

CJEU: CUPRIAK-TROJAN AND TROJAN v. WOJEWODA MAZOWIECKI (CASE C-713/23): Recognition of Same-Sex Marriages and the Limits of Member State Autonomy under EU Law

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The paper presents an output of the
research project APVV No. APVV-23-
0252.

Submitted: 28 April 2026

Accepted: 19 June 2026

Published: 01 August 2026

Abstract: *The present commentary examines the recent judgment of the Court of Justice of the European Union (CJEU) in Cupriak-Trojan case, which addresses the obligation of Member States to recognise the civil status of same-sex marriages lawfully concluded in another Member State in the context of free movement. The commentary first outlines the factual background of the case and the CJEU's conclusions. Particular attention is paid to the relationship between Cupriak-Trojan and the earlier judgment in Coman and Others, highlighting both continuity and development in the CJEU's approach to the recognition of same-sex relationships. While Coman concerned derived residence rights, Cupriak-Trojan extends the CJEU's reasoning to the broader issue of civil status recognition in the Member State of origin. Subsequently, the commentary assesses the implications of the judgment for the relationship between Union citizenship and Member State competence in the field of family law. It highlights the CJEU's approach to balancing the free movement of Union citizens with considerations of national identity and public policy, as well as the role of non-discrimination and the protection of family life. Finally, the commentary evaluates the broader significance of the Cupriak-Trojan judgment within the evolving case-law of the CJEU on the cross-border recognition of civil status, and its potential impact on national legal systems which do not provide for same-sex marriage, particularly with regard to the requirement to ensure effective and non-discriminatory mechanisms of recognition.*

Key words: *Union Citizenship; Free Movement of Persons; Same-Sex Marriage; Recognition of Civil Status; Transcription of Marriage Certificates; Charter of Fundamental Rights; Non-Discrimination; Family Life*

Suggested citation:

Martin Hamřík, Lenka Dufalová and Tamara Čipková, 'CJEU: Cupriak-Trojan and Trojan v. Wojewoda Mazowiecki (Case C-713/23): Recognition of Same-Sex Marriages and the Limits of Member State Autonomy under EU Law' (2026) 10(1) *Bratislava Law Review* 267 <https://doi.org/10.46282/blr.2026.10.1.1466>

1. INTRODUCTION

The judgment of the Court of Justice of the European Union in *Jakub Cupriak-Trojan and Mateusz Trojan v Wojewoda Mazowiecki*¹ represents another stage in the

¹ Case C-713/23 *Cupriak-Trojan and Trojan v Wojewoda Mazowiecki* (CJEU, 25 November 2025) EU:C:2025:917.

intricate and gradual Europeanisation of civil-status recognition, as the case situates itself at the intersection of Union citizenship, the free movement of persons, and the recognition of civil status, raising fundamental questions regarding the limits of Member State autonomy in matters of family law when confronted with obligations stemming from European Union law. The significance of the judgment *Cupriak-Trojan* should therefore not be understood solely as an isolated question of matrimonial law, but as part of a broader problem of legal identity and the practical effectiveness of civil-status recognition or even citizenship, not only in EU law context.² As stated by Kišoňová, the phenomenon of personal identity is complex, multilayered and dynamic;³ so are the questions of civil status, such as those in case *Cupriak-Trojan*.

The CJEU judgment *Cupriak-Trojan* deserves particular attention in Slovak legal scholarship, as it represents an important step in the development of case law concerning the recognition of civil status of same-sex spouses acquired in another Member State in the exercise of the right to free movement. Its relevance for Slovak law lies especially in the fact that it raises the question of how a Member State whose domestic law does not provide for same-sex marriage should respond to obligations arising from EU law in situations involving a cross-border element. This issue is particularly important in the Central European context, as Sabján and Meteňkanyč point out that countries of the so-called Visegrad Four have a poor track record, consistently ranking below the European average in studies concerning the acceptance and tolerance of LGBTIQ+ rights.⁴ The judgment therefore opens up space for a broader scholarly debate on the relationship between Member States' autonomy in family law, the protection of national identity, and the requirements that stem from EU citizenship, the prohibition of discrimination, and the protection of private and family life.

The objectives of the commentary are primarily (i) to describe and critically assess the CJEU's reasoning in *Cupriak-Trojan*, in particular with regard to the recognition of same-sex marriages and the limits of Member State autonomy under EU law; and (ii) to highlight that, notwithstanding the progressive elements of the judgment, certain aspects of the Court's approach raise concerns as to their coherence and potential implications for national legal systems. The commentary will first introduce the factual and legal background of the *Cupriak-Trojan* case (Chapter 2). Subsequently, it will analyse the shift from residence-based recognition to broader status recognition by comparing the Court's reasoning in *Coman* and *Cupriak-Trojan* (Chapter 3). The analysis will then turn to the anticipated and possible legal consequences of the judgment for EU Member States (Chapter 4). Finally, the commentary will conclude by addressing the key concerns arising from the judgment and its broader impact on the development of EU family law (Chapter 5).

2. BACKGROUND OF THE CASE CUPRIAK-TROJAN

The case of *Cupriak-Trojan* arises from a dispute concerning the refusal of Polish authorities to recognise, through transcription in the civil register, a marriage lawfully concluded in another Member State between two Union citizens of the same sex.

² See also *L.L. v Slovakia* (ECtHR, 08 April 2026, Communicated case) App No. 13880/34, concerning the loss of Slovak citizenship after the applicant acquired British citizenship following a same-sex marriage.

³ Renáta Kišoňová, 'The Individual's Identity in Contemporary Society' (2024) 18 *Language, Individual & Society* 232, 237 <https://doi.org/10.62991/LIS1996427466> accessed 25 June 2026.

