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FUNCTIONAL APPROACH TO THE RECOGNITION OF FAMILY RELATIONSHIPS IN THE CASE LAW OF EUROPEAN COURTS

ABSTRACT

*Although member states traditionally enjoy broad autonomy in the field of family law, the development of European case law has gradually led to a reassessment of the limits of that autonomy in cross-border situations. This is particularly evident in the context of recognising the legal effects of family relationships established in other member states. The paper proceeds from the research hypothesis that a functional approach to recognition has gradually emerged in European case law, allowing a distinction between the non-recognition of a family law institution as such and the obligation to recognise its legal effects where this is necessary for the protection of fundamental rights. Early elements of this approach can be identified in the case law of the European Court of Human Rights, particularly in *Mennesson and Labassee*, while the judgments of the Court of Justice of the European Union in *Coman* and *Pancharevo*, as well as more recent case law, have further elaborated this approach within the framework of EU law. It examines the development of this approach in the case law of the two European courts and the extent to which it can be regarded as a common methodological framework in cross-border family situations, particularly in cases concerning surrogacy and the free movement of European Union citizens. The central research question of the paper is whether this functional approach can be identified as a coherent methodological framework in the case law of European courts. The paper also briefly considers its relationship with the concept of the attenuated effect of public policy. The paper argues that the functional approach may be understood as a doctrinal tool that reconciles the protection of fundamental rights with the regulatory autonomy of member states.*

Keywords: *functional approach to the recognition, surrogacy, children's rights, family law*

1. INTRODUCTION

The normative regulation of family law has traditionally fallen within the sphere of broad state autonomy.¹ At the level of the European Union, harmonisation has primarily developed through private international law, particularly in the fields of jurisdiction, applicable law, and the recognition and enforcement of decisions, rather than through the unification of substantive family law.² As a result, significant differences persist between national legal systems, especially in relation to parenthood, the recognition of family relationships, and personal status.³ These differences acquire particular legal relevance in cross-border situations, where family relationships established in one member state seek to produce legal effects in another.⁴ The increasing mobility of persons within the European Union has led to a growing number of situations in which family relationships are established in one state while their legal effects are sought in another.⁵ In cross-border family situations, these differences create significant legal challenges, particularly in relation to legal certainty and the continuity of personal status.⁶ Private international law therefore plays a central role in addressing the fragmentation of legal relationships across member states.⁷ In the doctrine of private international law, the recognition of personal statuses has traditionally been regarded as one of the fundamental elements in ensuring legal certainty and the stability of legal relationships.⁸ The non-recognition of a status lawfully acquired abroad may lead to the phenomenon of so-called "limping" legal relationships, in which the same individual holds a different status depending on the state in which they are located.⁹ Furthermore, the fragmentation of personal

¹ Majstorović, I., *Family Law as Diversity in Unity: The European Union and Croatia*, in: Bodiroga-Vukobrat, N.; Hlača, N.; Hrabar, D. (eds.), *European Family Law*, Official Gazette, Zagreb 2013., p. 1.

² *European Family Law (PIL)*, Max-EuP 2012, Max Planck Encyclopedia of European Private Law, available at: [https://max-eup2012.mpipriv.de/index.php/European_Family_Law_\(PIL\)](https://max-eup2012.mpipriv.de/index.php/European_Family_Law_(PIL)), accessed 25 January 2026.

³ *Ibid.*

⁴ Garayova, L., *Parenthood without Borders – Judicial Cooperation for Cross-Border Family Security in the EU*, ECLIC, International Scientific Conference: Strong and Secure Europe: Legal and Economic Aspects, Faculty of Law, University of Osijek, 9/2025., p. 326–327.

⁵ European Parliament, *Cross-Border Legal Recognition of Parenthood in the EU*, Policy Department for Citizens' Rights and Constitutional Affairs, PE 746.632, 2023., p. 6–9.

⁶ *Ibid.*

⁷ Sajko, K., *Private International Law*, 5th ed., Official Gazette, Zagreb 2009., p. 7–16.

⁸ See Hlača, N., *Personal Status of Citizens in the European Union*, in: Bodiroga-Vukobrat, N. et al., *European Family Law*, Official Gazette, Zagreb 2013., p. 105–143.

⁹ Lagarde, P., *Recognition and Registration of Civil Status Documents in Cross-Border Cases*, Directorate-General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Brussels 2010., p. 7–8.

status in the area of parent-child relationships carries particular legal significance, as the non-recognition of parental status in cross-border situations creates concrete legal and practical difficulties that may restrict the exercise of freedom of movement within the European Union, while directly affecting the rights of children.¹⁰ Faced with these difficulties, states have traditionally relied on the concept of public policy as a corrective mechanism in the recognition of foreign legal relationships. While public policy serves to protect the fundamental values of the national legal order, its application in cross-border family situations creates a tension between regulatory autonomy and the effective protection of fundamental rights.¹¹ In this context, growing attention has been devoted to the role of fundamental rights in shaping approaches to the recognition of family relationships.¹² The right to private and family life, the right to identity, and the requirements of legal certainty are gradually gaining importance as criteria for assessing the justification of national restrictions in the field of recognition of personal statuses.¹³ Particular emphasis is placed on the position of the child as a holder of independent rights, whose interests do not necessarily coincide with the regulatory interests of the state.¹⁴ In this context, European case law has gradually shifted its analytical focus from the permissibility of specific family law institutions under national law to the legal effects of relationships lawfully established in another member state.¹⁵ This shift allows for a distinction between the non-recognition of a family law institution as such and the obligation to recognise its legal effects where this is necessary for the protection of fundamental rights.¹⁶ In legal doctrine, this approach is described as a functional approach to recognition, which seeks to address the fragmentation of personal status in cross-border situations while preserving the regulatory autonomy of member states.¹⁷ This paper proceeds from a clearly defined research question: can a functional approach to the recognition of family relationships be identified as a common methodological framework in the case law of European courts, and what are its limits in relation to traditional private international law mechanisms, in particular public policy and its attenuated effect (*effet atténué*)?

¹⁰ European Parliament, *op. cit.* in fn. 5, p. 7–8, 15–16.

¹¹ See Sajko, K., *op. cit.* in fn. 7, p. 256–269.

¹² Coman and others, application C-673/16, judgment of 5 June 2018, paras. 37–42.

¹³ Mennesson v France, application no. 65192/11, judgment of 26 June 2014, paras. 37–42.

¹⁴ *Ibid.*

¹⁵ See Scherpe, J. M., *Epilogue to the Family in EU Law – Is there a European Family Law?*, in: Part IV – The EU Family in Internal and External Crises, Cambridge University Press, 2024., p. 249–262.

¹⁶ Coman, *op. cit.* in fn. 12.

¹⁷ See Palazzo, N., *Functional Recognition and Polyamory: Glitters and Hard Truths in the O'Neill Judgment*, Journal of Social Welfare and Family Law, Vol. 46, No. 2/2024., p. 187–207.

