



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

FOURTH SECTION

CASE OF THOMAS v. THE UNITED KINGDOM

(Application no. 63701/00)

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 Thomas 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. 63701/00) 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 Ian Francis Thomas (“the applicant”), on 29 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 4 December 2001 the Court decided to adjourn the applicant’s complaint in relation to his claims for Widow’s Benefits and Widows’ Bereavement Tax 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 1949 and lives in Bournemouth.

6. His wife died on 2 November 1999. They had no children.

7. On 29 November 1999 and again on 17 August 2000 the applicant applied for the payment of social security survivors' benefits, namely Widow's Payment and Pension, with the Benefits Agency. On 3 December 1999 he was informed that he was not entitled to any benefit because he was not a woman and that he had no right of appeal since his claim had not been considered by a decision maker.

8. On 21 July 2000 the applicant wrote to the Benefits Agency asking for a reconsideration of his claim. On 26 July 2000 the Benefits Agency again refused his claim. The content of the letter of 3 December 1999 was reaffirmed in a letter dated 25 August 2000.

9. On 29 June 2001 the Benefits Agency wrote to the applicant stating that they had reconsidered the circumstances in which a formal decision should be given carrying a right of appeal and after reviewing their decision they again rejected the applicant's claim because he was not a woman. The applicant did not appeal further as he was advised that in any case such appeal would be bound to fail.

10. On 13 September 2000 the applicant made a claim for Widow's Bereavement Tax Allowance to the Inland Revenue. On 19 September 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.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. 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

12. 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

1. Admissibility

13. 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

14. 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).

15. 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).

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

17. 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 Bereavement Allowance

1. Admissibility

18. 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

19. 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).

20. 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).

21. 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

22. 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).

23. 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

24. 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

25. The applicant left it to the Court to grant any financial compensation considered equitable in respect of WBA. He requested the sum of GBP 1,999 in respect of Wpt including interest to the date of the filing of the parties’ submissions.

26. The Government submitted that the calculation of the amount of Wpt including interest which would have been payable to a woman amounted to GBP 1,206.15.

27. 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).

28. In relation to the claim for Wpt, 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 by the Government in the present case is the more realistic.

29. The Court finds no reason to depart from these findings and awards on an equitable basis, compensation to the applicant of EUR 1,600.

B. Costs and expenses

30. The applicant also claimed GBP 3,104.12 in respect of costs and expenses, inclusive of value added tax (“VAT”).

31. The Government contested the claim, which they believed was excessive for a straightforward case. They submitted that the figure of GBP 2,000 inclusive of VAT would suffice.

32. 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 Wpt were established in *Willis* and the issues concerning WBA were established in *Hobbs* (cited above), the Court awards the applicant EUR 3,000 for legal costs and expenses, in addition to any VAT that may be payable.

C. Default interest

33. 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. *Declares* admissible the applicant’s claim to a Widow’s Payment and Widow’s Bereavement 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 Widow’s Payment;
3. *Holds* that it is not necessary to examine separately the complaint under Article 14 taken in conjunction with Article 8 of the Convention as concerns the applicant’s non-entitlement to a Widow’s Payment;
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. *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 1,600 (one thousand six hundred euros) in respect of pecuniary damage;

(ii) EUR 3,000 (three thousand euros) in respect of costs and expenses;

(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;

6. *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