⁴ Nikolas Sabján and Olexij M Meteňkanyč, 'The Recent Transgender Court Decision in Czechia: Two Steps Forward, One Step Back (A Commentary on Case Pl ÚS 52/23)' (2024) 8(2) *Bratislava Law Review* 243, 244 <https://doi.org/10.46282/blr.2024.8.2.946> accessed 25 June 2026.

Mr Jakub Cupriak-Trojan, a dual Polish and German national, and Mr Mateusz Trojan, a Polish national, were married in Berlin on 6 June 2018, in accordance with German law. At the material time, the spouses resided in Germany but expressed their intention to return to Poland and to reside there as a married couple.⁵

Following the conclusion of the marriage, Mr Cupriak-Trojan adopted Mr Trojan's surname as the second element of his own surname. That change was recognised by the Polish authorities, which accepted the amendment of his surname in the national civil status records.⁶ This element is of particular relevance, as it demonstrates that certain legal effects of the marriage were, at least partially, acknowledged within the Polish legal order.

The dispute in the main proceedings originated in a request submitted by Mr Cupriak-Trojan to the Head of the Civil Registry Office in Warsaw for the transcription of the German marriage certificate into the Polish civil register. By decision of 8 August 2019, that request was refused on the ground that Polish law does not recognise marriage between persons of the same sex and that such transcription would therefore be contrary to the fundamental principles of the Polish legal order.⁷

The refusal to transcribe the marriage certificate was subsequently upheld by the *Wojewoda Mazowiecki* (Governor of Masovia Province). In addition to reiterating the incompatibility of such transcription with the Polish legal order, the Governor relied on the formal structure of the Polish civil registry system. He observed that transcription requires a faithful and literal transfer of the content of the foreign document and that, in the present case, such transcription would necessitate the registration of two men as spouses, including the placement of one of them under the heading traditionally reserved for a 'woman'. In his view, such an entry would be incompatible with the domestic legal framework governing marriage.⁸

The spouses at issue in the main proceedings challenged that decision before the *Wojewódzki Sąd Administracyjny w Warszawie* (Provincial Administrative Court, Warsaw). They argued, inter alia, that the constitutional protection of marriage as a union between a man and a woman does not preclude the recognition, for the purposes of civil status registration, of a marriage lawfully concluded abroad between two persons of the same sex.

By judgment of 1 July 2020, the court dismissed the action. It held that the transcription of the marriage certificate would be contrary to the fundamental principles of the Polish legal order within the meaning of Article 107(3) of the Law on civil status records.⁹ The court further reasoned that accepting the applicants' position would lead to the coexistence, within the national legal order, of marriages between persons of the opposite sex and marriages between persons of the same sex, a situation not provided for under Polish constitutional and statutory law.¹⁰

The applicants subsequently lodged an appeal on a point of law before the *Naczelny Sąd Administracyjny* (Supreme Administrative Court, Poland), which is the

⁵ *Cupriak-Trojan* (n 1) [20].

⁶ *Cupriak-Trojan* (n 1) [21].

⁷ As set out in the Constitution of the Republic of Poland, Art 18: 'Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland'; *Cupriak Trojan* (n 1) [22].

⁸ *Cupriak-Trojan* (n 1) [23].

⁹ Article 107 (3) of the Law on civil status records of 28 November 2014 (Dz. U., item 1741) provides: 'The Head of the Civil Registry Office shall refuse to transcribe a document where ... transcription would be contrary to the fundamental principles of the legal order of the Republic of Poland.'

¹⁰ *Cupriak-Trojan* (n 1) [25].

referring court. In their appeal, they contended that the refusal to recognise their marriage constituted a disproportionate restriction on their rights as Union citizens, in particular their right to move and reside freely within the territory of the Member States. They emphasised that the divergence between their civil status in Germany (married) and in Poland (unmarried) was liable to discourage them from exercising that right and to prevent them from continuing, in Poland, the family life established in Germany.¹¹

The referring court provided a detailed account of the legal effects of transcription under Polish law. It observed that transcription of a foreign civil status document is not merely evidentiary in nature but constitutes a material and technical act resulting in the creation of a Polish civil status record. That record is detached from the original foreign document and produces independent legal effects within the Polish legal order.¹²

In that regard, the referring court observed that, according to the existing national case-law, EU law does not impose an absolute obligation to transcribe foreign civil status documents, including marriage certificates, into the national civil register. Accordingly, a refusal of transcription may be justified under Article 107(3) of the Law on civil status records where it would be contrary to the fundamental principles of the Polish legal order.

In those circumstances, the referring court expressed doubts as to whether such a refusal to transcribe a marriage certificate lawfully issued in another Member State is compatible with Articles 20 and 21 TFEU, read in the light of Articles 7 and 21(1) of the Charter of Fundamental Rights of the European Union (Charter).¹³ While acknowledging that matters of civil status and marriage fall within the competence of the Member States, the court questioned whether the exercise of that competence may result in a restriction on the freedom of movement of Union citizens.

Referring to the case-law of the CJEU, in particular *Coman*¹⁴ and *Stolichna obshtina, rayon 'Pancharevo'*,¹⁵ the referring court highlighted that Union citizens must be able to lead a normal family life both in the host Member State and, upon return, in their Member State of origin. It therefore considered that the refusal to recognise the marriage at issue might undermine the effectiveness of the rights derived from Union citizenship, notably by preventing the applicants from enjoying a consistent civil status across Member States.¹⁶

Against that background, the *Naczelny Sąd Administracyjny* (Supreme Administrative Court) decided to stay the proceedings and to refer a question to the CJEU for a preliminary ruling:

Must the provisions of Article 20(2)(a) and Article 21(1) TFEU, read in conjunction with Article 7 and Article 21(1) of the Charter and Article 2(2) of Directive 2004/38,¹⁷ be interpreted as precluding the competent authorities of a Member State, where a citizen of the Union who is a national of that State has contracted a marriage with another citizen of the Union (a person of the same sex) in a Member State in accordance with the legislation of that State, from refusing to recognise that marriage certificate and transcribe it into the national civil registry, which prevents those persons from residing

¹¹ *Cupriak-Trojan* (n 1) [26].

