Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 22 May 2025[1]

Case C-789/23 [Tatrauskė][i]

I. J.
v
Registrų centras

(Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania))

(Reference for a preliminary ruling – Citizenship of the Union – Right to move and reside freely within the territory of the Member States – Conditions for the entry in the national register of a marriage contract concluded in another Member State – Requirement to include, in that contract, the personal identification number of at least one of the parties to that contract)

I. Introduction

1. The Lithuanian legislature has provided that a marriage concluded abroad may be entered in the Register of Marriage Contracts if it includes the personal identification number, as provided by the Population Register of the Republic of Lithuania ('the Lithuanian personal identification number') of at least one of the spouses. However, it is not possible for that number to be included in the extract from a marriage certificate drawn up in Italy, confirming the spouses' choice of the regime of separate property during marriage. In that situation, is it compatible with EU law to refuse to enter, in the Register of Marriage Contracts maintained in Lithuania, the information relating to the matrimonial property regime chosen by Union citizens married in Italy, given that one of them had a Lithuanian personal identification number, on the sole ground that the document serving as the basis for that entry did not contain that number?

2. That was the question faced by the referring court in the present case. This case thus provides the Court with an opportunity to develop its case-law on rights attaching to citizenship of the Union in the field of the recognition of certain documents drawn up in one Member State when they are registered in the national public registers of another Member State.

[1] Original language: French.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

II. Lithuanian law

3. Article 3.101 of the Lietuvos Respublikos civilinis kodeksas (Civil Code of the Republic of Lithuania; 'the Civil Code'), entitled 'Marriage Contract', provides:

'The marriage contract is an agreement, concluded by the spouses, which determines their property rights and obligations during marriage, as well as in the event of divorce or legal separation (separation).'

4. Article 3.103 of the Civil Code, entitled 'Form of marriage contract', provides:

'1. The marriage contract shall be concluded by notarial act.

2. The marriage contract and any amendments thereto shall be entered in the Register of Marriage Contracts. …

3. The marriage contract and any amendments thereto may be relied on against third parties only if the contract and its amendments have been entered in the Register of Marriage Contracts. That rule does not apply if, at the time of the conclusion of a legal act, the third parties were aware of the marriage contract or amendments thereto.'

5. The organisation and operation of the Register of Marriage Contracts, referred to in Article 3.103(2) of the Civil Code, are governed by the Vedybų sutarčių registro nuostatai (Regulations of the Register of Marriage Contracts), adopted by the Lietuvos Respublikos Vyriausybės 2002 m. rugpjūčio 13 d. nutarimas Nr. 1284 'Dėl Vedybų sutarčių registro nuostatų patvirtinimo' (Resolution No 1284 of the Government of the Republic of Lithuania of 13 August 2002 'approving the Regulations of the Register of Marriage Contracts'). The version of the Regulations of the Register of Marriage Contracts applicable to the dispute in the main proceedings is that of 10 September 2015, as amended by Resolution No 773 of the Government of the Republic of Lithuania of 8 July 2020 ('the Register Regulations').

6. Points 2 and 8 of the Register Regulations provide, respectively, that 'the purpose of the Register is to register the subject matter of the Register referred to in point 13 of the Register Regulations' and that 'the State enterprise Registrų centras [(Registers Centre, Lithuania)] shall be the administrator of the Register'.

7. Point 13 of the Register Regulations states:

'The following shall be registered in the Register:

13.1 marriage contracts,

…

13.3 the facts of division of property as set out in the [Civil Code].'

8. Point 67 of the Register Regulations provides:

‘A marriage contract or cohabitation contract concluded in a foreign State may be entered in the Register if the marriage contract or cohabitation contract contains the personal identification number of at least one of the parties to the contract, as provided by the Population Register [of the Republic of Lithuania].’

9. In accordance with point 68 of the Register Regulations:

‘Where one of the spouses or cohabitants wishes to have (i) a marriage contract or cohabitation contract certified in a foreign State, (ii) amendments to such a contract, or (iii) data concerning the termination of such a contract, entered in the Register, he or she may submit that data to the Register personally or through an authorised person, by post or electronically, in accordance with the procedure laid down by the administrator of the Register.’

10. By Resolution No 1263 of 14 December 2022,[2] the Register Regulations were amended with effect from 1 January 2023 and, as from that date, the entry of the marriage contract or cohabitation contract concluded in a foreign State is no longer subject to the condition that that contract contain the Lithuanian personal identification number of at least one of the parties to the contract.

III. The dispute in the main proceedings, the question referred for a preliminary ruling and the procedure before the Court

11. The appellant in the main proceedings, I. J., is a Union citizen and is registered in the Lithuanian Population Register.[3]

12. In 2006, the appellant in the main proceedings and C. B., an Italian national, married in Italy. The marriage was entered in the marriage register of an Italian municipality. The marriage certificate states that the marriage contract specified that the spouses had chosen the regime of separate property during marriage.

