



NEWS REPORT

Date:	4 August 2011
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Title:	Non-payment of a civil servant's retirement pension to the non-married surviving partner
Country:	France
Context	
Issue at stake:	Constitutionality of the non-payment of a civil servant's retirement pension to the non married surviving partner sexual orientation
Ground of discrimination:	
Source:	Constitutional Council, QPC-2011-155 of 29 July 2011
Field:	Employment, public sector
Legislative provisions:	Article L. 39 of the Code of Civil and Military Retirement Pensions

Content

Case: According to Article L39 of the Code of Civil and Military Retirement Pensions, the payment of the retirement pension of the civil servant to the surviving partner is conditional upon:

- having been married during a minimum of two year of service except if one or more children were born before retirement
- In case of disability leading to death or retirement, having been married before the disability.
- In case of retirement by reason of age, having been married two years before the age limitation as it existed at the time of marriage.
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Plaintiff claimed before the Conseil d'Etat that the condition of marriage violated the constitutional principle of equality towards non married couples (i.e. cohabitantes and partners registered in a civil partnership). The Conseil d'Etat referred the question of the constitutionality of this provision to the Constitutional Council.

Decision of the Constitutional Council: The Court decided that the purpose of the surviving spouse's pension is to provide for the loss of revenue supported by the spouse further to the death of a civil servant.

Therefore, considering that the institution of marriage is the only one to provide for obligations after its dissolution by death or other legal mean, to give a right to the patrimony after death and to institute a legal duties for the financial security of a family, the difference in treatment provided by the law between marriage, cohabitation and civil partnership does not violate the principle of equality which allows the legislator to institute different rules for different situations.

The court decides that the legislator has recognised three different legal regimes for couples – i.e. cohabitation, registered partnership and marriage - instituting various rights and obligations that each respect the principle of equality.

This decision follows two previous decisions theorizing the exclusive role of the legislator in defining the specificity of the conditions of access to the legal institution of marriage and of its legal status in terms of rights and obligations, pursuant to Parliament's exclusive prerogative in defining a national conception of family: one was a case where it concluded to the exclusive jurisdiction of the legislator in defining conditions of access to marriage and its competence in denying access to marriage to couples of same sex (QPC 2010-39 of 6 October 2010) and one, a case confirming the constitutionality of the difference between the right to simple adoption of a spouse's child between members of a married couple, and the denial of said right to civil partners of same sex (QPC 2010-92 of 28 January 2011).

In its discussion, the Constitutional council chooses not to address the issue of the discrimination on the ground of sexual orientation resulting from the condition of marriage. Sexual orientation is not an explicitly prohibited ground of discrimination provided by the Constitution and the Council maintains an approach based on the exclusive prerogatives of the legislator in determining rights and obligations attached to marriage.

Internet link source and additional information:

<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2011/2011-155-qpc/decision-n-2011-155-qpc-du-29-juillet-2011.99251.html>