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Press and Information

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Judgment of the Court of Justice in Case C-267/06

Tadao Maruko v Versorgungsanstalt der deutschen Bühnen

A LIFE PARTNER OF THE SAME SEX MAY BE ENTITLED TO A SURVIVOR'S PENSION UNDER AN OCCUPATIONAL PENSION SCHEME

The national court must determine whether a surviving life partner is in a situation comparable to that of a spouse who is entitled to the survivor's pension at issue

In 2001, under the relevant German law¹, Mr Maruko entered into a registered life partnership with a designer of theatrical costumes. Since 1959 Mr Maruko's partner had been a member of the Versorgungsanstalt der deutschen Bühnen, the institution responsible for managing old-age insurance for theatrical professionals from the German theatres and the related survivors' benefits. Following the death of his life partner in 2005, Mr Maruko applied to the Versorgungsanstalt for a widower's pension. His application was rejected on the ground that the Versorgungsanstalt Regulations makes no provision for such an entitlement in the case of surviving life partners.

The Bayerisches Verwaltungsgericht München, the court which must rule on the action brought by Mr Maruko, referred to the Court of Justice of the European Communities the question whether refusal to grant a survivor's pension to a life partner constitutes discrimination prohibited by the directive on equal treatment in employment and occupation². The aim of that directive is to combat, inter alia, discrimination on grounds of sexual orientation.

Since, however, that directive does not cover social security and social protection schemes the benefits of which are not equivalent to pay within the meaning of Community law, the Court was asked to determine, first, whether the survivor's pension at issue can be classified as pay. On that point, the Court points out that the occupational pension scheme managed by the Versorgungsanstalt has its origin in a collective agreement on employment, the objective of which was to supplement the social security benefits payable under the national legislation of general scope. That scheme is funded exclusively by the workers and their employers, without any financial involvement on the part of the State.

¹ Gesetz über die eingetragene Lebenspartnerschaft (Law on registered life partnership) of 16 February 2001 (BGBl. 2001 I, p. 266), as amended by the Law of 15 December 2004 (BGBl. 2004 I, p. 3396).

² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Furthermore, the retirement pension by reference to which the survivor's pension is calculated concerns only a particular category of workers and, moreover, its amount is dependent on the period of the worker's membership and how much he has paid in contributions. The survivor's pension therefore derives from the employment relationship of the deceased partner and must therefore be classified as pay. That is why the directive applies.

As regards the question whether the refusal to pay the survivor's pension to the registered life partner constitutes discrimination on grounds of sexual orientation, the Court finds in the light of the order for reference that Germany, while reserving marriage solely to persons of different sex, has none the less established the life partnership, the conditions of which have gradually been made equivalent to those applicable to marriage. The provisions of the Versorgungsanstalt Regulations restrict entitlement to survivor's pensions to surviving spouses. That being the case, and since life partners are denied the pension, the latter are thus treated less favourably than surviving spouses.

Consequently, the Court rules that the refusal to grant the survivor's pension to life partners constitutes direct discrimination on grounds of sexual orientation, if surviving spouses and surviving life partners are in a comparable situation as regards that pension. It is for the Bayerisches Verwaltungsgericht München to determine whether that condition is satisfied.

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Languages available: BG CS DE EN ES EL FR HU IT NL PL PT RO SK SL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-267/06>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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