13. The marriage in question was transcribed in Lithuania with the General Register Office.

14. On 15 February 2022, the appellant in the main proceedings applied to the Registers Centre, requesting the entry of a legal fact relating to her matrimonial property regime (namely the division of property between the spouses; ‘the division of property’) in the Register of Marriage Contracts.

[2] 2022 m. gruodžio 14 d. nutarimas Nr. 1263 ‘Dėl Lietuvos Respublikos Vyriausybės 2002 m. rugpjūčio 13 d. nutarimo Nr. 1284 “Dėl Vedybų sutarčių registro reorganizavimo ir Vedybų sutarčių registro nuostatų patvirtinimo” pakeitimo’ (Resolution No 1263 of the Government of the Republic of Lithuania of 14 December 2022 ‘amending Resolution No 1284 of the Government of the Republic of Lithuania of 13 August 2002 “approving the Regulations of the Register of Marriage Contracts”’).

[3] In the light of all the circumstances of the case, it is highly likely that the appellant in the main proceedings is a Lithuanian national. However, the referring court has not expressly stated so. It merely found that the appellant in the main proceedings is a Union citizen who had exercised her right to freedom of movement (paragraph 25 of the request for a preliminary ruling). It is nevertheless apparent from the order for reference that the appellant in the main proceedings has a personal identification number provided by the Population Register of the Republic of Lithuania and an identity card bearing that number (which makes it possible to establish that it is a Lithuanian identity card).

15. By decision of 9 March 2022, the Registers Centre rejected that application, relying, inter alia, on points 13, 67 and 68 of the Register Regulations. It stated that the extract from the marriage certificate submitted by the appellant in the main proceedings could be entered in the Register of Marriage Contracts as a marriage contract if she submitted an addendum (an annex) to the marriage certificate, certified by a notary or by any other competent Italian public official, containing the Lithuanian personal identification number of at least one of the spouses. It also stated that natural persons were not data providers as regards the division of property and that, therefore, the division of property could not be entered in the Register of Marriage Contracts.

16. The appellant in the main proceedings submitted a copy of an email to the case file, from which it is apparent that she had applied to the Italian authorities responsible for civil status matters for the issuance of a copy of the marriage certificate which included her Lithuanian personal identification number as it appeared on her identity card, however, that service refused her request, stating that that number could not be entered in the marriage certificate, since it was information which it could not certify. The appellant in the main proceedings also submitted a certificate issued by an Italian notary which stated that, under the second paragraph of Article 162 of the Codice civile (Civil Code), the regime of separate property during marriage may also be chosen by means of a declaration in the marriage certificate.

17. The appellant in the main proceedings brought an action before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) challenging the decision of 9 March 2022. By judgment of 29 June 2022, that court dismissed the action as unfounded. In the grounds for its decision, it stated that the conditions for the entry in the Register of Marriage Contracts of a contract concluded abroad, as laid down in point 67 of the Register Regulations, were not satisfied and, in particular, that the marriage contract did not contain the Lithuanian personal identification number of at least one of the parties to that contract.

18. The appellant in the main proceedings brought an appeal against that judgment before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), the referring court.

19. That court, sitting in extended composition, considers that the appellant in the main proceedings is seeking, in fact, to have her marriage contract entered in the Register of Marriage Contracts and not the division of property [4] and that her situation is governed by point 68 of the Register Regulations, in accordance with which one of the spouses may apply to have a marriage contract certified in a foreign State entered in the Register of Marriage Contracts. It also notes that, in accordance with point 67 of those regulations, the entry of a contract concluded abroad was, however, subject to the condition that it must include the Lithuanian personal identification number of at least one of the parties to that contract.

20. In that regard, the referring court notes that, under Italian law, the matrimonial property regime chosen by the spouses may be indicated on the marriage certificate. The extract from the marriage certificate of the appellant in the main proceedings, drawn up in Italy, does not mention

[4] In that regard, I note that, in the present case, it would be difficult to envisage the entry of the division of property, within the meaning of point 13.3 of the Register Regulations (which appears to concern agreements or decisions relating to the division of property which are part of the community of property of the spouses). First, the spouses chose the regime of separate property, during marriage and that choice was made at the time when the marriage was entered into. In that situation, property acquired by the spouses could not have entered the community and then be the subject of a division of property. Secondly, there is no mention, in the request for a preliminary ruling, of the conclusion of a contract for the division of property or of a court decision on the division of property or of a specific item of property which may be subject to division.

the personal identification numbers of the spouses. While the absence of those numbers was not an obstacle to the transcription of the marriage by the authorities responsible for civil status matters in Lithuania, the personal identification number was required, however, in order for the marriage contract concluded by the spouses to be entered in the Register of Marriage Contracts.

