certa est* – that is, the identity of the mother is always certain – is no longer upheld in an era where artificial reproduction is available; if the egg is not from the woman who bears and gives birth to the child, the biological mother is the woman who donated the egg. See de Groot, 2021, p. 3.



court asks whether the refusal to issue a birth certificate infringed the rights conferred on that Bulgarian national by Articles 20 and 21 of the TFEU and Articles 7, 24, and 45 of the Charter. Another question before the referring court was whether the registration of two mothers as parents on the birth certificate to comply with the abovementioned EU provisions would breach the national identity of Bulgaria, given that this is not possible under Bulgarian law. The referring court noted that the Bulgarian constitutional tradition protected the traditional concept of the family. The referring court thus asked whether it is necessary to strike a balance between, on the one hand, the national identity of the Republic of Bulgaria and, on the other hand, the right of the child to private life and freedom of movement. In essence, the question was whether a solution such as indicating one of the two mothers on the Spanish birth certificate, who is either the biological mother of the child or has become the mother by other means, such as adoption, in the box headed 'mother', while leaving the box headed 'father' blank, was an acceptable balance between the legitimate interests that were in conflict. Although the CJEU did not refer to the *Dansk Industri* case in its *Pancharevo* judgment, it is noteworthy in this respect, as the national court must interpret domestic laws in such a way that all possible solutions are taken into account to give effect to EU law, provided that they do not lead to *contra legem* application.<sup>126</sup> The proposal put forward by the referring court in the *Pancharevo*-case, namely the registration of one mother, would have been such a solution. The referring court asked in the *Pancharevo*-case if the CJEU were to find that EU law requires the registration of two mothers of a child on the Bulgarian birth certificate, how this requirement could be implemented in a way that takes into account the national rules in force on birth certificates and respects the national identity at the same time.<sup>127</sup> As a preliminary point, it is worth noting that a significant difference between the interpretation of the Advocate General and that of the CJEU is that the Advocate General also took into account the possibility that the child is not a Bulgarian citizen and therefore not a citizen of the EU, as claimed by the Bulgarian Government,<sup>128</sup> and thus derived the primacy of EU law from two different starting points. The CJEU, on the other hand, taking the interpretation of the referring court's position as given, proceeded on the basis that the child is a Bulgarian national and therefore a citizen of the Union.<sup>129</sup> As the Court did not deal with it in detail, the part of the Advocate General's opinion in which he assumed that the child was not a Bulgarian citizen was considered sufficient to be only outlined by the author. The Advocate General's argument<sup>130</sup> was based on the fact that although Member States are free under international and EU law to decide the conditions under which to grant citizenship to a person and are also free to invoke national identity as a justification in that regard, Member States must, in the exercise of such power, respect EU law insofar as the exercise of that power affects the rights

126 | CJEU case C-441/14, *Dansk Industri (DI)*, Judgment, 19. 4. 2016, paras. 30–32.

127 | CJEU case *Pancharevo*, Opinion, para. 28.

128 | 'However, since, under Art. 60(2) of the Family Code, the mother of the child is 'the woman who gave birth to that child' ('the biological mother') and it is precisely that information that is lacking in the dispute in the main proceedings, the Bulgarian Government disputed, at the hearing, the referring court's claim that it is established that the child is a Bulgarian national. In other words, Bulgaria does not recognise the parent-child relationship between the applicant in the main proceedings and the child and, therefore, that that child has Bulgarian nationality, on the sole basis of the presentation of the Spanish birth certificate.' CJEU case *Pancharevo*, Opinion, para. 33.

129 | CJEU case *Pancharevo*, Judgment, paras. 39–40.

