

**Press release issued by the Registrar
Chamber judgment
Not Final¹**

[P.B. and J.S. v. Austria](#) (application no. 18984/02)

**DIFFERENT TREATMENT AS REGARDS EXTENSION OF INSURANCE COVER
DISCRIMINATED AGAINST HOMOSEXUAL COUPLE
*Violation of Article 14 (prohibition of discrimination)
in conjunction with Article 8 (right to respect for private and family life)
of the European Convention on Human Rights until 30 June 2007*
No violation after that date**

Principal facts

The applicants are P.B., a Hungarian national, and J.S., an Austrian national. They were born in 1963 and 1959 respectively and live in Vienna in a homosexual relationship. The case concerns their inability under Austrian law to have one partner's sickness and accident insurance extended to the other partner.

J.S. is a civil servant while P.B. is not gainfully employed and runs the couple's household. In July 1997, P.B. asked the authority in charge of insurance for civil servants to recognise him as a dependent to whom J.S.'s sickness and accident insurance cover could be extended. The authority eventually dismissed the request in January 1998, referring to the relevant section of the Civil Servants Sickness and Accidents Insurance Act ("the insurance act"), which provided that only a close relative or a cohabitee of the opposite sex qualified as a dependent. The administrative court dismissed P.B.'s complaint against the decision in October 2001, holding that only where a man and a woman lived together in a household run by one of them while not being gainfully employed could it be concluded that they were cohabiting in a partnership. This was not the case if two people of the same sex lived together in a household.

In August 2006 an amendment to the insurance act entered into force, which introduced the possibility for a same-sex partner to qualify as a dependent if he or she was raising children or doing nursing work in the household. This condition was not necessary for a partner of the opposite sex to qualify as a dependent. Another amendment to the act entered into force in July 2007, after which opposite-sex partners were no longer entitled to qualify as a dependent without raising children or doing nursing work in the household. The amended act included a transitory provision for people previously entitled to benefits.

Complaints, procedure and composition of the Court

The applicants complained that the administrative court's decision discriminated against them because of their sexual orientation, relying in particular on Article 14 in conjunction with Article 8.

The application was lodged with the European Court of Human Rights on 24 April 2002.

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

Christos **Rozakis** (Greece), **President**,
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),

Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Giorgio **Malinverni** (Switzerland), *judges*,

and also Søren Nielsen, **Section Registrar**.

Decision of the Court

Applicability of Article 14

The Court observed that there had been a rapid evolution of social attitudes towards same-sex couples over the last decade, during which a considerable number of European states had accorded them legal recognition.² The Court therefore found that the relationship of the applicants, a same-sex couple living together in a partnership, fell within the notion of “family life” protected by Article 8.

While Article 8 did not as such guarantee a right to have the benefits from a specific insurance cover extended to a cohabiting partner, the possibility to do so provided under Austrian law had to be qualified as a measure intended to improve the principally insured person’s private and family situation. The extension of insurance cover at issue in the applicants’ case therefore fell under Article 8. Since P.B. and J.S. complained that they were victims of a difference in treatment without objective justification with regard to this extension, Article 14 taken together with Article 8 was applicable.

Compliance with Article 14 in conjunction with Article 8 before the amendment of the insurance act

As regards the period before August 2006, the Court observed that the Austrian Government had not given any justification for the difference in the treatment of P.B. and J.S., on the one hand and cohabitantes of the opposite sex on the other. The Court underlined that States had only a narrow margin of appreciation as regards different treatment based on sex or sexual orientation and that they were required to demonstrate that such a difference in treatment was necessary in order to realise a legitimate aim. In the absence of any justification, the Court concluded, by five votes to two, that there had been a breach of Article 14 in conjunction with Article 8 in respect of the period in question.

The period from August 2006 until June 2007

The Court considered that the discriminatory character of the insurance act did not change after its amendment in August 2006, even though homosexual couples, such as P.B. and J.S., were no longer fully excluded from its scope. There remained a substantial difference in treatment in comparison with heterosexual couples, since same-sex couples could qualify for the extension of one partner’s insurance cover to the other partner only if they were raising children together. The Court therefore unanimously found that there had also been a breach of Article 14 in conjunction with Article 8 in respect of this period.

The period from July 2007

The newly amended version of the insurance act was formulated in a neutral way concerning the sexual orientation of cohabitantes. The Court therefore considered that as of July 2007 P.B. and J.S. had no longer been subject to an unjustified difference in treatment as regards the benefit of extending health and accident insurance cover to P.B.

The Court was not convinced by P.B. and J.S.’s argument that the legal situation was still discriminatory, as the amendment had made it more difficult to extend insurance cover by introducing additional conditions which they did not fulfil. The Convention did not guarantee access to specific benefits. Moreover, the condition of raising children in the couple’s home was not in principle impossible for a homosexual couple to fulfil.

The Court was further not convinced by the argument that P.B. and J.S. were still discriminated against, because people to whom the extension of insurance cover had been granted before the amendment continued to benefit from it. According to the transitory provision, the benefit continued to apply only to people having passed a certain age limit and was otherwise limited to a certain period of

time. Such arrangements were acceptable in view of the principle of legal certainty.

The Court therefore unanimously concluded that there had been no violation of Article 14 in conjunction with Article 8 since July 2007.

Just satisfaction

The Court held that Austria had to pay P.B. and J.S jointly 10,000 euros for non-pecuniary damage.

The judgment is available only in English. This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, you can subscribe to the [Court's RSS feeds](#).

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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.

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 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 the day the request is rejected.

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.

² 6 member States of the Council of Europe grant same-sex couples the right to marry (Belgium, the Netherlands, Norway, Portugal, Spain and Sweden) and 13 have enacted a law on registered partnerships.

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