EDITURA LUMEN în elita editurilor românești

Available online http://lumenpublishing.com/journals/index.php/jls

e-ISSN: 2067-8509; ISSN-L: 1841-6195

Jurnalul de Studii Juridice

Year XIII, No. 1-2, June, 2018, pp. 113-124

DECISION IN CASE C-673/16 Relu Adrian COMAN AND OTHERS/ GENERAL INSPECTORATE FOR IMMIGRATION

Nadia-Cerasela ANIȚEI

DOI: https://doi.org/10.18662/jls/25

Covered in:
CEEOL, CrossRef, CrossCheck, Index Copernicus, Ideas RePeC, EconPapers, Socionet

©2018 The Authors & LUMEN Publishing House

How to cite: Anitei, N.C. (2018). Decision in Case C-673/16 Relu Adrian Coman and others/ General Inspectorate For Immigration. *Jurnalul de Studii Juridice, XIII* (1-2), 113-124. https://doi.org/10.18662/jls/25

DECISION IN CASE C-673/16 Relu Adrian COMAN AND OTHERS/ GENERAL INSPECTORATE FOR IMMIGRATION[1]

Nadia-Cerasela ANITEI [2]

Abstract

Mr. Relu Adrian Coman, a Romanian national, and Mr. Robert Clabourn Hamilton, an American national, married in Brussels in 2010.

The Romanian-American homosexual couple: Relu Adrian Coman, Romanian citizen, and Robert Clabourn Hamilton, American citizen legally married in Belgium, requested the Romanian authorities (namely the General Inspectorate for Immigration (Romania) and the Ministry of Home Affairs (Romania)) in December to be informed of the procedure and conditions under which Mr. Hamilton could, as a member of Mr. Coman's family, or as a spouse who is not a national of an EU Member State, obtain the right to live legally in Romania for more than three months.

In January 2013, the Immigration General Inspectorate transmitted to Mr. Robert Clabourn Hamilton in writing the refusal to grant the right to have a stable residence in Romania even though he is married to a Romanian (European) citizen, Mr. Relu Adrian Coman.

On October 5, 2013, as petitioners Relu Adrian Coman, Robert Clabourn Hamilton, the Accept Association files an action against the respondents General Inspectorate for Immigration, the Ministry of Home Affairs and the National Council for Combating Discrimination, a declaratory action in the Court of District 5, Bucharest.

By the authentication ruled in File no. 17111/302/2015 at the hearing on 18.12.2015, the District Court of District 5, Panel C-17 Civil, Bucharest, notified the

---

[1] https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:62016CJ0673&from=DE
https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/cp180002ro.pdf (accessed on June 14, 2018)
Court of Justice of the European Union PRESS RELEASE no. 02/18 Luxembourg, January 11, 2018. "NOTE: The Advocate General's conclusions are not binding on the Court of Justice. The task of the Advocates-General is to propose to the Court, in complete independence, a legal solution in the case attributed to them. The judges of the Court are due to deliberate in this case. The judgment will be delivered at a later date. NOTE: The preliminary reference allows the courts of the Member States to refer questions to the Court of Justice concerning the interpretation of Union law or the validity of a Union act in the context of a dispute before them. The Court does not resolve the national dispute. The National Court has the obligation to settle the case according to the Court's decision. This decision is also binding on the other national courts which have a similar problem.

[2] PhD Univ. Prof. Faculty of Law, Social and Political Sciences, Dunărea de Jos University, Galați, Romania e-mail: nadia.anitei@ugal.ro; ncerasela@yahoo.com

Constitutional Court with the exception of the unconstitutionality of the provisions of art. 277 paragraphs 2 and 4 of the Civil Code related to art. 4, art. 16 and art. 26 of the Romanian Constitution, exception raised by the petitioners Relu Adrian Coman, Robert Clabourn Hamilton and the ACCEPT Association

In November 2016, the RCC decided to send preliminary questions to the CJEU in file 78D / 2016[3]*. Thus, the RCC decided to suspend the judgment of the case having as object the exception of unconstitutionality of the provisions of the Romanian Civil Code and asked the Court of Justice of the European Union to give a preliminary ruling.*

According to Advocate General Wathelet, the concept of 'spouse' includes, in the light of the freedom of residence of Union citizens and members of their families, same-sex spouses. Although Member States are free to authorize or not to authorize same-sex marriage, they may not impede the freedom of residence of a citizen of the Union by refusing to grant his/her same-sex spouse, a third-country national, a right of permanent residence on their territory."

