



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

FOURTH SECTION

CASE OF THORNE v. THE UNITED KINGDOM

(Application no. 28091/02)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Thorne 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,
Ledi Bianku,
Mihai Poalelungi, *judges*,
and Lawrence Early, *Section Registrar*,
Having deliberated in private on 9 December 2008,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 28091/02) 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 Graham Thorne (“the applicant”), on 25 October 2001.

2. The applicant was represented by Royds Rdw, solicitors in London. 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 under Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1 that, because he was a man, he was denied social security benefits equivalent to those received by widows.

4. By a partial decision of 12 November 2002 the Court decided to communicate the complaints concerning widows’ benefits which had been made within the applicable time-limits. Subsequently, 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 1958 and lives in Kent.

6. His wife died on 25 January 2001. He made an oral claim for benefits on 16 February 2001. His formal claim for widows’ benefits, namely

Widow's Payment ("Wpt") and Widowed Mother's Allowance ("WMA") was made subsequently, allegedly on 2 March 2001, and was rejected on 28 June 2001 on the ground that he was not entitled to widows' benefits because he was not a woman. The applicant did not appeal as he considered or was advised that such a remedy would be bound to fail since no such social security benefits were payable to widowers under United Kingdom law.

7. The applicant was in receipt of child benefit at the time of his claim.

8. Upon the introduction of the new benefit scheme, as of 8 April 2001 the applicant started receiving Widowed Parent's Allowance instead of WMA.

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. The relevant domestic law and practice are described in the Court's judgment in the case of *Willis v. the United Kingdom*, no. 36042/97, §§ 14-26, ECHR 2002-IV.

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

10. The applicant complained that the United Kingdom authorities' refusal to pay him the social security benefit to which he would have been entitled had he been a woman in a similar position, namely Wpt and WMA, 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 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. Admissibility of the application

11. The Government submitted that the Department of Work and Pensions had no trace of a claim ever having been made by the applicant, nor any form of other documentation evidencing the receipt of the application for benefits. Consequently, it did not appear that the applicant ever made a claim and therefore, according to the Court’s established case-law, he was not a victim of the alleged violation.

12. The applicant submitted that although the Department of Work and Pensions had lost all the documents related to his case, and they had admitted this, this did not mean that he had never claimed such benefits. He submitted to the Registry of the Court a copy of his personal diary which showed a note stating that he had introduced his claim on 2 March 2001. Moreover, he submitted a copy of the rejection letter from the benefits agency dated 28 June 2001.

13. The Court considers that for the purposes of the present case the applicant has sufficiently proved that he made a formal application to the benefits agency. It will further consider that such claim had been made on 2 March 2001 and therefore within the domestic time-limits for claiming both benefits. Consequently, the application is not incompatible *ratione personae* with the provisions of the Convention or the Protocols thereto.

14. The Court further finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. The Court notes that the applicant’s complaint in respect of WMA refers solely to the period between the date of his wife’s death and 8 April 2001.

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 (see *Willis*, cited above, §§ 41-43).

17. 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 the instant case. Therefore the Court considers that the difference in treatment between men and women as regards entitlement to Wpt and WMA of which the applicant was a victim, was not based on any “objective and reasonable justification” (see *Willis*, cited above, § 42).

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

19. 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 and WMA, does not consider it necessary to examine his complaints in that regard under Article 14 taken in conjunction with Article 8.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. In respect of pecuniary damage the applicant claimed GBP 1,000 and GBP 1,078.33 equivalent to the amounts due in respect of Wpt and WMA for the period at issue, respectively. He further claimed interest on the said sums at a rate of 8 %.

22. The Government did not submit any comments.

23. 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) is the more realistic.

24. In the present circumstances and making an award on an equitable basis, the Court awards compensation to the applicant of EUR 3,000 in respect of the refusal to grant him Wpt and WMA up to 8 April 2001 as well as interest on that sum.

B. Costs and expenses

25. The applicant also claimed GBP 2,000 in respect of costs and expenses, plus value-added tax (“VAT”).

26. The Government did not submit any comments.

27. 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 the Court awards the applicant EUR 2,400 for legal costs and expenses, in addition to any VAT that may be payable.

C. Default interest

28. 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 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 Payment and Widowed Mother’s Allowance;
3. *Holds* that it is not necessary to examine separately the complaints under Article 14 taken in conjunction with Article 8 of the Convention as concerns the applicant’s non-entitlement to a Widow’s Payment and Widowed Mother’s 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 amounts to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) in respect of pecuniary damage plus any tax that may be chargeable;

(ii) EUR 2,400 (two thousand and four hundred euros) in respect of costs and expenses plus any tax that may be chargeable to the applicant;

(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 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President