

## EU Free Movement and Same-Sex Spouses

Judgment of the Court of Justice (Grand Chamber) of 5 June 2018 in Case *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*, C-673/16<sup>1</sup>

- 1. In a situation in which a Union citizen has made use of his freedom of movement by moving to and taking up genuine residence, in accordance with the conditions laid down in Article 7(1) 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, in a Member State other than that of which he is a national, and, whilst there, has created or strengthened a family life with a third-country national of the same sex to whom he is joined by a marriage lawfully concluded in the host Member State, Article 21(1) TFEU must be interpreted as precluding the competent authorities of the Member State of which the Union citizen is a national from refusing to grant that third-country national a right of residence in the territory of that Member State on the ground that the law of that Member State does not recognise marriage between persons of the same sex.**
- 2. Article 21(1) TFEU is to be interpreted as meaning that, in circumstances such as those of the main proceedings, a third-country national of the same sex as a Union citizen whose marriage to that citizen was concluded in a Member State in accordance with the law of that state has the right to reside in the territory of the Member State of which the Union citizen is a national for more than three months. That derived right of residence cannot be made subject to stricter conditions than those laid down in Article 7 of Directive 2004/38.**

**Małgorzata Puto**

University of Gdańsk, Poland  
malgorzata.puto@ug.edu.pl  
ORCID: 0000-0002-4391-9469

<https://doi.org/10.26881/gsp.2026.2.16>

<sup>1</sup> ECLI:EU:C:2018:385.

## Commentary

### 1. Introduction

The judgment of the Court of Justice of the European Union (hereinafter: CJEU) in *Coman* (C-673/16) constitutes a landmark ruling concerning the derived right of residence of same-sex spouses under EU free movement law. Although family law remains within the competence of the Member States, the case highlights the growing tension between national autonomy in regulating personal status and the effective exercise of EU citizenship rights.

This commentary argues that while the *Coman* judgment represents a significant step in the protection of free movement and family life of same-sex spouses, the Court adopted a cautious and incremental approach.<sup>2</sup> The central research question addressed in this text is whether this approach effectively balances the protection of EU citizenship rights with Member States' autonomy in family law. As a result, despite the formal clarity of the ruling, its implementation across Member States has been fragmented and inconsistent, undermining the effectiveness of EU law.

### 2. Factual background and questions referred

R.A. Coman, a Romanian national, exercised his right to free movement by residing and working in Belgium. During his residence there, he married R.C. Hamilton, a United States national, in accordance with Belgian law. Upon returning to Romania, Coman sought long-term residence for his spouse.

The Romanian immigration authorities refused to grant such a right, relying on domestic law, which does not recognise marriage between persons of the same sex. According to the authorities, Hamilton could only be granted a short-term right of residence, applicable to other third-country nationals, but not a derived right as a family member of a Union citizen.

The case was subsequently brought before the Romanian Constitutional Court, which decided to refer several questions to the CJEU for a preliminary ruling. In essence, the referring court asked whether the term "spouse" under Article 2(2)(a) of Directive 2004/38/EC<sup>3</sup> includes a same-sex spouse lawfully married in another Member State, and whether the refusal to recognise such a marriage for the purpose

<sup>2</sup> K. Lenaerts, "EU citizenship and the European Court of Justice's 'stone-by-stone' approach," *International Comparative Jurisprudence* 2015, vol. 1, no. 1, pp. 1–10.

<sup>3</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 30.04.2004, p. 77 (hereinafter: Directive 2004/38/EC).

of granting a right of residence is compatible with Article 21(1) of the Treaty on the Functioning of the European Union<sup>4</sup> and the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union.<sup>5</sup>

### 3. Description of the judgment

In its judgment of 5 June 2018, the CJEU held that Article 21(1) TFEU precludes the authorities of a Member State from refusing to grant a derived right of residence to a third-country national who is the same-sex spouse of a Union citizen, where that marriage was lawfully concluded in another Member State.

The Court emphasised that the term “spouse” in EU law is gender-neutral and therefore includes same-sex spouses. While Directive 2004/38/EC does not directly apply to situations in which a Union citizen returns to their Member State of nationality after having exercised free movement rights, its provisions may be applied by analogy to ensure the effectiveness of Article 21(1) TFEU.<sup>6</sup>

The CJEU further found that refusing to recognise a same-sex marriage for the sole purpose of granting a right of residence constitutes a restriction on the freedom of movement of Union citizens. Such a restriction may be justified only by objectives of general interest recognised by the Union, such as public policy or national identity, and must comply with the principle of proportionality while respecting fundamental rights, in particular the right to respect for private and family life under Article 7 CFR.<sup>7</sup> In this context, the Court concluded that the limited obligation to recognise same-sex spouses for residence purposes does not, in itself, undermine national identity or public policy.<sup>8</sup>

### 4. Legal analysis and commentary

The *Coman* judgment is notable for its reliance on Article 21(1) TFEU rather than exclusively on Directive 2004/38/EC. This choice allowed the Court to address return situations, which fall outside the strict scope of the Directive, while still ensuring the effective exercise of free movement rights.<sup>9</sup> By applying the Directive by analogy,

<sup>4</sup> Treaty on the Functioning of the European Union, OJ C 202, 7.06.2016, p. 47 (hereinafter: TFEU).

