



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

FOURTH SECTION

**CASE OF WILLIS v. THE UNITED KINGDOM**

*(Application no. 36042/97)*

JUDGMENT

STRASBOURG

11 June 2002

**FINAL**

*11/09/2002*

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.



**In the case of Willis v. the United Kingdom,**

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

Mr M. PELLONPÄÄ, *President*,

Sir Nicolas BRATZA,

Mr A. PASTOR RIDRUEJO,

Mr J. MAKARCZYK,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 21 May 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 36042/97) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission on Human Rights (“the Commission”) under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Mr Kevin David Willis (“the applicant”), on 24 April 1997.

2. The applicant was represented by Mr S. Wright, a legal officer with the Child Poverty Action Group, London. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley.

3. The applicant alleged that British social-security legislation discriminated against him and his late wife 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.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 11 May 1999 the Chamber declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

6. On 1 November 2001 the Court changed the composition of its Sections. This case was assigned to the newly composed Fourth Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is a British national born in 1956 and living in Bristol.

8. In December 1984 the applicant married Marlene Willis. They had two children: Natasha Uma, born on 24 March 1989, and Ross Amal, born on 2 August 1990. Mrs Willis died of cancer on 7 June 1996, at the age of 39. The applicant is the administrator of his late wife's estate.

9. Mrs Willis had been employed as a local authority housing officer. For the greater part of her married life, she was the primary breadwinner. She had paid full social-security contributions as an employed earner until 1994, and was subsequently entitled to contribution credits as a person unfit for work. On 3 November 1995 the applicant gave up work to nurse his wife and care for their children. Following his wife's death, he worked part time between 2 September 1996 and 6 November 1996, for an annual salary of 4,393 pounds sterling (GBP), but since this proved uneconomic he stopped working to care full time for the children.

10. On 4 November 1996 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 Mrs Willis would have been entitled, namely a widow's payment and a widowed mother's allowance, payable under the Social Security and Benefits Act 1992.

11. By a letter dated 18 November 1996, the Benefits Agency informed the applicant that the benefits he had claimed did not exist for widowers, and that his claim accordingly could not be accepted as valid. The letter continued:

“I am afraid I can only explain that the Government says that it has no plans to introduce a widowers' pension on the same line as the existing widows' benefits.

It may help if I explain the current policy underlying widows' benefits was established at a time when married women rarely worked. It is based on the assumption that women are more likely than men to have been financially dependent on their spouse's earnings and therefore more likely on widowhood to face greater financial hardship. The benefits themselves are concentrated on those widows who are perceived to have the greatest problems, those with children and older women who may have been out of the labour market for many years.

It is accepted that social patterns have changed considerably since the provisions were first introduced. However, it is still broadly the case that on bereavement, women are more likely than men to be in financial need. For instance, most widowers of working age will have been in employment before the death of their wives. They will not therefore have the same degree of difficulty in supporting themselves as widows who may have been out of the labour market for some time and may find it difficult to

obtain paid work. Women on average earn less than men. So even for women who have been working, the financial loss on widowhood is likely to be significantly more than for men.

Widows' benefits are not means tested and are paid regardless of the level of the widows' earnings. The Government says that the extension of the benefits on the same basis to widowers would mean substantial extra expenditure in paying maintenance benefit to men who are likely to be already maintaining themselves by their earnings, and in some cases, very high earnings indeed. To make existing widows' benefits provisions available to widowers would add an estimated GBP 490 million to the annual Social Security budget. The Government is of the opinion that at a time when all areas of public expenditure are having to be carefully considered, this is simply not a best use of scarce resources.

In making these points, the Government says that it is in no way minimising the sad problems faced by widowers, in particular those left with small children to care for. For them there are already available benefits such as Child Benefit and One Parent Benefit, together with the range of income-related benefits, for example, Income Support for those not in full time work and Family Credit for low paid workers. In the Government's view this remains the fairest way of providing benefits to meet specific need rather than an extension of widows' benefits along the lines suggested. ...”

