



Press and Information

Court of Justice of the European Union

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Judgment in Case C-673/16

Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others

The term ‘spouse’ within the meaning of the provisions of EU law on freedom of residence for EU citizens and their family members includes spouses of the same sex

Although the Member States have the freedom whether or not to authorise marriage between persons of the same sex, they may not obstruct the freedom of residence of an EU citizen by refusing to grant his same-sex spouse, a national of a country that is not an EU Member State, a derived right of residence in their territory

Mr Relu Adrian Coman, a Romanian national and Mr Robert Clabourn Hamilton, an American national, lived together in the United States for four years before getting married in Brussels in 2010. In December 2012, Mr Coman and his husband contacted the Romanian authorities to request information on the procedure and conditions under which Mr Hamilton, in his capacity as a member of Mr Coman’s family, could obtain the right to reside lawfully in Romania for more than three months. That request was based on the directive on the exercise of freedom of movement,¹ which allows the spouse of an EU citizen who has exercised that freedom to join his husband in the Member State in which the husband is living.

In response to that request, the Romanian authorities informed Mr Coman and Mr Hamilton that the latter only had a right of residence for three months, on the ground, in particular, that he could not be classified in Romania as a ‘spouse’ of an EU citizen as that Member State does not recognise marriage between persons of the same sex (‘homosexual marriage’).

Mr Coman and Mr Hamilton therefore brought an action before the Romanian courts seeking a declaration of discrimination on the ground of sexual orientation as regards the exercise of the right of freedom of movement within the EU. Asked to rule on an objection of unconstitutionality, raised in those proceedings, the Curtea Constituțională (Constitutional Court, Romania) has asked the Court of Justice whether Mr Hamilton may be regarded as the ‘spouse’ of an EU citizen who has exercised his right to freedom of movement, and must therefore be granted a permanent right of residence in Romania.

By today’s judgment, the Court observes, first of all, that the directive on the exercise of freedom of movement governs only the conditions determining whether an EU citizen can enter and reside in Member States other than that of which he is a national and does not confer a derived right of residence on nationals of a non-EU State who are family members of an EU citizen in the Member State of which that citizen is a national. The directive cannot therefore confer a derived right of residence on Mr Hamilton in the Member State of which Mr Coman is a national, namely Romania. The Court nonetheless observes that, **in certain cases, nationals of non-EU states, family members of an EU citizen, who are not eligible, on the basis of the directive, for a derived right of residence in the Member State of which that citizen is a national, could be accorded such a right on the basis of Article 21(1) of the Treaty on the Functioning of the EU** (a

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the EU 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; corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

provision which confers directly on EU citizens the primary and individual right to move and reside freely within the territory of the Member States).

The Court goes on to state that the conditions under which such a derived right of residence may be granted must not be stricter than those laid down by the directive for the grant of a derived right of residence to a national of a non-EU state who is a family member of an EU citizen having exercised his right of freedom of movement by settling in a Member State other than that of which he is a national. The directive must be applied, by analogy, to that situation.

The Court notes that, in the directive on the exercise of freedom of movement the term 'spouse', which refers to a person joined to another person by the bonds of marriage, is gender-neutral and may therefore cover the same-sex spouse of an EU citizen. Nevertheless, the Court states that a person's status, which is relevant to the rules on marriage, is a matter that falls within the competence of the Member States, and EU law does not detract from that competence, the Member States being free to decide whether or not to allow homosexual marriage. The Court also observes that the EU respects the national identity of the Member States, inherent in their fundamental structures, both political and constitutional.

The Court nonetheless considers that the refusal by a Member State to recognise, for the sole purpose of granting a derived right of residence to a national of a non-EU state, the marriage of that national to an EU citizen of the same sex lawfully concluded in another Member State may interfere with the exercise of that citizen's right to move and reside freely within the territory of the Member States. That could have the effect that freedom of movement from one Member State to another would vary depending on whether or not provisions of national law allow marriage between persons of the same sex.

That said, the Court notes that freedom of movement for persons may be subject to restrictions independently of the nationality of the persons concerned, if the restrictions are based on objective public-interest considerations and are proportionate to a legitimate objective pursued by national law.

In that regard, public policy, which is put forward in the present case as justification for restricting the right to freedom of movement, must be interpreted strictly, with the result that its scope cannot be determined unilaterally by each Member State without any control by the EU institutions. **The obligation for a Member State to recognise a homosexual marriage concluded in another Member State in accordance with the law of that state, for the sole purpose of granting a derived right of residence to a national of a non-EU state, does not undermine the institution of marriage in the first Member State. In particular, that obligation does not require that Member State to provide, in its national law, for the institution of homosexual marriage.** Moreover, an obligation to recognise such marriages, for the sole purpose of granting a derived right of residence to a national of a non-EU state, does not undermine the national identity or pose a threat to the public policy of the Member State concerned.

Lastly, the Court observes that a national measure that is liable to obstruct the exercise of freedom of movement for persons may be justified only where such a measure is consistent with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union. The fundamental right to respect for family and private life being guaranteed by Article 7 of the Charter, the Court notes that it is also apparent from the case-law of the European Court of Human Rights that the relationship of a homosexual couple may fall within the notion of 'private life' and that of 'family life' in the same way as a relationship of a heterosexual couple in the same situation.

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 European Union 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.

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

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