



Case concerning convicted prisoners' entitlement to social security benefits declared inadmissible

In its decision in the case of [S.S. v. the United Kingdom and F.A. and Others v. the United Kingdom](#) (application nos. 40356/10 and 54460/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned five convicted prisoners' entitlement to social security benefits whilst serving criminal sentences in psychiatric hospitals. New regulations were introduced in 2006 to ensure that prisoners in psychiatric hospitals did not receive social security benefits, available to other patients, until the date they would be entitled to release from prison. They notably complained that denying them the social security benefits paid to all other patients in psychiatric hospitals had amounted to unjustified discrimination.

The Court emphasised that States have a lot of room for manoeuvre to decide in areas of domestic economic or social policy, such as who is entitled to social security benefits. It therefore concluded that the case was inadmissible, the difference of treatment not being unreasonable given that the applicants, although patients, were also convicted criminals who had been given prison sentences.

Principal facts

The applicants S.S. (born in 1978), F.A. (born in 1967), H.B. (born in 1948), E.M. (born in 1946) and A.L.F. (born in 1971) are all British nationals.

They are all convicted prisoners who served, or are serving part of their sentences in psychiatric hospitals under the provisions of the UK's Mental Health Act 1983. The first four applicants were convicted of a criminal offence and sentenced to prison but at a later date were transferred from prison to a psychiatric hospital for treatment. These four applicants were transferred to a psychiatric hospital under Section 47 and 49 of the Mental Health Act. The last applicant was given a prison sentence for a crime but was then sent directly to a psychiatric hospital. He was transferred under Section 45A of the Mental Health Act.

The legal basis for a person's detention under the Mental Health Act has consequences for their social security entitlements. As a general rule prisoners are not entitled to social security benefits whilst they are serving their sentence. Prior to 2006, prisoners in psychiatric hospitals received the equivalent of pocket money when they were transferred to hospital, but new regulations were introduced which stopped them from receiving social security benefits until the date they would be entitled to release from prison. However under Section 37 of the Mental Health Act, individuals who are convicted of a criminal offence but ordered to be detained for psychiatric treatment as an alternative to being given a prison sentence are not subject to this rule and are therefore entitled to receive benefits. This difference is due to the fact that they have not been given a prison sentence.

The applicants brought judicial review proceedings, complaining that the new regulations were unlawful because they discriminated between different categories of patients who had been placed in psychiatric care via the criminal system. Their claims were dismissed by the High Court in 2009, and again by the Court of Appeal in 2010.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 19 July 2010 and 9 September 2010.

Relying on Article 14 (prohibition of discrimination) of the European Convention on Human Rights taken together with Article 1 (protection of property) of Protocol 1 to the Convention, the applicants complained that denying them the social security benefits paid to all other patients in psychiatric hospitals, including those convicted of crimes but sent to hospital instead of being given a prison sentence, amounted to unjustified discrimination. The applicants argued that their situation was comparable to that of other patients in psychiatric hospitals and yet they were treated differently to them.

The decision was given by a Chamber of seven, composed as follows:

Guido **Raimondi** (Italy), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),
Yonko **Grozev** (Bulgaria), *Judges*,

and also Françoise **Elens-Passos**, *Section Registrar*.

Decision of the Court

Article 14

The Court's case law establishes that it is discriminatory to treat people in relevantly similar situations differently if there is no objective and reasonable justification for doing so. The Court, in line with the observations made by the domestic courts, considered that the applicants had significant elements in common both with other patients but also with other prisoners and that a meaningful comparison could be made in either direction. Notably, although comparisons could be drawn with other patients, the applicants' status as prisoners remained very relevant to the assessment of whether denying them social security benefits had amounted to discrimination. The applicants had the status of patients in psychiatric hospitals as they required treatment for relatively severe mental problems, but they were first and foremost prisoners as they had been placed in hospital after having been convicted of serious criminal offences and found to be deserving of incarceration as a form of punishment.

The Court did not discern that the different treatment had been disproportionate. The Court reiterated that States have a lot of room for manoeuvre ("wide margin of appreciation") to decide in areas of domestic economic or social policy, such as who is entitled to social security benefits. This room for manoeuvre also applied to prisoner and penal policy, including the decision to apply a general rule disqualifying convicted prisoners from receiving social security benefits. The Court noted that the applicants remained under sentence of imprisonment whilst in hospital, and time spent in hospital counted towards time served from their prison sentences. Prisoners' entitlements would be restored if they were detained in hospital beyond the completion of their prison sentence, but they would return to prison if they were discharged from hospital before the completion of their sentence.

The Court found that the two justifications put forward by the Government for not paying the applicants' benefits also carried weight. The Government argued that paying benefits would amount to double provision, as the state already meets the basic needs of prisoners detained in psychiatric

hospitals. The Court further noted that they would not therefore be left without a means of subsistence due to the non-payment of benefits. The applicants were anyway in receipt of a discretionary allowance. The Government also argued that the non-payment of benefits should be viewed as an aspect of punishment.

The Court observed that prisoners, although deprived of their liberty, did not forfeit the remainder of their rights under the Convention. However their enjoyment of those remaining rights would inevitably be influenced by the prison context. The Court concluded that the difference of treatment fell within the range of permissible choices open to the domestic authorities, and had not constituted discrimination contrary to Article 14. It accordingly rejected the applications as manifestly ill-founded under Article 35 §§ 3 and 4 (admissibility criteria) of the Convention.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.