

***Coman Relu Adrian, Hamilton Robert Clabourn and
Association Accept***

v.

***General Inspectorate for Immigration and Ministry of
Home Affairs***

Before the Constitutional Court of Romania

**Written Supplementary Submissions on behalf of
the AIRE Centre (Advice on Individual Rights in
Europe),
the European Commission on Sexual Orientation Law
(ECSOL),
FIDH (Fédération Internationale des Ligues des Droits
de l'Homme),
ILGA-EUROPE (the European Region of the
International Lesbian, Gay, Bisexual, Trans and
Intersex Association) and
the International Commission of Jurists (ICJ)**

Interveners

July 2016

INTRODUCTION

1. The present written supplementary submissions are presented by the AIRE Centre (Advice on Individual Rights in Europe), the European Commission on Sexual Orientation Law (ECSOL), FIDH (Fédération Internationale des Ligues des Droits de l'Homme), ILGA-EUROPE (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) and the International Commission of Jurists (ICJ), hereinafter "the interveners".¹
2. In light of the recent judgment by the European Court of Human Rights in the case of *Taddeucci and McCall v. Italy* of 30 June 2016,² these submissions complement and supplement the interveners' original written submissions of 24 May 2016 in this case, in particular, those that focussed on the relevance of the case-law of the European Court of Human Rights to this Court's determination of the present case.

Supplementary submissions in light of the *Taddeucci* judgment

3. Most recently, and of particular relevance to this Court's determination of the present case, in *Taddeucci and McCall v. Italy*, the European Court of Human Rights considered the matter of the refusal by the Italian authorities to issue a residence permit. The applicants in the case, a male same-sex couple comprising an Italian and a New Zealand national, were unable to continue living together in Italy because the Italian authorities refused to grant a residence permit on family grounds to Mr McCall, the second applicant in the case, since Italy's immigration legislation did not allow unmarried partners to obtain a residence permit in these circumstances. The applicants had complained to the European Court of Human Rights, in particular, that the Italian authorities' refusal constituted discrimination based on sexual orientation.
4. The European Court of Human Rights found that the refusal to grant the applicants a residence permit on family grounds was unjustified discrimination and held that there had been a violation of Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life). In particular, the Court found that the circumstances of the applicants, an unmarried same-sex couple, could not be considered as comparable to that of an unmarried heterosexual couple. Since the applicants could neither marry nor – at the time of their complaint – otherwise obtain any other form of legal recognition of their situation in Italy, they could not qualify as "spouses" under domestic law. The Italian authorities' restrictive interpretation of "family member" had thus constituted, for same-sex couples, an insurmountable obstacle to obtaining a residence permit on family grounds. The Italian authorities had not adequately taken into account the applicants' personal circumstances, including, in particular, their inability to obtain any form of legal recognition of their relationship in Italy. In light of this, the European Court of Human Rights concluded that, by treating same-sex couples in the same way as unmarried heterosexual couples, the Italian authorities had violated the applicants' right not to be subjected to discrimination based on sexual orientation in the enjoyment of their rights under Article 8 of the Convention.
5. The interveners draw attention to two passages in the *Taddeucci* judgment of particular relevance to this Court's determination of the present case.
6. First, at para. 97, the Court held, "La Cour note également que le Gouvernement n'a contesté ni l'affirmation de l'ICJ, de l'ILGA-Europe et du NELFA selon laquelle il y aurait, au niveau mondial, une 'tendance significative' à traiter les partenaires de même sexe comme des 'membres de la famille' et à leur reconnaître le droit de vivre ensemble [...] ni l'analyse de droit comparé qui a conduit l'ECSOL à conclure à l'émergence d'un consensus européen selon lequel, en matière d'immigration, les unions entre personnes de même sexe tendent à être vues comme une 'vie familiale' [...] À cet égard, elle souligne qu'il ressort des 'documents européens pertinents' [...] que tant le Parlement européen que l'Assemblée parlementaire du

¹ See Annex 1 for a description of each of the organizations.

² [Taddeucci and McCall v. Italy](#), no. 51362/09, judgment of 30 June 2016, hereinafter "*Taddeucci*".

Conseil de l'Europe ont jugé problématique une interprétation restrictive, par les États membres, de la notion de 'membre de la famille' dans le domaine de l'immigration."³

7. Second, in his Concurring Opinion, Judge Spano, joined by Judge Bianku, underscored (para. 3 of the Concurring Opinion) that "[t]he judgment does nothing more than require Italy to take due account of the existence of a serious and stable same-sex relationship in this specific context. The Court thus firmly rejects the argument that States can legitimately invoke the concept of the 'traditional family' as a basis for denying a request for a residence permit made by a foreign national who is in a relationship with a citizen of the same sex."
8. The interveners submit that the European Court's findings and conclusions in the *Taddeucci* judgment are in accordance with their original submissions, both in respect of EU law and insofar as the case-law of the European Convention on Human Rights is concerned. Indeed, with *Taddeucci*, the European Court has taken another opportunity to reiterate, in the words of Judge Spano in his Concurring Opinion, that "the fundamental principle of human dignity, which is one of the cornerstones of Article 8 of the Convention, guarantees to each and every individual the right to found a family with whomever they choose, irrespective of their sexual identity or sexual orientation" (para. 4 of Spano's Concurring Opinion).

