CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45773/99
by Denis CAIRNEY
against the United Kingdom

The European Court of Human Rights (Third Section), sitting on 7 March 2000 as a Chamber composed of

Mr J.-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja, *judges*,
and Mrs S. Dollé, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 11 August 1998 and registered on 29 January 1999,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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 British national, born in 1959 and living in Dumbartin. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Particular circumstances of the case

The applicant and his wife were married in 1994 and had one child, born in 1994. The applicant's wife died on 25 April 1995, aged 30 years. The applicant is the administrator of his wife's estate.

The applicant's wife was employed as a civil servant for ten years, paying full social security contributions. In 1995, the applicant gave up work to care for his child.

In about April 1996, the applicant approached the Benefits Agency with a view to applying for a Widow's Payment and Widowed Mother's Allowance and was informed that he was ineligible for any such benefits.

On 22 May 1998, the applicant formally 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 and a Widowed Mother's Allowance, payable under the Social Security and Benefits Act 1992 ("the 1992 Act").

By a letter dated 31 July 1998, the Benefits Agency informed the applicant that:

> "There is currently no legislation which provides an equivalent to Widows' Benefit for a widower ... . The UK currently provides only for Widows' Benefit and clearly you cannot qualify for this benefit as you are a man. ..."

An appeal against such a decision would be bound to fail given that no social security benefits are payable to widowers under United Kingdom law.

The applicant receives Child Benefit at the rate of GBP 68 per month, together with Incapacity Benefit of GBP 75 per week and a pension paid by his wife's former employer at the rate of GBP 360 per month. His income precludes him from qualifying for means-tested benefits such as Income Support or Family Credit. A widow in a similar situation could claim Widow's Payment and Widowed Mother's Allowance, which are payable regardless of income and savings. If the applicant were entitled to receive these social security benefits, he calculates that he would be GBP 73.45 a week better off. He would also have received a one-off Widow's Payment of GBP 1,000.

B. Relevant domestic law and practice

Entitlement to widow's payment and widowed mother's allowance are governed by sections 36 and 37 of the Social Security Contributions and Benefits Act 1992 ("the 1992 Act"). By Section 1 of the 1992 Act, the funds required for paying such benefits are to be provided out of the National Insurance Fund by means of contributions payable to the Secretary of State for Social Security by earners, employers and others, together with certain additions made to the Fund by Parliament. Male and female earners are obliged to pay the

same social security contributions in accordance with their status as employed earners or self-employed earners.

1. Widow's Payment

Under Section 36 of the 1992 Act, a woman who has been widowed is entitled to a widow's payment (currently a lump sum payment of GBP 1,000) if:

(i) she is under pensionable age at the time when her husband died, or he was not then entitled to a Category A retirement pension;

(ii) her husband satisfied certain specified social security contribution conditions set out in a Schedule to the 1992 Act.

2. Widowed Mother's Allowance

Under Section 37 of the 1992 Act, in so far as relevant, a woman who has been widowed (and who has not remarried) is entitled to a mother's allowance on certain conditions, the following being the relevant conditions to the circumstance of the present case:

(i) her husband satisfied the contribution conditions set out in a Schedule to the Act; and

(ii) she is entitled to receive child benefit in relation to a son or daughter of herself and her late husband.

The Widowed Mother's Allowance currently amounts to GBP 62.45 per week, with an extra GBP 9.90 per week in respect of the eldest eligible child, and a further GBP 11.20 per week in respect of other children.

3. Widow's Pension

Under Section 38 of the 1992 Act, a woman who has been widowed (and who is not remarried) is entitled to a widow's pension if:

Under Section 38 of the 1992 Act, a woman who has been widowed (and who is not remarried) is entitled to a widow's pension if:

(i) her husband satisfied the contribution conditions set out in a Schedule to the Act; and

(ii) at the date of her husband's death she was over the age of 45 but under the age of 65; or

(iii) she ceased to be entitled to a widowed mother's allowance at the time when she was over the age of 45 but under the age of 65.

4. Time-limit for applications for benefits

Section 1 (1) of the Social Security Administration Act 1992, which applies to the applicant, provides that no entitlement to a benefit arises unless a claim for the benefit is made in the prescribed manner and within the prescribed time.