In methodological terms, the paper adopts a doctrinal approach based on the analysis of the case law of the European Court of Human Rights (hereinafter ECtHR) and the Court of Justice of the European Union (hereinafter: ECJ). The structure of the paper is as follows. First, the concept of personal status and its relevance in cross-border situations is outlined. This is followed by an analysis of the case law of the ECtHR, and subsequently of the ECJ. Finally, the paper offers a critical assessment of the functional approach and its relationship to traditional private international law mechanisms. Proceeding from the above, the paper advances the thesis that the judgments of the ECJ in *Coman*¹⁸ and *Pancharevo*,¹⁹ as well as more recent case law, although delivered in the context of the free movement of EU citizens, further elaborated a doctrinal framework for a limited and functional approach to the recognition of family relationships created in other member states. Early elements of a functional approach to the recognition of family relationships can be identified in the case law of the ECtHR in particular in the judgments *Mennesson*²⁰ and *Labassee*²¹, which constitute a starting point for examining its further development in the case law of the ECJ. Particular attention is devoted to the position of children, whose rights are especially vulnerable in such situations, given that the consequences of the non-recognition of parental relationships directly affect their legal identity and legal certainty. In such cases, the limits of state autonomy in the field of family law and the obligation to protect the rights of children guaranteed by Article 8 of the European Convention on Human Rights (hereinafter: ECHR)²² are considered simultaneously. In this context, as a starting point for the further analysis, the paper first examines the concept of personal status and its significance in cross-border situations.

2. RECOGNITION OF PERSONAL STATUS IN CROSS-BORDER SITUATIONS

The personal status of a natural person encompasses a set of legally relevant personal characteristics that distinguish that person from others and determine their position within the legal order. These are legal facts connected to the individual from which rights and obligations arise whose effects operate *erga*

¹⁸ *Coman, op. cit.* in fn. 12.

¹⁹ *V.M.A. v Stolichna obshtina, rayon 'Pancharevo'*, Case C-490/20, Judgment of 14 December 2021.

²⁰ *Mennesson, op. cit.* in fn. 13.

²¹ *Labassee v France*, Application No. 65941/11, Judgment of 26 June 2014.

²² European Convention for the Protection of Human Rights and Fundamental Freedoms, Official gazette – International Treaties, No. 18/1997, 6/1999, 14/2002, 13/2003, 9/2005, 1/2006, 2/2010, 13/2017.

omnes, irrespective of a specific legal relationship.²³ Although certain elements of personal status may be subject to change during a person's lifetime, they at any given moment constitute the basis for determining that person's legal position.²⁴ In the classical understanding, elements of personal status include, *inter alia*, name, gender, nationality, domicile, and family status.²⁵ Certain elements of personal status thereby have particular functional importance for the legal order, as they serve as connecting factors for the exercise of various public law and private law effects.²⁶ Within family status, marital status and parenthood are especially prominent, as these relationships produce wide legal effects and play a central role in shaping an individual's legal identity.²⁷ Marriage determines the legal position of an individual in relation to another person, while parenthood establishes the fundamental legal relationship between parent and child, with lasting consequences for both parties.²⁸ Such relationships carry particular normative weight, since their creation, modification, or termination directly affects the legal position of the individual. This is particularly evident in the area of parenthood, which does not only shape the legal status of adults but also produces long-term legal effects in relation to children, especially with regard to their identity, legal belonging to a family, and legal certainty.²⁹ Precisely because of these effects, legal doctrine emphasises that matters of personal status, although formally belonging to the sphere of private law, simultaneously possess a pronounced dimension of fundamental rights protection.

In cross-border situations, the legal significance of personal status becomes particularly evident. The freedom of movement of persons within the European Union leads to increasingly frequent situations in which elements of personal status, such as marital status or parenthood, are acquired or established in one state while their legal effects are sought in another.³⁰ In such circumstances, the non-recognition of a personal status lawfully acquired abroad may lead to situations in which the same person does not enjoy an equal legal position in different legal orders. Such inconsistency is particularly visible in the field of family

²³ Trabucchi, A., *Istituzioni di diritto civile*, 27th ed., Cedam, Padova 1985., p. 4.

²⁴ Hlača, N., *op. cit.* in fn. 8, p. 107.

²⁵ *Ibid.*

²⁶ *Ibid.*, p. 108.

²⁷ *Loc. cit.*

²⁸ *Ibid.*, p. 106–107.

²⁹ Mennesson, *op. cit.* in fn. 13 and Labassee, *op. cit.* in fn. 21.

³⁰ Hlača, N., *op. cit.* in fn. 8, p. 111.

relationships, as it may have serious consequences for legal certainty and the continuity of family life.³¹

The recognition of elements of personal status in cross-border situations is generally achieved through the recognition of foreign public documents, thereby enabling a status lawfully established in one state to produce effects in another.³² In this context, legalisation, including the institution of the *apostille*³³, has long represented a fundamental mechanism for confirming the authenticity of foreign documents in legal transactions. Although the *apostille*³⁴ remains relevant in relations with third countries, its application within the European Union has been significantly limited. Regulation (EU) 2016/1191 abolished the requirement of legalisation and *apostille* for certain public documents relating to personal status, with the aim of reducing administrative obstacles and facilitating the free movement of persons. However, this Regulation does not govern the recognition of the substantive legal effects of personal status, which remains within the competence of national legal orders. This clearly distinguishes the formal recognition of documents from the recognition of personal status itself, a distinction that carries particular normative importance in the context of cross-border family relationships.³⁵ The limitations of such a formal approach to the recognition of personal status are especially evident in situations where the non-recognition of the legal effects of a status may result in a violation of fundamental rights, particularly the right to private and family life and the right to identity. In such circumstances, an approach is gradually emerging that does not place exclusive emphasis on the formal recognition of documents but rather on the recognition of the concrete legal effects of personal status to the extent necessary to ensure legal certainty and effective legal protection. This establishes a normative framework for the analysis of the functional approach to the recognition of family relationships in cross-border situations, which will be examined in the following sections through the case law of the ECtHR and subsequently through the case law of the ECJ.

³¹ Corneloup, S.; Heiderhoff, B.; Honorati, C. (eds.), *Private International Law in a Context of Increasing International Mobility: Challenges and Potential*, Study for the JURI Committee, European Parliament, 2017., p. 9–11.

³² Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No. 1024/2012, OJ L 200, 26 July 2016. (hereinafter: Regulation (EU) 2016/1191.

³³ The apostille institute is regulated by the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, Official Gazette – International Treaties, No. 4/4, 11/11; Official Gazette of the FPRY – International Treaties, No. 10/62.

³⁴ Regulation (EU) 2016/1191, *op. cit.* in fn. 32.

³⁵ *Ibid.*

3. CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Proceeding from the previously outlined normative framework for the recognition of personal status in cross-border situations, it is first necessary to examine the case law of the ECtHR in cases concerning surrogacy and the recognition of family relationships established abroad. Although the ECtHR operates within a different normative framework and proceeds from the protection of rights guaranteed by the ECHR,³⁶ its case law has played an important role in shaping standards for the protection of personal status and family life in cross-border situations. Particular importance in this regard attaches to the judgments in *Mennesson*³⁷ and *Labassee*³⁸, in which the ECtHR for the first time examined the effects of the non-recognition of parenthood established through surrogacy on the rights of children born abroad.

In those cases, the ECtHR devoted particular attention to the protection of the rights of children, especially the right to identity and the right to private and family life guaranteed by Article 8 of the ECHR, thereby limiting the ability of states to call into question the continuity of a child's personal status through the non-recognition of a parent-child relationship.³⁹ Such an approach represents an important starting point for understanding the development of a functional approach to the recognition of family relationships in European case law. The analysis of these judgments makes it possible to examine the extent to which early elements of a functional approach to the recognition of family relationships can be identified in the case law of the ECtHR, which will in the following sections be compared with the approach developed in the case law of the ECJ.