The Court of Justice of the European Union (Grand Chamber) delivered its judgment in Case C-673/16, Relu Adrian Coman and Others. c to the General Inspectorate for Immigration and the Ministry of Home Affairs on June 5, 2018.

The Court of Justice of the European Union declares that "In a situation where a Union citizen has made use of his / her freedom of movement by moving and actually living under the conditions laid down in Article 7 (1) of Directive 2004/38/EC of the European Parliament and of the Council of April 29, 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) (EEC) no. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/90/365/EEC and 93/96/EEC in a Member State other than that the nationality of which he/she holds, or has, on that occasion founded or strengthened a family life with a third-country national of the same sex to whom he/she is linked by a legal marriage concluded in the host Member State, Article 21 (1) TFEU must be interpreted within the meaning that it is opposed for the competent authorities of the Member State the citizenship of which the citizen of the Union has to refuse to grant a right of residence on the territory of that Member State to that national on the ground that the law of that Member State does not provide for the same-sex marriage.

Article 21 (1) TFEU must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, a third-country national of the same sex as the citizen of the Union whose marriage to the latter was concluded in a Member State has the right to reside for more than three months on the territory of the Member State of which

[3] DECISION no. 534 of July 18, 2018 on the exception of unconstitutionality of the provisions of Article 277paragraphs (2) and (4) of the Civil Code accessed on https://www.ccr.ro/ccrSearch/MainSearch/SearchForm.aspx

the Union citizen is a national. This secondary right of residence may not be subject to more stringent conditions than those laid down in Article 7 of Directive 2004/38."

Keywords:

Same-sex spouses, spouse who is not a citizen of a Uesa Member State to have the right to live legally in Romania, the General Inspectorate for Immigration, the District Court of District 5 Bucharest, the Constitutional Court of Romania, the Advocate General's Opinion, Court of Justice of the European Union.

Mr. Relu Adrian Coman, a Romanian national, and Mr. Robert Clabourn Hamilton, an American national, met for the first time on June 8, 2002 in Central Park, New York.

Between 2002-2010 they lived together in the United States of America.

In 2010, Mr. Relu Adrian Coman, a Romanian citizen, and Mr. Robert Clabourn Hamilton, American citizen, married in Brussels.

In September 2012, Adrian Coman remained unemployed and wanted to return to Romania, alongside his spouse Robert Clabourn Hamilton.

To return to Romania he addresses the Romanian Consulate in Belgium for transcribing the marriage. The consulate refused the request.

The Romanian-American homosexual couple: Relu Adrian Coman, Romanian citizen, and American citizen Robert Clabourn Hamilton, legally married in Belgium, requested the Romanian authorities (namely the General Inspectorate for Immigration (Romania) and the Ministry of Home Affairs (Romania)) to be informed of the procedure and conditions under which Mr. Hamilton could, in his capacity as a member of Mr. Coman's family, or as a spouse who is not a national of an EU Member State, to be a legal resident in Romania for more than three months.

The request made by Mr. Robert Clabourn Hamilton, an American citizen, was based on Art. 2 section 2 letter (a), art. 3 paragraph (1) and paragraph (2) letters (a) and (b) and art. 7 paragraph (2) of Directive 2004/38/EC of the European Parliament and of the Council of April 29, 2004 regarding the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States4

[4] Directive 2004/38 / EC of the European Parliament and of the Council of April 29, 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/ 90/365 / EEC

allowing the spouse of a Union citizen who has exercised that freedom to join his/her spouse in the Member State in which the latter lives.

In January 2013, the General Inspectorate of Immigration transmitted to Mr. Robert Clabourn Hamilton in writing the refusal to be granted the right to have a stable residence in Romania even though he is married to a Romanian (European) citizen, Mr. Relu Adrian Coman.

On October 5, 2013, as petitioners Relu Adrian Coman, Robert Clabourn Hamilton, the Accept Association filed an action against the respondents General Inspectorate for Immigration, the Ministry of Home Affairs and the National Council for Combating Discrimination, declaratory action in the Court of District 5, Bucharest.

The District Court of District 5 Bucharest, declined jurisdiction in the above-mentioned case.

