CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## FOURTH SECTION

## DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 6638/03
by P.M.
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 24 August 2004 as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM *judges*,
and Mr M. O' BOYLE, *Section Registrar*,

Having regard to the above application lodged on 14 February 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

# THE FACTS

The applicant is a United Kingdom national, who was born in 1956 and lives in Durham. He is represented before the Court by Ms J. Sawyer, a barrister with Liberty, London.

## A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

Between 1987 and 1997, the applicant lived in a stable relationship with Miss D. They never married.

On 18 June 1991, Miss D. had a daughter. The applicant was registered as father on the birth certificate.

In October 1997, the applicant and Miss D. separated. On 29 June 1998, they entered into a Deed of Separation by which the applicant undertook to pay weekly maintenance of 25 pounds sterling (GBP) for his daughter. In the 1998/1999 tax year, he paid GBP 1,300 under the deed. The sum increased over time in accordance with the applicant's increase in earnings. Since April 2002, the applicant has made weekly maintenance payments of GBP 35.

For the year of assessment 1997-1998, the applicant was granted relief on his self-assessment tax return for the maintenance payments made under the Deed. The Government state that this was an error by the Revenue. In 1998-1999, the applicant put in a further claim to deduct these maintenance payments. This would have reduced his income tax liability by GBP 195.

By letter dated 21 December 2000, the Inland Revenue refused the claim for tax relief in respect of the maintenance payments: "because you were never married to your daughter's mother."

The applicant appealed against the refusal to a tax tribunal, namely the General Commissioners for the Division of Durham, invoking the provisions of the Convention.

A hearing took place on 11 July 2002. The applicant was unrepresented. On the morning of the hearing, counsel for the Inland Revenue presented him with a large file of the authorities on which the Inland Revenue sought to rely.

On 15 August 2002, the General Commissioners rejected his appeal, primarily on the ground that the Human Rights Act 1998 did not apply to the case as it had only come into force on 2 October 2000 after the tax year in question.

Miss D. married during the 1999-2000 tax year, on 24 July 1999.

## B. Relevant domestic law and practice

Section 347B of the Income and Corporation Taxes Act 1988, as it applied in the year of assessment 1998-1999, provided for the deduction of "qualifying maintenance payments". According to section 347B(1):

> (1) In this section 'qualifying maintenance payment' means a periodical payment which -
>
> (a) is made under an order made by a court in a member State or under a written agreement the law applicable to which is the law of a member State ...
>
> (b) is made by one of the parties to a marriage (including a marriage which has been dissolved or annulled) either-
>
> (i) to or for the benefit of the other party and for the maintenance of the other party, or
>
> (ii) to the other party for the maintenance by the other party of any child of the family,
>
> (c) is due at a time when -
>
> (i) the two parties are not a married couple living together and
>
> (ii) the party to whom or for whose benefit the payment is made has not remarried, and
>
> (d) is not a payment in respect of which relief from tax is available to the person making the payment under any provision of the Income Tax Acts other than this section."

Prior to amendment of the legislation in 1988, married couples who divorced or separated and unmarried couples who separated from one another were in the same position as regarded the deductibility of payments made under a deed of separation. The explanation for allowing the deduction to continue in respect of previously married couples as stated in a Press Release by Her Majesty's Treasury was:

> "A man maintaining his ex-wife (or vice versa) will get tax relief on the payments he makes, up to a limit equal to the difference between the married allowance and the single allowance... This recognises the cost of helping to support an ex-wife and maintain a second household. On present experience, this limit will more than cover the majority of payments to ex-wives and ex-husbands."

It appears that in tax years after 1999-2000 the availability of this deduction has been withdrawn from all but those aged 67 years or more.

Since the Child Support Act 1991 ("the CSA"), it has been Government policy that parents (predominantly fathers) separated from their children should be responsible for their children's maintenance, irrespective of their

marital status. The CSA gives the Child Support Agency mandatory powers to compel an absent father to give information about his finances, to assess the amount of contribution and to compel enforcement of the contributions.

