



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ANDRLE v. THE CZECH REPUBLIC

(Application no. 6268/08)

JUDGMENT

STRASBOURG

17 February 2011

FINAL

20/06/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Andrle v. the Czech Republic,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President*,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 November 2010 and 25 January 2011,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 6268/08) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Augustin Andrle (“the applicant”), on 28 January 2008.

2. The applicant was represented by Mr J. Lipavský, a lawyer practising in Hradec Králové. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm, from the Ministry of Justice.

3. The applicant alleged that he was discriminated against in the enjoyment of his right to protection of property on account of his sex. The applicant complained, specifically, that the pension scheme which established a different pensionable age for women caring for children compared to men in the same position did not pursue any legitimate aim, in breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

4. On 28 August 2009 the Court decided to give notice of the application to the Government, inviting them to comment on the applicant's complaints under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a Czech national born in 1946 who lives in Vysoké Mýto (the Czech Republic).

6. The applicant was married from 1971 until 1998, when he divorced. On 28 May 1998 the applicant applied for custody of two of his four children, born in 1982 and 1985, maintaining that since August 1997 he and his wife had not lived together and that he cared for the two minor children himself.

In a judgment of 16 July 1998 the Ústí nad Orlicí District Court awarded the applicant custody of the two children.

7. On 14 November 2003 the Czech Social Security Administration (*Česká správa sociálního zabezpečení*) dismissed an application by the applicant for a retirement pension as he had not attained the pensionable age required by section 32 of the Pension Insurance Act, which was, in his case, sixty-one years and ten months.

8. The applicant challenged the administrative decision before the Hradec Králové Regional Court (*Krajský soud*), arguing that given the fact that he had cared for two children, he was entitled to retire at the age of fifty-seven and had therefore reached the pensionable age.

9. On 1 December 2004 the Regional Court stayed the proceedings in the applicant's case pending the outcome of the proceedings before the Constitutional Court (*Ústavní soud*), which was called upon to review the constitutionality of section 32 of the Pension Insurance Act in another case (no. Pl. ÚS 53/2004) brought before it by the Supreme Administrative Court (*Nejvyšší správní soud*). The Hradec Králové Regional Court joined the proceedings in that case as an intervening party.

10. In judgment no. Pl. ÚS 53/2004 of 16 October 2007 the Constitutional Court dismissed the Supreme Administrative Court's petition to repeal section 32 of the Pension Insurance Act, finding that it was not discriminatory and was therefore compatible with Article 1 and Article 3 § 1, in conjunction with Article 30 § 1, of the Charter of Fundamental Rights and Freedoms.

11. On 12 December 2007 the Regional Court dismissed the applicant's action, referring to the Constitutional Court's judgment no. Pl. ÚS 53/2004.

12. By a judgment of 13 June 2008 the Supreme Administrative Court dismissed a cassation appeal by the applicant, relying on the aforesaid judgment of the Constitutional Court.

13. Subsequently, the applicant lodged a constitutional appeal in which he alleged, *inter alia*, a violation of Article 14 of the Convention and Article 1 of Protocol No. 1.

14. On 30 October 2008 the Constitutional Court rejected the constitutional appeal as manifestly ill-founded, emphasising, in particular, the discretion afforded to the legislature to implement preferential treatment, the objective and reasonable aim pursued by this preferential treatment of women and the relationship of proportionality between the means employed and the aim pursued.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Charter of Fundamental Rights and Freedoms (Constitutional Act no. 2/1993)

15. Article 1 provides that all people are free with equal dignity and equal rights. Their fundamental rights and freedoms are inherent, inalienable, imprescriptible, and not subject to repeal.

16. Under Article 3 everyone is guaranteed the enjoyment of his or her fundamental rights and basic freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership of a national or ethnic minority, property, birth, or other status.

17. Article 30 provides that citizens have the right to adequate material security in old age and during periods of incapacity to work, as well as in the case of the loss of their household provider.

B. Development of the State pension schemes in the territory of the Czech Republic, with special regard to the State pensionable age

18. Differentiated age limits for men and women for entitlement to State retirement pensions were first introduced by the Social Security Act (no. 55/1956), which became effective on 1 January 1957. In general, the pensionable age for men was set at sixty years, while for women it was set at fifty-five years.

19. The Social Security Act (no. 101/1964), effective from 1 July 1964, specified differentials in female pensionable age based on the number of children women raised. The explanatory report on the bill noted the following:

“This differentiated age limit for acquiring the right to retire reflects the different situation in the lives of mothers who, when they took care of children, also carried out duties in the family in addition to their employment duties.”

