



Press and Information

Court of Justice of the European Union

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Judgment in Case C-147/08

Jürgen Römer v Freie und Hansestadt Hamburg

A supplementary retirement pension paid to a partner in a civil partnership, which is lower than that granted in a marriage, may constitute discrimination on grounds of sexual orientation

This is the case if the partnership is reserved to persons of the same gender and if it is in a legal and factual situation comparable to that of marriage

Jürgen Römer worked for the Freie und Hansestadt Hamburg (the City of Hamburg, Germany) as an administrative employee from 1950 until he became incapacitated for work on 31 May 1990. From 1969, he lived continuously with his companion, Mr U, with whom he entered into a civil partnership in accordance with the German Law of 16 February 2001 on registered life partnerships. Mr Römer informed his former employer of this by letter of 16 October 2001.

He subsequently requested a recalculation of the amount of his supplementary retirement pension on the basis of the more favourable tax category applicable to married pensioners. Accordingly, in September 2001, the amount of his monthly retirement pension would have been DEM 590.87 (€302.11) higher if the more favourable tax category had been taken into consideration in order to determine the amount. By letter of 10 December 2001, the City of Hamburg refused to apply the more favourable tax category in order to calculate the amount of his supplementary retirement pension, on the ground that only married, not permanently separated, pensioners and pensioners entitled to claim child benefit or an equivalent benefit are entitled to that advantage.

Since Mr Römer took the view that he is entitled to be treated as a married, not permanently separated, pensioner for the calculation of his pension and that that right results from Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation¹, he brought a case before the Arbeitsgericht Hamburg (Labour Court of Hamburg, Germany). That court has referred questions to the Court of Justice concerning the interpretation of the general principles and provisions of European Union law on discrimination on grounds of sexual orientation in employment and occupation.

In its judgment delivered today, the Court first notes that supplementary retirement pensions – such as that at issue in this case – fall within the scope of Directive 2000/78.

Next, the Court recalls, first, that a finding of discrimination on the grounds of sexual orientation requires that the situations in question be comparable in a specific and concrete manner in the light of the benefit concerned.

The Court points out in that regard that **the German Law on registered life partnerships established, for persons of the same gender, life partnership, having chosen not to permit those persons to enter into marriage**, which remains solely open to persons of different gender. According to the referring court, following the gradual harmonisation of the regime of registered life partnership with that of marriage, there is no longer, in the German legal system, any significant legal difference between those two types of status of persons. The main remaining difference is the

¹ 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).

fact that marriage presupposes that the spouses are of different gender, whereas registered life partnership presupposes that the partners are of the same gender.

In the present case, entitlement to the supplementary retirement pension presupposes not only that the partner is married, but also that he is not permanently separated from his spouse, since that pension aims to provide a replacement income to benefit the recipient and, indirectly, the persons who live with him. In that regard, the Court emphasises that **the German law on registered life partnerships provides that life partners have duties towards each other to support and care for one another and to contribute adequately to the common needs of the partnership** by their work and from their property, as is the case between spouses during their life together. Therefore, according to the Court, **the same obligations are incumbent on both registered life partners and married spouses.** It follows that **the two situations are thus comparable.**

Second, the Court observes that as regards the criterion of less favourable treatment on the grounds of sexual orientation, it is apparent that **Mr Römer's pension would have been increased if he had married instead of entering into a registered life partnership with a man.** In addition, the increased benefit is not linked to the income of the parties to the union, to the existence of children or to other factors such as those relating to the spouse's financial needs. In addition, the Court notes that the contributions payable by Mr Römer in relation to his pension were wholly unaffected by his marital status, since he was required to contribute to the pension costs by paying a contribution equal to that of his married colleagues.

Finally, as regards the effects of discrimination on the ground of sexual orientation, the Court indicates, first, that by reason of the primacy of European Union law, the right to equal treatment can be claimed by an individual against a local authority and it is not necessary to wait for that provision to be made consistent with that law by the national legislature. Second, the Court indicates that **the right to equal treatment can be claimed by an individual only after the time-limit for transposing the Directive, namely from 3 December 2003.**

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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