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**The Institution of Marriage in National Law and European Union Law: Between State Autonomy and Common Standards**

**Keywords:** EU citizenship, free movement, marriage, same-sex couples, constitutional identity, Lithuanian Constitutional Court, Polish and Lithuanian Constitution, family reunification

**Słowa kluczowe:** obywatelstwo UE, swobodny przepływ osób, małżeństwo, pary jednopłciowe, tożsamość konstytucyjna, Litewski Sąd Konstytucyjny, Konstytucja Polski i Litwy, łączenie rodzin

**Abstract**

This article examines the interaction between national constitutional definitions of marriage and European Union law, with particular attention to the significance of the Court

of Justice's Coman ruling. Although Poland and Lithuania constitutionally define marriage as a union between a man and a woman, EU free movement law obliges Member States to recognise same-sex spouses for the purpose of derived residence rights. The article analyses the impact of Coman on the jurisprudence of the Lithuanian Constitutional Court and explores the regulatory challenges emerging in Poland resulting from the ruling's narrow scope and the gaps in national legislation.

## **Streszczenie**

### **Instytucja małżeństwa w prawie krajowym i prawie Unii Europejskiej: między autonomią państwa a wspólnymi standardami**

W artykule przeanalizowano relacje między konstytucyjnymi definicjami małżeństwa w państwach członkowskich a prawem Unii Europejskiej, ze szczególnym uwzględnieniem znaczenia wyroku Trybunału Sprawiedliwości w sprawie Coman. Chociaż Polska i Litwa konstytucyjnie określają małżeństwo jako związek kobiety i mężczyzny, prawo UE dotyczące swobodnego przepływu osób zobowiązuje państwa członkowskie do uznania małżonków tej samej płci na potrzeby przyznania pochodnego prawa pobytu. Artykuł analizuje wpływ sprawy Coman na orzecznictwo litewskiego Sądu Konstytucyjnego oraz przedstawia problemy regulacyjne pojawiające się w Polsce w związku z wąskim zakresem tego orzeczenia i lukami w krajowym ustawodawstwie.

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## **I. Introduction**

In EU law, the principle of non-discrimination has evolved to prohibit less favourable treatment on grounds such as sex, age and, notably, sexual orientation. Reflecting this development, numerous Member States have reformed their domestic legislation to allow same-sex couples to register partnerships or marry and to recognise family relationships (for example, the Netherlands, Belgium, Denmark). By contrast, several Member States, such as Poland and Lithuania, still enshrine in their constitutions the traditional notion of marriage as a union between a man and a woman. Yet EU citizenship and free-movement law, particularly as clarified in the CJEU's Coman judgment, extends the concept of "spouse" to same-sex partners lawfully married in another

Member State. Against this backdrop, the present article examines whether and how divergent national conceptions of marriage can be reconciled with the common standards established by EU law.

This article seeks three related objectives. First, it analyses EU law on free movement of persons, family reunification, and fundamental rights, focusing on interpreting the terms “spouse” and “family member” in the Free Movement Directive, as clarified by the CJEU in *Coman* case. Secondly, it aims to show the cross-border effect in the context of a partnership formed abroad. Thirdly, it examines the Lithuanian Constitutional Court’s ruling of 11 January 2019, which ruled that the concept of family is gender-neutral and that denying residence permits to same-sex spouses breaches constitutional guarantees of dignity and equality.

The paper is divided into two main parts. The first part outlines the EU legal framework governing marriage and family life, including Art. 21 of the Treaty on the Functioning of the European Union, Directive 2004/38/EC. It analyses the *Coman* case in depth, highlighting the Court’s reasoning and the consequences for Member States that do not recognise same-sex marriage. The second part turns to Lithuanian constitutional law, contextualising the 2019 case within domestic jurisprudence. It discusses the Lithuanian Constitutional Court’s (LCC) reasoning on integrating EU law, the distinction between marriage and family, the limits of the right to family life, and the obligation to avoid discrimination. The section also considers subsequent developments, including the Constitutional Court’s 17 April 2025 ruling, which deemed the lack of a legal mechanism for registering civil partnerships unconstitutional and directed the Seimas to adopt legislation to register partnerships.

