



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF SHIREBY v. THE UNITED KINGDOM

(Application no. 28071/02)

JUDGMENT

STRASBOURG

9 December 2008

FINAL

09/03/2009

This judgment may be subject to editorial revision.

In the case of Shireby v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lech Garlicki, *President*,

Nicolas Bratza,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 November 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 28071/02) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Mr David Shireby (“the applicant”), on 18 January 2002.

2. The applicant was represented by Royds Rdw, solicitors in London. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office, London.

3. By a partial decision of 12 November 2002 the Court decided to communicate the application. Subsequently, under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Sheffield.

5. His wife died on 3 April 2001. His claim for widows’ benefits was made in June 2001. On 22 June 2001 the applicant was informed that he was entitled to Widowed Parent’s Allowance (“WPA”). However, on 14 January 2002 he was informed that he was not entitled to a Bereavement Payment on the ground that the benefit did not exist at the time of the

applicant's wife's death. The applicant did not appeal as he considered or was advised that such a remedy would be bound to fail since no such social security benefits were payable to widowers under United Kingdom law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

6. The relevant domestic law and practice are described in the Court's judgment in the case of *Willis v. the United Kingdom*, no. 36042/97, §§ 14-26, ECHR 2002-IV.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1 AND/OR ARTICLE 8 OF THE CONVENTION

7. The applicant complained that the United Kingdom authorities' refusal to pay him the social security benefit to which he would have been entitled had he been a woman in a similar position, constituted discrimination against him on grounds of sex contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 and/or Article 8 of the Convention.

Article 14 of the Convention provides:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1 provides:

"1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 8 provides (as relevant):

"1. Everyone has the right to respect for his private and family life..."

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... the economic well-being of the country..."

A. Widow's Payment

1. Admissibility

8. The Government submitted that this complaint had been declared inadmissible by virtue of the Court's partial decision of 12 November 2002.

9. The Court notes that the said decision declared inadmissible complaints about discrimination in relation to widow's benefits where the applicants had failed to make a claim for benefits within the applicable time-limit. The Court recalls that, after 1997, a widow had to make a claim for Widow's Payment ("Wpt") within three months of the date of her husband's death. The applicant in the present case made his claim for benefits in June 2001; this was acknowledged by the Government in their letter to the Registry of 4 July 2006. His wife died on 3 April 2001. Thus, the claim had been made within the relevant domestic time-limit. On that account, this particular complaint was not declared inadmissible in the decision dated 12 November 2002.

10. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

11. The Court recalls that it has previously examined cases raising issues similar to those in the present case and found a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (see *Willis*, cited above, §§ 41-43).

12. The Court has examined the present case and finds that there are no facts or arguments from the Government which would lead to any different conclusion in this instance. Therefore the Court considers that the difference in treatment between men and women as regards entitlement to Wpt, of which the applicant was a victim, was not based on any "objective and reasonable justification" (see *Willis*, cited above, § 42).

13. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

14. The Court, having concluded that there has been a breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 as regards the applicant's non-entitlement to Wpt, does not consider it necessary to examine his complaints in that regard under Article 14 of the Convention taken in conjunction with Article 8.

B. Widowed Mother's Allowance / Widowed Parent's Allowance.

Admissibility

15. The Government submitted that the applicant had been given the opportunity to apply for WPA instead of Widowed Mother's Allowance ("WMA") and consequently he was not a victim of the alleged violation of the Convention.

16. The applicant acknowledged that on 22 June 2001 he had been granted WPA.

17. The Court considers that in these circumstances a woman would not have enjoyed a more favourable treatment than the applicant. Thus, the applicant cannot claim to have been a victim of a violation of his rights under the Convention and Protocol No.1. The complaint in respect of WMA is therefore incompatible *ratione personae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Widow's Pension

Admissibility

18. In relation to the claim for Widow's Pension ("WP"), the Court held in its lead judgment regarding WP that at its origin, and until its abolition in respect of women whose spouses died after 9 April 2001, WP was intended to correct "factual inequalities" between older widows, as a group, and the rest of the population and that this difference in treatment was reasonably and objectively justified. Moreover, the Court considered that the United Kingdom could not be criticised for not having abolished WP earlier and that it was not unreasonable of the legislature to decide to introduce the reform slowly (see *Runkee and White*, cited above, §§ 40-41). The Court, consequently, considering it was not necessary to examine separately the complaint in respect of Article 8, did not find a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 in respect of the non-payment to the applicants of WP or equivalent (*ibid* § 42).

19. Consequently, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

21. Notwithstanding the Court’s requests dated 19 March 2008 and 15 July 2008, the applicant’s representatives did not submit a claim under Article 41 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to declare the complaint about non-entitlement to a Widow’s Payment admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 concerning the applicant’s non-entitlement to a Widow’s Payment;
3. *Holds* that it is not necessary to examine separately the applicant’s complaint concerning Widow’s Payment under Article 14 of the Convention taken in conjunction with Article 8 of the Convention.

Done in English, and notified in writing on 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President