



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

FOURTH SECTION

CASE OF DOWNIE v. THE UNITED KINGDOM

(Application no. 40161/98)

JUDGMENT
(Friendly Settlement)

STRASBOURG

21 May 2002

This judgment is final but it may be subject to editorial revision.

In the case of Downie v. the United Kingdom,

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

Mr M. PELLONPÄÄ, *President*,

Sir Nicolas BRATZA,

Mr A. PASTOR RIDRUEJO,

Mrs E. PALM,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 30 April 2002,

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

PROCEDURE

1. The case originated in an application (no. 40161/98) 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 a United Kingdom national, Nicholas Downie (“the applicant”), on 7 October 1997.

2. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. A. Whomersley, Foreign and Commonwealth Office, London.

3. The applicant complained that 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.

4. On 7 March 2000, after obtaining the parties' observations, the Court declared the application admissible in so far as this complaint related to the period from 8 July 1997 onwards. The complaint of the applicant relating to the period from 19 November 1993 until 8 July 1997 was declared inadmissible on the same date.

5. On 14 March 2000, after an exchange of correspondence, the 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 12 June 2001 the Agent of the Government informed the Court that both parties had reached an agreement accepting a friendly settlement of the case. Declarations confirming the agreement were received from the applicant on 24 July 2001 and the Government on 7 August 2001.

THE FACTS

6. The applicant and his wife were married in 1978 and had three daughters, born in 1980, 1981 and 1986. The applicant's wife died in 1993, aged 42 years. The applicant is the administrator of his wife's estate.

7. The applicant's wife was employed as a private caterer for at least three years and, while working, she contributed to the joint income of the marriage. She paid full, or possibly reduced, social security contributions as an employed earner until her death. The applicant, a solicitor, continues in full-time work and has to meet the expense of childcare from the existing family income.

8. On 6 July 1997, the applicant applied 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").

9. By a letter dated 26 September 1997, the Benefits Agency informed the applicant that:

"There is currently no legislation which provides an equivalent to Widows' Benefit for a widower The UK currently provides only for Widows' Benefit and clearly you cannot qualify for this benefit as you are a man. ..."

10. An appeal against such a decision would have been bound to fail given that no social security benefits were payable to widowers under United Kingdom law at the material time. Under the Welfare Reform and Pensions Act 1999 bereavement benefits became available to both men and women as of 1 April 2001.

11. When he lodged his application, the applicant received weekly Child Benefit payments at the Lone Parent rate. His income precluded him from qualifying for means-tested benefits such as Income Support or Family Credit. A widow in a similar situation could have claimed Widow's Payment and Widowed Mother's Allowance, which were payable regardless of income and savings. If the applicant had been entitled to receive these social security benefits, he calculated that he would have been around GBP 80 per week better off. He would also have received a one-off Widow's Payment of GBP 1,000.

THE LAW

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

"I declare that the Government of the United Kingdom offer to pay GBP 19,124.32, plus GBP 1,959.90 in respect of legal costs and expenses, to Mr Nicolas J. Downie

with a view to securing a friendly settlement of the application registered under no. 40161/98. This sum covers any pecuniary and non-pecuniary damage as well as costs. It is noted that the applicant has already received the above mentioned amounts 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 the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention.”

13. The Court received the following declaration signed by the applicant:

“I note that the Government of the United Kingdom has paid a sum totalling GBP 21,084.22 covering both pecuniary and non-pecuniary damage and costs to Mr Nicholas J. Downie with a view to securing a friendly settlement of application no. 40161/98 pending before the Court.

I accept the proposal and waive any further claims in respect of the United Kingdom relating to the facts of this application. I declare that the case is definitely settled.

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 the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment.”

14. The Court takes note of the agreement reached between the parties (Article 39 of the Convention) and the amended legislation (paragraph 10 above). 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).

15. 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 21 May 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President