## **II. The impact of UE law on the Polish legal system regarding same-sex unions**

The Constitution of the Republic of Poland<sup>1</sup> defines the institution of marriage in Art. 18, which is included in the first chapter among the general principles of Polish statehood. According to the cited article, marriage is a union

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<sup>1</sup> Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78 item. 483, as amend.).

between a woman and a man. The shape of the institution of marriage outlined in the cited article is the result of discussions held during the drafting of its final content. The institution of marriage, alongside family, motherhood, and parenthood, is a value associated with the functioning of an individual in society<sup>2</sup>.

The model of marriage formulated in the Constitution of the Republic of Poland assumes the diversity of the spouses' gender, and the primary function of marriage and family is procreation. Given this definition of marriage<sup>3</sup>, the question arises whether it is possible to introduce same-sex marriages and civil partnerships into the Polish legal system. In Polish doctrine, various views clash. According to the first view, Art. 18 of the Constitution excludes homosexual marriages and the institutionalisation of partnerships. The second, most widespread definition defines marriage as the union of a man and a woman, excludes same-sex marriage, but allows for the institutionalization of partnerships. The third view assumes that Art. 18 of the Constitution provides special protection for heterosexual marriages but does not exclude the institutionalization of homosexual marriages, let alone civil partnerships<sup>4</sup>.

The Polish legal system does not provide for same-sex marriages or partnerships. Only the aforementioned constitutional regulation recognises marriages between a woman and a man. The fact that Poland is an EU Member State, which grants certain rights to same-sex couples based on the principle of freedom of movement and the institution of EU citizenship, is significant in this regard. Freedom of movement, or freedom to choose one's place of residence, makes it easier for citizens of different countries to form partnerships. This means that such a relationship can be cross-border if one of the partners

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<sup>2</sup> I. Grądzka, *Małżeństwo jako wartość chroniona konstytucyjnie* [in:] *Małżeństwo jako instytucja prawno-społeczna w Polsce*, eds. E. Krzysztofik, M. Maksymiuk, Lublin 2022, p. 45.

<sup>3</sup> The official definition of marriage, as set out in Art. 18 of the Constitution, is a matter of debate in legal doctrine. See: *Kodeks rodzinny i opiekuńczy. Komentarz*, eds. M. Habdas, M. Fras, Warszawa 2025, p. 22.

<sup>4</sup> P. Tuleja, *Commentary on Art. 18* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. II, ed. P. Tuleja, Warszawa 2023, p. 84; L. Garlicki, *Commentary on Art. 18* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I, ed. II, eds. L. Garlicki, M. Zubik, Warszawa 2016, pkt 8–10, LEX/el (20.10.2025); *Opinie w sprawie projektu ustawy o związkach partnerskich* (D. Dudek, R. Piotrowski), "Przeгляд Sejmowy" 2012, no. 4, pp. 167–194.

is a citizen of another EU Member State or a third country. The question then arises as to how individuals who have entered into a legal partnership abroad should be treated under Polish law. Can the partner of a Polish citizen be considered a family member after crossing the state border?

The lack of regulation in national law creates a situation where partners can only pursue their rights based on a violation of EU law<sup>5</sup>. Consequently, the Polish state is facing the issue of legalising same-sex unions<sup>6</sup>.

To better understand the issue under discussion, it is first necessary to clarify the matters of EU law. The institution of EU citizenship and freedom of movement are of great importance here. The concept of EU citizenship<sup>7</sup> implies a special bond that connects an individual to an international organisation. EU citizenship was associated with specific rights and obligations that initially only applied to economically active individuals, who were working or running a business in one of the Member States. Over time, the case law of the European Court of Justice (CJEU) has extended these rights to other categories of persons<sup>8</sup>. Currently, all EU citizens can invoke the rights derived from EU citizenship<sup>9</sup>.