21. The referring court therefore asks whether the rules introduced by the Register Regulations may be regarded as being capable of restricting the free movement of citizens of the Union in accordance with Article 21 TFEU.

22. In those circumstances, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 21(1) of the Treaty on the Functioning of the European Union be interpreted as precluding national legislation under which a marriage contract concluded in another Member State of the European Union may not be entered in the Register of Marriage Contracts if the marriage contract does not contain the [Lithuanian] personal identification number of at least one of the parties to that contract, … where, in circumstances such as those of the present case, the competent authorities of the Member State in which the marriage contract was concluded refuse to provide an extract from that contract supplemented by the relevant personal identification data?'

23. Written observations were submitted by the Lithuanian Government and by the European Commission. No hearing was held.

IV. Analysis

A. Admissibility

24. The Lithuanian Government submits that the request for a preliminary ruling is inadmissible. It submits that the rules in force as from 1 January 2023 do not provide that a marriage contract concluded abroad must state the Lithuanian personal identification number of at least one of the parties to that contract in order to be entered in the Register of Marriage Contracts. Therefore, the question referred for a preliminary ruling is irrelevant and, consequently, it is no longer necessary for the Court to rule on that question.

25. In response to a request for information from the Court, the referring court stated that, as a general rule, the court reviews the legality and merits of a decision of the administration in the light of the factual and legal circumstances prevailing when that decision was adopted. Consequently, in circumstances such as those at issue in the main proceedings, the amendment to the legislation concerned is, in itself, irrelevant to the examination of that case. The referring court also stated that the appellant in the main proceedings had not withdrawn her appeal and that, according to the information available to it, she had not submitted a new application for entry in the register after 1 January 2023. Therefore, the referring court is still required to examine that appeal and, given that it seeks, inter alia, the annulment of the decision of 9 March 2022, to rule on the legality and merits of that administrative decision.

26. In that regard, it should be borne in mind that it is solely for the national court before which the dispute in the main proceedings has been brought to assess the need for a preliminary ruling and the relevance of the questions which it submits to the Court, which enjoy a presumption of relevance. Thus, the Court is, in principle, bound to give a ruling where the question submitted concerns the interpretation or the validity of a rule of EU law, unless it is quite obvious that the interpretation sought bears no relation to the actual facts of the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to that question. [5]

27. In the present case, in the light of the information provided by the referring court, the question concerning the interpretation of Article 21(1) TFEU is relevant to the dispute before that court and an answer from the Court is necessary in order for it to rule on the dispute in the main proceedings in a manner consistent with EU law.

28. In those circumstances, I am of the view that the question referred for a preliminary ruling is admissible.

B. Substance

29. By its question referred for a preliminary ruling, the referring court asks, in essence, whether Article 21(1) TFEU precludes legislation of a Member State under which a marriage contract concluded in another Member State may not be entered in the register of marriage contracts maintained in the first Member State on the sole ground that it does not contain the personal identification number, as provided by the population register of the first Member State, of at least one of the parties to that contract, where the competent authorities of the State in which the marriage contract was concluded refuse to provide an extract from that contract containing the number in question.

30. In order to answer that question, it is necessary, first of all, to examine whether the situation of the appellant in the main proceedings falls within the scope *ratione materiae* of EU law and, in particular, of the rules governing the exercise by a citizen of the Union of his or her right to freedom of movement. If so, it will then be necessary to examine whether the application of the national legislation at issue constitutes a restriction on the free movement of citizens of the Union and, if that is the case, whether that restriction is justified.

1. The scope of EU law

31. The background to the question referred for a preliminary ruling in the present case is the legislation of a Member State, namely the Republic of Lithuania, on the maintenance of a register of marriage contracts.

32. In that regard, it should be noted that, as EU law currently stands, the establishment of registers of marriage contracts and the rules governing their operation fall within the competence of the Member States. While matters relating to jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes are

[5] Judgment of 26 September 2024, *Energotehnica* (C-792/22, EU:C:2024:788, paragraph 37 and the case-law cited).

regulated within the European Union by Regulation (EU) 2016/1103,[6] that regulation does not apply to the dispute in the main proceedings, since the Republic of Lithuania does not participate in the enhanced cooperation which it implements. Moreover, that regulation does not contain any provisions relating directly to the maintenance of registers of marriage contracts. It follows, in particular, that, in order to determine the law applicable to the matrimonial property regime and the conditions for and consequences of the entry of marriage contracts in those registers, the Lithuanian courts will continue to apply the conflict-of-law rules of Lithuanian law, the content of which has not been reproduced by the referring court.[7]

