
1) Reference Details

Jurisdiction: UN Human Rights Committee, Sixty-fifth session
Date of Decision: 30 April 1999
Case Status: Concluded by the Human Rights Committee

2) Facts

The author's first wife, a school teacher in the State party's civil service in the region of Styria (Steiermark), died on 23 June 1984. Subsequently, from November 1985, the author was entitled to a widower's pension, which was calculated on the basis of the transitional provisions of the Eighth Amendment to the Austrian Pensions Act (Pensionsgesetz). Until January 1995, this Amendment only provided for a reduced widower's pension, amounting to two thirds of the full pension entitlement. Widows, however, were entitled to the full pension.

The author submitted a communication to the Human Rights Committee, alleging a violation of Article 26 of the International Covenant on Civil and Political Rights. On 30 March 1992, the Committee found that the award of a reduced widower's pension to the author, calculated on the basis of the transitional provisions of the Eighth Amendment to the Pensions Act, constituted unlawful discrimination on the grounds of sex, in violation of Article 26 of the Covenant. According to the author, the State party's authorities had failed to readjust and re-calculate his pension entitlements, in spite of the findings of the Committee of 30 March 1992.

On 4 October 1991, the author remarried. Under s. 21 of the Austrian Pensions Act, Mr. Pauger was entitled to a one-time lump-sum payment (Abfindungszahlungen). On 8 November 1991, Mr Pauger appealed against the decision of the Styria Regional Education Board, arguing that the calculation of the lump-sum should be based on his full pension entitlement. On 9 January 1992, the regional government of Styria dismissed the appeal.

Furthermore, the author appealed this decision to the Supreme Administrative Court (Verwaltungsgerichtshof) of Austria. On 28 September 1993, the Court found that the one-time lump-sum payment had to be considered as a single payment of the monthly instalments the applicant would receive in the years following his remarriage. Not satisfied with this solution, the author filed a complaint with the European Commission of Human Rights. The European Commission held that the author's application concerned essentially the same issues as his previous communication under the Optional Protocol to the Human Rights Committee, namely discrimination and was therefore inadmissible.

The author argued that the Commission's decision to declare his case inadmissible cannot be regarded as an "examination" of the "same matter", within the meaning of the reservation to Article 5(2)(a) of the Optional Protocol entered by Austria, and that the Human Rights Committee is not precluded from considering his case.

3) Law

International Law
• Article 26 of the UN International Covenant on Civil and Political Rights 1966 (right to non-discrimination)

National Law

• The Austrian Pensions Act

4) Legal Arguments

The Author

The author submitted that the lump-sum payment of AS 500,612 finally awarded by the Styria Regional Education Board is AS 133,976 less than a lump-sum payment would be calculated on the basis of full pension entitlements a widow would be able to claim. The author contended that this constitutes sex-based discrimination against him, in violation of Article 26 of the Covenant.

The State

The State party argued that the case constituted an abuse of the right of submission within the meaning of Article 3 of the Optional Protocol as the legal issue is the same as that in two previous cases examined by two international instances of investigation or settlement and has already been settled.

Furthermore, the State party submitted that the legal rules originally relevant to the author's case were transitional provisions which had ceased to be operative. Therefore, the equal status of widows and widowers in the provisions of Austrian pension law applicable to the author's case was fully established.

5) Decision

The Committee's admissibility decision

The Committee observed that the European Commission had declared the author's application inadmissible on procedural grounds, without examining in any way the merits of the author's claim. In so doing, it had acknowledged that there were some differences in the author's first application to the Human Rights Committee and his subsequent application to the European Commission, but that the two cases concerned "essentially the same issue". On this basis, the Committee considered that the European Commission did not "examine" the author's complaint, since it declared it inadmissible on procedural grounds, which related to the earlier examination of the same issue by the Human Rights Committee.

In the light of the above considerations, the Committee was of the opinion that it was not precluded from considering the present communication. Therefore, the communication was admissible in so far as it appeared to raise issues under Article 26 of the Covenant.

Examination of the Merits

The Committee set out that the question before it was whether the basis of the calculation of the lump-sum payment which the author received under the Pension Act was discriminatory. The
lump-sum payment, consisting of 70 monthly instalments, was calculated partly on the basis of the reduced pension. The Committee upheld its view, concerning Communication No. 415/1990, that these reduced pension benefits for widowers are discriminatory on the ground of sex. Consequently, the reduced lump-sum payment received by the author is likewise in violation of Article 26 of the Covenant, since the author was denied a full payment on equal footing with widows.