Every Union citizen has the right to move and reside freely within the territory of the Member States (Art. 21 TFEU). This freedom constitutes a personal guarantee for citizens that must be respected by all Member States. The

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<sup>5</sup> M. Wąsik, *Związki osób tej samej płci. Konsekwencje braku regulacji w prawie polskim*, Warszawa 2024, p. 209.

<sup>6</sup> In 2024, a draft law on registered partnerships was developed, but it was not submitted to the Sejm. In recent years, there has also been a problem with the transcription of marriage certificates concluded in another Member State by same-sex couples. On November 8, 2023, the Supreme Administrative Court (NSA) referred a preliminary question to the Court of Justice of the European Union (CJEU), decision of the Supreme Administrative Court of November 8, 2023, ref. no. file II OSK 216/21.

<sup>7</sup> The term EU citizenship is regulated in Art. 9 Treaty on European Union (TUE) (Dz.U. UE C 202/1), as well as in Art. 20–24 the Treaty on the Functioning of the EU (TfUE) (Dz.U. UE C 202/1).

<sup>8</sup> A. Gubrynowicz, *Obywatelstwo Unii Europejskiej – stan obecny i perspektywy* [in:] *Obywatelstwo Unii Europejskiej*, notebooks OIDE 2008, no. 9, p. 7.

<sup>9</sup> According to the Art. 20 TFEU, “a citizenship of the Union is any person who holds the citizenship of a Member State. Union citizenship is additional to national citizenship and does not replace it.

aforementioned regulations are reiterated by EU Directive 2004/38/EC<sup>10</sup>, which states that Union citizenship confers on every Union citizen the fundamental and individual right to move and reside freely within the territory of the Member States. It regulates the conditions for the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members. It regulates the rights of EU citizens to freely leave their country of origin and to enter and reside in the territory of the host country. Among family members, the Directive mentions the spouse and partner. A partner is a person with whom an EU citizen has entered into a registered partnership.

Based on this Directive, the CJEU issued a judgment in the *Coman* case<sup>11</sup>. In this judgment, the Court defined the concept of a spouse within the meaning of the Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The Court defined “spouse” as a person who is married to another person (paragraph 34). Referring to the wording of the Directive, the Court defined the concept of “spouse” as gender-neutral and may include a spouse of the same sex as the Union citizen in question<sup>12</sup>. Therefore, in the Court’s view, a Member State cannot refuse the right of residence on its territory to the partner/spouse of an EU citizen. It should be emphasised that this judgment applies only to cross-border situations. This means that the Court only regulates the conditions of entry and stay in the territory of the host country (other than the country of origin). The Directive establishes two types of residence rights: basic – only for migrant citizens, and derived (dependent) – which are held by family members of a migrating citizen, regardless of their origin<sup>13</sup>. Family members of an EU citizen acquire the derived right of residence, provided that

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<sup>10</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 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 (Dz.U. UE L 158/77).

<sup>11</sup> Judgment of the CJEU of 5 June 2018, ref. no. file C-673/16.

<sup>12</sup> A different position on the interpretation of the term “spouse”, V. Stehlik, *The CJEU crossing the rubicon on the same-sex marriages? Commentary on Coman case*, “International and Comparative Law Review” 2018, vol. 18, no. 2, p. 91.

<sup>13</sup> E. Krzysztofik, *Gloss to the Judgement of the Court of Justice of the European Union in Case C 673/16 Relu Adrian Coman, Robert Clabourn Hamilton v. Inspectoratul General pentru Imigrari (Romania)*, “Przeгляд Prawa Konstytucyjnego” 2019, no. 5, p. 433.

the existence of a particular legal bond between them and the migrant citizen is proven. This applies to couples in a partnership who decide to change their place of residence and migrate from one Member State to another.