³ The *Taddeucci* judgment is only available in French. The interveners have provided the following unofficial translation of the above-cited passage: "The Court also notes that the Government has not disputed either the claim of the ICJ, ILGA-Europe and NELFA according to which it exists, globally, a 'significant trend' to treat partners of the same sex as 'family members' and to recognize their right to live together [...] or the comparative law analysis that has led ECSOL to conclude that a European consensus is emerging according to which, in the immigration context, same-sex partner unions tend to be viewed as constituting 'family life' [...] In this regard, the Court underlines that the 'relevant European documents' [...] demonstrate that both the European Parliament and the Parliamentary Assembly of the Council of Europe have deemed problematic a restrictive interpretation by Member States of the notion of 'family member' in the immigration context."

Annex I: the interveners

1. The **AIRE Centre** founded in 1993 is a charity and specialist law centre whose mission is to promote awareness of EU and ECHR rights and to assist marginalised individuals and those in vulnerable circumstances in asserting those rights. The Centre has two main areas of activity: litigating cases before the European Courts and providing free specialist legal advice to individuals and other lawyers and advisers on European law. The vast majority of that advice (approximately 600 cases per year) involves advice on the law relating to the free movement of EU citizens within the EU. The AIRE Centre also trains judges, public officials, lawyers and non-governmental organisations across Europe on fundamental rights and matters of European law. The AIRE Centre work in this field has also included expert advice to the European Commission and speaking at academic seminars across Europe on the subject of human rights law.
2. **ECSOL** (<http://www.sexualorientationlaw.eu>), founded in 2004 and based in Vienna, is a non-governmental and non-political network of legal experts from across Europe, covering all Council of Europe member states. Its mission is to strengthen research partnerships and to promote equality and legal recognition for LGBT individuals and same-sex couples in Europe. Its 54 members (at least one expert per member state) have a range of professional backgrounds: they include legal academics, practising lawyers, judges, and legal professionals working in governmental and non-governmental organisations. They regularly exchange information on important legal developments at the national, European and international levels. ECSOL is a member of the Fundamental Rights Platform of the Fundamental Rights Agency of the EU.
3. **FIDH** (<http://www.fidh.org>), founded in 1922 and based in Paris, is an international human rights non-governmental organisation bringing together 178 national human rights organisations from 120 countries. FIDH's mandate is to defend all human rights enshrined in the Universal Declaration of Human Rights, including the right to private and family life and the right to not be discriminated against. FIDH is involved in strategic litigation before national courts (France, Guinea Conakry, Ivory Coast, etc), regional courts and bodies (African Commission and Court on Human and Peoples' Rights, Inter-American Court of Human Rights, European Committee of Social Rights, European Court of Human Rights) and international/ised courts (International Criminal Court, Extraordinary Chambers in the Courts of Cambodia).
4. **ILGA EUROPE** (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association: <http://www.ilga-europe.org>), founded in 1996 and based in Brussels, seeks to defend at European level the human rights of those who face discrimination on the grounds of sexual orientation, gender identity, or gender expression. It was granted consultative status with the Council of Europe in 1998 and with the United Nations Economic and Social Council in 2006. Its membership consists of over 400 non-governmental organisations across the Council of Europe countries, whose members are mainly lesbian, gay, bisexual, transgender or intersex individuals. ILGA-Europe has intervened in a number of cases before the European Court of Human Rights and national high courts concerning rights of LGBTI people.
5. The **International Commission of Jurists** (ICJ, www.icj.org) is an international non-governmental organization (NGO) working to advance understanding and respect for the rule of law as well as the protection of human rights throughout the world. It was set up in 1952 and has its headquarters in Geneva, Switzerland. It is made up of some 60 eminent jurists representing different justice systems throughout the world and has national sections and affiliated organizations in all regions of the world. The ICJ holds consultative status at the Council of Europe, the United Nations Economic and Social Council, the United Nations Educational, Scientific and Cultural Organization and the African Union. The ICJ also cooperates with various bodies of the Organization of American States and the Inter-Parliamentary Union. Alone and jointly with other NGOs, the ICJ has intervened in numerous cases before the European Court of Human Rights and domestic courts, including before the Grand Chamber of the European Court of Human Rights in the case of *Vallianatos and Others v. Greece*.