

Ruling

1. Article 8 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer must be interpreted as applying to a situation in which an employer, which provides occupational old-age pension benefits through an inter-occupational institution, cannot, on account of its insolvency, offset losses resulting from a reduction in the amount of those benefits paid by the inter-occupational institution, a reduction which was authorised by the State supervisory authority for financial services which is the prudential regulator for that institution.
2. Article 8 of Directive 2008/94 must be interpreted as meaning that a reduction in the amount of occupational old-age pension benefits paid to a former employee, on account of the insolvency of his or her former employer, is regarded as being manifestly disproportionate, even though the former employee receives at least half of the amount of the benefits arising from his or her acquired rights, where, as a result of the reduction, the former employee is already living, or would have to live, below the at-risk-of-poverty threshold determined by Eurostat for the Member State concerned.
3. Article 8 of Directive 2008/94, which lays down an obligation to provide a minimum degree of protection, is capable of having direct effect, so that it may be relied upon against an institution governed by private law that is designated by the State as the institution which guarantees occupational pensions against the risk of an employer's insolvency where, in the light of the task with which it is vested and the circumstances in which it performs the task, that institution can be treated as comparable to the State, provided that the task of providing a guarantee with which the institution is vested actually covers the type of old-age benefits in respect of which the minimum degree of protection provided for in Article 8 is sought.

ECJ 19 December 2019, case C-460/18 P (HK – v – Commission), Miscellaneous

HK – v – European Commission, Council of the European Union, EU case

Summary

Denial of surviving spouse pension found legitimate, as living together cannot be considered equal to marriage or registered non-marital partnership.

Ruling

The Court:

1. Sets aside the judgment of the General Court of the European Union of 3 May 2018, HK v Commission (T-574/16, not published, EU:T:2018:252);
2. Dismisses HK's action seeking annulment of European Commission's decision refusing to grant him the benefit of the survivor's pension and to pay compensation for the material and non-material damage alleged;
3. Orders HK, the European Commission and the Council of the European Union to bear their own costs at first instance and on appeal.

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ECJ 19 December 2019, case C-465/18 (Comune di Bernareggio), Miscellaneous

AV, BU – v – Comune di Bernareggio (intervener: CT), Italian case

Summary

An unconditional right of pre-emption to pharmacists employed by the municipal pharmacy in a tendering procedure is contrary to the freedom of establishment.