

JUDGMENT OF THE COURT (Eighth Chamber)

8 December 2022 (*)

(Reference for a preliminary ruling – Free movement of persons – Article 45 TFEU – Workers – Regulation (EU) No 492/2011 – Article 7(1) and (2) – Equal treatment – Social advantages – Survivor’s pension – Members of a civil partnership – National legislation making the grant of a survivor’s pension conditional upon the entry in the national register of a partnership that was validly concluded and registered in another Member State)

In Case C-731/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Luxembourg), made by decision of 25 November 2021, received at the Court on 1 December 2021, in the proceedings

GV

v

Caisse nationale d’assurance pension,

THE COURT (Eighth Chamber),

composed of M. Safjan (Rapporteur), President of the Chamber, N. Jääskinen and M. Gavalec, Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- GV, by P.R. Mbonyumutwa, avocat,
- the Caisse nationale d’assurance pension, by A. Charton and M. Thewes, avocats,
- the European Commission, by B.-R. Killmann and D. Martin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 18, 45 and 48 TFEU, and of Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1), as amended by Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 (OJ 2016 L 107, p. 1) (‘Regulation No 492/2011’).
- 2 The request has been made in proceedings between GV, a French national, and the Caisse nationale d’assurance pension (National Pension Insurance Fund, Luxembourg) (‘CNAP’) concerning CNAP’s

refusal to grant GV a survivor's pension following the death of her partner.

Legal context

European Union law

Regulation No 883/2004

3 Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1), as amended by Commission Regulation (EU) No 1372/2013 of 19 December 2013 (OJ 2013 L 346, p. 27) ('Regulation No 883/2004'), entitled 'Matters covered', provides, in paragraph 1(e), that Regulation No 883/2004 is to apply to social security legislation concerning survivors' benefits.

4 According to Article 4 of that regulation, entitled 'Equality of treatment':

'Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.'

5 Article 5 of that regulation, entitled 'Equal treatment of benefits, income, facts or events', provides:

'Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:

...

(b) 'where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.'

Regulation No 492/2011

6 Article 7(1) and (2) of Regulation No 492/2011 provides:

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.'

Regulation (EU) 2016/1104

7 Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships (OJ 2016 L 183, p. 30) authorises the partners to designate or change the law applicable to the property consequences of their registered partnership.

8 Article 1 of that regulation, headed 'Scope', provides:

'1. This Regulation shall apply to matters of the property consequences of registered partnerships.

It shall not apply to revenue, customs or administrative matters.

2. The following shall be excluded from the scope of this Regulation:

...

(b) the existence, validity or recognition of a registered partnership,

...

(e) social security,

...’

Luxembourg law

Le code de la sécurité sociale (The Social Security Code)

9 Article 195 of the Social Security Code provides:

‘The surviving spouse or partner, within the meaning of Article 2 of the Law of 9 July 2004 on the legal effects of certain partnerships [(*Mémorial A* 2004, p. 2020)], of a recipient of an old-age or invalidity pension awarded under this Book or of an insured person if the latter, at the time of his or her death, has been insured for at least 12 months under Articles 171, 173 and 173a during the three years preceding the materialisation of the risk shall be entitled to a survivor’s pension, without prejudice to any other prescribed conditions. ... However, this period shall not be required in the event of the death of the insured person as a result of an accident of any kind whatsoever or an occupational disease recognised under the provisions of this Code which occurred during the affiliation.’

10 Under Article 196 of that code:

‘1. The survivor’s pension of the spouse or partner within the meaning of Article 2 of the Law of 9 July 2004 on the legal effects of certain partnerships shall not be payable:

- where the marriage or partnership was entered into less than one year before the death or before the retirement on the ground of invalidity or on account of the insured person’s old age;
- where the marriage or partnership was entered into with a recipient of an old-age or invalidity pension.

2. However, [paragraph] 1 shall not apply if at least one of the following conditions is met:

- (a) where the insured and employed person’s death or retirement on grounds of invalidity is the direct result of an accident occurring after the marriage or partnership;
- (b) where there is, at the time of death, a child born or conceived during the marriage, or a child legitimised by marriage;
- (c) where the deceased pension recipient was not more than 15 years older than his or her spouse or partner and the marriage or partnership had lasted, at the time of death, for at least one year;
- (d) where, at the time of death of the recipient of the pension, the marriage or partnership had lasted for at least 10 years.’