33. Nevertheless, it is common ground that, although the regulation of an area falls within the competence of the Member States, the latter must, when exercising that competence, comply with EU law and, in particular, with the FEU Treaty provisions on the freedom of every citizen of the Union to move and reside in the territory of the Member States.[8]

34. In that context, I would point out, in the first place, that the Court has held on numerous occasions that Union citizenship is destined to be the fundamental status of nationals of the Member States[9] and that a national of a Member State who has exercised, in his or her capacity as a Union citizen, his or her freedom to move and reside within a Member State other than his or her Member State of origin, may rely on the rights pertaining to Union citizenship, in particular the rights provided for in Article 21(1) TFEU, including, where appropriate, against his or her Member State of origin.[10]

35. As regards the specific rights attaching to the status of Union citizen, I must also point out, in the second place, that it is common ground that national legislation which places certain of the nationals of a Member State at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State is a restriction on the freedoms conferred by Article 21(1) TFEU on every citizen of the Union.[11]

36. In the present case, after having exercised her freedom to move and to reside in another Member State, the appellant in the main proceedings, a Union citizen, has had the entry of the marriage contract which she concluded in Italy refused in the Lithuanian Register of Marriage Contracts on the ground that that contract does not contain the Lithuanian personal identification number of at least one of the spouses. There is nothing to indicate that, under Lithuanian law, that information in the marriage contract is a condition for its existence or validity.

6 Council Regulation of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (OJ 2016 L 183, p. 1).

7 It is therefore possible that Article 3.103 of the Civil Code, which provides for the entry of marriage contracts in the Register of Marriage Contracts and specifies the consequences of that entry, is applicable only where Lithuanian law has been determined as the law applicable to the matrimonial property regime. However, when an application is made to have a marriage contract entered in the Register of Marriage Contracts, the applicability of that provision of the Civil Code as the law applicable to the matrimonial property regime cannot be excluded from the outset. Nor does it appear to be inconceivable that the condition for entry relating to the Lithuanian personal identification number, provided for in point 67 of the Register Regulations, applies to any marriage contract concluded abroad for which entry is sought, irrespective of the law applicable to the matrimonial property regime.

8 See, to that effect, judgment of 8 June 2017, *Freitag* (C-541/15, EU:C:2017:432, paragraph 33 and the case-law cited).

9 Judgments of 20 September 2001, *Grzelczyk* (C-184/99, EU:C:2001:458, paragraph 31), and of 4 October 2024, *Mirin* (C-4/23, EU:C:2024:845, paragraph 51 and the case-law cited).

10 Judgment of 14 December 2021, *Stolichna obshtina, rayon 'Pancharevo'* (C-490/20, EU:C:2021:1008, paragraph 42 and the case-law cited).

11 Judgment of 22 February 2024, *Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date* (C-491/21, EU:C:2024:143, paragraph 41 and the case-law cited).

37. Moreover, it is apparent from the request for a preliminary ruling that, if the appellant in the main proceedings had concluded her marriage contract in Lithuania, she would not, in any event, have been required to lodge it with the Registers Centre for the purposes of its entry in the register at issue. In Lithuania, that entry is carried out upon application submitted by the notary who drew up the notarial act and who is responsible for correctly identifying the parties to the contract and communicating the data required by the Register Regulations. [12]

38. In the light of those circumstances, it should be noted, first, that it is not disputed that the appellant in the main proceedings has an interest in having the information relating to her matrimonial property regime being entered in the Lithuanian Register of Marriage Contracts and, secondly, that the refusal to enter that information was a direct consequence of the application of a provision of national law applicable only to contracts concluded abroad. That refusal was therefore linked to the exercise, by the appellant in the main proceedings, of her right to move and reside in another Member State.

39. In those circumstances, I am of the opinion that the situation of the appellant in the main proceedings falls within the scope of Article 21(1) TFEU.

2. Restriction on the free movement of citizens of the Union

(a) Registers of marriage contracts

40. The Court has not yet had the opportunity to interpret Article 21(1) TFEU in the light of provisions of national law relating to the maintenance of registers of marriage contracts.

41. However, it has already had occasion to interpret that provision in the light of provisions of national law relating to the entry in national registers of various items of information concerning the identity of persons and their status. The Court has ruled, inter alia, on the transcription, in civil status documents, of a person's surname [13] or gender identity [14] in a situation where there were differences between the entries of those data in registers kept in different Member States.

42. As regards surnames, the Court has held, inter alia, that a refusal by the authorities of a Member State to recognise and enter in the civil registers the name of a Union citizen, as determined in another Member State, is likely to hinder the exercise of the right, enshrined in Article 21 TFEU, to move and reside freely in the territories of the Member States, as a result of confusion and inconvenience liable to arise from the divergence between the two names used for the same person, since many daily actions, both in the public and in the private domains, require a person to provide evidence of his or her own identity. [15] The same applies to a refusal by the authorities of a Member State to amend and recognise the gender identity which one of its nationals has legally acquired in another Member State. [16]

[12] Although the request for a preliminary ruling does not specify this, I assume that that personal identification number, where the parties have one, is also mentioned in the notarial act drawn up by a Lithuanian notary.

