



Opinion of the Advocate General at the Court

Laila Medina

in Case C-449/25 | Serviciul pentru Imigrări al județului Bihor (Civil partnership)

Press release No 129/26

Luxembourg, 17 September 2026

Advocate General Medina: the exercise of the freedom of movement alone, without establishing a genuine residence in another Member State, is not sufficient to give rise to a derived right of residence under EU law for a partner of a Union citizen who is a third-country national

A refusal to grant a derived right of residence by a Member State is outside the scope of citizenship provisions of EU law where the EU citizen has never lived in the Member State where the civil union was concluded, and where no dependency relationship exists with the third-country partner

In 2024, a Romanian citizen travelled to Italy for the sole purpose of entering into a civil union with her British partner. The Romanian citizen returned to Romania shortly thereafter. At the time, the two of them were residing in Romania and Australia, respectively, and neither of them resided in Italy. Six months later, in 2025, her partner, the British citizen, entered Romania to live there. Approximately three months after her arrival, she applied for an extension of her right of temporary residence in Romania for the purposes of family reunification. That application was refused on the grounds that Romanian law does not recognise civil unions between persons of the same sex and that the British citizen did not satisfy the conditions laid down by Romanian legislation governing family reunification.¹ She challenged the return decision before the referring court, the Court of Appeal Oradea (Romania). That court asked the Court of Justice whether Article 21(1) TFEU precludes Romania from refusing to grant a right of residence to a third-country national with whom that Union citizen has entered into a civil union under the law of another Member State in which neither of them has resided, on the grounds that Romanian law does not recognise civil partnerships between persons of the same sex.

In her Opinion delivered today, **Advocate General Laila Medina proposes that the Court of Justice should declare that the situation at issue does not fall within the scope of the citizenship provisions of the Treaty, namely Articles 20 and 21(1) TFEU.**

As regards Article 21(1) TFEU, the Advocate General recalls that **this provision confers a right of free movement on EU citizens** and that **any residence right of a third-country family member is derived** from that exercised freedom. The Advocate General also stresses that the factual elements of the case amount to a situation where, after having exercised free movement rights, a Union citizen returns to the Member State of nationality and seeks to rely on those rights in order to obtain a right of residence for the partner who is a third-country national (**'U-turn' situation**). Even though **Directive 2004/38 does not cover such 'U-turns'**, the conditions for granting a derived right of residence in the host Member State to a third country national, who is a family member of the Union citizen, **should apply by analogy**, given that in both cases it is the Union citizen who had exercised the free movement right and is the sponsor for such a derived right.

For a derived right of residence to arise under EU law in a 'U-turn' situation, two cumulative conditions must be satisfied. First, the Union citizen must have genuinely resided in another Member State in accordance with the conditions laid down in Article 7 or Article 16 of Directive 2004/38. Second, family life must have been created or strengthened during that genuine residence.

In the present case, since the Romanian citizen did not establish a genuine residence in Italy – the Member State where the

civil union with the British citizen was concluded – and travelled to Italy with the sole purpose of entering into a civil union, which was followed by an immediate return to Romania, **the requirement of 'genuine residence' under Articles 7 and 16 of Directive 2004/38 is not satisfied.**

Further, **no family life was created or strengthened in Italy** within the meaning established in O. and B.² At the time of the entry into civil union, the Romanian citizen was domiciled in Romania and her partner was domiciled in Australia, and the partner arrived in Romania only approximately six months later. No shared family life was therefore lived in Italy at any point. Therefore, **the second cumulative condition is equally not satisfied.** While the conclusion of a civil union is a legally significant act, it is not equivalent to having lived as a family in the host Member State.

As regards Article 20 TFEU, the Advocate General notes that there is **no relationship of dependency that is recognised in the Court's case-law between the Romanian citizen and her partner.** The threshold established in that case-law,³ requiring that a refusal of residence would compel the Union citizen to leave the territory of the EU as a whole, is not met in the present case.

The Advocate General thus concludes that the **Charter of Fundamental Rights does not apply in this matter**, because the situation falls outside the scope of EU law; any protection of the applicant's right to family life must accordingly be pursued under the European Convention on Human Rights.

Therefore, the Advocate General proposes that the Court answer that Article 20 and Article 21(1) TFEU, read in conjunction with Directive 2004/38 applied by analogy, must be interpreted as not precluding the authorities of the Member State of which a Union citizen is a national from refusing to grant a right of residence in the territory of that Member State to a third-country national with whom that Union citizen has entered into a civil union under the law of another Member State, on grounds of non-recognition of civil unions between persons of the same sex by the Member State of nationality.

For completeness, in the event that the Court were to find EU law applicable, the Advocate General outlines an alternative analysis. The Romanian provisions requiring proof of prior residence in another Member State, imposing a requirement of having a common child, and altogether refusing recognition of foreign same-sex civil partnerships would, in that scenario, appear incompatible with EU law.

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 of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, 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 Opinion is published on the CURIA website on the day of delivery.

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¹ Article 83(1) and Article 88(1) and (3)(b) of Government Emergency Order No 194/2002.

² Judgement of 12 March 2014, *O. and B.*, [C-456/12 and C-457/12](#) (see also Press Release [No 32/14](#)).

³ See, for example, judgment of 8 March 2011, *Ruiz Zambrano*, [C-34/09](#) (see also Press Release [No 16/11](#)).