<sup>5</sup> Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391 (hereinafter: CFR).

<sup>6</sup> On mutual recognition see: A. Tryfonidou, “EU Free Movement Law and the Recognition of Same-sex Relationships: The Case for Mutual Recognition,” *Columbia Journal of European Law* 2015, vol. 21, no. 2, pp. 195–248.

<sup>7</sup> Judgment of the Court of Justice of the European Union (Grand Chamber) of 5 June 2018 in Case *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*, C-673/16, ECLI:EU:C:2018:385, para 49.

<sup>8</sup> *Ibid.*, para 46.

<sup>9</sup> *Ibid.*, para 40.

the Court reinforced the autonomous interpretation of EU law concepts, including that of “spouse.”<sup>10</sup>

Although the Court acknowledged Article 21 CFR on non-discrimination, it deliberately framed the case primarily in terms of free movement rather than discrimination based on sexual orientation. This approach reflects judicial caution and an incremental strategy, aimed at minimising political backlash and avoiding a direct challenge to Member States’ competence in family law. Importantly, the Court explicitly stated that the obligation to recognise same-sex marriages applies solely for the purpose of granting a right of residence and does not require Member States to introduce or recognise same-sex marriage in their domestic legal orders.

The judgment marks a departure from earlier case law, such as *D and Sweden v Council*,<sup>11</sup> where marriage was understood as a union between persons of the opposite sex. In *Coman*, the Court adopted a dynamic interpretation of family life, consistent with evolving social realities and the increasing protection of LGBT+<sup>12</sup> persons under EU law.

## 5. Implementation in Member States

Despite the clarity of the Court’s ruling, its implementation has varied considerably among Member States. In countries where same-sex marriage is already recognised, the judgment did not require significant legislative or administrative changes. In contrast, in several Central and Eastern European states, compliance has been uneven.

In Romania, the authorities have continued to deny residence rights to same-sex spouses, citing administrative obstacles, thereby rendering the *Coman* judgment ineffective in practice.<sup>13</sup> In Bulgaria, although the Supreme Administrative Court

<sup>10</sup> V. Stehlík questions the gender-neutral interpretation of “spouse”, contrasting it with Directive 2004/38/EC’s definition of “registered partner” in Article 2(2)(b), which allows Member States discretion in recognition – V. Stehlík, “The CJEU Crossing the Rubicon on the Same-sex Marriages? Commentary on *Coman* case,” *International and Comparative Law Review* 2018, vol. 18, no. 2, pp. 91–92. For a contrasting view see: A. Tryfonidou, *An analysis of the ECJ ruling in case C-673/16 Coman. The right of same-sex spouses under EU law to move freely between EU Member States*, NELFA AISBL, January 2019. The Advocate General explored the drafting history of the Directive and concluded that the chosen word (“spouse”) was deliberately neutral (paras. 68–76 of the Opinion of Advocate General Wathelet of delivered on 11 January 2018, C-673/16, ECLI:EU:C:2018:2).

<sup>11</sup> Judgment of the Court of Justice of the European Union of 31 May 2001, *D and Sweden v Council*. Joined Cases C-122/99 P and C-125/99 P, ECLI:EU:C:2001:304.

<sup>12</sup> LGBT – lesbian, gay, bisexual and transgender/transsexual people. The ‘+’ symbol is used to include people whose identities do not fit typical binary notions of male and female, or who decide to identify themselves using other categories to describe their gender identity or their own understanding of their sexuality – Council of Europe, *LGBT+ (Gender Matters)*, <https://www.coe.int/en/web/gender-matters/lgbt> [accessed: 1.05.2025].

<sup>13</sup> D. de Groot, *Type A Report – Developments linked to the Court’s judgment in Coman: Recognition of same-sex marriage as marriage for the purpose of Dir. 2004/38/EC*, EU-Citizen: Academic Network on European Citizenship Rights, February 2020, p. 10.

recognised same-sex marriage for residence purposes,<sup>14</sup> procedural difficulties persist. In Poland, no legislative amendments have been introduced, and authorities interpret the judgment narrowly, limiting its effects strictly to residence rights and often refusing the transcription of foreign marriage certificates on public policy grounds.<sup>15</sup>

Latvia and Slovakia<sup>16</sup> have formally declared their intention to comply with the judgment, yet the absence of clear procedures has resulted in legal uncertainty. Lithuania represents a notable exception, having extended the effects of the judgment beyond its minimum requirements by recognising same-sex marriages and registered partnerships concluded abroad for residence and other legal purposes.<sup>17</sup>

The fragmented implementation of *Coman* raises concerns regarding the principle of sincere cooperation under Article 4(3) TEU.<sup>18</sup> It undermines the uniform application of EU law and weakens the practical effectiveness of Union citizenship rights.