[13] See, in particular, judgments of 22 December 2010, *Sayn-Wittgenstein* (C-208/09, EU:C:2010:806, operative part); of 12 May 2011, *Runevič-Vardyn and Wardyn* (C-391/09, EU:C:2011:291, operative part); of 2 June 2016, *Bogendorff von Wolffersdorff* (C-438/14, EU:C:2016:401, operative part); and of 8 June 2017, *Freitag* (C-541/15, EU:C:2017:432, operative part).

[14] Judgment of 4 October 2024, *Mirin* (C-4/23, EU:C:2024:845, operative part).

[15] See, inter alia, judgment of 8 June 2017, *Freitag* (C-541/15, EU:C:2017:432, paragraphs 36 to 39 and the case-law cited).

[16] See, to that effect, judgment of 4 October 2024, *Mirin* (C-4/23, EU:C:2024:845, paragraphs 55 to 57 and the case-law cited).

43. The question thus arises as to whether the case-law of the Court which I have just recalled [17] can be transposed to the present case. In order to answer that question, it is necessary to examine whether registers of marriage contracts are comparable to civil status registers or population registers.

44. I would note at the outset that, in matters of matrimonial property regimes, the legal solutions adopted in the legal systems of the Member States differ significantly. While there are similarities between national laws, the specific mechanisms put in place by those laws vary significantly. [18]

45. Thus, while the principle that spouses have the option of choosing a matrimonial property regime different from the legal regime appears to be recognised by all the Member States, solutions relating to the publication of marriage contracts reflecting that choice may differ. In that regard, some legal systems provide for marriage contracts to be entered in a special public register set up for that purpose, whereas others do not. [19] Moreover, within the first category of legal systems, some authorise the entry of marriage contracts concluded abroad [20] while others do not. [21]

46. The creation of a public register of marriage contracts is intrinsically linked to rules of national law on the determination of the owner of property acquired during marriage and to the liability of spouses for obligations arising during the marriage. As a general rule, although a legal system provides for the possibility for spouses to derogate from a legal regime by concluding a marriage contract, it also provides that that contract is to be enforceable against third parties only if they have been aware of it. A register of marriage contracts is an instrument for publicising such contracts, which contributes significantly to the protection of the property interests of the spouses and, more generally, to legal certainty. In principle, the entry of a marriage contract in such a register has the effect of making that contract enforceable against third parties, whether or not they are actually aware of its conclusion.

47. That is the case under Lithuanian law. Thus, as provided for in Article 3.103(3) of the Civil Code, the marriage contract and any amendments thereto may be relied on against third parties only if the contract and its amendments have been entered in the Register of Marriage Contracts, unless the third parties were aware of them at the time of the conclusion of a legal act. There is nothing in Article 3.103 of the Civil Code to indicate that the possibility of entering a marriage contract in the register in question depends on the place where that contract was concluded or on other circumstances capable of constituting a connecting factor which determines the law applicable to the matrimonial property regime.

48. It follows that, under Lithuanian law, the entry of a marriage contract in the register at issue has the effect, inter alia, of making that contract enforceable against third parties. That entry is therefore capable of affecting the legal situation of the spouses vis-à-vis third parties.

[17] See point 42 of this Opinion.

[18] See, in that regard, inter alia, Consortium ASSER-UCL, 'Étude sur les régimes matrimoniaux des couples mariés et sur le patrimoine des couples non mariés dans le droit international privé et le droit interne des États membres de l'Union européenne', pp. 22 and 23. That 2003 study, which was carried out at the request of the Commission, presents an overview of national rights in the European Union of 15 Member States. See, also, information on the website of the Council of the Notariats of the European Union 'Couples in Europe. The law for couples in 22 EU countries', https://www.coupleseurope.eu/en/ ('the Couples in Europe website').

[19] According to the information available on the Couples in Europe website, such registers do not exist in, inter alia, Austria, France, Poland and Slovakia.

[20] According to the information available on the Couples in Europe website, a marriage contract concluded abroad may be entered in the special national register in, inter alia, Germany, Estonia, Latvia and the Netherlands.

[21] According to the information available on the Couples in Europe website, the entry in the national special register of a marriage contract concluded abroad does not appear to be possible in, inter alia, the Czech Republic, Hungary and Malta.

49. That said, it should be noted that the significance of the entry of a marriage contract in the register in question is not comparable to that of the entry of a person's name or gender in the national civil register. The consequences of those entries are different in nature.

