



Discrimination in the calculation of a disability allowance in Switzerland

In today's **Chamber judgment**¹ in the case of **[di Trizio v. Switzerland](#)** (application no. 7186/09) the European Court of Human Rights held, by four votes to three, that there had been:

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

The case concerned the refusal of the Swiss Disability Insurance Office to continue paying a 50% disability allowance to the applicant, Ms di Trizio, after the birth of her twins.

Ms di Trizio originally worked full time but had to give up work in June 2002 because of back problems. She was granted a 50% disability allowance for the period from June 2002 until the birth of her twins. The allowance was later stopped owing to the application of the "combined method", which presupposed that even if she had not had a disability the applicant would not have worked full time after the birth of her children. She complained that she had been discriminated against on account of her sex.

The Court accepted the Government's argument that the aim of disability insurance was to insure individuals against the risk of becoming unable to engage in paid employment or perform routine tasks which they would have been able to carry out had they remained in good health. However, the Court considered that this aim had to be assessed in the light of gender equality.

The Court observed that Ms di Trizio would probably have received a partial disability allowance if she had worked full time or had devoted her time entirely to household tasks. Having previously worked full time, she had originally been granted the allowance and had continued to receive it until her children were born. It was thus clear that the decision refusing her entitlement to the allowance had been based on her assertion that she wished to reduce her working hours in order to take care of her children and her home. In practice, for the vast majority of women wishing to work part time following the birth of their children, the combined method, which in 98% of cases was applied to women, was a source of discrimination.

Principal facts

The applicant, Vita Maria di Trizio, is an Italian national who was born in 1977 and lives in Rapperswil-Jona, in the Canton of St Gall (Switzerland).

Ms di Trizio had to leave her full-time sales job in June 2002 because of back problems. In October 2003 she applied to the Disability Insurance Office ("the Office") for a disability allowance. In February 2004 she gave birth to twins and suffered increased back pain as a result. A household assessment was carried out in the course of which Ms di Trizio stated, in particular, that she would have to continue working half time after the birth of her children, for financial reasons. The assessment report concluded that the applicant's capacity to perform household tasks was reduced by 44.6%.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In a decision of 26 May 2006 the Office found that Ms di Trizio had been in full-time paid employment until the end of 2003, had been a housewife between January and May 2004 and had then decided to work on a half-time basis from June 2004 onwards in order to devote time to caring for her home and her children. The Office paid Ms di Trizio an allowance for the period from 1 June 2003 to 31 August 2004 and decided that she did not qualify for any allowance beyond that point. The Office took the view that the applicant would in any event not have resumed full-time work after the birth of her children, having stated that she wished to devote part of her time to running the household.

After lodging an unsuccessful complaint with the Office Ms di Trizio appealed to the Insurance Court of the Canton of St Gall, which allowed her claims in part. The court considered that the applicant's degree of disability had been established on the basis of an incomplete set of facts. It referred the case back to the Office for further investigation.

The Office appealed against that decision to the Federal Court. In its reasoning the Federal Court observed that the aim of disability insurance was to insure individuals against the risk of becoming unable – for medical reasons – to engage in paid employment or perform routine household tasks. The aim was not to provide compensation in respect of activities which the insured person would never have carried out even if he or she had not had a disability. Lastly, the combined method prevented people who were well-off and who had never previously worked from claiming disability benefits although they would probably never have worked even without a disability. In the view of the Federal Court, the combined method did not give rise to any discrimination. It therefore held that Ms di Trizio was not entitled to an allowance.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Ms di Trizio complained mainly of the fact that her degree of disability had been calculated by applying the “combined method”, which had resulted in payment of her allowance being stopped because of her part-time work. Relying also on Article 14 (prohibition of discrimination), taken in conjunction with Article 6 (right to a fair hearing) and with Article 8 of the Convention, she complained of discrimination. Under Article 6 § 1 (right to a fair hearing within a reasonable time), she further complained about certain aspects of the domestic proceedings.

The application was lodged with the European Court of Human Rights on 3 February 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

András **Sajó** (Hungary), *President*,
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland),
Paul **Lemmens** (Belgium),
Egidijus **Kūris** (Lithuania),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 14 taken in conjunction with Article 8

The Court reiterated that the advancement of gender equality was a major goal of the Council of Europe member States and that very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention.

According to the data provided by the Government, the combined method had been applied in 2009 in about 7.5% of all decisions on disability benefits; 97% of those cases had related to women and 3% to men. The Federal Court itself had acknowledged that the combined method of assessing disability was applied largely to women who had reduced their working hours after having children. Further, in its report of 1 July 2015 the Federal Council had noted that 98% of the cases in which the combined method was applied concerned women.

The Government argued that the aim of disability insurance was to insure individuals against the risk of becoming unable – owing to a disability – to engage in paid employment or to carry out routine household tasks which they had been able to perform previously and which they could still have performed had they not had a disability. The Court considered that the aim pursued by the legislation was a legitimate one capable of justifying the differences observed.

The Court noted that Ms di Trizio had originally worked full time and had been obliged to give up work in June 2002 because of back problems. She had been recognised as having a 50% disability during the period from June 2003 until the birth of her twins and had received an allowance for the period from 1 June 2003 to 31 August 2004. The allowance had subsequently been stopped owing to the application of the “combined method”, which presupposed that – as she herself had stated – she would not have worked full time after the birth of her children even if she had not had a disability.

The Court accepted the Government’s argument that the aim of disability insurance was to insure individuals against the risk of becoming unable, owing to a disability, to engage in paid employment or perform routine tasks which they would have been able to perform had they remained in good health. However, the Court considered that this aim had to be assessed in the light of gender equality.

The Court observed that Ms di Trizio would probably have received a partial disability allowance if she had worked full time or had devoted her time entirely to household tasks. Having previously worked full time, she had originally been granted the allowance and had continued to receive it until her children were born. It was thus clear that the decision refusing her entitlement to the allowance had been based on her assertion that she wanted to reduce her working hours in order to take care of her children and her home. In practice, for the great majority of women wishing to work part time following the birth of their children, the combined method, which in 98% of cases was applied to women, was a source of discrimination.

The Court further noted that the Federal Council, in its report of 1 July 2015, had summarised and analysed in detail the criticisms directed against the combined method. The Federal Council had acknowledged that this method could result in a lowering of the degree of disability recognised and that a question might arise regarding possible discrimination, at least of an indirect nature. In the Court’s view, these were clear indications of a growing awareness that the combined method was no longer consistent with efforts to achieve gender equality in contemporary society, in which women legitimately sought to reconcile family and professional life. The Court noted that some of the domestic courts also supported the application of a method which was more favourable to insured persons who worked part time and which took sufficient account of their disability with regard to both their paid work and their domestic activities.

The Court was not convinced that the difference in treatment to which Ms di Trizio had been subjected had any reasonable justification. It held by four votes to three that there had been a violation of Article 14 taken in conjunction with Article 8.

Other articles

In view of its finding of a violation of Article 14 taken together with Article 8, the Court held by four votes to three that it was not necessary to examine separately the applicant's complaint alleging a violation of Article 14 read together with Article 6 or the complaint under Article 8 taken alone.

Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 24,000 in respect of costs and expenses.

Separate opinion

Judges Keller, Spano and Kjølbros expressed a separate opinion which is annexed to the judgment.

The judgment is available only in 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.