12. The applicant lodged a statutory appeal against this decision on 17 February 1997. The Social Security Appeal Tribunal declined jurisdiction on the basis that no appealable decision had been made.

13. The applicant currently receives child benefit and, in respect of his son Ross, received a disability living allowance and an invalid care allowance for a period following his wife's death. He is also in receipt of a widower's pension under Mrs Willis's occupational pension scheme. The applicant has capital, much of which is derived from a joint endowment policy (for which he and Mrs Willis had paid premiums) which matured on Mrs Willis's death, from which he obtains a further income of about GBP 150 per month. Because of his savings, the applicant does not qualify for means-tested benefits such as income support or family credit. All the social-security benefits he receives would also be received by a widow, who would in addition be paid a widow's payment and a widowed mother's allowance.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

14. Under United Kingdom law, certain social-security benefits, including widow's payment, widowed mother's allowance and widow's pension, are paid for out of the National Insurance Fund. By section 1 of the Social Security and Benefits Act 1992 (“the 1992 Act”), the funds required for paying such benefits are to be provided 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.

15. 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.

*Widow's payment*

16. Under section 36 of the 1992 Act, a woman who has been widowed is entitled to a widow's payment (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; and
- (ii) her husband satisfied certain specified social-security contribution conditions set out in a schedule to the 1992 Act.

*Widowed mother's allowance*

17. Under the relevant part of section 37 of the 1992 Act, 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 conditions relevant 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 72.50 per week, with an extra GBP 9.70 per week in respect of the eldest eligible child, and a further GBP 11.35 per week in respect of other children.

*Widow's pension*

18. 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 her husband satisfied the contribution conditions set out in a schedule to the Act; and

- (i) at the date of her husband's death she was over the age of 45 but under the age of 65; or
- (ii) she ceased to be entitled to a widowed mother's allowance at the time she was over the age of 45 but under the age of 65.

If the applicant were a woman, he could look forward to entitlement to a widow's pension at some stage between 2006 and 2009, depending on when his youngest child ceased to be a dependant, at which time he would no longer be entitled to the widowed mother's allowance.

*Time-limit for applications for benefits*

19. Section 1(1) of the 1992 Act, 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 a widow's payment and a 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 a 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 ...”

#### *The Welfare Reform and Pensions Act 1999*

20. The Welfare Reform and Pensions Act 1999 (“the 1999 Act”) introduces two new social-security benefits, the widowed parent's allowance and the bereavement allowance. The widowed parent's allowance replaces the widowed mother's allowance. The bereavement allowance replaces the widow's pension. Both are payable to men and women who meet the relevant qualifying conditions. The 1999 Act also introduces a new social-security payment, called a bereavement payment, payable both to men and women in place of the widow's payment.

21. The relevant parts of the Act came into force on 9 April 2001 and allow any man whose wife dies before, on or after that date, or any woman whose husband dies on or after that date, to apply for the widowed parent's allowance. It also allows any man whose wife dies on or after that date to apply for the bereavement payment or the bereavement allowance in exactly the same way as a woman whose husband dies on or after that date.

22. The transitional provisions of the 1999 Act preserve the entitlements of women under the 1992 Act whose husbands died before 9 April 2001. Such women thus continue to be entitled to the widow's payment, the widowed mother's allowance and the widow's pension where the relevant qualifying conditions are met.

Thomas John Hooper and Others v. Secretary of State for the Department of Work and Pensions ([2002] High Court, Administrative Court (England and Wales) 191)

23. On 14 February 2002 Mr Justice Moses delivered judgment in the High Court in a case brought by four claimants, all of whom were widowers claiming, *inter alia*, that their ineligibility for widows' benefits under the 1992 Act was discriminatory contrary to Article 14 of the Convention taken in conjunction with both Article 8 of the Convention and Article 1 of Protocol No. 1. Three of the claimants had been left with dependent children, with the result that the benefits at issue in their cases were the widow's payment and the widowed mother's allowance. The fourth claimant (Mr Naylor) had been left without dependent children, with the result that the benefits at issue in his case were the widow's payment and the widow's pension.