¹² *Cupriak-Trojan* (n 1) [28].

¹³ *Cupriak-Trojan* (n 1) [27].

¹⁴ Case C-673/16 *Coman and Others v. Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* (CJEU, 5 June 2018) EU:C:2018:385.

¹⁵ Case C-490/20 *V.M.A v. Stolichna obshtina, rayon 'Pancharevo'* (CJEU, 14 December 2021) EU:C:2021:1008.

¹⁶ *Cupriak-Trojan* (n 1) [31].

¹⁷ 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 [2004] OJ L158/77.

in the State in question with the marital status of a married couple and under the same surname, on the grounds that the law of the host Member State does not provide for same-sex marriage?¹⁸

The CJEU first clarified that the situation falls within the scope of Articles 20 and 21 TFEU, rather than Directive 2004/38, as the dispute concerns the recognition of civil status in the Member State of origin. It reiterated that Union citizenship constitutes the fundamental status of nationals of the Member States and that Union citizens who have exercised their free movement rights must be able to rely on those rights upon returning to their Member State of origin. In particular, the CJEU emphasised that such citizens enjoy the right to lead a normal family life both in the host Member State and in their Member State of nationality, including with their spouse.¹⁹

The CJEU held that the refusal to recognise a same-sex marriage lawfully concluded in another Member State is likely to constitute a restriction on the freedom of movement under Article 21 TFEU. Such a refusal is liable to create serious obstacles in the administrative, professional and private lives of the persons concerned and to prevent them from continuing the family life established in the host Member State. The CJEU therefore found that the lack of recognition forces the applicants to live under different civil statuses across Member States, thereby undermining the effectiveness of Union citizenship rights.²⁰

Finally, the CJEU examined whether such a restriction could be justified. While reaffirming that Member States retain competence in matters of marriage and may decide whether to allow same-sex marriage under national law, it held that the obligation to recognise such marriages for the purposes of EU law does not undermine national identity or public policy. On the contrary, the refusal to recognise the marriage infringes fundamental rights protected by Articles 7 and 21 of the Charter, including respect for family life and the prohibition of discrimination based on sexual orientation. The CJEU concluded that Member States must provide effective mechanisms for recognition and, where transcription is the only such mechanism, they are required to allow it without discrimination.²¹

3. FROM RESIDENCE RECOGNITION TO STATUS RECOGNITION: COMPARING COMAN AND CUPRIAK-TROJAN

With regard to the case law of the CJEU, the judgment in *Cupriak-Trojan* is not the first decision addressing issues of recognition of same-sex couples. The *Cupriak-Trojan* judgment primarily builds on the earlier judgment in *Coman*.²² Both cases concern the recognition of a same-sex marriage lawfully concluded in a Member State that does not allow for same-sex marriages; but when compared, it becomes clear that several important differences can be identified.

In both cases, the CJEU accepted that marriage as such remains within the competence of the Member States. However, it also insisted that Member States must exercise that competence consistently with the EU law and without discrimination,²³

¹⁸ *Cupriak-Trojan* (n 1) [36].

¹⁹ *Cupriak-Trojan* (n 1) [37]-[43].

²⁰ *Cupriak-Trojan* (n 1) [51]-[54].

²¹ *Cupriak-Trojan* (n 1) [47]-[48], [61]-[63], [74]-[77].

²² *Coman and Others* (n 14).

²³ *Cupriak-Trojan* (n 1) [37].

especially where refusal to recognise a family status lawfully created in another Member State would discourage Union citizens from exercising their free movement rights.

In *Coman*, a Romanian citizen married his American same-sex partner, non-EU citizen, in Belgium. Romania refused to grant the American spouse a residence right for more than three months because Romanian law did not allow same-sex marriages to be concluded in Romania and as a result did not recognise same-sex marriages concluded abroad. The dispute concerned whether the non-Union same-sex spouse of a Union citizen could be treated as a 'spouse' for the purpose of EU family reunification and residence rights. The CJEU framed the dispute by reference to Article 21 TFEU, Directive 2004/38 and the right to private and family life and the prohibition of discrimination guaranteed by the Charter of Fundamental rights of the EU.

The first distinction between the two cases concerns **the legal object of recognition**. As Kochenov and Belavusau point out, *Coman*, in essence, is about immigration rights.²⁴ In *Coman*, recognition was required only for the purpose of granting a derived right to residence to the same-sex spouse of a Union citizen. The importance of the judgement lies in the fact that the CJEU held the term 'spouse' within the meaning of Directive 2004/38 as gender-neutral and may therefore cover the same-sex spouse of the Union citizen.²⁵ Tryfonidou describes *Coman* as a landmark ruling because the CJEU made clear that same-sex marriages are to be treated as equivalent to opposite-sex marriages for the purposes of EU free movement law, but she also stresses that the judgment was limited to family reunification in free movement cases.²⁶ *Cupriak-Trojan* addresses a different problem, as both spouses were Union citizens. The question was whether a Member State could refuse to recognise their marital status and refuse transcription of their marriage certificate into the national civil register. The CJEU held that Directive 2004/38 did not govern the dispute as it governs only the conditions determining whether a Union citizen can enter and reside in Member States other than that of which he or she is a national.²⁷ The case concerned recognition of marital status in the Member State of nationality, not entry or residence in another Member State. The CJEU therefore based its reasoning on Articles 20 and 21 TFEU in conjunction with Articles 7 and 21 of the Charter. *Coman* thus protects the right to be accompanied by one's spouse. *Cupriak-Trojan* protects the right to return to one's Member State of nationality without losing the civil status lawfully created in another Member State.

