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Case Study Sexual Orientation

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A -> Belgian citizen
B -> French citizen
A & B -> same-gender couple
-> legally married in Portugal
-> resided in Spain for some years

Now -> A & B moving to another EU-member-state:
-> allowing marriage only for different-gender couples
-> providing no registered partnership
-> limits joint adoptions to married couples
-> not recognizing joint adoptions by same-gender couples
-> no penal sanctions for discrimination, only financial compensations

A -> employed by a private company
-> providing an occupational pension scheme to its employees; run by a pension fund.
-> after 5 years asks the pension fund if B entitled to survivor's pension

Fund -> denies and argues:
-> national law does not allow same-gender marriages
-> statutes grant pensions to „married couples“, so to opposite-gender-couples only

- Court* -> finds in favor of the pension fund
-> couple unmarried
-> difference in treatment not based on sexual orientation but on marital status
-> no discrimination under Dir 2000/78/EC
-> non-pecuniary damage:
-> national 3-years-limitation period
-> runs from conclusion of employment contract
-> expired
- B* -> mathematics teacher
-> private school run by a church
-> terminates contract because
-> same-sex relations a sin under their religion and unacceptable for school-staff

A. Pension Fund

- a. Have A & B suffered discrimination under Directive 2000/78/EC by the denial of B's entitlement to a survivor's pension?
-> If yes: direct or indirect discrimination?
- a. Would your finding be different if A & B were not married but in a registered partnership concluded in Germany?
- b. Would your finding be different if A & B were not married and neither in a registered partnership (so unmarried and unregistered)?
- c. Would your findings (to questions a., b. and c.) be different if A & B were both citizens of the host member-state?
- d. Would your findings be different if the benefit refused (by the employer) would not be entitlement to survivor's pension but a household allowance for the child legally jointly adopted by the couple in Spain?

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B. Private School

Could the termination of the employment be justified under Directive 2000/78/EC?

C. Sanctions

- a. Is the decision of the national court to apply the national 3-years-period of limitation in conformity with Directive 2000/78/EC?
- b. If you find discrimination in A. and B. above: would you award compensation for non-pecuniary damage?
bb. If yes, provide the Union law basis for it. How would you estimate the amount of compensation and which criteria would you apply for this assessment?

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