



## **European network of legal experts in gender equality and non-discrimination**

### **FLASH REPORT**

<b>Country:</b>	Cyprus
<b>Title:</b>	Supreme Court decision concerning equal treatment between men and women in relation to survivors' pensions
<b>Date:</b>	18 March 2019
<b>Expert:</b>	Vera Pavlou
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Constitutionality of a law extending the entitlement of survivors' (widower) pensions to men
<b>Grounds of discrimination:</b>	Gender
<b>Field of application:</b>	Social protection, Statutory social security
<b>Source:</b>	National court decision
<b>Applicable law:</b>	Article 157 TFEU; Article 80.2 Constitution of the Republic of Cyprus; N.132(I)/2018 on Social Insurance (amending) Law of 2018

### **Content**

**Case:** The President of the Republic submitted a Recourse to the Supreme Court alleging the unconstitutionality of an amendment to the law on social insurance which extended the entitlement to a survivor's (widower) pension to all survivor men irrespective of the date of their wives' or cohabitants' death. Until July 2018, national law had differentiated criteria regarding access to survivor's pension: women survivors were entitled to a benefit inasmuch as they were cohabiting with the deceased spouse and were dependent on him for subsistence, while men survivors could access the benefit only if, in addition to cohabitation and dependence, they were permanently unable to sustain themselves. In July 2018 the government presented a law to the House of Representatives which gave men equal access to survivors' benefits; the law was to be applied for deaths occurring on and after 01 January 2018. The House of Representatives adopted the law but with a broadened personal scope by removing the temporal restriction and thus making the law applicable to all survivors irrespective of their spouses'/cohabitants' date of death. The President of the Republic alleged that the extension of personal scope was unconstitutional due to Article 80.2 of the Constitution which restricts the parliament's power to propose legislation which has the effect of incrementing the State Budget. The Supreme Court struck down the amendment introduced by the parliament.

**Decision of the court:** Decision of the Supreme Court on Recourse No. 6/2018 President of the Republic vs House of Representatives (01 March 2019).

**Key points of analysis:** In its statements to the Supreme Court, the House of Representatives argued that while extending the law's personal scope increases the state budget and is thus against Article 80.2 of the Constitution, such extension is justified as a matter of EU law obligation and in particular that flowing from Article 157 TFEU on equal pay between men and women. The Court said that according to CJEU case law, Article 157 TFEU applies to pay which includes survivors' pensions inasmuch such pensions are paid

by the ex-employer to the surviving spouse/cohabitant due to the existence of an employment relationship between the employer and the deceased. Under Cypriot law, the survivor's pension is granted by the state irrespective of the existence of an employment relationship between an employer and the deceased spouse/co-habitant. In this sense, it does not constitute pay for the purpose of Article 157 TFEU. In addition, since Directive 79/7/EEC on equal treatment between men and women in matters of social security does not apply to survivors' benefits, it is difficult to see how EU law could be triggered in this case.

**Internet link source:** The Court's decision (in Greek) is available [here](#).