



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

FOURTH SECTION

CASE OF SZULC v. THE UNITED KINGDOM

(Application no. 63679/00)

JUDGMENT

STRASBOURG

8 April 2008

FINAL

08/07/2008

This judgment may be subject to editorial revision.

In the case of Szulc 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,
David Thór Björgvinsson,
Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 63679/00) 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 Waldemar Szulc (“the applicant”) on 22 October 2000.

2. The applicant was unrepresented before the Court. 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 12 November 2002 the Court decided to communicate the complaint concerning Widowed Mother’s Allowance and Widow’s Bereavement Allowance and declared inadmissible the remainder of the application. Subsequently, under the provisions of Article 29 § 3 of the Convention, the President of the Chamber, to which the case had been allocated, 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 1955 and lives in Leicester.

5. His wife died on 16 February 1996, leaving two children of ten and twelve years of age respectively. His claim for widows’ benefits was made on 9 February 1997 and was rejected on 18 February 1997 on the ground

that he was not entitled to widows' benefits because he was not a woman. The applicant appealed and his claims were consistently rejected up to the most recent decision dated 23 October 2000.

6. On an unspecified date the applicant made a claim to the Inland Revenue, requesting an allowance equivalent to that received by a widow, namely Widow's Bereavement Allowance ("WBA"). After various rejections, on 20 September 2000 the Inland Revenue confirmed that he was ineligible for WBA as he was not a woman.

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 or tax 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 judgments in the cases of *Willis v. the United Kingdom*, no. 36042/97, §§ 14-26, ECHR 2002-IV; and *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 OR ARTICLE 8 OF THE CONVENTION.

9. The applicant complained that the United Kingdom authorities' refusal to pay him the social security and tax benefits 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 Bereavement Allowance ("WBA"), 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 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

11. 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).

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 WMA, 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 WMA, does not consider it necessary to examine his complaints in that regard under Article 14 taken in conjunction with Article 8 (see *Willis*, cited above, § 53).

B. Widow's Bereavement Allowance

1. Admissibility

15. 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

16. 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).

17. 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).

18. 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

19. 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. Damage

20. The applicant claimed compound interest on the sums due for WMA and WBA, at the relevant base rate in each year.

21. The Government submitted that the calculation including interest which would have been applicable to a woman awaiting payment of benefits amounted to GBP 30,119.53, a sum which had already been accepted and the cheque cleared by the applicant.

22. 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) and therefore the rate proposed and paid by the Government in the present case, is the more realistic.

23. In these circumstances, the Court makes no award under this head.

B. Costs and expenses

24. The applicant also claimed GBP 2,250 for administrative charges in relation to forty-five hours of work on his convention application and GBP 25 for postage and incidental charges. Thus, he claimed a total of GBP 2,275 in respect of costs and expenses.

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

26. 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). It follows that, in accordance with its case-law, even if the applicant had indeed spent time working on the case, the Court cannot make an award under this head, as this time would not represent monetary costs actually incurred by him (see *Buzescu v. Romania*, no. 61302/00, § 114, 24 May 2005, and *Lehtinen v. Finland* (no. 2), no. 41585/98, § 57, 8 June 2006). As for the postage costs the Court rejects the claim as the applicant has failed to prove that this sum had actually been incurred.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to declare admissible the remainder of the application;
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* 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;
5. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President