3.1. *Mennesson v. France* and *Labassee v. France*

The absence of a European consensus on the permissibility of surrogacy represents a significant challenge for the case law of the ECtHR, particularly in the application of Article 8 of the ECHR. The diversity of national solutions gives rise to complex questions regarding the scope of the right to private and family life and

³⁶ ECHR, *op. cit.* in fn. 22.

³⁷ *Mennesson*, *op. cit.* in fn. 13.

³⁸ *Labassee*, *op. cit.* in fn. 21.

³⁹ *Ibid.*

its potential conflict with the protection of public policy.⁴⁰ The ECtHR therefore regards the achievement of a balance between the general public interest and the interests of the individual as an imperative when examining such cases, particularly in situations where the non-recognition of a parent-child relationship affects the legal status of children born abroad.⁴¹

The judgments in *Mennesson v. France* and *Labassee v. France* represent a turning point in the case law of the ECtHR, as they shift the focus from the permissibility of surrogacy to the legal effects of parenthood established abroad.⁴² In these cases, the ECtHR examined the rights arising from parenthood lawfully established through surrogacy in the United States of America, which were in conflict with French public policy.⁴³ Although the factual circumstances of the two judgments are not identical, given that they raise the same legal issues and that the ECtHR delivered two corresponding judgments on 26 June 2014., the cases will be analysed jointly in the following sections.

3.2. Analysis of *Mennesson* and *Labassee*

Against this background, the ECtHR in *Mennesson v. France* and *Labassee v. France* examined situations in which children were born through surrogacy arrangements lawfully carried out in the United States, with the parent-child relationship formally recognised under US law. Upon returning to France, the applicants sought recognition of that relationship, which was refused by the national authorities on the grounds of public policy and the prohibition of surrogacy.⁴⁴

Although the factual circumstances in *Mennesson v. France* and *Labassee v. France* differ in certain respects, the ECtHR delivered substantively identical judgments in both cases on 26 June 2014. At the core of both cases was the question of whether the national refusal to recognise parenthood lawfully established abroad through surrogacy was compatible with the right to respect for

⁴⁰ Shuilleabhain, M. N., *Surrogacy, System Shopping, and Article 8 of the European Convention on Human Rights*, International Journal of Law, Policy and the Family, Vol. 33, No. 1/2019., p. 115.

⁴¹ Bouček, V., *European Private International Law in the European Integration Process and Selected Issues of the Applicable Law*, Official Gazette, Zagreb 2021., p. 114.

⁴² Fenton-Glynn, C., *International surrogacy before the European Court of Human Rights*, Journal of Private International Law, Vol. 13, No. 3/2017., p. 555.

⁴³ *Mennesson*, *op. cit.* in fn. 13 and *Labassee*, *op. cit.* in fn. 21.

⁴⁴ *Mennesson*, *op. cit.* in fn. 13, paras. 6–28 and *Labassee*, *op. cit.* in fn. 21, paras. 6–17.

private and family life guaranteed by Article 8 of the ECHR.⁴⁵ These cases provided the first systematic opportunity for the ECtHR to examine the limits of state autonomy in protecting public policy in relation to the rights of children in cross-border situations. The ECtHR first established that the refusal to register the parent-child relationship constituted an interference with the rights guaranteed by Article 8 of the ECHR. While this interference was prescribed by law and pursued legitimate aims, including the protection of public policy, the key issue was whether it was proportionate. France relied on the nullity of surrogacy agreements under national law and on the need to discourage recourse to such practices abroad.⁴⁶ The ECtHR further observed that no European consensus exists in the field of surrogacy, which grants States a wide margin of appreciation.⁴⁷ However, it emphasised that this margin is not unlimited and must be assessed in light of the nature and seriousness of the interference with individual rights. It particularly stressed that, where fundamental aspects of children's identity are concerned, the state's margin of appreciation must be narrower.⁴⁸ In this respect, the ECtHR's reasoning is particularly important, as it makes clear that national public policy cannot be applied without limits where fundamental rights are concerned. In that context, the ECtHR clearly distinguished between different aspects of the rights protected under Article 8 of the ECHR. With regard to the intended parents' right to respect for family life, the ECtHR accepted the conclusion of the national courts that the non-recognition of parenthood had not prevented the family from living together in France nor had it led to a de facto severance of family ties. Accordingly, it did not find a violation of Article 8 of the ECHR in that aspect.⁴⁹ By contrast, the ECtHR devoted particular attention to the children's right to respect for private life, which in its view encompasses the right to personal identity and legal certainty. This distinction is central to the ECtHR's reasoning, as it redirects the focus from the interests of the adults to the autonomous rights of the child. By refusing to recognise parenthood lawfully established abroad, the children were placed in a situation of legal uncertainty regarding their origin, nationality, and inheritance rights. Although Article 8 of the ECHR does not guarantee a right to acquire a particular nationality, the ECtHR emphasised that nationality, as well as the legal relationship with one's parents, constitute essential components of a child's identity. Uncertainty concerning these elements may have long-term

⁴⁵ Mennesson, *op. cit.* in fn. 13, para. 43 and Labassee, *op. cit.* in fn. 21, para. 34.

⁴⁶ Mennesson, *op. cit.* in fn. 13, paras. 48–50 and Labassee, *op. cit.* in fn. 21, paras. 33–38.

⁴⁷ Mennesson, *op. cit.* in fn. 13, paras. 76–78 and Labassee, *op. cit.* in fn. 21, paras. 57–58.

⁴⁸ Mennesson, *op. cit.* in fn. 13, paras. 96–100 and Labassee, *op. cit.* in fn. 21, paras. 59–60.

⁴⁹ Mennesson, *op. cit.* in fn. 13, paras. 92–94 and Labassee, *op. cit.* in fn. 21, paras. 71–73, 81.

negative consequences for the child's development and social integration.⁵⁰ Furthermore, the ECtHR considered that a situation in which a state simultaneously acknowledges the existence of family life in a factual sense but refuses to recognise its legal effects leads to an internal contradiction within the legal system. According to the ECHR, such contradictions undermine the children's identity within society and exceed the limits of the state's permissible margin of appreciation, particularly in situations where at least one of the intended parents is also the child's biological parent.⁵¹ This line of reasoning further reinforces the idea that the legal effects of a family relationship cannot be disregarded where doing so would undermine fundamental aspects of a child's identity. It reflects a broader shift in the ECtHR's approach, which prioritises the protection of fundamental rights over the formal acceptance of a particular family law institution. Accordingly, the ECtHR concluded that, although there had been no violation of Article 8 of the ECHR with regard to the intended parents' right to respect for family life, there had been a violation in respect of the children's right to respect for their private life.⁵² The ECtHR thus confirmed that, although states retain broad autonomy to prohibit surrogacy as a family law institution, they are not entitled to completely refuse recognition of the legal effects of parenthood lawfully established abroad where this would undermine the child's fundamental rights.⁵³ This child-centred approach represents an important step towards the development of a functional approach to recognition, as it prioritises the protection of fundamental rights over the formal acceptance of a particular family law institution. It also provides an important starting point for understanding the further development of this approach in the case law of the ECJ, particularly in cases concerning the free movement of European Union citizens.

4. CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Building on the standards of protection developed in the case law of the ECtHR, this section examines the case law of the ECJ in relation to the recognition of family relationships in cross-border situations. The case law of the ECJ plays a key role in determining the legal effects of non-recognition in the context of free movement and the protection of fundamental rights. In this respect, the ECJ's approach does not question national definitions of family law institutions as such,

⁵⁰ Mennesson, *op. cit.* in fn. 13, paras. 96–101 and Labassee, *op. cit.* in fn. 21, paras. 75–80.

⁵¹ *Ibid.*

⁵² Mennesson, *op. cit.* in fn. 13, para. 102 and Labassee, *op. cit.* in fn. 21, para. 81.

⁵³ *Ibid.*

but rather focuses on their legal effects where necessary to ensure the effectiveness of EU law.

Against this background, the judgments in *Coman*⁵⁴ and *Pancharevo*⁵⁵, as well as more recent case law, are examined as key examples of the further development of a functional approach to the recognition of family relationships in EU law. In those cases, the ECJ examined the extent to which member states, while retaining autonomy in the field of family law, are nevertheless required to recognise certain legal effects of family relationships lawfully established in other member states. These cases demonstrate a shift from the question of whether a family relationship must be recognised as such to the question of which legal effects must be recognised in order to safeguard rights derived from EU law.

4.1. *Coman*

The judgment of the ECJ in *Coman* represents a significant development in the case law concerning the recognition of the legal effects of family relationships in cross-border situations within the European Union. Although delivered in the context of the free movement of Union citizens, the judgment has broader implications, particularly regarding the limits within which member states may refuse to recognise a family relationship without infringing rights derived from EU law.⁵⁶ In *Coman*, the ECJ did not address the recognition of same-sex marriage as a family law institution as such, but rather focused on the legal effects arising from such a relationship in a cross-border context.⁵⁷ This distinction is central to the ECJ's reasoning, as it reflects a functional approach to recognition based on the effects of a relationship rather than its formal acceptance under national law. In doing so, the ECJ addressed the relationship between member states' autonomy in regulating family law and the requirements of free movement under EU law.⁵⁸ The case thus forms part of a broader line of case law in which the ECJ assesses the impact of national rules on personal status on the effective exercise of rights guaranteed under EU law.

The case concerned a Romanian national who, during residence in another member state, entered into a same-sex marriage with a third-country national.

⁵⁴ *Coman*, *op. cit.* in fn. 12.

⁵⁵ *Pancharevo*, *op. cit.* in fn. 19.

⁵⁶ Frattone, C., *Same-sex spouses' rights in the ECJ's Coman case*, *Roma Tre Law Review*, No. 2/2019., p. 303–305.

⁵⁷ *Ibid.*

⁵⁸ *Coman*, *op. cit.* in fn. 12, paras. 37–38.

Upon returning to Romania, the spouse applied for a right of residence exceeding three months as a family member of a Union citizen. The Romanian authorities refused the request, relying on national provisions prohibiting same-sex marriage and its recognition, including marriages concluded abroad. This refusal resulted in the denial of legal effects of a marriage lawfully concluded in another member state, solely due to differences in national family law.⁵⁹ The dispute therefore raised the issue of the fragmentation of personal status within the Union and the possibility that a Union citizen, upon returning to their own member state, might lose the legal continuity of the family life established in another member state. The case thus illustrates the problem of fragmentation of personal status within the Union and raises the question of whether such fragmentation is compatible with the effective exercise of free movement rights.

From a legal perspective, the case was situated at the intersection of primary and secondary EU law. On the one hand, Article 21(1) of the Treaty on the Functioning of the European Union (hereinafter: TFEU)⁶⁰ guarantees Union citizens the right to move and reside freely within the territory of the member states.⁶¹ In addition, Directive 2004/38/EC (hereinafter: the Directive)⁶² governs the right of residence of family members, including the definition of "family member". Although the Directive formally applies to situations where a Union citizen resides in a member state other than that of their nationality, the ECJ, following its settled case law, applied it by analogy to situations involving the return of a Union citizen to their member state of origin.⁶³ In doing so, the ECJ emphasised the need to ensure the effectiveness of the freedom of movement. If a Union citizen, upon returning to their own member state, were prevented from living with a family member with whom they had established a family life in another member state, the freedom of movement would be seriously restricted. Such an outcome could have a deterrent effect on the exercise of the right to free movement, which is incompatible with the fundamental objectives of Union law.⁶⁴ In this context, the ECJ focused not on the formal recognition of the marriage under national law, but on the necessity of

⁵⁹ *Ibid.*, paras. 45–49.

⁶⁰ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 202/49, 7 June 2016.

⁶¹ Coman, *op. cit.* in fn. 12, para. 18.

⁶² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30 April 2004.

⁶³ Coman, *op. cit.* in fn. 12, paras. 20–24.

⁶⁴ Gyeney, L., *Same Sex Couples' Right to Free Movement in Light of Member States' National Identities: The Legal Analysis of the Coman Case*, *Iustum Aequum Salutare*, Vol. 14, No. 2/2018., p. 162–163.

recognising its legal effects in order to ensure the effective exercise of free movement rights.

4.1.1. Analysis of Coman

In *Coman*, the ECJ examined the relationship between member states' competence in the field of personal status and the obligations arising under EU law in cross-border situations involving the exercise of free movement. The dispute concerned the legal effects of the national non-recognition of a same-sex marriage lawfully concluded in another member state, in the context of a Union citizen returning to the member state of their nationality. The case therefore raised the question of whether national rules on personal status may limit the exercise of rights derived from EU law in cross-border situations.⁶⁵ The ECJ recalled that Union citizenship, under Article 20 TFEU, is intended to be the fundamental status of nationals of the member states and entails the right to move and reside freely, including the possibility of leading a normal family life.⁶⁶ A Union citizen who has exercised free movement may therefore rely on rights under Article 21(1) TFEU also vis-à-vis their member state of nationality.⁶⁷ This confirms that the rights derived from Union citizenship extend beyond purely internal situations where a cross-border element is present. The non-recognition of a family relationship established during residence in another member state therefore cannot be regarded as an exclusively internal matter of national family law, but rather as an issue falling within the scope of Union law due to its effects in a cross-border situation.⁶⁸ The central element of the ECJ's reasoning concerned the interpretation of the term "spouse" within the meaning of Directive 2004/38, applied by analogy in situations involving the return of a Union citizen. The ECJ recalled that Article 2(2)(a) of the Directive expressly lists the "spouse" as a family member. On that basis, the ECJ concluded that the term "spouse" constitutes an autonomous concept of Union law and is gender-neutral. This interpretation is central to the ECJ's approach, as it treats the concept of "spouse" as an autonomous notion of EU law, independent of national definitions. Consequently, it may include the same-sex spouse of a Union citizen, provided that the marriage was lawfully concluded in another member state in

⁶⁵ Kochenov, D.; Belavusau, U., *Same-sex spouses in the EU after Coman: More free movement, but what about marriage?*, EUI Working Paper LAW, No. 3/2019., p. 1–2 and 5–6.

⁶⁶ *Coman*, *op. cit.* in fn. 12, paras. 29–32.

⁶⁷ *Ibid.*, paras. 31–32.