Based on the Constitution, it should be noted that marriage is a union between a woman and a man. This is also confirmed by the Family and Guardianship Code in Art. 1<sup>14</sup>. Therefore, a same-sex union that is recognised as a marriage under international law cannot be considered equivalent to a traditional marriage<sup>15</sup>. Recognising same-sex marriage would require an amendment to the Constitution of the Republic of Poland. In 2005, the Constitutional Court ruled that marriage had acquired distinct constitutional status under Polish domestic law as defined by Art. 18. Amending this status would require an amendment to the Constitution. The nature or status of marriage in the Polish constitutional legal system cannot be changed based on a ratified international agreement<sup>16</sup>. However, I see no obstacles to regulating the issue of same-sex partnership in the law<sup>17</sup>.

It should be noted that in the Coman judgment, the CJEU explicitly stated that a Member State cannot rely on its national law solely to refuse to recognise on its territory a marriage concluded between same-sex couples who are Union citizens. The essence of the Coman judgment concerns the rights of free movement of persons guaranteed in the treaties<sup>18</sup>. It does not oblige Member States

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<sup>14</sup> Legal act: The Family and Guardianship Code Act of February 25, 1964 (Dz.U. 2025, item. 897).

<sup>15</sup> See: Supreme Court decision of September 24, 2024, ref. no. file I CSK 2467/24, LEX/el.

<sup>16</sup> Judgment of the Constitutional Tribunal of 11 May 2005, ref. no. file K 18/04, pkt. 16.6; The Court did not specify what it means by the term “change in the constitutional status of marriage”, see more: A. Jezusek, *Możliwość instytucjonalizacji związku osób tej samej płci w świetle art. 18 Konstytucji RP*, “Przegląd Sejmowy” 2015, no. 4, p. 69.

<sup>17</sup> Case of Przybyszewska and others v. Poland, 12 December 2023 (Applications nos. 11454/17 and 9 others). In this judgment, the European Court of Human Rights obliged the Polish state to introduce any legal regulation of same-sex unions. <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%2211454/17%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%22001-229391%22%5D%7D> (12.11.2025). A. Jezusek, *op.cit.*, p. 86.

<sup>18</sup> D.E. Harasimiuk, *Prawo do swobodnego przemieszczania się i pobytu obywateli unijnych pozostających w jednopłciowych związkach małżeńskich (uwagi na tle wyroku TS z 5.06.2028 r.)*, “Państwo i Prawo” 2020, no. 9, p. 103.

to legalise same-sex partnerships or marriages in national law. This creates a situation in which the partner of a Polish citizen remains in a legal vacuum after crossing the Polish border. Crossing the border has no legal consequences other than the right of residence. The Polish legal system does not recognise same-sex partnerships, meaning crossing the border does not change their civil status under national law. EU citizens can only claim a right of residence in Poland based on freedom of movement. However, it should be noted that the Court emphasised that EU citizens have the right to lead a family life within the territory of the Member States of the Union. Additionally, in light of Art. 9 of the Charter of Fundamental Rights, it should be noted that the family (its establishment) is not seen as a possible consequence solely of marriage<sup>19</sup>.

As highlighted in the literature, the non-recognition of a registered partnership in the Polish legal system for purposes other than immigration law may infringe upon the exercise of the right to freedom of movement. It is pointed out that the regulation of marriages and other relationships is left to national regulations, but the issue of taking into account the effects of recognizing these relationships concluded effectively under the rule of a foreign state is an issue that goes beyond national law<sup>20</sup>.

### **III. The Lithuanian Constitutional Court's 2019 Decision: Applying Coman and Aligning National Law with EU Standards**

Art. 38 of the Lithuanian Constitution defines marriage as a free union between a man and a woman<sup>21</sup>, anchoring a traditional national understanding of this institution<sup>22</sup>. By contrast, as previously noted, Directive 2004/38/EC confers free

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<sup>19</sup> *Karta Praw Podstawowych Unii Europejskiej. Komentarz*, ed. A. Wróbel, Warszawa 2020, p. 326.

