Landmark opinion: Top EU lawyer backs trans people's right to legal gender recognition across the EU

article, non-discrimination, legal gender recognition

Last week, Advocate General of the Court of Justice of the European Union Richard de la Tour delivered his Opinion in the case C-43/24 *Shipov*. The case was brought forward by a Bulgarian trans woman currently living in Italy who was repeatedly denied her requests to legally amend her gender marker and name on her Bulgarian documents by Bulgarian courts.

In a major development, the Advocate General stated that under EU law provisions on freedom of movement and fundamental right to private and family life, Member States have an obligation to legally recognise the lived gender of their nationals. While Member States can decide how to design such a process, they cannot request evidence of having had surgery. Furthermore, the Advocate General confirmed: identity documents and passports are key for EU nationals to enjoy freedom of movement. Therefore, Member States must provide travel documents matching the lived gender identity. In the case of Bulgaria, the change should be entered in the birth certificate, as it is the primary document needed for changing ID documents.

Background

The Opinion follows a lawsuit filed by a Bulgarian trans woman currently living in Italy with her partner. Her requests to legally amend her gender marker and name on her Bulgarian documents have been repeatedly denied by Bulgarian courts over the course of nine years. The mismatch between her gender identity and expression and her gender marker in her official documents leads to discrimination in all areas of life where official documents are required. This includes everyday activities such as going to the doctor and paying for groceries by card, finding employment, enrolling in education, or obtaining housing. It also creates an obstacle to her exercising freedom of movement as she has to show mismatching documents whenever she travels.

The European Court of Human Rights had already ruled in 2020 in the case of Y.T. and again in 2022 in the case of P.H. that Bulgaria is breaching the European Convention on Human Rights by failing to provide quick, transparent and accessible legal gender recognition procedures. Since then, the situation for trans people in Bulgaria has deteriorated significantly.

On 20 February 2023, the Bulgarian Supreme Court adopted a binding interpretative decision. It established that Bulgarian law does not enable the courts to allow a change to the sex, name and personal identification number of trans people on the civil status register. Therefore, this decision introduced a general, automatic and universal de facto ban preventing Bulgarian courts from allowing legal gender recognition. Given this background, the Bulgarian Supreme Court halted the domestic proceedings of the applicant and asked the CJEU whether this ban is compatible with EU law.

The CJEU Advocate General's Opinion

In this case, the CJEU is being asked to decide whether the Bulgarian legal system, which effectively blocks legal gender recognition mainly due to court decisions based on religious and moral beliefs, violates EU law principles of

equality and non-discrimination, freedom of movement and the right to private and family life, as guaranteed by the EU Charter of Fundamental Rights and the Treaties.

In his Opinion delivered on 4 September 2025, Advocate General Richard de la Tour proposed that the Court should rule in its judgment that EU law requires Member States to provide for legal gender recognition of their nationals. The Advocate General made clear that identity cards and passports should record their holder's "lived gender identity", rather than sex assigned at birth, to serve their purpose, i.e. identify the holder. In his view, the mismatch between the applicant's ID documents and her "lived gender identity" in this case does not allow her to effectively exercise her right to move, reside and work across EU Member States. Requiring identity cards to show only the sex listed on the birth certificate, rather than the lived gender identity, creates a barrier to free movement rights, especially the right to private and family life guaranteed by the Charter.

The Opinion added that EU law provisions require the changes to be entered in the applicant's birth certificate when a change to identity documents solely depends on such an entry on a primary document.

Further, the Advocate General stated that legal gender recognition cannot be subject to the production of evidence of having undertaken surgery, as this would undermine the right to the integrity of the person and the right to respect for private life referred to in Articles 3 and 7 of the Charter. Unfortunately, the Advocate General suggested that a medical certificate, including a psychiatric diagnosis, may constitute relevant and sufficient evidence to grant legal gender recognition. We are hopeful the Court will move away from this medicalised approach and the requirement of "relevant and sufficient evidence". This would allow for more flexibility, responding better to the individual circumstances, and respect the different approaches Member States might choose.

Importantly, the Opinion reminded that the national courts have the competence to interpret EU law, even if it contrasts decisions from a higher domestic court (Supremacy of EU law). De la Tour proposed that the CJEU should rule that the Bulgarian referring court should not wait until the national legislation is amended by legislative or other procedure to grant legal gender recognition to the applicant.

The Advocate General also pointed out that while Member States have to provide for a field indicating "gender" in an EU passport, it can be left empty and that EU law does not require identity documents to have a gender marker at all.

Impact

While Advocate General's opinions are not binding, their conclusions are taken into consideration by the CJEU judges and are often indicative of their ruling.

A positive judgment from the CJEU would be of the utmost importance for the protection of trans people still deprived of any possibility of having their gender identity recognised in some EU Member States. It would confirm that the absence of any possibility to obtain legal gender recognition in a Member State is incompatible with the EU Charter of Fundamental Rights and the Treaties provisions. Currently, Hungary and Bulgaria are *de facto* banning legal gender recognition in the EU, while efforts for similar restrictions have been considered in other Member States.

A judgment in this case is expected at the beginning of 2026.

Welcoming this Opinion, Marie-Hélène Ludwig, ILGA-Europe's Senior Strategic Litigation Officer said: "After the Mirin, Mousse and Deldits rulings, this Opinion builds on the momentum for the protection of trans people's fundamental rights in the EU. We are hopeful the judgement will follow this Opinion and make clear that the right to free movement can only be effective if Member States ensure that trans people have functional identity documents."

Richard Köhler, TGEU's Expert Advisor, said: "TGEU has long championed what today's Opinion confirms: functional identity documents aren't a privilege, they're essential for participating in EU life. By empowering judges to uphold fundamental rights immediately, this Opinion offers hope to trans people facing bans, bureaucratic barriers and border humiliation across Europe. We call upon the Commission to take note and to ensure that, whether by stick or carrot, Member States have functional systems in place."

Bilitis, the Bulgarian Helsinki Committee, Deystvie, ILGA-Europe and TGEU (Trans Europe and Central Asia) are providing support to the applicant and her lawyers in this case.

Read the Opinion **here**

Your support makes change possible

We work across Europe and Central Asia to advance trans rights, build strong communities, and drive change through research, advocacy, and community-building.

Your donation helps us continue this vital work — defending trans lives, amplifying trans voices, and advocating for justice every day.

donate now