Rewriting Marriage After Trojan

Polish Courts Go Beyond the Minimum Standard of EU Law

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In the span of just a few weeks in spring 2026, the post-*Trojan* Polish Supreme Administrative Court delivered a series of judgments that significantly clarified the legal status of same-sex marriages concluded abroad. In its judgment of 20 March 2026 (II OSK 216/21), followed by three further rulings of 7 May 2026 (II OSK 1075/23, II OSK 2070/23, II OSK 2073/23), the Court confirmed the obligation to transcribe foreign same-sex marriage certificates into the Polish civil status register. At the same time, on 22 May 2026, Poland adopted a regulation amending the templates of civil status records, explicitly allowing entries such as husband/husband and wife/wife. This change will come into effect on 22 August 2026.

These developments, taken together, mark more than the implementation of the CJEU's judgment in *Trojan*. They indicate a broader shift in the logic of recognition: from a model strictly tied to free movement towards a more autonomous, status-based approach. While the CJEU in *Trojan* articulated a minimum standard required under EU law, Polish courts appear to have moved beyond that baseline by expanding the rationale for recognition, grounding it in constitutional and human rights reasoning rather than in free movement considerations.

Post-*Trojan*, national courts have not simply applied the CJEU's case law on same-sex marriage recognition. While formally operating within the EU framework, they have developed its implications further, gradually moving from a mobility-based logic toward a more status-oriented model of recognition grounded in constitutional and ECHR considerations.

From Coman to Trojan: The Limits of Free Movement

The trajectory of EU law on same-sex marriage recognition has long been defined by a cautious logic: recognition is derivative, functional, and tied to free movement. In *Coman* (C-673/16), the Court established that the term "spouse" in Directive 2004/38 includes same-sex spouses, but only for the purposes of residence rights. The ruling deliberately stopped short of requiring full recognition of marital status.

This logic was preserved, albeit significantly stretched, in *Trojan* (C-713/23). The CJEU held that Member States must recognise same-sex marriages concluded in other Member States when necessary to ensure the effective exercise of EU free movement rights, read in the light of Articles 7 and 21 of the EU Charter (family life and non-discrimination).

Yet even as the Court emphasised the right to "lead a normal family life" within the Union, it remained formally anchored in mobility. The core trigger remained the cross-border element: the couple must have exercised free movement and "created or strengthened a family life" abroad. Thus, *Trojan* reflects a constitutional compromise: recognition as a corollary of movement, not as an autonomous status right.

The Polish Turn: From Implementation to Expansion

The decisive doctrinal development did not occur in Luxembourg, but in Warsaw.

In its judgment of 20 March 2026 (II OSK 216/21), the Polish Supreme Administrative Court implemented *Trojan* by ordering the transcription of a same-sex marriage concluded abroad and explicitly recognising the primacy of EU law in this field.

At first sight, the judgment appears as a faithful application of EU law: refusal to transcribe a marriage certificate constitutes an unjustified restriction of free movement and family life.

However, a closer reading reveals a more far-reaching move. The Supreme Administrative Court rejected the argument that Article 18 of the Polish Constitution (defining marriage as a union of a man and a woman) constitutes an absolute barrier to transcription. Moreover, it reframed an obligation to transcribe not merely as a technical EU requirement but as compatible with the domestic constitutional order, and crucially treated recognition as a necessary condition for ensuring the continuity of legal status.

The Supreme Administrative Court explicitly said:

> *"Article 18 of the Constitution of the Republic of Poland provides that marriage, understood as a union between 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. This provision cannot be interpreted as establishing an absolute obstacle to the recognition of a same-sex marriage concluded in another Member State of the European Union in accordance with the law of that State, including the transcription of such a marriage certificate into the Polish civil status register. Article 18 of the Constitution, by assigning a particular position within the legal system to marriage understood as a union between a man and a woman, is intended to emphasise that this specific institution of marriage enjoys special protection (care and safeguarding) by the Republic of Poland, similarly to the family, motherhood, and parenthood. However, this provision cannot be construed as implying, first, a prohibition on the recognition of other types of relationships between two persons regardless of their sex, nor, second, that such relationships are not entitled to any level of protection and care".*

While presented as implementation, the judgment effectively redefines the relationship between constitutional constraints and recognition obligations. Recognition and domestic marriage law are no longer seen as mutually exclusive but as capable of coexistence within a single legal order.

Selective Reception: The Marginalisation of "Family Life Abroad"

Paradoxically, while expanding the scope of recognition, the further judgments of 7 May 2026 appear to downplay a key element of the CJEU's reasoning: the requirement that family life be "created or strengthened" in another Member State.

In the CJEU's framework, this requirement functions as an obvious jurisdictional gatekeeper. Recognition is triggered not by the existence of a marriage as such, but by the exercise of free movement.

Yet Polish jurisprudence increasingly marginalises this condition. The Polish judgments do not meaningfully examine whether the couples established a genuine life abroad or resided there for a significant period. Although the factual circumstances remain only partially clear, the reasoning suggests that the nature and duration of residence abroad are no longer decisive.