<sup>20</sup> M. Wąsik, *op.cit.*, p. 247; O.M. Piaskowska, P.F. Piesiewicz, *Prawo do zawarcia związku jednopłciowego jako wyraz poszanowania prawa do ochrony życia prywatnego i rodzinnego*, "Europejski Przegląd Sądowy" 2018, no. 5, p. 14.

<sup>21</sup> Lietuvos Respublikos Konstitucija. *Lietuvos aidas*, 1992–11–10, No. 220–0.

<sup>22</sup> Marriage under Art. 3.7(1) of the Lithuanian Civil Code is defined as a voluntary union between a man and a woman. Art. 3.12 explicitly bans same-sex marriage, permitting marriage only between persons of different sexes. The same restriction applies to partnership (Art. 3.229). Lietuvos Respublikos civilinis kodeksas (Valstybės žinios, 2000, no. 74–2262).

movement and residence rights on Union citizens and their family members, and the *Coman* judgment clarified that these rights require Member States to recognise a same-sex spouse for the limited purpose of granting a derived right of residence.

Against this backdrop, the LCC was called upon in 2019 to resolve a dispute in which a Belarusian national and his Lithuanian spouse, who had contracted a lawful marriage in Denmark, sought to reside together in Lithuania. The Migration Department refused to grant a temporary residence permit because Lithuanian law does not recognise same-sex marriages or partnerships; the district court upheld this decision, but the Supreme Administrative Court referred the matter to the LCC to determine whether the refusal was compatible with the Constitution and the obligations flowing from Union law.

The main legal question before the LCC was whether a same-sex spouse or registered partner should be regarded as a “family member” entitled to a residence permit under the “Law on the Legal Status of Aliens”. The Migration Department argued that, because the Constitution explicitly defines marriage as a union between a man and a woman, the national legislation on the legal status of aliens could not apply to same-sex marriages or partnerships concluded abroad. In its view, Lithuania was not obliged to extend family reunification rights beyond the traditional family model.

The referring court and other critics of this restrictive interpretation emphasised that the constitutional concept of family is not confined to the formal institution of marriage. The LCC had already recognised, in its 2011 jurisprudence, that a family arises out of continuous emotional attachment, mutual understanding, responsibility, respect and joint upbringing of children, rather than solely from entering into marriage<sup>23</sup>. Those characteristics are genderneutral and may be present in different types of partnerships. The question, therefore, was whether the migration law should be interpreted consistently with this broader constitutional understanding of family and in light of the State’s international obligations.

After analysing the ruling of 11 January 2019<sup>24</sup> of LCC and with a view to providing the reader with a clearer picture, all of the Court’s arguments have been grouped into four categories, which are presented below.

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<sup>23</sup> The Constitutional Court of the Republic of Lithuania, Ruling of 28 September 2011.

<sup>24</sup> The Constitutional Court of the Republic of Lithuania, Ruling of 11 January 2019, No. KT19-N4/2025.

The LCC emphasised the constitutional significance of EU membership and the resulting obligation to implement Union law. Lithuania voluntarily transferred specific sovereign competences by joining the EU, and the Constitution recognises that the country's participation in European integration is a constitutional value<sup>25</sup>. This commitment requires national authorities and courts to interpret domestic law in conformity with EU law and to ensure that Union law is effective within the national legal order. The Court stressed that full membership in the EU is a constitutional value and an imperative of the Nation's sovereign will.

The Constitutional Court held that the Law on the Legal Status of Aliens cannot be applied in a manner that undermines the rights provided by Directive 2004/38/EC. The primacy and direct effect of Union law require national authorities to apply EU law in fields within transferred competences and, where necessary, to disapply conflicting national provisions. Lithuania's constitutional commitment to EU membership therefore entails an obligation to recognise a same-sex spouse for family reunification, notwithstanding the domestic definition of marriage.