50. First of all, registers of marriage contracts are not the source of information on a person's civil status and, therefore, the fact that a marriage contract is not entered in the register in question does not create any risk of confusion as regards data relating to a person's civil status; where a marriage contract is not entered in the register, the legal regime is presumed to apply to the property relationship between the spouses. Next, such a register does not exist in all the EU legal systems which provide for the possibility for spouses to conclude a marriage contract. Moreover, the validity of a marriage contract does not, as a general rule, depend on it being entered in the register of marriage contracts. Lastly, at least under Lithuanian law, the entry of a marriage contract in that register is not the only way of ensuring that a marriage contract is enforceable against third parties: when concluding a legal act with a person, informing that person of the existence of a marriage contract produces the same effect, albeit only *inter partes*.

51. Those differences show that the case-law on the entry in national civil registers of the name or gender of a person who has exercised his or her right to free movement cannot be transposed to the entry of marriage contracts in marriage contract registers.

52. However, that cannot mean that the refusal to enter in the Register of Marriage Contracts a contract concluded in another Member State does not constitute a restriction on the freedom to move and reside in another Member State, enshrined in Article 21(1) TFEU.

(b) The impact of the rules for entry in the Register of Marriage Contracts on the right of Union citizens to free movement

53. I would recall that it is apparent from settled case-law that national legislation which places certain nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State constitutes a restriction of the freedoms conferred by Article 21(1) TFEU on every citizen of the Union.[22] The Court has also held that the opportunities offered by the Treaty in relation to freedom of movement and residence cannot be fully effective if a national of a Member State can be deterred from availing himself or herself of them by obstacles raised to his or her residence in the host Member State by legislation of his or her State of origin penalising the fact that he or she has exercised them.[23]

54. As I have stated,[24] under Lithuanian law, the entry of a marriage contract in the Register of Marriage Contracts produces a specific legal effect in that it enables spouses to ensure that that contract is enforceable against third parties, whether or not they are aware of its conclusion. Refusing that entry therefore has an impact on the legal situation of the spouses under Lithuanian law, in that it deprives them of the possibility of benefiting from a measure of national law which makes it possible to ensure the protection of their property interests and which, more generally, is favourable to them from the point of view of legal certainty. Individuals therefore have an interest in their marriage contracts being entered in the register at issue.

[22] See, inter alia, judgments of 11 July 2002, *D'Hoop* (C-224/98, EU:C:2002:432, paragraph 31); of 24 October 2013, *Thiele Meneses* (C-220/12, EU:C:2013:683, paragraph 22); and of 26 May 2016, *Kohll and Kohll-Schlesser* (C-300/15, EU:C:2016:361, paragraph 42).

[23] See judgments of 29 April 2004, *Pusa* (C-224/02, EU:C:2004:273, paragraph 19); of 26 October 2006, *Tas-Hagen and Tas* (C-192/05, EU:C:2006:676, paragraph 30); of 22 May 2008, *Nerkowska* (C-499/06, EU:C:2008:300, paragraph 32); and of 14 October 2010, *van Delft and Others* (C-345/09, EU:C:2010:610, paragraph 97).

[24] See point 48 of this Opinion.

55. It is true that, as EU law currently stands, Member States are not obliged to establish registers relating to marriage contracts. However, where such a register exists in one Member State and the applicable legislation provides for the right to enter in that register a marriage contract concluded in another Member State,[25] the conditions for the entry of that contract should be designed in such a way as to ensure compliance with the provisions of the FEU Treaty and in particular Article 21(1) thereof. If that were not the case, persons falling within the scope *ratione personae* of the national legislation in question, such as, inter alia, the nationals of that Member State, might be deterred from exercising the rights which they derive from the Treaty in relation to freedom of movement and residence, in fear of losing the benefits resulting from such entry.

56. It follows that the rules for entering marriage contracts concluded in another Member State in the register concerned are liable to affect the exercise of the right of Union citizens to free movement.

(c) The condition relating to the personal identification number being stated

57. In the version applicable to the dispute in the main proceedings, Lithuanian law did not preclude the entry of a marriage contract concluded abroad in the Register of Marriage Contracts but made such entry subject to the condition that that contract must include the Lithuanian personal identification number of at least one of the spouses ('the condition at issue').

58. The condition at issue was not formally laid down for marriage contracts concluded in Lithuania. This is due to the fact that, under national law, those contracts are concluded by notarial act, which means that the verification and, most probably, the reference to the personal identification number in those contracts is carried out by the notary who is, moreover, responsible for their entry in the Register of Marriage Contracts and communicating the data required for that purpose. In that context, requiring that number to be indicated in marriage contracts concluded abroad for the purposes of their entry in the Register of Marriage Contracts does not appear to imply, prima facie, discrimination against persons who conclude a marriage contract abroad as compared with those who conclude it in Lithuania.