⁶⁸ Tryfonidou, A., *The ECJ Recognises the Right of Same-Sex Spouses to Move Freely between EU Member States: The Coman Ruling*, *European Law Review*, Vol. 44, No. 5/2019., p. 16–18.

accordance with the law of that state.⁶⁹ In this way, the ECJ ensures that the legal effects of marriage are recognised for the purposes of EU law without requiring member states to recognise the institution of same-sex marriage as such. A member state may not rely on its own national law in order, solely for the purpose of granting a derived right of residence, to refuse recognition of such a marriage.⁷⁰ This confirms that national rules on personal status cannot be relied upon where they undermine the effectiveness of rights derived from EU law. At the same time, the ECJ expressly confirmed that personal status, including rules on marriage, in principle falls within the competence of the member states and that Union law does not impose an obligation to introduce or generally recognise same-sex marriage.⁷¹ However, that competence must be exercised in compliance with Union law, in particular the right of Union citizens to move and reside freely guaranteed by Article 21(1) TFEU. National rules on personal status cannot produce effects that lead to a restriction of the rights conferred on Union citizens under the Treaty.⁷² This reflects a balance between member states' regulatory autonomy and the requirements of EU law, whereby national competence is preserved, but its effects are limited where they interfere with the exercise of free movement rights. The ECJ further observed that allowing member states, depending on national law, to grant or refuse residence to the same-sex spouse of a Union citizen would result in the uneven application of the freedom of movement within the Union. Such an approach would be contrary to the objectives of Directive 2004/38, as the exercise of the freedom of movement would become dependent on the legislation of a particular member state.⁷³ Moreover, refusal to recognise the marriage for the purpose of residence could prevent a Union citizen from returning to the member state of their nationality accompanied by their spouse, thereby seriously restricting the exercise of the rights under Article 21(1) TFEU.⁷⁴ This highlights that national divergences in the regulation of personal status cannot lead to obstacles to the uniform application of free movement rights within the Union. In examining the justification for such a restriction, the ECJ addressed arguments based on public policy and national identity.⁷⁵ It emphasised that the concept of public policy must be interpreted restrictively and may be relied upon only where there is a genuine and sufficiently serious threat to a fundamental interest of society.⁷⁶ The obligation to recognise a same-sex marriage solely for the purpose of granting a right of residence to the spouse does not affect the

⁶⁹ *Ibid.*, para. 35.

⁷⁰ *Ibid.*, para. 36.

⁷¹ *Ibid.*, para. 37.

⁷² *Ibid.*

⁷³ Tryfonidou, A., *op. cit.* in fn. 68, p. 6–7.

⁷⁴ Coman, *op. cit.* in fn. 12, para. 40.

⁷⁵ *Ibid.*, para. 42.

⁷⁶ *Ibid.*

institution of marriage in the national law of the member state nor does it require any amendment to its family legislation. Such an obligation therefore does not interfere with the national identity of the member state nor does it constitute a threat to public policy.⁷⁷ This demonstrates that public policy cannot be invoked where it would undermine the effectiveness of rights derived from EU law. The ECJ further emphasised that any restriction on the freedom of movement must also be assessed in the light of the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union.⁷⁸ In that regard, the ECJ highlighted the right to respect for private and family life under Article 7 of the Charter, which has the same meaning and scope as Article 8 of the ECHR.⁷⁹ Referring to the case law of the ECtHR, the ECJ confirmed that the relationship of a same-sex couple may constitute family life and private life to the same extent as the relationship of a heterosexual couple in a comparable situation.⁸⁰

Accordingly, in its response to the questions referred for a preliminary ruling, the ECJ held that Article 21(1) TFEU precludes a member state from refusing, in a situation where a Union citizen has genuinely and lawfully exercised the freedom of movement and has created or strengthened a family life in another member state with a same-sex spouse, to grant that spouse a right of residence solely on the ground that national law does not provide for same-sex marriage. The ECJ further clarified that the same-sex spouse, as a third-country national, has the right to reside for more than three months in the member state of which the Union citizen is a national, and that this right must not be made subject to conditions more stringent than those laid down in Article 7 of Directive 2004/38.⁸¹ According to *Rijpma*, it follows from the content of the *Coman* judgment that ECJ does not introduce an obligation of general recognition of same-sex marriage as a family law institution, but rather establishes a model of a limited, functional approach to recognition. member states are required to recognise the legal effects of personal status lawfully acquired in another member state to the extent necessary for the exercise of the rights conferred on Union citizens under Union law. Such an approach allows for the preservation of the regulatory autonomy of member states in the field of family law while simultaneously preventing the fragmentation of personal status and ensuring the continuity of family life in cross-border

⁷⁷ Tryfonidou, A., *op. cit.* in fn. 68, p. 11–12 and *Coman*, *op. cit.* in fn. 12, paras. 45–46.

⁷⁸ Charter of Fundamental Rights of the European Union, OJ C 202/389, 7. 6. 2016. (hereinafter Charter)

⁷⁹ *Coman*, *op. cit.* in fn. 12, paras. 47–48.

⁸⁰ *Ibid.*, para. 50.

⁸¹ *Ibid.*, para. 58.

situations.⁸² This further confirms the development of an approach which, similarly to the case law of the ECtHR, distinguishes between the non-recognition of a family law institution and the obligation to recognise its legal effects where this is necessary for the protection of fundamental rights.

The Coman judgment therefore goes beyond the specific issue of residence rights and establishes a broader doctrinal framework for limiting national autonomy in the field of personal status where this affects rights guaranteed under EU law. The functional approach to recognition, grounded in the protection of fundamental rights and the effectiveness of free movement, can be regarded as one of the central methodological elements in the case law of the ECJ. This approach is further developed in the Pancharevo judgment, particularly in the context of parent-child relationships and the legal identity of the child, with a strong emphasis on the best interests of the child and the continuity of personal status within the European Union.

4.2. Pancharevo

The Pancharevo case opens a discussion on one of the central issues of European Union law in the field of cross-border family relationships, namely ensuring the effective protection of children in situations in which their personal status and the parent-child relationship do not correspond to the legal solutions of the member states in which they reside.⁸³ The case concerns a situation in which a child born in one member state was issued a birth certificate indicating two mothers, while another member state refused to recognise that parent-child relationship for the purposes of issuing an identity document. This refusal raised the question of whether such non-recognition could restrict the child's right to free movement and undermine the continuity of their personal status within the European Union.⁸⁴ In this context, the question of recognising a parental relationship cannot be assessed solely from the perspective of national autonomy in family law, but must be examined in light of the effects that such non-recognition produces on the child's fundamental rights. The central legal problem in Pancharevo therefore concerns the limits within which member states may refuse recognition of a parental relationship without undermining the child's status as a holder of rights under EU

⁸² Rijpma, J. J., *You Gotta Let Love Move: ECJ 5 June 2018, Case C-673/16, Coman, Hamilton, Accept v Inspectoratul General pentru Imigrări*, European Constitutional Law Review, Vol. 15, No. 2/2019., p. 327–335.

⁸³ Pancharevo, *op. cit.* in fn. 19.

⁸⁴ See Pancharevo, *op. cit.* in fn. 19, paras. 18–32.

law.⁸⁵ This suggests the need to examine a legal framework that balances member states' regulatory autonomy with the recognition of certain legal effects of the parent-child relationship where necessary to protect the child's identity, legal certainty, and freedom of movement.

