



Global Employer Services Immigration

Advocate-General's ground-breaking opinion on free movement of same-sex couples in Europe

On 11 January 2018, Advocate-General Wathelet published a ground-breaking opinion in the *Coman* case before the Court of Justice of the European Union (CJEU) in Luxembourg. As a result, same-sex spouses in Europe would have the same unrestricted free movement rights as heterosexual couples. In most cases, the Court follows the Advocate-General's opinion.

Mr. Coman and Mr. Hamilton

Mr. Coman, a Romanian national, met his partner Mr Hamilton in the US, where they lived together for several years before moving to Brussels, where they got married. Several years later, they moved to Romania. However, Mr. Hamilton was denied residency rights as a "spouse", a right that heterosexual spouses can claim based on the European Citizenship directive.

How the rules are currently applied

To date, a married same-sex partner was not considered a spouse (article 2) but "a partner with whom the Union citizen has a durable relationship that is duly attested" (article 3).

This means that Member States can facilitate the free movement of these "partners", however, without any

obligation for a Member State to do so unless that Member State also recognises same-sex marriages.

Since Romania does not recognise same-sex marriages, this means that Mr. Hamilton could be refused residency rights.

The Advocate-General's opinion

According to Advocate-General Wathelet, married same-sex couples should fall within the scope of article 2 (and not article 3). The word "spouse" is gender-neutral and indifferent to the location where the marriage was certified.

What does this mean?

If the CJEU confirms this approach, married same-sex couples would be able to move freely and without administrative worries to every EU Member State, regardless of whether same-sex marriage is allowed in that Member State.

It should be noted that the above is only applicable to same-sex marriages and not same-sex partnerships.

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