20. The State Pension Insurance Act (no. 155/1995), effective since 1 January 1996, provides for the basic State pension insurance coverage, laying down the conditions for eligibility for pensions, including retirement

pensions, and the methods for calculating and paying out pensions. The pension scheme works on the pay-as-you-earn principle, whereby employees pay contributions from their income, which serve the purpose of financing pensions for today's pensioners from the national budget. Male and female earners are obliged to pay the same social-security contributions in accordance with their status as employed earners or self-employed earners.

21. At the relevant time, section 32(1) of the State Pension Insurance Act provided as follows:

“(1) The pensionable age is

(a) for men, 60 years,

(b) for women:

1. 53 years provided they have raised at least five children,
2. 54 years provided they have raised three or four children,
3. 55 years provided they have raised two children,
4. 56 years provided they have raised one child, or
5. 57 years,

if the insured persons had attained that age by 31 December 1995.”

Section 32(2) provided that for insured persons who reached the above-mentioned age limits between 1 January 1996 and 31 December 2006 the pensionable age was to be gradually raised by two months for men and four months for women for each calendar year, even incomplete, between 31 December 1995 and the date of reaching the above-mentioned age limits.

Section 32(4) provided at the relevant time:

“(4) The requirement for a woman to raise children in order to become entitled to an [earlier] State retirement pension has been satisfied if the woman personally takes care, or has taken care, of children for at least ten years before the children reach the age of majority. However, if a woman starts to raise a child after the child has reached the age of eight years, the requirement of raising children has been met if the woman personally takes care, or has taken care, of the child for at least five years before the child reaches the age of majority; however, the foregoing shall not apply if the woman stopped taking care of the child before the child reached the age of majority.”

22. According to the Government's submissions, women are called upon to prove that they have raised children for the statutory period by completing a statutory declaration appended to their application for the retirement pension.

23. Owing to complex demographic changes, the State pensionable age for all persons has thus been gradually rising. Since 2003 the Government

have made efforts to push through two amendments of the State Pension Insurance Act envisaging a gradual equalisation of men's and women's retirement age regardless of the number of children raised. However, owing to difficult political negotiations with certain political parties and trade unions, the only possible solution was to reach a compromise.

24. As a result, the amended Act no. 155/1995, effective from 1 January 2010, provides in section 32 as follows:

“(1) The pensionable age is

(a) for men, 60 years,

(b) for women:

1. 53 years provided they have raised at least five children,
2. 54 years provided they have raised three or four children,
3. 55 years provided they have raised two children,
4. 56 years provided they have raised one child, or
5. 57 years,

in the case of insured persons born before 1936.

(2) For insured persons born after 1936 and before 1968 the pensionable age is determined according to the table annexed to this Act, which calculates the increased pensionable ages by adding extra months.

(3) For insured persons born after 1968 the pensionable age is

(a) for men, 65 years,

(b) for women:

1. 62 years provided they have raised at least four children,
2. 63 years provided they have raised three children,
3. 64 years provided they have raised two children, or
4. 65 years.”

C. Constitutional Court judgment no. Pl. ÚS 53/2004 of 16 October 2007

25. By this judgment, the Plenary of the Constitutional Court rejected the Supreme Administrative Court's petition for the repeal of section 32 of

the Pension Insurance Act. It held that a particular legal framework which gave an advantage to one group or category of persons compared to another could not in itself be said to violate the principle of equality, and that the legislature had discretion to implement preferential treatment. The approach at stake was based on objective and reasonable grounds and pursued a legitimate aim. The court came to the conclusion that the proposed repeal would be contrary to the principles of legal certainty and minimal restrictions on human rights as women would lose preferential treatment whereas men would not receive the same benefits. Therefore, the solution to the unequal treatment of men and women required a complex and prudent adjustment of the whole pension scheme.

In its observations to the Constitutional Court the Ministry of Labour and Social Affairs submitted that among the European Union Member States a similar provision was effective for a temporary period only in Slovakia and to a limited extent in Slovenia.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

26. The applicant complained that he was discriminated against in the enjoyment of his property rights on account of his sex. In particular, he alleged that the pension scheme, which established a different pensionable age for women caring for children and for men in the same position, did not pursue any legitimate aim.

Article 14 of the Convention provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Article 1 of Protocol No. 1 provides:

“1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

27. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely with regard to “the enjoyment of the rights and freedoms” safeguarded by those provisions (see, amongst many authorities, *Şahin v. Germany* [GC], no. 30943/96, § 85, ECHR 2003-VIII). The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but it is also sufficient for the facts of the case to fall “within the ambit” of one or more of the Convention Articles (see, among other authorities, *Gaygusuz v. Austria*, § 36, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, and *E.B. v. France* [GC], no. 43546/02, § 47, ECHR 2008-... and references therein).