4.2.1. Analysis of Pancharevo

The case concerned a Bulgarian national who, together with her spouse, resided in another member state, where their child was born and was issued a birth certificate listing both women as parents. The Bulgarian authorities refused to register the child in the national civil registry and to issue an identity document, relying on national law, which does not recognise same-sex parenthood and considers such recognition contrary to public policy.⁸⁶ As a result, the child, despite holding the nationality of a member state, was placed in a situation in which the effective exercise of the right to free movement was jeopardised.⁸⁷ The referring court therefore raised the question of whether such non-recognition was compatible with Articles 20 and 21 TFEU,⁸⁸ read in conjunction with the Charter of Fundamental Rights of the European Union⁸⁹, in particular the rights to private and family life and the best interests of the child.⁹⁰

The request for a preliminary ruling also addressed the relationship between national identity and EU law, as well as the extent to which member states may rely on public policy in order to refuse recognition of a parent-child relationship established in another member state.⁹¹ In essence, the case required the ECJ to determine the relationship between national competence in the field of family law and the obligations arising under EU law in cross-border situations.⁹² Against this background, the ECJ proceeded to examine the case within the framework of EU

⁸⁵ Marinkás, G., *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*, Law, Identity and Values, Vol. 3, No. 1/2023., p. 190.

⁸⁶ De Groot, D. A. J. G., *Special Report: EU Law and the Mutual Recognition of Parenthood between Member States: The Case of V.M.A. v Stolichna obshtina*, RSCAS/GLOBALCIT Special Report, Robert Schuman Centre for Advanced Studies, European University Institute, No. 1/2021., p. 1–2.

⁸⁷ Pancharevo, *op. cit.* in fn. 19, para. 26.

⁸⁸ TFEU, *op. cit.* in fn. 60.

⁸⁹ Charter of Fundamental Rights of the European Union, *op. cit.* in fn. 78.

⁹⁰ Pancharevo, *op. cit.* in fn. 19, paras. 28–30.

⁹¹ *Ibid.*, para. 32, points 1–4.

⁹² Luku, H., *The Supreme Administrative Court of Bulgaria's Final Decision in the Pancharevo Case: Bulgaria Is Not Obligated to Issue Identity Documents for Baby S.D.K.A. as She Is Not Bulgarian (but Presumably Spanish)*, Conflict of Laws, 2023., p. 1–5.

law. The case was approached not as a question of recognising a family law institution as such, but as a question concerning the effects of non-recognition on the exercise of rights derived from EU law.⁹³ The ECJ begins its analysis with the fact that the child acquired the nationality of a member state and that, pursuant to Article 20 TFEU, the child holds the status of a Union citizen.⁹⁴ Relying on settled case law according to which Union citizenship is intended to be the fundamental status of nationals of the member states, the ECJ places the case within the scope of Union law.⁹⁵ This excludes the possibility of treating the matter as an exclusively internal issue of national family law, regardless of the national legal qualification of the parental relationship. On that basis, the ECJ further develops its approach to the interpretation of Article 21 TFEU. Freedom of movement and residence is not interpreted as an abstract right, but as a right that must be genuinely and effectively exercisable. This means that member states cannot rely on formal or procedural requirements where their application would render the exercise of free movement rights ineffective. In this context, the ECJ links the obligation to issue identification documents with the effective application of Union law and expressly rejects the possibility for a member state to rely on its own procedural or formal requirements where their application creates obstacles to the exercise of the rights of a Union citizen.⁹⁶ This confirms that national rules on personal status cannot have autonomous effect insofar as they lead to the derogation of the effects of Union law. The central element of the ECJ's reasoning concerns the recognition of the parent-child relationship established in another member state. The ECJ proceeds from the fact that the parental relationship between the child and the two mothers was lawfully established in the member state of the child's birth and confirmed by a public document issued in accordance with the law of that state.⁹⁷ Accordingly, the Bulgarian authorities, like the authorities of any other member state, are required to recognise that parental relationship in order to enable the child to exercise, with each of her two parents, the right to move and reside freely within the territory of the member states, as guaranteed by Article 21(1) TFEU.⁹⁸ Instead of examining the substantive compatibility of that relationship with the national family law of the member state of which the child is a national, the ECJ analyses the consequences of non-

⁹³ *Functional Recognition of Same-sex Parenthood for the Benefit of Mobile Union Citizens – Brief Comments on the CJEU's Pancharevo Judgment*, 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 30 January 2026.

⁹⁴ Pancharevo, *op. cit.* in fn. 19, para. 40.

⁹⁵ *Ibid.*, para. 41.

⁹⁶ *Ibid.*, paras. 41–46.

⁹⁷ *Ibid.*, para. 48.

⁹⁸ *Ibid.*, para. 49.

recognition in a cross-border context. This confirms that the ECJ does not assess the validity of the parental relationship under national law, but rather its legal effects in a cross-border context. The non-recognition of the parental relationship is assessed solely in light of its effect on the child's ability to exercise, together with each of her parents, the right to free movement and residence.⁹⁹ In doing so, the ECJ expressly establishes a model of a limited, functional approach to the recognition of family relationships. A member state is therefore required to recognise the parental relationship only to the extent necessary for the exercise of the rights that the child derives from Union law. This reflects a functional approach to recognition, whereby the obligation of recognition is limited to what is necessary to ensure the effective exercise of rights derived from EU law. Such an obligation does not entail recognition of same-sex parenthood as an institution of national family law, nor does it produce effects outside the scope of Union law. In this way, the ECJ deliberately avoids normative unification of family law while simultaneously preventing the fragmentation of the child's personal status within the legal space of the Union.¹⁰⁰ With regard to reliance on national identity and public policy, the ECJ adopts a restrictive approach and limits the scope of those concepts in the context of EU law. Article 4(2) Treaty on European Union¹⁰¹ cannot be interpreted as an autonomous basis for derogation from Union law, but rather as a provision whose application remains subject to the requirements of the union's fundamental freedoms and fundamental rights.¹⁰² This confirms that national identity and public policy cannot be invoked as autonomous grounds for refusing recognition where such refusal would undermine the effectiveness of rights derived from EU law. The ECJ expressly emphasises that the obligation arising from the functional approach to recognising the parental relationship does not interfere with the fundamental political and constitutional structures of a member state, as it does not require any amendment of national family legislation nor the general acceptance of such a parental relationship in national law.¹⁰³ The ECJ places particular emphasis on the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life and the rights of the child.¹⁰⁴ The right to free movement is interpreted in inseparable connection with the obligation to safeguard the best interests of the child, while the non-recognition of the parental relationship is assessed as a measure capable of leading to legal uncertainty, undermining

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, para. 52.

¹⁰¹ Treaty on European Union, OJ C 202, 7.6.2016. (hereinafter TEU)

¹⁰² Pancharevo, *op. cit.* in fn. 19, paras. 54–55.

¹⁰³ *Ibid.*, para. 57.

¹⁰⁴ *Ibid.*, paras. 59–65.

identity, and effectively preventing the exercise of the rights of a Union citizen.¹⁰⁵ This confirms that the child's rights are not treated as ancillary, but as a central element in determining the scope of member states' obligations under EU law. By referring to the case law of the ECtHR, the ECJ confirms that the existence of family life depends on the reality of family relationships rather than on the formal structure of the family.¹⁰⁶ In its response to the questions referred, the ECJ therefore concludes that Union law requires the member state of which the child is a national to issue the child with an identification document for the purpose of exercising the right to free movement, irrespective of the issuance of a national birth certificate, and, in that context, to recognise the parental relationship lawfully established in another member state. Such recognition is limited to the purpose of exercising the rights that the child derives from Union law and does not produce effects within national family law beyond that framework.¹⁰⁷

The Pancharevo judgment confirms the doctrinal consistency of the ECJ's case law, particularly in relation to Coman. The Court does not call into question the competence of member states in the field of family law, nor does it impose an obligation of general recognition of family relationships not provided for under national law. However, it clearly delineates the limits of national regulatory autonomy where its exercise leads to a restriction of rights derived from EU law.

