



NEWS REPORT

Date: 15 July 2009
Expert: Neža Kogovšek
Title: Constitutional Court Finds Discrimination Based on Sexual Orientation
Country: Slovenia

Context

Issue at stake: Registration of Same-Sex Partnership Act is discriminatory since it puts same-sex partners in unequal position than opposite-sex partners in relation to inheritance rights.

Ground of discrimination: of sexual orientation

Source: national court decision

Field: social protection

Legislative provisions: Article 22 of the Registration of Same-Sex partnership Act

Content

Case: The complainants, a same-sex couple, registered their same-sex partnership in Slovenia in accordance with the Registration of Same Sex Partnerships Act. After the registration, which took place on 3 October 2006, the provisions of this act started to be applicable to them. They felt that this Act is discriminatory and decided to file a petition to the Constitutional Court to review it. They decided to attack only one provision of the law, Article 22, which regulates inheritance rights differently than the Inheritance Act that is in place for spouses and opposite-sex civil partners. In the complaint the applicants stated that since they registered their partnership, Article 22 of this act would apply to them in case one of them dies. They claimed that Article 22 was discriminatory since it regulates different inheritance regimes for common possessions and special possessions (while the Inheritance Act regulates only one regime for the

entire legacy of the deceased), as the surviving partner is excluded from inheritance of special possessions, and since the Act does not regulate obligatory share for the surviving partner in case the deceased leaves him out of the will. According to the Slovenian law, common possessions encompass everything that partners have acquired by work in the time of lasting of marriage, civil union or registered partnership, and possessions acquired by income deriving from their common possessions (e.g. rents from apartment bought with money obtained through work and leased to a third party). Common possessions belong to both partners and their shares are not determined. Special possessions of each partner are those acquired before they entered into marriage/civil union/registered partnership, by inheritance or gifts, and income from their special possessions (e.g. rents from inherited apartment leased to a third party).

Decision of the Court: The Constitutional Court found that Article 22 of the Registration of Same Sex Partnerships Act is contrary to the Constitution. According to the decision, the National Assembly should remove the established inconsistencies within six months of the publication of this decision in the Official Journal of the Republic of Slovenia. Until the inconsistencies are removed, the same rules are valid for inheritance between registered same-sex partners as for inheritance between spouses of different sex, in accordance with the Inheritance Act. The court justified its decision by stating that the situation of partners in a registered same-sex partnership is, in relation to the right to inheritance of the deceased partner, in its basic actual and legal elements comparable with the situation of spouses. The difference in regulation of inheritance between spouses and partners in registered same-sex partnerships is not based on objective criteria, but on sexual orientation. Sexual orientation is, however, one of the personal circumstances from paragraph 1 of Article 14 of the Constitution on which discrimination is prohibited. Since there is no constitutionally justifiable reason for differentiation, such regulation is contrary to paragraph 1 of Article 14 of the Constitution. The decision was adopted unanimously by all nine Constitutional Court Judges.

Internet link source and additional information:

Full text of decision (in Slovenian): <http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/5EC66748A09C70A4C12575EF002111D8>

