



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 02/18

Luxembourg, 11 January 2018

Advocate General's Opinion in Case C-673/16
Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and
Others

According to Advocate General Wathelet, the term 'spouse' includes, in the light of the freedom of residence of citizens of the EU and their family members, spouses of the same sex

Although Member States are free to authorise marriage between persons of the same sex or not, they may not impede the freedom of residence of an EU citizen by refusing to grant his or her spouse of the same sex, a national of a non-EU country, a right of permanent residence in their territory

Mr Coman, a Romanian national, and Mr Hamilton, a US national, cohabited for four years in the United States before marrying in Brussels in 2010. In December 2012, Mr Coman and his spouse requested the Romanian authorities to issue them with the necessary documents in order to enable Mr Coman to work and reside permanently in Romania with his spouse. That request was based on the directive on the exercise of freedom of movement,¹ which permits a spouse of an EU citizen who has exercised that freedom to join his or her spouse in the Member State where the latter resides.

However, the Romanian authorities refused to grant Mr Hamilton that right of residence on the ground, inter alia, that he could not be classified in Romania as the 'spouse' of an EU citizen, that Member State not recognising same-sex marriage.

Mr Coman and Mr Hamilton then brought an appeal before the Romanian courts challenging the decision of the Romanian authorities. Hearing a plea of unconstitutionality raised in the context of that dispute, the Curtea Constituțională (Constitutional Court, Romania) asks the Court of Justice whether Mr Hamilton, as the spouse of an EU citizen having exercised his freedom of movement, must be granted a right of permanent residence in Romania.

In his Opinion delivered today, Advocate General Melchior Wathelet states, first of all, that **the legal issue at the centre of the dispute is not that of the legalisation of same-sex marriage, but that of the free movement of EU citizens**. While Member States are free to provide for marriage between persons of the same sex in their domestic legal system or not, they must fulfil their obligations under the freedom of movement of EU citizens.

Next, the Advocate General finds that the directive makes no reference to Member State law in order to determine the nature of 'spouse', even though **that concept must be interpreted autonomously and uniformly throughout the EU**. In that regard, the Advocate General points out that the term 'spouse' within the meaning of the directive refers to a relationship based on marriage **while nevertheless being neutral as to the sex of the persons concerned and indifferent as to the place where that marriage was contracted**. In that context, the Advocate General considers that, in view of the general evolution of the societies of the Member States of

¹ 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34).

the EU in the last decade in the area of authorisation of same-sex marriage,² the case-law of the Court³ whereby 'according to the definition generally accepted by the Member States, the term marriage means a union between two persons of the opposite sex' can no longer be followed.

The Advocate General also notes that the concept of 'spouse' is necessarily linked to family life, which is protected in an identical manner by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (ECHR).⁴ In that regard, the Advocate General recalls that the European Court of Human Rights (ECtHR) has recognised that same-sex couples, first, can enjoy a family life⁵ and, second, must be afforded the possibility of obtaining legal recognition and protection of their unions.⁶ Moreover, the ECtHR also considered that, in the area of family reunification, **the objective of protecting the traditional family cannot justify discrimination on grounds of sexual orientation.**⁷

In those circumstances, the Advocate General is of the opinion that **the concept of 'spouse' within the meaning of the directive also includes spouses of the same sex. Accordingly, such a person may also reside on a permanent basis in the territory of the Member State in which his or her spouse is established as an EU citizen after exercising his or her freedom of movement.** That conclusion also applies in respect of that citizen's country of origin, when he returns there after residing on a permanent basis in another Member State in which he has developed or consolidated a family life, as Mr Coman has done with Mr Hamilton in the present case.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher 📞 (+352) 4303 3355

Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" 📞 (+32) 2 2964106

² Marriage between persons of the same sex is currently authorised in 13 EU Member States. Pursuant to the judgment of the Austrian Constitutional Court of 4 December 2017 (G 258-259/2017-9), it will also be authorised in Austria by 1 January 2019 at the latest.

³ Case: [C-122/99 P](#) and [C-125/99 P](#) D and Sweden v Council.

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950.

⁵ See judgment of the ECtHR of 24 June 2010, Schalk and Kopf v Austria, paragraph 94.

⁶ See judgment of the ECtHR of 21 July 2015, Oliari and Others v Italy, paragraph 185.

⁷ See judgment of the ECtHR of 30 June 2016, Taddeucci and McCall v Italy, paragraph 93.