## COMPLAINTS

The applicant complains under Article 14 in conjunction with Article 1 of Protocol No. 1 that he has been discriminated against in relation to his right to property on the grounds of (a) his unmarried status and/or (b) status as the father of a child born out of wedlock. The duty to pay taxes falls within the field of application of Article 1 of Protocol No. 1, and the tax allowance for qualifying maintenance payments falls within the ambit of the third sentence of that provision. The applicant has nonetheless been treated differently than others in an analogous situation solely because he was not married to his daughter's mother. This difference in treatment does not have any objective or reasonable justification as it penalises illegitimacy and unmarried fathers may also have the burden of second households in the same way as previously married fathers.

The applicant further complains that he had no effective remedy for this complaint contrary to Article 13 of the Convention.

## THE LAW

The applicant complains that he is unable to claim tax deduction for maintenance payments made in respect of his daughter because he was not married to her mother, invoking Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 and Article 13 of the Convention.

Article 14 of the Convention:

> "The enjoyment of the rights and freedoms set forth in [the] 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:

> "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.
>
> 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 13 of the Convention:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

## A. Article 35 § 1 of the Convention – the six month rule

The Government argued that the application had been lodged out of time. Although the applicant's representatives wrote to the Registry on 14 February 2003, they did not lodge the full application until 20 May 2003 which was more than six months after the final decision, that of the General Commissioners on 15 August 2002. This was undue delay which was not justified by the need to seek "final instructions" as stated in the correspondence and contrary to clear notice of the importance to avoid delay.

The applicant submitted that a fourteen week gap between the introductory letter and the completion of a full application cannot be regarded as undue delay. Throughout the period, the applicant's representatives kept the Court appraised of their progress in finalising the application and instructions were meanwhile being given to two barristers, on tax and exhaustion matters, whose drafts were circulated to incorporate comments by the applicant and his representatives. This was all done in an orderly and timely fashion.

In accordance with the established practice of the Convention organs, the Court considers the date of the introduction of an application to be the date of the first letter indicating an intention to lodge an application and giving some indication of the nature of the application. However, where a substantial interval follows before an applicant submits further information about his proposed application or before he returns the application form, the Court may examine the particular circumstances of the case to determine what date should be regarded as the date of introduction with a view to calculating the running of the six month period imposed by Article 35 of the Convention. The purpose of the six month rule is to promote security of the law, to ensure that cases raising Convention issues are dealt with within a reasonable time and to protect the authorities and other persons concerned from being under uncertainty for a prolonged period of time. It would be contrary to the spirit and aim of the six-month rule if, by any initial communication, an application could set into motion the proceedings under the Convention and then remain inactive for an unexplained and unlimited length of time. Applicants must therefore pursue their applications with reasonable expedition, after any initial introductory contact (see *Olivier Gaillard v. France* (dec.), no. 47337/99, 11 July 2000, *Franz Hofstädter v.*

*Austria* (dec.), no. 25407/94, 12 September 2000, and *Siti Bulut and Hatice Yavuz* (dec.), no. 73065/01, 28 May 2002, and the cases cited therein).

In the present case, the Court recalls that the applicant's representatives lodged an introductory letter containing a summary of facts or complaints by fax on 14 February 2003. On 7 March 2003, the applicant's representatives informed the Court that they noted the need to avoid undue delay and that they would submit the application form within eight weeks. On 7 May 2003, they wrote again, indicating that they were seeking final instructions from their client and would be submitting the application form within two weeks. On 20 May 2003, the application form was duly sent, along with letter of authority and supporting documents.

The Court observes that it took the applicant's representatives about three months and one week to provide the application form and necessary documentation. While no doubt it might have been possible for them to act with more speed, it may be noted that they kept the Registry apprised of their progress, ensuring that there was no appearance of the matter lying dormant. In the circumstances, the Court does not consider that the overall period discloses a lack of expedition or any abusive or unreasonable conduct on the part of the applicant's representatives.