130 | CJEU case *Pancharevo*, Opinion, paras. 133–134.



guaranteed and protected by the EU legal order. Consequently, the invocation of national identity is not appropriate in a case where the recognition of a family tie established in the Spanish birth certificate prevents the applicant, as an EU citizen, from exercising the rights guaranteed to him by secondary EU law on the free movement of citizens, such as Directive 2004/38 and Regulation No. 492/2011.<sup>131</sup>

In the second part of the Advocate General's reasoning, he analysed the case where the child is a Bulgarian citizen and consequently an EU citizen. As the case file showed, the Bulgarian authorities were willing to issue a birth certificate that would only identify the applicant in the main proceedings as the mother, based on which an identity document could then be issued for her daughter. The Bulgarian Government recalled that, although requested by the authorities in the main proceedings, recognition as the mother is not a condition to prove biological descent. The plaintiff in the main proceedings may have made this declaration at any time.<sup>132</sup> This solution would have undoubtedly brought the case to a swift conclusion and would also have been in line with the judgment of the CJEU in the *Dansk Industri* case, given that in this case the national court would have interpreted the national legislation in such a way as to give effect to EU law, while considering all possible solutions, without leading to *contra legem* interpretation. However, the applicant in the main proceedings did not accept this, as it would mean that the family relationship that actually existed between his spouse and the child<sup>133</sup> – and that was formally recognised by the Spanish birth certificate – would have been extinguished under Bulgarian law.<sup>134</sup> This would have affected the family life that was effectively established in Spain, adversely.<sup>135</sup> Based on the well-established case-law of the CJEU,<sup>136</sup> the establishment and solid existence of family life implies that the family members concerned may continue that family life upon their return to their Member State of origin. In contrast, as Advocate General Kokott pointed out in paragraph 62 of the Opinion:

The status of family member forms the basis of numerous rights and obligations arising from both EU and national law. To name just a few examples, from the uncertainties surrounding the child's right of residence in Bulgaria, to obstacles relating to custody and social security, that refusal would also have consequences in matrimonial and inheritance matters. In those circumstances, there is no doubt that the failure to recognise the family relationships established in Spain could deter the applicant in the main proceedings from returning to her Member State of origin.<sup>137</sup>

131 | Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5. 4. 2011 on the freedom of movement for workers within the Union Text with EEA relevance (OJ L 141, 27. 5. 2011, pp. 1–12).

132 | CJEU case *Pancharevo*, Opinion, paras. 34, 138.

133 | Based on the well-established case law of the ECtHR: '[...] the existence or non-existence of "family life" is essentially a question of fact depending upon the real existence in practice of close personal ties [...] the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life [...]' See ECtHR case *K. and T. v. Finland*, paras. 150–151.

134 | CJEU case *Pancharevo*, Opinion, para. 113.

135 | Which, according to the ECtHR *Shavdarov* and *Mennesson* judgments, means that the persons concerned can '[...] live there together in conditions broadly comparable to those of other families [...]' ECtHR case *Mennesson*, para. 92; *EJEB, Shavdarov v. Bulgaria*, No. 3465/03, Judgment, 21. 12. 2010, para. 40.

136 | See CJEU case *C-370/90, Singh*, Judgment, 7. 7. 1992, paras. 21–25.

137 | CJEU case *Pancharevo*, Opinion, para. 62.

The Advocate General examined whether the obligation under EU law infringed on the national identity of the country and stated that

As regards [...] the refusal to also recognise the British mother as a parent for the purpose of drawing up a Bulgarian birth certificate, it follows from the considerations set out in the previous section that reliance on national identity in accordance with Article 4(2) TEU may justify that refusal. [...] By contrast, as regards [...] the refusal to recognise parentage for the purpose of issuing an identity document in accordance with Article 4(3) of Directive 2004/38, [...] does not appear to have the same legal effects as a birth certificate including that information. An identity document does not have probative function as regards the parentage of a person.<sup>138</sup>

From all this, the Advocate General concluded that

[...] the entry of the two parents mentioned on the Spanish birth certificate on such a document is not in any way capable of altering the concepts of parent-child relationships or parenthood in Bulgarian law. The only obligations created for the Republic of Bulgaria in that regard relate to the safeguarding of the rights which that child derives from EU law, in particular Directive 2004/38, which lays down, in Article 4(3) thereof, the obligation to issue an identity document to every citizen.<sup>139</sup>