Between October 2013 and September 2015, the case file concerned was postponed.

In September 2015, the Bucharest Court of Appeal established that it was up to the District Court of District 5, Bucharest to judge case Coman-Hamilton.

By the authentication ruled in File no. 17111/302/2015 at the hearing on 18.12.2015, the District Court of District 5, Panel C-17 Civil, Bucharest, notified the Constitutional Court with the exception of the unconstitutionality of the provisions of art. 277 paragraphs 2 and 4 of the Civil Code related to art. 4, art. 16 and art. 26 of the Romanian Constitution, exception raised by the petitioners Relu Adrian Coman, Robert Clabourn Hamilton and the ACCEPT Association[5].

In November 2016, the RCC decided to send preliminary questions to the CJEU in file 78D / 2016. Thus, the CFR decided to suspend the case on the objection of unconstitutionality of the provisions of the Romanian Civil Code and asked the Court of Justice of the European Union to give a preliminary ruling. Thus, by its judgment of 29 November 2016, the Constitutional Court referred the following questions to the European Court of Justice for a preliminary ruling.

---

and 93/96 / EEC (OJ 2004 L 158, p. 77, rectifications in OJ 2004 L 229, p. 35 and in JO 2005, L 197, p. 34 vol. 7, p. 56)

[5] File no. 17411/302/2015 applicants: Relu Adrian Coman, Robert Clabourn Hamilton, ACCEPT Association having as its subject-matter a declaratory action and claims: General Inspectorate for Immigration and Ministry of Home Affairs with mandatory summoning of the National Council for Combating Discrimination consulted on https://www.jurisprudenta.com/dosare-procese/2015/17411q302q2015-302/ accessed on 29/06/2018. .

In November 2016, the RCC decided to send preliminary questions to the CJEU in file 78D / 2016[6]. Thus, the RCC decided to suspend the judgment of the case having as object the exception of unconstitutionality of the provisions of the Romanian Civil Code and asked the Court of Justice of the European Union to give a preliminary ruling[7]. Thus, by its judgment of November 29, 2016, the Constitutional Court referred the following questions to the European Court of Justice for a preliminary ruling:

'(1) Under Article 2 section (2) letter (a) of Directive 2004/38, read in conjunction with Articles 7, 9, 21 and 45 of the Charter, does 'spouse' include the same-sex spouse of a non-member state, of a European citizen with whom the citizen has been legally married under the law of a Member State other than the host State?

2. If the answer to the first question is in the affirmative, do Articles 3 paragraph (1) and 7 paragraph (2) (3) of Directive 2004/38, read in conjunction with Articles 7, 9, 21 and 45 of the Charter, require that the host Member State grants a residence permit in its territory for more than 3 months to a same-sex spouse of a European citizen?

3. If the answer to Question 1 is in the negative, can the same-sex spouse in a non-Member State of a European citizen with whom the citizen has been lawfully married under the law of a Member State other than the host State, be qualified as 'any other family member ...' within the meaning of Article 3 paragraph (2) letter (a) of Directive 2004/38 or as 'the partner with whom the Union citizen has a duly substantiated, lasting relationship' within the meaning of Article 3 paragraph (2) (b) of Directive 2004/38, with the host State's correlative obligation to facilitate his/her entry and stay, even if the host State does not recognize same-sex marriages or does not provide for any alternative form of legal recognition, such as registered partnerships?

4. If the answer to the third question is in the affirmative, then do Articles 3 (2) and 7 (2) of Directive 2004/38, read in conjunction with Articles 7, 9, 21 and 45 of the Charter, require the host Member State to

[6] DECISION no. 534 of July 18, 2018 on the exception of unconstitutionality of the provisions of Article 277 paragraphs (2) and (4) of the Civil Code accessed on https://www.ccr.ro/ccrSearch/MainSearch/SearchForm.aspx

[7] The preliminary reference allows the courts of the Member States in a dispute to refer to the Court questions concerning the interpretation of Union law or the validity of a Union act. The Court does not settle the national dispute. The National Court has the obligation to settle the case according to the Court's decision. This decision is equally binding for other national courts that are faced with a similar problem." ~ https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/cp180002ro.pdf

grant the right to reside in its territory for more than 3 months to a same-sex spouse of a European citizen? "

On January 11, 2108, the Court of Justice of the European Union issued the press release no. 02/18 Luxembourg, which sets out the Advocate General's Opinion [8] in Case C-673/16 Relu Adrian Coman and Others / General Inspectorate for Immigration and Others[9].

