



## New UK housing benefit regulation discriminated against a woman who had suffered domestic violence

In today's Chamber judgment<sup>1</sup> in the case of [J.D. and A v. the United Kingdom](#) (applications nos. 32949/17 and 34614/17) the European Court of Human Rights held,

**unanimously**, that there had been **no violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights in respect of the first applicant, and,

**by five votes to two**, that there had been a **violation of Article 14 in conjunction with Article 1 of Protocol No. 1** in respect of the second applicant.

The case concerned the applicants' complaint that new rules on housing benefit in the social housing sector (informally known as "the bedroom tax") discriminated against them because of their particular situations: the first applicant cares for a disabled daughter while the second is a victim of domestic violence. Both live in specially adapted homes.

The Court held that the applicants were particularly prejudiced by the measure, which leads to a reduction in rental subsidy if occupants have more bedrooms than they are entitled to under the legislation, with the aim of incentivising them to move house.

It concluded that Discretionary Housing Payments (DHPs), which can make up shortfalls in rent, allowed it to find that the difference in treatment in the first applicant's case was justified.

However, that was not the case for the second applicant: she was part of another scheme whose aim was to allow victims of domestic violence to remain in their homes and the DHPs could not resolve the conflict between that aim and the aim of the bedroom tax, which was to incentivise her to move.

### Principal facts

The applicants, J.D. and A, are two British nationals.

Both applicants live in social housing and receive housing benefit to pay their rent. After a new regulation was introduced in 2012, their housing benefit was reduced because they were found to have one more bedroom than they were entitled to under the regulation.

The first applicant, J.D., has a specially adapted property as she lives with her severely disabled daughter. The two of them live in a three-bedroom property.

The second applicant, being at risk of extreme domestic violence, was included in a "Sanctuary Scheme", which also meant that there were some adaptations to her property, including the installation of a "panic room" in the attic for herself and her son with whom she lives in a three-bedroom house.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Both applicants applied for Discretionary Housing Payments (“DHPs”) to cover the shortfall in rent following the introduction of the regulation in 2012 and received DHP awards on a temporary basis.

They began court proceedings over the housing benefit decisions on the grounds of discrimination, arguing that the reduction in rent put them in precarious circumstances which were not remedied by the discretionary payments under the DHP scheme. The cases went to appeal and then to the Supreme Court, which delivered its judgment in November 2016, dismissing their claims.

The Supreme Court held that the lower courts had been right to apply the test of “manifestly without reasonable foundation” for the discriminatory treatment of the applicants and essentially found that the discretionary payment scheme had been appropriate to deal with their cases.

## Complaints, procedure and composition of the Court

The first applicant complained of discrimination on the basis of her daughter’s disability, relying on Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) and Article 1 of Protocol No. 1 (protection of property).

The second applicant complained of discrimination on the basis of her gender as the victim of gender-based violence, relying on Article 14 in conjunction with Article 8.

The two applications were lodged with the European Court of Human Rights on 27 April 2017 and 5 May 2017 respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,  
 Krzysztof **Wojtyczek** (Poland),  
 Aleš **Pejchal** (the Czech Republic),  
 Pauliine **Koskelo** (Finland),  
 Jovan **Ilievski** (North Macedonia),  
 Raffaele **Sabato** (Italy) and,  
 Leona June **Dorrian** (the United Kingdom), *ad hoc Judge*,

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

### [Article 14 in conjunction with Article 1 of Protocol No. 1](#)

The Court found that the substance of the applicants’ complaints called for them to be examined under Article 14 and Protocol No.1 rather than under Article 8.

#### *Outline of Convention and case-law principles*

The Court reiterated that people caring for a disabled child with whom they had close personal links and people, overwhelmingly women, who had suffered gender-based violence could claim the protection of Article 14.

It also noted that any difference in treatment on the grounds set out in that provision was discriminatory if it had no “objective and reasonable justification”. States not only had to avoid discrimination but also had a duty to make sure that people in significantly different situations were treated differently if necessary.

States had wide discretion (“wide margin of appreciation”) when introducing general economic or social measures, but they should not lead to discrimination. Any difference in the treatment of

disabled people or on account of gender would require “very weighty reasons” to be justified or to be found to be in accordance with the Convention.

#### *The applicants’ case*

The Court held that because of their situations the applicants had been particularly prejudiced by being treated in the same way as other recipients of housing benefit whose payments had been reduced. It noted in particular that the applicants occupied specially adapted premises and would face hardship or, in the case of the second applicant, a risk to personal safety, if they had to move.

The Court then examined whether the failure to take account of the applicants’ difference had been discriminatory. It had to consider whether there had been an objective and reasonable justification for that treatment. In other words, the treatment had to pursue a legitimate aim and there had to be a reasonable relation of proportionality between the means used and the aim sought. It reiterated that the authorities had to have given very weighty reasons for the measure in question.

It noted that the domestic courts had accepted that the aim of the measure – reducing State expenditure by persuading people of working age in social housing with more bedrooms than necessary to move into smaller accommodation – was legitimate. The applicants had also accepted this to be the case in general terms.

Turning to the question of proportionality, the Court looked at the compatibility of the system as a whole with Article 14, not only at the applicants’ individual circumstances.

#### *The first applicant*

The Court noted that any move would be disruptive and highly undesirable for the applicant. At the same time, a move into smaller specially adapted accommodation would not be in fundamental opposition to the recognised needs of disabled people who lived in such accommodation but did not have a medical need for an extra bedroom.

The Court also held that the DHP scheme, while having disadvantages, such as being discretionary, allowed local authorities to take decisions on an individual basis and had various safeguards, such as having to be in line with the Human Rights Act and authorities’ Public Sector Equality Duty.

The Court read such requirements as meaning that the first applicant could not be refused DHPs if it meant that her need for appropriately adapted housing was not met. Indeed, she had been awarded DHPs for several years.

The DHP scheme thus amounted to a sufficiently weighty reason to satisfy the Court that the means employed to implement the measure in question had a reasonable relationship of proportionality to its legitimate aim. The difference in treatment of the first applicant was therefore justified and there had been no violation of Article 14 in conjunction with Article 1 of Protocol No. 1.

#### *The second applicant*

The Court noted that the regulation’s aim to encourage people to move was in conflict with the Sanctuary Scheme’s goal of allowing victims of gender-based violence to stay in their homes.

The impact of treating the second applicant or other people in Sanctuary Schemes in the same way as others subject to the new housing benefit rules was therefore disproportionate as it did not correspond to the legitimate aim of the measure. The Government had not provided any weighty reasons to justify prioritising the aim of the scheme over that of enabling victims of domestic violence to remain in their homes. The provision of DHPs, including the disadvantages the Court had identified, could not correct that situation.

In the context of domestic violence States also had a duty to protect people from threats from others, including in situations where an individual’s right to the enjoyment of his or her home free of violent disturbance was at stake.

In conclusion the Court found that the second applicant had suffered a violation of her rights under Article 14 in conjunction with Article 1 of Protocol No. 1.

#### [Just satisfaction \(Article 41\)](#)

The Court held that the United Kingdom was to pay the second applicant 10,000 euros (EUR) for the non-pecuniary damage she had suffered.

#### Separate opinions

Judges Wojtyczek and Pejchal expressed a joint partly dissenting opinion.

*The judgment is available only in English.*

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