Advocate General Kokott adopted the principle of functional recognition from the Opinion of Advocate General Wathelet in the Coman-case, as did the CJEU. However, the CJEU, unlike the Advocate General, took the child's nationality and status as an EU citizen as given. The CJEU's judgment relied more heavily on Article 21(1) of the TFEU and on the obligation under Article 4(3) of Directive 2004/38/EC to issue an identity card or passport to their nationals, when compared to the Advocate General's opinion. A Member State may not refuse to comply with its obligation on the ground that, under its national law, the issue of such documents is subject to the child being in possession of a birth certificate.<sup>140</sup> Another key element in the reasoning of the CJEU is the right to family life established by the applicant and her spouse, which was recognised by the Spanish authorities when they issued the birth certificate on which both spouses were listed as mothers of the child. The Bulgarian authorities are obliged to recognise this family relationship to allow the child to exercise, together with both parents, the right to move and reside freely within the territory of the Member States under Article 21(1) of the TFEU.<sup>141</sup> Just like the Advocate General's opinion, the CJEU takes into account the provisions of the Founding Treaties and the ECHR, and the relevant CJEU and ECtHR case law, according to which Member States enjoy freedom on whether and how they regulate same-sex marriage and parenthood in their national law. However, while exercising that power, each Member State must respect EU law, and the provisions of the freedom of movement and residence recognised for all EU citizens within the territory of the Member States, and to that end – as stated

138 | CJEU case Pancharevo, Opinion, paras. 149–150.

139 | CJEU case Pancharevo, Opinion, para. 150.

140 | CJEU case Pancharevo, Judgment, paras. 42–46.

141 | CJEU case Pancharevo, Judgment, paras. 48–49.

in the Coman-case – each Member State must recognise the personal status of persons established in another Member State in accordance with its laws.<sup>142</sup>

The CJEU considered whether Member States could rely on national identity under Article 4(2) of the TEU, whereby ‘[the European Union] shall respect [...] essential State functions, including ensuring the territorial integrity of the State, maintaining law and order [...]’. In this respect, the Court recalled that, according to its previous case-law:<sup>143</sup>

[...] the concept of public policy as justification for a derogation from a fundamental freedom must be interpreted strictly, with the result that its scope cannot be determined unilaterally by each Member State without any control by the EU institutions. It follows that public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society.<sup>144</sup>

However, in line with the Advocate General’s opinion<sup>145</sup> the Court stated that compliance with the obligation arising from the Union law in question does not entail

[...] an obligation [...] to provide, in its national law, for the parenthood of persons of the same sex, or to recognise, for purposes other than the exercise of the rights which that child derives from EU law, the parent-child relationship between that child and the persons mentioned on the birth certificate drawn up by the authorities of the host Member State as being the child’s parents.<sup>146</sup>

At this point, it is worth mentioning the findings of the CJEU which put the rights of the child at the forefront of the examination of the case. As stated in paragraph 65<sup>147</sup> of the judgment:

In those circumstances, it would be contrary to the fundamental rights which are guaranteed to the child under Articles 7 and 24 of the Charter for her to be deprived of the relationship with one of her parents when exercising her right to move and reside freely within the territory of the Member States or for her exercise of that right to be made impossible or excessively difficult in practice on the ground that her parents are of the same sex.<sup>148</sup>

Thus, the CJEU ruled that the Bulgarian authorities are obliged to issue the child’s birth certificate, which is a condition for the issuance of an identity document or passport

142 | CJEU, Pancharevo, Judgment, para. 52.

143 | CJEU, Coman, Judgment, para. 44; see also the C438/14, Bogendorff von Wolffersdorff, Judgment, 2 June 2016, para. 67.

144 | CJEU case Pancharevo, Judgment, para. 55.

145 | CJEU case Pancharevo, Opinion, paras. 150–151.

146 | CJEU case Pancharevo, Judgment, para. 57.

147 | See also, para. 59 of the judgment.

