



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

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## FOURTH SECTION

Application no. 2663/21  
Relu-Adrian COMAN and Others  
against Romania  
lodged on 23 December 2020

## SUBJECT MATTER OF THE CASE

The applicants are a same-sex couple (“the first and the second applicants”) and a non-governmental organisation promoting the interests of lesbian, gay, bisexual and transgender people (LGBT) in Romania (“the third applicant”).

The application concerns the alleged discrimination of the first and second applicants, lawfully married in a Member State of the European Union, due to the impossibility for the second applicant, a third-country national, to obtain a right of residence on the territory of Romania in his capacity of spouse of a Romanian citizen. This impossibility arises from the provisions of Article 277 of the Civil Code, which does not recognize marriage between people of the same-sex.

The applicants initiated proceedings before the domestic courts seeking an acknowledgment of discrimination on the ground of sexual orientation originating from the provisions of Article 277 of the Civil Code, as regards the exercise of the right of freedom of movement in the European Union. 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 decided to

send a preliminary question to the Court of Justice of the European Union (“CJEU”).

Following the judgment adopted by the CJEU on 5 June 2018, the Constitutional Court ruled that the relevant provisions of the Civil Code are constitutional only if interpreted in the sense that they allow the granting of the right to reside, in accordance with the European Union law, to spouses of Romanian citizens from same-sex marriages concluded in a Member State of the European Union.

Subsequently, the applicants requested the reopening of the main proceedings. By a decision of 16 September 2019, the Bucharest 5<sup>th</sup> District Court dismissed the action as time lapsed (*‘perimată’*), on the grounds that the applicants were at fault for not requesting the reopening of the proceedings within six months from the date of the Constitutional Court’s decision. By a final decision of the Bucharest County Court of 26 June 2020, the applicants’ appeal was rejected as unfounded with final effect.

Relying on Article 6 § 1 of the Convention, all applicants complain of a breach of their right of access to court due to the dismissal of their action on procedural grounds without a decision on the merits, arguing that the reopening of the proceedings should have been done *ex officio*.

Under Article 8 of the Convention, the first and second applicants complain of a breach of their right to private and family life due to the impossibility for the second applicant to obtain a right of residence on the territory of Romania in his capacity of spouse of a Romanian citizen.

The first and second applicants complain that the domestic legal provisions prohibiting them to be recognized as spouses, prerequisite for obtaining the right to reside in Romania for the second applicant, amount to a breach of Article 12 of the Convention.

Relying on Article 14 taken in conjunction with Articles 6 § 1, 8, 12 and 13 of the Convention, the first and second applicants allege that the above breaches of their rights constitute discrimination against them on account of their sexual orientation.

Relying on Article 13 taken in conjunction with Articles 8, 12 and 14 of the Convention, the first and second applicants complain that they have been deprived of an effective remedy for their complaints.

## QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicants’ right of access to court, contrary to Article 6 § 1 of the Convention, due to the Bucharest

County Court's decision of 26 June 2020 rejecting with final effect their action on procedural grounds?

2. Has there been a violation of the first and second applicants' right to respect for their private and family life contrary to Article 8 of the Convention, due to the inability for the second applicant to obtain the right of residence in Romania in his capacity of spouse of a Romanian citizen (see, *mutatis mutandis*, *Taddeucci and McCall v. Italy*, no. 51362/09, 30 June 2016)?

3. Does the first and second applicants' impossibility to obtain recognition of the status of spouses, prerequisite for obtaining the right to reside in Romania for the second applicant, amount to a breach of Article 12 of the Convention?

4 Have the first and second applicants suffered discrimination in the enjoyment of their Convention rights on the ground of their sexual orientation, contrary to Article 14 of the Convention read in conjunction with Articles 6 § 1, 8, 12 and 13 of the Convention (see *Pajić v. Croatia*, no. 68453/13, 23 February 2016)?

5. Did the first and second applicants have at their disposal an effective domestic remedy in respect of their Convention complaints, as required by Article 13 of the Convention?

## APPENDIX

No.	Applicant's name	Year of birth /registration	Nationality	Place of residence	Represented by
1.	Relu-Adrian COMAN	1971	Romanian	New York	Raluca Iustina IONESCU
2.	Robert Clabourn HAMILTON	1971	American	New York	Raluca Iustina IONESCU
3.	ASOCIAȚIA ACCEPT	1996	Romanian	Bucharest	Raluca Iustina IONESCU