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<sup>25</sup> The Constitutional Court's position to EU law was not new, as its earlier jurisprudence had already emphasised the significance of EU law in Lithuania's legal system. In its ruling of 24 January 2014, the Court confirmed that Lithuania's EU membership is grounded in the Constitutional Act on Membership of the Republic of Lithuania in the European Union, whose preamble stresses that the EU respects human rights, fundamental freedoms, national identity, and constitutional traditions, and that membership enhances human rights protection, security, and citizens' welfare (The Constitutional Court of the Republic of Lithuania. Ruling of 24 January 2014, No. KT10-N1/2014).

The LCC has also noted that the norms of EU law are a constituent part of the legal system of Lithuania; where it concerns the founding Treaties of EU, the norms of EU law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of Lithuania (The Constitutional Court of the Republic of Lithuania. Ruling of 11 July 2014, No. KT36-N10/2014 and decision of 20 October 2017, No. KT14-S7/201).

The LCC has held that full participation by Lithuania, as a Member State, in the EU is a constitutional imperative based on the expression of the sovereign will of the Nation; full membership by Lithuania in the EU is a constitutional value (the Constitutional Court's ruling of 24 January 2014, its decision of 16 May 2016, and its ruling of 14 December 2018); the constitutional imperative of full participation by Lithuania in the EU also implies the constitutional obligation of Lithuania to properly implement the requirements of EU law (The Constitutional Court of the Republic of Lithuania. Decision of 20 December 2017, No. KT21-S11/2017 and ruling of 14 December 2018, No. KT22-N12/2018).

As mentioned, the Lithuanian Constitution defines marriage as a free union between a man and a woman. This definition enjoys constitutional status and can be amended only by a referendum or a special constitutional procedure; it cannot be modified by ordinary legislation or judicial interpretation<sup>26</sup>. Marriage, therefore, remains a formal legal institution tied to the union of opposite-sex partners.

The LCC stated that the Constitution does not define “family” exclusively through “marriage”. In the extensive jurisprudence, the Constitutional Court has held that a family is characterised by substantive elements: a permanent emotional attachment, mutual respect and responsibility, a joint household, and the upbringing of children. Those elements may exist in relationships outside a formally registered marriage. The Court noted that the constitutional protection of family life is gender-neutral and must extend to all relationships that exhibit these characteristics<sup>27</sup>.

The LCC stressed that recognising a same-sex family for the limited purpose of migration does not alter the constitutional definition of marriage. Lithuania remains free to regulate marriage in accordance with its Constitution, and the decision does not oblige the State to register same-sex marriages or partnerships. However, it requires public authorities to protect and respect family life in various forms<sup>28</sup>. This interpretation reconciles the preservation of the traditional institution of marriage with the protection of human dignity and equality for all family arrangements.

It should be noted that some legal researchers have raised criticism that an increasingly broad separation of the concept of “family” from marriage may lead to the normative relativisation of the latter institution. Some Lithuanian authors argue that such a development, grounded in the prioritisation of individual autonomy, risks weakening marriage’s protective function as a constitutionally safeguarded social structure vis-à-vis the state and the market. Within national constitutional doctrine, doubts have likewise been expressed as to whether an overly expansive interpretation of the family concept may

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<sup>26</sup> *Lietuvos konstitucinė teisė*, eds. V. Sinkevičius et al., MRU, 2017, p. 263.

<sup>27</sup> A. Limantė, *Stiprėjantis tos pačios lyties asmenų šeiminių santykių teisinis pripažinimas Europoje*, “Teisės Problemos” 2019, vol. 1(97), p. 38.

<sup>28</sup> The Constitutional Court of the Republic of Lithuania, Ruling of 11 January 2019. No. KT19-N4/2025.

lose its connection to the constitutional logic of family formation and to the protection of family as an autonomous constitutional value<sup>29</sup>.

These concerns are reinforced by scholars from other jurisdictions, who question whether such an interpretative expansion is consistent with the intent of Art. 16 of the Universal Declaration of Human Rights, which recognises the family as the natural and fundamental unit of society<sup>30</sup>.

Taken together, these critical observations demonstrate that, in the context of EU law, the relationship between family and marriage remains not only a matter of legal compatibility, but also one of normative balance. This balance requires Member States to reconcile non-discrimination imperatives with the stability of constitutionally protected family models.