28. The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention article, for which the State has voluntarily decided to provide (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 40, ECHR 2005-X).

29. If a Contracting State has legislation in force providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (*ibid.*, § 54).

30. In cases, such as the present, concerning a complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 that the applicant has been denied all or part of a particular benefit on a discriminatory ground covered by Article 14, the relevant test is whether, but for the condition of entitlement about which the applicant complains, he or she would have had a right, enforceable under domestic law, to receive the benefit in question. Although Protocol No. 1 does not include the right to receive a social-security payment of any kind, if a State does decide to create a benefits scheme, it must do so in a manner which is compatible with Article 14. (*ibid.*, § 55).

31. It follows that the applicant's interests fall within the scope of Article 1 of Protocol No. 1 and of the right to property which it guarantees. This is sufficient to render Article 14 applicable in this case.

32. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

33. As the applicant did not submit his observations within the given time-limit, they have not been included in the case file.

(b) The Government

34. The Government admitted that the applicant had been subjected to different treatment from a woman in a similar situation who had raised one or two children. In their view, however, such a difference in treatment had an objective and reasonable justification.

35. In this connection, the Government pointed out that the Social Security Act (no. 101/1964), which introduced a differentiated pensionable age depending on the number of children women had raised (see paragraph 19 above), reflected the economic and social situation in the then socialist Czechoslovakia. Firstly, the extensive development of the economy necessitated the full involvement of women in the labour process. Secondly, under the Communist regime, women were primarily responsible for the functioning of families and almost entirely responsible for children. In that period, the foundations for the family model (persisting until the present time) were laid; under that model, women were expected to work on a full-time basis and at the same time to take care of children and the household. As a result of the combination of those two factors, mothers found themselves under an enormous burden. At the same time, the then legislature took into account the biological perspective because the child-raising requirement set forth in the Act implied from the outset not only the care of the child but also pregnancy, childbirth, breastfeeding and so on.

36. Against this background, the Government admitted that the measure consisting in the lowering of the pensionable age for women according to the number of children raised had not been introduced to protect or reward parents for raising children, but served as a protective measure compensating for the factual inequality in which women in their capacity as mothers found themselves in comparison with men. It thus aimed to rectify the inequalities between the social roles of the two sexes in the family and to redress the imbalance created by maternity, which would always constitute a certain disadvantage for mothers in the labour market. Since those disadvantages stemmed from the biological differences between women and men, the Government submitted that the measure challenged by the applicant appeared to be objectively and reasonably justified for the purposes of Article 14 of the Convention.

37. Furthermore, the Government submitted that, unlike biological factors, social factors were subject to change. Therefore, the differentiated pensionable age for women depending on the number of children raised would continue to be justified until social conditions changed enough for women to cease to be disadvantaged as a consequence of the existing family model.

38. Because changes in the organisation of family life were evolving only very slowly in the Czech Republic, the Government believed that, as in the case of *Stec and Others v. the United Kingdom* ([GC], no. 65731/01, ECHR 2006-VI), it would be difficult to specify the moment from which this unfairness to men (caused by the lowering of the State pensionable age depending on the number of children raised only in the case of women) prevailed over the need to remedy the disadvantaged position of women. Also, the Constitutional Court had held in its judgment no. Pl. ÚS 53/2004 that the elimination of inequalities between men and women in the State pension insurance scheme should fully reflect the development of the situation in society.

39. With regard to the exact timing and method for rectifying the inequality, the Government stated that amendments to Act no. 155/1995, regulating the State pension insurance scheme, had introduced the gradual raising of the existing pensionable ages as one of the key measures of pension reform. Another objective of the subsequent measures was the equalisation of the State pensionable age for men and women, regardless of the number of children raised.

40. The Government asserted that the current measures were only temporary solutions, part of the long-term fundamental reform of the whole State pension system. Two other approaches would be far more difficult than this method of taking gradual steps. An instant abolition of the lowering of women's State pensionable age in relation to the number of children raised would have been socially insensitive, contrary to the principle of foreseeability of the law and therefore entirely unacceptable both politically and socially. The lowering of the male pensionable age in relation to the number of children raised would lead to a considerable increase in the expenditure of the Czech Social Security Administration and to an unavoidable increase in the caseload of the courts, which would have to devise a very complicated system for checking which of the parents actually took care of children and was therefore eligible for the lowered retirement age. This method would have meant a step back in pension reform overall, which, in fact, envisaged a considerable increase in the State pensionable age for everyone.