Secondly, in *Coman* the CJEU did not require Romania to introduce same-sex marriage into its domestic law. **Nor did it require Romania to recognise all legal consequences of the Belgian marriage**. Recognition was required only 'for the sole purpose' of granting a derived right of residence to a third-country national.²⁸ Bogdan explains that *Coman* concerned the relevance of family status created abroad for free movement, especially where the host Member State does not recognise the family relationship in question. He notes that family law differences may deter Union citizens from moving, since citizens may hesitate to exercise free movement if their marriage or

²⁴ Dmitry Vladimirovich Kochenov and Uladzislau Belavusau, 'After the Celebration: Marriage Equality in EU Law Post-Coman in Eight Questions and Some Further Thoughts' (2020) 27(5) *Maastricht Journal of European and Comparative Law* 549, 562 <https://doi.org/10.1177/1023263X20962749> accessed 25 June 2026.

²⁵ *Coman and Others* (n 14) [35].

²⁶ Alina Tryfonidou, 'The ECJ Recognises the Right of Same-Sex Spouses to Move Freely Between EU Member States: The Coman Ruling' (2019) 44(5) *European Law Review* 663, 663–664.

²⁷ *Cupriak-Trojan* (n 1) [37].

²⁸ *Coman and Others* (n 14) [36].

family relationship will not be recognised in state family wishes to move.²⁹ In *Cupriak-Trojan* the CJEU held that refusal to recognise the marriage of two Union citizens of the same sex, lawfully concluded during residence in another Member State, constitutes an obstacle to Article 21(1) TFEU.³⁰ The CJEU emphasised that without recognition the spouses would be unable, in many aspects of everyday public and private life, to rely on their marital status, even though that status had been lawfully established in another Member State.³¹ As Vaigé points out, ***Cupriak-Trojan* judgment contains no narrowing formulation ‘for the sole purpose of’** (transcription). On the contrary, the judgment explicitly references the loss of concrete legal effects when recognition is withheld: access to health insurance, registration of surnames and enforceability of obligations between spouses and third parties.³² Therefore the judgement represents a significant qualitative shift in the understanding of the right to free movement. The legal problem is no longer only whether the same-sex spouse may reside in the EU Members state; it is whether the Union citizen may continue to live with the civil identity acquired through the exercise of free movement.

A further aspect to be examined when comparing the judgments, is **the increasing role of the Charter in the CJEU's reasoning**. In *Coman*, the Charter played a role mainly when examining whether the restriction of free movement could be justified by public order or national identity argument. Tryfonidou criticises this structure, observing that the CJEU preferred to base its reasoning on free movement, with fundamental rights entering the analysis mainly at the justification stage rather than as an independent basis for finding a breach of EU law.³³ In *Cupriak-Trojan*, the Charter is more central. The preliminary question referred to the CJEU by the Polish Supreme Administrative Court explicitly mentioned Articles 7 and 21 of the Charter.³⁴ The judgment also refers to the European Court of Human Rights (ECtHR) case law regarding Poland, including the conclusion that the absence of legal recognition for same-sex couples left them in a legal vacuum and have not provided for the core needs of recognition and protection of same-sex couples in a stable relationship.³⁵ The CJEU used the case law of the ECtHR to support its interpretation of Article 7 of the Charter, namely the right to respect for private and family life. Since Article 7 of the Charter corresponds to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the CJEU takes the case law of the ECtHR into account when interpreting it.

Finally, both judgements **limit the use of national identity and public policy arguments as justifications for non-recognition**. In *Coman*, the CJEU held that the obligation to recognise a same-sex marriage for the sole purpose of granting a derived right to residence does not undermine the institution of marriage in the Member State of origin, which is defined by national law.³⁶ Tryfonidou highlights that the CJEU rejected attempts to justify the refusal by reference to national identity and public policy, and that

²⁹ Michael Bogdan, 'The Relevance of Family Status Created Abroad for the Freedom of Movement in the EU' (2020) 66(4) *Acta Universitatis Carolinae Iuridica* 85, 85–86 <https://doi.org/10.14712/23366478.2020.33> accessed 25 June 2026.

³⁰ *Cupriak-Trojan* (n 1) [54].

³¹ *Cupriak-Trojan* (n 1) [53].

³² Lina Vaigé, 'Cupriak-Trojan: A First Reading from a Private International Law Perspective' (EAPIL, 9 December 2025) <https://eapil.org/2025/12/09/cupriak-trojan-a-first-reading-from-a-private-international-law-perspective/> accessed 15 April 2026.

³³ Tryfonidou (n 26) 668–669.

³⁴ *Cupriak-Trojan* (n 1) [36].

³⁵ *Cupriak-Trojan* (n 1) [66].

³⁶ *Coman and Others* (n 14) [45].

this was important, both practically and symbolically, because the CJEU made it clear that Member States may not discriminate against same-sex relationships in situations falling within EU law.³⁷ In *Cupriak-Trojan*, the same reasoning is applied to a more far-reaching form of recognition, as it is not limited to residence rights. It concerns the recognition of marital status itself and, where necessary, its registration in the national civil register. The CJEU therefore strengthened the principle that national family-law autonomy cannot be exercised in a way that deprives Union citizens of the practical benefit of their free movement rights.

Comparing these two decisions, we have concluded that *Cupriak-Trojan* not only develops the logic of *Coman* but also moves beyond it. Whereas *Coman* required recognition of a same-sex marriage for the limited purpose of granting a derived right of residence to a third-country national spouse, *Cupriak-Trojan* requires recognition of the marital status of two Union citizens, including transcription of the foreign marriage certificate where that is the only means available under national law. The development can be seen from functional recognition for residence purposes to recognition of civil status as a condition for the effective exercise of Union citizenship, free movement, private and family life, and non-discrimination.

