

Together we can make the Coman judgment a reality: the freedom of movement of same-sex couples across the EU

[Blog](#), [Legal Protection](#), [Coman Case](#), [Family](#), [Strategic Litigation](#)

Do you know when EU citizens started to have the right to free movement across the European Union (EU), i.e. the right to live and work in any Member States they choose?

Most people might answer that this right always came automatically when a country joined the EU; others might answer that this was in 1992, with the [Treaty of Maastricht](#). And some experts might even know that the right to freedom of movement was later further defined in legislation, namely the [Citizens Directive \(2004/38\)](#). This Directive sets out the conditions under which nationals of one EU Member State may reside and work in other EU Member States, as well as family reunification rights of migrant Union citizens and their family members, including spouses.

Nevertheless, many citizens, namely same-sex couples and their families, cannot take for granted that they can fully enjoy their freedom of movement. As some Member States still do not recognise same-sex partnerships and marriages, they often continue to refuse same-sex partners the right to reside and work there.

In June 2018, the Court of Justice of the EU (CJEU) ruled against such discrimination of same-sex couples, and [defined the meaning of the term 'spouse' in the context of freedom of movement](#) as "gender-neutral [and inclusive of] the same-sex spouse of an EU citizen". With this judgment, the CJEU finally put an end to legal ambiguity whether the term spouse in the Citizens Directive covers same-sex spouses of EU nationals, including when granting residence permits.

The Coman Case

This was the case of Adrian Coman, a Romanian citizen who married his husband (a US citizen) in Belgium while residing there. Upon subsequently moving back to Romania, the couple found that Romania did not recognise their marriage, and a residence permit for the American spouse was denied by authorities. A legal challenge by Coman made its way through the Romanian courts until, in 2016, the CJEU was asked by the Romanian Constitutional Court to interpret the word 'spouse' in the context of EU law on freedom of movement.

As a result, all EU Member States are now obliged to treat the same-sex spouse of an EU citizen just as they would a different-sex spouse – irrespective of whether or not the Member State provides in its own laws possibilities for same-sex marriage or civil partnership. **It means that when an EU citizen and a non-EU citizen get married in the EU and genuinely reside for at least 3 months in the Member State where the marriage took place, they enjoy the right to move freely as spouses from one EU country to another, whether or not they are a same-sex couple.** They cannot legally be prevented from doing so.

So with this judgment, we have a basis to ensure that same-sex couples do not have to worry anymore when moving from one Member State to another.

But why does this matter?

Today, there are still 6 Member States in the EU that do not recognise either same-sex partnerships or marriages. In the past, these Member States also claimed that they do not need to recognise these unions as part of the freedom of movement. With the Coman judgment, it is now clear that they are obliged to amend their national laws in such a way as to provide a legal framework for ensuring that the CJEU's ruling is properly implemented. In other words, they must ensure that same-sex couples are guaranteed the same right of residence as different-sex couples.

Who are these [6 Member States](#)? Bulgaria, Latvia, Lithuania, Poland, Romania and Slovakia.

Unfortunately some Member States may not immediately implement the judgment properly, despite national courts **being obliged to follow the** Coman judgment. This obligation is because EU law has supremacy over national laws, without exception. And so we need to make sure that we hold any non-compliant Member States accountable.

The European Commission is the institution that ensures this accountability. As the politically independent executive arm of the EU, the Commission has the power to take legal action against Member States, and it is their job to ensure that EU law is properly implemented.

Okay, but **what can we do as individuals or civil society organisations?**

We can support the European Commission in this by raising any violation of the freedom of movement for same-sex couples by [filing an official complaint](#) – which you can do in your preferred EU language.

If your complaint is found to be valid, the European Commission will launch a formal infringement procedure against the Member State. To know more, check out this [nifty overview](#) of how such a complaint procedure unfolds!

Sometimes things aren't so clear... If you are uncertain about whether or not a law has actually been breached, you can [get help and advice](#) informally from enquiry services provided by the EU – also in any of the 24 EU languages.

But the easiest thing is to [reach out to us at ILGA-Europe](#) **should you think you have a complaint to report.** The Coman judgment is historical because of its great significance and the incredible impact it has on so many lives, both present and future. We're all in this together, to make sure that the progressiveness of the court is felt in the everyday lives of same-sex couples across the EU.

Read also:

- ILGA-Europe's [Q&A about the Coman case](#).
- Arpi Avetisyan's essay '[European Law Developments on SOGIE](#)' from International Lesbian, Gay, Bisexual, Trans and Intersex Association: Lucas Ramon Mendos, [State-Sponsored Homophobia 2019](#) (Geneva; ILGA, March 2019).
- Research report '[An analysis of the ECJ ruling in Case c-673/16 Coman](#)' prepared by Professor Alina Tryfonidou (University of Reading) for [NELFA](#), the Network of European LGBTIQ* Families Associations.
- FRA Report: '[Making EU citizens' rights a reality: national courts enforcing freedom of movement and related rights](#)'?

If you live in one of the EU Member States that does not recognise same-sex partnerships or marriages, you can also contact in your own language:

- Bulgaria: [Bulgarian Helsinki Committee](#) – bhc@bghelsinki.org
- Latvia: [Mozaika](#) – mozaika@mozaika.lv
- Lithuania: [Nacionalinė? LGBT* teisių gynimo asociacija](#) – office@gay.lt / +370 5 2610314
- Poland: [Lambda Warszawa](#) – warszawa@lambdawarszawa.org
- Romania: [Asociata Accept](#) – teodora@acceptromania.ro / +40 723 50 31 72
- Slovakia: [inPoradna](#) – [online contact form](#) / +421 948 144 313

Join our webinar on bringing cases before the European Commission – Thursday, 30 April 2020

Bringing complaints before the European Commission serves as a basis for **raising awareness** on the obstacles faced by LGBTI people, and for initiating a **formal infringement procedure** against a Member State to help ensure its compliance with EU law.

This webinar is for all **LGBTI organisations and activists in the European Union**. Our speakers and experts will share their experience of **bringing cases to the European Commission** on discriminatory application of EU law and failure of implementation of CJEU judgments, as well as provide guidance on EU law aspects that can be challenged through the procedure.

The webinar will take place on [Thursday, 30 April 2020 between 10:00 and 11:30 CEST](#).

Speakers will include:

- Teodora Ion-Rotaru from the Romanian association ACCEPT,
- Professor Alina Tryfonidou from the University of Reading, and
- Etienne Deshoulières

With moderation by Arpi Avetisyan, Senior Litigation Officer at ILGA-Europe.