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Strategic Challenges of the EU Succession Regulation: Same-Sex Marriages in Light of C-713/23 and Its Implications for Slovak Succession Law

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Abstract

The judgment of the Court of Justice of the European Union in Case C-713/23, *Wojewoda Mazowiecki*, constitutes a significant development in the Court's case law concerning the recognition of personal status acquired in another Member State. While the decision has primarily been discussed in the context of civil registration and the free movement of Union citizens, its implications for cross-border succession have received little scholarly attention. This article examines the consequences of the judgment for the application of Regulation (EU) No. 650/2012 on succession, with particular emphasis on Slovak succession law, which neither recognises same-sex marriage nor registered partnerships. Using doctrinal legal analysis and a contextual interpretation of the Court's jurisprudence, the article argues that the judgment should be understood through the concept of functional recognition. Although Member States remain competent to regulate marriage, they may be required to recognise the legal effects of a same-sex marriage lawfully concluded in another Member State where such recognition is necessary to ensure the effectiveness of EU law. The article demonstrates that this approach may influence the determination of heirs, the status of the surviving spouse, matrimonial property settlement, and the legal effects of the European Certificate of Succession. It concludes that Slovak authorities should apply a functional, case-by-case assessment that reconciles national constitutional identity with the effective protection of rights guaranteed by EU succession law, thereby contributing to the broader debate on the interaction between national family law and European private international law.

Keywords: Case C-713/23; *Wojewoda Mazowiecki*; same-sex marriage; personal status; functional recognition; cross-border succession; Regulation (EU) No. 650/2012; European Certificate of Succession; Slovak law; European Union law



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1. Introduction

The recognition of personal status acquired in another Member State has become one of the most challenging issues at the intersection of national family law and European Union law (see [Yang 2025](#); [Martín 2025](#)). Although the regulation of marriage remains within the competence of the Member States, the increasing mobility of Union citizens means that personal status lawfully established in one Member State increasingly produces legal consequences in another. The resulting tension between the Member States' constitutional

autonomy in matters of family law and the effectiveness of rights derived from European Union law has become a recurring theme in the case law of the Court of Justice of the European Union.

The judgment of the Court of Justice in Case C-713/23, *Wojewoda Mazowiecki* ([Court of Justice of the European Union 2025](#)) represents a significant development in this line of case law. Although the dispute formally concerned the transcription of a marriage certificate into the Polish civil register, the legal issues addressed by the Court extend well beyond civil-status registration. The judgment raises a broader question concerning the extent to which a Member State may refuse to recognise the legal effects of a marital status lawfully acquired in another Member State where such recognition is necessary to ensure the effective exercise of rights conferred by European Union law. The Court confirmed that while Member States remain free to determine whether same-sex marriage forms part of their domestic legal order, they may not exercise that competence in a manner that renders the exercise of rights derived from Union law impossible or excessively difficult.

While the implications of the judgment have primarily been discussed in the context of civil registration and freedom of movement, its potential consequences for European private international law remain largely unexplored. This is particularly true in the field of cross-border succession governed by Regulation (EU) No. 650/2012. Although the Regulation deliberately excludes questions of personal status from its substantive scope, the determination of the surviving spouse frequently constitutes a necessary preliminary question for identifying the heirs, determining their succession rights, settling matrimonial property, and giving effect to the European Certificate of Succession (“ECS”). The effectiveness of the harmonised succession regime may therefore depend upon the recognition of a personal status that remains outside the scope of harmonisation.

These questions are particularly significant within the Slovak legal order. Slovak law neither permits same-sex marriage nor recognises registered partnerships as a general legal institute. At the same time, however, the surviving spouse occupies a privileged position under Slovak succession law. This creates a potential conflict between the constitutional and statutory concept of marriage under Slovak law and the obligation to ensure the effective application of Regulation (EU) No. 650/2012 in cross-border succession proceedings.

Against this background, this article examines the implications of Case C-713/23 for Slovak succession law. It argues that the judgment should be understood through the concept of functional recognition. Although Member States are not required to recognise same-sex marriage as an institute of domestic family law, they may nevertheless be required to recognise the legal effects of a marital status lawfully acquired in another Member State where such recognition is necessary to ensure the effective exercise of rights conferred by European Union law. The article further argues that in the context of cross-border succession, this requirement may affect the determination of heirs, the legal position of the surviving spouse, the settlement of matrimonial property, and the legal effects of the European Certificate of Succession.

The article is structured as follows. Section 2 analyses the judgment in Case C-713/23 within the broader context of the Court of Justice’s case law concerning the recognition of personal status acquired in another Member State. Section 3 examines the recognition of foreign public documents under Regulation (EU) 2016/1191 and considers the implications of the judgment for the Slovak system of civil registration. Section 4 analyses the relationship between Case C-713/23 and Regulation (EU) No. 650/2012, with particular emphasis on the role of personal status as a preliminary question in cross-border succession proceedings. Section 5 discusses the implications of the judgment for Slovak succession law, focusing on the position of the surviving same-sex spouse, the European Certificate of Succession, and the ongoing recodification of Slovak private law. Section 6 concludes by identifying

the broader significance of the judgment for the relationship between national family law, European private international law, and the effective protection of rights derived from European Union law. To the authors' best knowledge, this is the first study to examine the implications of Case C-713/23 for the application of Regulation (EU) No. 650/2012 and Slovak succession law.

2. Analysis of Case C-713/23

2.1. Factual Background

Case C-713/23, *Wojewoda Mazowiecki*, arose from a dispute concerning the recognition of a same-sex marriage lawfully concluded in Germany and its transcription into the Polish civil status register. The applicants, Jakub Cupriak-Trojan, a Polish and German national, and Mateusz Trojan, a Polish national, married in Berlin on 6 June 2018 under German law and subsequently applied for the transcription of their German marriage certificate in Poland ([Commission Européenne 2024](#), para. 1, 12, 17).

The application was refused by the Head of the Warsaw Civil Registry Office on the ground that Polish law defines marriage exclusively as a union between a man and a woman and that the transcription of a marriage certificate concerning two men would therefore be contrary to the fundamental principles of the Polish legal order ([Commission Européenne 2024](#), para. 12–14; [Constitution of the Republic of Poland 1997](#), Art. 18; [Family and Guardianship Code 1964](#), Art. 1(1)). Under Polish law, transcription is not merely a technical registration of a foreign public document but creates a Polish civil status record with independent legal effects within the domestic legal order ([Commission Européenne 2024](#), para. 1, 12, 17).¹

The applicants appealed against that decision to the Voivode of Mazowiecki², acting as the appellate administrative authority, who upheld the refusal. They subsequently challenged the Voivode's decision before the Provincial Administrative Court in Warsaw. The court confirmed that the refusal was compatible with Polish constitutional and family law, holding that the dispute concerned civil status rather than the exercise of rights under EU law ([Court of Justice of the European Union 2025](#), para. 11, 13, 25). The applicants then lodged a cassation appeal before the Supreme Administrative Court of Poland (Naczelny Sąd Administracyjny), which considered that the dispute raised questions concerning the interpretation of EU law. Since the applicants were Union citizens who had exercised

¹ A similar constitutional approach can be observed in the Slovak legal system. The Constitution of the Slovak Republic (Constitutional Act No. 460/1992 Coll.), as amended by Constitutional Act No. 161/2014 Coll., provides in Article 41(1) that "marriage is a unique union between a man and a woman". Building on this framework, the 2025 constitutional amendment No. 255/2025 Coll. further reinforced the constitutional protection of traditional family-related values by providing, inter alia, that the parents of a child are the mother and the father, defining the mother as a woman and the father as a man (Article 41(2)); limiting adoption primarily to married couples (Article 41(5)); recognising only biologically determined sex as male or female (Article 52a); and declaring the protection of these matters to form part of Slovakia's constitutional identity (Article 7(6)–(7)).

