



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

FOURTH SECTION

CASE OF BOOTH v. THE UNITED KINGDOM

(Application no. 27961/02)

JUDGMENT

STRASBOURG

3 February 2009

FINAL

03/05/2009

This judgment may be subject to editorial revision.

In the case of Booth 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 13 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 27961/02) 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 Tony Booth (“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. On 17 November 2005 the Court decided to communicate the complaints concerning widows’ benefits. 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 1944 and lives in Sussex.

6. His wife died on 29 October 2000. They had no children from the marriage. His claim for widows’ benefits was made on 2 January 2001 and was rejected on 31 May 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.

II. RELEVANT DOMESTIC LAW AND PRACTICE

7. 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

8. 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 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 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. The Government’s preliminary objection

9. The Government submitted that since the applicant’s first letter to the Court had not been in accordance with Rule 47 § 1 of the Rules of Court, the application had been lodged more than six months from the date on which the final decision was taken and should therefore be declared inadmissible.

10. The Court recalls that in accordance with Rule 47 § 5 of the Rules of Court, the date of introduction of the application is as a general rule considered to be the date of the first communication from the applicant setting out, even summarily, the object of the application (see *Calleja v. Malta*, (dec.), no. 75274/01, 18 March 2004).

11. The Court observes that the applicant’s representative lodged a number of applications with the Court regarding complaints related to the various types of widow’s benefits and therefore the same subject matter. In his covering letter, the applicant’s representative described these cases as a “group application for widowers seeking equal entitlement to State bereavement benefits”. Although he did not individualise the nature of the complaints of each applicant, it was clear for the Court that they all wished to contest their non-entitlement under Articles 8, 14 and 1 of Protocol No. 1. The representative subsequently submitted follow-up schedules including, on 25 October 2001, a schedule giving details of the applicant in the instant case. The Court took as the date of introduction of each application the date on which the relevant schedule relating to a particular applicant was submitted.

The Court further notes that following a decision of 17 December 2002 taken by a Committee declaring the applicant’s case inadmissible for failure to comply with the six-month rule, the case was reopened in view of the discovery of the schedule relating to the applicant.

The Court therefore considers that, in the circumstances of the present case and as accepted in all grouped widowers’ cases filed by the applicant’s legal representative, the schedules as so submitted suffice to be regarded as the applicant’s first letter for the purposes of Article 35 § 1 of the Convention.

12. Consequently, since the applicant’s first letter is dated 25 October 2001 and the final decision in his case is dated 31 May 2001, the application has not been lodged outside the six-month period. The Government’s objection is therefore dismissed.

B. 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.

C. Widow's Pension

Admissibility

18. 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*, no. 42949/98, §§ 40-41, 25 July 2007). 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 Widow's Pension or equivalent (*ibid* § 42).

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

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.”

21. Notwithstanding the Court's requests dated 12 August 2008 and 16 October 2008, the applicant's representatives did not submit a claim under Article 41 of the Convention.

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 inadmissible 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 Payment;
3. *Holds* that it is not necessary to examine separately the complaint under Article 14 in conjunction with Article 8 of the Convention as concerns the applicant's non-entitlement to a Widow's Payment.

Done in English, and notified in writing on 3 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President