



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

FOURTH SECTION

CASE OF TWIZELL v. THE UNITED KINGDOM

(Application no. 25379/02)

JUDGMENT

STRASBOURG

20 May 2008

FINAL

20/08/2008

This judgment may be subject to editorial revision.

In the case of Twizell 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. 25379/02) 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 Geoffrey Twizell (“the applicant”), on 7 June 2002.

2. 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 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 1941 and lives in France.

5. His wife died on 26 March 2001. They had no children from the marriage. His claim for widows’ benefits under the new system in place as from 9 April 2001 was made on 4 May 2001 and was rejected on 4 June 2001 on the ground that he was not entitled to widows’ benefits.

On 10 July 2001 the applicant appealed. Reconsideration took place on 23 July 2001 and the decision remained unchanged. On 15 November 2001 his appeal was heard and dismissed by an Appeal Tribunal. On 23 November 2001 the applicant applied for leave to appeal to the Social Security Commissioner. On 20 February 2002 the applicant was informed that his request had been disallowed.

6. 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

7. The relevant domestic law and practice is described in the Court's judgment in the cases of *Willis v. the United Kingdom*, no. 36042/97, §§ 14-26, ECHR 2002-IV and *Runkee and White v. the United Kingdom*, no. 42949/98, §§ 40-41, 25 July 2007.

8. The Welfare Reform and Pensions Act 1999 ("the 1999 Act") introduced various new social-security payments, *inter alia*, Bereavement Payment and Bereavement Allowance.

9. Bereavement Payment is payable both to men and women in place of Widow's Payment. The same conditions applied, except that the new payment was available to both widows and widowers whose spouse died on or after 9 April 2001. However, the amount is double the sum offered under the previous scheme. Bereavement Allowance replaced Widow's Pension. It is an allowance for widows and widowers over the age of 45 but under pensionable age at the time of the spouse's death and where there are no dependent children. It is payable for 52 weeks from the date of bereavement.

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

10. The applicant complained that the United Kingdom authorities' refusal to pay him the social security benefits to which he would have been entitled had he been a woman in a similar position namely Widow's Payment ("Wpt") 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.

11. He further complained that the United Kingdom authorities' refusal to pay him the social security benefits to which he would have been entitled had his wife died after April 2001, namely Bereavement Payment ("BP") and Bereavement Allowance ("BA") constituted discrimination against him 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. Widow's Payment

1. Admissibility

12. 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

13. 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).

14. 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).

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

16. 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 taken in conjunction with Article 8 (see *Willis*, cited above, § 53).

B. Widow’s Pension

1. Admissibility

17. 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*, cited above, §§ 40-41). The Court, consequently, considering that it was not necessary to examine the complaint separately under Article 8, 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).

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

C. Bereavement Payment and Bereavement Allowance

1. Admissibility

19. The Court considers that the applicant’s complaint about the non-payment to him of BP and BA falls within the scope of Article 1 of Protocol No. 1 (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, §§ 53 and 54, ECHR 2005- ...). Since Article 14 therefore applies, it is not necessary to decide whether the complaint also

raises an issue under Article 14 taken in conjunction with Article 8 (see also *Willis v. the United Kingdom*, cited above, § 53).

20. The Court recalls that Article 1 of Protocol No. 1 does not include a right to acquire property. It places no restriction on the Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a State does decide to create a benefits or pension scheme, it must do so in a manner which is compatible with Article 14 of the Convention (see the *Stec and Others*, cited above, §§ 54-55).

21. A difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see the *Stec and Others*, [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2006-...). The scope of this margin will vary according to the circumstances, the subject-matter and the background.

22. The Court notes that unlike most complaints relating to these issues, the present complaint is not about a difference in treatment based exclusively on the ground of sex, in which case very weighty reasons would have to be put forward to find such a difference in treatment compatible with the Convention. The present complaint is based on the fact that a difference in treatment resulted from the application of a cut-off date.

23. In the present case, it must be recalled that the Welfare Reform and Pensions Act 1999 ("the 1999 Act") introduced a new system of benefits, the aim of which was to level out any discrimination arising from the previous system of benefits applied in the United Kingdom before April 2001. In particular, the 1999 Act introduced, among other benefits, BP and BA and came into force on 9 April 2001. It replaced equivalent benefits payable prior to that date, but to which only widows had been entitled.

24. The Court considers that BP and BA were intended to correct the undesired discriminatory situation created amongst the widowed part of the population prior to 2001 and therefore the resultant difference in treatment caused by the non-retrospective effect of the operative date – 9 April 2001 – pursued a legitimate aim. In creating a scheme of benefits it is sometimes necessary to use cut-off points that apply to large groups of people and which may to a certain extent appear arbitrary. The applicant's spouse died almost immediately before the entry into force of the 1999 Act and for that reason the applicant could not qualify for BP and BA. However, this is an inevitable consequence of introducing new systems which replace previous and outdated schemes. The choice of a cut-off date when transforming social security regimes must be considered as falling within the wide margin

of appreciation afforded to a State when reforming its social strategy policy and in the instant case the impugned cut-off date can be deemed reasonably and objectively justified.

25. It follows that 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

26. 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

27. In respect of pecuniary damage the applicant claimed a total of 10,770 British pounds sterling (GBP):

- (i) GBP 2,000 for Widow’s Payment/Bereavement Payment;
- (ii) GBP 3,770 for BA (52 weeks at GBP 72.50 per week).

28. The Government requested the Court to limit any award to the sum of GBP 1,142.97 representing Wpt and interest as of November 2005.

29. The Court notes that it has only found a violation in respect of Wpt. It recalls that at the time of the applicant’s wife’s death, the lump sum for Wpt was equivalent to GBP 1,000. The interest rate has already been determined by the Court in the case of *Runkee and White* (cited above, § 52). Thus, making an award on an equitable basis, the Court awards compensation to the applicant of 1,960 euros (EUR) in respect of the refusal to grant him Wpt including interest.

B. Non-pecuniary damage

30. The applicant claimed GBP 5,000 for the hurt and distress caused by the alleged violation.

31. The Government contested the claim.

32. 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

33. The applicant did not submit any claims under this head.

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 Widow's Payment 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 Widow's Payment;
3. *Holds* that it is not necessary to examine the complaints under Article 14 of the Convention in conjunction with Article 8 of the Convention as concerns the applicant's non-entitlement to a Widow's Payment;
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 1,960 (one thousand nine hundred and sixty euros) in respect of pecuniary damage;
 - (ii) any tax that may be chargeable on the above amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President