



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

FOURTH SECTION

CASE OF McNAMEE v. THE UNITED KINGDOM

(Application no. 61949/00)

JUDGMENT

STRASBOURG

27 March 2008

FINAL

27/06/2008

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 McNamee v. the United Kingdom,

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

Lech Garlicki, *President*,

Nicolas Bratza,

Giovanni Bonello,

Stanislav Pavlovski,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 61949/00) 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 Sean McNamee (“the applicant”) on 5 May 2000.

2. The applicant was represented before the Court by McCann and McCann Solicitors, Belfast. 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 4 December 2001 the Court decided to communicate the complaint concerning widows’ benefits and declared the remainder of the application inadmissible. It also decided to join this application to other applications (nos. 60525/00, 60933/00, 60937/00, 60944/00, 61038/00, 61388/00, 62776/00, 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). By a decision of 26 August 2003 the Court declared the remainder of the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant lives in Northern Ireland.

6. His wife died in May 2000. They had no children from the marriage. His claim for widows' benefits was made in June 2000 and was rejected on 15 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 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 Widow's Payment ("WpT"), 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 Government argued that the applicant had not made an application for a widow’s benefit and therefore a woman in his position would not have been entitled to any benefit in such a circumstance.

10. The Court notes that the applicant submitted a signed decision of the Social Security Agency dated 15 June 2000 which evidences that he made a claim which was in fact processed.

11. In these circumstances, the Court recalls that it 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).

12. 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 WPt, of which the applicant was a victim, was not based on any “objective and reasonable justification” (see *Willis*, cited above, § 42).

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

14. 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 WPt, does not consider it necessary to examine his complaints in that regard under Article 14 of the Convention taken in conjunction with Article 8.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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.”

16. Notwithstanding, the Court’s requests dated 23 July 2007 and 11 December 2007, the applicant’s representatives did not submit a claim under Article 41 of the Convention.

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 Payment;
3. *Holds* that it is not necessary to examine the applicant’s complaint under Article 14 of the Convention taken in conjunction with Article 8 of the Convention.

Done in English, and notified in writing on 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President