In the conclusions presented today, Advocate General Melchior Wathelet states first that the legal issue at the center of the dispute is not that of legalization of same-sex marriage but of the free movement of citizens of the Union. While Member States are free to authorize or not to authorize same-sex marriage in their domestic legal order, they must comply with their obligations under the freedom of movement of Union citizens. The Advocate General then observes that the Directive does not contain any reference to the right of Member States to establish the status of 'spouse', so that that notion must receive an autonomous and uniform interpretation throughout the Union. In that regard, the Advocate General points out that the concept of 'spouse' within the meaning of the Directive is linked to a relationship based on marriage, but also neutral from the point of view of the sex of the persons concerned and not dependent on the place where that marriage was concluded. In that context, the Advocate General considers that in the light of the general development of the societies of the Member States of the Union in Directive 2004/38 / EC of the European Parliament and of the Council of April 29, 2004 on the right of citizens of the Union to move and reside freely within the territory of the Member States and the members of their families [10] the course of the last decade with regard to the authorization of same-sex marriage[11], the case-law of the Court of Justice[12]

[8] The Advocate General's conclusions are not binding on the Court of Justice. The task of the Advocates-General is to propose to the Court, in complete independence, a legal solution in the case attributed to them. The judges of the Court are due to deliberate in this case-https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/cp180002ro.pdfhttps://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/cp180002ro.pdf

[9] https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/cp180002ro.pdf (accessed on June 14, 2018) Court of Justice of the European Union PRESS RELEASE no. 02/18 Luxembourg, January 11, 2018.

[10] amending Council Regulation (EEC) (EEC) no, 1612/68 and repealing Directives 64/221 / EEC, 68/360 / EEC, 72/194 / EEC, 73/148 / EEC, 75/34 / 90/365 / EEC and 93/96 / EEC (OJ 2004 L 158, p. 77, OJ 2004 L 229, p. vol. 7, p. 56). www.curia.europa.eu

[11] The same-sex marriage is currently authorized in 13 Member States of the Union. Pursuant to the judgment of the Austrian Constitutional Court of December 4, 2017 (G 258-259 / 2017-9), it will also be authorized in Austria no later than January 1, 2019.

according to which "the term «marriage»", as defined commonly by the Member States, designates a union between two persons of a different sex" can no longer be retained. The Advocate General also points out that the concept of "spouse" is necessarily linked to family life, which is protected in the same way by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (ECHR)[13]. In this regard, the Advocate General reminds that the European Court of Human Rights has recognized that homosexual couples may have a family life[14] and, on the other hand, have the opportunity to obtain legal recognition and legal protection of their couple[15]. In addition, the European Court of Human Rights has also held that, in the field of family reunification, the objective of protecting the traditional family cannot justify discrimination on grounds of sexual orientation. In those circumstances, the Advocate General takes the view that the concept of 'spouse' within the meaning of the Directive also includes same-sex spouses. Consequently, such a person may also live permanently on the territory of the Member State in which his/her spouse has established him/herself as a citizen of the Union after having exercised his/her freedom of movement. This conclusion also applies[16] to the state of origin of that citizen when returning to that State after a permanent residence in another Member State where he/she began or consolidated a family life, as Mr. Coman did with Mr. Hamilton in this case.

The Court of Justice of the European Union (Grand Chamber) delivered its judgment in Case C-673/16, Relu Adrian Coman and Others. c the General Inspectorate for Immigration and the Ministry of Internal Affairs on June 5, 2018.

The Court of Justice of the European Union responded to the 4 questions as follows:

1. In the light of all the foregoing considerations, the answer to the first question must be that, in a situation where a citizen of the Union has made use of his or her freedom of movement by moving and actually living in accordance with the conditions laid down in Article 7 paragraph (1) of

[12] See Judgment of the Court of May 31, 2001, D and Sweden v Council (C-122/99 P and C-125/99 P).

[13] The European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950.

[14] See Judgment of the European Court of Human Rights of June 24, 2010, Schalk and Kopf v. Austria, paragraph 94.

[15] See the Judgment of the European Court of Human Rights of July 21, 2015, Oliari and Others v. Italy, paragraph 185.

