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Free movement of same-sex spouses in the EU

*Family status, Identities and Private International Law
A Critical Assessment in the Light of Fundamental Rights*

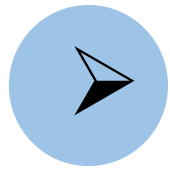
12 May 2022

Legal framework
concerning family
reunification rights
under EU free
movement law

- Primary law: Art. 21(1)
- Secondary law:
Dir. 2004/38

Coman case,
5 June 2018,
C-673/16

Three situations:



a Union citizen and a third-country national

≠

1) both spouses Union citizens

2) both spouses third-country nationals

The *Coman* case

Factual background

- Mr Coman, US and Romanian citizen, worked in Belgium, where married Mr Hamilton, US citizen.
- In Romania Mr Coman applied for a residence permit for his husband, as family member of a Union citizen, on the basis of Citizens' Rights Directive.
- Refusal of the Romanian authorities: unions between same-sex partners not allowed under domestic law.
- Constitutional Court of Romania referred a preliminary ruling to the Court of Justice on the relevant Articles of the Directive.

Main points of the decision - I

Applicability of
the Citizens'
Rights
Directive
2004/38?

Derived right
of residence of
third-country
nationals
based on
Article 21(1)
TFEU

Application of
the Citizens'
Rights
Directive by
analogy

Main points of the decision - II

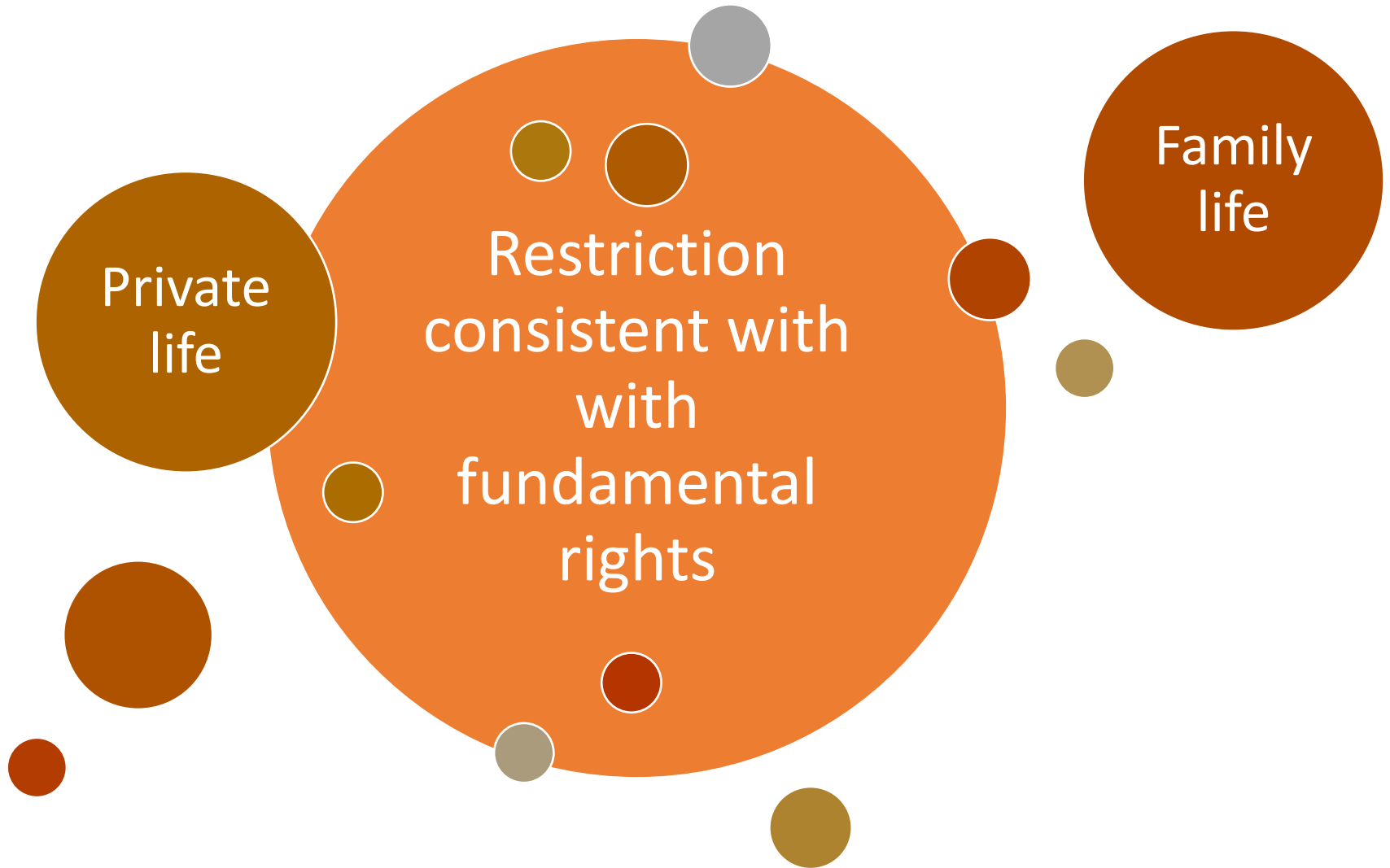
notion of “spouse” (art. 2(2)(a) Dir.) >
no definition > CJ: **gender-neutral**

No reference to domestic legislation ≠
registered partnership > No refusal for
sole purpose of free movement

non-recognition = restriction of free movement rights
objective public-interest considerations (downplayed) +
proportionality

for the sole purpose of granting a
derived right of residence

Main points of the decision - III



Observations

Approach
of the
Court

No
substanti-
ve rights

Notion
of
spouse

No
arguments
on non-
discriminati
-on

Other
purposes

Genuine
residence

Difficult
compliance
by MS

Other
Coman
proceedings
(ECHR)

Post –
Coman
case

Downgra-
ding
(Italy)

Policy
develop-
ments

Conclusions

‘Union Citizenship effect’

Coman
case

Pancharevo
case

?

Thank you!