



Compulsory work for a prisoner of retirement age is not in breach of the Convention

In today's **Chamber** judgment¹ in the case of **Meier v. Switzerland** (application no. 10109/14) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 4 § 2 (prohibition of forced labour) of the European Convention on Human Rights.

The case concerned the requirement for a prisoner to work beyond the retirement age.

The Court noted that there was insufficient consensus among Council of Europe member States regarding compulsory work for prisoners after retirement age. Accordingly, it emphasised, on the one hand, that the Swiss authorities enjoyed a considerable margin of appreciation and, on the other, that no absolute prohibition could be inferred from Article 4 of the Convention. The compulsory work performed by Mr Meier during his detention could therefore be regarded as "work required to be done in the ordinary course of detention", for the purpose of Article 4 of the Convention. Consequently, it did not constitute "forced or compulsory labour" within the meaning of that Article.

Principal facts

The applicant, Beat Meier, is a Swiss national who was born in 1946 and is currently detained in Regensdorf.

By a judgment of 4 July 2003 the Court of Appeal of the Canton of Zürich sentenced Mr Meier to four years and four months' imprisonment. In March 2010 the Court of Appeal suspended the execution of the custodial sentence, replacing it with preventive detention (*Verwahrung*). On 6 December 2011 Mr Meier requested exemption from compulsory work while serving his sentence. His request was denied. The competent prison authority imposed a stricter prison regime on him on account of his refusal to work. That decision was subsequently revoked after an appeal from Mr Meier.

On 15 February 2003 Mr Meier appealed to the Federal Court, arguing that there had been an incorrect application of the Criminal Code and violations of human dignity and individual liberty as protected by the Federal Constitution. The Federal Court dismissed his appeal, holding that compulsory work for prisoners was not in itself in breach of human rights provided that the work being offered was tailored to each prisoner's abilities, training and interests.

Complaints, procedure and composition of the Court

Relying on Article 4 § 2 (prohibition of forced labour), Mr Meier alleged that there had been a violation of his right not to be required to perform forced or compulsory labour, emphasising that he was of retirement age. Relying on Article 14 (prohibition of discrimination), he complained of

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.

discrimination against him as a prisoner who had reached retirement age as compared with a person at liberty, who no longer had to work.

The application was lodged with the European Court of Human Rights on 26 January 2014.

Judgment 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),
Branko **Lubarda** (Serbia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),

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

Decision of the Court

Article 4 § 2

This was the first case in which the Court had had to deal with the issue of compulsory work in prison beyond retirement age. The Court had to assess whether it had involved any “forced or compulsory labour” in breach of Article 4 of the Convention. It noted that Mr Meier had been required to work under Article 81 of the Criminal Code. If he had refused to perform the work assigned to him, he would have committed an offence and would have had to face the consequences. Mr Meier had therefore performed work under threat of a penalty.

The Court held that the question whether Article 4 § 3 (a)² of the Convention applied to this situation should be assessed in the light of the purpose, nature and extent of the compulsory work and the manner in which it had to be performed.

As regards the purpose of the compulsory work, the Court accepted the Government’s argument that the duty of prisoners to continue working even beyond retirement age was part of the drive to reduce the harmful effects of incarceration. Suitable, reasonable work could help structure prisoners’ everyday lives and keep them active, which were important objectives for the well-being of a long-term prisoner.

As regards the nature of the work performed by prisoners who had reached retirement age, the observations issued by the Federal Council in October 2012 in reply to the report by the Committee for the Prevention of Torture on its visit to Switzerland in October 2011³ showed that compulsory work did not apply to all prisoners to the same extent and that it had to be tailored, depending on the circumstances, to the prisoner’s abilities, fitness for work and state of health.

The Court also observed that the extent of the obligation to work was also tailored to Mr Meier’s circumstances and personal situation inasmuch as he only worked about three hours a day, that is to say 18 hours and 20 minutes per week. As regards the manner in which Mr Meier had to perform his work, the Court pointed out that he was housed, together with other prisoners who had reached retirement age, in a special wing of the prison. Finally, it should be noted that the applicant was paid for his work.

2. “For the purpose of this article the term “forced or compulsory labour” shall not include: any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention”.

3. [Report to the Swiss Federal Council on the visit to Switzerland by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) from 10 to 20 October 2011 (available in French only).

With regard to practice in Council of Europe member States, the Court noted that it emerged from a comparative survey covering 28 countries that convicted prisoners were not required to work after retirement age in 16 member States. In the other 12 member States surveyed the issue was not explicitly regulated in domestic law, but these countries allowed exceptions to compulsory prison work depending on the prisoners' capacities and age.

The Court concluded that in the absence of a sufficient consensus among the member States of the Council of Europe concerning the requirement for prisoners to work beyond retirement age, it should be emphasised, firstly, that the Swiss authorities enjoyed a considerable room for manoeuvre ("margin of appreciation"), and secondly, that no absolute prohibition of such work could be inferred from Article 4 of the Convention. The compulsory work performed by Mr Meier during his detention could therefore be regarded as "work required to be done in the ordinary course of detention", for the purpose of Article 4 of the Convention. Consequently, it did not constitute "forced or compulsory labour" within the meaning of that Article.

Noting that Mr Meier had simply challenged the actual principle of compulsory work for prisoners who had reached retirement age and had not complained about the manner in which the work assigned to him by the Swiss authorities had to be performed, the Court found that there had been no violation of Article 4 of the Convention.

[Article 14 in conjunction with Article 4](#)

The Court noted that Mr Meier had not alleged before the Federal Court that he had suffered discriminatory treatment. This complaint thus had to be dismissed for non-exhaustion of domestic remedies.

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.