

Petrovic v Austria (Application no. 20458/92)

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of Decision: 27 March 1998

Case Status: Decided on merits

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696023&portal=hbkm&source=externalbydocnumber&table=1132746FF1FE2A468ACBCD1763D4D8149>

2) Facts

The applicant, an Austrian national, was denied parental leave allowance by local authorities on the basis that only mothers were entitled to it. He alleged that this amounted to a violation of his right to freedom from discrimination, as well as a violation of his right to respect for family and private life. By the time the case came before the European Court of Human Rights, the legislation had been amended, permitting fathers to claim parental leave allowance, but only for children born after December 1989 when the new legislation came into effect.

3) Law

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

The applicant sought to challenge section 26(1) of the Unemployment Benefit Act 1977 which provided that only mothers could claim parental leave allowance.

4) Legal Arguments

The Applicant

The applicant submitted that any financial assistance enabling parents to stop working in order to look after their children affected family life and therefore, came within the scope of Article 8 of the Convention. He alleged that he was the victim of discrimination on grounds of sex in breach of Article 14 of the Convention taken together with Article 8 due to the different treatment of mothers and fathers with respect to granting a parental leave allowance which in his opinion was not justified.

The Government

The Government argued that parental leave allowance did not fall within the scope of Article 8 since the provision did not contain any general obligation to provide financial assistance to a parent who wished to stay at home to look after their children, and parental leave allowance was a matter of welfare policy which was not to be included within the concept of family life. It was not disputed that that amounted to a difference in treatment on grounds of sex. The Government submitted that the fact that there was no common European standard on the matter meant that the Austrian legislature's decision to pay a parental leave allowance only to mothers fell within the margin of appreciation. Furthermore, the provisions in question reflected the outlook of society at

the time, according to which the mothers had the primary role in looking after young children.

5) Decision

In its reasoning the Court stated that by granting parental leave allowance, States are able to demonstrate their respect for family life within the meaning of Article 8 of the Convention and thus determined that the facts of the case fell within the ambit of Article 8, going on to address the case on the basis of Article 8 in conjunction with Article 14. Noting that there was no dispute over the fact that there was different treatment depending on sex, the Court went on to ask if this difference had a reasonable and objective justification, and was proportionate in the pursuit of a specific aim. The Court held by seven votes to two that there had been no violation of Article 14 reasoning that the State had not overstepped its margin of appreciation, and noting that the Court found it difficult to criticise the Austrian legislature for having introduced in a gradual manner, reflecting the evolution of society in that sphere, legislation which was very progressive in Europe.

Dissenting Opinion

Judges Bernhardt and Spielmann issued a dissenting opinion, arguing that there had been a violation of Article 14 taken in conjunction with Article 8, on the grounds that the Austrian legislation under which only mothers were entitled to parental leave allowance was based on a traditional distribution of family responsibilities between mothers and fathers, and that traditional practices and roles in family life alone do not justify a difference in treatment of men and women. In their opinion, discrimination against fathers perpetuated this traditional distribution of roles and could also have negative consequences for the mother. They also opined that the reference to the situation in other European States and to the lack of uniform practice was not conclusive. The judges recalled the Commission statement in its report on the case that there are different social-security systems in the European States, and a State, when opting for one system, is not permitted to grant benefits in a discriminatory manner.