



Legislation providing for termination of widower's pension when the youngest child reaches the age of majority is discriminatory

In today's **Grand Chamber** judgment¹ in the case of **Beeler v. Switzerland** (application no. 78630/12) the European Court of Human Rights held, by a majority (12 votes to 5), that there had been:

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

The case concerned the termination of the applicant's widower's pension after his younger child reached the age of majority. The Federal Law on old-age and survivors' insurance provided that entitlement to a widower's pension ended when the youngest child reached the age of 18, whereas this was not the case for a widow.

Before the Court, the applicant argued that he had been discriminated against in relation to widows in a comparable situation, who would not have lost their entitlement to the pension. The Government contended that it was still justifiable to rely on the presumption that the husband provided for the financial maintenance of the wife, particularly where she had children, and thus to afford a higher level of protection to widows than to widowers. In their view, the difference in treatment was therefore based not on gender stereotyping but on social reality.

Firstly, the Court noted that between 1997 and 2010, the applicant had been in receipt of the widower's pension and had organised the key aspects of his family life, at least partially, on the basis of the existence of the pension. The delicate financial situation in which he had found himself at the age of 57, in view of the loss of the pension and his difficulties in returning to an employment market from which he had been absent for 16 years, was the consequence of the decision he had made years earlier in the interests of his family, supported from 1997 onwards by receipt of the widower's pension. The Court therefore held that Articles 8 and 14 of the Convention were applicable in the present case.

Next, the Court found that although the applicant had been in an analogous situation in terms of his subsistence needs, he had not been treated in the same way as a woman/widow. He had therefore been subjected to unequal treatment. The Government had not shown that there were very strong reasons or "particularly weighty and convincing reasons" justifying the difference in treatment on grounds of sex. In the Court's view, the Government could not rely on the presumption that the husband supported the wife financially (the "male breadwinner" concept) in order to justify a difference in treatment that put widowers at a disadvantage in relation to widows. It found that the legislation in question contributed rather to perpetuating prejudices and stereotypes regarding the nature or role of women in society and was disadvantageous both to women's careers and to men's family life.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicant, Max Beeler, 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 old 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 objection, relying on the principle of gender equality laid down in the Swiss Constitution, an argument which the Compensation Office rejected. He then appealed to the Cantonal Court, arguing that there were no grounds for treating him less favourably than 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.

Complaints, procedure and composition of the Court

The applicant relied on Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights, complaining that he had been discriminated against in relation to widowed mothers with sole childcare responsibilities.

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

In its Chamber [judgment](#) of 20 October 2020, the Court held unanimously that there had been a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life) of the Convention.

On 19 January 2021 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber). On 8 March 2021 the panel of the Grand Chamber accepted that request. A hearing was held on 16 June 2021.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert Spano (Iceland), *President*,
Jon Fridrik Kjølbro (Denmark),
Síofra O'Leary (Ireland),
Marko Bošnjak (Slovenia),
Gabriele Kucsko-Stadlmayer (Austria),
Yonko Grozev (Bulgaria),
Stéphanie Mourou-Vikström (Monaco),
Pere Pastor Vilanova (Andorra),
Pauliine Koskelo (Finland),
Jovan Ilievski (North Macedonia),
Péter Paczolay (Hungary),
Arnfinn Bårdsen (Norway),
Saadet Yüksel (Türkiye),
Anja Seibert-Fohr (Germany),
Peeter Roosma (Estonia),
Ioannis Ktistakis (Greece),
Andreas Zünd (Switzerland),

and also Søren Prebensen, *Deputy Grand Chamber Registrar*.

Decision of the Court

Applicability of Articles 8 and 14

The Court noted that the pension in question sought to promote family life for the surviving spouse by enabling the latter to look after his or her children full-time if that had previously been the role of the deceased parent, or, in any event, to devote more time to them without having to face financial difficulties that would force him or her to engage in an occupation.

In the present case, at the time of the applicant's wife's death in 1994, their daughters had been one year and nine months old and four years old. In that situation, which made it necessary to take difficult decisions with a crucial impact on the organisation of his family life, the applicant had left his job in order to devote himself full-time to his family, in particular by looking after and bringing up his daughters. The Court had no doubt that the receipt of the widower's pension had necessarily affected the way in which his family life was organised throughout the period concerned. Accordingly, from the point at which the applicant had been granted the widower's pension in 1997 until it had been terminated in November 2010, he and his family had organised the key aspects of their daily life, at least partially, on the basis of the existence of the pension. Moreover, the delicate financial situation in which the applicant had found himself at the age of 57, in view of the loss of the survivor's pension and his difficulties in returning to an employment market from which he had been absent for 16 years, was the consequence of the decision he had made years earlier in the interests of his family, supported from 1997 onwards by receipt of the widower's pension.

The Court therefore concluded that the facts of the case fell within the ambit of Article 8 of the Convention. This was sufficient to render Article 14 of the Convention applicable.