59. However, meeting a requirement laid down by the legislation of a Member State concerning the form of an act may prove difficult where that act is drawn up in another Member State and is therefore governed by the law of that other Member State which does not necessarily provide for it. It may prove complicated, if not impossible, for individuals to require an authority of another Member State to include in an authentic instrument, drawn up in accordance with the rules in force in that other Member State, elements whose inclusion is not provided for by the legislation of that other Member State.

60. That is the case here. First, the marriage contract at issue in the main proceedings, in which the spouses chose the regime of separate property during marriage, was concluded by means of a simple declaration entered in the marriage certificate. That contract does not therefore take the form of a notarial act and, accordingly, it was not possible to include a personal identification number of the spouses. Second, although it was conceivable for the Registers Centre to enter in

[25] I would like to point out that I am not prejudging the question whether there is a general obligation on a Member State to register marriage contracts concluded in another Member State or, therefore, the question whether Lithuanian law should provide for the possibility, for persons who do not have a Lithuanian personal identification number, of entering a marriage contract concluded abroad in the Register of Marriage Contracts. As regards the present case, those questions are hypothetical given that Lithuanian law provides for the possibility of entering marriage contracts concluded abroad in the Register of Marriage Contracts and that the appellant in the main proceedings has a Lithuanian personal identification number.

the register the regime of separate property during marriage on the basis of an extract from a marriage certificate drawn up in Italy, that was subject to the condition that an annex to the marriage certificate, certified by a notary or by any other competent Italian public official, containing the personal identification number, be drawn up. However, it was not possible to draw up such an annex under Italian law.

61. Consequently, the condition at issue, although it corresponded to a condition laid down for marriage contracts concluded in Lithuania, may not be able to be fulfilled by persons with a Lithuanian personal identification number who had concluded a marriage contract in another Member State, irrespective of the wishes and steps taken by the spouses. Thus, while providing for the possibility, for persons with a Lithuanian personal identification number, to enter a marriage contract concluded abroad in the Register of Marriage Contracts, the Lithuanian legislature made that entry subject to a condition which could be objectively impossible to satisfy and which was capable of preventing persons who had exercised their right to freedom of movement from registering their marriage contract in the register in question.

62. In so far as the condition at issue was capable of constituting an obstacle to the entry of a marriage contract concluded in another Member State in the Lithuanian Register of Marriage Contracts by a Union citizen who had a Lithuanian personal identification number and who was entitled under Lithuanian law, to have that contract entered in the register, I am of the opinion that that condition constituted a restriction on the free movement of Union citizens guaranteed by Article 21(1) TFEU.

3. Justification for the restriction on the free movement of Union citizens

63. It is common ground that a restriction on the free movement of Union citizens, which, as in the main proceedings, is independent of the nationality of the persons concerned, may be justified if it is based on objective public-interest considerations and proportionate to a legitimate objective pursued by national law.[26] It follows from the case-law of the Court that a measure is proportionate if, while appropriate for securing the attainment of the objective pursued, it does not go beyond what is necessary in order to attain it.[27]

(a) Identification of an objective consideration of public interest

64. With regard to the justification for the condition at issue, the Lithuanian Government explains that its objective was to ensure the correct identification of persons who have concluded a marriage contract and the accuracy and veracity of the data contained in the Register of Marriage Contracts, which are authentic as long as they have not been challenged before the courts. As regards marriage contracts concluded in Lithuania, that objective has been achieved by the fact that those contracts are drawn up by a notary, who is responsible for communicating, using specific software, the required data to the Register of Marriage Contracts. By contrast, the provision of data relating to a marriage contract concluded abroad, which have not been transferred to the system by a Lithuanian court or notary, was subject to the condition at issue in order to ensure verification of the accuracy, veracity and relevance of those data, since they could not be verified or ensured by a notary or a court.

[26] Judgment of 5 June 2018, *Coman and Others* (C-673/16, EU:C:2018:385, paragraph 41 and the case-law cited).

[27] Judgments of 18 July 2006, *De Cuyper* (C-406/04, EU:C:2006:491, paragraph 42); of 26 October 2006, *Tas-Hagen and Tas* (C-192/05, EU:C:2006:676, paragraph 35); and of 5 June 2018, *Coman and Others* (C-673/16, EU:C:2018:385, paragraph 41).

65. I am not unsympathetic to the justification put forward by the Lithuanian Government. Whatever the function of the various public registers which exist at national level, their main objective is to contribute to legal certainty. In order to achieve that objective, it is essential that the data registered are correct.

