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a fellow Southwestern state, who started the trend in 2008, is now against it.² Limiting, but also potentially harmful to the new person. It is unnecessary and wrong. Gender identity cannot be decided with the most important

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and there is no reason for denying that right. Gender identity may or may not correspond with the sex assigned at birth. It is manifested in gender expression, including sense of the body, dress, speech, and mannerisms, but JHQGHU H[SUHVVLRQ PD\ RU PD\ QRW FRQIRUP WR D SH
Furthermore, gender identity may not follow Western binary concepts of gender.⁵ It is time all countries allow for gender self-termination in legal gender assignment, inclusion of nonbinary gender markers,⁶ and postponement of the attribution of legal gender. Yet, many countries still deny these rights invoking public policy considerations such as national identity, custom and tradition. The only practical disadvantage raised by the opponents is the administrative institutional cost of reassigning gender and revising the documents and records. But this has proved to be a minimis problem.⁷

Improving the recognition procedures of trans, nonbinary, and intersex people is one of the 2020-2025 action items of the first ever EU LGBTIQ Strategy, presented by the President of the European Commission in the 2020 State of the Union address to the European Union (EU), legal gender can be confirmed through a self-termination procedure in only four Member States. The vast majority of states have adopted differing

2. J.E.A. & K. v. O.D., 2021 WL 58267..58 0 g 0 G [~~00~~KnON

requirements for gender reassignment surgery, a disorder diagnosis, medical procedures including sterilization

regulation¹⁶ focuses on simplifying the formalities of the authentication of documents and mutual administrative cooperation, but there is no more determined movement in the direction of automatic recognition of civil status documents and judgments.

The lack of uniformity in the regulations of legal gender recognition and reassignment in another Member State¹⁷ is unduly burdensome to already stigmatized and marginalized groups. What happens when a transgender person relocates to a state with more demanding procedures and wants to have the gender reassignment recognized or wants to enforce it? The answer is not simple. The local courts make those decisions on a country-by-country and case-by-case basis. Such ad hoc adjudication denies the transgender people legal predictability and reliance. Moreover, the recognition or enforcement procedure is not always simple and clear.¹⁸ Procedural standards vary too. In some countries, for example Holland or Ireland,¹⁹ an administrative certificate reconfirms gender, and others require a court judgment to recognize a preferred gender.²⁰ This creates a problem when the receiving court refuses recognition for the lack of finality in the decision of

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judgment recognition through independent legal acts, including resolutions, had already resulted in a complex system difficult to follow even for the practitioners.⁵² Thus, the requirement of repealing existing multilateral acts must be considered as a factor that might complicate the solution taking full effect since it would depend in part on the action of individual signatories.

On the other end of the spectrum an idea but less feasible solution, the (8 FRXOG 3 \$ PHULFDQLJH´ WKH IRUPXODWLRQ RI \$UWLFOH 82 (criminal matters) by amending the TFEU to firmly establish the principle of the full faith and credit that must be given to other EU Member States statutes, public records, and court judgments. The text of the TFEU could GURS WKH GLVWLQF WLRQ 3 E H WZLQJ QDWLRQDO FIDLO´ one mutual recognition requirement, regardless of the type of ~~judgment~~ record, so interstate civil status recognition would not be left behind. A resolution would still be needed to make it clear that the revised provision of

signed it, and more importantly, ratified⁶⁵ it. This may be only a fraction of the EU Member States.

expressly prohibited by TFEU.⁷³ Theoretically, a receiving country could not refuse to make necessary adjustments in a birth certificate based on a gender recognition judgment from another Member State, which changes could be made based on a domestic court order, citing the public policy exception.

Moreover, the Coman court specifically, when mandating a Member State to recognize a foreign same-sex marriage for purposes of granting residency to the non-citizen spouse, explicitly dismissed the public policy exception.⁷⁴ Marriage creates new rights for other people, including children. Gender recognition, on the other hand, distinctly individual right to self-determination and self-expression. It affects other people, but not directly, like marriage. Therefore, looking out for other members of the society as the basis for public policy justification for obstructing a fundamental right of the EU would unlikely be a persuasive argument for rejecting an out-of-state gender reassignment judgment.

Similarly, in cases addressing the interstate recognition of legal names, the ECJ recognized the supremacy of the fundamental freedoms guaranteed by the TFEU.⁷⁵ In particular, those involving the right to move and reside in the territory of the Member States over local interest. The court ruled that the refusal to register the name obtained in another state, which conflicts with the rules of the receiving state, creates an inconvenience that would inhibit the right to free movement and that cannot be justified by an overriding public policy.⁷⁷

What seems to impair the full benefit of the Full Faith and Credit Clause protection in the area of marriage and gender recognition in the United States does not then appear as such in the European context. If invoking local public policy was not a sufficient basis for not recognizing a valid same-sex marriage from another jurisdiction (Coman), it will likely not stand in the way of recognizing legal gender reassignment in the EU.