Through this approach, the ECJ confirms the doctrine of the functional approach to the recognition of family relationships as an instrument for ensuring the effectiveness of the rights of Union citizens in cross-border situations. In this respect, the obligation of recognition is limited to the legal effects necessary to ensure the effective exercise of rights derived from EU law. This approach also indicates a significant degree of convergence with the standards developed in the case law of the ECtHR, particularly with regard to the protection of children's identity and legal certainty in cross-border situations. The normative significance of the Pancharevo judgment thus extends beyond the field of free movement in the narrow sense and points to broader implications for European standards of child protection and legal certainty in transnational family relationships. In this respect, the Pancharevo judgment represents one of the clearest expressions of the functional approach to the recognition of family relationships in the case law of the ECJ.

¹⁰⁵ *Ibid.*, paras. 46, 49, 65.

¹⁰⁶ *Ibid.*, paras. 60–62.

¹⁰⁷ *Ibid.*, para. 70.

4.3. Further development of the functional approach in recent ECJ case law

The approach developed in the case law of the ECJ, particularly in *Coman* and *Pancharevo*, has been further elaborated in more recent judgments, notably *Mirin*¹⁰⁸ and *Cupriak-Trojan*.¹⁰⁹ These cases provide additional insight into the scope and limits of the functional approach to the recognition of personal status in cross-border situations, while also revealing a certain differentiation in its application depending on the nature of the personal status concerned.

In *Mirin*, the ECJ addressed a situation concerning the recognition of a change of name and gender identity lawfully established in another member state. The applicant, a Union citizen, had obtained legal recognition of his gender transition abroad and subsequently sought the registration of that change in the member state of origin. The national authorities refused, requiring the initiation of a new domestic procedure. The ECJ held that such a requirement constitutes a restriction on the exercise of the right to free movement, as it places the individual in a situation of legal uncertainty and may lead to inconsistencies in identity documents. In its reasoning, the ECJ went beyond a strictly functional understanding of recognition. It required not only the recognition of certain legal effects, but also the recognition and registration of the change in order to ensure the continuity of the individual's legal identity across member states. The obligation imposed on the member state of origin thus extended to the registration of the change in official records, ensuring the continuity of the individual's legal identity across legal systems. This approach reflects a stronger emphasis on the protection of personal identity as a fundamental right, closely linked to human dignity and legal certainty.¹¹⁰

By contrast, in *Cupriak-Trojan*, the ECJ reaffirmed the functional approach developed in *Coman* and *Pancharevo* in the context of same-sex marriage. The case concerned the refusal of a member state to recognise and register a same-sex marriage lawfully concluded in another member state. The ECJ held that such a refusal may constitute a restriction on the exercise of the right to free movement, particularly where it prevents individuals from leading a normal family life in the member state of origin. However, the ECJ maintained the distinction between the recognition of a family law institution as such and the recognition of its legal effects. It confirmed that member states are not required to introduce or generally

¹⁰⁸ *Mirin*, Case C-4/23, Judgment of 4 October 2024.

¹⁰⁹ *Cupriak-Trojan*, Case C-713/23, Judgment of 5 December 2024.

¹¹⁰ Tryfonidou, A., *The Cross-Border Recognition of Changes in the Legal Sex of Transgender Persons: The Landmark Court of Justice Ruling in the Mirin Case*, *European Constitutional Law Review*, Cambridge University Press, 2025., p. 333–355.

recognise same-sex marriage in their national legal orders. At the same time, they are required to recognise and give effect to such a marriage to the extent necessary to ensure the effective exercise of rights derived from EU law. The obligation of recognition thus remains limited in scope and functionally determined.¹¹¹

When considered together, these judgments demonstrate that the functional approach to recognition, although consistently applied as a methodological framework, is not uniform in its intensity. In cases such as *Cupriak-Trojan*, the ECJ adheres to a limited model of recognition focused on specific legal effects necessary for the exercise of free movement rights. In contrast, in *Mirin*, the ECJ requires a more extensive form of recognition where this is necessary to safeguard fundamental aspects of personal identity and to avoid situations of legal fragmentation. This development suggests that the functional approach is evolving into a more flexible doctrinal tool, the application of which depends on the nature of the personal status concerned and the degree to which non-recognition affects fundamental rights. While the preservation of member states' regulatory autonomy remains a central element of the ECJ's reasoning, its limits are increasingly defined by the need to ensure the continuity of personal status and the effective protection of fundamental rights in cross-border situations. This confirms that the functional approach to recognition, as identified in this paper, operates as a coherent methodological framework in the case law of the ECJ, while allowing for variation in its intensity depending on the nature of the personal status and the degree of interference with fundamental rights.

5. CONCLUSION

The development of European case law in the field of cross-border family relationships demonstrates the gradual emergence of a functional approach to the recognition of family relationships as a coherent methodological framework in the case law of both the ECtHR and the ECJ. This approach is based on a clear distinction between the non-recognition of a particular family law institution as such and the obligation to recognise its legal effects to the extent necessary to protect fundamental rights and to ensure the continuity of personal status in cross-border situations. The analysis of the case law shows that both European courts, despite operating within different normative frameworks, converge in limiting the extent to which member states may rely on national autonomy and public policy where the non-recognition of family relationships would undermine fundamental aspects of individual identity, legal certainty, and the effective enjoyment of rights.

¹¹¹ See *Cupriak-Trojan*, *op. cit.* in fn. 109, paras. 1–77.

In this respect, particular importance is attached to the position of the child, whose rights, especially the right to identity and legal certainty, play a decisive role in determining the limits of state discretion.

In the case law of the ECJ, this approach is most clearly reflected in the judgments in *Coman* and *Pancharevo*, and further developed in more recent case law. While the ECJ consistently preserves the regulatory autonomy of member states in the field of family law, it imposes an obligation to recognise the legal effects of personal status lawfully acquired in another member state where this is necessary to ensure the effective exercise of rights derived from EU law. The scope of this obligation is not uniform, but varies depending on the nature of the personal status and the degree of interference with fundamental rights, as illustrated by the distinction between cases concerning family relationships and those concerning personal identity. This confirms that the functional approach to recognition operates as a flexible doctrinal tool, capable of adapting to the specific circumstances of each case while maintaining a consistent methodological core. At the same time, it reflects a gradual shift in European case law from a formal understanding of recognition towards an approach focused on the concrete legal effects of personal status and their impact on fundamental rights.