Also, the LCC addressed the conditions under which the right to family life may be restricted. Both the Lithuanian Constitution and international human rights instruments recognise the right to respect for private and family life. However, this right is not absolute; restrictions may be imposed for legitimate aims such as the protection of national security, public order, or public health. Any restriction must, however, satisfy the test of proportionality: it must pursue a legitimate aim, be appropriate and necessary to achieve that aim, and be the least restrictive means available<sup>31</sup>.

The Court emphasised that discrimination based on sexual orientation or gender identity can never constitute a legitimate aim. Public authorities cannot rely on prevailing social stereotypes, moral disapproval or the preferences of the majority to justify restrictions on family life. Lithuanian institutions must therefore avoid discriminatory practices and ensure that objective and proportionate considerations justify any restrictions on the right to family life. According to the LCC judge, prof. dr. V. Mizaras, the Court emphasises that democracy does not equate to unconditional majority rule; it requires

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<sup>29</sup> V.A. Vaičaitis, *Ar Konstitucijoje numatyta šeimos kūrimo samprata prieštarauja Konstitucijai? (2024 m. gruodžio 18 d. Konstitucinio Teismo nutarimo komentaras)*. Teisė.pro, 30 December 2024, <https://www.teise.pro/index.php/2024/12/30/v-a-vaicaitis-ar-konstitucijoje-numatyta-seimos-kurimo-samprata-priestarauja-konstitucijai-2024-12-18-d-konstitucinio-teismo-nutarimo-komentaras> (10.12.2025).

<sup>30</sup> J. Lewis, *Rewriting the Family: How Modern Ideologies Collide with Human Rights Law*. JURIST, 2025 <https://www.jurist.org/commentary/2025/12/rewriting-the-family-how-modern-ideologies-collide-with-human-rights-law> (10.12.2025).

<sup>31</sup> A. Limantė, *op.cit.*, p. 39.

balancing to protect minorities and prevent abuses of dominance. The state has a positive duty to ensure effective human rights protection, particularly for vulnerable groups that hold unpopular views or belong to social minorities<sup>32</sup>.

This approach aligns with the ECtHR, which holds that while states need not legalise same-sex marriage, they must provide adequate legal protection for such couples and avoid discrimination based on sexual orientation, as otherwise Art. 8 and 14 of the Convention are breached<sup>33</sup>.

The fourth argument concerned the EU's free movement right. Drawing on Art. 21 TFEU, Directive 2004/38/EC, the Universal Declaration of Human Rights, and the CJEU's *Coman* ruling, the Court held that authorities cannot deny a residence permit solely because the spouses are of the same sex, as this would be discriminatory and violate free movement. The Court also underlined that granting such permits does not oblige Lithuania to register same-sex marriages domestically, but the state may not hinder family reunification for migration purposes.

The Constitutional Court's 2019 ruling had a significant impact on the Lithuanian legal system and practice. First, it established a legal basis requiring Lithuania to issue temporary residence permits to same-sex spouses and partners whenever one is a Lithuanian citizen or a lawful resident of the country. This means that the Migration Department and other institutions must apply the Law on the Legal Status of Aliens in a manner consistent with EU law and the LCC's jurisprudence on the concept of family.

Secondly, the ruling made clear that Lithuania is not obliged to register same-sex marriages. The Court stressed that, under the Constitution, marriage remains a union between a man and a woman, and the state retains discretion to determine whether to recognise partnerships or other family forms in domestic law.

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<sup>32</sup> V. Mizaras, *Konstitucija kaip siekio būti laimingesniais garantija: Konstitucinio Teismo nutarimas dėl tos pačios lyties sutuoktinio pripažinimo šeimos nariu*, <https://www.teise.pro/index.php/2019/01/15/v-mizaras-konstitucija-kaip-siekio-buti-laimingesniais-garantija-konstitucinio-teismo-nutarimas-del-tos-pacios-lyties-sutuoktinio-pripazinimo-seimos-nariu> (10.12.2025).

