

Karlheinz Schmidt v. Germany (Application no. 13580/88)

From DADEL

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of decision: 18 July 1994

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695757&portal=hbkm&source=externalbydocnumber&table=1132746FF1FE2A468ACCBCD1763D4D8149>

2) Facts

The Applicant, a German national, alleged that the requirement in the Baden-Württemberg Fire Brigades Act that subjected only men to the obligation to serve as firemen or pay a financial contribution was discrimination based on sex under Article 14 of the Convention, taken in conjunction of Article 4 para. 3(d) of the Convention and Article 1 of Protocol No. 1. The Commission referred this application to the Court.

The Applicant, residing in Tettngang, in the Land of Baden-Württemberg, was required by the relevant municipal authorities to pay a fire service levy. The Baden-Württemberg Fire Brigades Act required municipalities to set up proficient fire brigades. All the male residents between ages 18-50 may be called to serve as firemen, although this has never occurred in Baden-Württemberg. Section 43 of the Land Fire Brigades Act stated that all male adults residing in Tettngang at the beginning of the budget year were liable to pay a fire service levy. Women were not subject to the requirement to serve in the fire brigade or to pay a financial contribution.

3) Admissibility

No objection regarding admissibility was mentioned.

4) Merits

The Court noted that it has consistently held that Article 14 complements the other substantive provisions of the Convention and the Protocols. The Court considered compulsory fire service to be one of the normal civic obligations envisaged in Article 4 para. 3(d) and concluded that the obligation to pay also falls with the Article 4 para. 3(d) scope.

For purposes of Article 14, a difference of treatment is discriminatory if it "has no objective and reasonable justification" – it needs to pursue a "legitimate aim" and

have a "reasonable relationship of proportionality between the means employed and the aim sought to be realized." Very weighty reasons would need to be put forward for a difference in treatment based exclusively on the ground of sex to be compatible with the Convention. The Government argued that the difference in treatment was based on objective and reasonable grounds; fire brigade duty is a traditional civic obligation in Baden-Wurttemberg and that in making the duty compulsory solely for males, the legislature had taken account of the specific requirements of service in the fire brigade and the physical and mental characteristics of women. The sole aim was the protection of women. The financial contribution was purely compensatory in nature.

The Court noted that women have been accepted for voluntary service in the fire brigade and that there were some places that did not impose different obligations for the two sexes in this field. It also concluded that what is decisive in this present case is that, in practice, no male person was obliged to serve in a fire brigade because of a sufficient number of volunteers. Therefore financial contribution had, in fact if not in law, lost its compensatory character and had become the only effective duty. In the imposition of a financial burden such as this, a difference of treatment on the ground of sex could hardly be justified.

The Court found it unnecessary to examine whether the Applicant was the victim of discrimination contrary to Article 14 of the Convention as regards his right to the peaceful enjoyment of his possessions, guaranteed under Article 1 of Protocol No. 1.

5) Decision

The Court held by six votes to three that there was a breach of Article 14 of the Convention taken in conjunction with Article 4 para. 3(d).

A joint dissenting opinion found that the difference of treatment had an objective and reasonable justification, as the difference was based on fitness to carry out the tasks inherent in fire brigade duty. Since the obligation of the compensatory charge was derived directly from the obligation to perform the duty in question, the dissent applied the same conclusion.

A concurring opinion doubted whether the Applicant had status as a victim in so far as he alleged discriminatory treatment prohibited by Article 14 of the Convention. In addition, this opinion felt that in this case prohibited discriminatory treatment had not been sufficiently distinguished from legitimate differences of treatment based on sex or on other personal circumstances, as the contested legislation also took account of other criteria. Also, physical difference between the two sexes is a weighty consideration justifying a difference of treatment. In this specific case, however, the obligation imposed on men to serve was one of law and theory and the levy that the Applicant was required to pay seemed more of a tax than a compensatory payment, lacking any reasonable and objective justification.

Another dissent found that the Applicant's claim was completely unfounded, as the Applicant was not required to perform forced or compulsory labor and what was required of him was a service that forms part of a normal civic obligation.