



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

FOURTH SECTION

CASE OF ARKWELL v. THE UNITED KINGDOM

(Application no. 47289/99)

JUDGMENT

STRASBOURG

25 September 2007

FINAL

25/12/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Arkwell 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 Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 4 September 2007

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

PROCEDURE

1. The case originated in an application (no. 47289/99) 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 Mr Daryl Shaun Arkwell (“the applicant”) on 2 October 1998.

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

3. The applicant complained under Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1 that, because he was a man, he was denied social security benefits equivalent to those received by widows.

4. On 11 May 1999 the Court decided to communicate this application. On 7 March 2000, after obtaining the parties' observations, the Court declared this application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Gloucestershire.

6. His wife died in March 1998, leaving two children born in 1984 and 1988. His claim for widows' benefits was made on 14 March 1998 and was rejected on 15 September 1998 on the ground that he was not entitled to widows' benefits because he was not a woman. The applicant did not appeal further as he considered or was advised that such a remedy would be bound to fail since no security benefits were payable to widowers under United Kingdom law.

II. RELEVANT DOMESTIC LAW

7. The domestic law relevant to this application is set out in *Willis v. the United Kingdom*, no. 36042/97, §§ 14-26, ECHR 2002-IV.

COMPLAINTS

8. 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.

THE LAW

9. 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.

10. On 23 April 2007 the applicant's representative notified the Court that Mr Arkwell had been offered GBP 18,195.71 in respect of his claim for WPt and/or WMA and that he had accepted payment. The applicant's representative further requested the Court to adjourn the claim for Widow's Pension. On 30 April 2007 the applicant's representative was sent a letter by the Registry stating that the Court would consider striking the case out of its list in respect of the claim which has been settled, while the claim in respect of Widow's Pension would be adjourned until the Court's lead judgment on that issue, *Runkee and White v. the United Kingdom* (nos. 42949/98 and 53134/99), delivered on 10 May 2007, had become final (see paragraph 13 below). The representative has not sent a letter objecting to the striking out of the former claim. On 3 August 2007 the applicant's representative was sent another letter by the Registry stating that the latter judgment had become final on 25 July 2007 following the parties' notification that neither side intended to seek referral of the case to the Grand Chamber (Article 44 § 2 (a) of the Convention).

11. The Court takes note of the agreement reached between the parties in respect of WPt and/or WMA (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).

12. In respect of Mr Arkwell's claim regarding Widow's Pension ("WP"), it is noted that his children are now 23 and 19 years of age and it is possible that a woman in his position would have ceased to be entitled to WMA and become entitled to WP.

13. In the Court's lead judgment regarding WP the Court held 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 v. the United Kingdom*, no. 42949/98, §§ 40-41, 25 July 2007). The Court, consequently, 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 Widow's Pension or equivalent (*ibid* § 42).

14. The Court finds no reason to depart from these findings in the present case.

15. There has accordingly been no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

16. In conclusion, therefore, the Court strikes out of its list the applicant's complaints as regards Widow's Payment and Widowed Mother's

Allowance and finds no violation in respect of the applicant's complaint as regards Widow's Pension.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike out of its list of cases the complaints about non-entitlement to a Widow's Payment and Widowed Mother's Allowance;
2. *Holds* unanimously that there has been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 as regards the applicant's complaint about his non-entitlement to a Widow's Pension.

Done in English, and notified in writing on 25 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Josep CASADEVALL
President