



24.10.2012

NOTICE TO MEMBERS

Subject: Petition 1025/2011 by Thorsten Kehrmann (German), on unequal treatment of homosexuals in Germany

1. Summary of petition

The petitioner is homosexual and plans to enter into a registered partnership with his life partner. The petitioner claims that, despite many court rulings, the German Government obstructs equal treatment of the registered partnership and traditional marriage. The petitioner argues that partners in both forms of cohabitation have the same obligations toward each other and that both should therefore be treated equally under the law. This is not the case in Germany, according to the petitioner, in particular with respect to tax law and adoption law. The petitioner alleges that the German State discriminates against homosexuals and that this is in contravention of EU law. He refers in this connection to the ruling of the European Court of Justice in Case C-147/08.

2. Admissibility

Declared admissible on 6 January 2012. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 20 April 2012

The Commission is aware of the fact that several Member States, e.g. Germany, provide in their national legal order for registered partnerships. In some of these Member States this institution is open exclusively for same-sex couples, whilst in others both same-sex as well as opposite-sex couples can enter into a registered partnership.

There is currently no EU legislation on registered partnerships or marriages, nor on their recognition. The definition and the content of registered partnerships and of marriages fall under the exclusive competence of the Member States.

The Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships¹, currently under negotiation, does not cover the recognition of registered partnerships, nor questions related to tax law or adoption. The concept of "registered partnership" is defined under its Article 2, point b) but only for the purposes of the Regulation. The actual substance of the concept is defined in the national laws of the Member States.

The petitioner refers to the ruling of the Court of Justice in case of J. Römer (C-147/08) concerning a request of a German citizen in a same-sex registered partnership to benefit from the same pension calculation system to which married employees are entitled. This case is related to non-discrimination in employment and occupation², notably as regards non-discrimination on grounds of sexual orientation and the right to a supplementary retirement pension to be paid to a registered partner. The Court has referred to an earlier judgment with similar questions³ and emphasized that in order to be entitled to benefit from the same pension rights as married couples the life partner has to be in a legal and factual situation comparable to that of a married person. It is then for the national court to assess the comparability, focusing on the respective rights and obligations of spouses and persons in a registered life partnership.

According to the referring court in the Römer case, Germany has created a separate regime for persons of the same sex (the "registered life partnership") and this regime has been gradually made equivalent to that of marriage.

Conclusion

At present, there is no EU law on registered partnerships. It is consequently for Member States alone to decide whether they provide in their national legal order for registered partnerships and/or other civil unions, including for same-sex couples.

It should be noted that the Court of Justice case to which the petitioner refers is related to retirement pension rights and not to rights under tax or adoption laws.

Considering the information provided by the petitioner and the above reasoning, the Commission cannot currently provide a more detailed reply. However, should the petitioner be able to provide the Petitions committee with any additional details, the Commission could then examine this issue further.

4. Commission reply (REV), received on 24 October 2012

¹ COM(2011) 127 final.

² Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

³ Case C-267/06 Maruko [2008], ECR I-1757.

In his latest correspondence, the petitioner brings to the attention of the Commission a judgement of the German Federal Constitutional Court of 18 July 2012. In this decision, the Court ruled that a different treatment of marriages and registered partnerships in the law related to real estate transfer tax violates the German Constitution as it discriminates registered partnerships by virtue of their sexual orientation.

However, this new information does not change the Commission's position.

Regarding the alleged violation of Article 21 (1) (non-discrimination) of the Charter of Fundamental Rights of the EU, the Commission would like to point out that according to Article 51 (1) of the Charter of Fundamental Rights of the EU, the provisions of the Charter are addressed to the institutions and bodies of the Union and to the Member States only when they are implementing Union law. This means that the Commission may only take action if an issue of EU law arises when the Member States are implementing EU law.

Moreover, as stated in the initial Commission communication, there is neither EU law on registered partnerships nor EU law related to real estate transfer tax between partners.

In that matter it is thus for Member States alone to ensure that their obligations regarding fundamental rights – as resulting from international agreements and from their internal legislation – are respected.

Therefore, the Commission cannot take action at EU level on the issues raised by the petitioner.