



## Decision to reduce compensation awarded to a 50-year-old woman for a medical error was discriminatory

In today's Chamber judgment<sup>1</sup> in the case of [Carvalho Pinto de Sousa Morais v. Portugal](#) (application no. 17484/15) the European Court of Human Rights held, by five votes to two, that there had been:

**a violation of Article 14 (prohibition of discrimination) read together with Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The case concerned a decision of the Supreme Administrative Court to reduce the amount of compensation awarded to the applicant, a 50-year-old woman suffering from gynaecological complications, as a result of a medical error. An operation in 1995 had left her in intense pain, incontinent and with difficulties in having sexual relations. The applicant alleged in particular that the decision to reduce the amount of compensation was discriminatory because it had disregarded the importance of a sex life for her as a woman.

The Court found in particular that the applicant's age and sex had apparently been decisive factors in the national courts' final decision not only to lower the compensation awarded for physical and mental suffering but also for the services of a maid. The decision had moreover been based on the general assumption that sexuality was not as important for a 50-year-old woman and mother of two children as for someone of a younger age. In the Court's view, those considerations showed the prejudices prevailing in the judiciary in Portugal.

### Principal facts

The applicant, Maria Ivone Carvalho Pinto de Sousa Morais, is a Portuguese national who was born in 1945 and lives in Bobadela (Portugal).

The applicant, suffering from a gynaecological disease, had surgery in May 1995. The operation left her in intense pain and led to a loss of sensation in the vagina, incontinence, difficulty walking and sitting, and having sexual relations.

She found out that a pudendal nerve had been injured during the operation, and she therefore brought a civil action against the hospital for damages. At first-instance she was awarded 80,000 euros (EUR) for the physical and mental suffering caused by the medical error and EUR 16,000 for the services of a maid to help with household tasks.

However, on appeal, the Supreme Administrative Court, although confirming the findings of the first-instance court, found those awards excessive and reduced them to EUR 50,000 and EUR 6,000, respectively. It found in particular that her pain had been aggravated during the surgery, but that it was not new and had not resulted exclusively from the injury to the nerve; and that, in any case, she was already 50 years old at the time of the surgery and the mother of two children, an age when sexuality was not as important. It further found that she was unlikely to be in need of a full time

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](http://www.coe.int/t/dghl/monitoring/execution).

maid at the time as, considering the age of her children, she only needed to take care of her husband.

## Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life), the applicant alleged that the Supreme Administrative Court's decision to reduce her compensation had been discriminatory, in particular because it had disregarded the importance of a sex life for her as a woman.

The application was lodged with the European Court of Human Rights on 1 April 2015.

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

Ganna **Yudkivska** (Ukraine), *President*,  
Vincent A. **De Gaetano** (Malta),  
Paulo **Pinto de Albuquerque** (Portugal),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Iulia **Motoc** (Romania),  
Georges **Ravarani** (Luxembourg),  
Marko **Bošnjak** (Slovenia),

and also Marialena **Tsirli**, *Section Registrar*.

## Decision of the Court

The Court recalled that gender equality was today a major goal for the member States of the Council of Europe, meaning that very good reasons would have to be put forward before a difference of treatment on grounds of sex could be accepted as compatible with the European Convention. In particular, references to traditions, general assumptions or prevailing social attitudes in a country were insufficient for a difference in treatment on grounds of sex.

The applicant's age and sex had apparently been decisive factors in the Supreme Administrative Court's final decision not only to lower the compensation for physical and mental suffering but also the amount allocated for the services of a maid. The Supreme Administrative Court's decision had moreover been based on the general assumption that sexuality was not as important for a 50-year-old woman and mother of two children as for someone of a younger age. It thus ignored the physical and psychological importance of sexuality for women's self-fulfillment and other dimensions of women's sexuality in the concrete case of the applicant herself. In the Court's view, those considerations showed the prejudices prevailing in the judiciary in Portugal.

In contrast, the Court could not help noting the national courts' approach in two other judgments in 2008 and 2014 concerning complaints by two male patients about medical malpractice. In those cases, the Supreme Court of Justice found that the fact that the men could no longer have normal sexual relations had affected their self-esteem and had resulted in "tremendous/strong mental shock", regardless of their age or whether they had had children or not.

The Court therefore concluded that there had been a violation of Article 14 taken in conjunction with Article 8.

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

The Court held, by five votes to two, that Portugal was to pay the applicant 3,250 euros (EUR) in respect of non-pecuniary damage and EUR 2,460 for costs and expenses.

## Separate opinions

Judges Yudkivska and Motoc expressed concurring opinions. Judges Ravarani and Bošnjak expressed a joint dissenting opinion.

*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.