

## Tadao Maruko v. Versorgungswerk der deutschen Bühnen

# ECJ says Registered Partners must be Treated Equally to Marriage

Rechtskomitee LAMBDA: „Historic victory“

RKL-President Graupner represented ILGA-Europe (the European Region of the International Lesbian and Gay Organisation ILGA) in a landmark case before the European Court of Justice (ECJ). The highest court in the EU today decided that registered (same-sex) partnerships have to be treated on the same footing as marriage and that employers and pension schemes must not restrict benefits to married partners.

Mr. Maruko for years lived with his partner in registered partnership. After his partner had died the Vddb, the pension scheme for German theatres, refused to pay him a survivors pension as such pension are provided only for married partners. Mr. Maruko sued the Vddb and the Bavarian Administrative Court Munich referred the case to the ECJ for interpretation of the EU-Antidiscrimination-Directive.

The ECJ heard the case in an oral hearing on June 18th, 2007. Mr. Maruko has been represented by ILGA-Europe and ILGA-Europe itself by RKL-president Dr. Helmut Graupner who has been assisted by Dr. Robert Wintemute (professor of human rights at Kings College London) and Manfred Bruns from the German federal lgb organisation LSVD (who is a retired federal attorney at the German Supreme Court).

### Acceptance of homosexuality an indispensable step

The German government did not oppose Mr. Maruko while the British and the Dutch governments did so. The European Commission however supported Mr. Marukos position.

The Advocate General presented his opinion last september saying that registered partners (in employment) have to be treated on the same footing as married partners if – as it is the case in in Germany – registered partnership gives rise to substantially identical consequences as marriage and the legal situation of registered partners is similar to that of married couples.

The Advocate General's opinion contained some important fundamental statements. So that "acceptance of homosexuality" is an "indispensable step on the way to implementation of equality and respect for all human beings" (par. 2). That the principle of equal treatment – together with the one of freedom of movement – is the principle which shows the longest tradition in European law and which is the most deeply rooted principle there (par. 83). And that the prohibition of discrimination on the basis of sexual orientation, due to its fundamental character, is of a different dimension then the prohibition of age-discrimination (note 82).

### Unjustifiable direct discrimination

The ECJ went even beyond the opinion of the Advocate General. On the one hand it weakened the criteria "substantially identical consequences" and "similar legal situation" into just "similar situation". On the other hand it found not (as the Advocate General did) just indirect discrimination but direct discrimination. Direct discrimination, other then an indirect one, cannot be justified.

The ECJ in addition made clear that for establishing a "comparable situation" not any differences between registered partnerships and marriage count. The only question is whether there is "a union of mutual support and assistance which had been formally constituted for life" (par. 62, 67-69).

„The ECJ already three times decided in favour of transsexuals, but so far never for homosexuals“, says Dr. Helmut Graupner, president of the Austrian lesbian and gay rights organization Rechtskomitee LAMBDA (RKL) and counsel of Tadao Maruko, “We are very glad that the ECJ did send a strong signal against discrimination of same-sex couples all over Europe”.

Rechtskomitee LAMBDA (RKL), founded in 1991, on a supra-partisan and denominational level is working for the implementation of human rights for homo- and bisexual men and women. In its honorary board it convenes so prominent members as Prime Minister Dr. Alfred Gusenbauer, President of Federal Parliament Mag. Barbara Prammer, former Minister of Justice Mag. Karin Gastinger, former President of the Parliamentary Assembly of the Council of Europe Peter Schieder, Federal Ombudsman Mag. Terezija Stoisits, Director of Public Security Dr. Erik Buxbaum, the former President of National Judges Association Dr. Barbara Helige, the Vice-President of the Vienna Bar-Association Dr. Elisabeth Rech, the President of D.A.S.-legal expenses insurance company Dr. Franz Kronsteiner, the President of Weisser Ring Dr. Udo Jesionek, the Secretary General of Amnesty International Austria Mag. Heinz Patzelt and the well-known human-rights experts Dr. Lilian Hofmeister and Univ.-Prof. Dr. Manfred Nowak, the constitutional law professors Univ.-Prof. Dr. Christian Brünner, Univ.-Prof. Dr. Bernd-Christian Funk, Univ.-Prof. Dr. Heinz Mayer and Univ.-Prof. Dr. Ewald Wiederin, famous child- and adolescent psychiatrist Univ.-Prof. Dr. Max Friedrich and the Vienna Child- and Youth-Ombudspersons DSA Monika Pinterits and Dr. Anton Schmid, sexologists Univ.-Prof. Dr. Josef Christian Aigner, Univ.-Prof. Dr. Rotraud Perner and Univ.-Lekt. Mag. Johannes Wahala, theologist Univ.-Prof. Dr. Kurt Lüthi, Life-Ball-Organisator Gery Keszler, Entertainer Günter Tolar and many more. October 2<sup>nd</sup>, 2006, RKL's 15 years anniversary has been celebrated in historic Ceremonial Act “Against Sexual Apartheid” in the lower chamber of Austrian federal parliament. This first honouring of an lgbt organisation in a national parliament worldwide took place in attendance of over 500 guests including highest representatives from the judiciary, administration and politics.

The judgment and the opinion of the Advocate General can be found at :

<http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?where=&lang=de&num=79919598C19060267&doc=T&ouvert=T&seance=ARRET>  
(Urteil)

<http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?where=&lang=de&num=79929093C19060267&doc=T&ouvert=T&seance=CONCL>  
(Schlussanträge)

More information: Rechtskomitee LAMBDA, (++43/1/876 30 61), [office@RKLambda.at](mailto:office@RKLambda.at); [www.RKLambda.at](http://www.RKLambda.at)

2008-04-01