The Law of 9 July 2004

11 Article 2 of the loi du 9 juillet 2004, relative aux effets légaux de certains partenariats (Law of 9 July 2004 on the legal effects of certain partnerships), as amended by the loi du 3 août 2010 (Law of 3 August 2010) (*Mémorial A* 2010, p. 2190) (‘the Law of 9 July 2004’), provides:

‘For the purposes of this law, “Partnership” means cohabitation by two persons of different sexes or of the same sex, hereinafter referred to as [“partners”], who live as a couple and who have made a declaration in accordance with Article 3 below.’

12 Article 3 of that law provides:

‘Partners who wish to make a partnership declaration shall make a written declaration, personally and jointly, before the Registrar of the commune of their joint domicile or place of residence, in respect of their partnership and of the existence of an agreement dealing with the property consequences of their partnership, where such an agreement has been concluded between them.

The Registrar shall verify whether both parties satisfy the conditions laid down in the present law and, if so, shall issue a certificate to both of the partners stating that their partnership has been declared.

For persons whose birth certificate was drawn up or transcribed in Luxembourg, the partnership declaration shall be noted in the margin of each partner’s birth certificate.

The Registrar shall, within three working days, send the declaration, including, where appropriate, a reference to the agreement, to the Public Prosecutor’s Office for it to be kept in the Civil Records Registry and recorded in a file referred to in Article 1126 et seq. of the New Code of Civil Procedure.

The registered partnership shall take effect between the parties from the time the declaration is received by the Registrar who shall give it a legal date. It shall not be effective vis-à-vis third parties until the day on which the declaration is recorded in the Civil Records Registry.

A Grand-Ducal regulation may determine the content and formalities of the declaration and the accompanying documents.’

13 Article 4 of that law is worded as follows:

‘In order to be able to make the declaration provided for in Article 3, both parties must:

1. have the capacity to enter into an agreement, in accordance with Articles 1123 and 1124 of the Civil Code;
2. not be bound by marriage or another partnership;
3. not be related by blood or by marriage to a prohibited degree under Articles 161 to 163 and the second paragraph of Article 358 of the Civil Code;
4. be lawfully resident in the territory of Luxembourg.

Paragraph 4 above applies only to non-Community nationals.’

14 Article 4-1 of that law provides:

‘Partners who have registered their partnership abroad may make an application to the Public Prosecutor’s Office for the purposes of registration with the Civil Records Registry and inclusion in a file referred to in Article 1126 et seq. of the New Code of Civil Procedure, provided that, on the date when the partnership was entered into, both parties met the conditions laid down in Article 4.

A Grand-Ducal regulation may determine the formalities of the application and the accompanying documents.’

Le Nouveau Code de procédure civile (the New Code of Civil Procedure)

15 Article 1126 of the New Code of Civil Procedure provides:

‘Extracts of documents and judgments which must be kept at the Civil Records Registry shall be filed with the Public Prosecutor’s Office.

...’

16 Article 1127 of that code provides:

‘Documents and judgments kept in the Civil Records Registry shall be made public by way of entry in a file, manually or electronically, on behalf of the protected person. That entry shall indicate the number under which the document or judgment was entered in the register provided for in paragraph 2 of the preceding article.

...’

17 According to Article 1129 of that code:

‘Copies of extracts kept in the Civil Records Registry may be issued to any applicant. Where a removal statement has been entered on the file, copies of the extracts kept in the Civil Records Registry may be issued only upon authorisation by the State Prosecutor General.’

The dispute in the main proceedings and the question referred for a preliminary ruling

18 On 22 December 2015, the applicant in the main proceedings and her partner, both French nationals residing in France, registered, in due and proper form, a joint declaration of a civil solidarity pact (‘PACS’) with the tribunal d’instance de Metz (District Court, Metz, France). Both were employees in Luxembourg.

19 The partner of the applicant in the main proceedings died on 24 October 2016 following an accident at work. On 8 December 2016, the applicant in the main proceedings applied to CNAP for the grant of a survivor’s pension.

20 That application was rejected on 27 November 2017 on the ground that, since the PACS registered in France had not been recorded in the Luxembourg Civil Records Registry during the lifetime of the two contracting parties, it could not be relied on against third parties.

21 By judgment of 18 March 2020, the conseil arbitral de la sécurité sociale (Social Security Arbitration Board, Luxembourg) dismissed the action brought by the applicant in the main proceedings against CNAP’s decision of 27 November 2017 refusing to grant her a survivor’s pension.

22 By judgment of 25 June 2020, the conseil supérieur de la sécurité sociale (Higher Social Security Board, Luxembourg) upheld that judgment.