24. The defendant government department conceded before the High Court that there had been discrimination under Article 14 of the Convention taken in conjunction with Article 8 in relation to non-payment of the widowed mother's allowance. As regards the question of whether the claimants' complaints, in so far as they related to the widow's payment and the widow's pension, fell within the ambit of Article 8, Mr Justice Moses commented as follows:

“In my view, the availability of pecuniary support afforded by Widow's Payment and Widow's Pension does have a significant effect on the relationship of a family prior to the death of the spouse. They form a significant part of a family's plans for a secure future. ...

Financial planning seems to me to be a significant aspect of family life and the benefits play some part in allaying fears for the future of a surviving spouse. ...

Moreover, Widow's Payments and Widow's Pensions form part of a congeries of provisions, all of which are designed to provide support to a surviving spouse at different stages of her life. Widow's Payments ... are one-off payments made immediately on bereavement. Widowed Mother's Allowances are paid whilst she looks after dependent children and Widow's Pension payable in the longer term between the ages of 45-65 when she has finished bringing up her children. Viewed as part of a package, the payments and pensions payable to a widow are bound to be of concern to the family before the death of the husband.

Accordingly, for those reasons I conclude that the failure to make Widow's Payment and Widow's Pension available to a surviving widower falls within the ambit of Article 8(1). Thus Article 14 is itself engaged.”

25. In dismissing the claimants' arguments that the same complaints fell also within the ambit of Article 1 of Protocol No. 1, Mr Justice Moses commented:

“... In order to establish that the benefits in issue are their possessions, the claimants must establish a pecuniary right based upon their contributions. Absent such

contributions, they have no possession within the meaning of Article 1 of the First Protocol. There is no hint, in any of the cases that the [Strasbourg] Court intended to depart from the fundamental principle that to come within the ambit of Article 1 of the First Protocol, a property right must be established. ...

... A deceased widow's entitlement to benefits depends upon the contributions of the deceased husband. ... A widower has no entitlement under domestic legislation arising from the contributions of his deceased spouse. He thus has no entitlement and consequently no possession within the meaning of Article 1 of the First Protocol.”

26. Prior to his examination of whether there was objective justification for non-payment of the widow's pension to widowers, Mr Justice Moses observed:

“Only Mr Naylor's case raises the issue of Widow's Pension. Although other claimants, in their written argument, raised the issue of future entitlement to Widow's Pension, such a claim is hypothetical, since they are too young to claim it now and may never become entitled should they re-marry, ... or should they co-habit ...”

Mr Justice Moses concluded that there was objective justification for the difference in treatment between widows and widowers as regards entitlement to a widow's pension under the 1992 Act.

## COMPLAINTS

27. The applicant complained that the United Kingdom authorities' refusal to pay him the social-security benefits to which he would have been entitled had he been a woman in a similar position, namely a widowed mother's allowance and a widow's payment, constituted discrimination against him and his wife on grounds of sex contrary to Article 14 of the Convention taken in conjunction with each of Article 8 of the Convention and Article 1 of Protocol No. 1. He made an identical complaint as regards his future non-entitlement to a widow's pension. He complained also of a violation of Article 13 of the Convention.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

28. The applicant complained that the United Kingdom authorities' refusal to pay him the social-security benefits to which he would have been

entitled had he been a woman in a similar position, namely a widowed mother's allowance and a widow's payment, constituted discrimination against him and his wife on grounds of sex contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. He made an identical complaint as regards his future non-entitlement to a widow's pension.

Article 14 of the Convention provides:

“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 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.”

## **A. Widow's payment and widowed mother's allowance**

### *1. Applicability of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1*

29. The Court notes that, according to its established case-law, Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them (see, among other authorities, *Gaygusuz v. Austria*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1141, § 36).

