



Termination of a widower's pension, on grounds of sex, when his youngest child reached the age of majority breached the Convention

In today's Chamber judgment¹ in the case of [B. v. Switzerland](#) (application no. 78630/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the widower's pension to which the applicant had ceased to be entitled after his younger daughter had reached the age of majority. The Federal Law on Old-Age and Survivors' Insurance provides that entitlement to a widower's pension ends when the youngest child reaches the age of 18, whereas this is not the case for a widow.

The Court reiterated that the Convention was a "living instrument" which had to be interpreted in the light of present-day conditions and found that the presumption that the husband provided financially for his wife, particularly when she had children, was no longer valid and could not justify the difference in treatment of which the applicant had been a victim.

The Court was unable to conclude that there had been "very weighty reasons" in the present case to justify the difference in treatment on grounds of sex alleged by the applicant. It therefore found that the Government had failed to provide any reasonable justification for the inequality in the treatment of the applicant.

Principal facts

The applicant, B., is a Swiss national who was born in 1953. He is the father of two children, whom he raised alone after losing his wife in an accident when the children were one year and nine months and four years old.

On 9 September 2010, after noting that the applicant's younger daughter was about to reach the age of majority, the Compensation Office of the Canton of Appenzell Outer Rhodes terminated the payment of the applicant's widower's pension. He lodged an appeal, invoking the principle of gender equality laid down in the Swiss Constitution, an argument which the Office rejected. He then appealed to the Cantonal Court, arguing that there was no reason to place him at a disadvantage in relation to a widow. The Cantonal Court dismissed his appeal, observing that the legislature had been aware of the unequal treatment of widows and widowers when drafting and amending the Federal Law on Old-Age and Survivors' Insurance and had taken the view that widowers with childcare responsibilities could be expected to return to work when those responsibilities ended, whereas this could not reasonably be required of women in the same circumstances.

An appeal by the applicant to the Federal Supreme Court was dismissed in a judgment of 4 May 2012.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life), the applicant complained that he had been discriminated against in relation to widowed mothers with sole responsibility for raising their children.

The application was lodged with the European Court of Human Rights on 19 November 2012.

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

Paul Lemmens (Belgium), *President*,
Georgios A. Serghides (Cyprus),
Helen Keller (Switzerland),
Alena Poláčková (Slovakia),
María Elósegui (Spain),
Gilberto Felici (San Marino),
Lorraine Schembri Orland (Malta),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

[Article 14 taken together with Article 8](#)

The Court found that the applicant's complaint fell within the scope of Article 8 because the purpose of a widow's or widower's pension was to enable the surviving spouse to organise his or her family life. Moreover, as he had been 57 years old when he had stopped receiving the pension and 59 when the Federal Supreme Court had delivered its judgment, it would have been difficult for him to envisage returning to the labour market, a factor that had had a practical impact on the way in which he had organised his family life. Accordingly, Article 14 taken together with Article 8 was applicable in the present case.

With regard to applicant's allegation of discrimination on grounds of "sex", the Court observed that he had indeed suffered unequal treatment in that the payment of his widower's pension had been terminated when his younger daughter had reached the age of majority, whereas a widow in the same situation would not have lost her entitlement to a pension.

As to the objective nature of the discrimination, the Court was prepared to accept the Government's argument that there was a presumption that the husband provided financially for his wife, particularly when she had children. However, it considered that careful scrutiny of the reasonableness of the inequality in treatment was required. It reiterated that only "very weighty reasons" could justify discrimination on grounds of sex, whether the victim was a woman or a man.

The Court could not rule out that the introduction of a pension limited to widows might have been justified by the role and status assigned to women at the time the relevant law had been passed, in 1948. However, it pointed out that the Convention was a "living instrument" which had to be interpreted in the light of present-day conditions and found that the presumption that the husband provided financially for his wife, particularly when she had children, was no longer valid and could not justify the difference in treatment of which the applicant had been a victim.

The Court noted that the applicant's wife had died in an accident when their children had been one year and nine months and four years old. Since then, the applicant had brought up the children alone without being able to carry on his career. Having been 57 years old when he had stopped receiving the pension, the applicant had not been engaged in any gainful activity for more than 16 years. The Court failed to see why the applicant would have had less difficulty returning to the

labour market at that age than a woman in a similar situation, or why the termination of the pension would have affected him to a lesser extent than a widow in comparable circumstances.

The Court was unable to conclude that there had been “very weighty reasons” in the present case to justify the difference in treatment on grounds of sex alleged by the applicant. It therefore found that the Government had failed to provide any reasonable justification for the inequality in the treatment of the applicant.

There had therefore been a violation of Article 14 taken together with Article 8 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that Switzerland was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,380 in respect of costs and expenses.

Separate opinion

Judge Keller expressed a separate opinion, which is annexed to the judgment.

The judgment 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.