23 The applicant in the main proceedings brought an appeal before the Cour de cassation (Court of Cassation, Luxembourg) against that judgment. In support of that appeal, she relies, inter alia, on a plea alleging infringement of Articles 18 and 45 TFEU, relating to, respectively, the prohibition of discrimination on grounds of nationality and freedom of movement for workers, and alleging infringement of Article 7(2) of Regulation No 492/2011.

24 By judgment of 25 November 2021, the Cour de cassation (Court of Cassation) held that Luxembourg legislation did not discriminate directly between Luxembourg partners and partners who are nationals of another Member State, whether the partnership was entered into in Luxembourg or abroad.

25 However, the referring court is uncertain whether there is any indirect discrimination in so far as the obligation imposed by Article 4-1 of the Law of 9 July 2004 on partners who have already registered their partnership in another Member State to have it also entered in the Luxembourg Civil Records Registry, in order, in particular, to receive a survivor’s pension, affects in particular cross-border workers, namely workers who carry out their professional activity in Luxembourg while residing in one of its neighbouring countries.

26 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does EU law, in particular Articles 18, 45 and 48 [TFEU], and Article 7(2) of Regulation [No 492/2011], preclude provisions of the law of a Member State, such as Article 195 of the ... Social Security Code and Articles 3, 4 and 4-1 of the [Law of 9 July 2004], which make the grant, to the

surviving partner of a partnership properly entered into and registered in the Member State of origin, of a survivor's pension, due as a result of the exercise by the deceased partner of a professional activity in the host Member State, subject to the condition that the partnership was recorded in a register kept by that State for the purposes of verifying compliance with the substantive conditions required by the law of that Member State in order to recognise a partnership and ensure its effectiveness vis-à-vis third parties, whereas the grant of a survivor's pension to the surviving partner of a partnership entered into in the host Member State is subject to the sole condition that the partnership has been properly entered into and registered there?'

Consideration of the question referred for a preliminary ruling

- 27 As a preliminary point, it must be noted that, although the referring court refers in its question to Articles 18 and 48 TFEU, those provisions are not relevant to the dispute in the main proceedings.
- 28 As regards Article 18 TFEU, it follows from settled case-law that that provision of the Treaty applies independently only to situations governed by EU law for which the Treaty lays down no specific rules of non-discrimination. In relation to the freedom of movement for workers, the principle of non-discrimination was implemented by Article 45 TFEU and Regulation No 492/2011 (see, to that effect, judgments of 30 May 1989, *Commission v Greece*, 305/87, EU:C:1989:218, paragraphs 12 and 13, and of 25 October 2012, *Prete*, C-367/11, EU:C:2012:668, paragraphs 18 and 19).
- 29 As regards Article 48 TFEU, it follows from the Court's case-law that that provision does not have the objective of laying down a legal rule which is operative as such, but constitutes a legal basis for the adoption of such measures in the field of social security as are necessary to provide freedom of movement for workers (see, to that effect, judgment of 10 March 2011, *Casteels*, C-379/09, EU:C:2011:131, paragraph 14). Such measures are now set out in Regulation No 883/2004.
- 30 It must therefore be held that, by its single question, the referring court asks, in essence, whether Article 45 TFEU and Article 7(2) of Regulation No 492/2011 must be interpreted as precluding legislation of a host Member State which provides that the grant, to the surviving partner of a partnership that was validly entered into and registered in another Member State, of a survivor's pension due on account of the exercise, in the first Member State, of a professional activity by the deceased partner, is subject to the condition that the partnership was first recorded in the register kept by that State.
- 31 As regards the interpretation of Article 45 TFEU and Article 7 of Regulation No 492/2011, it is settled case-law that the equal-treatment rule laid down in those provisions prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, through the application of other distinguishing criteria, lead in fact to the same result (see, to that effect, judgments of 12 February 1974, *Sotgiu*, 152/73, EU:C:1974:13, paragraph 11, and of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 18).
- 32 In that context, the Court has stated that a provision of national law, even if it applies regardless of nationality, must be regarded as indirectly discriminatory if it is intrinsically liable to affect workers who are nationals of other Member States more than national workers and if there is a consequent risk that it will place the worker from a different Member State at a particular disadvantage, unless it is objectively justified and proportionate to the aim pursued (see, to that effect, judgments of 23 May 1996, *O'Flynn*, C-237/94, EU:C:1996:206, paragraph 20, and of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 19).
- 33 As it is applied in the present case, the Luxembourg legislation lays down, with regard to a partnership entered into and registered in another Member State in accordance with the relevant rules of that State, a condition to which a partnership entered into in Luxembourg is not subject.
- 34 CNAP applied Article 4-1 of the Law of 9 July 2004 by requiring a partnership already registered in another Member State to be also recorded in the Luxembourg Civil Records Registry, which means that the partners must submit a request to that effect to the Luxembourg Public Prosecutor's Office. It is true

that a partnership entered into and declared in Luxembourg is also to be recorded in the Luxembourg Civil Records Registry, but under Article 3 of that law, ‘the Registrar [is to send the declaration to the Public Prosecutor’s Office]’. That registration is thus carried out automatically by the Registrar before whom the partnership was declared. Since that legislation is liable to place nationals of other Member States at a disadvantage, it establishes, as a consequence, unequal treatment indirectly based on nationality.