30. The applicant argued that the widow's payment and the widowed mother's allowance come within the ambit of Article 1 of Protocol No. 1 because they are both pecuniary rights payable on the satisfaction of the legislative conditions. He highlighted the fact that the right to receive the benefits in question is conditional upon the payment of contributions to the National Insurance Fund. As the contributions were clearly within the ambit of Article 1 of Protocol No. 1, so must be the ensuing benefits.

31. The Government did not make any submissions on the applicability of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 in relation to these aspects of the complaint, other than to argue that the conclusions reached by Mr Justice Moses in the High Court in *Hooper* (see paragraph 25 above) were correct.

32. The Court notes that in *Gaygusuz* (cited above, pp. 1141-42, §§ 39-41) it considered that the right to emergency assistance, entitlement to which was linked to the payment of contributions to the unemployment insurance fund, constituted a pecuniary right for the purposes of Article 1 of Protocol No. 1. Similarly, the Commission has previously assimilated the right to social-security benefits to a property right within the meaning of that Article where a person has made contributions to a social-security system from which he will later derive the benefits concerned (see, for example, *Müller v. Austria*, no. 5849/72, Commission's report of 1 October 1975, Decisions and Reports (DR) 3, p. 25, and *G. v. Austria*, no. 10094/82, Commission decision of 14 May 1984, DR 38, p. 84).

33. The Court notes that at the material time the widow's payment and the widowed mother's allowance were paid to women who had been widowed and who satisfied the various statutory conditions laid down in the 1992 Act (see paragraphs 16 and 17 above). Both these social-security benefits were paid out of the National Insurance Fund, into which male and female earners were obliged to pay contributions in accordance with their status as employed or self-employed earners.

34. In the instant case, it has not been argued that the applicant did not satisfy the various statutory conditions for payment of a widow's payment and a widowed mother's allowance. The refusal to recognise the applicant as being entitled to those benefits was based exclusively on his male sex. A female in the same position as the applicant would have had a right, enforceable under domestic law, to receive a widow's payment and a widowed mother's allowance.

35. The Court does not consider it significant that the statutory condition requiring payment of contributions into the National Insurance Fund required the contributions to have been made, not by the applicant, but by his late wife. It is not therefore necessary for the Court to address in this case the question of whether a social-security benefit must be contributory in nature in order for it to constitute a "possession" for the purposes of Article 1 of Protocol No. 1.

36. The Court therefore considers that the right to a widow's payment and a widowed mother's allowance – in so far as provided for in the applicable legislation – is a sufficiently pecuniary right to fall within the ambit of Article 1 of Protocol No. 1.

The Court considers further that, as the applicant was denied the right to a widow's payment and a widowed mother's allowance on the ground of a distinction covered by Article 14 of the Convention, namely sex, that

provision must also be applicable to this aspect of his complaint (see, among other authorities, *Gaygusuz*, cited above, p. 1142, § 41).

2. *Compliance with Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1*

37. The applicant argued that the difference in treatment between men and women as regards entitlement to a widow's payment and a widowed mother's allowance was not based on any objective and reasonable justification. In particular, it was based upon gender-stereotyping and broad generalisations which were no longer an accurate reflection of social conditions in the United Kingdom. The fact that widows' benefits were not means-tested meant that high-earning women in a position similar to that of the applicant would benefit, while the applicant and other men would be denied such benefits regardless of their need. The fact that resources were finite did not justify concentrating all the resources which were available on the protection of bereaved women to the detriment of widowed men. Indeed, the applicant highlighted the fact that working women in his wife's position were required to pay the same proportion of their earnings to the National Insurance Fund as men, notwithstanding the more limited benefits offered to their surviving relatives in the event of their death. He pointed out the less discriminatory approaches taken by the majority of the other member States of the Council of Europe in the context of survivors' benefits.

38. The Government did not make any submissions on the compliance with Article 14 of the Convention, taken in conjunction with Article 1 of Protocol No. 1, of the decision to refuse the applicant the widow's payment and the widowed mother's allowance.

