CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF CRILLY v. THE UNITED KINGDOM

(Application no. 12895/02)

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 Crilly 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 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 12895/02) 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 William Crilly (“the applicant”) on 26 September 2000.

2. The applicant was represented by Mr John Savage a financial accountant practising in Cornwall. 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 Widow's 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 30 April 2002 the Court decided to communicate the complaint concerning Widow's Bereavement Allowance and declared inadmissible the remainder of the application. By a decision of 4 November 2003 the Court declared the remainder of the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lives in Devon.

6. His wife died on 10 March 1997. On 24 February 2000 the applicant's representative made a claim on behalf of the applicant to the Inland Revenue, requesting an allowance equivalent to that received by a widow, namely Widow's Bereavement Allowance ("WBA") for the years 1996/7 and 1997/8. On 13 March 2000 the Inland Revenue informed him that he was ineligible for WBA as he was not a woman. The applicant's representative replied by letter on 16 March 2000 and again on 4 August 2000 arguing that the refusal was discriminatory. The Inland Revenue responded on 11 August 2000, maintaining its decision to refuse the allowance. The applicant's representative wrote also to the Chancellor of the Exchequer, on whose behalf the Personal Tax Division of the Inland Revenue replied on 19 September 2000, confirming that the applicant, as a man, was not entitled to WBA. 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

7. 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

8. 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."

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 (*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).

10. The Court has examined the present case and finds that the Government have not presented any facts or arguments 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).

11. 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

12. 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 and non-pecuniary damage

13. The applicant did not submit any claims in respect of pecuniary and non pecuniary damage.

14. Consequently, the Court makes no award under this head.

B. Costs and expenses

15. The applicant claimed GBP 4,200 in respect of costs and expenses, inclusive of value added tax ("VAT"). He made reference to the Court's case law in *Crossland v. the United Kingdom*, (no. 36120/97, 9 November 1999) which involved the representation of a single client and in which the costs awarded were similar to those claimed by the applicant.

16. The Government contested the claim. It held that in the present case what was at stake was a tax allowance amounting to GBP 543.

Consequently legal expenses amounting to eight times as much could not be considered reasonable as to quantum. Moreover, the Government did not consider reasonable the amount of time claimed to have been spent on the application and the professional fees per hour. Consequently, they submitted that 400 euros would be a reasonable sum in respect of legal costs and expenses.

17. 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). On the basis of the information in its possession and taking into account that the issues concerning WBA were established in *Hobbs* (cited above) the Court awards the applicant EUR 600 for legal costs and expenses, in addition to any VAT that may be payable.

C. Default interest

18. 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 the applicant's non-entitlement to a Widow's Bereavement Allowance;

2. *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 amount to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 600 (six hundred euros) in respect of costs and expenses;
(ii) any tax that may be chargeable on the above amount;
(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;

3. *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	Josep CASADEVALL
Registrar	President