



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

FOURTH SECTION

CASE OF SMITH v. THE UNITED KINGDOM

(Application no. 64729/01)

JUDGMENT

STRASBOURG

20 May 2008

FINAL

29/09/2008

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 Smith 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,
David Thór Björgvinsson,
Ján Šikuta,
Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 64729/01) 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 a British national, Mr James Smith (“the applicant”), on 13 November 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. 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 4 December 2001 a Chamber of the Fourth Section of the Court decided to communicate this application. Subsequently, under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1930 and lives in Scotland.

6. His wife died on 24 April 1994. On 26 October 2000 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"), for previous tax years. On 29 September 2000 the Inland Revenue informed him that he was ineligible for WBA as he was not a woman. 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 are 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."

1. Admissibility

9. 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

10. 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).

11. 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 WBA, of which the applicant was a victim, was not based on any “objective and reasonable justification” (see *Hobbs*, cited above, § 53).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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.”

14. Notwithstanding, the Court’s request dated 11 April 2007, the applicant’s letters of reply dated 20 April 2007 and 16 October 2007 did not include a claim under Article 41 of the Convention.

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 Widow’s Bereavement Allowance.

Done in English, and notified in writing on 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President