41. So far, the Government had succeeded in pushing through proposals for the gradual equalisation of the State pensionable age for men and women in general. For this purpose the pensionable age for women was

currently growing twice as fast as that for men. The upper limit had been set, for the time being, at sixty-five years for men and women.

42. As early as 2003, the Government had tried to abolish, on a step-by-step basis, the lowering of the women's State pensionable age in relation to the number of children raised, but having regard to the negative opinions of organisations representing both employees and employers (see paragraph 23 above), they had abandoned that intention for the time being in the interest of maintaining lasting social stability. Later, in 2007, they had not succeeded in pushing through a similar proposal to its full extent, so for the time being the lowering of the State pensionable age in relation to the number of children raised had been abolished only for women born after 1968 who had raised one child (see paragraph 24 *in fine* above).

43. The Government also drew attention to further attempts to gradually remove gender-based differentials from the State pension insurance scheme, such as entitlement to bereavement benefits for men and women taking into account care for children, parental leave and parental allowance.

44. The Government lastly noted that the Court, in the case of *Stec and Others* (judgment, cited above), had refused to blame the United Kingdom government for the lengthy process of consultation and review and the national parliament's decision to introduce reform slowly and in stages. The Czech Government believed that the employers' and employees' representatives' negative view of the proposal to abolish the lowering of women's State pensionable age in relation to the number of children raised reflected, *inter alia*, evidence brought to light by surveys and statistical data, which indicated that, in the Czech Republic, a traditional family model still prevailed.

45. In the light of the above considerations, the Government concluded that the decisions on the exact timing and method for rectifying the inequality were not so “manifestly unreasonable” as to exceed the wide margin of appreciation enjoyed by States in the formation of their economic and social policies.

2. *The Court's assessment*

(a) **General principles**

46. The applicant complained of a difference in treatment on the basis of sex, which falls within the non-exhaustive list of prohibited grounds of discrimination in Article 14.

47. The Court's case-law establishes that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). However, not every difference in treatment will amount to a violation of Article 14. It must be established that other persons in an analogous or relevantly similar situation enjoy

preferential treatment and that this distinction is discriminatory (see *Ünal Tekeli v. Turkey*, no. 29865/96, § 49, ECHR 2004-X).

48. Article 14 does not prohibit a member State from treating groups differently in order to correct “factual inequalities” between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV; *Stec and Others*, judgment cited above, § 51; and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-XII, with further references). A difference in treatment is, however, discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment (see *Van Raalte v. the Netherlands*, 21 February 1997, § 39, *Reports* 1997-I).

49. The scope of this margin will vary according to circumstances, subject matter and background (see *Petrovic v. Austria*, 27 March 1998, § 38, *Reports* 1998-II). In this respect, one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States (see *Rasmussen v. Denmark*, 28 November 1984, § 40, Series A no. 87). As a general rule, very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of sex as compatible with the Convention (see *Stec and Others*, judgment cited above, § 52, and *Willis*, cited above, § 39). This principle is strengthened by the efforts for advancement of the equality of the sexes which is today a major goal in the member States of the Council of Europe (see *Konstantin Markin v. Russia*, no. 30078/06, § 47, 7 October 2010 (not final, subject to Article 44 § 2 of the Convention), and *Ünal Tekeli*, cited above, § 59).

50. On the other hand, a wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are, in principle, better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the State's policy choice unless it is “manifestly without reasonable foundation” (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 80, *Reports* 1997-VII, and *Stec and Others*, judgment cited above, § 52).

51. Indeed the pension systems constitute cornerstones of modern European welfare systems. They are founded on the principle of long-term contributions and the subsequent entitlement to a pension guaranteed, at

least to a certain extent, by the State. Unlike other welfare benefits, every member of society is eligible to draw this benefit after reaching the pensionable age. The inherent features of the system – stability and reliability – allow for lifelong family and career planning. For these reasons the Court considers that any adjustments of the pension schemes must be carried out in a gradual, cautious and measured manner. Any other approach could endanger social peace, foreseeability of the pension system and legal certainty.

(b) Application of these principles to the present case

52. Both parties agreed that the application concerned the lowering of the pensionable age for women who took care of children but not for men in the same situation, and not the different pensionable age between men and women born before 1969 in general. The applicant, arguing that he had cared himself for his children born in 1982 and 1985, from at least 1997 until they had reached the age of majority, applied for a retirement pension in 2003, at the age of fifty-seven. His request was dismissed as he had not attained the pensionable age required for men, which could not be lowered according to the number of children raised (see paragraphs 6 and 7 above).