² The Mazowiecki Voivodeship is the highest representative of the regional state administration in Poland, namely in the Mazowieckie Voivodeship, with its seat in Warsaw. This position is held by a person appointed by the President of the Council of Ministers, who performs tasks such as the representative of the government in the region, superior to the centralised state administration, supervisory authority over local government, and representative of the state in property matters. It is not directly the registry office (which is run by the municipal office according to Polish law on population registration and civil status), but supervises the registry offices as a superior body, i.e. it controls their activities, resolves appeals, and performs administrative supervision. Currently (as of 2026), the Voivode of Mazovia is Mariusz Frankowski, who heads the Mazovian Voivodeship Office (Mazowiecki Urząd Wojewódzki) at Plac Bankowy 3/5 in Warsaw and has vice-voivodes such as Robert Sitnik (first vice-voivode) and Patryk Fajdek (second vice-voivode). In the Trojan dispute (C-713/23), the Mazowiecki Voivodeship held the status of an administrative appellate authority (*druga instancja postępowania administracyjnego*), which confirmed the refusal to transcribe their same-sex marriage in Germany into the Polish civil status register (*akta stan cywilnego*) for the purposes of the right of residence under Directive 2004/38/EC on the free movement of citizens of the Union ([European Parliament and Council of the European Union 2004](#)).

their right to free movement by marrying in another Member State and sought to rely on that marital status upon returning to Poland, the Supreme Administrative Court stayed the proceedings and referred a question to the Court of Justice of the European Union (hereinafter as well as “CJEU” or “Court”) for a preliminary ruling³.

In essence, the referring court asked whether Articles 20 and 21 TFEU, read in conjunction with Articles 7 and 21 of the Charter of Fundamental Rights of the European Union, preclude a Member State from refusing to recognise and transcribe a same-sex marriage lawfully concluded in another Member State solely because its domestic law does not provide for such marriages ([Court of Justice of the European Union 2023](#)). The reference thus raised a fundamental constitutional question concerning the relationship between the Member States’ competence to regulate marriage and personal status and their obligation to ensure the effective exercise of rights deriving from Union citizenship. More specifically, the Court was asked whether the refusal to recognise a same-sex marriage validly concluded in another Member State could constitute an unjustified restriction on the free movement of Union citizens where it prevented them from relying on their marital status in their Member State of nationality (Articles 20 and 21 TFEU; Articles 7 and 21 of the Charter) ([Court of Justice of the European Union 2023](#)).

2.2. Strategic Arguments Before the National Courts

The dispute before the Polish authorities reflected two fundamentally different approaches to the relationship between national competence in matters of family law and the rights deriving from Union citizenship.

The Polish authorities argued that the regulation of marriage and personal status falls within the competence of the Member States. Relying on Article 18 of the Polish Constitution, which protects marriage as a union between a woman and a man, and Article 1(1) of the Family and Guardianship Code 1964, they maintained that Polish law does not recognise same-sex marriage ([Constitution of the Republic of Poland 1997](#), Art. 18; [Family and Guardianship Code 1964](#), Art. 1(1); Case C-713/23, para. 13). Although the interpretation of Article 18 remains controversial in Polish legal scholarship ([Stępień-Załucka and Miraut Martín 2023](#)), the authorities adopted a restrictive interpretation. They further argued that transcription of the German marriage certificate would create a Polish civil-status record with legal effects incompatible with the Polish legal order. Finally, they maintained that the dispute fell outside the scope of EU law because it concerned civil status and family law rather than the exercise of rights deriving from Union citizenship. The Provincial Administrative Court in Warsaw endorsed that reasoning, holding that transcription would create legal effects incompatible with the constitutional definition of marriage ([Court of Justice of the European Union 2025](#), para. 11, 13, 25).

The applicants, in contrast, argued that the refusal to recognise and transcribe their marriage constituted a disproportionate restriction on the rights attached to Union citizenship. They did not seek the general recognition of same-sex marriage under Polish law, but only recognition of a legal status lawfully acquired in another Member State in the exercise of their right to free movement. Relying on Article 21(1) TFEU, they submit-

³ Full question ‘Must the provisions of Article 20(2)(a) and Article 21(1) TFEU, read in conjunction with Articles 7 and 21(1) of the Charter of Fundamental Rights of the European Union and Article 2(2) of 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, be interpreted as precluding the competent authorities of a Member State of which a Union citizen who is married to another Union citizen of the same sex, in one of the Member States, in accordance with the legislation of that State, from refusing to recognise that marriage certificate and to enter it in the national civil status register, thereby preventing those persons from residing in that State with the marital status resulting from their marriage and under the same surname; on the ground that the law of the host Member State does not provide for marriage between persons of the same sex?’.

ted that refusing recognition placed them in different legal positions depending on the Member State concerned, thereby creating legal uncertainty and practical difficulties in exercising rights connected with their family status. That line of argument was essentially supported by the Regional Prosecutor in Warsaw, who likewise considered that the refusal to recognise a civil status lawfully acquired in another Member State could constitute a disproportionate restriction on the freedom of movement of Union citizens ([Prokurator Regionalny w Warszawie 2024](#)).

3. Written Observations of the Participants and Stakeholders

The written observations submitted by the participants reveal three competing conceptions of the relationship between the Member States' competence in matters of marriage and personal status and the rights deriving from Union citizenship. The case did not concern the abstract question whether a Member State is required generally to recognise same-sex marriages concluded in another Member State. Rather, it concerned whether the refusal to recognise, and where necessary transcribe, such a marriage could undermine the effective exercise of the rights guaranteed by Articles 20 and 21 TFEU.

Against that background, the participants advanced three distinct approaches. The applicants argued that in the circumstances of the Polish legal system, transcription constituted the only effective means of ensuring recognition of their family status and of safeguarding the practical effectiveness of their rights as Union citizens. In contrast, the Wojewoda Mazowiecki relied on a strictly domestic-law approach, maintaining that transcription would create legal effects incompatible with the Polish constitutional definition of marriage and would therefore be contrary to the fundamental principles of the Polish legal order. The European Commission, supported in part by the Republic of Poland, adopted an intermediary position. It argued that EU law may require the recognition of a same-sex marriage lawfully concluded in another Member State, while the obligation to transcribe that marriage depends on whether transcription is necessary to ensure the effective exercise of rights guaranteed by EU law.

3.1. A Primarily National Approach

The first approach, represented primarily by the office of Wojewoda Mazowiecki ([Wojewoda Mazowiecki 2024](#)), was grounded in a formal and state-centred understanding of civil status. Relying on Article 18 of the Polish Constitution, Article 1(1) of the [Family and Guardianship Code \(1964\)](#) and the Civil Status Records Act, the Wojewoda argued that transcription is not a neutral administrative act but one that produces legal effects within the domestic legal order. From this perspective, the transcription of a foreign marriage certificate necessarily entails the creation of a Polish civil-status record, and consequently, the recognition of the underlying legal institute. Since Polish law recognises marriage exclusively as a union between a man and a woman, the Wojewoda concluded that the transcription of a same-sex marriage would be incompatible with the fundamental principles of the Polish legal order ([Wojewoda Mazowiecki 2024](#)).

