

AUT-2018-3-004

a) Austria / b) [Constitutional Court](#) / c) / d) 03-10-2018 / e) G 189/2018 / f) / g) / h) CODICES ([German](#)).

Keywords of the systematic thesaurus:

[05.02.02.13](#) Fundamental Rights - Equality - Criteria of distinction - **Differentiation *ratione temporis***.

Keywords of the alphabetical index:

Children's home, violence, compensation / Equality, categories of person, comparison / Prisoner, rights.

Headnotes:

For certain categories of offenders under § 5.6 of the Federal Act on Pension Benefits for the Victims of Violence in Homes (*Heimopferrentengesetz*), the entitlement to such monthly benefits is suspended during a period of imprisonment as well as during any period of preventive detention in an institution. This provision cannot be considered to be objectively unjustified as such pension benefits are only meant to provide individuals who as children were resident in a children's home or a foster homes and who were the victims of violence whilst placed there with a viable old-age income, while they were detained such a need was fully covered by the competent public authorities.

Summary:

I. Since 2017, anyone who has already drawn a retirement pension or has reached the statutory retirement age is entitled to a monthly pension benefit under the Federal Act on Pension Benefits for the Victims of Violence in Homes (the «Act») if they had received a lump sum compensation for violence suffered during their placement in a children's home or foster home or, where such a compensation has not been granted, may demonstrate that they were a victim of a willful violent offence whilst placed in such a home.

The pension benefit is of 300 Euros per month subject to an annual adjustment to reflect wage development in Austria.

According to § 5.6 of the Act, the entitlement to the pension benefit shall be suspended during any period of imprisonment or of detention in an institution for mentally ill offenders, offenders in need of treatment for addiction, or dangerous repeat offenders.

The applicant before the Constitutional Court received a monthly disability pension and had been granted a lump sum compensation for violence suffered in a children's home. In July 2017, he applied for a monthly pension benefit under the Act. Relying on § 5.6 of the Act, the competent authorities denied his right to that benefit. They did so on the basis that the applicant had been serving a prison sentence ever since this benefit had been established.

The applicant filed a constitutional complaint with the Constitutional Court, claiming that a legal provision denying that social benefit to prisoners ran counter to the constitutional principle of equality laid down in Article 7.1 of the Federal Constitutional Act. He argued that the pension benefit served as a compensation for violence suffered; therefore, it was objectively unjustified to suspend the entitlement to it during a period of imprisonment. The applicant also pointed out that similar social benefits granted under the Federal Act on Assistance for the Victims of a Crime (*Verbrechensopfergesetz*) were not affected by imprisonment, without there being any objective justification for that difference in treatment.

II. The Constitutional Court noted that the constitutional principle of equality places certain restraints on the legislator. It, for instance, prohibits the legislator from creating provisions or making differences in treatment that are not objectively justified. Apart from that, however, the legislator may pursue its political goals in any way it considers appropriate.

Turning to the present case, the Court held that the Act seeks to secure a sufficient old-age income for individuals who suffered violence in children's homes. The pension benefit of 300 Euros per month is a lump sum which shows no relation to the actual harm suffered, but appeared to be sufficient so as to increase such individuals' financial means to a total that correspond to the average old-age pension in Austria.

Therefore, the pension benefits in question could not be regarded as some form of compensation within the meaning of tort law. It was to be considered as transfer payments, which made good any financial disadvantage the recipients had had to experience under the general statutory pension scheme.

The Court therefore concluded that, if the entitlement to such pension benefits is suspended during imprisonment or other detention, with prisoner's needs being met by the public authorities, such a provision may not be considered to be objectively unjustified.

As regards the Federal Act on Assistance for the Victims of a Crime, it seeks to provide various social benefits where victims of a crime have suffered bodily harm or any other damage to health, including mental impairment, without the offender paying (full) compensation for the damage. In particular, such benefits are only granted in accordance with the general principles of tort law.

The Court therefore concluded that the financial benefits provided for victims of a crime, on the one hand, and for individuals who were formerly resident in children's or foster homes and who were affected by violence, on the other hand, are completely different in terms of eligibility and aim. As a consequence, the difference in treatment between the two types of individual also proved to be in conformity with the principle of equality.

Languages:

German.