4. ANTICIPATED AND POSSIBLE LEGAL CONSEQUENCES OF CUPRIAK-TROJAN FOR EU MEMBER STATES

Despite the reservations regarding the judgment *Cupriak-Trojan* outlined above and the debates concerning the general binding nature of CJEU decisions,³⁸ it is indisputable that the interpretation of EU law falls within the jurisdiction of the CJEU,³⁹ and it is therefore important to address the implications that the judgment *Cupriak-Trojan* will probably have in legislation of the Member States, therefore on all citizens of the Union under Article 20(1) TFEU,⁴⁰ exercising their freedom to move and reside within another Member State.⁴¹ For the purpose of analysing the potential impact of the judgment, it is appropriate to categorise Member States into three main groups based on the extent to which same-sex unions are (non-)recognised.

Member States not-recognising same-sex unions. The judgment *Cupriak-Trojan* will have the most transformative potential impact on those Member States whose legal orders do not provide a legal status for same-sex couples comparable to marriage or to a registered partnership. The direct, not merely potential, impact of the judgment *Cupriak-Trojan* is, by virtue of the referral of the preliminary question, naturally implied in Poland. This was already manifested in the decision of the *Naczelny Sąd Administracyjny* of 20 March 2026, which ordered the registry office to transcribe the marriage certificate of the same-sex couple marriage concluded by the couple in question in Berlin into the registry.⁴² The reasoning of the said decision accepted the CJEU's conclusions in the

³⁷ Tryfonidou (n 26) 675–676.

³⁸ See, e.g., Giuseppe Martinico, 'Retracing Old (Scholarly) Paths: The Erga Omnes Effects of the Interpretative Preliminary Rulings' (2023) 15(SI) *European Journal of Legal Studies* 37 <https://doi.org/10.2924/EJLS.2023CJEU.003> accessed 25 June 2026; Csongor István Nagy, 'The Rebellion of Constitutional Courts and the Normative Character of European Union Law' (2024) 73(1) *International and Comparative Law Quarterly* 65 <https://doi.org/10.1017/S0020589323000519> accessed 25 June 2026.

³⁹ Consolidated Version of the Treaty on European Union [2020] OJ C202/1, art 19(1); Consolidated Version of the Treaty on the Functioning of the European Union [2020] OJ C202/47, art 267.

⁴⁰ *Cupriak-Trojan* (n 1) [39]–[43].

⁴¹ Directive 2004/38/EC, recital 1.

⁴² *Cupriak-Trojan and Trojan v. Wojewoda Mazowiecki* (Judgement) Supreme Administrative Court (*Naczelny Sąd Administracyjny*), Poland, 20 March 2026) Case No II OSK 216/21 [operative part, sentence 2].

judgment *Cupriak-Trojan*, stating that as in the case of the recognition of a marriage between persons of different sexes legally concluded in a Member State⁴³ (in addition, transcription does not create a new legal situation, but rather confirms its prior existence⁴⁴) there are no valid grounds for asserting that the transcription of a foreign marriage certificate for a same-sex couple could pose a real and serious threat to the fundamental principles of the Polish legal order, thereby undermining national identity and national regulatory autonomy in the area of family law⁴⁵ and does not affect the institution of marriage as defined by Polish law.⁴⁶ Particularly noteworthy (even in relation to other Member States in this group) is the statement from the summarisation of the judgment's conclusions, which implies the irrelevance of legislative and technical difficulties arising from the information systems used to register marriages concluded abroad (mere technical impossibility of same-sex couple registration).⁴⁷ The legal situation in Poland is identical to that in Slovakia⁴⁸ or Bulgaria,⁴⁹ the only Member States not recognising same-sex unions as well as having a constitutional ban on same-sex marriage,⁵⁰ or similar to those not recognising same-sex unions and having non-constitutional ban on same-sex marriage at the same time (Romania⁵¹ and Lithuania^{52,53}). The decision in question thus creates a positive obligation for these Member States to recognise a marriage between two same-sex nationals of that Member State concluded lawfully in the exercise of their freedom to move and reside within another Member State (in which they have created or strengthened a family life). In doing so, it goes beyond the former EU law derived obligation to grant the right of residence to a third-country national in the territory of the Member State of origin of the Union national who concluded a same-

⁴³ *Cupriak-Trojan* (Supreme Administrative Court, Poland) (n 42) [6.19].

⁴⁴ *Cupriak-Trojan* (Supreme Administrative Court, Poland) (n 42) [6.4].

⁴⁵ *Cupriak-Trojan* (Supreme Administrative Court, Poland) (n 42) [6.22].

⁴⁶ *Cupriak-Trojan* (Supreme Administrative Court, Poland) (n 42) [6.17].

⁴⁷ *Cupriak-Trojan* (Supreme Administrative Court, Poland) (n 42) [6.31].

⁴⁸ With the recent exception resulting from the Constitutional Act No 255/2025 Coll, art 7(6), amending the Constitution of the Slovak Republic: 'The Slovak Republic retains sovereignty, above all, in matters of national identity, consisting primarily of fundamental cultural and ethical issues concerning the protection of life and human dignity, private and family life, marriage, parenthood, and family, public morality, civil status, culture, and language, as well as decision-making on related matters in the fields of healthcare, science, upbringing, education, civil status, and inheritance.'

⁴⁹ Constitution of the Slovak Republic, art 41(1); Constitution of the Republic of Bulgaria, art 46(1).

⁵⁰ It should be noted that Polish Supreme Administrative Court considered the constitutional definition of marriage as union of man and woman as not precluding the recognition of a same-sex marriage lawfully contracted in another Member State during the exercise of the right to freedom of movement and residence by such persons for the purpose of continuing their family life in that marital status, because a different interpretation of that provision would be contrary to the prohibition of discrimination in social life, including on grounds of sex and sexual orientation. See *Cupriak-Trojan* (Supreme Administrative Court, Poland) (n 42) [6.18].