148 | As my colleague Márta Benyusz pointed out during a discussion of views in the topic, all these suggest that the Member State’s right to vindicate derogation from treaty provisions on the grounds of public policy is limited by the prevalence of the best interests of the child. See Benyusz, 2021, p. 149; this finding is emphatically confirmed in the CJEU press release. See Court of Justice of the European Union (Press Release No. 221/21).

under Bulgarian national law. A Member State may not rely on national law and national identity in this respect.<sup>149</sup>

## 4. Summarising thoughts and conclusions

In the Pancharevo- and Coman-cases, the CJEU, adopting the principle of functional recognition – based also on the principle of effectiveness – made part of its case law the applicability of the principle of the ‘portability of personal status’ to Directive 2004/38/EC, a principle adopted from the theory into the case law of the CJEU. According to the Opinion of Advocate General Whathelet in the Coman-case, the application of the principle avoids the possibility of a different interpretation of the rights deriving from Article 21(1) of the TFEU and from Directive 2004/38/EC in each Member State, without prejudice to the national identity of the Member State, as the Member State is not obliged to change the constitutional rules that form part of its national identity. The main question posed at the beginning of the study is whether, given the fact that EU law directly or indirectly affects national law in many areas, the application of a functional approach may not lead to a de facto change in national legislation even if this does not take place de jure. In other words, if a Member State is ultimately forced to give way to the primacy of EU law in several sub-areas on a functional basis, does it retain room for manoeuvre, even though its constitution remains otherwise unchanged?

To answer this, the author has examined the margin of appreciation that the Member States of the Council of Europe and EU enjoy based on the established case law of the ECtHR and the CJEU in the Pancharevo-case. Given that, under Article 6(3) of the TEU, the fundamental rights guaranteed by the ECHR form part of the EU’s legal order as a general principle, the CJEU regularly refers to the case law of the ECtHR. In the Coman- and Pancharevo-cases, for example, the CJEU reiterated, with reference to the ECtHR’s case law, that the decision on the right of same-sex couples to marry or have children is a matter for the discretion of the Member States under the ECHR and the case law of the ECtHR interpreting it. In EU law terms, it falls within the scope of the national identity of the Member State, which, according to Article 4(2) of the TEU, is ‘[...] inherent in their fundamental structures, political and constitutional [...]’.

As the ECtHR has stressed – *inter alia* in the Gas and Dubois case – ‘marriage confers a special status on those who enter into it’. In accordance with the judgment of the ECtHR delivered in Schalk and Kopf case, the State, acting within its discretion, is free to decide whether or not to confer the right to marry – and the special rights granted by this legal institution – on same-sex couples. As the ECtHR explained in the Schalk and Kopf case, the differences between the rights of marriage and those of registered partners, particularly in relation to having children, are in line with European developments. Articles 8 and 12 of the ECHR, which guarantee the ‘right to respect for private and family life’ and the ‘right to marry’ respectively, do not impose any obligation on State Parties in this regard. However, according to the judgments in the Orlandi and Schalk and Kopf cases, the relationship of same-sex couples living together as stable, de facto partners is protected by the rights to private life and to family life within the meaning of the case law interpreting

Article 8 of the ECHR. It follows from these findings of the ECtHR that the State Parties to the ECHR are obliged to grant legal recognition to same-sex couples as stated by the Court in the Oliari and Taddeucci-cases. The most widespread form of this, accepted by the Court in several cases, is the institution of registered partnerships, which Bulgaria does not currently guarantee in its national law,<sup>150</sup> thus failing to fulfil its obligations under Article 8 of the ECHR. However, after the CJEU's judgment in the Coman-case, the country's highest administrative court has recognised the Australian same-sex partner of a French national as a spouse within the meaning of Directive 2004/38/EC in order to comply with the country's obligations under EU law.

