

**Dietmar Pauger v. Austria, Communication No. 415/1990, U.N. Doc.  
CCPR/C/44/D/415/1990 at 122 (1992).**

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Communication No. 415/1990 : Austria. 30/03/92.  
CCPR/C/44/D/415/1990. (Jurisprudence)

Convention Abbreviation: CCPR  
Human Rights Committee  
Forty-Fourth session

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5,  
PARAGRAPH 4  
OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT  
ON CIVIL AND POLITICAL RIGHTS -FORTY-FOURTH SESSION  
concerning

Communication No. 415/1990

Submitted by: Dietmar Pauger

Alleged victim: The author

State party: Austria

Date of communication: 5 June 1990

Date of decision on admissibility: 22 March 1991

The Human Rights Committee, established under article 28 of the International  
Covenant on Civil and Political Rights,

Meeting on 26 March 1992,

Having concluded its consideration of communication No. 415/1990, submitted to the  
Human Rights Committee by Mr. Dietmar Pauger under the Optional Protocol to the  
International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of  
the communication and by the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol

The facts as submitted by the author

1. The author of the communication is Dietmar Pauger, an Austrian citizen born in 1941 and a resident of Graz, Austria. He claims to be a victim of a violation by Austria of article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force with respect to Austria on 10 March 1988.

2.1 The author works as a university professor. His wife died on 23 June 1984. She had been a civil servant and employed as a teacher in a public school in the province of Styria (Land Steiermark). On 24 August 1984, the author submitted a pension claim pursuant to the Pension Act of 1965 (Pensionsgesetz 1965). He notes that the Pension Act granted preferential treatment to widows, as they would receive a pension, regardless of their income, whereas widowers could receive pensions only if they did not have any other form of income. Since the author was gainfully employed, the provincial government of Styria (Steiermärkische Landesregierung) rejected his claim, which was similarly dismissed on appeal by the Constitutional Court of Austria (Verfassungsgerichtshof).

2.2 Subsequently, the eighth amendment to the Pension Act (8. Pensionsgesetznovelle) of 22 October 1985 introduced a general widower pension, applicable retroactively from 1 March 1985. However, a three-phase pension scheme was set up, providing reduced benefits in the first two stages: one third of the pension as of 1 March 1985, two thirds as of 1 January 1989, the full pension as of 1 January 1995.

2.3 On 13 May 1985 the author again applied for a widower's pension, which was granted at the reduced (one-third) level provided for in the eighth amendment. However, according to a particular provision of this amendment, applicable only to civil servants, the pension initially was not paid to the author but placed "in trust".

2.4 The author subsequently appealed to the Constitutional Court, requesting (a) payment of the full pension; and (b) the annulment of the provision stipulating that pensions of civil servants are "kept in trust" (Ruhensbestimmung). By decision of 16 March 1988, the Constitutional Court held the Ruhensbestimmung to be unconstitutional, but did not settle the question of the constitutionality of the three phases of pension benefits for widowers. After yet another appeal, the Constitutional Court dismissed, on 3 October 1989, the author's request for a full pension and the annulment of the three phases of implementation.

Complaint

3. The author claims to be a victim of a violation of article 26 of the Covenant, because, whereas a widow would have received a full pension under similar circumstances, he, as a widower, received no pension at all from 24 June 1984 to 28 February 1985, and has received only a partial pension since then. In particular, he

contends that the inequality in pension benefits resulting from the three phases of implementation of the eighth amendment to the Pension Act constitutes discrimination, since the differentiation between widows and widowers is arbitrary and cannot be said to be based on reasonable and objective criteria.

#### Committee's admissibility decision

4. At its forty-first session, the Committee considered the admissibility of the communication, noting that the State party had not raised any objections to admissibility. On 22 March 1991, the Committee declared the communication admissible in respect of article 26 of the Covenant.

#### The State party's explanations and the author's comments thereon

5.1 In its submission, dated 8 October 1991, the State party argues that the former Austrian pension legislation was based on the fact that in the overwhelming majority of cases only the husband was gainfully employed, and therefore only he was able to acquire an entitlement to a pension from which his wife might benefit. It submits that, in response to changed social conditions, it amended both family legislation and the Pension Act; equality of the husband's position under pension law is to be accomplished in a number of successive stages, the last of which will be completed on 1 January 1995.

5.2 The State party further submits that new legislation, designed to change old social traditions, cannot be translated into reality from one day to the other. It states that the gradual change in the legal position of men with regard to their pension benefits was necessary in the light of the actual social conditions, and hence does not entail any discrimination. In this context, the State party points out that the equal treatment of men and women for purposes of civil service pensions has financial repercussions in other areas, as the pensions will have to be financed by the civil servants, from whom pension contributions are levied.

6.1 In his reply to the State party's submission, the author argues that pursuant to amendments in family law, equal rights and duties have existed for both spouses since 1 January 1976, in particular with regard to their income and their mutual maintenance. He further submits that in the public sector men and women receive equal payment for equal services and have also to pay equal pension fund contributions. The author states that there is no convincing reason as to why a period of nearly two decades since the emancipation of men and women in family law should be necessary for the legal emancipation in pension law to take place.

6.2 According to the author, neither the financial burden on the State's budget, nor the fact that many men are entitled to pensions of their own, can be used as arguments against the obligation to treat men and women equally, pursuant to article 26 of the Covenant. The author points out that the legislator could have established other, such as income-related, criteria to distinguish between those who are entitled to a full pension and those who are not. He further submits that the financial burden caused by

the equal treatment of men and women under the Pension Act would be comparatively low, because of the small number of widowers who are entitled to such a pension.

#### Examination of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee has already had the opportunity to express the view that article 26 of the Covenant is applicable also to social security legislation. It reiterates that article 26 does not of itself contain any obligation with regard to the matters that may be provided for by legislation. Thus it does not, for example, require any State to enact pension legislation. However, when it is adopted, then such legislation must comply with article 26 of the Covenant.

7.3 The Committee reiterates its constant jurisprudence that the right to equality before the law and to the equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.

7.4 In determining whether the Austrian Pension Act, as applied to the author, entailed a differentiation based on unreasonable or unobjective criteria, the Committee notes that the Austrian family law imposes equal rights and duties on both spouses, with regard to their income and mutual maintenance. The Pension Act, as amended on 22 October 1985, however, provides for full pension benefits to widowers only if they have no other source of income; the income requirement does not apply to widows. In the context of said Act, widowers will only be entitled to full pension benefits on equal footing with widows as of 1 January 1995. This in fact means that men and women, whose social circumstances are similar, are being treated differently, merely on the basis of sex. Such a differentiation is not reasonable, as is implicitly acknowledged by the State party when it points out that the ultimate goal of the legislation is to achieve full equality between men and women in 1995.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the application of the Austrian Pension Act in respect of the author after 10 March 1988, the date of entry into force of the Optional Protocol for Austria, made him a victim of a violation of article 26 of the International Covenant on Civil and Political Rights, because he, as a widower, was denied full pension benefits on equal footing with widows.

9. The Committee notes with appreciation that the State party has taken steps to remove the discriminatory provisions of the Pension Act as of 1995. Notwithstanding these steps, the Committee is of the view that the State party should offer Mr. Dietmar Pauer an appropriate remedy.

10. The Committee wishes to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.