The Republic of Poland adopted a more nuanced position, which reveals an important shift in the legal framing of the dispute ([République de Pologne 2024](#)). While maintaining that the regulation of marriage remains within the competence of the Member States, it expressly acknowledged that this competence is not absolute and must be exercised in compliance with EU law. In particular, Poland accepted that in certain circumstances, the refusal to recognise a personal status acquired in another Member State may hinder the exercise of rights deriving from Union citizenship.

This acknowledgment introduces a functional dimension absent from the Wojewoda's argument. By recognising that discrepancies in civil status may give rise to practical

difficulties comparable to those identified in the Court's case law on surnames (see, e.g., Grunkin and Paul, C-353/06), the Republic of Poland implicitly accepted that the effects of non-recognition must be assessed in light of their impact on the individual. Its position therefore shifts the focus from the abstract incompatibility of legal systems to the concrete consequences for Union citizens. At the same time, however, Poland maintained that the existence of such an obstacle must be determined on a case-by-case basis by the national court, thereby preserving a significant margin of discretion at the domestic level (*République de Pologne* 2024, para. 21).

3.2. A Union Citizenship Approach

In contrast, the applicants framed the dispute primarily through the lens of Union citizenship (*JC-T and MT* 2024). They argued that the case did not concern the introduction of same-sex marriage into Polish law, but rather the recognition of a legal status lawfully acquired in another Member State in the exercise of free movement rights. Relying on Articles 20 and 21 TFEU, Articles 7 and 21 of the Charter of Fundamental Rights of the European Union, and the judgments in *Coman* (C-673/16) and *Pancharevo* (C-490/20), they maintained that Member States may not exercise their competence in matters of family law in a manner that renders the exercise of rights attached to Union citizenship impossible or excessively difficult.

Central to their argument was the claim that the refusal to recognise their marriage placed them in divergent legal positions depending on the Member State concerned. This fragmentation of personal status, in their view, undermined both legal certainty and the continuity of family life across borders. Such fragmentation has been repeatedly identified in the Court's case law as a source of obstacles to free movement, particularly where individuals are required to navigate inconsistent legal identities across jurisdictions (see *Garcia Avello*, C-148/02; *Grunkin and Paul*, C-353/06). By emphasising the practical and identity-related dimensions of marital status, the applicants sought to demonstrate that non-recognition is not merely symbolic but has tangible consequences for the exercise of rights in everyday life, including access to administrative procedures, property arrangements, and the recognition of family ties.

From a doctrinal perspective, this argument reflects a broader shift in the Court's jurisprudence towards a functional understanding of personal status. Rather than treating civil status as a purely domestic matter insulated from EU law, the Court increasingly assesses it in light of its role in enabling the effective exercise of Union rights (see *Jakab and Kochenov* 2017). In *Coman*, the Court held that the term "spouse" in Directive 2004/38 must be interpreted autonomously and includes same-sex spouses for the purposes of residence rights, notwithstanding the absence of recognition of same-sex marriage in the host Member State (*Court of Justice of the European Union* 2018). Similarly, in *Pancharevo*, the Court required the recognition of a parent-child relationship established in another Member State to ensure the child's effective enjoyment of rights derived from Union citizenship (*Court of Justice of the European Union* 2021). In both cases, the obligation imposed on Member States was not one of harmonising family law, but of ensuring that national rules do not undermine the effectiveness of EU law.

The applicants' reasoning thus situates the present dispute within this line of authority. By invoking the principle of effectiveness (*effet utile*), they argued that the refusal to recognise their marriage deprives Union citizenship of its practical substance (*JC-T and MT* 2024). This approach aligns with the Court's broader tendency to interpret citizenship rights as a "fundamental status" of nationals of the Member States (see *Grzelczyk*, C-184/99), requiring that national measures be assessed in light of their impact on the real and effective enjoyment of those rights.

3.3. *The Commission's Functional Approach*

The European Commission proposed a distinct analytical framework that seeks to reconcile national competence with the requirements of EU law by introducing a clear distinction between recognition and transcription. According to the Commission, EU law may require Member States to recognise a same-sex marriage where such recognition is necessary for the exercise of rights derived from EU law. However, this obligation does not automatically extend to the transcription of the marriage into the national civil-status register. This distinction is analytically significant. By separating the question of recognition from that of transcription, the Commission reframes the dispute in functional terms (Commission Européenne 2024).

Firstly, the decisive issue is not whether a Member State must generally recognise same-sex marriage, but whether the refusal to recognise or transcribe a foreign marriage prevents the effective exercise of rights guaranteed by EU law. In this sense, recognition becomes a context-dependent obligation, triggered only where it is necessary to ensure the effectiveness of Union law. From this perspective, transcription is not an end in itself, but merely one possible means of achieving that objective. If the rights of the individuals concerned can be effectively exercised without transcription, EU law does not require it. Conversely, where transcription constitutes the only effective means of ensuring those rights, a Member State may not rely on its domestic legal order to refuse it.

Secondly, the Commission's reasoning implicitly builds on and refines earlier case law of the CJ EU. By emphasising functional recognition, it aligns with the logic developed in *Coman* and *Pancharevo*, while clarifying that the obligation imposed on Member States is not one of general recognition of family institutes, but of ensuring the effectiveness of specific Union rights in concrete situations. This clarification is particularly relevant in distinguishing between different legal contexts in which personal status may become relevant, including residence rights, administrative procedures, or property-related matters.

Thirdly, the Commission's approach also highlights the central role of proportionality in mediating conflicts between national identity and Union law. Rather than treating recognition as an absolute requirement, it requires an assessment of whether the refusal to recognise or transcribe a foreign marriage is justified in light of its impact on the individual's ability to exercise EU rights (European Parliament and Council of the European Union 2016).

The Commission's reasoning ultimately establishes a conceptual framework that also serves as the basis for the Court of Justice of the European Union's decisions. The emphasis on the functional recognition and effectiveness of Union law thus forms the basis not only for the decision in this case, but also for assessing the implications of the judgment in other areas of law, including cross-border succession.

3.4. *Opinion of Advocate General Richard de la Tour*

In his Opinion of 3 April 2025, Advocate General Richard de la Tour situated the case within the Court's established case law on the recognition of personal status acquired in another Member State. He reiterated that although the regulation of marriage falls within the competence of the Member States, that competence must be exercised in compliance with EU law, in particular Articles 20 and 21 TFEU and Article 7 of the Charter.

The Advocate General distinguished between recognising a same-sex marriage and transcribing it into the national civil-status register. In his view, EU law may require a Member State to recognise a same-sex marriage lawfully concluded in another Member State where this is necessary to ensure the effective exercise of rights deriving from Union citizenship. That obligation, however, does not automatically require transcription. Transcription is therefore required only where it constitutes the sole effective means of securing those rights. In contrast, legislation or administrative practice that excludes all legal effect

solely because domestic law does not recognise same-sex marriage is incompatible with Articles 20 and 21 TFEU ([Advocate General Richard de la Tour 2025](#)).

3.5. *Decision on the Merits*

In its judgment in *Cupriak-Trojan vs. Wojewoda Mazowiecki* case, the Court of Justice largely followed the Opinion of Advocate General Richard de la Tour while expressing more clearly the circumstances in which EU law requires the recognition, and in the Polish context also the transcription, of a same-sex marriage lawfully concluded in another Member State.