Finally, it is worth highlighting the ECtHR's Advisory Opinion P16-2018-001 and those judgments which reiterate the findings of the advisory opinion, namely *C. and E. v. France* and *D. v. France*, and thus make them binding for Bulgaria. In these cases, the ECtHR concluded in the context of surrogacy that, under Article 8 of the ECHR, State Parties to the ECHR are obliged to grant legal recognition, domestically as well, to a legally recognised parent-child relationship between a child and prospective mother established based on a surrogacy agreement. However, a State Party to the Convention has a wide margin of appreciation as to the form of such legal recognition, as long as the legal instrument granting it is properly and effectively functioning and the best interests of the child prevail. Under the ECHR, a State is not obliged to register the 'mother-to-be' as the mother in its national civil registry based on the information contained in the birth certificate issued by a foreign authority. The solution offered by the Bulgarian authorities in the *Pancharevo* case, a declaration of maternity, which would have resulted in de facto full legal recognition of the person making the declaration of recognition, is in line with the ECtHR's established case law in this area. One may find a divergence between the case law of the ECtHR and CJEU in this respect, as the latter grants a narrower margin of discretion for Member States in requiring an EU Member State to provide a foreign birth certificate with necessary documents for the exercise of the right of free movement of persons.

Given that the EU does not have competence to regulate family law relationships in a binding manner, no decisions of the CJEU have directly addressed the issue. However, it has indirectly touched upon the question of the recognition of family relationships: first, in the direction of the right to the free movement of workers, as in the 1992 *Singh* judgment, in which it held that where a Member State does not guarantee the same rights of residence to the spouse and children of a worker, it constitutes a serious obstacle to the free movement of labour; and second, the Opinion of the Advocate General in the CJEU's decision in the *Römer*-case, which approached the issue from the perspective of non-discrimination, stating that 'the aim of protecting marriage or the family cannot legitimise discrimination on grounds of sexual orientation.'

However, the decisions of the CJEU vis-à-vis family life, referred to in the above paragraph, were not made in light of the rights of same-sex couples, but to uphold the freedom of movement of workers/persons. Although the CJEU's statements in its case law, including the *Singh* case, that family members have the right to live as a family in another Member State may, at first sight, appear convincing, the CJEU was indeed ruling on issues relating to so-called 'traditional families', that is, families formed by opposite-sex spouses. The Opinion of Advocate General Saugmandsgaard Øe in the *Erzberger*-case, in which he argued that in a non-harmonised area, such as family life, any legislation of

the host Member State of an EU citizen, which would be less favourable than that of his Member State of origin cannot be interpreted as an obstacle to free movement.

Summarising these findings, one may observe that Advocate General Wathelet's Opinion in the Coman-case marked a significant shift from the well-established case law of the ECtHR and from the rather modest and reserved case law of CJEU in the issue. Wathelet relied on the 'principle of the portability of personal status' to justify the functional extension of the applicability of EU law in a matter which, under the Founding Treaties, falls within the exclusive competence of the Member States. This legal position was taken up by the CJEU and incorporated into its case law by its judgment in the said case. In its judgment in the Pancharevo-case and in its most recent order in the *Rzecznik Praw Obywatelskich* case, the CJEU confirmed the direction, which was first marked in the Coman-case. This has recently induced the Bulgarian and Polish Supreme Administrative Courts to apply the principle of functional recognition and make rulings contradictory to national law. The process of aligning national case law with EU law has therefore begun.

With the Coman-case, the European Commission now has a case law argument to justify its targets in its 2020 LGBTQ Equality Strategy Document and its legislative proposal submitted on 7 December 2022. This objective is to ensure, through a legislative act, that Member States will mutually recognise parental status registered in another Member State in the future. However, as mentioned in the study, there was no agreement reached among ministers on this issue at the February 2022 Justice and Home Affairs Council, which suggests that the issue outlined in this study will remain a topical one at the political level.

## Bibliography

Andrzejewski, M. (2021) 'Legal Protection of the Family: Essential Polish Provisions Regarding International Legal Standards and Social Change' in Barzó, T., Lenkovics, B. (eds.) *Family Protection From a Legal Perspective*. Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, pp. 151–190; [https://doi.org/10.54237/profnet.2021.tbblfl\\_5](https://doi.org/10.54237/profnet.2021.tbblfl_5).

