



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

FOURTH SECTION

CASE OF MITCHARD v. THE UNITED KINGDOM

(Application no. 42711/02)

JUDGMENT

STRASBOURG

3 February 2009

FINAL

03/05/2009

This judgment may be subject to editorial revision.

In the case of Mitchard 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. 42711/02) 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 St John Edward Mitchard (“the applicant”), on 18 March 2002.

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 8 April 2003 the Court decided to communicate the complaints concerning widows’ benefits relating to the period after the date on which the applicant lodged his relevant claim and declared the remainder of the application inadmissible. 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 1956 and lives in Oxford.

6. His wife died on 12 October 1996 leaving dependent children. His claim for widows' benefits was made in March 2001 and on 2 May 2001 it was determined that he was entitled to Widowed Parent's Allowance as from 10 April 2001. The applicant however requested that the claim be treated as from the date of his wife's death, or alternatively that he be allowed to claim the equivalent widow's benefit. On 22 October he made a formal application for widow's benefit which was rejected on 27 February 2002 on the ground that he was not entitled to widows' benefits because he was not a woman. 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 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 Widowed Mother's Allowance ("WMA") 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 cases with the Court regarding complaints relating 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 18 March 2002, 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 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 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 18 March 2002 and the final decision in his case is dated 27 February 2002, the application has not been lodged outside the six-month period and the Government’s objection is therefore dismissed.

B. Widowed Mother's Allowance in respect of the period prior to the grant of Widowed Parent's Allowance

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 WMA, 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 in relation to the period at issue.

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 WMA, 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 24 July 2008, 6 August 2007, 25 September 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 Widowed Mother's Allowance 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 Widowed Mother's Allowance;
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 Widowed Mother's Allowance.

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