

Blažič and Kern v. Slovenia U-I-425/06-10

1) Reference Details

Jurisdiction: Constitutional Court of the Republic of Slovenia

Date of Decision: 2 July 2009

Case Status: Final

Link to full case (in Slovenian only):

<http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/5EC66748A09C70A4C12575EF002111D8>

2) Facts

The applicants were a gay couple who registered their same sex partnership in Slovenia, in accordance with the Registration of Same Sex Partnerships Act (RSSPA). It was only after their registration that the inheritance provisions of RSSPA entered into force. They felt that the RSSPA applied unequal standards between same sex and opposite sex couples and was discriminatory. The applicants therefore filed a petition to the Constitutional Court to review it.

3) Law

Slovenian Constitution

- Article 14 (right to non-discrimination);
- Article 15 (the prohibition of limiting human rights with a pretext that it is not recognised by constitution);
- Article 33 (the right to private property and inheritance); and
- Article 67 (Property)

Legislation

- Article 22 of the Registration of Same Sex Partnership Act, Official Journal of the Republic of Slovenia No. 65/2005

The provision of Article 22 of RSSPA states as follows:

“(1) In case of death of a partner the surviving partner has the right to inheritance on the share of **common possessions** under this act.

(2) If the deceased has children, the possessions from the previous paragraph are inherited by the surviving partner and the children of the deceased by equal shares.¹

¹ For example, if the deceased has two children, common possessions are divided into three shares and each of the children and the surviving partner inherits one third of common possessions.

(3) If the deceased does not have children, the surviving partner inherits the entire share of **common possessions** of the deceased.

(4) **Special possessions** of the deceased are inherited in accordance with the general rules on inheritance.² General rules on inheritance are also used in inheritance of the share of common possessions of the deceased if this act does not stipulate otherwise.

(5) The material competency for the inheritance procedures lies within the county courts.”

Note on common and special possessions

In general, the Slovenian legal system differentiated between **common possessions** of partners (married or unmarried opposite sex partners and registered same sex partners) and **special possessions** of partners.

Common possessions encompass everything that the partners have acquired through work within the duration of the marriage, civil union or registered partnership, and possessions acquired by income deriving from their common possessions (e.g. rents from apartment bought with money obtained through work and leased to a third party). Common possessions belong to both partners and their shares are not determined.

Special possessions of each partner are those acquired before they entered into marriage/civil union/registered partnership, by inherited possessions or gifts, and income from their special possessions (e.g. rents from inherited apartment leased to a third party).

4) Legal Arguments

The applicants

The applicants contended that the RSSPA regulates inheritance for same sex partners differently than the Inheritance Act which applies generally in Slovenia. The applicants argued, among other things, that under the inheritance laws regulated by the RSSPA and the Inheritance Act same sex partners would be excluded from having a share in special possessions but married couples would not have been excluded.

Under the terms of the Inheritance Act the entire possessions (compiled both of the deceased's **common** possessions and the deceased's **special** possessions) are inherited by spouse and deceased's children in equal shares. If the deceased has no children, the possessions are inherited by the spouse (one half) and the parents (one half). In addition, under Article 25 of the Inheritance Act the surviving partner has the right to an “obligatory share”, which is a share that the surviving partner is entitled to even if the deceased writes a will from which this partner is excluded.

² This means that **special possessions** acquired by the deceased before the registration of partnership, by inheritance or by gifts, are inherited by a different system than **common possessions**. Following this provision, the surviving partner is excluded from inheritance of **special possessions** – only spouses, children, parents and other blood relatives of the deceased can inherit special possessions.

The applicants argued further that Article 22 of RSSPA did not meet the goal of the legislator which was to regulate the economic and social relations between registered same sex couples, **because RSSPA introduced rules which are totally different from the inheritance rules generally in place, and the only reason for this differentiation was sexual orientation.**

The applicants stressed that in economic and social terms the registered same sex partnership is the same as marriage. It is a lasting life union of partners which is concluded for the purpose of mutual moral, emotional and economic support. The bases for both are equality of partners, mutual affection, love, understanding and trust, and in both cases the partners are obliged to respect, trust and help each other. In both cases common possessions are created by law, partners contribute to and share expenses, support the other partner if incapable of work, etc.

In their application the applicants invoked Articles 14, Article 15, Article 33 and Article 67 and the Act Implementing the Principle of Equal Treatment which prohibits discrimination, *inter alia*, on the basis of sexual orientation in all fields of social life.

The respondent

The National Assembly of the Republic of Slovenia as the opposite party did not respond.

5) Decision

The Court held:

- 1) Article 22 of the Registration of Same Sex Partnerships Act was contrary to the Constitution;
- 2) The National Assembly has to remove the established inconsistencies within six months following the publication of this decision in the Official Journal of the Republic of Slovenia;
- 3) Until the inconsistencies are removed, the same rules are valid for inheritance between registered same sex partners as for inheritance between spouses in accordance with the Inheritance Act.

Justification

The Court explained that the situation of registered same sex partners, in relation to the right to inheritance, is comparable with the situation of spouses. The differences in the regulation of inheritance between spouses and registered same sex partners were not based on objective non-personal circumstances, but on sexual orientation. The Court confirmed that sexual orientation was a prohibited ground of discrimination under Article 14(1) of the Constitution and that there was no constitutionally justifiable reason for the differentiation. Finding a violation of Article 14, the Constitutional Court did not go on to assess whether Articles 15, 33 and 67 of the Constitution were violated.

The decision is important as it was the first time that the Constitutional Court of Slovenia confirmed that sexual orientation is one of the protected grounds on which discrimination is

prohibited under the “any other personal circumstance” clause of Article 14(1) of the Constitution.

The decision is also important since in its reasoning the Constitutional Court affirmed that:

“[R]egistered partnership is a relationship which is in content similar to marriage or civil partnership. The stable connection between two persons, who are close to each other, who help and support each other is the key element of both. The ethical and emotional essence of a registered partnership, as stated in Article 8 of RSSPA, according to which the partners have to respect, trust and help each other, is similar to the union between a man and a woman. The legal situation of such partnership is also similar to marriage. RSSPA also ensures mutual rights and obligations to partners, protects a weaker partner, regulates their legal position towards third parties, the state, and the social environment.”

The decision was adopted unanimously by all nine Constitutional Court judges.