Freedom of movement and same-sex couples in Romania – coman case update

News, Civil Rights and Freedom, Legal Protection, Coman Case, Family, Romania

> Same-sex spouses are included in the definition of 'spouse', for the purposes of freedom of residence of citizens of the EU and their family members. This is the opinion of the Advocate General assigned to examine questions on the right to free movement of EU citizens raised by Adrian Coman and his husband Clai Hamilton.

In this morning's press release, Advocate General Wathelet clearly notes that while EU Member States are free to decide on their own marriage legislation, they may not impede an EU citizen's freedom of residence by refusing to grant their same-sex spouse residence.

ILGA-Europe are excited by today's announcement. As third party interveners in the Coman case at national level, ILGA-Europe have been following developments in this case every step of the way, receiving regular updates from our member organisation ACCEPT Association.

The points raised by the Advocate General's opinion are very encouraging. This also marks another important milestone for Adrian Coman and Clai Hamilton. They are now one step closer to an answer, potentially one step closer to protection for their own family and one step closer to clarity for lots more rainbow families.

Who are Adrian and Clai?

Adrian Coman (born in Romania) and Clai Hamilton (a US citizen) were married in Belgium in 2010 but are not recognised as a family by the Romanian authorities. The couple have not been able to live together in Romania as a result and began legal action over five years ago to rectify this.

In 2016, the Romanian Constitutional Court referred the case to the Court of Justice of the European Union, and on 21 November 2017, the Grand Chamber composed of 15 CJEU judges held a public hearing. The Court was being asked to interpret the word "spouse" in the context of EU law on freedom of movement.

Romania currently sits at 35th in the Rainbow Europe ranking on law and policy.

What is an Advocate General and what does today's announcement mean?

The 11 Advocates General are independent legal advisers who assist the CJEU's judges. Their role is an advisory, but influential, one. They take a detailed look at the legal aspects of the case assigned to them, analyse the problem and suggest a solution.

Their impartial advice, called an 'opinion', is not legally binding. (As a result, the court does not have to follow their advice and may issue a decision that differs from what the AG suggests today.) This marks the end of the oral hearing stage of the Coman case. Now, the judges will deliberate before issuing their final decision.

When will the final decision be made?

At this point, there is no set timetable for when the judgment in the case will be delivered; however, ACCEPT Association and the legal team supporting the Coman Hamilton family have noted that these particular proceedings have been dealt with quite promptly to date and expect a decision in spring 2018.

How has the opinion been received?

ACCEPT Association has noted "…*the Advocate General's Opinion supports all the arguments ACCEPT and the plaintiffs have put forward to European judges*…" and Adrian Coman remarked that "…*we can no longer be treated as inferior citizens without equal rights on the basis of the prejudices that some people have about homosexuality*."

- For more reaction from member organisation ACCEPT, Adrian, Clai and their legal team, read their latest statement here.

- The Advocate General's opinion has also been published in full on the Court's website.
- The initial press release on the opinion is available in PDF format here.
- Video footage (in FR) from the CJEU is available via the European Commission's audiovisual services.