CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF FALLON v. THE UNITED KINGDOM

(Application no. 61392/00)

JUDGMENT

STRASBOURG

20 November 2007

FINAL

20/02/2008

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 Fallon 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. PAVLOVSCHI,
Mr L. GARLICKI,
Mrs P. HIRVELÄ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 23 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 61392/00) 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 Joseph Fallon ("the applicant") on 5 September 2000.

2. The applicant was represented before the Court by Pierce Glynn Solicitors, London. 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 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. By a partial decision of 10 October 2001 the Court decided to communicate the complaints concerning widows' benefits and declared the remainder of the application inadmissible. By a decision of 8 April 2003 the Court declared the complaint regarding Widowed Mother's Allowance admissible and the remainder of the application inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Dorset.

6. His wife died on 13 July 1999, leaving four children born in 1981, 1983, 1991 and 1999. His claim for widows' benefits was made in May 2000 and was rejected on 16 May 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

7. 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

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1 AND/OR ARTICLE 8 OF THE CONVENTION.

8. The applicant complained that the United Kingdom authorities' refusal to pay him the social security benefit to which he would have been entitled had he been a woman in a similar position, namely Widowed Mother's Allowance ("WMA"), constituted discrimination against him on grounds of sex contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 and/or Article 8 of the Convention.

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."

Article 8 provides (as relevant):

> "1. Everyone has the right to respect for his private and family life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... the economic well-being of the country..."

9. 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 (see *Willis,* cited above, §§ 41-43).

10. 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 WMA, of which the applicant was a victim, was not based on any "objective and reasonable justification" (see *Willis*, cited above, § 42).

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

12. The Court, having concluded that there has been a breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 as regards the applicant's non-entitlement to WMA, does not consider it necessary to examine his complaints in that regard under Article 14 taken in conjunction with Article 8.

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 8,356.98 British pounds sterling (GBP):

(i) GBP 5,301.64 for WMA payments from 22 February 2000 to 11 April 2000;

(ii) Interest at rate of 8% on the above amounts, namely, GBP 3,045.34;

(iii) Christmas bonus, GBP 10.

15. The Government submitted that GBP 6,280.62 covering the amount of WMA due and interest on such sums would be adequate compensation. The Government submitted that the Court should apply the same interest

rates as applied by the Department of Work and Pensions when, exceptionally, a welfare claimant had lost the use of a sum of money as a result of a departmental error. These rates, based on the yearly Average Retail Shares and Deposits rate supplied by the Building Societies Commission, varied from 4.881%, being the highest, in 1998–1999 and 2.691%, being the lowest, in 2003-2004. The Government contested the remaining claims as they were not due to the applicant's failure to receive social security benefits.

16. The Court considers that the interest rate applied, which is intended to compensate for loss of value of the award over time, should reflect national economic conditions, such as levels of inflation and rates of interest available to investors nationally during the relevant period and it considers that the rate proposed by the Government is the more realistic (see *Runkee and White v. the United Kingdom,* nos. 42949/98 and 53134/99, judgment of 10 May 2007, § 52).

17. In these circumstances, and making an award on an equitable basis, the Court awards compensation to the applicant of GBP 6,280.62 (approximately 9,030 euros) which covers both the amount due in WMA and interest on it.

B. Non-pecuniary damage

18. The applicant claimed GBP 1,000 for the hurt and distress caused by the alleged violation.

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

20. The Court does not accept that he was caused any particular moral damage as a result of being denied the benefit in question. No award is accordingly made under this head.

C. Costs and expenses

21. The applicant also claimed GBP 2,367.70 in respect of costs and expenses, inclusive of value added tax ("VAT").

22. The Government contested the claim. While a fee rate of GBP 120 had been submitted in respect of solicitors, no fee rate was quoted in respect of counsel. Furthermore no details were given as to the number of hours of work claimed. In the absence of such details, in accordance with the Court's jurisprudence, this claim should be dismissed.

23. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). However, all claims for just satisfaction must be particularised and

supported by relevant documentation, failing which the Chamber may reject the claim in whole or in part. The applicant has not submitted itemised bills of costs to the Court. Without details of the work done and the hourly rates charged, it is not possible for the Court to determine whether the costs were necessarily incurred and reasonable as to quantum. On the basis of the information in its possession and taking into account that the issues concerning WMA were established in *Willis*, the Court awards the applicant EUR 2,000 for legal costs and expenses, in addition to any VAT that may be payable.

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. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 concerning non-entitlement to a Widowed Mother's Allowance;

2. *Holds* that it is not necessary to consider that complaint under Article 14 of the Convention taken in conjunction with Article 8;

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, the following amounts to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 9,030 (nine thousand and thirty euros) in respect of pecuniary damage;
(ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
(iii) any tax that may be chargeable on the above amounts;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 20 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President