



Key Issues: Equal treatment – age and sexual orientation

Case: David L Parris v Trinity College Dublin & Others

Reference: Case C-443/15, CJEU (First Chamber), 24 November 2016

Legislation: Directive 2000/78/EC

Mr Parris, who was born on 21 April 1946, has dual Irish and United Kingdom nationality. He has been living for over 30 years in a stable relationship with his same-sex partner. In 1972 Mr Parris was appointed by Trinity College Dublin as a lecturer. Pursuant to his contract of employment, he was admitted in October 1972 as a non-contributory member of a pension scheme operated by Trinity College Dublin. The scheme was closed to new entrants on 31 January 2005.

Rule 5 of the pension scheme provides for the payment of a survivor's pension to the spouse or, since 1 January 2011, the civil partner of a member, where the member predeceases the spouse or now the civil partner. In particular, under the terms of the scheme, on retirement a member is entitled to a pension equal to two-thirds of his or her final salary. Where a member dies after retirement, the surviving spouse, or now the civil partner, is entitled to a pension for life equal to two-thirds of the amount payable to the member before his or her death. However, that survivor's pension is payable only if the member married or entered into a civil partnership before reaching the age of 60.

On 21 December 2005 it became possible to enter into a civil partnership in the United Kingdom under the Civil Partnership Act 2004. On 21 April 2009, when he was aged 63, Mr Parris registered a civil partnership in the United Kingdom. At that time there was no provision in Irish law by which Mr Parris's civil partnership could be recognised in Ireland. On 3 December 2009 the Trinity College Dublin pension fund was transferred to the National Treasury Management Agency (Ireland) (NTMA). The NTMA is a State agency with the function of providing the government with asset and liability management services. Since January 2010 all the pension scheme's liabilities have been met out of State resources.

On 25 January 2010 Mr Parris applied for and obtained an option allowing him to take cost-neutral early retirement from 31 December 2010, although he was contractually entitled to retain his pensionable employment until 30 September 2013. On 19 July 2010 the Civil Partnership Act was enacted in Ireland. On 17 September 2010 Mr Parris made a request to Trinity College Dublin that, on his death, his civil partner should receive a survivor's pension. The request was rejected by decision of 15 November 2010. On 20 December 2010 he appealed against that decision to the Higher Education Authority. Mr Parris retired on 31 December 2010. The Civil Partnership Act entered into force on 1 January 2011.

On 12 January 2011 Mr Parris's United Kingdom civil partnership was recognised in Irish law, following the making of the necessary ministerial order by statutory instrument No 649/2010. By decision of 17 May 2011, the Higher Education Authority upheld the decision of Trinity College Dublin. The authority found in particular that Mr Parris had retired before the recognition of his civil partnership by Ireland, and furthermore that the rules to be applied by Trinity College Dublin excluded the payment of a survivor's benefit where the member married or entered into a civil partnership after the age of 60.

Mr Parris thereupon brought proceedings against Trinity College Dublin, the Higher Education Authority, the Department of Public Expenditure and Reform and the Department of Education and Skills before the Equality Tribunal (Ireland), arguing that he had been directly or indirectly discriminated against by them, contrary to the 1990 Act, by reason of his age and sexual orientation. When that action was dismissed by the Equality Tribunal, Mr Parris appealed to the Labour Court (Ireland).

That court is uncertain whether, in circumstances such as those at issue in the main proceedings, the application of a national rule specifying an age by which a member of an occupational benefit scheme must marry or enter into a civil partnership for his spouse or civil partner to be entitled to a survivor's pension amounts to discrimination on grounds of age and/or sexual orientation, contrary to Directive 2000/78. In those circumstances, the Labour Court (Ireland) decided to stay the proceedings and to refer a number of questions to the Court of Justice of the EU (CJEU) a preliminary ruling.

Consideration by CJEU

The CJEU has previously recognised that a survivor's pension provided for under an occupational pension scheme falls within the scope of Article 157 TFEU. The CJEU has stated that the fact that such a pension, by definition, is paid not to the worker but to his survivor cannot affect that interpretation. Such a pension being a benefit deriving from the survivor's spouse's membership of the scheme, the pension accrues to the survivor by reason of the employment relationship between the employer and the survivor's spouse and is paid to the survivor by reason of the spouse's employment.

Recital 22 of Directive 2000/78 expressly states that the directive is without prejudice to national laws on marital status and the benefits dependent thereon. In this context, the CJEU has held that marital status and the benefits flowing therefrom are matters which fall within the competence of the Member States and that EU law does not detract from that competence. However, in the exercise of that competence the Member States must comply with EU law, in particular the provisions relating to the principle of non-discrimination.

The Member States are thus free to provide or not provide for marriage for persons of the same sex, or an alternative form of legal recognition of their relationship, and, if they do so provide, to lay down the date from which such a marriage or alternative form is to have effect. Consequently, EU law, in particular Directive 2000/78, did not require Ireland to provide before 1 January 2011 for marriage or a form of civil partnership for same-sex couples, nor to give retrospective effect to the Civil Partnership Act and the provisions adopted pursuant to that act, nor, as regards the survivor's benefit at issue in the main proceedings, to lay down transitional measures for same-sex couples in which

the member of the scheme had already reached the age of 60 on the date of entry into force of the act.

The CJEU held that:

1. Article 2 of Council Directive 2000/78/EC must be interpreted as meaning that a national rule which, in connection with an occupational benefit scheme, makes the right of surviving civil partners of members to receive a survivor's benefit subject to the condition that the civil partnership was entered into before the member reached the age of 60, where national law did not allow the member to enter into a civil partnership before reaching that age, does not constitute discrimination on grounds of sexual orientation.
2. Articles 2 and 6(2) of Directive 2000/78 must be interpreted as meaning that a national rule, such as that at issue in the main proceedings, which, in connection with an occupational benefit scheme, makes the right of surviving civil partners of members to receive a survivor's benefit subject to the condition that the civil partnership was entered into before the member reached the age of 60, where national law did not allow the member to enter into a civil partnership before reaching that age, does not constitute discrimination on grounds of age.
3. Articles 2 and 6(2) of Directive 2000/78 must be interpreted as meaning that a national rule such as that at issue in the main proceedings is not capable of creating discrimination as a result of the combined effect of sexual orientation and age, where that rule does not constitute discrimination either on the ground of sexual orientation or on the ground of age taken in isolation.

Why is this decision important?

The entitlement of a survivor to the benefits of a partner's pension scheme is an issue being confronted more frequently by employers and courts. This decision recognises a particular limitation of EU law in this area but employers should tread carefully and ensure, as far as possible, that the principle of equal treatment is observed in all cases.

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