



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

FOURTH SECTION

CASE OF O'BRIEN v. THE UNITED KINGDOM

(Application no. 61391/00)

JUDGMENT

STRASBOURG

17 July 2008

FINAL

17/10/2008

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 O'Brien 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 24 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 61391/00) 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 a British national, Mr Colin Joseph O'Brien ("the applicant"), on 15 September 2000

2. The applicant was represented by Ms P. Glynn, 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 partial decision of 8 October 2002 the Court decided to adjourn the applicant's complaint in connection with his claims for Widows' Benefits, relating to discrimination suffered by him during the period after the date on which he lodged his "second" claim for Widows' Benefits, to adjourn the applicant's complaint concerning Widow's Bereavement Allowance and to declare the remainder of the application inadmissible.

4. Subsequently, under the provisions of Article 29 § 3 of the Convention, 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**

5. The applicant was born in 1955 and lives in Bridgend.

6. His wife died on 29 April 1999 leaving two children, born in 1989 and 1991.

7. In 1999 the applicant enquired about widows' benefits and he was informed that he was not entitled to such benefits.

8. In early 2000 the applicant applied for widows' benefits again and on 13 March 2000 the Benefits Agency rejected his claim.

9. He lodged an appeal against this decision on 16 March 2000 and this appeal was struck out on 23 May 2000 on the basis that it was misconceived.

10. On 16 May 2000 the applicant made an oral claim for Widow's Bereavement Allowance to the Inland Revenue. On 23 May 2000 he was informed that his claim could not be accepted because there was no basis in domestic law allowing widowers to claim this benefit. The applicant was advised that an appeal against this decision would be bound to fail.

11. The applicant received child benefit in the sum of GBP 100 per month.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice are described in the Court's judgments in the cases of *Willis v. the United Kingdom*, no. 36042/97, §§ 14-26, ECHR 2002-IV; *Hobbs, Richard, Walsh and Geen v. the United Kingdom*, nos. 63684/00, 63475/00, 63484/00 and 63468/00, 26 March 2007; and *Runkee and White v. the United Kingdom* nos. 42949/98 and 53134/99, 25 July 2007.

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.

13. 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 Widow's Payment ("Wpt"), Widowed Mother's Allowance ("WMA"), Widow's Bereavement Allowance ("WBA") 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 and/or Article 8.

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 of the Convention 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 and/or Widowed Mother’s Allowance

14. By a letter of 12 May 2006 the applicant’s representatives notified the Court that Mr O’Brien had been offered GBP 12,393.23 in respect of his claims for Wpt and/or WMA including costs and that he had accepted the offer. By a letter of 16 May 2007 the applicant’s representatives notified the Court that Mr O’Brien had received the said payment.

15. The Court takes note of the friendly settlement reached between the parties in respect of Wpt and/or WMA. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

16. Consequently, this part of the application should be struck out of the list.

B. Widow’s Bereavement Allowance

1. Admissibility

17. The Government contested the admissibility of the applicant’s claim for the tax year 1999/2000 on the basis that he had only made an oral claim, therefore failing to comply with a domestic requirement. According to

domestic legal provisions, telephone claims could be accepted from 1998 onwards, but only if they related to the current year of assessment, namely, the year of assessment in which the claim was made, or the following year. In the present case Mr O'Brien's claim for the tax year 1999/2000 referred to a previous year of assessment. Consequently, the applicant cannot claim to be a victim of the alleged violation.

18. The applicant submitted that the Court should not differ from its holding in *White v. the United Kingdom* ((dec.), no.53134/99) in which it rejected the Government's plea regarding benefit claims not made in the proper format. Indeed there were no reasons why claims for WBA could not be treated on a par with claims for other bereavement benefits.

19. The Court recalls that the precise form in which an applicant indicates his intention to claim benefits is not of importance, the central question being whether the applicant has made clear his wish to claim benefits (see *White*, cited above). The Court finds that in the present case the applicant made clear such intention for both years of assessment, whether in writing or orally, and he can accordingly claim to be a victim of a violation of the Convention for the purposes of Article 34.

20. 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

21. 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*, cited above, §§ 53-54).

22. 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).

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

C. Widow's Pension

24. 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*, cited above, §§ 40-41). The Court, consequently, considering it was not necessary to examine separately the complaint in respect of 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 WP or equivalent (*ibid* § 42).

25. Consequently, this 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. Damage

27. The applicant left it to the Court to grant any financial compensation considered equitable.

28. The Government did not make any submissions on that point.

29. In its lead judgment regarding WBA the Court found no reason to remedy the inequality of treatment by “levelling up” and awarding the value of tax benefits which had been found to be unjustified. It accordingly made no award in respect of the pecuniary loss alleged to have been suffered (see *Hobbs*, cited above, § 69). Moreover, the Court does not accept that the applicant was caused real and serious emotional damage as a result of being denied a tax allowance of the relatively low value of the WBA (*ibid* § 72).

30. The Court finds no reason to depart from these findings and consequently no award can be made under this head.

B. Costs and expenses

31. The applicant also claimed GBP 1,007.80 in respect of costs and expenses, inclusive of value added tax (“VAT”).

32. The Government did not make any submissions on that point.

33. 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). On the basis of the information in its possession and

taking into account that the issues concerning WBA were established in *Hobbs* (cited above) the Court awards the applicant EUR 600 for legal costs and expenses, in addition to any VAT that may be payable.

C. 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 strike out the applicant's complaints concerning non-entitlement to a Widow's Payment and/or Widowed Mother's Allowance;
2. *Declares* admissible the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 concerning non-entitlement to a Widow's Bereavement Allowance and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 in connection with the applicant's complaint concerning non-entitlement to a Widow's Bereavement 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 amount to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 600 (six hundred euros) in respect of costs and expenses;
 - (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 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President