This ambiguity is significant. It indicates that recognition may extend beyond situations of genuine free movement to cases that could be described as "marriage tourism", where couples travel abroad specifically to conclude a marriage and subsequently return to Poland.

In fact, the cases decided by the Supreme Administrative Court concerned what have been described in public debate as "weekend marriages" – a term used by the Polish Minister of Justice. The couples in question were Polish nationals being residents in Poland and did not relocate abroad; instead, they travelled to Germany and to Madeira (Portugal) specifically for the purpose of concluding a marriage, before returning to Poland.

From the Court's perspective, however, the question of whether the couples had established or pursued family life abroad did not appear to be determinative. Notably, in one of the judgments delivered jointly in three separate cases, judge Zbigniew Kostka did not rely on *Trojan* – as had been the case in earlier administrative court decisions – but instead grounded the reasoning in the case law of the ECHR. This reflects a further shift in emphasis, aligning the Court's

approach with the Strasbourg line of jurisprudence, which already in 2023 found that the absence of any legal framework for same-sex couples in Poland violates Article 8 ECHR.

Recognition Without Residence? The Emergence of "Marriage Tourism" Cases

Once recognition is accepted for couples who exercised free movement and lived in another Member State, it becomes increasingly difficult to justify denying recognition to couples who travelled abroad solely to conclude a marriage while otherwise remaining resident in Poland.

In such cases, the cross-border element is formally present, but the CJEU's emphasis on "creating or strengthening family life abroad" becomes less central. Marriage itself can be understood as an act that creates family life, regardless of the duration of residence abroad.

In this context, the legal problem gradually shifts. It is no longer confined to EU free movement law but begins to raise questions of equality and non-discrimination under domestic constitutional law. If recognition is granted in one category of cases, denying it in another may lead to unequal treatment that is increasingly difficult to justify.

The ECHR Turn: Reframing Recognition Beyond EU Law

Another striking feature of post-*Trojan* Polish jurisprudence is its increasing reliance on the ECHR.

While the CJEU refers to the right to family life under Article 7 of the EU Charter, its reasoning remains tied to cross-border movement. By contrast, the Strasbourg framework imposes a structural obligation to ensure legal recognition, irrespective of mobility.

Polish courts explicitly draw on ECtHR case law (such as *Przybyszewska a.o. v Poland* , *Formela a.o. v Poland* and *Andersen v Poland*), which found that the absence of any legal framework for same-sex couples violates Article 8 ECHR. This shift detaches recognition from EU citizenship and reorients it toward fundamental rights protection.

The result is a hybrid model: EU law provides the trigger, but ECtHR reasoning drives the expansion. Recognition is no longer merely instrumental but increasingly grounded in the protection of personal status and family life.

From Functional Recognition to Status Continuity

Taken together, these developments point toward a broader conceptual shift: the emergence of a principle of status continuity.

Under the classical EU approach, recognition is instrumental – it facilitates mobility. Under the emerging national approach, recognition is intrinsic – it protects the integrity of personal status across borders. The CJEU in *Trojan* already hinted at this shift by emphasising the "serious inconvenience" caused by non-recognition. Polish courts develop this insight further: the central problem is not only barriers to movement, but the fragmentation of legal identity. Recognition thus becomes a matter of legal certainty, equality before the law, and coherence of personal status.

Conclusion: A New Phase of Euromarital Constitutionalism

Post-*Trojan* developments signal a transition from mobility-based recognition to status-based recognition. Polish courts are not only implementing EU law – they are actively shaping its practical and conceptual reach.

By downplaying the cross-border element, integrating ECtHR reasoning, and emphasising the continuity of personal status, they contribute to a broader transformation: from integration through movement toward integration through rights. In this emerging landscape, recognition is no longer merely a by-product of mobility but an increasingly autonomous claim of legal status – one that national courts and public authorities are progressively willing to uphold, even beyond the minimum required by EU law.

Post Scriptum

What began as a functional requirement of EU law has thus evolved into a broader legal reality – one in which

the continuity of personal status prevails over formal barriers, and where judicial dialogue is gradually translated into systemic change.

This development is further reinforced at the domestic level: following the line adopted by the Supreme Administrative Court, regional administrative Courts, acting as courts of first instance, have likewise ordered the transcription of foreign marriage certificates, thereby confirming the emergence of a consolidated line of case law.

Yet, this is not the end of the process. With the gradual incorporation of these developments into the Polish legal order, a new phase is emerging in which their implications are being tested in the fields of private law and tax law. In theory, transcription remains merely a literal reproduction of a foreign marriage certificate within the Polish civil status registry. However, the practical implications of such registration remain uncertain and raise fundamental questions: whether couples whose marriages have been transcribed will be able to derive further legal effects under Polish law, such as access to social security benefits, the possibility of submitting joint income tax returns, or the right to obtain medical information about their partner. The initial response should be: possibly. But for Polish legal practitioners, this marks the beginning of a new stage – one of litigation and strategic testing of the system.

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