

The *Coman* case and national sovereignty in marital matters

To the attention of The President of the European Commission, Mr. Jean-Claude Juncker
 The President of the European Parliament, Mr. Antonio Tajani
 The President of the European Council, Mr. Donald Tusk

We, the undersigned **731 NGOs** from **9 EU Member States**, want to express our deep concern regarding the upcoming judgment of the Court of Justice of the European Union (CJEU) in the *Coman* case, due 5 June 2018. This has the potential to impact EU-wide legislation on marriage and family, and to undermine national protections of marriage as one man and one woman, which, in many EU countries, is enshrined in the Constitution.

The *Coman* case deals with a same-sex couple who obtained a marriage certificate in Belgium, and subsequently sought recognition from Romania. When Romania refused to consider them a married couple, according to national law, they sued the government. The case was ultimately submitted to the CJEU, which is asked to define the notion of ‘spouses’ in EU free movement legislation.

Advocate General Melchior Wathelet stated, in his Opinion of 11 January 2018, that:

The definition generally accepted by the Member States, the term marriage means a union between persons of the opposite sex’, now seems to me outdated...The legal recognition of same-sex marriage does no more than reflect a general development in society with regard to the question. Statistical investigations confirm it; the authorisation of marriage between persons of the same sex in a referendum in Ireland also serves as an illustration...It is not something associated with a specific culture or history; on the contrary, it corresponds to a universal recognition of the diversity of families.

We, the undersigned NGOs send out the clear message that, if the CJEU adopts the Opinion of the Advocate General and the position of the European Commission, by which ‘spouses’ includes ‘same sex spouses’ as an autonomous definition, national marital legislation will be severely undermined.

Currently, 6 Member States (Romania, Bulgaria, Latvia, Lithuania, Poland, and Slovakia) do not have same-sex civil partnerships. Fourteen Member States define marriage as the union of one man and one woman. Six of these State have enshrined this definition in their Constitutions. However, all will be obliged, as a consequence of the CJEU’s ruling in *Coman* to give legal effect to ‘same sex marriage’ concluded outside their territory. This can be called “**ideological colonization**”.

The judgment will create chaos and division, not more harmonization. The existence of two definitions of ‘spouses’ or ‘marriage’ one established internally, (through democratic voices, including referenda), and one ‘imported’ from other Member States would create a legal chaos and a conflict of norms that would even amount to overriding national Constitutions. It will bring resistance.

In times when the EU stands on rocky grounds, the CJEU and other EU institutions should be cautious not to further the divide and tear apart the Union. **Undermining national (even constitutional) definitions of marriage, and eschewing democratic processes is unacceptable for the EU project, originally founded on respect for cultural, religious and national diversity.**

Sincerely yours,
Signatories