From the perspective of private international law, this development may be understood in light of the concept of the attenuated effect of public policy (*effet atténué*). While public policy remains a legitimate ground for limiting the recognition of foreign legal relationships, its application is increasingly restricted in cross-border situations where the refusal of recognition would disproportionately interfere with fundamental rights. In such cases, public policy does not operate as an absolute barrier, but rather as a flexible corrective mechanism, allowing for the recognition of certain legal effects of a personal status without requiring the full acceptance of the underlying institution within the national legal order. The functional approach to recognition can therefore be understood as reflecting, to a significant extent, the logic of the attenuated effect of public policy, reconciling the need to preserve the fundamental values of national legal systems with the imperative of ensuring the effective protection of fundamental rights and the continuity of personal status within the European legal space. At the same time, this comparison should not be understood as implying a complete equivalence between the two concepts, but rather as indicating a functional similarity in their operation in cross-border situations. Although it does not lead to the unification of family law at the European level, it provides a stable and adaptable framework for addressing the challenges posed by increasingly complex cross-border family situations. In this sense, the functional approach does not merely resolve individual cases, but contributes to the gradual shaping of a common European understanding of the limits of state autonomy in the field of personal status. Its further development will depend on the Court's ability to

maintain this balance in increasingly complex cross-border situations, particularly in areas where fundamental rights and national identity remain in structural tension.

REFERENCES

BOOKS AND ARTICLES

1. Bouček, V., *European Private International Law in the European Integration Process and Selected Issues of the Applicable Law*, Official Gazette, Zagreb 2021.
2. Corneloup, S.; Heiderhoff, B.; Honorati, C. (eds.), *Private International Law in a Context of Increasing International Mobility: Challenges and Potential*, Study for the JURI Committee, European Parliament, 2017.
3. De Groot, D. A. J. G., *Special Report: EU Law and the Mutual Recognition of Parenthood between Member States: The Case of V.M.A. v Stolichna obshtina*, RSCAS/GLOBALCIT Special Report, Robert Schuman Centre for Advanced Studies, European University Institute, No. 1/2021., p. 1–21.
4. European Parliament, *Cross-Border Legal Recognition of Parenthood in the EU*, Policy Department for Citizens' Rights and Constitutional Affairs, PE 746.632, 2023.
5. Fenton-Glynn, C., *International Surrogacy before the European Court of Human Rights*, Journal of Private International Law, Vol. 13, No. 3/2017., p. 546–567.
6. Frattone, C., *Same-sex Spouses' Rights in the ECJ's Coman Case*, Roma Tre Law Review, No. 2/2019., p. 303–315.
7. Garayova, L., *Parenthood without Borders: Judicial Cooperation for Cross-Border Family Security in the EU*, EU and Comparative Law Issues and Challenges (ECLIC), No. 9/2025., p. 326–347.
8. Gyenyey, L., *Same Sex Couples' Right to Free Movement in Light of Member States' National Identities: The Legal Analysis of the Coman Case*, Iustum Aequum Salutare, Vol. 14, No. 2/2018., p. 149–171.
9. Hlača, N., *Personal Status of Citizens in the European Union*, in: Bodiřoga-Vukobrat, N.; Hlača, N.; Hrabar, D. (eds.), *European Family Law*, Official Gazette, Zagreb 2013.
10. Kochenov, D.; Belavusau, U., *Same-sex Spouses in the EU after Coman: More Free Movement, but What about Marriage?*, EUI Working Paper LAW, No. 3/2019., p. 1–18.

11. Lagarde, P., *Recognition and Registration of Civil Status Documents in Cross-Border Cases*, Directorate-General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Brussels 2010.
12. Luku, H., *The Supreme Administrative Court of Bulgaria's Final Decision in the Pancharevo Case: Bulgaria Is Not Obligated to Issue Identity Documents for Baby S.D.K.A. as She Is Not Bulgarian (but Presumably Spanish)*, *Conflict of Laws*, 2023., p. 1–5.
13. Majstorović, I., *Family Law as Diversity in Unity: The European Union and Croatia*, in: Bodiřoga-Vukobrat, N.; Hlaća, N.; Hrabar, D. (eds.), *European Family Law*, Official Gazette, Zagreb 2013.
14. Marinkás, G., *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*, *Law, Identity and Values*, Vol. 3, No. 1/2023., p. 177–201.
15. Palazzo, N., *Functional Recognition and Polyamory: Glitters and Hard Truths in the O'Neill Judgment*, *Journal of Social Welfare and Family Law*, Vol. 46, No. 2/2024., p. 187–207.
16. Rijpmma, J. J., *You Gotta Let Love Move: ECJ 5 June 2018, Case C-673/16, Coman, Hamilton, Accept v Inspectoratul General pentru Imigrări*, *European Constitutional Law Review*, Vol. 15, No. 2/2019., p. 234–339.
17. Sajko, K., *Private International Law*, 5th ed., Official Gazette, Zagreb 2009.
18. Scherpe, J. M., *Epilogue to the Family in EU Law – Is there a European Family Law?*, in: Part IV – The EU Family in Internal and External Crises, Cambridge University Press, 2024.
19. Shuilleabhain, M. N., *Surrogacy, System Shopping, and Article 8 of the European Convention on Human Rights*, *International Journal of Law, Policy and the Family*, Vol. 33, No. 1/2019., p. 104–122.
20. Trabucchi, A., *Istituzioni di diritto civile*, 27th ed., Cedam, Padova 1985.
21. Tryfonidou, A., *The Cross-Border Recognition of Changes in the Legal Sex of Transgender Persons: The Landmark Court of Justice Ruling in the Mirin Case*, *European Constitutional Law Review*, Cambridge University Press, 2025., p. 333–355.
22. Tryfonidou, A., *The ECJ Recognises the Right of Same-Sex Spouses to Move Freely between EU Member States: The Coman Ruling*, *European Law Review*, Vol. 44, No. 5/2019., p. 1–17.

LEGAL ACTS

1. Charter of Fundamental Rights of the European Union, OJ C 202/389, 7. 6. 2016.

2. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30. 4. 2004.
3. European Convention for the Protection of Human Rights and Fundamental Freedoms, Official gazette – International Treaties, No. 18/1997, 6/1999, 14/2002, 13/2003, 9/2005, 1/2006, 2/2010, 13/2017.
4. Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 5 October 1961, Official Gazette of the FPRY, MU No. 10/62; Official gazette – International Treaties, No. 4/4, 11/11.
5. Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No. 1024/2012, OJ L 200, 26. 7. 2016.
6. Treaty on European Union, OJ C 202, 7.6.2016.
7. Treaty on the Functioning of the European Union (consolidated version), OJ C 202/49, 7. 6. 2016.

CASE LAW

1. Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne, Case C-673/16, Judgment of 5 June 2018.
2. V.M.A. v Stolichna obshtina, rayon "Pancharevo", Case C-490/20, Judgment of 14 December 2021.
3. Labassee v. France, Application No. 65941/11, Judgment of 26 June 2014.
4. Mennesson v. France, Application No. 65192/11, Judgment of 26 June 2014.
5. Mirin, Case C-4/23, Judgment of 4 October 2024.
6. Cupriak-Trojan, Case C-713/23, Judgment of 5 December 2024.

NETWORK RESOURCES

1. European Family Law (PIL), Max-EuP 2012, Max Planck Encyclopedia of European Private Law, available at: <https://www.mpipriv.de/1417957/20211102-max-eup2012>
2. Functional Recognition of Same-sex Parenthood for the Benefit of Mobile Union Citizens – Brief Comments on the CJEU's Pancharevo Judgment, available at: <https://capil.org/2022/02/03/functional-recognition-of-same-sex->

parenthood-for-the-benefit-of-mobile-union-citizens-brief-comments-on-the-
cjeus-pancharevo-judgment/