



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

FOURTH SECTION

CASE OF NELSON v. THE UNITED KINGDOM

(Application no. 74961/01)

JUDGMENT

STRASBOURG

1 April 2008

FINAL

01/07/2008

This judgment may be subject to editorial revision.

In the case of Nelson 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,

Ljiljana Mijović,

Ján Šikuta

Päivi Hirvelä,

Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 11 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 74961/01) 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 Alan Nelson (“the applicant”) on 4 October 2001.

2. The applicant was represented before the Court by Ms Jacky Starling, a lawyer practising in London. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office, London.

3. By a decision of 10 September 2002 the Court decided to communicate the complaints concerning widows’ benefits and to declare the remainder of the application inadmissible. Under the provisions of Article 29 § 3 of the Convention, it subsequently decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Hampshire.

5. His wife died on 28 March 1993, leaving two children born in 1989 and 1991. His claim for widows’ benefits was made in 1996 but no decision was ever issued.

6. His second claim for widows' benefits was made on 19 January 1999 and was rejected on 14 February 2000 on the ground that he was not entitled to widows' benefits because he was not a woman. However, the applicant never received this decision and it was only after contacting the Department of Work and Pensions ("DWP") that he received a duplicate copy on 4 April 2001.

7. The applicant did not appeal further 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

8. 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 OR 8 OF THE CONVENTION.

9. 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") and Widow's Pension ("WP"), 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 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...”

A. Widowed Mother’s Allowance

1. Admissibility

10. The Government submitted that the complaint was out of time since it was introduced more than six months after the final domestic decision which in the present case was dated January 1999. The Government noted that the wording of Article 35 § 1 referred to the date “when the final decision was taken”. They further submitted that it was up to the applicant to follow up the decision on his claim in a timely manner.

11. The applicant submitted that after the lack of response to his claim introduced in 1996, he did not find it strange that no response had been received to his claim introduced in 1999. In 2001 with the introduction of the new benefits’ scheme he had been informed that he would receive a new benefit form. However, it too was never received. It was only when the applicant contacted the DWP in this connection that it transpired that a decision had been taken on his 1999 claim, and the decision of 4 April 2001, marked as duplicate, was the first notification he received in respect of this claim.

12. The Court recalls that in accordance with Article 35 § 1 of the Convention an application must be introduced within six months of the date of the “final decision” in the chain of domestic remedies which have to be exhausted, or where there are no such remedies, from the date of the act complained of, or knowledge thereof. An exception may be made to the six-month’ rule in the event of a continuing situation giving rise to a violation (see *Hilton v. the United Kingdom*, no. 12015/86, Commission decision of 6 July 1988, Decisions and Reports (DR) 57, pp. 113-115). The Court has already considered that there is no such “continuing situation” in cases of this type, since a widower cannot claim to be a victim of discrimination until he has applied for benefits and been refused. It has therefore been the Court’s consistent practice in such cases to hold that the six months time-limit in Article 35 § 1 of the Convention begins to run from the date of the final refusal by the domestic authorities of such benefits (see, for example, *Barrow and Others v. the United Kingdom* (dec.), nos. 68175/01, 68928/01,

69327/01, 13944/02, 13 December 2005). It further recalls that in cases where a decision is not pronounced publicly, the time starts to run on the day following the date on which the applicant or his representative was informed of this final decision (see *K. C. M. v. the Netherlands*, Commission decision of 9 January 1995, no. 21034/92, Decisions and Reports (DR) 80-A, p. 88).

13. In the present case the Court is ready to accept that the applicant only received notification of the said decision on 4 April 2001, and that the latter constitutes the date of the final decision for the purposes of the six months rule. Thus, the decision was delivered less than six months before the date of introduction of the case before this Court. It follows that the application cannot be rejected as being out of time.

14. The Court finds that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

15. 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).

16. 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).

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

18. 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 separately his complaints in that regard under Article 14 taken in conjunction with Article 8 (see *Willis*, cited above, § 53).

B. Widow’s Pension

1. Admissibility

19. The Court notes that the applicant has complied with the six months rule for the reasons given above.

20. It further notes that the applicant's children are now 17 and 19 years of age, and it is possible that a woman in his position would have ceased to be entitled to Widowed Mother's Allowance and become entitled to a Widow's Pension.

21. However, the Court held in its lead judgment regarding WP that at its origin, and until its abolition in respect of women whose spouses died after 9 April 2001, WP was intended to correct "factual inequalities" between older widows, as a group, and the rest of the population and that this difference in treatment was reasonably and objectively justified. Moreover, the Court considered that the United Kingdom could not be criticised for not having abolished WP earlier and that it was not unreasonable of the legislature to decide to introduce the reform slowly (see *Runkee and White v. the United Kingdom*, no. 42949/98, §§ 40-41, 25 July 2007). The Court, consequently, did not find a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 in respect of the non-payment to the applicants of Widow's Pension or equivalent (*ibid* § 42).

22. Consequently, the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. In respect of pecuniary damage the applicant claimed a total of 17,354.55 British pounds sterling (GBP):

(i) GBP 17,384.55 representing Widowed Mother's Allowance payments from 27 October 1998 to 9 April 2001 at a rate of GBP 136.65 per week;

(ii) Christmas bonus of GBP 30 at GBP 10 per annum;

(iii) Interest calculated at a rate of 8% on the above amounts.

25. The Government did not make any submissions on the claim.

26. 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. It considers that the rate determined by the Court in the case of *Runkee and White* (cited

above, § 52) should apply and that the starting point for interest is taken to be the date of the Benefit's Agency's letter to the applicant informing him that the claim had been refused.

27. In these circumstances, and making an award on an equitable basis, the Court awards compensation to the applicant of GBP 20,000 (approximately 26,955 euros) in respect of the refusal to grant him WMA up to 9 April 2001 as well as interest on that sum.

B. Non-pecuniary damage

28. The applicant claimed GBP 19,500 for the hurt and distress caused by the alleged violation.

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

30. The Court does not find it established that the applicant was caused real and serious emotional damage as a result of being denied the benefit in question. No award can accordingly be made under this head.

C. Costs and expenses

31. The applicant also claimed GBP 6,079.22 in respect of costs and expenses, inclusive of value-added tax ("VAT").

32. The Government contested the claim.

33. 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). 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 2,500 for legal costs and expenses, in addition to any VAT that may be payable.

D. Default interest

34. 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 declare admissible the complaint relating to the applicant's non-entitlement to a Widowed Mother's Allowance and the remainder of the application inadmissible;
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 Widowed Mother's Allowance;
3. *Holds* that it is not necessary to examine separately the complaint under Article 14 in conjunction with Article 8 of the Convention as concerns the applicant's non-entitlement to a Widowed Mother's Allowance;
4. *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 26,955 (twenty-six thousand nine hundred and fifty-five euros) in respect of pecuniary damage
 - (ii) EUR 2,500 (two thousand five hundred 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President