39. According to the Court's case-law, a difference of treatment is discriminatory for the purposes of Article 14 of the Convention if it "has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. However, very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of sex as compatible with the Convention (see, among other authorities, *Van Raalte v. the Netherlands*, judgment of 21 February 1997, *Reports* 1997-I, p. 186, § 39).

40. The Court notes that the applicant's wife worked throughout the best part of her marriage to the applicant and during that time paid full social-security contributions as an employed earner in exactly the same way as a man in her position would have done. It notes also that the applicant gave up work to nurse his wife and care for their children on 3 November 1995

and that, being a relatively low earner, it proved uneconomic for him to return to work on a part-time basis following his wife's death. Despite all this, the applicant was entitled to significantly fewer financial benefits upon his wife's death than he would have been if he were a woman and she had been a man.

41. The Court observes also that the authorities' refusal to grant the applicant a widow's payment and a widowed mother's allowance was based exclusively on the fact that he was a man. It has not been argued that the applicant failed to satisfy any of the other statutory conditions for the award of those benefits and he was accordingly in a like situation to women as regards his entitlement to them.

42. The Court considers that the difference in treatment between men and women as regards entitlement to the widow's payment and widowed mother's allowance, of which the applicant was a victim, was not based on any "objective and reasonable justification".

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

## **B. Widow's pension**

44. The applicant stated that he faced a very significant risk that he would, within the next few years, be deprived on the grounds of his sex of a widow's pension to which he would otherwise have been entitled. He argued that he was already suffering detriment due to his being deprived of the possibility of ever applying for a widow's pension.

45. The applicant maintained that a widow's pension constituted a "possession" for the purposes of Article 1 of Protocol No. 1. He pointed to the fact that it was a pecuniary social benefit, entitlement to which was linked to the satisfaction of statutory conditions, including the payment of national insurance contributions. He submitted that the conditions applying to eligibility to a widow's pension were discriminatory against him and that his case was thus indistinguishable from *Gaygusuz* (cited above).

46. The Government pointed out that a widow in the applicant's position would not be entitled to a widow's pension until at least 2006, and possibly not until 2009, which is the latest date on which the applicant's youngest child will cease to be regarded as being dependent. They stated that a woman in the applicant's position might never qualify for a widow's pension because she might not, at the time of her future claim, meet the relevant statutory criteria. The Government thus considered this aspect of the complaint hypothetical and speculative.

47. The Government argued that, in any event, a widow's pension did not fall within the scope of Article 1 of Protocol No. 1 since it did not constitute a "possession" for the purposes of that Article. They highlighted the fact that entitlement to a widow's pension was dependent on the national

insurance contributions of the deceased spouse of the claimant. They indicated that Article 1 of Protocol No. 1 did not entitle a person to any particular benefit of any particular amount, nor did it entitle a person to payment of a social-security benefit unless that person had satisfied the conditions laid down by domestic law. They drew support for their submissions from the judgment of the High Court in *Hooper* (see paragraph 25 above).

48. The Court reiterates that Article 14 of the Convention affords protection against discrimination, that is treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see, for example, *Fredin v. Sweden (no. 1)*, judgment of 18 February 1991, Series A no. 192, p. 19, § 60).

49. In the present case, even if the applicant were a woman and the discrimination of which he complains was thus removed, he would not currently qualify for a widow's pension under the conditions set out in the 1992 Act. Indeed, a widow in the applicant's position would not qualify for the pension until at least 2006 and might never so qualify due to the effect of other statutory conditions requiring, for example, that a claimant does not re-marry before the date on which her entitlement would otherwise crystallise. Three of the four claimants in *Hooper* (cited above) were in an equivalent position to the applicant in this respect, leading Mr Justice Moses to comment that their claims to the pension were "hypothetical" (see paragraph 26 above).

50. The Court thus concludes that, since the applicant has not been treated differently from a woman in an analogous situation, no issue of discrimination contrary to Article 14 of the Convention arises as regards entitlement to a widow's pension on the facts of this case.

