



Reports of Cases

Case C-731/21

GV

v

Caisse nationale d'assurance pension

(Request for a preliminary ruling from the Cour de cassation du Grand-Duché de Luxembourg (Luxembourg))

Judgment of the Court (Eighth Chamber), 8 December 2022

(Reference for a preliminary ruling – Free movement of persons – Article 45 TFEU – Workers – Regulation (EU) No 492/2011 – Article 7(1) and (2) – Equal treatment – Social advantages – Survivor's pension – Members of a civil partnership – National legislation making the grant of a survivor's pension conditional upon the entry in the national register of a partnership that was validly concluded and registered in another Member State)

Free movement of persons – Workers – Equal treatment – Social advantages – Survivor's pension – Members of a civil partnership – National legislation making the grant of a survivor's pension conditional upon entry in the national register of a partnership that was validly concluded and registered in another Member State – Indirect discrimination based on nationality – Justification – Proportionality – None – Not permissible

(Art. 45 TFEU; European Parliament and Council Regulation No 492/2011, Art. 7)

(see paragraphs 31-34, 36, 37, 40, 43, operative part)

Résumé

In December 2015, the applicant in the main proceedings and her partner, French nationals residing in France and employees in Luxembourg, registered, in due and proper form, a joint declaration of a civil solidarity pact ('PACS') with the tribunal d'instance de Metz (District Court, Metz, France). After the partner of the applicant in the main proceedings died in 2016 following an accident at work, the applicant applied to the caisse nationale d'assurance pension (National Pension Insurance Fund, Luxembourg) for a survivor's pension. That application was refused on the ground that the PACS registered in France had not been recorded in the Luxembourg Civil Records Registry during the lifetime of the two contracting parties and that, consequently, it could not be relied on against third parties. The refusal of that application was upheld in the action brought by the applicant before the competent social courts.

An appeal was brought before the Cour de cassation (Court of Cassation, Luxembourg) and the latter asks the Court of Justice whether there is any indirect discrimination,¹ in so far as the obligation imposed by Luxembourg law² on partners who have already registered their partnership in another Member State also to have it registered in the Luxembourg Civil Records Registry in order to receive a survivor's pension affects cross-border workers in particular.

The Court rules that Article 45 TFEU and Article 7 of Regulation No 492/2011, which are aimed at ensuring equal treatment for workers, preclude legislation of a host Member State which provides that the grant, to the surviving partner of a partnership that was validly entered into and registered in another Member State, of a survivor's pension due on account of the exercise, in the first Member State, of a professional activity by the deceased partner, is subject to the condition that the partnership was first recorded in the register kept by that State.

Findings of the Court

The Court notes, in the first place, that the Luxembourg legislation lays down, with regard to a partnership entered into and registered in another Member State in accordance with the relevant rules of that State, a condition to which a partnership entered into in Luxembourg is not subject.

Whereas a partnership entered into and declared in Luxembourg is automatically entered into the Luxembourg Civil Records Registry by the Registrar before whom the partnership was declared, in the case of a partnership already registered in another Member State, registration in Luxembourg requires the partners to submit a request to that effect to the Luxembourg Public Prosecutor's Office. Consequently, the Luxembourg legislation establishes unequal treatment indirectly based on nationality.

In the second place, the Court verifies whether that unequal treatment is objectively justified and proportionate, and finds that it is not. In that regard, registration in the Luxembourg Civil Records Registry of partnerships entered into in other Member States is not an obligation but merely an option. If such a registration is not mandatory, it cannot be regarded consistently as constituting an essential formality for verifying that a partnership registered in another Member State fulfils the substantive conditions required by the Law of 9 July 2004 and for ensuring that such a partnership can be relied on against third parties.

In any event, a refusal to grant a survivor's pension on the ground that the partnership on which the application for a pension is based was not registered in Luxembourg goes beyond what is necessary to attain the objective pursued and thus infringes the principle of proportionality.

First, the production of an official document issued by the competent authority of the Member State in which the partnership was entered into appears sufficient to ensure that that partnership can be relied on against the authorities of another Member State which are responsible for payment of survivors' benefits, unless certain evidence may raise doubts as to the accuracy of that

¹ The referring court relies on Articles 18, 45 and 48 TFEU, and Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1), as amended by Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 (OJ 2016 L 107, p. 1) ('Regulation No 492/2011').

² Article 4-1 of the loi du 9 juillet 2004, relative aux effets légaux de certains partenariats (Law of 9 July 2004 on the legal effects of certain partnerships) (*Mémorial A* 2004, p. 2020), as amended by the loi du 3 août 2010 (Law of 3 August 2010) (*Mémorial A* 2010, p. 2190) ('the Law of 9 July 2004').

document. In such a case, any doubt on the part of the authorities of the latter Member State could be removed by means of a request for information addressed to the authorities which registered that partnership in order to satisfy themselves as to the authenticity of the partnership.

Secondly, in the absence, in the applicable national legislation, of any condition regarding the deadline for registering the partnership in question, there is nothing to prevent that registration from being carried out on the date on which the survivor's pension is applied for, which would also make it possible to attain the objective pursued by that legislation. It is not apparent from the order for reference that that possibility was exercised in the case in the main proceedings.