Associated Press (2019) *Bulgaria court recognizes gay marriage in landmark case* [Online]. Available at: <https://apnews.com/article/c575e7c8cd4d470c87d64a0b76820433> (Accessed: 5 February 2023).

Benyusz, M. (2021) 'A gyermekek jövője az Európai Unióban – Mit ígér a Bizottság 2021-2024-es stratégiája?', *Jog – Állam – Politika*, 13(3), pp. 149–162.

Barzó, T. (2021) 'Family Protection in Central European Countries' in Barzó, T., Lenkovics, B. (eds.) *Family Protection From a Legal Perspective*. Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, pp. 287–322; [https://doi.org/10.54237/profnet.2021.tbblfl\\_9](https://doi.org/10.54237/profnet.2021.tbblfl_9).

de Groot, D. (2021) *EU law and the mutual recognition of parenthood between Member States: the case of V.M.A. v Stolichna obshtina*. European University Institute [Online]. Available at: <https://cadmus.eui.eu/handle/1814/69731> (Accessed: 5 February 2023).

Den Haese, S. (2021) *Cross-Border Portability of Personal Status: Human Rights to the Rescue?* Human Rights in Context [Online]. Available at: <https://www.humanrightsincontext.be/post/cross-border-portability-of-personal-status-human-rights-to-the-rescue> (Accessed: 5 February 2023).

Drinóczi, T. (2018) 'A tagállami identitás védelme' in Jakab, A., Fekete, B. (eds.) *Internetes Jogtudományi Enciklopédia* [Online]. Available at: [http://real.mtak.hu/83280/1/a\\_tagallami\\_identitas\\_vedelme\\_u.pdf](http://real.mtak.hu/83280/1/a_tagallami_identitas_vedelme_u.pdf) (Accessed: 26 March 2023).

Ellena, S. (2022) *EU countries split over Commission's plan to give parents cross-border rights*. EURACTIV.com [Online]. Available at: <https://www.euractiv.com/section/non-discrimination/news/eu-countries-split-over-commissions-plan-to-give-parents-cross-border-rights/> (Accessed: 5 February 2023).

EAPIL Editorial (2022) *Functional Recognition of Same-sex Parenthood for the Benefit of Mobile Union Citizens – Brief Comments on the CJEU's Pancharevo Judgment*. By the editors of the EAPIL Blog, 3 February 2022 [Online]. Available at: <https://eapil.org/2022/02/03/functional-recognition-of-same-sex-parenthood-for-the-benefit-of-mobile-union-citizens-brief-comments-on-the-cjeus-pancharevo-judgment/> (Accessed: 5 February 2023).

French Ministry of the Interior (2022) *Informal Ministerial Meeting of the Justice and Home Affairs Council configuration* (Lille, 3-4 February 2022) – Press kit, p. 13 [Online]. Available at: [https://presidence-francaise.consilium.europa.eu/media/r4fjcllf/jai-lille\\_dossier-de-presse-ang.pdf](https://presidence-francaise.consilium.europa.eu/media/r4fjcllf/jai-lille_dossier-de-presse-ang.pdf) (Accessed: 5 February 2023).



Gellérné Lukács, É. (2020) 'Az egyenlő bánásmód, a nem diszkriminatív akadályok és az intézményesített jogvédelem fejlődése a személyek szabad mozgása területén', *Állam- és jogtudomány*, 61(3), pp. 61–73.

Grünberger, M. (2010) 'Die Gleichbehandlung von Ehe und eingetragener Lebenspartnerschaft im Zusammenspiel von Unionsrecht und nationalem Verfassungsrecht', *Familie Partnerschaft Recht*, 16(5), pp. 203–208.

Gyenyey, L. (2018) 'Same Sex Couples' Right to Free Movement in Light of Member States National Identities. The legal analysis of the Coman case', *Iustum Aequum Salutare*, 14(2), pp. 149–171.