It follows that it is unnecessary for the Court to consider whether the applicant's complaints in this context fall within the scope of Article 1 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

51. The applicant also complained that the United Kingdom authorities' refusal to pay him the widow's payment and widowed mother's allowance to which he would have been entitled had he been a woman in a similar position constituted discrimination on grounds of sex contrary to Article 14 of the Convention taken in conjunction with Article 8. He made an identical complaint as regards his future non-entitlement to a widow's pension.

52. The relevant part of Article 8 of the Convention provides:

"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. Widowed mother's allowance and widow's payment**

53. 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 the widowed mother's allowance and the widow's payment, does not consider it necessary to examine his complaints in that regard under Article 14 of the Convention taken in conjunction with Article 8.

#### **B. Widow's pension**

54. The applicant argued that the provision of a widow's pension to a surviving spouse was clearly intended to promote family life. He maintained that a widow's pension was paid to, among others, a widow who had dependent children at the date of her husband's death once she was no longer in receipt of child benefits. He submitted that the provision of the pension to a surviving spouse was intended to recognise and promote the family relationship between spouses and that entitlement to it affected the way in which married partners arranged their financial affairs. He thus submitted that his complaint as regards future non-entitlement to a widow's pension fell within the ambit of Article 8 of the Convention.

55. The Government, at the outset, submitted that the widow's pension did not fall within the ambit of Article 8 of the Convention because it was payable following bereavement and, in contrast to the widowed mother's allowance, was not aimed at enhancing family or private life. However, later in the proceedings before the Court the Government accepted the applicant's argument that the widow's pension fell within the ambit of that Article.

56. The Court has already concluded (see paragraph 50 above) that no issue of discrimination contrary to Article 14 arises as regards entitlement to a widow's pension on the facts of this case.

It follows that it is unnecessary for the Court to consider whether the applicant's complaints in the context of the widow's pension fall within the scope of Article 8 of the Convention.

### **III. ALLEGED DISCRIMINATION SUFFERED BY THE APPLICANT'S LATE WIFE**

57. The applicant complained also about discrimination suffered by his late wife in respect of the decision to refuse him a widow's payment and a widowed mother's allowance, and in respect of his future non-entitlement to

a widow's pension, notwithstanding the social-security contributions made by her during her lifetime. The Court considers that this aspect of the complaint does not raise any issues separate from those raised in respect of the discrimination alleged to have been suffered by the applicant himself. In the light of the conclusions reached above, the Court does not consider it necessary to consider this aspect of the complaint.

#### IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

58. The applicant also complained that he had no effective remedy before a national authority because the discrimination of which he complained was contained within unambiguous primary legislation.

59. Article 13 of the Convention provides:

“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.”

60. The applicant argued that, because the discrimination of which he complained was contained in unambiguous primary legislation, and because the Convention had not at the relevant time been incorporated into domestic law, there were no means by which he could challenge the refusal of benefits before the domestic courts or other authorities.

61. The Government did not submit any observations on the merits of the applicant's complaints.

62. The Court reiterates that Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's primary legislation to be challenged before a national authority on grounds that it is contrary to the Convention (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 47, § 85). It is therefore unable to accept the applicant's argument.

63. The facts of the present case therefore disclose no violation of Article 13 of the Convention.

#### V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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. Pecuniary damage**

65. In respect of pecuniary damage, the applicant claimed:

(i) 21,804.07 pounds sterling (GBP) in respect of loss of the widow's payment (GBP 1,000) and the widowed mother's allowance up to 9 April 2001, less deductions in respect of the invalid care allowance and the one-parent benefit paid to him over that period (GBP 20,804.07);

(ii) widowed mother's allowance payments in respect of an ongoing period after 9 April 2001;

(iii) widow's pension payments once his entitlement to the widowed parent's allowance ceased; and

(iv) interest at the rate of 8% per annum on the arrears of all widows' benefits found owing to him from 7 June 1996 until the date of judgment.

