



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

THIRD SECTION

CASE OF CORNWELL v. THE UNITED KINGDOM

(Application no. 36578/97)

JUDGMENT

STRASBOURG

25 April 2000

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In the case of Cornwell v. the United Kingdom,

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

Mr J.-P. COSTA, *President*,

Sir Nicolas BRATZA,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Mr W. FUHRMANN,

Mrs H.S. GREVE,

Mr K. TRAJA, *Judges*,

and also of Mrs. S. DOLLÉ, *Section Registrar*.

Having deliberated in private on 28 March 2000,

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

PROCEDURE

1. The case originated in an application (no. 36578/97) against the United Kingdom lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Mr David Paul Cornwell (“the applicant”), on 30 May 1997.

2. The applicant was represented by Mr Anthony Pethick, a lawyer practising in Saffron Walden. The Government of the United Kingdom (“the Government”) were represented by their Agent, Mrs S. Langrish, Foreign and Commonwealth Office, London.

3. The applicant complained that the lack of provision for widowers’ benefits under British Social Security legislation discriminated against him on grounds of sex, in breach of Article 14 of the Convention, taken in conjunction with both Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. On 21 October 1998 the Commission (First Chamber) decided to give notice of the application to the Government and invited them to submit their observations on its admissibility and merits. The Government submitted their observations on 5 February 1999, to which the applicant replied on 29 March 1999.

4. On 11 May 1999 the Court declared the application admissible insofar as it relates to the period from 7 February 1997 onwards.

5. On 19 May 1999, after an exchange of correspondence, the Section Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 22 July 1999 and 18 January 2000 the Agent of the

Government and the applicant's representative respectively submitted formal declarations accepting a friendly settlement of the case.

AS TO THE FACTS

6. The applicant's wife died on 24 October 1989. He has a son, born on 24 April 1988, whom he cares for and in respect of whom he receives a weekly Child Benefit.

7. On 7 February 1997 the applicant's representative contacted the Benefits Agency of the Department of Social Security to inquire about the statutory provisions for receiving widows' benefits, namely a Widowed Mother's Allowance and a Widow's Payment.

8. On 14 February 1997 the Benefits Agency answered that Section 37 of the Social Security Contributions and Benefits Agency Act 1992 provided only for widow's benefits and not for widower's benefits.

9. By letter of 28 March 1997 the Benefits Agency informed the applicant that:

“... your wife met both condition 1 and condition 2 for payment of the benefits ... and you will understand that if your late wife's record had been that of a man, the survivor would have had title to widowed mother's allowance and widow's payment using that record.

Our records show that your late wife entered National Insurance on 11 July 1976 and the start of her working life for National Insurance purposes was 6 April 1976. From 6 April 1976 up to and including the tax year prior to her death on 24 October 1989 (i.e. 5 April 1989) she had a total of 14 qualifying years, having received qualifying earnings of at least 52 times the lower earnings limit for each particular year. This means that your late wife had a 100% record for the whole period of her working life up to the date of her death.”

10. On 23 April 1997 the Benefits Agency confirmed that if the applicant were a woman and his wife had been a man, he would, following her death, have been entitled to receive Widowed Mother's Allowance at the full 100% basic rate plus an addition for Additional Pension which had been earned by virtue of the rate of contributions paid after 1978.

AS TO THE LAW

11. On 22 July 1999 the Court received the following declaration from the Government:

“In respect of benefits which the applicant would have received from 7 February 1997 to 12 July 1999 had he been a bereaved widow, the Government is willing to offer him a payment of £11,904,60. [...]

As the applicant is no doubt aware, the Government is currently taking measures in the Welfare Reform and Pensions Bill to grant equal treatment to widows and widowers in respect of social security benefits. Until such time as this legislation is in force, the Government would propose, on an extra-statutory basis, to pay to the applicant the amounts which he would receive were he a bereaved widow. From 12 July 1999, therefore, it would propose to make such payments at the relevant weekly rate for so long as Mr Cornwell continued to meet the entitlement conditions for widowed mother’s allowance. [...]

In respect of the applicant’s claim for costs and expenses, the Government is prepared to offer the sum of £3,229.75, being the total of the barristers’ and solicitors’ costs [...].”

12. On 18 January 2000 the Court received from the applicant’s representative the following declaration:

“The applicant’s position is that he is now prepared to agree a settlement of the case in terms set out in the respondent Government’s letter dated 22 July 1999.”

13. The Court takes note of the agreement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

14. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 25 April 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President