Kruger, T. (2020) *Same-sex parentage and surrogacy and their practical implications in Poland*. Conflictoflaws.net [Online]. Available at: <https://conflictflaws.net/2020/same-sex-parentage-and-surrogacy-and-their-practical-implications-in-poland/> (Accessed: 5 February 2023).

Library of Congress (2018) *Germany: Federal Court of Justice Rules Same-Sex Marriage Does Not Make Wife of Child's Mother Co-parent by Law* [Online]. Available at: <https://www.loc.gov/item/global-legal-monitor/2018-11-09/germany-federal-court-of-justice-rules-same-sex-marriage-does-not-make-wife-of-childs-mother-co-parent-by-law/> (Accessed: 5 February 2023).

Marinkás, Gy. (2021) 'Ultra Vires avagy sem? Az EKB által alkalmazott válságkezelési eszközök és azok konformitása az uniós joggal, különös tekintettel az EUB és a Német Szövetségi Alkotmánybíróság közötti évtizedes hatásköri vitára', *Miskolci Jogi Szemle*, 16(5), pp. 328–329; <https://doi.org/10.32980/MJSz.2021.5.1476>.

Office of Communication and Promotion of the Polish Ministry of Justice (2021) *Veto on plans to legalise adoption by same-sex couples and same-sex marriages (08.10.2021)* [Online]. Available at: <https://www.gov.pl/web/justice/veto-on-plans-to-legalise-adoption-by-same-sex-couples-and-same-sex-marriages> (Accessed: 5 February 2023).

Pfeiff, S. (2017) *La portabilité du statut personnel dans l'espace européen*. Bruxelles: Bruylant Publishing.

Schmidt, V. A. (2016) 'Reinterpreting the rules 'by stealth' in times of crisis: a discursive institutionalist analysis of the European Central Bank and the European Commission', *West European Politics*, 39(5), pp. 1–21; <https://doi.org/10.1080/01402382.2016.1186389>.

Sowry, B. (2022) *EU-wide recognition of surrogacy and same-sex parenthood proposed* [Online]. Available at: <https://www.progress.org.uk/eu-wide-recognition-of-surrogacy-and-same-sex-parenthood-proposed/> (Accessed: 5 February 2023).

Weiler, J., Haltern, U., Mayer, F. (1995) 'European Democracy and Its Critique. Five Uneasy Pieces', European University Institute, Robert Schuman Centre, EUI Working Paper, RSC No. 95/11 [Online]. Available at: [https://cadmus.eui.eu/bitstream/handle/1814/1386/95\\_11.pdf](https://cadmus.eui.eu/bitstream/handle/1814/1386/95_11.pdf) (Accessed: 26 March 2023).

Wysocka-Bar, A. (2020) *Legal Status of a Child Born Through Surrogacy – Latest From Poland*. The Blog of the European Association of Private International Law [Online]. Available at: <https://eapil.org/2020/12/16/polish-court-asks-the-cjeu-to-rule-on-the-status-of-children-born-to-same-sex-couples/> (Accessed: 5 February 2023).

Answer given by Ms Dalli on behalf of the European Commission on 1.3.2022 to Parliamentary question E-005164/2021 (17.11.2021) [Online]. Available at: [https://www.europarl.europa.eu/doceo/document/E-9-2021-005164-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2021-005164-ASW_EN.html) (Accessed: 5 February 2023).

Chart of signatures and ratifications of Treaty 214 (Status as of 29/01/2023) [Online]. Available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=214> (Accessed: 5 February 2023).

Civil unions and registered partnerships [Online]. Available at: [https://europa.eu/youreurope/citizens/family/couple/registered-partners/index\\_en.htm](https://europa.eu/youreurope/citizens/family/couple/registered-partners/index_en.htm) (Accessed: 5 February 2023).

Court of Justice of the European Union (Press Release No. 221/21) Judgment in Case C-490/20 *Stolichna obshtina, rayon 'Pancharevo'* [Online]. Available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-12/cp210221en.pdf> (Accessed: 5 February 2023).

Deutscher Bundestag, Ausschuss für Arbeit und Sozialordnung des Bundestages (BTDrucksache 7/4845).