[16] Under Article 21 paragraph (1) TFUE.

Directive 2004/38, in a Member State other than that of which he/she is a national and who has established or consolidated on that occasion a family life with a third-country national of the same sex to whom he/she is tied by means of a legal marriage concluded in the host Member State, Article 21 (1) TFEU must be interpreted that it is opposed for the competent authorities of the Member State the nationality of which the Union citizen holds to refuse to grant a right of residence on the territory of that Member State to the national referred to on the grounds that the law of that Member State does not provide for marriage between a person of the same sex.

2. Having regard to the foregoing considerations, the answer to the second question must be that Article 21 paragraph (1) TFEU must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, a third-country national of the same sex as the Union citizen whose marriage with the latter has been concluded in a Member State under the law of that State shall enjoy a right of residence for more than three months on the territory of the Member State of which the Union citizen is a national. This derived right of residence cannot be subject to more stringent conditions than those laid down in Article 7 of Directive 2004/38.

3. In the light of the answer given to the first and second questions, there is no need to answer the third and fourth questions.

The Court of Justice of the European Union declares that "In a situation where a Union citizen has made use of his / her freedom of movement by moving and actually living under the conditions laid down in Article 7 (1) of Directive 2004/38 / EC of the European Parliament and of the Council of April 29, 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) (EEC) no 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/90/365/EEC and 93/96/EEC in a Member State other than that the nationality of which he/she has, or has, on that occasion founded or strengthened a family life with a third-country national of the same sex to whom he/she is linked by a legal marriage concluded in the host Member State, Article 21 (1) TFEU must be interpreted as it is opposed for the competent authorities of the Member State the citizenship of which the citizen of the Union holds to refuse to grant a right of residence on the territory of that Member State to that national on the ground that the law of that Member State does not provide for the same-sex marriage.

Article 21 (1) TFEU must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, a third-country national of the same sex as the citizen of the Union whose marriage to the latter was concluded in a Member State has the right to reside for more than three months on the territory of the Member State of which the Union citizen is a national. This secondary right of residence may not be subject to more stringent conditions than those laid down in Article 7 of Directive 2004/38."

Conclusions[17]

By Judgment in Case C-673/16, Relu Adrian Coman and Others, the Inspectorate General for Immigration and the Ministry of Home Affairs on June 5, 2018, the European Court of Human Rights responded mainly to the following question from the Romanian Constitutional Court: does the notion of "spouse" in Article 2 section (2) letter (a) of the Directive 2004/38, in conjunction with Articles 7, 9, 21 and 45 of the Charter, include the same-sex spouse from a non-EU country of a European citizen to whom the citizen has been legally married under the law of a Member State other than the host State? The answer of the CJEU to this preliminary question was that the concept of "spouse" for the purposes of Union law on the freedom of residence of Union citizens and members of their families also includes same-sex spouses. The Court has stated that while Member States are free to authorize or not to authorize homosexual marriage, they cannot impede the freedom of residence of a citizen of the Union by refusing to grant his/her non-EU spouse of the same sex, a derived right of residence on their territory.

The CJEU stated in that judgment that "the civil status of persons, which includes rules on marriage, is a matter falling within the competence of the Member States" and that "Union law does not affect that competence", the said States being "free to provide or not to provide for same-sex marriage." The CJEU recalls that "the Union respects the national identity of the Member States, inherent to their fundamental political and constitutional structures".

[17] https://www.juridice.ro/584710/cjue-c-673-16-coman-si-altii-inspectoratul-general-pentru-imigrari-si-altii-notiunea-sot-in-sensul-dispozitiilor-dreptului-uniunii-privind-libertatea-de-sedere-cuprinde-sotii.html accessed on June 5, 20018; A.C. Scrieru, Implications of the CJUE Decision ruled in Coman-Hamilton case, available at https://www.juridice.ro/585119/implicatii-ale-deciziei-cjue-pronuntate-in-cauza-coman-hamilton.html accessed on June 8.

CJEU ruling[18] (which is part of the complementary European legislation), in case C-673/16, Relu Adrian Coman and others. c The General Inspectorate for Immigration and the Ministry of Home Affairs on June 5, 2018 is not related to the articles of the Romanian Constitution regarding the family nor to the Articles of the Civil Code on Family (the marital conditions of marriage) nor does it oblige the Romanian State to the legalization of same-sex marriage and the subject-matter of the right of residence of Mr. Hamilton, a member of Mr. Coman's family, or a spouse who is not a national of an EU Member State, is to obtain the right to reside lawfully in Romania for period of more than three months.

