



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

FOURTH SECTION

CASE OF HERBERT v. THE UNITED KINGDOM

(Application no. 62868/00)

JUDGMENT
(Striking out)

(This version has been rectified under Rule 81 of the Rules of Court
on 18 March 2009)

STRASBOURG

22 January 2008

FINAL

22/04/2008

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 Herbert v. the United Kingdom,

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

Josep Casadevall, *President*,

Nicolas Bratza,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovski,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 4 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 62868/00) 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 George William Herbert (“the applicant”) on 5 September 2000.

2. The applicant was represented before the Court by Heswall Citizens Advice Bureau. 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. 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 1946 and lives in Preston.

6. His wife died on 11 November 1999, leaving two children born in 1992 and 1995. His claim for widows' benefits was made on 22 June 2000 and was rejected on 28 June 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

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.

THE LAW

8. 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.

9. On 5 October 2005 the applicant's legal representative notified the Court that, as regards WMA, a friendly settlement had been reached between the parties as Mr Herbert had been offered EUR¹ 11,368.14 and he had accepted payment. On 23 March 2006 the applicant's representatives were sent a letter by the Registry enquiring whether the applicant wished to continue his application with regard to Widow's Pension (WP). On 6 July 2007 the applicant's representative informed the Court that the applicant no longer wished to proceed with the latter complaint.

10. The Court takes note of the friendly settlement reached between the parties in respect of the claim for 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). It further notes that the applicant

¹ Rectified on 18 March 2009: the text previously read GBP.

does not intend to pursue his petition, within the meaning of Article 37 § 1 (a), in respect of his claim for WP. In accordance with Article 37 § 1 *in fine* of the Convention, the Court finds no special circumstances regarding respect for human rights as defined in the Convention or its Protocols which require the continuation of the examination of this claim.

11. Accordingly, the remainder of the application should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the remainder of the application out of its list of cases.

Done in English, and notified in writing on 22 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Josep Casadevall
President