Article 14 read in conjunction with Article 8

The Court found that the applicant could claim to have been the victim of discrimination on grounds of "sex" within the meaning of Article 14 of the Convention. It observed that the termination of his entitlement to a widower's pension had been based on section 24(2) of the Federal Law on old-age and survivors' insurance, which, in the case of widowers alone, ended that entitlement at the time when the youngest child reached the age of majority. Widows, meanwhile, retained their entitlement to a survivor's pension even after their youngest child had reached the age of majority. As a result, the applicant had stopped receiving the survivor's pension simply because he was a man. Although he had been in an analogous situation in terms of his subsistence needs, he had not been treated in the same way as a woman/widow. He had therefore been subjected to unequal treatment on account of the termination of his widower's pension.

The Court pointed out that it had already accepted that any adjustments of pension schemes had to be carried out in a gradual, cautious and measured manner, since any other approach could endanger social peace, the foreseeability of the pension system and legal certainty. It reiterated, however, that very weighty reasons would have to be put forward before it could regard a difference of treatment based on the ground of sex as compatible with the Convention, and that the margin of appreciation afforded to States in justifying such a difference was narrow.

In the present case, the Court noted that in justifying the difference in the treatment of women and men regarding entitlement to a survivor's pension, the Government had argued that gender equality had not yet been entirely achieved in practice as far as involvement in paid employment and the distribution of roles within the couple were concerned. In the Government's view, it was still justifiable to rely on the presumption that the husband provided for the financial maintenance of the wife, particularly where she had children, and thus to afford a higher level of protection to

widows than to widowers. The difference in treatment, they argued, was therefore based not on gender stereotyping but on social reality.

The Court emphasised that the advancement of gender equality remained a major goal in the member States of the Council of Europe. This was reflected in instruments such as Recommendation R (85) 2 on legal protection against sex discrimination, adopted by the Committee of Ministers on 5 February 1985, which called for men and women to be guaranteed equal treatment with regard to access to official social security and pension systems and with regard to the benefits paid by such systems.

The Court consequently reaffirmed that references to traditions, general assumptions or prevailing social attitudes in a particular country were no longer sufficient justification for a difference in treatment on grounds of sex, whether in favour of women or men. This meant that the Government could not rely on the presumption that the husband supported the wife financially (the “male breadwinner” concept) in order to justify a difference in treatment that put widowers at a disadvantage in relation to widows.

The Court further observed that the Swiss government had acknowledged in 1997 that women were increasingly often in gainful employment and that protection was necessary for men who devoted themselves to carrying out household tasks and bringing up children. However, complete harmonisation of the eligibility conditions for widows’ and widowers’ pensions appeared to have been thwarted at the time by financial constraints and criticism. Other attempts by the government from 2000 onwards had been unsuccessful.

Against that background, the Court attached crucial importance to the considerations set out by the Federal Supreme Court, which, in its judgment of 4 May 2012 in the present case, had observed that the legislature had been aware, when the widower’s pension had been introduced, that the relevant rules established an unacceptable distinction on grounds of sex, breaching the Constitution.

In the Court’s view, the above-mentioned attempted reforms and the assessment of the impugned legislation by the country’s highest court, the Federal Supreme Court, showed that the old “factual inequalities” between men and women had become less marked in Swiss society. Accordingly, the considerations and assumptions on which the rules governing survivors’ pensions had been based over the previous decades were no longer capable of justifying differences on grounds of sex. The Federal Supreme Court’s judgment even indicated that the rules in question were in breach of the principle of gender equality enshrined in Article 8 of the Swiss Constitution. The Court added that in its view, the legislation in question contributed rather to perpetuating prejudices and stereotypes regarding the nature or role of women in society and was disadvantageous both to women’s careers and to men’s family life.

Turning to the present case, the Court observed that after his wife’s death, the applicant had devoted himself entirely to looking after, bringing up and caring for his children and had given up his job. He had been 57 years old when payment of the pension had ceased, by which time he had not been in gainful employment for more than 16 years. In that regard, the Grand Chamber shared the Chamber’s view that there was no reason to believe that the applicant, at that age and following a lengthy absence from the labour market, would have had less difficulty in returning to employment than a woman in a similar situation, or that the termination of the pension would have had less impact on him than on a widow in comparable circumstances.

Having regard to the foregoing, and to the narrow margin of appreciation enjoyed by the respondent State in the present case, the Court found that the Government had not shown that there were very strong reasons or “particularly weighty and convincing reasons” justifying the difference in treatment on grounds of sex complained of by the applicant. That being so, the unequal treatment to which the applicant had been subjected could not be said to have been reasonably and

objectively justified. There had therefore been a violation of Article 14 of the Convention read in conjunction with Article 8.

Just satisfaction (Article 41)

The Court held (by 12 votes to 5) that Switzerland was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 16,500 in respect of costs and expenses.

Separate opinions

Judges Seibert-Fohr and Zünd each expressed a concurring opinion. Judges Kjølbrot, Kucsko-Stadlmayer, Mourou-Vikström, Koskela and Roosma expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and 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.