CJEU Advocate General says collection of civil titles is unlawful and risks discrimination against trans and non-binary people

article, non-discrimination

ILGA-Europe, TGEU and Association Mousse welcome the opinion of the Advocate General of the Court of Justice of the European Union confirming that the French railway company should stop collecting its passengers' civil titles.

The opinion concerns a case initiated by the Mousse Association, representing 64 individuals, against France's national state-owned railway company (SNCF) practice of forcing passengers to choose between the civil titles 'Mr' or 'Ms' when purchasing train tickets. The train company does not offer a third option.

The case relies on the General Data Protection Regulation (GDPR)'s principles of data minimisation and accuracy, as well as the fundamental EU law principle of non-discrimination.

Yesterday, CJEU Advocate General Maciej Szpunar said that it is not "necessary" under GDPR and that it is therefore unlawful for the SNCF to collect individuals' civil titles. The Advocate General dismissed the SNCF's arguments that the data collection in question is necessary to adapt its commercial communication or transport services depending on the passengers' civil titles.

The Advocate General also agreed with Association Mousse that processing data on civil titles creates a risk of discrimination on the grounds of gender identity for trans and non-binary people notably as other States legally recognise non-binary identities.

As such, the Advocate General's reasoning represents a positive step forward for the rights of non-binary people, but also more broadly, for LGBTI people who do not identify within the gender binary.

As the CJEU will now deliberate on this case, our organisations hope that the judgment will align with the opinion of the Advocate General and put an end to the misgendering and discrimination faced by non-binary people who are constantly forced to choose in their everyday lives between two options that do not correspond to their identity. Also, binary trans people, whose identity documents do not match their gender identity, will benefit from fewer mandatory forms asking for a gender marker, when it is not necessary to the service or contract at hand.

Therefore, a positive judgment would set a significant precedent for the inclusion of all gender identities in many areas of life, by requiring forms without any reference to gender markers or with inclusive options. It doesn't take anything away from anyone, but it helps marginalised communities a lot.

Almost two-thirds (64 per cent) of trans respondents felt discriminated against in the year before the survey, followed by more than half (51 per cent) of non-binary and gender-diverse respondents, where every second respondent experienced discrimination in the same period, found the EU Fundamental Rights Agency LGBTI survey 2023. The same survey also found that 15 per cent of non-binary and 35 per cent of trans people said they experienced discrimination when they had to show their ID. In contrast, only 1% of cisgender endosex respondents reported such issues. Non-binary people make up the largest compound (65 per cent) of the trans community

ILGA-Europe and TGEU are providing support to Association Mousse and its lawyers, Etienne Deshoulières from Deshoulières Avocats and Johan Heymans, Yasmina El Kaddouri and Delphine Holemans from VS Advocaten, in this case.

Signatories

- TGEU (Trans Europe and Central Asia)
- ILGA-Europe
- Association Mousse

More info

- Read the Advocate General's opinion
- VS Advocaten