



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

FOURTH SECTION

CASE OF MCELROY AND OTHERS v. THE UNITED KINGDOM

(Applications nos. 57646/00, 57946/00 and 60937/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

22 May 2007

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

In the case of McElroy and Others v. the United Kingdom,

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

Mr J. CASADEVALL, *President*,

Sir Nicolas BRATZA,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 3 May 2007

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

PROCEDURE

1. The case originated in three applications (nos. 57646/00, 57946/00 and 60937/00) 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 Mr Oliver McElroy, Mr Gerard Rogan and Mr Louis O'Hare (“the applicants”), on 12 May 2000, in the case of the first two applicants and on 31 August 2000 in the case of the third applicant.

2. The applicants were represented before the Court by Mr L. Allamby, a lawyer practising in Belfast. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office.

3. The applicants complained under Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1 that, because they were men, they were denied social security benefits equivalent to those received by widows.

4. By partial decisions of, respectively, 19 February 2002, 18 August 2001 and 4 December 2001, the Court decided to communicate these applications, and in the latter decision, in respect of application no. 60937/00 to join it to other applications (nos. 60525/00, 60933/00, 60944/00, 61038/00, 61388/00, 61949/00, 62776/00, 63388/00, 63464/00, 63469/00, 63470/00, 63473/00, 63474/00, 63584/00, 63645/00, 63701/00, 63702/00, 64735/01 and 65723/01).

5. On 19 February 2002, 18 September 2001 and 4 December 2001, respectively, after obtaining the parties' observations, the Court declared these applications admissible in so far as they concerned discrimination suffered by the applicants in connection with their claims for widows' benefits and declared the remainder of each application inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Mr McElroy

6. The applicant was born in 1959 and lives in County Down.

7. His wife died on 16 November 1998, leaving him with three children born in 1993, 1995 and 1998. His claim for widows' benefits was made on 22 December 1998 and was rejected on 23 February 1999 on the ground that he was not entitled to widows' benefits because he was not a woman. The applicant lodged an appeal on 1 April 1999, which was heard and dismissed by the Social Security Tribunal on 20 April 2000.

B. Mr Rogan

8. The applicant was born in 1965 and lives in Northern Ireland.

9. His wife died on 11 June 1996, leaving him with three children born in 1989, 1994 and 1996. His claim for widows' benefits was made on 23 May 1997 and was rejected on 30 November 1998 on the ground that he was not entitled to widows' benefits because he was not a woman. The applicant lodged an appeal on 30 November 1998, which was heard and dismissed by the Social Security Tribunal on 20 April 2000.

C. Mr O'Hare

10. The applicant was born in 1963 and lives in Belfast.

11. His wife died on 10 February 2000, leaving him with two children born in 1991 and 1998. His claim for widows' benefits was made on 10 February 2000 and was rejected on 14 April 2000 on the ground that he was not entitled to widows' benefits because he was not a woman. 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

12. The relevant domestic law and practice is 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

13. By a letter of 11 May 2005 the respondent Government informed the Court that the House of Lords had decided, in relation to the claims for Widowed Mother's Allowance (WMA) and Widow's Payment (WPt), that there was in principle no objective justification at the relevant time for not paying these benefits to widowers as well as widows, but that the Government had a defence under section 6 of the Human Rights Act 1998 (the HRA). It noted that, in view of this, the multitude of cases before the Court and the fact that the HRA defence was only applicable in the domestic arena, the Government were prepared, in principle, to settle all claims made by widowers against the United Kingdom arising out of the arrangements applicable prior to April 2001 for the payment of WMA and WPt.

14. By a letter of 18 January 2007 the applicants' representative notified the Court that Mr McElroy had been offered GBP 5,322.88, Mr Rogan had been offered GBP 7,429.61 and Mr O'Hare had been offered GBP 1,191.44 and that they had accepted payment. On 19 January 2007 the representative was sent a letter by the Registry stating that if no reply was received to the contrary by 2 February 2007, the Court might consider striking out the applications from its list in their entirety. The representative has not sent a letter objecting to the striking out of the applications.

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 applications should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to disjoin application no. 60937/00 from the others to which it was joined;
2. *Decides* to strike the applications out of its list of cases.

Done in English, and notified in writing on 22 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President