Deutscher Bundestag, Gesetzentwurf (19. Wahlperiode) 12.06.2018 (Drucksache 19/2665).

ECHR, Press Release (132/2019), 10.04.2019 [Online]. Available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6380685-8364782&filename=Advisory+opinion+P16-2018-001+.pdf> (Accessed: 5 February 2023).

European Commission, Equality package: Commission proposes new rules for the recognition of parenthood between Member States. Press Release, 7 December 2022, Brussels (IP/22/7509) [Online]. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7509](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7509) (Accessed: 5 February 2023).

European Commission, Initiative on the recognition of parenthood between Member States Factual summary of the Open Public Consultation. Brussels, October 2021 (No. 6847413) [Online]. Available at: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12878-Cross-border-family-situations-recognition-of-parenthood\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12878-Cross-border-family-situations-recognition-of-parenthood_en) (Accessed: 5 February 2023).

European Commission: Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood. Brussels, 7.12.2022 (COM (2022) 695 final) [Online]. Available at: [https://commission.europa.eu/system/files/2022-12/com\\_2022\\_695\\_1\\_en\\_act\\_part1.pdf](https://commission.europa.eu/system/files/2022-12/com_2022_695_1_en_act_part1.pdf) (Accessed: 5 February 2023).

European Commission: Union of Equality: LGBTIQ Equality Strategy 2020-2025. Brussels, 12.11.2020 (COM (2020) 698 final) [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0698> (Accessed: 5 February 2023).

European Parliament (2019-2024) Verbatim Report of Proceedings (15.03.2023.), p. 213 [Online]. Available at: [https://www.europarl.europa.eu/doceo/document/CRE-9-2023-03-15\\_HU.pdf](https://www.europarl.europa.eu/doceo/document/CRE-9-2023-03-15_HU.pdf) (Accessed: 26 March 2023).

European Parliament, 2022/0402(CNS) [Online]. Available at: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0402\(CNS\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0402(CNS)&l=en) (Accessed: 26 March 2023).

Minutes: 7th Meeting of the Expert Group on the recognition of parenthood between Member States 22 February 2022 (via VTC) [Online]. Available at: <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&do=groupDetail.groupDetail&groupID=3765> (Accessed: 5 February 2023).

Parlamento italiano, risoluzione della 4<sup>a</sup> commissione permanente (politiche dell'unione europea) doc. xviii-bis n. 2 [Online]. Available at: <https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-0695/itsen> (Accessed: 26 March 2023).

Parlement français, N° 84 sénat session ordinaire de 2022-2023 (22 mars 2023) [Online]. Available at: <https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-695/frsen> (Accessed: 26 March 2023).

Parliamentary question (No. E-005164/2021) [Online]. Available at: [https://www.europarl.europa.eu/doceo/document/E-9-2021-005164\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2021-005164_EN.html) (Accessed: 5 February 2023).

Procedure 2022/0402/CNS [Online]. Available at: [https://eur-lex.europa.eu/procedure/EN/2022\\_402](https://eur-lex.europa.eu/procedure/EN/2022_402) (Accessed: 21 March 2023).

Regulation on the recognition of parenthood between Member States. In "A New Push for European Democracy" (As of 20/02/2023) [Online]. Available at: <https://www.europarl.europa.eu/legislative-train/spotlight-JD22/file-recognition-of-parenthood-between-member-states?sid=6701> (Accessed: 21 March 2023).

State of the Union Address by President von der Leyen at the European Parliament Plenary (16 September 2020) [Online]. Available at: [https://ec.europa.eu/commission/presscorner/detail/hu/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/hu/SPEECH_20_1655) (Accessed: 5 February 2023).

Status Table of Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages Entry into force: 1.5.1991 [Online]. Available at: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=88> (Accessed: 5 February 2023).

Vragen over voorstel voor een verordening betreffende wederzijdse erkenning van afstamming (COM(2022)695) 24 maart 2023 (172946.01U) [Online]. Available at: <https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-695/nleer> (Accessed: 25 March 2023).