<sup>33</sup> For example, the European Court of Human Rights cases *Schalk and Kopf v. Austria* (judgment of 24 June 2010, application no. 30141/04), *Vallianatos and Others v. Greece* (judgment of 7 November 2013, application nos. 29381/09 and 32684/09), *Orlandi and Others v. Italy* (judgment of 14 December 2017, application no. 26431/12).

Thirdly, the ruling spurred debate on legalising civil partnership. Although the Constitutional Court did not alter the definition of marriage, it noted that the constitutional understanding of family protection permits alternative forms, such as partnerships or civil unions. Such forms would offer legal recognition and protection to persons who cannot marry but live together and share responsibilities. Partnership bills have been submitted to the Seimas several times, but by the end of 2025, none had been adopted, mainly because of political disagreement and divergent public opinion<sup>34</sup>. Nonetheless, the court's decision and ongoing pressure from human rights advocates compel legislators to revisit the issue. It is worth noting that on 17 April 2025, the Constitutional Court adopted a ruling requiring the parliament to establish a legal mechanism to protect partners' rights and to create conditions for the official registration of partnerships<sup>35</sup>.

Finally, the ruling affirmed that Lithuanian constitutional law must align with EU citizenship rights and the CJEU's definition of "spouse" in *Coman*. The LCC held that EU citizens have the right to live with their same-sex spouses or partners, requiring authorities to issue temporary residence permits irrespective of the marriage form. Although this did not mandate legalising same-sex marriage domestically, it changed migration practice, removed discrimination, and stimulated debate on civil partnership. The ruling also affects residence registration, work permits and health insurance, obliging institutions to ensure effective protection for such families and reflecting a broader EU trend towards adapting national law to Union-level human rights standards.

Also worth noting is that the LCC did not examine EU citizenship and its content in detail in this ruling. However, in its constitutional jurisprudence, the Court has stated that EU citizenship does not alter the national institution of citizenship of any Member State, including that of the Republic of Lithuania. In relation to Lithuanian citizenship, EU citizenship is additive and supplementary, since one can be an EU citizen only if one holds the citizenship of a Member State of the EU – in this case, Lithuania. Consequently, in the

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<sup>34</sup> G. Navaitis, V. Gaidys, *Lietuvos gyventojų požiūris į tos pačios lyties porų šeimines teises. Sociologija. Mintis ir veiksmai*, Vilnius 2015, p. 8.

<sup>35</sup> The Constitutional Court of the Republic of Lithuania, Ruling of 17 April 2025, No. KT21-N5/2025.

case under consideration, applying the directive will neither change nor simplify the procedure for granting Lithuanian citizenship.

#### **IV. Conclusions**

This research demonstrates that although Member States retain sovereign authority to define the institution of marriage in accordance with their constitutional traditions, such autonomy cannot override the requirements of EU law, particularly the free movement rights derived from Art. 21 TFEU and Directive 2004/38/EC. In *Coman*, the Court of Justice established a gender-neutral interpretation of “spouse”, obliging all Member States to grant derived residence rights to same-sex spouses, while simultaneously emphasising that this obligation does not extend to the recognition of other family-related rights. This narrow scope is especially significant for Poland, as it exposes regulatory gaps and underscores the necessity of legislative reform that respects constitutional public order principles. By contrast, the Lithuanian Constitutional Court’s 2019 ruling demonstrates that constitutional identity and EU legal obligations can be reconciled by distinguishing the institution of marriage from a broader, gender-neutral concept of family and by grounding state duties in the principle of non-discrimination. Ultimately, EU jurisprudence and emerging national developments signal a gradual convergence toward minimum standards of family protection for mobile EU citizens, even as diverse national models of marital regulation persist.

As an EU Member State, Lithuania has developed legislation on partnerships. In Poland, discussions on this topic are initiated from time to time, but a lack of political consensus means that no legal action has been taken.

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