



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

FOURTH SECTION

CASE OF BLACKGROVE v. THE UNITED KINGDOM

(Application no. 2895/07)

JUDGMENT

STRASBOURG

28 April 2009

FINAL

28/07/2009

This judgment may be subject to editorial revision.

In the case of Blackgrove 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 7 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 2895/07) 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 John Blackgrove (“the applicant”), on 21 December 2006.

2. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office, London.

3. By a decision of 4 September 2008 the President of the Fourth Section of the Court decided to communicate the application. Subsequently, under the provisions of Article 29 § 3 of the Convention, 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

4. The applicant was born in 1949 and lives in Kent.

5. The applicant and his wife had two children, born in 1982 and 1987. The applicant’s wife died on 2 June 1999.

6. On 5 October 2000 the applicant applied to the Benefits Agency for the payment of social security benefits. He applied for benefits equivalent to those which a widow, whose husband had died in similar circumstances to those of his wife, would have been entitled, namely a Widow’s Payment

(“Wpt”) and a Widowed Mother’s Allowance (“WMA”), payable under the Social Security and Benefits Act 1992 (“the 1992 Act”). On 17 October 2000 his application was rejected as these benefits were only available to women. This decision was reconsidered without alteration on 25 October 2000.

7. The applicant appealed to the Social Security Tribunal on 10 July 2001 and again his claim was rejected. In November 2001 the applicant applied for leave to appeal to the Appeal Commissioner. Eventually permission was granted but his appeal was again rejected on 28 May 2004. The applicant again appealed to the Commissioner who rejected the applicant’s appeal on 13 December 2006.

8. Finally, the applicant submitted an appeal to the Court of Appeal (Civil Division), which was refused on 16 March 2007.

9. At the time of his claim in 2000 the applicant was in receipt of child benefit.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. 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

11. 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. Widow's Payment

1. Admissibility

12. The Court recalls that a widow was not automatically entitled to survivors' benefits, but had to claim them from the relevant authority. Various time-limits applied: after 1997, a widow had to make a claim for Wpt within three months of her husband's death.

13. The Court considers, as it held in *Cornwell v. the United Kingdom* (no. 36578/97, (dec.), 11 May 1999) that unless or until a man has made a claim to the domestic authorities for bereavement benefits, he cannot be regarded as a “victim” of the alleged discrimination involved in the refusal to pay such benefits, because a woman in the same position would not automatically be entitled to widows' benefits until she had made a claim (see also *White v. the United Kingdom*, no. 53134/99 (dec.), 7 June 2001, where the Court clarified that, as long as an applicant had made clear to the authorities his intention to claim benefits, the precise form in which he did so was not important). Similarly, a man who failed to apply within the time-limits as they applied to a woman claimant could not, in most cases, claim to be a victim of discrimination, since a woman in the same position would not have been entitled to the benefit in question (see *Rogan v. the United Kingdom*, no. 57946/00, (dec.), 8 September 2001).

14. Consequently, the applicant's claim for Wpt made in 2000 had been made out of time. Thus, the applicant cannot claim to have been a victim of a violation of his rights under the Convention and Protocol No. 1.

15. Accordingly, this part of the application is incompatible *ratione personae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Widowed Mother's Allowance

1. Admissibility

16. 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

17. 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).

18. 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).

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

20. 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

1. Admissibility

21. 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).

22. 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

23. 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

24. In respect of damage the applicant claimed a total of 98,000 British pounds sterling (GBP):

- (i) GBP 48,000 for Widow's benefits to date;
- (ii) GBP 50,000 for health problems suffered since pursuing this case and loss of employment income.

25. The Government submitted that WMA ceased to exist as from 9 April 2001. It followed that had the applicant been a woman, he would only have been entitled to WMA for the period from 5 October 2000 to 9 April 2001. The sum that would be due for that period would have been GBP 3,565.77 together with interest of GBP 1,226.01 as calculated according to established principles. The Government could not accept that the loss of a relatively small sum of money for such a relatively short period of time was the cause of the health problems suffered by the applicant. Moreover, according to the Court's case-law an award of non pecuniary damage was not generally made in cases where the breach arose from a failure to pay money, except where there were serious aggravating circumstances which were not present in the instant case.

26. The Court notes that it has only found a violation in respect of WMA. The interest rate applicable has already been determined by the Court in the case of *Runkee and White* (cited above, § 52). In these circumstances, the Court awards compensation to the applicant of 5,185 euros (EUR) in respect of the refusal to grant him WMA up to 9 April 2001 as well as interest on that sum. The Court does not find it established that the applicant was caused real and serious health or emotional damage as a result of being denied the benefit in question and therefore makes no award in respect of those claims.

B. Costs and expenses

27. The applicant claimed GBP 350 in costs for pursuing his claim before the domestic jurisdictions and this Court, including GBP 200 for costs incurred before the Court of Appeal.

28. The Government contested the claim, stating that it mainly referred to domestic proceedings before the Court of Appeal which, in the applicant's case, did not have to be taken in order to exhaust domestic remedies. Moreover, the bills submitted were dated 2007 and therefore could not have been incurred in connection with the application to the Court.

29. The Court considers that notwithstanding the allegedly poor prospects of success, the applicant cannot be reproached for having taken his claim to the Court of Appeal. As to the costs incurred in relation to the proceedings in Strasbourg, the Court notes that the proceedings started in 2006. Thus, it finds no reason to doubt that the applicant's bills dated 2007, which are not excessive, have been incurred for the purposes of the Convention proceedings. It therefore considers it appropriate to award the applicant EUR 370 under this head.

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.
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 5,185 (five thousand one hundred and eight-five euros) plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 370 (three hundred and seventy euros) plus any tax that may be chargeable to the applicant, 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 amounts 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 28 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President