



NEWS REPORT

Date:	3 September 2010
Expert:	Dieter Schindlauer
Title:	ECtHR case of P.B. and J.S. vs. Austria
Country:	Austria
Context	
Issue at stake:	Impossibility to have the cover of one partners health and accident insurance extended to include the other partner in a same-sex partnership
Ground of discrimination:	Sexual orientation
Source:	ECHR judgment (Decision of the ECHR App. No. 18984/02)
Field:	access to social security/healthcare
Legislative provisions:	Art. 14 and Art. 8 ECHR

Content

Case: The applicants – a homosexual couple - claimed they had been victims of discrimination given the impossibility to have the coverage of the second applicant's health and accident insurance extended to include the first applicant. Under section 56 of the Civil Servants Sickness and Accident Insurance Act (CSSAIA), as in force until 1 August 2006, such an extension was only open to cohabiting persons of the opposite sex. On 1 August 2006, section 56 of the CSSAIA was amended. A second amendment to section 56 of the CSSAIA entered into force on 1 July 2007. The latter amendment omitted the explicit reference to partners of the opposite sex in section 56(6a) and restricted the scope of application of section 56(6) to relatives. It is thus formulated in a neutral way concerning the sexual orientation of cohabitees.

Decision of the Court: Decision of the ECHR App. No. 18984/02 dating from 22.07.2010. The Court held by five votes to two that there has been a violation of Article 14, taken in conjunction with Article 8, as regards the period until the entry into force of the first as well as the second amendment to the CSSAIA. The Court recalled (in § 36 of the judgement) that "*very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of sex as compatible with the Convention.*" The Austrian government did not give any justification for the difference in treatment experienced by the applicants and that experienced by cohabitees of the opposite sex. The Court decided that during the period after the entry into force of the amended section 56(6) and (6a) of the CSSAIA on 1 July 2007 Austria was no longer in breach of the Convention – mainly because the benefit of cover by the partners' insurance was bound to the condition of raising children in the common household and this is formulated in a neutral way and the applicants did not argue that under Austrian law homosexuals are excluded from caring for children.



Internet link source and additional information:

ECHR Website:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=871551&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>