At the relevant time, the time-limits for claiming widow's payment and widowed mother's allowance were set out in the Social Security (Claims and Payments) Regulations 1987 (Statutory Instrument 1987/1968), regulation 19 of which provided:

> "(6) The prescribed time for claiming benefits not specified in column (1) of Schedule 4 shall be – ...
>
> (b) twelve months in the case of ... widow's benefit ... .
>
> (7) The periods of six and twelve months prescribed by paragraph (6) are calculated from any day on which, apart from satisfying the condition of making a claim, the claimant is entitled to the benefit concerned."

In addition, section 1(2) of the Social Security Administration Act 1992 provides, in relation to claims for widow's payment:

> "Where under subsection (1) above a person is required to make a claim or to be treated as making a claim for a benefit in order to be entitled to it –
>
> (a) if the benefit is a widow's payment, she shall not be entitled to it in respect of a death occurring more than 12 months before the date on which the claim is made or treated as made ... ."

COMPLAINTS

The applicant complains that British social security legislation discriminates against him on grounds of sex, in breach of Article 14 of the Convention taken in conjunction with both Article 8 of the Convention and Article 1 of Protocol No. 1.

PROCEDURE

The application was introduced on 11 August 1998 and registered on 29 January 1999.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

On 11 May 1999, the Court decided to communicate the application to the respondent Government. The Government's written observations were submitted on 10 August 1999. The applicant replied on 3 September 1999.

THE LAW

1. The applicant complains that the lack of provision for widowers' benefits under British social security legislation discriminates against him on grounds of sex, in breach of Article 14 of the Convention taken in conjunction with both Article 8 of the Convention and Article 1 of Protocol No. 1. He complains of a continuing violation from his wife's death in 1989 onwards.

Article 14 states:

"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 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 ... ."

Article 1 of Protocol No. 1 states:

"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."

The Government contest the admissibility of the application insofar as it relates to the period from 22 April 1995 until 22 May 1998. They point out that the applicant did not attempt to claim widows' benefits until 22 May 1998 and that it was only from this date onwards that the legislation was applied to him. Had a woman claimed widows' benefits on 22 May 1998 in respect of the death of her husband in April 1995, she would have been told that she was out of time for claiming a widow's payment and that she could only claim widowed mothers' allowance with effect from 23 May 1997. They rely on the Court's decision in Cornwell v. the United Kingdom (no. 36578/97, 11 May 1999) in which the Court decided that the applicant was not a victim in relation to alleged discrimination in connection with widows' benefits until he applied to be paid such benefits, his application subsequently being refused.

The applicant contends that he was affected by the impugned legislation from about April 1996, when he was informed by the Benefits Agency that he was not eligible for widows' benefits.

The Court recalls that under Article 34 of the Convention it may receive applications from individuals and others "claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto". In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see, for example, the Buckley v. the United Kingdom judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1288, §§ 56-59, and the Valmont v. the United Kingdom decision of 23 March 1999, no. 36385/97). The Court recalls, further, its decision in Cornwell v. the United Kingdom (no. 36578/97, 11 May 1999), which held that the applicant was not a victim in relation to alleged discrimination in connection with widows' benefits until he applied unsuccessfully to be paid such benefits.

In the present case, during the period between his wife's death on 25 April 1995 and his claim for benefits on 22 May 1998, the applicant cannot be said to have been directly affected by the discrimination of which he complains, since a woman in the same position who had made no formal claim would have had no entitlement to widows' benefits under domestic law. It follows that for the period 25 April 1995 to 22 May 1998 the applicant cannot claim to have been a victim of a violation of his rights under the Convention and First Protocol, and that the application, insofar as it relates to this period, 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.

2. The Court notes that the Government do not contest the admissibility of the application insofar as it relates to the period after 22 May 1998. It considers that this part of the application raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. It concludes, therefore, that this part of the application is not 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 INADMISSIBLE insofar as it relates to the period from 25 April 1995 until 22 May 1998;

DECLARES THE APPLICATION ADMISSIBLE insofar as it relates to the period from 22 May 1998 onwards, without prejudging the merits of the case.

S. Dollé
Registrar

J.-P. Costa
President