



Gender discrimination in civil-service retirement ages

In today's **Chamber judgment**¹ in the case of [Moraru and Marin v. Romania](#) (applications nos. 53282/18 and 31428/20) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 12 (general prohibition of discrimination) to the European Convention on Human Rights.

The case concerned the compulsory retirement age for female civil servants in Romania, previously set lower than that set for men, and an allegation of discrimination.

The Court found in particular that not giving the applicants the option to continue to work past the retirement age for women and until they reached the retirement age set for men had constituted discrimination based on sex.

Principal facts

The applicants, Liliana Moraru and Doina Marin, are Romanian nationals who were born in 1956 and 1958 and live in Focșani (Romania) and Bucharest respectively. They are retired civil servants.

Ms Moraru worked in the Galați branch of the National Agency for Fiscal Administration. In 2016, as she approached the compulsory retirement age for women, she asked to be allowed to continue to work until 65, the retirement age for men.

However, on 1 March 2017 Ms Moraru's employment contract was terminated as she had reached the compulsory age of retirement and had made the necessary contributions to the pension scheme. Her employer refused to overturn that decision.

Ms Moraru appealed to the courts, alleging discrimination based on sex. At first instance the Vrancea County Court found in her favour, holding that under the relevant law (the Pension Act and Directive 2006/54/EC) a civil servant had a right and not an obligation to retire.

However, her employer appealed successfully. The Galați Court of Appeal found that the law referred to by the first-instance court did not apply in this case, and that the requirements of the Civil Service Act and the Pension Act were clear on the guillotining of contract periods at the compulsory age of retirement.

Ms Marin was head of service in the Ministry of Business, Commerce and Entrepreneurship. In January 2019 her employment was terminated as she had reached the compulsory retirement age for women. The Ministry refused to reconsider that decision.

She went to court to have that decision overturned, arguing that have an earlier retirement age for women was discriminatory. In June 2019 the Bucharest County Court found in her favour and annulled the decision to terminate her employment. However, an appeal by her employer was successful. Bucharest Court of Appeal stated specifically that Ms Marin had not requested equal

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.

treatment, merely to be allowed to work one year more in her role, which did not come under the relevant domestic case-law on the matter.

Legislation and case-law in the matter has changed since the applications were lodged, and women in Romania can now work in civil-service positions until the retirement age for men.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 12 (general prohibition of discrimination) to the Convention, the applicants complained that being forced to retire at the compulsory age of retirement for women had amounted to discrimination. Ms Marin also relied on Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life).

The applications were lodged with the European Court of Human Rights on 6 November 2018 and 14 July 2020 respectively.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Armen **Harutyunyan** (Armenia),
Anja **Seibert-Fohr** (Germany),
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

Decision of the Court

The Court adjudged that the case would be examined under Article 1 of Protocol No. 12 to the Convention alone.

In the case-law of the Court it had been consistently found that differences in retirement age between the sexes amounted to a difference of treatment, as had been the case when these applications had been lodged.

Regarding that situation's compatibility with the Convention, the Court noted that the situation had been related to the social-security arrangements in place in the State. It observed that the domestic courts had failed to address relevant arguments around European Union law or the case-law of the Court of Justice of the European Union.

The Government made no arguments concerning the financial or other costs to society of allowing women to work until 65. Indeed, the situation had later been remedied in Romania via legislation and a Constitutional Court decision (no. 387/2018). A further decision of that court (no. 112/2021) extended that provision to the civil service.

The Court concluded therefore that not giving the applicants the option to continue to work past the retirement age for women and until they reached the retirement age set for men had constituted discrimination based on sex which had not been objectively justified or necessary, in violation of Article 1 of Protocol No. 12 to the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that Romania was to pay Ms Moraru 7,500 euros (EUR) in respect of pecuniary and non-pecuniary damage, and EUR 1,600 to Ms Marin and EUR 400 to Ms Moraru in respect of costs and expenses.

The judgment is available only in English.

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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.