⁵¹ According to Codul Civil (Legea nr. 287/2009; Civil Code of Romania), art 277(1), marriage between persons of the same sex shall be prohibited.

⁵² According to Lietuvos Respublikos civilinis kodeksas (2000 m. liepos 18 d. Nr. VIII-1864; Civil Code of the Republic of Lithuania), art 3.12., marriage is only permitted with a person of the opposite sex.

⁵³ Cohabitation without marriage registration recognised by Lietuvos Respublikos civilinis kodeksas (Civil Code of the Republic of Lithuania), art 3.229, limitedly to different-sex couples was found unconstitutional, as failure to ensure legal recognition and protection of unmarried couples whose common life is based on the content of family relationships of a permanent or long-term nature, regardless of the gender of the persons forming them, would violate the principle of equality of persons and non-discrimination' and the regulation should be complex (inter alia inheritance, mutual maintenance, health care services, minor children, etc.). Ruling of the Constitutional Court of the Republic of Lithuania (*Sąd Konstitucijny Litwy*), Case No KT21-N5/2025 (17 April 2025), [operative part], [41], [45].

sex marriage in the host Member State.⁵⁴ Failure of several Member States to do so can be supplemented by failure to comply with ECHR (as all the EU Member States ratified ECHR), namely Art. 8 ECHR (also in conjunction with Art. 14 ECHR⁵⁵) granting the right to respect for private and family life, which includes same-sex couple living in a stable *de facto* partnership⁵⁶ and involving not only safeguarding the relationship of same-sex couple manifested by registered partnership or marriage concluded abroad,⁵⁷ but also creating a positive obligation to non-discriminatory legal recognition of same-sex unions⁵⁸ (mainly when such non-marital partnership is available to different-sex couples⁵⁹). The positive obligation of the ECHR contracting party exists irrespectively of the 'traditional family' concept (as it cannot be harmed or its future or integrity compromised by the granting of rights towards same-sex couples⁶⁰) as well as despite allegedly negative, or even hostile, attitude on the part of the heterosexual majority,⁶¹ as references to traditions, general assumptions or prevailing social attitudes in a particular country cannot be considered to amount to sufficient justification for a difference in treatment.⁶² It should be implemented adequately, taking into account the social and cultural background.⁶³ Therefore it does not need to be necessarily fulfilled in the form of same-sex marriage as granted to different-sex couples by Art. 12 ECHR.⁶⁴ Likewise, according to the CJEU, Member States can freely decide whether or not to provide for marriage for persons of the same sex.⁶⁵ The positive obligation towards same-sex unions derived from the ECHR jurisprudence, reviewed in the light of *Cupriak-Trojan* therefore raises the question whether enacting at least registered-partnership legislation in the remaining Member States would be sufficient.

Members States recognising same-sex registered partnership. Although the number of Member States that have introduced same-sex registered partnerships has recently been diminishing as a result of same-sex marriage increasingly being introduced instead,⁶⁶ there are several Member States fulfilling their positive obligation under Art. 8

⁵⁴ *Coman and Others* (n 14).

⁵⁵ *Maymulakhin and Markiv v Ukraine* (ECtHR, 1 June 2023) App No 75135/14 [80]–[81].

⁵⁶ *Schalk and Kopf v Austria* (ECtHR, 24 June 2010) App No 30141/04 [94]–[95].

⁵⁷ *Koilova and Babulkova v Bulgaria* (ECtHR, 5 September 2023) App No 40209/20 [66]; *Formela and Others v Poland* (ECtHR, 19 September 2024) App Nos 58828/12 and 4 others [29].

⁵⁸ *Oliari and Others v Italy* (ECtHR, 21 July 2015) App Nos 18766/11 and 36030/11 [174], [185]; *Fedotova and Others v Russia* (ECtHR, 17 January 2023) App Nos 40792/10, 30538/14 and 43439/14 [224]; *Buhuceanu and Others v Romania* (ECtHR, 23 May 2023) App Nos 20081/19 and 20 others [83]; *Przybyszewska and Others v Poland* (ECtHR, 12 December 2023) App Nos 11454/17 and 9 others [123].

⁵⁹ *Vallianatos and Others v Greece* (ECtHR, 7 November 2013) App Nos 29381/09 and 32684/09 [90].

⁶⁰ *Fedotova and Others v Russia* (ECtHR, 17 January 2023) App Nos 40792/10, 30538/14 and 43439/14 [212]–[213].

⁶¹ *Fedotova and Others* (n 60) [219]; *Buhuceanu and Others v Romania* (n 59) [80].

⁶² *Khamtokhu and Aksenchik v Russia* (ECtHR, 24 January 2017) App Nos 60367/08 and 961/11 [78].

⁶³ *Przybyszewska and Others v Poland* (n 58) [121].

⁶⁴ *Schalk and Kopf v Austria* (n 56) [101]; *Oliari and Others v Italy* (n 58) [192]; *Chapin and Charpentier v France* (ECtHR, 9 June 2016) App No 40183/07 [48].

⁶⁵ Case C-443/15 *David L Parris v Trinity College Dublin and Others* (CJEU, 24 November 2016) EU:C:2016:897 [59]. According to said decision, Member States (in the context of EU competence) are also free to decide on an alternative form of legal recognition of same-sex relationships. Possibility not repeated in *Coman and Others* (n 14) [37].

⁶⁶ Denmark, the first country in the world to introduce same-sex registered partnership in 1989 abolished the legislation after introducing same-sex marriage in 2012. Similarly: Sweden (1995 - 2009), Finland (2002 - 2017), Germany (2007 - 2017), Ireland (2010 - 2015) and Slovenia (2006 - 2023) repealed their registered partnership legislation following the introduction of same-sex marriage.