66. The objective of ensuring the accuracy, veracity and relevance of the data contained in a public register and of contributing to ensuring legal certainty is therefore, in my view, capable of constituting an objective in the public interest justifying the existence of the condition at issue.

(b) Proportionality

67. In that situation, it is necessary to examine whether the condition at issue was proportionate to the legitimate objective pursued.

(1) Appropriateness

68. I am of the opinion that the condition at issue was appropriate for attaining the objective pursued.

69. In contrast to marriage contracts concluded in Lithuania, the personal identification number of persons who had concluded a marriage contract abroad was not communicated to the Register of Marriage Contracts by the notary. That number had to be registered by an official at the Registers Centre. The inclusion of that number in marriage contracts concluded abroad also enabled them to be entered in the register.

70. Moreover, even if the officials at the Registers Centre had the right to access the national population register, the personal identification number also enabled them to check the accuracy and veracity of other personal data relating to the data subject and mentioned in the marriage contract, by comparing the data in that register with those contained in the marriage contract.

71. It follows that the reference to the personal identification number was capable of enabling the Registers Centre to ensure the accuracy and completeness of the data contained in the Register of Marriage Contracts.

72. Therefore, the appropriateness of the condition at issue for the attainment of the objective pursued does not appear to be open to question.

(2) Necessity

73. The situation is different as regards the necessity of the condition at issue.

74. Irrespective of the advantages associated with the use of personal identification numbers, it is clear that such a number is not the only data which makes it possible to ensure the correct identification of the person wishing to enter his or her marriage contract in the register in question. Data such as the first name, surname, date and place of birth, possibly supplemented by the numbers of the documents used when the marriage contract was concluded, are often sufficient to rule out a risk of confusion as to the identity of the persons. Therefore, in the present case, the condition at issue was not necessary in order to verify that one of the spouses had a Lithuanian personal identification number and to identify that person correctly.

75. Moreover, it was possible for the Lithuanian legislature to provide, for the person submitting an application for the entry of his or her marriage contract in the register, the option of indicating his or her personal identification number in a separate document, such as a registration form, accompanied by a copy of his or her identity document. A comparison of the data identifying the person concerned, which appear in the marriage contract and on the copy of the identity document, would have been sufficient to establish with certainty the personal identification number to be entered in the register in question. In the event that the officials at the Registers Centre were able to access the national population register, that information could easily be verified.

76. Those considerations are corroborated by the transcription of the appellant's marriage certificate by the Lithuanian authorities responsible for civil status matters. It is apparent from the order for reference that that transcription was made on the basis of the same document as that submitted in support of the application to have the marriage contract entered in the Register of Marriage Contracts. If, under national law, the inclusion of that number was not essential for the purposes of transcription of the marriage certificate in the civil register, it is difficult to see why it would be necessary for the purposes of entering the marriage contract in the Register of Marriage Contracts.

77. The decisive factor, in my view, is the fact that the application of the condition at issue restricted the ability of persons with a Lithuanian personal identification number to have their marriage contract entered in the Register of Marriage Contracts, whereas it is apparent from point 67 of the Register Regulations that persons who had a Lithuanian personal identification number had the right to have their marriage contracts entered in the register. Making the entry in the Register of Marriage Contracts of a marriage contract concluded abroad subject not to the condition that one of the spouses has a Lithuanian personal identification number, but to the condition that that number be mentioned in the contract, had the effect not only of limiting *ratione personae* the scope of the legislation at issue to persons with that number, but also of imposing a condition as to the content of the document drawn up by a foreign authority. Since it was objectively impossible to ensure that the foreign authorities would take that condition into account, the entry in the register in question of a marriage contract concluded abroad was therefore uncertain and depended on the goodwill of those authorities or on the formal requirements laid down by the law of the place where the contract was concluded.

78. Since it had the effect of limiting the access of persons with a Lithuanian personal identification number to the Register of Marriage Contracts, it must be held that the condition at issue went beyond what was necessary to attain the objective pursued.

(3) Conclusion as to proportionality

79. In the light of the foregoing, I take the view that, in so far as national legislation such as that at issue in the main proceedings, which lays down the condition at issue, was not necessary to attain the objective pursued and, consequently, was not proportionate, the restriction on the free movement of Union citizens resulting from the application of that condition is not justified.

V. Conclusion

80. In the light of all of the foregoing considerations, I propose that the Court should answer the question referred for a preliminary ruling by the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) as follows:

Article 21(1) TFEU

must be interpreted as precluding legislation of a Member State under which a marriage contract concluded in another Member State by a citizen of the European Union who has exercised his or her freedom to move and reside in that other Member State may not be entered in the Register of Marriage Contracts maintained in the first Member State on the sole ground that it does not contain the personal identification number, as provided by the population register of the first Member State, of at least one of the parties to that contract, despite the fact that one of those persons has that number.