



The rejection of an application for an invalidity pension was neither unfair nor discriminatory

In its decision in the case of [Spycher v. Switzerland](#) (application no. 26275/12) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the rejection of an application for an invalidity pension made by a person suffering from an illness not covered by the invalidity insurance scheme.

The Court held in particular that Ms Spycher had not raised any arguments demonstrating a lack of independence or impartiality on the part of the medical centre that had carried out the expert examination in her case. It further held that the domestic courts did not appear to have assessed the medical documents, and in particular the private expert report produced by Ms Spycher and the medical centre's report, in an arbitrary manner. Lastly, the Court considered that the difference between a syndrome with no underlying organic cause, such as that from which Ms Spycher suffered, and one with an underlying organic cause was a matter of objective medical diagnosis. The fact that Ms Spycher, on the basis of that objective distinction, had not obtained an invalidity pension did not amount to discrimination against her, as the two situations were not analogous or relevantly similar.

Accordingly, the Court rejected the application as being manifestly ill-founded.

Principal facts

The applicant, Iris Spycher, is a Swiss national who was born in 1971 and lives in Oberstocken (Switzerland).

Ms Spycher, who suffered from persistent pain following an accident not related to her professional activity, applied to the Invalidity Insurance Office of the Canton of Berne ("the Office") for an invalidity pension. In support of her application she furnished a private expert report which stated that she was unfit to work. The Office rejected her application, citing the case-law of the Federal Court according to which individuals with Ms Spycher's condition, a somatoform pain syndrome without any underlying organic disease, were not eligible for the benefit in question. The Cantonal Administrative Court dismissed an appeal by Ms Spycher on the same grounds. She appealed against that decision to the Federal Court, which ordered a fresh expert report. The Office instructed one of its medical centres to carry out the expert examination on Ms Spycher, but she contested the choice of centre.

On the basis of this fresh expert report, according to which Ms Spycher was fully fit to carry on her most recent occupation or any other suitable occupation, the Office again refused her pension application. That decision was upheld by the Administrative Court, which declined to take oral evidence from the two doctors proposed by Ms Spycher as witnesses at a public hearing. The Federal Court also dismissed her appeal, finding that there were no specific grounds for doubting the reliability and conclusive nature of the findings of the expert report produced by the medical centre, which had acted as an auxiliary body of the invalidity insurance provider.

Ms Spycher applied to the Federal Court on 2 September 2015 to have the proceedings reopened. The application is still pending.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 17 April 2012.

Relying on Article 6 § 1 (right to a fair hearing) of the Convention, Ms Spycher alleged that she had not been given a fair hearing. She contended that the centre chosen for the expert examination was not independent and impartial *vis-à-vis* the invalidity insurance provider, since the latter paid for the expert examinations, and that the courts were likewise not independent and impartial when they based their judgment on an expert report prepared by the insurer's medical centre without ordering their own expert report. Under Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life), and with Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment), Ms Spycher further alleged that the case-law of the Federal Court discriminated against people suffering from pain syndromes without any underlying organic disease compared with those suffering from disorders with an underlying organic cause.

The decision was given by a Chamber of seven judges, composed as follows:

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
George **Nicolaou** (Cyprus),
Helen **Keller** (Switzerland),
Johannes **Silvis** (the Netherlands),
Dmitry **Dedov** (Russia),
Pere **Pastor Vilanova** (Andorra), *Judges*,

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 6 § 1

With regard to Ms Spycher's complaint alleging a lack of impartiality and independence on the part of the medical centre, whose experts were paid by the invalidity insurance provider, the Court emphasised that the mere fact that the experts were employed by the administrative authority which had to decide on a given case did not in itself constitute grounds for finding that they were not capable of acting with the required objectivity. Furthermore, the centre in question was not a federal administrative unit but a public limited company whose task was to carry out expert medical examinations for a number of clients, including the Invalidity Insurance Offices.

The Court also noted that Ms Spycher, who had not raised objections to the medical centre experts, had not advanced any grounds for her complaint as to the alleged lack of independence and impartiality of the experts who had examined her, other than the contractual relationship between the centre and the invalidity insurance provider. Accordingly, the Court held that this complaint was manifestly ill-founded.

As to the complaint concerning the unfairness of proceedings in which the courts based their decision on those expert reports, the Court observed that Ms Spycher's case had been examined twice by the invalidity insurance provider and also by the Cantonal Court and the Federal Court. During the second set of proceedings, the insurance provider had ordered an expert examination to be carried out at the medical centre in order to pursue the medical investigation further. Ms Spycher had subsequently had an opportunity to comment on the expert report, and it was apparent from the file that she had not really taken advantage of that opportunity. She and her representative had also attended a public hearing of the Cantonal Court, in the context of adversarial proceedings. The fact that the Cantonal Court had not granted Ms Spycher's request to question two doctors as

witnesses, and had refused to order a further expert report, fell within the scope of the free assessment of the evidence. Hence, as confirmed by the Federal Court, the Cantonal Court did not appear to have assessed the medical documents, and in particular the private expert report produced by Ms Spycher and the medical centre's report, in an arbitrary manner. The Court saw no evidence to suggest that the proceedings as a whole had been unfair and rejected this part of the complaint as being manifestly ill-founded.

Article 14 taken together with Article 8

The Court noted that the difference between the two syndromes (with or without an underlying organic cause) was a matter of medical diagnosis, with the result that a person suffering from one syndrome could not be said to be in an analogous or relevantly similar situation to someone suffering from the other.

The two types of syndrome were distinguished by the presence or absence of an organic component that could be objectively established by medical science. The fact that Ms Spycher had not obtained an invalidity pension because of this distinction did not discriminate against her in comparison with persons who obtained it and were suffering from a syndrome with an underlying organic cause.

Furthermore, quite apart from the difference in the nature of the two syndromes, there had been an objective and reasonable justification for the difference in treatment, since an invalidity pension could not be granted on the basis of a purely subjective diagnosis, that is to say, one that was not objectively established by medical science. Accordingly, the medical centre's experts had based their report on an objective determination of Ms Spycher's fitness for work.

The Court therefore rejected the complaint as being manifestly ill-founded.

Article 14 taken together with Articles 2 and 3

The Court noted that Ms Spycher had not raised this complaint sufficiently before the Federal Court and had therefore not exhausted domestic remedies. Furthermore, she had not substantiated the complaint before the Court, which rejected it as being manifestly ill-founded.

The decision is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.