As a preliminary matter, the Court held that the dispute did not fall within the scope of Directive 2004/38, since it concerned the recognition of a marriage in the Member State of nationality rather than the exercise of residence rights in a host Member State. The case was therefore examined under Articles 20 and 21 TFEU, interpreted in light of Articles 7 and 21 of the Charter ([Court of Justice of the European Union 2025](#), para. 37–38).

Applying those principles, the Court found that Poland's refusal to recognise the applicants' marriage was capable of seriously hindering their freedom of movement by placing them in different legal positions depending on the Member State concerned. Such fragmentation of personal status created legal uncertainty and practical difficulties in the exercise of rights connected with family life and therefore constituted an obstacle to Article 21 TFEU. The Court further held that this restriction could not be justified by the Member States' competence in matters of marriage, national identity or public policy. Recognition of a same-sex marriage for the purposes of EU law does not oblige a Member State to introduce same-sex marriage into its domestic legal order but merely requires it to acknowledge a legal status lawfully acquired elsewhere where this is necessary to ensure the effectiveness of Union law.

Finally, the Court addressed the relationship between recognition and transcription. It confirmed that Member States remain free to determine the procedural means by which recognition is ensured, provided that those procedures effectively safeguard rights guaranteed by EU law. In the specific context of the Polish legal system, however, the Court concluded that transcription constituted the only effective means of ensuring recognition of the applicants' marriage. Since different-sex couples could obtain a transcription of foreign marriage certificates whereas same-sex couples could not, the Polish legislation also resulted in discrimination on grounds of sexual orientation contrary to Article 21(1) of the Charter.

The Court therefore concluded that Articles 20 and 21 TFEU, read in conjunction with Articles 7 and 21 of the Charter, preclude national legislation that refuses to recognise a same-sex marriage lawfully concluded in another Member State, or to transcribe the corresponding marriage certificate where transcription is the only effective means of ensuring recognition of that marriage ([Court of Justice of the European Union 2025](#), para. 77).

4. Case C-713/23 in the Development of EU Law

Case C-713/23 should arguably be understood as extending beyond the specific issue of the recognition of same-sex marriages concluded in another Member State. Rather than introducing a new legal principle or altering the established division of competences between the European Union and the Member States, the judgment forms part of the Court's broader case law concerning the interaction between national rules on personal status and the effective exercise of rights deriving from Union citizenship. It therefore provides further guidance on the circumstances in which matters of personal status, although remaining within national competence, become relevant for the application of EU law.

From this perspective, the significance of the judgment lies less in the specific outcome of the case than in the manner in which it develops the Court's existing reasoning. Three

aspects appear particularly relevant. First, the judgment confirms that although the regulation of marriage remains within the competence of the Member States, the exercise of that competence must comply with EU law where personal status affects rights deriving from Union citizenship. Secondly, it further reinforces the continuity of civil status across the European Union by limiting situations in which Union citizens acquire conflicting personal statuses as a consequence of exercising their right to free movement (see [Tryfonidou 2025](#)). Thirdly, it develops the Court's functional approach to the recognition of personal status by focusing on the legal effects attached to that status rather than on recognition of the family institute as such. These observations provide the analytical framework for assessing the implications of the judgment beyond family law, including in the field of cross-border succession.

4.1. The Relationship Between National Competence and the Effectiveness of EU Law

A first observation that may arguably be derived from Case C-713/23 concerns the relationship between the Member States' competence to regulate personal status and the requirements of EU law. The judgment may be understood as further clarifying that the competence of the Member States in matters of marriage and personal status is not displaced by Union law. Rather, where the exercise of that competence affects the effective enjoyment of rights deriving from Union citizenship, it must be exercised consistently with the requirements of EU law. The significance of the judgment therefore appears to lie not in redefining the allocation of competences between the European Union and the Member States, but in refining the conditions under which national rules governing personal status may produce effects within the sphere of Union law.

This proposition finds strong support in the Court's earlier case law. In *Coman* (C-673/16), the Court reaffirmed that in the current state of EU law, the regulation of marriage and the determination of personal status remain within the competence of the Member States. At the same time, however, it emphasised that Member States must exercise that competence in compliance with EU law, particularly the rights deriving from Union citizenship and the freedom of movement guaranteed by Article 21 TFEU ([Court of Justice of the European Union 2018](#)).

The Court's reasoning is significant because it is distinguished between the institute of marriage and the legal consequences attached to marital status. It accepted that Member States remain free to define marriage under their domestic legal systems and are under no obligation to introduce same-sex marriage. Nevertheless, where a same-sex marriage has been lawfully concluded in another Member State, national authorities may be required to recognise that marital status for the limited purpose of ensuring the effective exercise of rights conferred by EU law. Such recognition is therefore functional rather than institutional; it serves the exercise of a specific EU-law right without requiring the harmonisation of national family law ([Tryfonidou 2019](#)).

The Court further emphasised that such a refusal would undermine the effectiveness of Article 21 TFEU by making the exercise of free movement dependent on the law of the Member State of return. Equally important is the Court's treatment of the objections based on national identity and public policy. It rejected the argument that recognising a same-sex marriage for the sole purpose of granting a derived right of residence would undermine the constitutional conception of marriage or the national identity of the Member State. Since such recognition was confined to a specific EU-law purpose and did not require any modification of domestic family law, the Court concluded that it neither altered the national institute of marriage nor posed a genuine threat to public policy.

The same functional reasoning is evident in *Pancharevo* (C-490/20). The Court reaffirmed that under the current state of EU law, the determination of parenthood, like the

regulation of marriage, remains within the competence of the Member States (Court of Justice of the European Union 2021). Nevertheless, it emphasised that Member States must exercise that competence in compliance with EU law by recognising, for the purposes of the exercise of rights deriving from Union citizenship, the civil status established in another Member State (Kochenov and Belavusau 2020).

Applying that principle, the Court held that Bulgaria was required to recognise the parent–child relationship lawfully established in Spain, notwithstanding the fact that Bulgarian law did not recognise parenthood of two persons of the same sex. Such recognition was necessary to enable the child, as a Union citizen, to exercise effectively the right to move and reside freely together with each of her parents under Article 21 TFEU. The Court expressly rejected the argument that this obligation undermined the Member State’s constitutional identity or required it to amend its substantive family law. Rather, recognition was confined to the purposes of EU law and did not oblige Bulgaria to recognise same-sex parenthood beyond what was necessary to ensure the effective exercise of the child’s rights under Union law (Tryfonidou 2022).

Against this background, Case C-713/23 appears to represent a further application of the same judicial approach. The Court reaffirmed that Member States remain free to determine whether and under what conditions same-sex marriage forms part of their domestic legal order. At the same time, it held that the exercise of that competence may not prevent Union citizens from effectively relying on a marital status lawfully acquired in another Member State where such status is relevant for the exercise of rights guaranteed by EU law. In this respect, the judgment appears to extend the reasoning developed in Coman and Pancharevo to the recognition of marital status in the Member State of nationality. The decisive question is therefore no longer whether marriage falls within national competence, which remains beyond dispute, but whether the exercise of that competence may undermine the effectiveness of rights deriving from Union citizenship.

4.2. *The Gradual Reduction in the Fragmentation of Personal Status in Europe*

A second aspect that deserves particular attention concerns the Court’s increasingly coherent approach to the recognition of personal status in cross-border situations. Although the Court has never articulated a general principle requiring the continuity of personal status across the European Union, its case law appears progressively to limit situations in which Union citizens are attributed contradictory personal statuses solely because they have exercised their right to free movement. The common feature of this jurisprudence is not the harmonisation of substantive family law, but the gradual reduction in legal fragmentation where such fragmentation is liable to interfere with rights guaranteed by EU law (Salerno 2019).

