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Case Study

Sexual Orientation

EUROPEAN COMMISSION

DG Justice

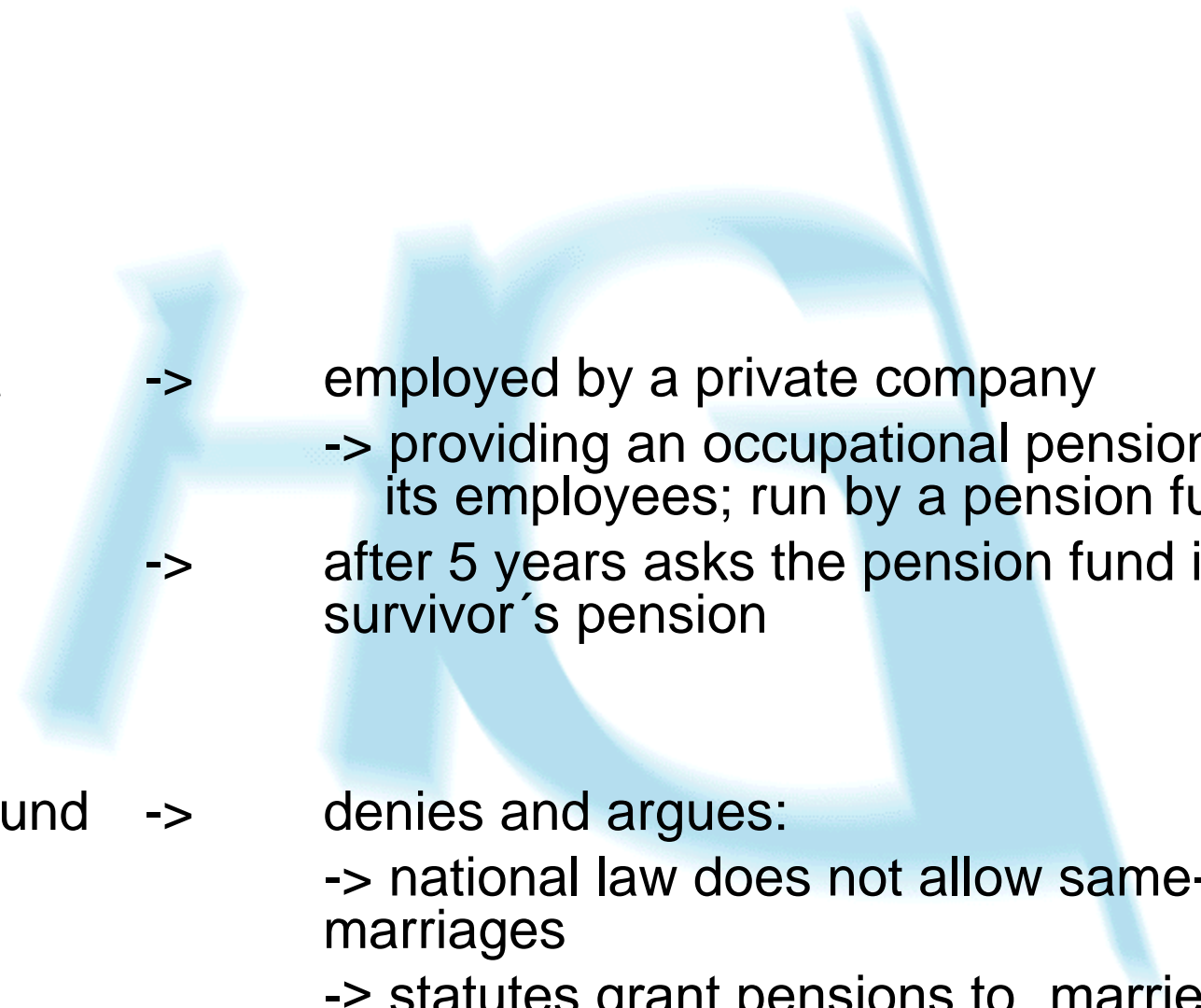
Legal Seminar – Enforcement of equality and anti-discrimination law

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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

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- 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?

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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