53. Acknowledging that, in the former Czechoslovakia, the more favourable treatment of women who raised children was originally designed to compensate for the factual inequality and hardship arising out of the combination of the traditional mothering role of women and the social expectation of their involvement in work on a full-time basis, the Court considers that this measure pursued a legitimate aim.

54. It remains to be examined whether or not the underlying difference in treatment between men and women in the State pension scheme is acceptable under Article 14, that is, whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

55. The Court cannot overlook the fact that the measure at stake is rooted in specific historical circumstances. The means employed in 1964 reflected the realities of the then socialist Czechoslovakia, where women were responsible for childcare and the related care of the household while being under pressure to work full time (see paragraph 19 and 35 above). The amount of salaries and pensions awarded to women was also generally lower in comparison with those awarded to men.

56. Although this family model inevitably shaped recent families, in today's society the child-bearing and child-rearing roles may no longer overlap to such a great extent. Indeed, the efforts by the respondent State to modify the pension scheme, whether successful or not, are intended to react to these and much wider social and demographic developments. Yet it is difficult to pinpoint any particular moment when the unfairness to men begins to outweigh the need to correct the disadvantaged position of women

by means of affirmative action. The reluctance of certain political parties and trade unions to support the equalisation of the pension scheme may be indicative in this regard (see paragraph 23 above). The Court cannot but reiterate that the national authorities are better placed than an international judge to determine such a complex issue relating to economic and social policies, which depends on manifold domestic variables and direct knowledge of the society concerned, and that they have to enjoy a wide margin of appreciation in this sphere.

57. The Court notes that the Czech Government have already made the first concrete move towards equalisation of the retirement age, since in the amendment of Act no. 155/1995, effective from 1 January 2010, they repealed the lowered pensionable age for women born after 1968 who had raised one child (see paragraph 24 *in fine* above). As a consequence the pensionable age is the same for women born after 1968 who have raised no children or one child as the pensionable age for men born after 1968. Women who have raised two or more children continue to have their pensionable age lowered. Nonetheless, the pension reform seems to be heading towards an overall increase in the pensionable age, taking no account of the number of children raised by either women or men (see paragraphs 40-42 above).

58. The Court acknowledges that owing to the difficult political negotiations, the resulting change in the Czech pension scheme is limited. However, the demographic shifts and changes in perceptions of the roles of the sexes are by their nature gradual and, after forty-five years of the existence of the measure at stake, it is necessary to time the amendment accordingly. Therefore, the State cannot be criticised for progressively modifying its pension system to reflect these gradual changes (see also paragraph 51 above) and for not having pushed for complete equalisation at a faster pace. Indeed, the respondent Government have to choose from among different methods of equalising the retirement age. This task is even more demanding and deserves well-thought-out solutions since the State has to place this reform in the wider context of other demographic shifts, such as the ageing of the population or migration, which also warrant adjustment of the welfare system, while preserving the foreseeability of this system for the persons concerned who are obliged to contribute to it.

59. The present case must therefore be distinguished from the issue of discrimination in the field of parental leave (see *Konstantin Markin*, cited above, not final). In the *Konstantin Markin* case the Court held that the traditional perception of women as primary child-carers could not provide sufficient justification for the exclusion of the father from the entitlement to take parental leave from now on and for the future (*ibid.*, § 49) and found a violation of Article 14 in conjunction with Article 8. However, unlike the pension scheme, parental leave is a short-term measure which does not affect the entire lives of members of society. It is related to today's life of

those concerned whereas the pension age reflects and compensates for inequalities of former times. In the Court's opinion, the amendments of the parental leave system referred to in the case of *Konstantin Markin* do not involve changes to the subtle balance of the pension system, do not have serious financial ramifications and do not alter long-term planning, as might be the case with the pension system, which forms a part of national economic and social strategies.

60. To conclude, the Court finds that the original aim of the differentiated pensionable ages based on the number of children women raised was to compensate for the factual inequality between men and women. In the light of the specific circumstances of the case, this approach continues to be reasonably and objectively justified on this ground until social and economic changes remove the need for special treatment for women. In view of the time-demanding pension reform which is still ongoing in the Czech Republic, the Court is not convinced that the timing and the extent of the measures undertaken by the Czech authorities to rectify the inequality in question have been so manifestly unreasonable as to exceed the wide margin of appreciation allowed in such a field (see *Stec and Others*, judgment cited above, § 66).

61. In these circumstances the Court finds that the Czech Republic cannot be criticised for having failed to ensure, in the present case, a reasonable relationship of proportionality between the impugned difference in treatment and the legitimate aim pursued.

There has therefore been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Done in English, and notified in writing on 17 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President