This tendency first emerged in the Court’s jurisprudence concerning personal identity. In Garcia Avello (C-148/02), the Court held that the refusal to recognise the surname of children possessing dual nationality created practical and administrative difficulties capable of discouraging the exercise of free movement. Although the determination of surnames remained a matter of national law, the Court considered that the coexistence of different legal identities in different Member States could itself constitute an obstacle prohibited by Article 21 TFEU. The same reasoning was further developed in Grunkin and Paul (C-353/06). There, the Court required Germany to recognise a surname lawfully acquired in Denmark, emphasising that requiring an individual to bear different surnames in different Member States generated legal uncertainty extending well beyond questions of personal identity (Court of Justice of the European Union 2008). The significance of these judgments arguably lies not in the law of names itself, but in the Court’s recognition that fragmentation of personal status may impair the effective exercise of free movement.

The Court subsequently extended this approach to family relationships. In *Coman* (C-673/16) and *Pancharevo* (C-490/20), it required Member States to recognise family statuses lawfully established abroad where non-recognition would undermine rights derived from Union citizenship, while leaving substantive family law within national competence. Case C-713/23 develops this line of reasoning by indicating that a Union citizen should not, as a consequence of exercising free movement, be regarded as married in one Member State and unmarried in another where such fragmentation would impair the effective exercise of rights guaranteed by EU law.

Although the European Court of Human Rights approaches these questions from a different legal perspective, its case law appears to reveal a comparable evolution. In *Oliari and Others v Italy*, the Court held that the complete absence of any legal framework recognising same-sex couples failed to satisfy the positive obligations arising under Article 8 ECHR (*Oliari and Others v. Italy* 2015). This approach was further strengthened in *Fedotova and Others v. Russia*, where the Grand Chamber held that Article 8 ECHR imposes a positive obligation on States to provide same-sex couples with an appropriate legal framework ensuring the recognition and protection of their relationships. While the Court reaffirmed that States retain a margin of appreciation as to the form of such recognition, it made clear that they cannot refuse to provide any legal recognition at all. Although *Fedotova* does not concern free movement or Union citizenship, it similarly recognises that the absence of a legal framework for the recognition and protection of same-sex couples may interfere with the effective enjoyment of the right to respect for private and family life under Article 8 ECHR (*Fedotova and Others v. Russia* 2023).

Although deriving from different legal instruments and pursuing different objectives, the jurisprudence of both European courts appears increasingly reluctant to accept situations in which legally established aspects of personal status lose their practical significance merely because they cross national borders.

4.3. Recognition of Personal Status Through Its Legal Consequences

A third aspect of the judgment that may merit closer consideration concerns the object of recognition under EU law. The judgment appears to suggest that the decisive question is no longer whether a Member State must recognise a particular family institute in abstracto, but whether the refusal to recognise a personal status lawfully acquired in another Member State prevents the effective exercise of rights guaranteed by Union law in a specific legal context. Recognition thus appears to be assessed not as an end in itself, but through the legal consequences attached to the personal status concerned.

This functional understanding of recognition may already be observed in the Court's earlier case law. In *Coman* (C-673/16), the Court did not require Romania generally to recognise same-sex marriage within its domestic legal order. Instead, recognition was required only for the specific purpose of granting a derived right of residence under Directive 2004/38 (*Court of Justice of the European Union* 2018). Likewise, in *Pancharevo* (C-490/20), the Court did not harmonise national rules on parenthood. Rather, it required the recognition of the parent-child relationship only insofar as this was necessary to enable the child to effectively exercise rights deriving from Union citizenship (*Court of Justice of the European Union* 2021). In both judgments, the legal relevance of personal status was therefore determined by the rights that depended upon it rather than by the status itself.

A central element of the Case C-713/23 judgment is the distinction drawn between the recognition of a marriage and the transcription of a marriage certificate. The Court accepted that transcription does not constitute an autonomous obligation under EU law and that Member States remain free to determine the procedural mechanisms through which recognition is ensured. At the same time, it held that those mechanisms must be

capable of guaranteeing the effective enjoyment of rights protected by Union law. In the particular circumstances of the Polish legal system, transcription became necessary not because EU law requires a uniform system of civil-status registration, but because it constituted the only effective means by which the applicants could rely on their marital status in practice. The obligation therefore arose from the legal consequences attached to the absence of recognition rather than from the institute of marriage itself.

This aspect of the judgment may have significance extending beyond civil-status registration. It arguably suggests that the relevance of a foreign personal status should always be assessed in light of the specific legal effects that depend upon it. In some contexts, those effects may concern residence rights; in others, the recognition of parenthood, access to social benefits, matrimonial property, taxation, or pension rights. The decisive question is not whether national law generally recognises the underlying family institute, but whether the refusal to take account of that personal status prevents the effective exercise of rights protected by EU law in the particular legal relationship concerned.

This reasoning appears particularly relevant in the field of cross-border succession. Regulation No. 650/2012 does not regulate marriage, nor does it require Member States to recognise particular family institutes. Nevertheless, the status of surviving spouse frequently constitutes a preliminary legal question upon which the existence and scope of succession rights depend. It may therefore be argued that the analytical framework developed in Case C-713/23 provides a useful starting point for examining whether, and to what extent, a same-sex marriage lawfully concluded in another Member State must be taken into account by national authorities when determining succession rights under the Succession Regulation.

5. The Implications of Case C-713/23 for Slovak Succession Law Under the EU Succession Regulation

The significance of Case C-713/23 extends beyond civil-status registration. Its reasoning is equally relevant to cross-border succession proceedings under Regulation (EU) No. 650/2012⁴, where the determination of succession rights may depend on the prior recognition of a marital status lawfully acquired in another Member State. This section examines the implications of that approach for Slovak succession law, with particular reference to the position of the surviving same-sex spouse, the determination of heirship, the recognition of foreign public documents, and the legal effects of the European Certificate of Succession.

5.1. Marriage Under Slovak Law

The Slovak legal system does not permit same-sex marriage, as is also the case in four other Member States of the European Union, nor does it recognise registered partnership as a general legal institute for the recognition of same-sex couples. In a purely domestic context, the position under Slovak law is therefore clear: the spouse of the deceased may only be a person of the opposite sex with whom the deceased entered into marriage under Slovak law or under a foreign legal system whose effects are recognised by Slovak law. In a cross-border context, however, the position may be more complex (see Dutta and Weber 2016; Pazdan and Zachariasiewicz 2021; Pfeiffer 2016; Szöcs 2019; Załucki 2018). Where a same-sex marriage has been validly concluded in another Member State and its existence subsequently fails to be taken into account in succession proceedings in Slovakia, it is no longer sufficient, following the judgment in Case C-713/23, to rely solely on the Slovak definition of marriage.

⁴ European Parliament and Council of the European Union (2012), in particular Articles 21–23. Cf. also judgment of the Court of Justice of the European Union (2018), in which the Court held that the concept of ‘spouse’ also includes a spouse of the same sex for the purposes of exercising the right of free movement and residence.

Such a situation may arise in several ways. The deceased may have had his or her habitual residence in a Member State that permits same-sex marriage while owning property in Slovakia. Alternatively, the deceased may have entered into a same-sex marriage in another Member State, subsequently moved to Slovakia, and died while habitually resident there. Equally, a surviving same-sex spouse may seek to rely in Slovakia on the legal effects of a European Certificate of Succession issued in another Member State. In each of these situations, it must be determined whether the Slovak authorities may refuse to recognise the status of the surviving spouse solely because Slovak law does not recognise such a marriage.