The particular judgment reconfirming gender should be final and reviewable only if there is a mistake. For example, if the same petition was brought in the receiving state.⁷⁶ The review of the out-of-state gender recognition judgment may also be gender.⁷⁸ The finality of that judgment would strip the person of ever having a possibility of obtaining legal recognition of their gender; it would force someone to live with the disastrous consequence of a state gender g 257.33 Tm4 re f*720 612

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through a new proceeding. Gender is fluid throughout the way so a
quick and easily accessible legal procedure should allow for the new legal

interestingly, ignored that argument even though discrimination on the basis of sexual orientation was raised in the original proceedings. However, the focus on the interstate aspect of civil status judgment recognition can hardly be considered *Coman*'s weakness for the purposes of interstate gender recognition. Its reasoning offers the strongest analogy

precedence.⁹⁸ The interstate gender recognition case should be decided by the ECJ to reaffirm those principles specifically in the gender area.

The ECtHR decision.⁹⁹ The Member States must comply with the latter but only if they are parties to the dispute.¹⁰⁰ A failure to comply may have some consequences (the court does monitor compliance with its judgment and progress in implementing the orders), but the verdict is not binding in any way on non-parties.¹⁰¹ In the absence of such obligation, other local courts may be reluctant to follow the judgment to avoid charges of overreaching. Another reason why the ECJ is a proper venue is that strategic litigation could supplement a faith and credit clause preferably included in the TFEU or enacted in the EU primary law. The ECJ is the appropriate court to interpret the new provision and foreclose the possibility of a public policy pathway to non-recognition of a gender judgment in another Member State.¹⁰²

The ECJ could mandate the EU Member States to mutually recognize valid gender reassignments mirroring the *Coman* decision, regardless of the sex marriages are not valid in Romania could not preclude local recognition of such marriage validly contracted in another EU Member State. In the case of interstate gender recognition, different requirements for legal gender reassignment in the receiving state, may invalidate a valid gender reassignment from another Member State. The issue can be formulated on the same legal grounds, the same rights are implicated: freedom of movement and residence and continuation of family life that has been created or strengthened in another Member State and similar reasoning would apply. Like with marriage, the states will retain their competence to regulate legal gender recognition in their territory. But the court, by asserting that that competence is subordinate to the EU fundamental right of freedom of movement and residence, would force the states to mutually recognize gender reassignment from another Member State.

Moreover, like in *Coman*, the two justifications for non-recognition of out-of-state gender judgments should be explicitly rejected: the excuse of the

98. *Coman* Case C-673/16, ¶¶ 45-46; Garcia, Case G148/02, ¶¶ 116491-11650; Grunkin-Paul, Case C-353/06, ¶ 7675.

99. Gundega Mikelstone, *The Binding Force of the Case Law of the Court of Justice of the European Union* 20 JURISPRUDENCIA 469, 473 (2013).

100. Laurence R. Helfer & Erik Voeten, *International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe* 68 INT'L ORG. FOUND. 77, 77-78 (2014).

101. *Id.* at 81.

102. *Id.*

103. The ECtHR opinions are not as impactful, but helpful. The ECJ adopts the ECtHR judgments as persuasive authority in its reasoning. In civil status cases, the Article 8 right to respect for private and family life of the European Convention on Human Rights is implicated since gender, like name, is a means of personal identification and a link to family, courts' opinion. Likewise, in *Coman* the ECtHR caselaw related to private and family life also supported the court's judgment. See Beury, *supra* note 95.

interpretation of the EU law and public policy exception. *Coman*, the court
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interpret the fundamental rights of the EU without any control by the EU
institutions.¹⁰⁴ The ECJ should also expressly reject the public policy
justification for refusing to recognize judgments from another EU

coverage. The judgment may help overcome opposition to a particular policy change resulting from the political process. It would help shape social attitudes by influencing domestic courts, executives, and international organizations. On the most practical level, the legal practitioners will be able to use the reasoning in their argument before the courts. The judgment compelling mutual recognition in the area of gender could potentially bring awareness and changes not only in the interstate recognition of gender reassignment, but also in national requirements for legal gender reassignment, moving towards uniform self-determination model and eliminating medical and procedural hurdles in all EU Member States.

Taking *Coman* as an example, commentators admit that its verdict is an important counterweight to the recent rise of bans on same-sex marriages in the EU.¹¹⁴ Potential effects of the outcome of the case extend beyond the grant of residency to Mr. Hamilton, as evidenced by the amount of *curiae* briefs submitted by European and international organizations.¹¹⁵ ILGAhng-

States is the ultimate goal, but its achievement might have to wait until the wave of the conservative shift in some of EU countries recedes.