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Judgment of the Court in Case C-731/21 | Caisse nationale d'assurance pension

Cross-border workers are not required to have registered in Luxembourg a civil partnership (PACS) that was entered into in another Member State

The grant of a survivor's pension cannot be conditional upon such a registration taking place during the partners' lifetime

In December 2015, GV and her partner, French nationals residing in France and employees in Luxembourg, registered, in due and proper form, a joint declaration of a civil solidarity pact (PACS) with the tribunal d'instance de Metz (District Court, Metz, France). After GV's partner died in 2016 as a result of an accident at work, GV applied to the caisse nationale d'assurance pension (National Pension Insurance Fund, Luxembourg) for a survivor's pension. That application was refused on the ground that the PACS registered in France had not been recorded in the Luxembourg Civil Records Registry during the lifetime of the two contracting parties and that, consequently, it could not be relied on against third parties.

GV unsuccessfully challenged that decision before the conseil arbitral de la sécurité sociale (Social Security Arbitration Board), and subsequently before the conseil supérieur de la sécurité sociale (Higher Social Security Board (Luxembourg)). In September 2020, she brought an appeal before the Cour de cassation (Court of Cassation, Luxembourg).

The Court of Cassation asks the Court of Justice whether there is any indirect discrimination in so far as the obligation imposed by Luxembourg law on partners who have already registered their partnership in another Member State also to have it recorded in the Luxembourg Civil Records Registry in order to receive a survivor's pension affects cross-border workers in particular.

In today's judgment, the Court rules that Article 45 TFEU and Article 7 of Regulation (EU) No 492/2011, which aim to ensure equal treatment between workers, preclude legislation of a host Member State which provides that grant, to the surviving partner of a partnership that was validly entered into and registered in another Member State, of a survivor's pension due on account of the exercise, in the first Member State, of a professional activity by the deceased partner, is subject to the condition that the partnership was first recorded in the register kept by that State.

The Court notes that Luxembourg legislation lays down, with regard to a partnership that was entered into and registered in another Member State according to the relevant rules of that State, a condition to which a partnership entered into in Luxembourg is not subject. The latter partnership is automatically recorded in the Civil Records Registry by the Registrar before whom the partnership was declared.

According to the Court, **that legislation is liable to place nationals of other Member States at a disadvantage and establish unequal treatment indirectly based on nationality.**

The Court states that it obviously legitimate for a Member State to satisfy itself that a survivor's pension, financed

from public funds and paid to the surviving partner as a result of the death of the other partner caused by an accident at work, is paid only to a person who can prove that he or she was indeed the partner of the deceased worker. The Court states, however, that even though that registration is not obligatory but is optional, a refusal to grant a survivor's pension on the ground that the partnership on which the application for a pension is based was not registered in Luxembourg goes beyond what is necessary to obtain the objective pursued and thus infringes the principle of proportionality.

In order to ensure that a PACS can be relied on against third parties and to ensure compliance with the conditions for the grant of a survivor's pension, the Court finds that it would be **sufficient** to produce an **official document** issued by the competent authority of the Member State in which the partnership was registered.

The Court adds that, in any event, registration of the PACS in the Member State that is required to pay the survivor's benefits could still take place on the date of the application for those benefits.

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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