The decisive issue is not whether the Slovak Republic is required to introduce same-sex marriage. Case C-713/23 imposes no such obligation on the Member States. Rather, the central question concerns functional recognition: whether, in a particular cross-border case, a Slovak authority is required to recognise a marital status lawfully acquired in another Member State to the extent necessary to ensure the effective exercise of rights derived from European Union law. In the context of succession, such rights may include, in particular, the right to assert succession rights under Regulation (EU) No. 650/2012 or the right to ensure that a European Certificate of Succession produces legal effects in respect to property situated in Slovakia.

From this perspective, Case C-713/23 provides an important analytical framework. If the Slovak authorities were to deny any legal significance to the marital status of a surviving same-sex spouse acquired in another Member State, this could lead to a result similar to that rejected by the Court of Justice in *Wojewoda Mazowiecki*. The person concerned would be regarded as a spouse in one Member State but, for the purposes of succession proceedings, as a person without family status in another. Such divergence may have even more serious consequences in the field of succession than in the context of civil registration, since it may directly result in the loss of proprietary rights.

The question for Slovak law, therefore, is how to reconcile the domestic understanding of marriage with the requirement to ensure the effective exercise of rights under European Union law. The answer should not lie in the general recognition of same-sex marriage for all purposes of Slovak law. Rather, it requires an assessment of whether, in a particular cross-border succession case, the effects of a foreign marital status may be refused without undermining the effectiveness of the Succession Regulation and the case-law of the Court of Justice concerning Article 21 TFEU. Where a marriage is concluded in the territory of the Slovak Republic, the competent registry office issues a marriage certificate. Where the marriage is concluded abroad, the fact of the marriage is recorded in the Special Registry (*osobitná matrika*). Such registration is carried out upon application and following the submission of the marriage certificate. The relevant legislation uses the term “shall be recorded”. Properly interpreted, this indicates that registration in the Special Registry is merely a declaratory act of registration and does not itself create any new legal rights.

Pursuant to Section 22a of Act No. 154/1994 Coll. on Civil Registers, as amended, a marriage that is contrary to the legal order of the Slovak Republic may not be entered in the civil register; any such entry is void from the date on which it is made⁵. Significantly, the legislation again refers to registration rather than to the creation of marital status.

In this context, it is necessary to have regard to the Constitution of the Slovak Republic, in particular Article 7(6), according to which matters relating to marriage form part of the national identity of the Slovak Republic, and Article 41(1), which provides that marriage is a unique union between a man and a woman⁶. From a formal perspective, in light of the judgment in *Wojewoda Mazowiecki*, it is therefore necessary to distinguish between the

⁵ Section 22a of Act No. 154/1994 Coll. on Civil Registers, as amended.

⁶ Article 7(6) and Article 41(1) of the Constitution of the Slovak Republic.

conclusion of a same-sex marriage within the Slovak legal order, which is not permitted, and the acceptance of a public document issued by another Member State certifying that such a marriage has been lawfully concluded.

For that reason, it is also necessary to take into account Regulation (EU) 2016/1191 on public documents, the objective of which is to reduce bureaucracy and costs for Union citizens who are required to present a public document issued in one Member State in another Member State. Under that Regulation, Member States are required to accept certain public documents, including marriage certificates, as authentic without requiring an apostille or any equivalent formality ([European Parliament and Council of the European Union 2016](#)).

Against that legal background, and with regard to the Constitution of the Slovak Republic and the Civil Registers Act, it is likely that if a foreign marriage certificate relating to a same-sex marriage were submitted for registration in the Special Registry, such registration would be refused. That, however, does not necessarily mean that the person concerned, namely the surviving same-sex spouse of the deceased, would be precluded from asserting his or her rights in succession proceedings on the basis of the Succession Regulation, read in conjunction with the judgment in *Wojewoda Mazowiecki*.

It is precisely at this point that the normative significance of Case C-713/23 becomes apparent. In that judgment, the CJEU rejected the proposition that a Member State may completely disregard a marital status lawfully acquired in another Member State where doing so would render impossible, or excessively difficult, the exercise of rights conferred by European Union law. From a substantive perspective, in the context of succession, refusing to recognise the marriage certificate would not merely amount to a symbolic denial of personal status; it could directly result in the loss of succession rights. Such an outcome would move the issue into a significantly more substantial proprietary sphere than that at issue in Case C-713/23 itself, which concerned the transcription of a marriage certificate and the possibility for the applicants to be recognised as spouses in their Member State of origin.

In the present context, the relevant legal framework is provided by Regulation (EU) No. 650/2012 on matters of succession. The Regulation establishes a unitary framework for cross-border succession by allocating jurisdiction to a single authority and subjecting the succession, as a rule, to a single applicable law, thereby ensuring the coherent administration of cross-border estates ([Júdová 2018](#)).

At the same time, the Regulation deliberately excludes questions of personal status and family relationships from its substantive scope (Article 1(2)(a)). Nevertheless, the applicable law governing succession determines the identity of the beneficiaries, their respective shares, and the succession rights of the surviving spouse or partner (Article 23(2)(b)). This gives rise to a classic preliminary question, since the concept of “spouse” is not harmonised by the Regulation, although it is decisive for determining succession rights ([Bonomi 2020](#)). Accordingly, in cross-border succession proceedings, the status of surviving spouse may have to be determined by reference to a marriage validly concluded in another Member State. Following Case C-713/23, that status cannot automatically be denied solely because Slovak law adopts a different substantive definition of marriage.

Finally, it should be noted that a decision confirming succession (the succession order) has a declaratory character: it confirms legal facts that have been established and proved during the proceedings ([Gandžalová and Dolíhalová 2025](#)). Succession proceedings are, as a rule, commenced ex officio upon notification of the death of the deceased or following a

judicial declaration of death. The court appoints a notary as judicial commissioner, who conducts the proceedings and decides the matter on behalf of the court⁷.

5.2. Determination of the Heirs

Under Slovak law, succession may take place either testate or intestate. A testator is, in principle, free to dispose of his or her estate by will, subject to statutory limitations where the deceased leaves descendants. Descendants enjoy the status of forced heirs (*neopomenuteľní dedičia*). Adult descendants are entitled to at least one-half of their statutory share, while minor descendants are entitled to their full statutory share. A will that fails to respect these mandatory shares is relatively invalid⁸.

In cases of intestate succession, Slovak law recognises four classes of statutory heirs. For the purposes of this study, only the first two are relevant. Under the first class of succession, the deceased's spouse and descendants inherit in equal shares. Where the deceased leaves no descendants, succession passes to the second class, comprising the surviving spouse, the deceased's parents, and persons who lived with the deceased in the same household for at least one year immediately preceding the deceased's death and who, for that reason, either cared for the common household or were dependent on the deceased for maintenance (hereinafter the cohabiting person). Within the second class of heirs, the surviving spouse enjoys a privileged position, being entitled to at least one-half of the estate (*Gandžalová and Dolíhalová 2025*).

From a descriptive perspective, it is sufficient to observe that Slovak succession law accords the surviving spouse a significant legal position (*Gandžalová and Dolíhalová 2025*; *Števček et al. 2019*, pp. 888 et seq.). From an analytical perspective, however, the decisive point is that this position is inseparably linked to the family-law status of spouse.

5.3. The Status of the Spouse in Slovak Succession Proceedings

Under Slovak law, the deceased's spouse is the person who was legally married to the deceased at the time of death. Whether the spouses were living in the same household at the time of death is irrelevant. What matters is the existence of a formally valid marriage.

