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**Autor:** Meier, Mariann  
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# Swiss old age and invalidity insurance

## *Discrimination against Swiss women abroad*

MUCH has been said and written since the Federal Insurance Tribunal decided that the wives of Swiss working abroad – but insured compulsorily in Switzerland – were not covered unless they had made a separate application before the age of 50.

This judgement clearly discriminated against Swiss women abroad, for their counterparts in Switzerland do not have to apply separately in order to be insured.

On December 14 a long and excellent article appeared in the *Neue Zürcher Zeitung*, written by its London Political correspondent, Mr Roger Bernheim. In it, the writer gave all the details of what he calls "a questionable manipulation of the law".

He agrees that this deplorable dispute between a category of Swiss women abroad and the Swiss Compensation Office in Geneva should never have arisen and had by now assumed scandalous proportions.

The number of women affected has not been revealed but it probably lies somewhere around 10,000. However it is likely that only about 1,000 are affected materially at the moment.

One instance was the invalid wife of a Swiss working for a Swiss company in Germany who was suddenly told that not only would she no longer get her invalidity benefit but she was asked to pay back well over Sfr. 30,000 which had been paid out to her in the course of the years since she became an invalid.

Mr Bernheim pointed out how embassies and consulates had informed such women for 30 years that they were in the same position as women in Switzerland whose husbands were insured

under the compulsory scheme.

The surprise came overnight when, in 1980, the law was suddenly interpreted in a different way and these women were told that in spite of official declarations, they were not insured after all unless they had made a separate application.

They were told that they could still join provided that they were not yet 51 but that their enrolment had no retrospective value.

Mr Bernheim made it clear that neither the pension of the married couple nor the widow's pension was affected but that it affected a wife's independent entitlement such as invalidity or if she reaches pensionable age before her husband. Children's benefits, too, could be affected.

The writer went into the legal aspects of the matter and tried to show how the interpretation of the law suddenly changed. He also detailed certain judgments and statements in the course of the years (1958, 1964 and 1975/6) which were according to the original intention of the legislator because parliament had insisted at the time that Swiss citizens abroad and their families should have continued protection.

The Federal Office of Social Insurance, too, declared in 1964 that wives were insured. Information leaflets issued by embassies and consulates even stated that such wives could not join at all.

It was not until 1982 that the leaflet was changed and that women were advised to join.

Mr Bernheim asked whether a tribunal might change its mind in the course of the years, as the Federal Insurance Tribunal did on August 6, 1980. His answer was yes, but that the new interpretation of the law could not then be applicable in retrospect to facts which the court itself had helped to create at the time.

He went on to give details of several declarations by the Compensation Office in Geneva which were contradictory, and next reported the sudden decision by the Federal Council that all federal employees affected in this matter would be protected by the Confederation which would cover any damages due to "incorrect or incomplete information".

This, said Mr Bernheim, made the whole matter even more scandalous, for wives of Swiss working in Embassies and Consulates were now covered, which meant special privileges to some while others were still discriminated against.

Why only federal employees and not all Swiss abroad who had been affected equally by "incorrect and incomplete information" he asked. Of course, the Federal Council is responsible for its employees under the law but surely the new decision should

cover all Swiss in the same position.

Mr Bernheim pointed out that the Federal Council was trying to find a solution, probably by a temporary regulation added to the AHV Law. This should give all women in this position the possibility of retrospective enrolment to the voluntary insurance scheme. But it is hardly possible that such a ruling would become operative before 1984.

The authorities, continued Mr Bernheim, based their opinion on the law. But the change in interpretation which the Federal Tribunal had made in August 1980 was not based on the law but on "Gründen staatshaushalterischer Zweckdienlichkeit".

By this he meant a notification by the Federal Office of Social Insurance, on which the tribunal based its decision. In that particular notification the point of view was upheld that if the wife of the compulsorily insured Swiss abroad was covered it could have undesirable consequences on the wives living abroad of foreign workers in Switzerland.

There were clauses on equal treatment in interstate agreements on social insurance which Switzerland had concluded with seven states. The said Federal Office was afraid for the future of Switzerland's great social institution!

No doubt we Swiss abroad agree with Mr Bernheim's conclusion that it is scandalous that Swiss women abroad should have to suffer for mistakes made by the authorities, and they are grateful to him for his detailed article which showed the reader in Switzerland how urgently the great wrong needed to be put right – and very soon, too. – **Mariann Meier.**