66. The Government accepted the applicant's calculation in respect of the widow's payment and the widowed mother's allowance payable up to 9 April 2001. It opposed the applicant's claim for interest on the basis that social-security benefits are not generally paid for investment purposes.

The Government thus concluded that the applicant was entitled to GBP 21,804.07 in respect of pecuniary damage.

67. The Court notes that the applicant's calculations as to the amount of the widow's payment and the widowed mother's allowance payable after deductions until implementation of the new scheme created by the 1999 Act on 9 April 2001 is not disputed by the Government.

68. The Court further observes that, from 10 April 2001, the applicant has been entitled to claim the widowed parent's allowance in exactly the same way as he could, had he been a woman, have claimed the widowed mother's allowance under the 1992 Act.

69. The Court considers that interest can be claimed from the dates on which each recoverable element of past pecuniary damage accrued (see, among other authorities, *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 24, ECHR 2000-IX).

70. In these circumstances, and making an award on an equitable basis, the Court awards compensation to the applicant in the sum of GBP 25,000 in respect of the refusal to grant him the widow's payment and the loss of the widowed mother's allowance up to 9 April 2001.

### **B. Costs and expenses**

71. The applicant also claimed GBP 19,142.94 in respect of costs and expenses, inclusive of value-added tax (VAT). This included the fees of the applicant's solicitors and counsel together with fees for liaison with other non-governmental organisations in connection with the case and the fees of an expert social economist.

72. The Government did not dispute the base hourly rates claimed by the applicant's solicitors, but submitted that a 100% uplift on those fees was unjustified. They stated that the hourly rate charged by the applicant's counsel was also excessive. They argued that sums in respect of liaison with other non-governmental organisations should not be recoverable and maintained that, if their preliminary objections as to the applicant's complaint relating to non-entitlement to the widow's pension was upheld by the Court, the applicant should not be entitled to that part of his costs and expenses connected to that complaint. The Government suggested that a reasonable sum in respect of costs and expenses would be GBP 3,000 inclusive of VAT.

73. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II).

74. The Court does not consider that its conclusions in respect of the applicant's complaint about non-entitlement to a widow's pension imply that the associated legal costs and expenses were unnecessarily incurred or were unreasonable as to quantum (see *Smith and Grady* (just satisfaction), cited above, § 30, and *Jordan v. the United Kingdom (no. 1)*, no. 30280/96, § 42, 14 March 2000). However, it does consider that the uplift included in the solicitor's fees was unwarranted and that the counsel's fees were excessive.

In light of the above, the Court awards the global sum of GBP 12,500 for legal costs and expenses, inclusive of VAT.

### **C. Default interest**

75. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Holds* that Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 is applicable to the applicant's complaint concerning non-entitlement to the widow's payment and the widowed mother's allowance;
2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 in connection with that complaint;

3. *Holds* that it is not necessary to consider that complaint under Article 14 of the Convention taken in conjunction with Article 8;
4. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 8 of the Convention or Article 1 of Protocol No. 1 in connection with the applicant's complaint concerning non-entitlement to a widow's pension;
5. *Holds* that it is not therefore necessary to consider whether Article 8 of the Convention and Article 1 of Protocol No. 1 are applicable to the applicant's complaint concerning non-entitlement to a widow's pension;
6. *Holds* that it is not necessary to consider the case under Article 14 of the Convention taken in conjunction with Article 8 of the Convention or Article 1 of Protocol No. 1 in connection with the complaint about discrimination allegedly suffered by the applicant's late wife;
7. *Holds* that there has been no violation of Article 13 of the Convention;
8. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention:
    - (i) GBP 25,000 (twenty-five thousand pounds sterling) in respect of pecuniary damage;
    - (ii) GBP 12,500 (twelve thousand five hundred pounds sterling) in respect of the costs and expenses of the proceedings before the Convention organs (inclusive of value-added tax);
  - (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;
9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Matti PELLONPÄÄ  
President