In succession proceedings, the notary establishes family relationships on the basis of all available evidence, including public documents and information obtained from the Population Register. Since entries in the Population Register are declaratory rather than constitutive of civil status, they do not preclude reliance on other evidence demonstrating the existence of a family relationship established abroad (*Števček et al. 2019*). Consequently, the information contained in the register is regularly supplemented by the production of public documents. It is not uncommon, for example, for the Population Register to omit one or more of the deceased's children. In such cases, a person's status as the deceased's child, and therefore as an heir, is established by producing a birth certificate as a public document. By analogy, the same approach could be adopted with respect to marriage certificates issued by another Member State of the European Union (*Júdová 2024*).

The purpose of succession proceedings is to determine the heirs, establish the inventory of the deceased's assets and liabilities, and facilitate the conclusion of a succession agreement between the heirs where appropriate. Determining who qualifies as an heir necessarily includes establishing the status of the deceased's spouse. Recognition of the status of surviving spouse should not be understood merely as conferring succession rights. A person recognised as an heir enters the succession proceedings under the same legal

⁷ Act No. 161/2015 Coll. Code of Civil Non-Contentious Procedure (hereinafter referred to as the "CMP") as amended, § 23 (2), § 24 and § Code (Act No. 161/2015 Coll.), in particular Sections 161 (1) et seq.

⁸ Sections 476–479 of Act No. 40/1964 Coll., Civil Code, as amended (forced heirs and relative invalidity of a will).

regime as any other heir, acquiring not only the rights attached to heirship but also the corresponding obligations, including liability for the deceased's debts within the limits prescribed by succession law (Dolíhalová and Takáč 2025). Functional recognition therefore does not create a unilateral advantage but simply determines the person's legal position within the succession proceedings. It is therefore necessary to determine whether, at the time of death, the deceased was married, single, divorced, or widowed. This determination is also indispensable for identifying the property forming part of the estate. Where the deceased dies while married, it is not possible to determine the estate without first identifying which assets formed part of the matrimonial community property and which belonged exclusively to the surviving spouse. Under Slovak law, this matrimonial property regime, which may arise only between spouses, is referred to as the community property of spouses (*bezpodielové spoluvlastníctvo manželov*)⁹. Before succession rights can be determined, this community property must first be settled in order to establish which assets belong to the surviving spouse and which form part of the deceased's estate. Under Slovak law, this issue is resolved directly within the succession proceedings by the notary acting as judicial commissioner. An incorrect determination of the deceased's marital status therefore has direct consequences not only for identifying the heirs, but also for determining the composition of the estate itself.

Accordingly, Slovak law recognises only two legally relevant categories in relation to an adult partner: spouse and cohabiting person. The Slovak legal system contains no register or other official record of relationships comparable to marriage where the statutory requirements for contracting a marriage have not been fulfilled. In recent years, public debate has focused on proposals to establish at least a register of partnerships, which would provide legal recognition for such relationships, for example, for the purposes of succession in the second class of heirs or access to information concerning a partner's health. To date, however, these discussions have not resulted in legislative reform.

The status of a spouse cannot be equated with that of a cohabiting person. A spouse proves his or her legal status by producing a marriage certificate, whereas a cohabiting person must establish that status by other means. It cannot be demonstrated by reference to any official register but instead depends upon factual evidence, such as witness testimony, proof of a common residence, or similar evidence. In practice, the notary usually becomes aware of the existence of a cohabiting person through interviews with the heirs.

In order to inherit, a cohabiting person must cumulatively satisfy the statutory requirements of having lived with the deceased in a common household for at least one year immediately preceding the deceased's death and of either jointly maintaining that household or being mutually dependent on the deceased for maintenance. Provided these conditions are fulfilled, the category of cohabiting person may include the deceased's partner, but equally any other individual, such as a parent, sibling, or another relative.

This category is not, however, functionally equivalent to that of a spouse. First, entitlement depends upon proof of additional factual conditions, most notably the existence of a common household for the statutory period, whereas no such requirement applies to a spouse. Secondly, within the second class of statutory heirs, a cohabiting person does not enjoy the same autonomous legal position as either the surviving spouse or the deceased's parents. Thirdly, this category does not recognise the marital status itself where that status has been lawfully acquired in another Member State (see Garayová 2021).

⁹ Sections 143–151 of Act No. 40/1964 Coll., Civil Code (community property of spouses).

5.4. The European Certificate of Succession

From the perspective of Case C-713/23, it is therefore problematic if Slovak law were to systematically replace the status of a surviving same-sex spouse with that of a cohabiting person. Such an approach might formally provide a basis for succession, but it would simultaneously deny the marital status that is required to be recognised for the purposes of exercising rights derived from European Union law. Recharacterisation as a cohabiting person operates as a compensatory solution, which presupposes that the conflict is genuine rather than apparent. (See [García Yzaguirre and Keršić 2025](#), pp. 14–15). If the CJ EU emphasises the need to enable Union citizens to continue the family life established in another Member State, that status cannot, in the context of succession, simply be transformed into a less protected and more conditional category of heir solely because domestic law does not recognise same-sex marriage. Nor would such an approach resolve the issue of the spouses' matrimonial property.

The Regulation (EU) No. 650/2012 establishes a uniform conflict-of-laws and procedural framework for cross-border succession (see [European Parliament and Council of the European Union 2012](#)). In particular, it regulates jurisdiction, the applicable law, the recognition and enforcement of decisions, the acceptance and enforcement of authentic instruments, and the European Certificate of Succession. At the same time, it expressly refrains from harmonising questions of personal status or family relationships. Accordingly, the Regulation does not itself determine who is to be regarded as the spouse of the deceased.

This structural feature of the Regulation is of particular importance for Slovak law ([Júdová 2019](#)). Although the Regulation does not require Slovakia to amend its domestic definition of marriage, it may, in a cross-border succession case, create a situation in which recognition of a marital status lawfully acquired abroad is necessary to ensure the effective exercise of succession rights. For example, where the law applicable under the Regulation is the law of a State that recognises a surviving same-sex spouse as an heir, refusal by the Slovak authorities to recognise that status could effectively alter the outcome required by the applicable law. Such a situation may arise where the deceased, whether a Slovak national or a national of another Member State habitually resident in Slovakia, has validly concluded a same-sex marriage in another Member State. It may also occur where the deceased has chosen the law of his or her nationality to govern the succession pursuant to Article 22 of Regulation (EU) No. 650/2012, and in a will governed by that law, has bequeathed part of the estate to his or her same-sex spouse.

Where succession proceedings are conducted in Slovakia, the notary must determine the legal effects of the documents submitted ([Đurana 2025](#)). In our view, due regard should be had to the legal effects of foreign public documents, and where relevant, foreign succession decisions ([European Parliament and Council of the European Union 2012](#)).

Where succession proceedings have already been completed in another Member State and the heir seeks to exercise his or her rights in Slovakia because the deceased owned property situated there, those rights are established by producing a European Certificate of Succession, which serves as a uniform instrument throughout the European Union. The same approach should apply where the deceased was validly married to a person of the same sex.

The exercise of rights based on a European Certificate of Succession is not conditional upon the registration of the deceased's marriage in the Slovak Special Registry. Where an ECS issued in another Member State identifies the surviving same-sex spouse as an heir, the Slovak authorities should give effect to the legal consequences flowing from that certificate. Any contrary approach would undermine one of the principal objectives of the Regulation, namely, to facilitate proof of succession rights throughout the European Union ([Sisák 2021](#)).

