



## Legal Seminar – Enforcement of equality and anti-discrimination law 28 November 2014

### CASE STUDY

#### Workshop: Sexual orientation

A, a Belgian citizen, and B, a French citizen, are a same-gender couple legally married in Portugal and having resided in Spain for some years. Now they are moving to an EU-member-state which allows marriage only for different-gender-couples, provides no registered partnership, limits joint adoptions to married couples and does not recognize joint adoptions by same-gender couples abroad. This member-state provides no penal sanctions for discrimination, only financial compensations.

A is employed by a private company which provides an occupational pension scheme to its employees. This scheme is run by a pension fund. After five years of employment A asks the pension fund if B would be entitled to a survivor's pension. The fund denies and points to the fact that the national law of the respective member-state does not allow same-gender marriage. So its statutes restricting survivor's pensions to married couples only would grant such pensions just to opposite-gender-couples.

A goes to court and the court finds in favor of the pension fund saying that the couple is considered unmarried by the national law and therefore cannot qualify as "married" according to the fund's statute. The difference in treatment would be based on marital status and not on sexual orientation, thus not giving rise to discrimination under Directive 2000/78/EC. In addition, as regards compensation for non-pecuniary damage, the 3-years-period of limitation under national law would run from the conclusion of the employment contract and therefore already had expired anyway.

B is a mathematics teacher employed by a private school run by a church. When they find out about the same-sex relationship the school terminates the contract in accordance with the provisions of the employment contract. They declare that same-sex relations are a sin under their religion and unacceptable for school staff.

#### 1 Pension Fund

- a. Have A & B suffered discrimination under Directive 2000/78/EC by the denial of B's entitlement to a survivor's pension? If yes: direct or indirect discrimination?
- b. Would your finding be different if A & B were not married but in a registered partnership concluded in Germany?
- c. Would your finding be different if A & B were not married and neither in a registered partnership (so unmarried and unregistered)?
- d. Would your findings (to questions a., b. and c.) be different if A & B were both

- citizens of the host member-state?
- e. Would your findings be different if the benefit refused (by the employer) would not be entitlement to survivor's pension but a household allowance for the child legally jointly adopted by the couple in Spain?

## **2. Private School**

- a. Could the termination of the employment be justified under Directive 2000/78/EC?

## **3. Sanctions**

- a. Is the decision of the national court to apply the national 3-years-period of limitation in conformity with Directive 2000/78/EC?
- b. If you find discrimination in A. and B. above: would you award compensation for non-pecuniary damage? If yes, provide the Union law basis for it. How would you estimate the amount of compensation and which criteria would you apply for this assessment?