## 6. Conclusions

The analysis confirms the thesis set out in the introduction. The *Coman* judgment illustrates the CJEU's attempt to balance the effective exercise of free movement rights with respect for Member States' competence in family law through a cautious and incremental interpretation of EU law. The Court clearly established that the refusal to recognise same-sex spouses for residence purposes constitutes a restriction on free movement, which cannot be justified by references to national identity or public policy when assessed in light of proportionality and fundamental rights.

At the same time, the examination of national practice demonstrates that the effectiveness of the judgment remains uneven. While the ruling answers the key legal questions concerning the scope of Article 21(1) TFEU and the derived right of residence of same-sex spouses, persistent administrative and procedural barriers in several Member States continue to hinder the practical enjoyment of these rights. This confirms that, although the thesis and research questions are fully addressed at the level of EU law, their realisation in practice depends on consistent and sincere implementation at the national level.

<sup>14</sup> Supreme Administrative Court of the Republic of Bulgaria, Decision No. 3500 of 15 May 2019, administrative case No. 3500/2018.

<sup>15</sup> Provincial Administrative Court in Warsaw, judgment of 14 June 2018, II SA/Wa 1621/18, CBOSA. Subsequent development: After the submission of this commentary, the CJEU delivered its judgment of 25 November 2025 in Case C-713/23, *Cupriak-Trojan*, holding that EU law precludes the refusal to recognise a same-sex marriage lawfully concluded in another Member State, including through transcription where this constitutes the sole means of recognition under national law. The judgment has direct implications for national administrative practice.

<sup>16</sup> D. de Groot, *Type A Report...*, p. 18.

<sup>17</sup> *Ibid.*, p. 15.

<sup>18</sup> Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47.

## Literature

- Council of Europe, *LGBT+ (Gender Matters)*, <https://www.coe.int/en/web/gender-matters/lgbt> [accessed: 1.05.2025].
- de Groot D., *Type A Report – Developments linked to the Court's judgment in Coman: Recognition of same-sex marriage as marriage for the purpose of Dir. 2004/38/EC*, EU-Citizen: Academic Network on European Citizenship Rights, February 2020.
- Lenaerts K., "EU citizenship and the European Court of Justice's 'stone-by-stone' approach," *International Comparative Jurisprudence* 2015, vol. 1, no. 1, pp. 1–10.
- Stehlik V., "The CJEU Crossing the Rubicon on the Same-sex Marriages? Commentary on Coman case," *International and Comparative Law Review* 2018, vol. 18, no. 2, pp. 85–99.
- Tryfonidou A., *An analysis of the ECJ ruling in case C-673/16 Coman. The right of same-sex spouses under EU law to move freely between EU Member States*, NELFA AISBL, January 2019.
- Tryfonidou A., "EU Free Movement Law and the Recognition of Same-sex Relationships: The Case for Mutual Recognition," *Columbia Journal of European Law* 2015, vol. 21, no. 2, pp. 195–248.

## Summary

**Małgorzata Puto**

### EU Free Movement and Same-Sex Spouses

This case note analyses the CJEU's judgment in *Coman* (C-673/16), which interpreted Directive 2004/38/EC and Article 21(1) TFEU. It evaluates the ruling's contribution to the development of EU citizenship and the protection of fundamental rights, while also highlighting its limitations in light of Member States' autonomy in family law. The judgment is a significant step towards equality and underscores the ongoing tension between EU obligations and national sovereignty.

**Keywords:** *Coman* judgment, discrimination based on sexual orientation, European Union, freedom of movement rights, same-sex spouses.

## Streszczenie

**Małgorzata Puto**

### Swoboda przemieszczania się w Unii Europejskiej a małżeństwa jednopłciowe

W niniejszej glosie został przeanalizowany wyrok TSUE w sprawie *Coman* (C-673/16), w którym Trybunał dokonał interpretacji postanowień dyrektywy 2004/38/WE i art. 21 ust. 1 TFUE. Ocenił wkład orzeczenia w rozwój obywatelstwa UE i ochronę praw podstawowych, a także podkreślono jego ograniczenia w świetle autonomii państw członkowskich w prawie rodzinnym. Orzeczenie to stanowi znaczący krok w kierunku równości i podkreśla trwające napięcie między zobowiązaniami unijnymi a suwerennością narodową.

**Słowa kluczowe:** wyrok w sprawie *Coman*, dyskryminacja ze względu na orientację seksualną, Unia Europejska, prawo do swobodnego przemieszczania się, małżeństwa jednopłciowe.