

Same-Sex Couples

Advocate General Asks ECJ for Equal Treatment in all 27 Member-States

Rechtskomitee LAMBDA: "Groundbreaking case for the whole of Europe"

RKL-President Graupner represents ILGA-Europe (the European Region of the International Lesbian and Gay Organisation ILGA) in a landmark case before the Court of Justice of the European Union (ECJ). In *Jürgen Römer vs. City of Hamburg (C-147/08)* the Advocate General asks the Court to decide that same-sex couples must have access to employment benefits for married couples in all 27 member-states.

Mr. Jürgen Römer is a retired employee of the City of Hamburg. Since 1969, he has been living with his partner, Mr. Alwin Ulrich, in committed loving relationship, so for over 40 years. In 1999 they registered their partnership under the City of Hamburg's registration scheme and immediately after the introduction of federal registered partnership they entered "life partnership" in 2001.

The City of Hamburg pays to Mr. Römer a lower pension than to its pensioners with a married partner. His retirement pension is lower than for married pensioners solely on the basis that he has a (same-sex) registered partner and not a (different-sex) married partner. Germany allows registered partnership only for same-sex couples and civil marriage only for opposite-sex couples. Mr. Römer sued the City of Hamburg and the Hamburg Labour Court referred the case to the ECJ for interpretation of the EU-Antidiscrimination-Directive.

Mr. Römer is represented by Hamburg attorney Birgit Boßert and by ILGA-Europe with ILGA-Europe itself represented by RKL-president Dr. Helmut Graupner.

Advocate General Niilo Jääskinen recently presented his opinion saying that same-sex couples must have access to employment benefits for married couples in all 27 member-states. Based on the ECJ's landmark-judgment in *Maruko vs. VdB (01.04.2008)*, which has also been litigated by RKL-president Dr. Helmut Graupner, and following the line of argument put forward by ILGA-Europe the Advocate General argues that marriage and family law rests in the competence of the member-states and not of the Union. But if a member-state decides to restrict civil marriage to opposite-sex couples only, it nevertheless, under the EU-Antidiscrimination-Directive, has to guarantee equal treatment and grant homosexual couples (despite not being married) access to all the employment benefits granted to married couples.

If a member-state has a registered partnership putting same-sex couples into a legal position comparable to married couples, exclusion from marriage benefits constitutes direct discrimination. And if a member-state created a registration scheme for same-sex couples inferior to civil marriage or if it grants same-sex couples no registration at all, exclusion constitutes indirect discrimination.

General principle of Union law

Protection of marriage and the family as such, the Advocate General says, cannot serve as valid justification for such discrimination (par. 106-111). Protection of marriage and the family in a national constitution, as it is the case in Germany, cannot compromise the prohibition of discrimination on the basis of sexual orientation. Union law supersedes also national constitutional law.

The Advocate General finds that the prohibition of discrimination on the basis of sexual orientation is a general principle of Union law (par. 129-133). So the prohibition of (direct or indirect) discrimination (on the ground of sexual orientation) is not limited to periods after entry into force of the EU-Antidiscrimination-Directive (2000/78/EC) or after expiration of its

implementation period (December 2003), but it takes full effect also for periods preceding those dates. So equal treatment (and compensation) can be claimed back to the beginning of a certain discrimination.

In most of the cases the ECJ follows the Advocates Generals' opinion.

„The Advocate General's opinion is groundbreaking for the whole Union“, says Dr. Helmut Graupner, president of the Austrian lesbian and gay rights organization Rechtskomitee LAMBDA (RKL) and counsel of Jürgen Römer, “If the ECJ follows it, all 27 member-states will have to grant same-sex couples access to all the employment benefits married couples enjoy, no matter if they allow registered partnership or not”.

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 former Prime Minister Dr. Alfred Gusenbauer, President of Federal Parliament Mag. Barbara Prammer, former Minister of Justice Mag. Karin Gastinger, the Honorary President of the Parliamentary Assembly of the Council of Europe Peter Schieder, Federal Ombudsman Mag. Terezija Stoisits, former 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, Life-Ball-Organisor Gery Keszler and many more. October 2nd, 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 the plenary session hall of a national parliament worldwide took place in attendance of over 500 guests including highest representatives from the judiciary, administration and politics (<http://www.rklambda.at/festakt/index.htm>). Since 2010 RKL is a member of the Fundamental Rights Platform of the European Union Agency for Fundamental Rights (www.fra.europa.eu).

See the opinion of the Advocate General at: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-147/08&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>

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

2010-08-23