35 It is therefore necessary to ascertain whether that unequal treatment is objectively justified and proportionate.

36 In that regard, it appears, first, that the Luxembourg legislation at issue in the main proceedings enables the authorities of that Member State to verify compliance with the substantive conditions laid down by the Social Security Code for the grant of a survivor’s pension to a partner and ensures that the partnership can be relied on against third parties. It is legitimate for a Member State to satisfy itself that a survivor’s pension, financed from public funds and paid to the surviving partner as a result of the death of the other partner caused by an accident at work, is paid only to a person who can prove that he or she was indeed the deceased worker’s partner.

37 That being so, according to the Court’s settled case-law, national legislation is appropriate for ensuring the attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner (see, to that effect, judgments of 10 March 2009, *Hartlauer*, C-169/07, EU:C:2009:141, paragraph 55, and of 11 July 2019, *A*, C-716/17, EU:C:2019:598, paragraph 24).

38 It is apparent from the file before the Court that compliance with the substantive conditions laid down by the Luxembourg Social Security Code in order for the surviving partner to be able to receive a survivor’s pension on account of the death of his or her partner is not disputed in the main proceedings. CNAP justified the refusal to grant such a pension to the applicant in the main proceedings on the sole ground that the partnership between her and her partner had not been recorded in the Luxembourg Civil Records Registry.

39 In that regard, it must be noted that the registration in the Luxembourg Civil Records Registry of partnerships concluded in other Member States is not an obligation but merely an option. Article 4-1 of the Law of 9 July 2004 provides that the partners may submit a request for registration to the Public Prosecutor’s Office. As the European Commission stated in its observations, if such a registration is not mandatory, it cannot be regarded consistently as constituting an essential formality for verifying that a partnership registered in another Member State fulfils the substantive conditions required by the Law of 9 July 2004 and for ensuring that such a partnership can be relied on against third parties.

40 In any event, a refusal to grant a survivor’s pension on the ground that the partnership on which the application for a pension is based was not registered in Luxembourg goes beyond what is necessary to attain the objective pursued and thus infringes the principle of proportionality referred to in paragraph 32 of the present judgment.

41 First, as is apparent from the Court’s case-law, the production of an official document issued by the competent authority of the Member State in which the partnership was concluded appears sufficient to ensure that that partnership can be relied on against the authorities of another Member State which are responsible for payment of survivors’ benefits, unless certain evidence may raise doubts as to the accuracy of that document (see, by analogy, judgment of 2 December 1997, *Dafeki*, C-336/94, EU:C:1997:579, paragraph 19). In such a case, any doubt on the part of the authorities of the latter Member State could be removed by means of a request for information addressed to the authorities which registered that partnership in order to satisfy themselves as to the authenticity of the partnership.

42 Secondly, in the absence, in the applicable national legislation, of any condition regarding the deadline for registering the partnership in question, there is nothing to prevent that registration, which must be distinguished from the registration of the partnership by the competent authorities of the Member State in which that partnership was constituted, from being made on the date on which the survivor’s pension is requested, which would also make it possible to attain the objective pursued by that legislation. It is not apparent from the order for reference that that possibility was exercised in the case in the main proceedings.

- 43 In the light of the foregoing, the answer to the question referred is that Article 45 TFEU and Article 7 of Regulation No 492/2011 must be interpreted as precluding legislation of a host Member State which provides that the grant, to the surviving partner of a partnership that was validly entered into and registered in another Member State, of a survivor's pension due on account of the exercise, in the first Member State, of a professional activity by the deceased partner, is subject to the condition that the partnership was first recorded in the register kept by that State.

Costs

- 44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

Article 45 TFEU and Article 7 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, as amended by Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016,

must be interpreted as precluding legislation of a host Member State which provides that the grant, to the surviving partner of a partnership that was validly entered into and registered in another Member State, of a survivor's pension due on account of the exercise, in the first Member State, of a professional activity by the deceased partner, is subject to the condition that the partnership was first recorded in the register kept by that State.

[Signatures]

* Language of the case: French.