ECHR by legalising same-sex registered partnerships only (Cyprus, Czech Republic,⁶⁷ Italy) with some of them having a constitutional ban on same-sex marriage at the same time (Croatia, Hungary, Latvia). When critically assessing the potential influence of the judgment *Cupriak-Trojan* on these Member States, the judgment may be characterised as technocratic and ambiguous, as the CJEU, despite variously referring to both the Charter⁶⁸ and the ECHR,⁶⁹ limits its conclusions narrowly to the recognition of a same-sex marriage (including transcription of the marriage certificate if needed) concluded in another Member State, without clarifying the true scope of the Member State's obligations.⁷⁰

This results in two distinct perspectives. The first perspective, based strictly on EU law, holds that, irrespective of whether a Member State permits same-sex marriage domestically, same-sex marriages concluded in another Member State must be recognised, as marital status should be regarded as an integral component of a person's identity and personal status,⁷¹ but without imposing 'any obligation on the part of other Member States to ensure that such recognition produces effects in terms of civil status'.⁷² The second perspective, when construing the judgment *Cupriak-Trojan* in conjunction with positive obligations of the Member States derived from ECtHR jurisprudence, suggests that, even though the extent of status and rights granted to same-sex unions falls within a certain margin of appreciation of the Member State,⁷³ such recognition should be adequate⁷⁴ and *de facto* close or similar to marriage not only in material aspects (e.g., taxation, inheritance), but also in moral ones (e.g., rights and duties in terms of mutual assistance), and must be practical and effective rather than merely theoretical or illusory.⁷⁵ Therefore, same-sex couples married abroad should be granted rights comparable to those associated with marriage (notably the Member State where it was concluded), enabling them to enjoy continuous respect for their private and family life. This would, of course, raise a legitimate question concerning the potential discrimination between domestic nationals and those nationals who have exercised their right of free movement and residence under Directive 2004/38/EC. Notwithstanding both presented perspectives, a strict grammatical interpretation of the operative part of the judgment *Cupriak-Trojan* leads to the conclusion that a Member State which recognises a same-sex marriage concluded in another Member State 'only' as a registered partnership does not fulfil its obligations under the Charter.

Member States recognising same-sex marriages. The effects of the judgment *Cupriak-Trojan* should, *prima facie*, be irrelevant for the vast majority of Member States

⁶⁷ Since 1 January 2025 Czech Republic has replaced the former 'registered partnership' concept with 'partnership' in order to distinguish it from marriage, granting same-sex couples almost the same rights, except for the contested issue of joint adoption. As stated by Tomšej, it will take years before the interpretation of rights (see, e.g., Czech Civil Code, Section 800 (Act No. 89/2012 Coll.) related to adoption) acquired under the 'partnership' is confirmed by case law. See Jan Tomšej, 'Daleká cesta za rovností: několik poznámek k novému institutu partnerství [A long road to equality: a few remarks on the new institution of partnership]' (2025) 33(6) *Právní rozhledy* 197, 201.

⁶⁸ *Cupriak-Trojan* (n 1) [operative part], [55], [63]-[64].

⁶⁹ *Cupriak-Trojan* (n 1) [64]-[66].

⁷⁰ A similarly restrained interpretive approach was also adopted by the Polish Supreme Administrative Court in the subsequent decision. *Cupriak-Trojan* (Supreme Administrative Court, Poland) (n 42) [6.22].

⁷¹ Similarly in Case C-4/23 [Mirin] *M.-A.A. v. Direcția de Evidență a Persoanelor Cluj, Serviciul stare civilă and others* (CJEU, 4 October 2024) EU:C:2024:845 [53].

⁷² Case C-713/23 *Cupriak-Trojan and Trojan v Wojewoda Mazowiecki* EU:C:2025:235, Opinion of AG Richard de la Tour, point 29.

⁷³ See, e.g., *Schalk and Kopf v Austria* (n 56) [108].

⁷⁴ *Przybyszewska and Others v Poland* (n 58) [121].

⁷⁵ See, e.g., *Fedotova and Others v Russia* (n 58) [190].

that grant same-sex couples the possibility to conclude a marriage (Denmark, Finland, Germany, Ireland, Portugal, Slovenia, Sweden), provided that recognition is effected through marital status, even in the Member States that in addition to marriage also offer the option of a registered partnership (Austria, Belgium, Estonia, France, Greece, Luxembourg, Malta, Netherlands, Spain). The only question that may arise in this context, independently of the judgment, concerns the scope of the rights and obligations guaranteed to spouses in individual cases within a given Member State. However, there are no fundamental differences in the essential key features of marital status (including with regard to the adoption of minors) related to personal and family life within Member States.

5. CONCLUSION: CONCERNS ARISING FROM THE CUPRIAK-TROJAN JUDGMENT

To conclude, *Cupriak-Trojan* judgment raises concerns mainly in those Member States which define marriage as a union between a man and a woman and, consequently, do not recognise the effects of same-sex marriages concluded abroad. The main concern is that same-sex couples who cannot marry in their home Member State will rely on this judgment as a basis for entering into marriage in other Member States; in other words, that the judgment will lead to so-called 'wedding/marriage tourism'⁷⁶, mainly if there is no minimum residency period requirement in the state allowing for same-sex marriages.

