



Court of First Instance of the European Communities

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Press and Information

Judgment in Case T-58/08 P
Commission v Anton Pieter Roodhuijzen

THE COMMUNITY INSTITUTIONS MUST RECOGNISE A NON-MARITAL PARTNERSHIP EVEN WHERE IT IS NOT COMPARABLE TO A MARRIAGE

Where the partner of a European official demonstrates that their partnership constitutes a union and that their status as non-marital partners has been recognised by a Member State, the partner who is not an official may benefit from the sickness insurance scheme of the Communities

According to the Staff Regulations of Officials of the European Communities, spouses of officials are covered by the Joint Sickness Insurance Scheme of the Communities where they are not eligible for benefits of the same nature and of the same level from another provider. With regard to cover under the Joint Sickness Insurance Scheme (JSIS), the unmarried partner of an official is to be treated as the spouse if the couple produces a document recognised by a Member State, acknowledging their status as non-marital partners, if neither partner is in a marital relationship or in another non-marital partnership and if the partners are not closely related.

Netherlands law provides, alongside traditional marriage, for two types of union: 'geregistreerd partnerschap' (registered partnership) and 'samenlevingsovereenkomst' (cohabitation agreement). Whilst the first has legal consequences similar to those produced by marriage, the second gives rise between the parties only to consequences directly resulting from the terms laid down in the agreement.

In addition, a 'samenlevingsovereenkomst' may be entered into by two or more persons who are not even required to live together as a single household, and persons who are closely related are not prohibited from concluding such an agreement. However, it is possible for the partners to formalise their situation by notarial act, which gives them access to pension schemes for partners and to various social advantages linked to employment.

Mr Roodhuijzen, a Netherlands national and an official at Eurostat, requested the Commission to recognise his partnership with his companion, which was governed by a 'samenlevingsovereenkomst' concluded in the Netherlands before a notary, in order for his partner to be covered by the JSIS. The cohabitation agreement which they had concluded and their status as non-marital partners were later recognised by the Netherlands authorities.

The Commission rejected that request on the ground that the partnership of Mr Roodhuijzen and his partner was not similar to marriage.

Mr Roodhuijzen challenged that decision before the Civil Service Tribunal which, by judgment of 27 November 2007¹, annulled the Commission's decision, finding that there were numerous points of similarity between the consequences laid down contractually in the 'samenlevingsovereenkomst' in question and those in a marriage.

The Commission appealed to the Court of First Instance against the Tribunal's judgment.

The Court finds, first, that the Tribunal did not exceed its jurisdiction in giving an autonomous interpretation to the concept of 'non-marital partnership' in the Staff Regulations and in referring to the special features of Netherlands law. It was for the Tribunal to interpret the concept of 'non-marital partnership' since the Staff Regulations do not call for a decision which is under the sole competence of the Member State concerned and subject to the judicial review specific to the legal system of that State. In that context, the review by the Community judicature of an autonomous Community concept may also involve taking national law into consideration as a matter of fact.

Next, the Court states that the Staff Regulations allow the concept of 'non-marital partnership' to be defined as presenting certain similarities with marriage **but do not require it to be comparable to marriage**. The Staff Regulations do not thus require that the partnership be, like marriage, regulated by law or subject to a specific registration requirement. **The existence of a non-marital partnership merely implies a union between two persons and that the couple have produced a document recognised by a Member State, acknowledging their status as non-marital partners.**

None the less, the Court notes that the 'samenlevingsovereenkomst' may also cover situations where the criteria for a non-marital partnership are not fulfilled, in particular where more than two persons or close relations enter into a cohabitation agreement. The Court concludes that, in such a situation, the Community institution concerned is obliged to verify whether the conditions set out in the Staff Regulations are fulfilled and that, accordingly, recognition of a non-marital partnership cannot arise from the assessment of a Member State alone.

By contrast, where an official shows that the partnership which he has concluded constitutes cohabitation between two persons and that it has been recognised by a Member State to be a non-marital partnership, **it is not for the Community institution** – contrary to the finding of the Tribunal in the judgment under appeal – to examine whether the reciprocal rights and obligations laid down by the partners in their agreement govern their cohabitation in a structured and detailed way. **The Staff Regulations do not require verification of whether the consequences of the partnership concluded by the official concerned are similar in numerous respects to those of a marriage.**

Consequently, the Tribunal erred in law in the judgment under appeal inasmuch as it examined in detail the reciprocal rights and obligations concerning Mr Roodhuijzen's cohabitation with his partner. However, since the Tribunal rightly found that all the requirements in the Staff Regulations concerning, first, the existence of cohabitation and, second, the formal aspects, were satisfied, that error of law **is not such as to invalidate the judgment under appeal.**

¹ [Judgment](#) of the First Chamber of the Civil Service Tribunal of 27 November 2007 in Case F-122/06 *Roodhuijzen v Commission*

The Court of First Instance thus dismisses the appeal in its entirety as unfounded.

NOTE: The Court of Justice, on a proposal from its First Advocate General, may exceptionally decide to review decisions given by the Court of First Instance on appeal against the decisions of the Civil Service Tribunal, within a total period of two months of the delivery of the decision of the Court of First Instance.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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