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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 10 May 2011 (reference for a preliminary ruling from the Arbeitsgericht Hamburg — Germany) — Jürgen Römer v Freie und Hansestadt Hamburg

(Case C-147/08) ⁽¹⁾

(Equal treatment in employment and occupation — General principles of European Union law — Article 157 TFEU — Directive 2000/78/EC — Scope — Concept of ‘pay’ — Exclusions — Occupational pension scheme in the form of a supplementary retirement pension for former employees of a local authority and their survivors — Method of calculating that pension favouring married recipients over those living in a registered life partnership — Discrimination based on sexual orientation)

(2011/C 194/02)

Language of the case: German

Referring court

Arbeitsgericht Hamburg

Parties to the main proceedings

Applicant: Jürgen Römer

Defendant: Freie und Hansestadt Hamburg

Re:

Reference for a preliminary ruling — Arbeitsgericht Hamburg — Interpretation of the principle of equal treatment, Article 141 EC, and Articles 1, 2, 3(1)(c) and (3) of and recital 22 in the preamble to 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) — Scope of the directive — Exclusion of payments of any kind made by state schemes or similar, including state social security or social protection schemes — Exclusion of national laws on marital status and the benefits dependent thereon — Occupational pension scheme in the form of a supplementary old-age pension for former employees of a local authority and their

survivors — Method of calculation of the pension more favourable to married beneficiaries than to those living in a registered civil partnership

Operative part of the judgment

1. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation is to be interpreted as meaning that supplementary retirement pensions such as those paid to former employees of the Freie und Hansestadt Hamburg and their survivors on the basis of the Law of the Land of Hamburg on supplementary retirement and survivors' pensions for employees of the Freie und Hansestadt Hamburg (Erstes Ruhegeldgesetz der Freien und Hansestadt Hamburg), as amended on 30 May 1995, which constitute pay within the meaning of Article 157 TFEU, do not fall outside the material scope of the Directive either on account of Article 3(3) thereof or on account of recital 22 in the preamble thereto;
2. Article 1 in conjunction with Articles 2 and 3(1)(c) of Directive 2000/78 preclude a provision of national law such as Paragraph 10(6) of that Law of the Land of Hamburg, under which a pensioner who has entered into a registered life partnership receives a supplementary retirement pension lower than that granted to a married, not permanently separated, pensioner, if
 - in the Member State concerned, marriage is reserved to persons of different gender and exists alongside a registered life partnership such as that provided for by the Law on registered life partnerships (Gesetz über die Eingetragene Lebenspartnerschaft) of 16 February 2001, which is reserved to persons of the same gender, and
 - there is direct discrimination on the ground of sexual orientation because, under national law, that life partner is in a legal and factual situation comparable to that of a married person as regards that pension. It is for the referring court to assess the comparability, focusing on the respective rights and obligations of spouses and persons in a registered life partnership, as governed within the corresponding institutions, which are relevant taking account of the purpose of and the conditions for the grant of the benefit in question

3. Should Paragraph 10(6) of the Law of the Land of Hamburg on supplementary retirement and survivors' pensions for employees of the Freie und Hansestadt Hamburg, as amended on 30 May 1995, constitute discrimination within the meaning of Article 2 of Directive 2000/78, the right to equal treatment could be claimed by an individual such as the applicant in the main proceedings at the earliest after the expiry of the period for transposing the Directive, namely from 3 December 2003, and it would not be necessary to wait for that provision to be made consistent with European Union law by the national legislature.

(¹) OJ C 171, 5.7.2008.

Judgment of the Court (First Chamber) of 5 May 2011 (references for a preliminary ruling from the Bundesfinanzhof (Germany) — Hauptzollamt Koblenz v Kurt Etling, Thomas Etling (C-230/09), Hauptzollamt Oldenburg (C-231/09) v Theodor Aissen, Hermann Rohaan

(Joined Cases C-230/09 and C-231/09) (¹)

(Agriculture — Milk and dairy sector — Regulation (EC) No 1788/2003 — Levy in the milk and dairy sector — Regulation (EC) No 1782/2003 — Direct support schemes under the common agricultural policy — Transfer of individual reference quantities — Repercussions on the calculation of the levy — Repercussions on the calculation of the dairy premium)

(2011/C 194/03)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicants: Hauptzollamt Koblenz (C-230/09), Hauptzollamt Oldenburg (C-231/09)

Defendants: Kurt Etling, Thomas Etling (C-230/09), Theodor Aissen, Hermann Rohaan (C-231/09)

Intervening party: Bundesministerium der Finanzen

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 5(k) of Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector (OJ 2003 L 270, p. 123) — Reversion of the milk reference quantity in the course of the

reference period following termination of an agricultural lease — Whether the quantity already delivered by the previous lessee during the reference period may be taken into account for the purpose of determining the reference quantity available to the lessor

Operative part of the judgment

1. Article 10(3) of Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector, as amended by Council Regulation (EC) No 2217/2004 of 22 December 2004, must be interpreted as meaning that the reallocation of the unused part of the national reference quantity allocated to deliveries must be carried out in proportion to the individual reference quantity of each producer having overdelivered, namely that determined at 1 April of the relevant twelve-month period, or according to objective criteria to be set by the Member States. The concept of individual reference quantity used in that provision does not allow transfers of reference quantities during that period to be taken into account.
2. National legislation implementing the option, provided for in Article 10(3) of Regulation No 1788/2003, as amended by Regulation No 2217/2004, of setting objective criteria according to which the reallocation of the unused part of the national reference quantity allocated to deliveries is to be carried out must comply, in particular with general principles of EU law and the objectives pursued by the common agricultural policy, especially those concerning the common organisation of the markets in the milk sector.
3. Those objectives do not preclude national legislation, adopted in the context of the implementation of that option, which allows overdelivering producers, who have, in accordance with the provisions of Regulation No 1788/2003, as amended by Regulation No 2217/2004, received a transfer, during the relevant twelve-month period, of an individual reference quantity under which milk has already been delivered for that same period by the producer who previously held it, to participate in that reallocation by including some or all of that reference quantity. Member States must however ensure that such legislation does not give rise to transfers which, while formally complying with the conditions laid down by that regulation, are intended solely to allow certain overdelivering producers to obtain a more favourable position on that reallocation.
4. The expression 'individual reference quantity eligible for premium and available on the holding' contained in Article 95(1) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, as amended by Commission