Within the Slovak legal system, this issue is likely to arise most frequently in proceedings concerning the registration of ownership of immovable property in the Land Register (Barancová and Saktorová 2024). Where an ECS establishes that the surviving same-sex spouse has acquired ownership of immovable property situated in Slovakia, the cadastral authority should not refuse registration solely because the heir's status derives from a same-sex marriage concluded abroad. The relevant question for the cadastral authority should not be whether Slovak law permits same-sex marriage, but whether the ECS satisfies the requirements laid down by Regulation (EU) No. 650/2012 and establishes the applicant's entitlement to registration.

It is in this respect that the practical significance of Case C-713/23 for succession law becomes most apparent. Refusing to recognise the legal effects of an ECS would amount not only to refusing recognition of a marital status lawfully acquired abroad, but also to undermining the effectiveness of an instrument created by European Union law. If the Slovak authorities were to refuse to recognise a surviving same-sex spouse as an heir despite that status having been certified in accordance with the Regulation, domestic non-recognition would directly impede the exercise of rights conferred by European Union law.

In the most serious cases, where such non-recognition amounts to a sufficiently serious breach of obligations arising under European Union law, it could also give rise to the liability of the Member State for damage caused by a breach of European Union law (Slašťan and Levrinc 2025, pp. 114–25). Any legal construction that systematically refuses to give effect to a duly issued European Certificate of Succession solely because the heir derives his or her status from a same-sex marriage concluded in another Member State would, in our view, be incompatible with the direct effect, the objectives, and underlying principles of Regulation (EU) No. 650/2012.

5.5. Recodification of Slovak Succession Law

Although Regulation (EU) No. 650/2012 excludes questions of personal status from its substantive scope, the administration of cross-border successions may nevertheless require the prior determination of family status (European Parliament and Council of the European Union 2012). This is particularly so where the identity of the surviving spouse affects the determination of heirship or other succession rights. The resulting interaction between national rules governing personal status and the harmonised framework of the Succession Regulation gives rise to a preliminary question that the Regulation itself does not resolve.

Case C-713/23 provides important guidance in this respect. Although it does not require Member States to alter their domestic definition of marriage, it indicates that they may be required to recognise the legal effects of a personal status lawfully acquired in another Member State where this is necessary to ensure the effective exercise of rights conferred by EU law. The relevance of that approach becomes particularly apparent in Slovak succession proceedings, where a notary acting as judicial commissioner may have to determine whether a person claiming to be the deceased's surviving spouse can rely on a same-sex marriage validly concluded in another Member State.

Slovak private law is currently undergoing a comprehensive recodification, which also substantially affects the law of succession (see Dulaková 2024). In our view, however, the proposed reforms do not reflect the implications of Case C-713/23. The statutory classes of heirs remain largely unchanged. At the same time, the proposed legislation grants the deceased greater freedom to arrange his or her property during their lifetime, taking into account factors such as care provided to the deceased. In addition to making a will, the deceased will also be able to dispose of property upon death by means of a succession agreement. The introduction of succession agreements strengthens the deceased's contractual autonomy in arranging property relations for the event of death (Dolíhalová and Takáč 2026).

Neither a will nor a succession agreement, however, provides a systemic solution to the question of the legal status of the surviving same-sex spouse in succession proceedings. In light of the foregoing analysis, such a systemic legislative solution may not, in our view, be necessary.

Recognition of a surviving same-sex spouse as an heir should not be viewed solely through the prism of conferring individual rights in succession proceedings. When assessing the legal effects of a public document issued by the competent authority of another Member State, due regard must also be had to the principle of mutual trust between Member States and to the recognition of legal situations validly created in accordance with the law of the Member State of origin.

The key legal issue is therefore not, in itself, the position of the surviving partner as a potential heir, but rather the acceptance of a marriage certificate relating to a same-sex marriage issued by another Member State of the European Union. In our view, the legal framework provides a sufficiently clear basis for resolving this issue. Its practical application, however, continues to be influenced by broader constitutional, ethical, societal, and most probably political considerations.

6. Conclusions

The judgment of the Court of Justice in Case C-713/23, *Wojewoda Mazowiecki* marks an important development in the Court's case law concerning the recognition of personal status lawfully acquired in another Member State. Although the judgment arose in the context of the transcription of a foreign marriage certificate, its significance extends well beyond civil-status registration. It clarifies the limits of the Member States' autonomy in matters of family law, where the exercise of rights derived from European Union law depends upon recognition of a legal status acquired elsewhere within the Union.

The analysis presented in this article demonstrates that the judgment does not require Member States to introduce same-sex marriage or to modify their constitutional or statutory definitions of marriage. Rather, it establishes a requirement of functional recognition. While Member States remain competent to regulate marriage as an institute of domestic family law, they may not automatically refuse to recognise the legal effects of a marital status lawfully acquired in another Member State where such refusal would render impossible, or excessively difficult, the effective exercise of rights conferred by European Union law.

This distinction is particularly significant in the field of cross-border succession. Although Regulation (EU) No. 650/2012 deliberately excludes questions of personal status from its substantive scope, the determination of the surviving spouse frequently constitutes a necessary preliminary question for identifying the heirs, determining their shares, settling matrimonial property, and giving effect to a European Certificate of Succession. The apparent separation between family status and succession law is therefore less clear in practice than it appears from the structure of the Regulation itself.

The Slovak legal order illustrates this tension particularly clearly. Slovak law neither permits same-sex marriage nor recognises registered partnerships as a general legal institute. At the same time, however, the surviving spouse occupies a privileged position under Slovak succession law. Refusing to recognise the status of a surviving same-sex spouse lawfully acquired in another Member State may therefore affect not only the determination of heirs, but also the composition of the estate, the settlement of matrimonial property, the legal effects of the European Certificate of Succession, and the registration of ownership rights in respect of immovable property. Such consequences would extend far beyond questions of civil-status registration and could undermine the effectiveness of the uniform succession regime established by Regulation (EU) No. 650/2012.

For these reasons, this article argues that the legal response should not consist in extending the institute of same-sex marriage within Slovak domestic law, nor in replacing the surviving spouse with another legal category, such as that of a cohabiting person. Such an approach would fail to recognise the legal status lawfully acquired in another Member State and would not ensure the effective exercise of rights guaranteed by European Union law. Instead, the appropriate solution lies in the functional recognition of foreign marital status for the specific purposes of cross-border succession proceedings falling within the scope of Union law.

Neither testamentary succession nor the proposed introduction of succession agreements within the ongoing recodification of Slovak private law provides a systemic solution to this issue. Those instruments strengthen the autonomy of the deceased but cannot replace the statutory legal position of the surviving spouse or resolve the procedural and proprietary consequences that flow from marital status in succession proceedings.

The broader significance of Case C-713/23 therefore lies not in harmonising national family law but in reinforcing the principle that Member States must ensure the practical effectiveness of rights derived from European Union law. In the field of succession, this requires national authorities to distinguish between recognition of marriage as an institute of domestic law and recognition of the legal effects of a marital status lawfully acquired in another Member State where such recognition is necessary for the effective application of Regulation (EU) No. 650/2012.

The principal challenge for Slovak law is therefore not to redefine marriage as a matter of domestic family law, but to develop a coherent and legally predictable framework for the functional recognition of foreign marital status in cross-border succession proceedings. Such an approach would preserve the constitutional autonomy of the Slovak Republic in matters of family law while ensuring the effectiveness, uniform application, and mutual trust that constitute the foundations of European private international law.

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