



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

FOURTH SECTION

CASE OF CROSS v. THE UNITED KINGDOM

(Application no. 62776/00)

JUDGMENT

STRASBOURG

9 October 2007

FINAL

09/01/2008

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 Cross 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 18 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 62776/00) 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 Richard Cross (“the applicant”) on 9 October 2000.

2. The applicant was unrepresented before this Court. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office, London.

3. The applicant complained that the United Kingdom authorities' refusal to grant him Widowed Bereavement Allowance or equivalent constituted discrimination on grounds of sex contrary to Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

4. By a partial decision of 4 December 2001 the Court decided to communicate this application. It also decided to join this application to other applications (nos. 60525/00, 60933/00, 60937/00, 60944/00, 61038/00, 61388/00, 61949/00, 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 26 August 2003, after obtaining the parties' observations, the Court declared this application admissible in so far as the complaint concerned Widow's Bereavement Tax Allowance and declared the remainder of the application inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1944 and lives in Surrey.

7. His wife died on 4 June 1995. On 11 September 2000 the applicant made a claim to the Inland Revenue requesting an allowance equivalent to that received by a widow, namely Widow's Bereavement Allowance ("WBA") for the years 1995/6 and 1996/7. On 25 September 2000 the Inland Revenue informed him that he was ineligible for WBA as 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 such benefit was payable to widowers under United Kingdom law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

8. The relevant domestic law and practice is described in the Court's judgment in the case of *Hobbs, Richard, Walsh and Geen v. the United Kingdom*, nos. 63684/00, 63475/00, 63484/00 and 63468/00, judgment of 26 March 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

9. The applicant complained that the United Kingdom authorities' refusal to grant him WBA or equivalent constituted discrimination on grounds of sex contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Article 14 of the Convention provides:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1 provides:

"1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law.

2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

10. The Court has previously examined cases raising issues similar to those in the present case and found a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (*Hobbs, Richard, Walsh and Geen v. the United Kingdom*, nos. 63684/00, 63475/00, 63484/00 and 63468/00, judgment of 26 March 2007, §§ 53-54).

11. The Court has examined the present case and finds that there are no facts or arguments from the Government which would lead to any different conclusion in this instance. Therefore the Court considers that the difference in treatment between men and women as regards entitlement to WBA, of which the applicant was a victim, was not based on any “objective and reasonable justification” (see *Hobbs*, cited above, § 53).

12. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

14. In respect of pecuniary damage the applicant claimed a total of 575 British pounds sterling (GBP) for WBA.

15. The Government did not make any submissions on that point.

16. In its lead judgment regarding WBA the Court found no reason to remedy the inequality of treatment by “levelling up” and awarding the value of tax benefits which had been found to be unjustified. It accordingly made no award in respect of the pecuniary loss alleged to have been suffered (see *Hobbs, Richard, Walsh and Geen v. United Kingdom*, nos. 63684/00, 63475/00, 63484/00 and 63468/00, 26 March 2007, § 69).

17. The Court finds no reason to depart from this finding and consequently no award can be made under this head.

B. Non-pecuniary damage

18. The applicant claimed 75% of the estimated legal costs for the hurt and distress caused by the alleged violation.

19. The Government did not make any submissions on that point.

20. The Court notes that the applicant has produced no evidence to substantiate his claims. It does not accept that he was caused real and serious emotional damage as a result of being denied a tax allowance of the relatively low value of the WBA (*ibid* § 72). No award can accordingly be made under this head.

C. Costs and expenses

21. The applicant, who was not represented, claimed GBP 7.53 in respect of photocopying and postage costs in connection with correspondence with the Court and GBP 3,196.03 as an estimate of what a solicitor would have charged him had he been represented. He claimed a total amount of GBP 3,203 for costs and expenses, inclusive of value added tax ("VAT").

22. The Government contested the claim on the basis of the Court's jurisprudence.

23. The Court reiterates that only such costs and expenses as were actually and necessarily incurred in connection with the violation or violations found, and are reasonable as to quantum, are recoverable under Article 41 (see, for example, *Şahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII). It follows that, in accordance with its case-law, even if the applicant had indeed spent time working on the case, the Court cannot make an award under this head, as this time would not represent monetary costs actually incurred by him (see *Buzescu v. Romania*, no. 61302/00, § 114, 24 May 2005, and *Lehtinen v. Finland (no. 2)*, no. 41585/98, § 57, 8 June 2006). As for the postage costs the Court is satisfied that the sums claimed were actually and necessarily incurred, and reasonable as to quantum (see *Maronek v. Slovakia*, judgment of 19 April 2001, *Reports of Judgments and Decisions* 2001-III, § 70). It therefore awards the full amount of 12 euros (EUR).

D. Default interest

24. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to disjoin the application from the others to which it was joined;
2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 concerning the applicant's non-entitlement to a Widow's Bereavement Allowance;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12 (twelve euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, together with any tax that may be payable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President