The effects of the CJEU's rulings (including the Coman case) are equally binding on all national courts that are dealing with a similar problem.

So, the legal effects of the CJEU19 judgment in Case C-673/16, Relu Adrian Coman and others. c The General Inspectorate for Immigration and the Ministry of Home Affairs on June 5, 2018 applies to both EU Member States that do not have legal provisions on homosexual couples and to EU Member States that have materialized civil partnerships of this kind through legal regulations in many countries: Denmark (1989), Norway (1993), Sweden (1994), Iceland (1996), Netherlands and Belgium (1998), France (1999, The Netherlands (2000) Canada and Spain (2005).

There are currently over twenty states that have legalized these marriages, some of which allow the adoption of a child by these couples.

As such, CJEU's rulings are also equally binding on national courts in the 28 states that have a similar problem on which they have ruled but do not resolve the national dispute. The national referral court has the obligation to settle the case according to the CJEU judgment.

Concerning the impact of the CJEU judgment in Case C-673/16, Relu Adrian Coman and others. c The General Inspectorate for Immigration and the Ministry of Home Affairs on June 5, 2018 we state that:

1. there is no question about the conclusion of a same-sex marriage on the territory of Romania because art. 277 Civil Code with the marginal name "Prohibition or equivalence of certain forms of cohabitation with marriage" states: "It is forbidden to conclude same-sex marriages. (1) Marriages between persons of the same sex concluded or contracted abroad either by Romanian citizens or by foreign nationals are not recognized in

[18] interprets EU law to ensure that it is applied in the same way in all member countries and resolves legal disputes between national governments and European institutions.

[19] interprets EU law to ensure that it is applied in the same way in all member countries and resolves legal disputes between national governments and European institutions.

Romania. (paragraph 2) Civil partnerships between persons of the opposite or same sex concluded or contracted abroad either by Romanian citizens or by foreign citizens are not recognized in Romania. (3) The legal provisions on the free movement on the territory of Romania of the citizens of the Member States of the European Union and the European Economic Area remain applicable". (paragraph 4). The two courts in Luxembourg and Strasbourg have left the regulation of same-sex marriage at the competence of the states, and Romania forbids this type of marriage;

2. If two spouses of the same sex filed an application for acknowledgment on the territory of Romania of a same-sex marriage concluded abroad, the application would be rejected because of the breach of public policy under domestic law. However, the solution will remain purely formal in the context in which, as a result of the binding nature of the CJEU judgment ruled in Case C-673/16 Relu Adrian Coman, such marriages must be recognized as having effects, such as those regarding the right to circulation, but also other possible legal effects that may concern: the legal effects of marriage, adoption, the best interests of the child, tax interests or social benefits, etc.;

3. Future same-sex spouses may file an application for the conclusion of a civil partnership or acknowledgment of such partnership abroad in an EU Member State. In the case of such requests, their admission would put the administrative authorities in Romania into trouble in order to resolve the disputes that would arise.

References:

Court of Justice of the European Union PRESS RELEASE no. 02/18 Luxembourg, January 11, 2018.

Council Regulation (EEC) (EEC) no, 1612/68 and repealing Directives 64/221 / EEC, 68/360 / EEC, 72/194 / EEC, 73/148 / EEC, 75/34 / 90/365 / EEC and 93/96 / EEC (OJ 2004 L 158, p. 77, OJ 2004 L 229, p. vol. 7, p. 56. Retrieved from: www.curia.europa.eu

DECISION No. 534 of July 18, 2018 on the exception of unconstitutionality of the provisions of Article 277paragraphs (2) and (4) of the Civil Code. Accessed on https://www.ccr.ro/ccrSearch/MainSearch/SearchForm.aspx.

Directive 2004/38 / EC of the European Parliament and of the Council of April 29, 2004

European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950.

https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:62016CJ0673&from=DE https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/cp180002ro.pdf (accessed on June 14, 2018)

Judgment of the European Court of Human Rights of June 24, 2010, Schalk and Kopf v. Austria, paragraph 94.

Judgment of the European Court of Human Rights of July 21, 2015, Oliari and Others V. Italy, paragraph 185.