

European Court will consider lack of implementation of EU law to enable freedom of movement for same-sex spouses

[News](#), [Legal Protection](#), [Coman Case](#), [Court of Justice of the European Union](#), [European Court of Human Rights](#), [Romania](#)

Almost three years after the European Court ruled that Romania must recognise a same-sex couple under EU freedom of movement legislation, its government is yet to implement the judgement.

In June 2018, the Court of Justice of the European Union (CJEU) [issued a landmark judgement](#), recognising that same-sex spouses are also spouses under EU freedom of movement laws. Almost three years later, Romania has still not respected the judgement by granting the male spouse of a Romanian man a residence permit in Romania. Together with Romanian LGBTI organisation [ACCEPT](#), the couple has now taken the case to the European Court of Human Rights to address this failure of implementation of the CJEU judgement and finally get their rights recognised.

In the ground-breaking judgment of *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne (Coman and Others)*, delivered on 5 June 2018, the CJEU clarified that the term 'spouse' in the EU Freedom of Movement Directive (2004/38/EC) includes same-sex spouses, and that Romanian authorities must ensure that EU law is implemented equally and duly, without discrimination based on one's sexual orientation. In practice this means that Romania must recognise same-sex partnerships from other EU countries, and therefore needs to grant a residence permit to Adrian Coman's partner and others in similar situations.

In line with the CJEU judgment, the right to family life of same-sex couples was reaffirmed by the Constitutional Court of Romania in July 2018, yet Romania continues to refuse to acknowledge the judgments and provide the residence permit. ACCEPT has brought this to the European Commission's (EC) attention by submitting a complaint about a second case, similar to Coman. However, what we keep hearing from the EC is that in order to start infringement procedure, the EC would have to establish a 'general and consistent' non-application of EU legislation, which according to the services is difficult to establish.

According to Teodora Ion Rotaru of ACCEPT Romania: "We rely on the European Commission to ensure that member states correctly implement hard-won rights, like those enshrined by the Coman judgement. The CJUE was adamant that rights pertaining to the protection of rainbow families need to be applicable in practice, and the role of European institutions is even more important when national governments and legislatures fail to protect the rights of European citizens. Even if we now rely on the European Court of Human Rights to enforce EU law in Romania, we trust that the European Commission will step in and ensure that its role as the guardian of the treaties is fulfilled by engaging in a productive dialogue with Romanian authorities.

Arpi Avetisyan, Head of Litigation at ILGA-Europe, added: "The Coman judgment brought a long-awaited clarification on the term 'spouse' and established that same-sex spouses enjoy the freedom of movement on equal footing across the EU. Yet the applicants themselves continue to suffer and are unable to exercise their right, due to blatant violations by the Romanian government of its obligations under EU law. CJEU judgments are part of

EU law, which has supremacy over national law and must be applied to all national acts.

“It is a very welcome step that the European Court moved ahead with the consideration of the case in timely manner. We hope that the European Commission will join the efforts to ensure that not only the applicants themselves, but other same-sex couples in a similar situation will finally see their freedom of movement and family rights protected.”

Katrin Hugendubel, Advocacy Director with ILGA-Europe, concluded: “We are very disappointed by the fact that the EC is not acting strongly on ensuring that Romania is fully respecting the important judgement in the Coman case. It is hard to see how continuing to ignore such a public and landmark judgement three years later does not point to a systematic refusal to apply the principle of non-discrimination clearly established by the CJEU. It is a sad day for the EU that the couple now is turning the ECHR to find justice.”

Background

The applicants Adrian Coman (a Romanian national) and Clai Hamilton (a US citizen) got married in 2010, in Belgium. Two years later, the couple applied to the Romanian authorities for a residence permit so that Clai could join Adrian, to live and work in Romania as the spouse of an EU citizen. This request was refused and the Romanian Consulate in Brussels also refused to transcribe their marriage certificate into the Romanian register.

The couple filed a discrimination complaint in 2013, and deliberations over which court would hear the case at first instance began. In 2015, the first hearings took place in Bucharest. The preliminary question raised by Adrian and Clai concerned Civil Code Article 277 and the constitutionality of denying recognition to married same-sex couples in Article 277(2), while Article 277(4) notes the applications of freedom of movement. On 18 December 2015, the District Court referred the case to the Constitutional Court, for a review of the constitutionality of the relevant provisions of the Civil Code and stayed the proceedings until delivery of a decision by the Constitutional Court. The Constitutional Court referred questions for a preliminary ruling to the CJEU, which delivered a judgment on 5 June 2018.

Further information:

- Read more about the Coman case [here](#) and a Q&A [here](#).
- Find out more about our [litigation work](#).

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