

# Widow's pension: unequal treatment and discrimination on grounds of gender



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Litigation, Cyprus

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## Introduction

Gender discrimination is not always to the detriment of women; it can sometimes negatively affect men, usually due to the prevailing stereotypes which exist in labour-dominated societies. General presumptions such as "the husband supports the wife financially" are no longer valid since many women are economically active, financially self-sufficient and often make an important contribution to family finances.

Relevant to this changing status quo, on 10 December 2020 the Administrative Court issued its decision in *Georgiou v Republic* (recourse number 299/2016). The case concerned the differentiation in treatment, by law, between women and men of deceased spouses.

## Facts

After the death of his wife, the male applicant applied for a widower's pension. His application was rejected by the Social Insurance Services in accordance with Paragraph (2) of Article 41 of the Social Insurance Law (59(I)/2010), which was in force at the time. Under these provisions, a widower was entitled to a widower's pension only if he was permanently incapable of self-preservation and was supported solely, or mainly, by the deceased spouse at the time of their death. These special conditions did not apply to (female) widows, who were entitled to a pension without any additional conditions.

The applicant filed a claim before the Administrative Court and, as grounds for annulment of the decision, cited the following grounds:

- the violation of his right to equality; and
- the prohibition of discrimination on the grounds of sex, which is enshrined and protected by:
  - Article 28 of the Constitution; and
  - Article 14 in conjunction with Article 1 of the First Additional Protocol and Articles 8 and 1 of the 12th Protocol to the European Convention on Human Rights.

Further, the applicant suggested that Article 41 of the Social Insurance Law, which formed the basis of the contested decision, was unconstitutional and contrary to Article 28 of the Constitution. The applicant also noted that the Social Insurance Law had been amended in 2019 by Law 126(I)/2019, which explicitly states that:

*[t]he purpose of this draft law is to amend the Law on Social Security, so that the widow's pension is provided on equal terms to men and women, thus correcting an unconstitutional provision of the above law.*

## Decision

The court held that the contested decision was based on a legislative provision (ie, Article 41 of the Social Insurance Law) which was directly discriminatory against men, in that it treated men substantially differently to women by making the granting of a widower's pension subject to special conditions which were not required for the granting of a widow's pension.

The court also adopted the same reasoning in *Hadjikyprí v Republic* (case number 622/2017, 10 July 2020). In this case, the court declared Article 41 of the Social Insurance Law unconstitutional because, by applying different criteria depending on gender, it discriminates between people on the basis of gender and gender discrimination is a violation of the principle of equality as enshrined in Article 28 of the Constitution.

With the amendment of the Social Insurance Law in 2019, the legislature decided to grant a widow's pension on equal terms for men and women. However, there was a differentiation between the treatment of men and women, since in the case of men, only those who had lost their wives after 1 January 2018 could claim the benefit. Hence, the new form of the Social Insurance Law as amended does not promote the principle of equality.

Significantly, all of this occurred at a time when the European Court of Human Rights was settling case law on the subject. In *B v Switzerland* (reference number 78630/12, 20 October 2020), the European Court of Human Rights reiterated its settled case law that only "very serious grounds" could justify discrimination on the grounds of sex; this applies equally whether the victim is a woman or a man. In the present case, the applicant highlighted that the European Convention on Human Rights is a "living instrument" that must be interpreted in light of current circumstances and concluded that the presumption that a husband usually helps his wife financially is no longer valid. Therefore, a majority held that there were no compelling reasons and no reasonable justification for the unequal treatment of the applicant.

## Comment

Undoubtedly, if Cyprus wishes to be regarded as a modern, enlightened society, it is time for it to change all anachronistic legal provisions and outdated views such as those referred to in this article.

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