Complaint Filed with EC Against Lack of Free Movement for Same-sex Couples in Hungary

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> ILGA-Europe, alongside a Hungarian activist organisation, have filed a complaint against Hungary because of its refusal to implement the 2018 Coman judgement, which recognises that the term “spouse” includes same-sex spouses under EU freedom of movement laws.

Just ahead of the fourth anniversary of the ground-breaking 2018 Court of Justice of the European Union (CJEU) judgement giving freedom of movement to same-sex couples in the EU (Coman vs. The Romanian State), ILGA-Europe, alongside Hungarian LGBTI organisation, Háttér Society and supported by the law firm White and Case, have filed a complaint with the European Commission because of Hungary’s non-compliance with the judgement.

With a complaint already pending on Romania because it has not implemented the 2018 ruling, and is thus disrespecting EU law, proof has also been provided that Hungary also continues to ignore the judgement and is prohibiting freedom of movement for same-sex couples.

The Hungarian state body in charge of granting recognition to foreign marriages and foreign partnerships refuses to recognise same-sex marriages legally concluded in jurisdictions of other EU Member States, as obliged by the 2018 Coman ruling, thus impeding freedom of movement within the EU and breaching EU law.

The refusal of the Hungarian State to comply with the Coman judgment is illustrated in a recent opinion issued by the Hungarian Ministry of Justice, which, in essence, states that the validity of a foreign marriage should be assessed under the country’s International Private Law Act (IPLA). Under the IPLA, a foreign marriage shall only be valid if the legislative conditions in the countries of both spouses country laws are satisfied, in other words the laws of the States of which the spouse is a national. According to sec. 12(1) of the IPLA, however, foreign law is not applied if the result of its application would violate fundamental values and constitutional principles.

Following the standpoint adopted by the Ministry of Justice, the Hungarian authorities deprive the following same-sex couples of marriage recognition (and thus freedom of movement):

- A same-sex marriage legally concluded abroad (including in other EU jurisdictions) with a Hungarian national. The Hungarian authorities do not allow for a recognition of a same-sex marriage with Hungarian nationals since Hungarian law does not provide for same-sex marriage.
- A same-sex marriage legally concluded abroad (including in other EU jurisdictions) where both of the spouses personal laws allow for same-sex marriage. The Hungarian authorities do not allow for recognition of same-sex marriage, because they consider it contrary to Hungarian public policy, and in alleged violation of the fundamental values and constitutional principles of the Hungarian legal system.

Active Steps To Make Life for Same-sex Couples More Difficult

In addition, requests for recognition of foreign same-sex marriages have not merely been denied, the Hungarian State has also taken active steps to make the lives of same-sex couples even more difficult than they were at the

time the Coman ruling was delivered.

Since 2019, third-country nationals (non-Hungarian, non-EU) cohabiting with a Hungarian citizen, whether formally registered with public notaries as cohabiting partners or not, are no longer considered as their “family member,” thereby denying them basic immigration rights. This additional hurdle has worsened the conditions of same-sex couples in Hungary. Whereas the recognition of same-sex marriages has always been denied, third-country nationals living with a Hungarian citizen outside of a registered partnership will now also be denied the right to reside permanently in Hungary.

This situation is in clear violation of EU law and the 2018 Coman ruling of, as well as Art. 21(1) and Art 4(3) of the Treaty on the Functioning of the European Union (TFEU) and the Directive 2004/38/EC on the right of citizens of the Union and their family members to move and stay in the territory of the Member States.

The landmark Coman ruling was adopted four years ago, recognising that the term “spouse” includes same-sex spouses under EU freedom of movement laws. The ruling was supposed to provide same-sex spouses with much-awaited freedom of movement and long-overdue equal treatment throughout the EU. However, on its fourth anniversary, not only has Mr Hamilton, the spouse of Mr Coman, still not been granted residency in Romania, but legislation in both Hungary and Romania continues to violate the right to freedom of movement for same-sex couples.

The CJEU explicitly held that the refusal to recognise the same-sex marriage of an EU citizen, which constitutes a restriction of their right to move and reside freely within the EU under Art. 21(1) TFEU (Coman, § 40), cannot be justified on public policy and national identity grounds (Coman, §§ 41-50). Numerous administrative procedures have been pursued in Hungary, notably by Háttér Society. Háttér assist same–sex couples to apply for domestic registration of their same–sex marriage concluded outside Hungary, either as marriage or as a registered partnership, in order to obtain a right of residence. Such applications have, to date, always been rejected.

According to Katrin Hugendubel, Advocacy Director with ILGA-Europe, “We urge the Commission to investigate the complaints filed regarding Hungary and Romania, and to take all steps at its disposal, to ensure that Hungary, Romania, and indeed all Member States, respect the Coman ruling at the Court of Justice of the European Union. In essence, the ruling states that all EU member states are obliged to recognise legally concluded same-sex marriages in other member states, whenever this is necessary to secure the freedom of movement of the same-sex spouse.”