Accordingly, the Court maintains the introduction date as being that of the applicant's first letter dated 14 February 2003. The case was therefore introduced within six months of the final decision, namely the Commissioners' rejection of the applicant's appeal on 15 August 2002, and cannot be rejected for failure to comply with the six-month time limit imposed by Article 35 § 1 of the Convention.

### B. Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1

The Government accepted that the QMPA (qualifying maintenance payment allowance) as a tax allowance set off against the liability to pay income tax fell within the ambit of Article 1 of Protocol No. 1. However, insofar as he complained that the difference in treatment in this respect flowed from his unmarried status, he could not claim to be in an analogous position to a married couple (see *Lindsay v. United Kingdom*, application no. 11089/84, Commission decision of 11 November 1986, DR 49, p. 181; *Shackell v. United Kingdom*, no. 45851/99, (dec.) 27 April 2000). As in this case, the applicant was refused relief solely on the grounds of his unmarried status, the consequence of the couple's free choice not to marry, there was no differential treatment on a prohibited ground. They submitted that questions of paternity were irrelevant to the availability of the allowance, as the same applied to payments made by an unmarried person to another, where there were no children of the family.

The Government argued that even if this was not the case there was an objective and reasonable justification for the difference in treatment. They referred to the historical development of the tax relief available for maintenance payments in the context of the taxation of married couples, in particular to maintain the status quo for the purposes of taxation for married couples after the breakdown of a marriage. They also submitted that it promoted the institution of marriage in conferring special rights and privileges on those choosing to marry, even after marriage break-down and that aim had been recognised as legitimate and within the margin of appreciation by Convention case-law. Legal obligations adhered to marriage and its breakdown that did not apply in non-legally binding partnerships. It was incorrect to state that the difference penalised illegitimacy, as the recipient of maintenance was always not taxable, irrespective of birth status. The very limited tax allowance made available to ex-spouses but not to former cohabitees was therefore objectively justified and well within the margin of appreciation to be afforded to the democratically elected national legislature in a complicated area of economic and social policy.

Concerning Article 13, the Government submitted that the applicant's complaints were directed against primary legislation in which respect Article 13 did not guarantee a remedy according to the Court's case-law.

The applicant submitted that he was in an analogous position to married fathers and argued that the cases cited by the Government confused the existence of an analogous situation with the existence of an objective justification for any difference in treatment, citing instead *Sahin v. Germany* (no. 30943/96, ECHR 2003-VII). Furthermore, he could claim to be under identical legal obligations as a married father as regarded his responsibilities to his child and thus in an analogous position for that reason.

The applicant argued that there was no objective and reasonable justification. The tax break might have been small to the Government but was a significant proportion of his weekly net earnings. He disputed that the historical background of the previous system provided any justification or explanation for why they did not provide the QMPA in a non-discriminatory fashion to all couples, who having separated, had to bear the costs of two households. Nor had the Government explained convincingly why the fact of marriage provided a justification for treating child maintenance payments differently; the fact that there might exist an objectively justifiable basis for the difference in treatment in respect of spousal maintenance payments did not mean that there was also a justifiable basis for the difference in treatment in respect of child maintenance payments. A father was compelled by statute to provide maintenance for children irrespective of his married status. It was inconsistent to treat unmarried fathers the same as married fathers for purpose of imposing financial obligations and then treat them differently by denying them tax breaks for those payments. He also doubted the validity of arguments that providing the tax break to married fathers

after divorce somehow promoted the institution of marriage or that the margin of appreciation justified such blatant discrimination.

As to Article 13, the applicant argued that it would nonetheless have been possible to provide some sensible intermediate form of relief and pointed to the later introduction of the Human Rights Act 1998, which provided for a declaration of incompatibility of legislation and the European Union provisions which had the effect of setting aside domestic primary legislation which conflicted with EC law.

### C. The Court's assessment

Having regard to the applicant's complaints and the parties' submissions, the Court finds that serious questions of fact and law arise, the determination of which should depend on an examination of the merits. The application cannot be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court unanimously

*Declares* the application admissible, without prejudging the merits of the case.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President