



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

SECOND SECTION

CASE OF FIELDING v. THE UNITED KINGDOM

(Application no. 36940/97)

JUDGMENT
(Friendly Settlement)

STRASBOURG

29 January 2002

In the case of Fielding v. the United Kingdom,

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

Mr J.-P. COSTA, *President*,
Sir Nicolas BRATZA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 8 January 2002,

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

PROCEDURE

1. The case originated in an application (no. 36940/97) against the United Kingdom of Great Britain and Northern Ireland 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 an United Kingdom national, David William Fielding (“the applicant”), on 17 June 1997.

2. The applicant was represented before the Court by Mr J. Welch, a lawyer practising in London. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. A. Whomersley, Foreign and Commonwealth Office.

3. The applicant complained that British social security and tax 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.

4. The case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 8 June 1999, having obtained the parties’ observations, the Court declared the application admissible.

5. On 6 October 2001 and on 18 October 2001 the applicant’s representative and the Agent of the Government respectively submitted formal declarations accepting a friendly settlement of the case.

6. On 1 November 2001 the Court effected a change in the composition of its Sections, and the present case was assigned to the new Second Section.

THE FACTS

7. The applicant and his wife were married in 1973 and had three children, born in 1974, 1976 and 1988. The applicant's wife died in 1996.

8. The applicant's wife worked throughout the marriage, only taking breaks in order to have the three children, and paid full social security contributions as an employed earner. The applicant continues in full-time work, earning approximately GBP 29,500 per annum, from which he has to pay the mortgage on the family home and support himself and the children, the two eldest of whom are currently at University and the youngest of whom lives with the applicant and is partly cared for by a child-minder.

9. In January 1997 the applicant applied by telephone to the Benefits Agency for the payment of social security benefits. He applied for benefits equivalent to those which a widow whose husband had died in similar circumstances to those of his wife would have been entitled, namely a Widow's Payment and a Widowed Mother's Allowance, payable under the Social Security and Benefits Act 1992 ("the 1992 Act"). He was informed that the Benefits Agency was unable to accept his application as a valid claim because the regulations governing the payment of widows' benefits were specific to women. An appeal against such a decision would be bound to fail given that no social security benefits were payable to widowers under United Kingdom law.

10. The applicant also contacted the Inland Revenue and applied by telephone for bereavement tax allowance. He was informed that he did not qualify for the tax allowance, since he is a man and the law provided only for payments to widows.

11. The applicant receives Child Benefit at the Lone Parent rate in respect of his youngest child. His income precludes him from qualifying for means-tested benefits such as Income Support or Family Credit. A widow in a similar situation could claim Widow's Payment and Widowed Mother's Allowance, which are payable regardless of income and savings.

12. On 9 April 2001 the Welfare Reform and Pensions Act 1999 came into force, making bereavements benefits available to both men and women.

THE LAW

13. The Court received the following declaration from the Government:

“I declare that the Government of the United Kingdom and the applicant in the case no. 36940/97 have reached a friendly settlement upon the following terms:

(a) the Government will pay the applicant the sum of GBP 14,573.32, being the amount that the applicant would have been paid, had he been a woman, by way of Widow’ Payment and Widowed Mother’s allowance from the date of his wife’s death until 9 April 2001 and the amount that the Widow’s Bereavement Tax Allowance would have been worth to him; and

(b) the Government will pay the applicant’s legal representative the sum of GBP 5,000 in respect of his legal costs and expenses.

This sum shall cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable within three months from the date of delivery of the judgment by the Court pursuant to the Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after the Court’s judgment has been delivered.”

14. The Court received from the applicant’s representative the following declaration signed by the applicant’s representative:

“I note that the Government of the United Kingdom are prepared to pay to Mr Fielding the sum of GBP 14,573.32 covering pecuniary and non-pecuniary damage and to his representative the sum of GBP 5,000 in respect of his legal costs and expenses with a view to securing a friendly settlement of application no. 36940/97 pending before the Court.

I accept the proposal and waive any further claims against the United Kingdom in respect of the facts of this application. I declare that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after the Court’s judgment has been delivered.”

15. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). 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).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 29 January 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President