In comparison, Austrian law does not impose any minimum period of residence or domicile as a precondition for marriage. Same-sex couples may get married in Austria even if neither of them has Austrian citizenship or a place of residence in Austria, provided that the substantive and formal requirements for marriage are satisfied. This makes Austria more accessible to non-resident couples than jurisdictions where celebration of marriage is tied to a domicile or residence. On the other hand, in France, depending on the situation, there may be a mandatory minimum residency period. Article 74 of the French Civil Code states:

The marriage will be celebrated, at the choice of the spouses, in the commune where one of them, or one of their parents, has his or her domicile or residence established by at least one month's continuous dwelling on the date of the publication provided for by law.⁷⁷

Getting married in France thus requires connection to a specific commune. Spouses may get married in the commune where one of the spouses or his or her parent has domicile or residence. If marriage is based on residence rather than domicile, that residence must have been established by at least one month of continuous dwelling by the date of the legally required publication of the marriage notice.

Based on the foregoing, the concerns in the first group of Member States - not-recognising same-sex unions (e.g., Slovakia) are that their citizens might enter a same-

⁷⁶ Legally speaking, 'wedding tourism' describes a situation which occurs when couples travel to, or establish temporary residency in, a jurisdiction with more favourable laws to get married, register a partnership, or dissolve a marriage that is not recognised in their home jurisdiction. The term is not broadly used, and we may also speak about the same-sex marriage forum shopping.

⁷⁷ Under the French Civil Code, arts 63–65, before a marriage can take place, the civil registrar must publish a notice of the intended marriage. This is done by placing a poster on the door of the town hall of the relevant commune. The notice includes the future spouses' names, occupations, domiciles and residences, as well as the place where the marriage will be celebrated. The poster must remain displayed for **ten days**, and the marriage cannot be celebrated before that period has expired. If the marriage is not celebrated within **one year** after the expiry of the publication period, a new publication must be made before the marriage can take place.

sex marriage in the third group of Member States – recognising same-sex marriages (e.g., Austria) and then, based on the *Cupriak-Trojan* judgement, request the transcription of their marriage certificate into the civil register of the Member State of their nationality. However, it should be noted that this is not the purpose of the judgment, and, in our view, such conclusion cannot be derived from any part of the CJEU's reasoning. For this reason, Lysina's view cannot be accepted insofar as he argues that, first and foremost, the judgment establishes a general obligation on Member States to respect a civil status acquired in another Member State where this is necessary for the exercise of EU rights.⁷⁸ This obligation is certainly not framed in the judgment as a general one; rather, it concerns only those Union citizens who have established family life in another Member State.

The key question raised by the judgment *Cupriak-Trojan* that will need to be addressed in the future - is therefore assessing the limits of what can be considered as 'creating or strengthening family life'. This follows in particular from paragraph 46 of the judgment, that states:

As regards the situation of two Union citizens who, as in the main proceedings, live together in the host Member State and have married there in accordance with the law of that Member State, the effectiveness of the rights which those citizens derive from Article 21(1) TFEU requires, all the more, that those citizens be certain that they will be able, in the Member State from which they originate, **to continue the family life which they began or strengthened in the host Member State, in particular through their marriage.**⁷⁹

Thus by guaranteeing a minimum level of legal protection enabling the full establishment of family law status, which, at the same time, cannot be considered as infringing upon either national identity or national regulatory autonomy in the field of family law.⁸⁰

The central point of the judgment is therefore to ensure that Union citizens are able, in a Member State which does not allow same-sex marriage, **to continue the family life** which they created or strengthened in another Member State. It must therefore be concluded that the **judgment cannot be applied to cases in which the same-sex spouses did not even create family life in a Member State which provides for or recognises same-sex marriage.**

Beyond its immediate implications for free movement, *Cupriak-Trojan* illustrates the growing importance of legal recognition as a prerequisite for the effective enjoyment of fundamental rights. While the judgment remains carefully confined to its factual context, it nevertheless reinforces the principle that Member States cannot rely on their domestic family-law regimes where doing so would undermine the effective exercise of rights derived from EU law.⁸¹

⁷⁸ Peter Lysina, 'Rozsudok Súdneho dvora vo veci Wojewoda Mazowiecki – nová doktrína, alebo neodôvodnený zásah do národných právomocí? [The Court of Justice's judgment in Wojewoda Mazowiecki – a new doctrine, or an unjustified interference with national competences?]' (Comenius Blog, 27 December 2025) <https://comeniusblog.flaw.uniba.sk/2025/12/27/rozsudok-sudneho-dvora-vo-veci-wojewoda-mazowiecki-nova-doktrina-alebo-neodovodneny-zasah-do-narodnych-pravomoci/> accessed 15 April 2026.

⁷⁹ *Cupriak-Trojan* (n 1) [46].

⁸⁰ *Cupriak-Trojan* (Supreme Administrative Court, Poland) (n 42) [6.28].

⁸¹ Judgment *Cupriak-Trojan* should not be considered without further context, as it needs to be viewed as a part of a wider European rights-based discussion about identity, as the autonomy and self-determination often depend on whether the legal order provides mechanisms capable of reflecting a person's lived and legally relevant status. When the state conditions recognition of same-sex couples, similarly to the recognition of legal sex on sterilisation or genital surgery in a recent Czech Constitutional Court decision, the interference is not merely administrative: it may affect bodily integrity, self-determination, personal autonomy, privacy and human dignity (Nikolas Sabján and Olexij M Meteňkanyč (n 4) 247), while also raising equality concerns. This

broader perspective of the judgment in *Cupriak-Trojan* also helps explain why national-identity, public-policy or moral objections, including those framed through religious discourse under the term 'gender ideology', according to Batka used imprecisely (Lubomír Batka, 'Hľadanie identity ECAV na Slovensku vo vzťahu k transrodovým ľuďom [The search for the identity of the ECAV in Slovakia in relation to transgender people]' (2025) 31(1) *Teologická reflexe* 54, 54 <https://doi.org/10.14712/27880796.2025.4> accessed 25 June 2026), must be assessed critically where they operate as barriers to effective LGBTIQ+ rights recognition.