



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45851/99
by Joanna SHACKELL
against the United Kingdom

The European Court of Human Rights (First Section), sitting on 27 April 2000 as a Chamber composed of

Mrs E. PALM, *President*,
Sir Nicolas BRATZA,
Mr L. FERRARI BRAVO,
Mr Gaukur JÖRUNDSSON,
Mr R. TÜRMEŒ,
Mr B. ZUPANČIĆ,
Mr T. PANŦIRU, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having regard to the above application introduced on 18 December 1998 and registered on 2 February 1999,

Having deliberated, decides as follows:

THE FACTS

The applicants are British national, born in 1957 and living in Wiltshire. She is represented before the Court by Mr Neil Feirn, a Welfare Rights Worker also practising in Wiltshire. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Particular circumstances of the case

The applicant commenced a long-term relationship with Ian Green in September 1978. The couple never married but lived together until Ian Green died, in September 1995, aged 39, from an accident at work. The couple had three children, Eleanor Clemency born on 15 June 1989, Georgina Miranda born on 11 July 1991 and Harrison Thomas born on 13 November 1994.

Ian Green worked as a self-employed builder and paid full social security and national insurance contributions as a self-employed earner. His contribution record was such that had he been married to the applicant, she would have been entitled to social security benefits as his widow on his death.

On 17 February 1996 the applicant submitted a claim for widow's benefits (widow's payment and widowed mother's allowance) to the Benefits Agency. Her claim was rejected on 29 February 1996 on the basis that widow's benefits could only be paid where the claimant had been married to the person who had died. The applicant appealed the decision on 19 March 1996, arguing a breach of Article 8 § 1 of the European Convention on Human Rights ("the Convention"). The Social Security Appeal Tribunal rejected her appeal, stating that an individual could not rely on the Convention in domestic courts. The applicant was granted leave to appeal to a Social Security Commissioner on 7 December 1996. On 23 March 1998 Commissioner Levenson dismissed her appeal, stating that she had no remedy under domestic law or the Convention in a domestic court. The applicant applied for leave to appeal to the Court of Appeal on 16 June 1998 and was refused leave on 29 June 1998.

The applicant is currently working full-time. She receives child benefit for her three children amounting to GBP 35.70 per week. She receives no other social security benefits although she did receive a lump sum pension from a private insurance policy taken out by Ian Green during his life. If the applicant were entitled to receive social security benefits equivalent to those to which a married woman in similar circumstances to herself would be entitled, she would be GBP 87.30 per week better off. She would also have received a one-off Widow's Payment of GBP 1,000.

B. Relevant domestic law

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 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. It makes no difference to the contributions payable whether someone is single or married.

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. of Article 1 of Protocol No. 1.

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 62.70 per week, with an extra GBP 9.90 per week in respect of the eldest eligible child, and a further GBP 11.30 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:

- (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.

If the applicant had been married to Ian Green, she could look forward to entitlement to a Widow's Pension in the future, when she would no longer be entitled to the Widowed Mother's Allowance.

COMPLAINTS

The applicants complain that British social security legislation discriminates against her because she is an unmarried surviving partner. She alleges a violation of Article 14 of the

Convention taken in conjunction with both Article 8 of the Convention and Article 1 of Protocol No. 1. She also complains that her children are discriminated against because of their illegitimate status in breach of Article 14 taken in conjunction with Article 8. She further claims she has no effective remedy under Article 13 of the Convention.

THE LAW

1. The applicant complains that the lack of provision for benefits to unmarried surviving partners under British social security legislation discriminates against her and her children on grounds of her unmarried status and their illegitimacy, 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.

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.”

According to the Court’s 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. Accordingly, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the provisions (see the *Gaygusuz v. Austria* judgment of 16 September 1996, Reports-1996, p. 1141, § 36).

The applicant argues that her entitlement to widow’s benefits is a pecuniary right for the purpose of Article 1 of Protocol No. 1. The Court recalls that in the above-mentioned case of *Gaygusuz*, the applicant’s entitlement to social benefits (in that case an advance on a pension in the form of an emergency payment) was linked to the payment of contributions into a national fund and found to be a pecuniary right for the purpose of Article 1 of Protocol No. 1 (above-mentioned judgment of 16 September 1996, p. 1142, § 41). In the present case

Ian Green paid full contributions as a self-employed earner and the refusal to grant the applicant widow's benefits was based exclusively on the finding that she had not been married to him. The Court will assume that the right to widow's benefits may be said to be a pecuniary right for the purposes of Article 1 of Protocol No. 1. There is therefore no need, in the present circumstances, to determine whether the facts of the case also fall within the scope of Article 8 of the Convention.

However, the Court recalls that Article 14 of the Convention safeguards individuals placed in similar positions from any discrimination in the enjoyment of the rights and freedoms set out in the Convention and Protocols (see the *Marckx v Belgium* judgment of 13 June 1979, Series A no. 31, p. 5). The applicant in the present case seeks to compare herself to a widow, in other words a woman whose husband, as opposed to partner, has died. The Court recalls that the European Commission of Human Rights held, in a case concerning unmarried cohabitantes who sought to compare themselves with a married couple that

“these are not analogous situations. Though in some fields, the *de facto* relationship of cohabitantes is now recognised, there still exist differences between married and unmarried couples, in particular, differences in legal status and legal effects. Marriage continues to be characterised by a corpus of rights and obligations which differentiate it markedly from the situation of a man and woman who cohabit” (*Lindsay v. the United Kingdom*, Comm. Dec. 1.11.86, D.R. 49, p. 181).

The Court notes that that decision of the Commission dates from 1986, that is, over 14 years ago. The Court accepts that there may well now be an increased social acceptance of stable personal relationships outside the traditional notion of marriage. However, marriage remains an institution which is widely accepted as conferring a particular status on those who enter it. The situation of the applicant is therefore not comparable to that of a widow.

In any event, the Court recalls that under its case-law, a difference in treatment is discriminatory for the purposes of Article 14 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” (see, among other authorities, see the *Schmidt and Dahlström v. Sweden* judgment of 6 February 1976, Series A no. 21, pp. 32–33, § 24, and the *Van Raalte v. the Netherlands* judgment of 21 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 186, § 39).

Further, the Court reiterates that “States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background...” (see the *Petrovic v Austria* judgment of 27 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 587, § 38). The Court again notes that marriage remains an institution that is widely accepted as conferring a particular status on those who enter it and, indeed, it is singled out for special treatment under Article 12 of the Convention. The Court considers that the promotion of marriage, by way of limited benefits for surviving spouses, cannot be said to exceed the margin of appreciation afforded to the respondent Government.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected in accordance with Article 35 § 4.

2. The applicant further argues that her children are discriminated against by reason of their illegitimate status. She alleges violation of Article 8 taken in conjunction with Article 14 of the Convention, arguing that the refusal to pay her widow's benefits in respect of her children has a direct financial consequence on her family life.

However, whilst it is true that the applicant does not receive Widowed Mother's Allowance, the reason for her not being eligible is that she and her late partner were not married. It is not related to the status of the children, and it follows that the applicant's ineligibility for Widowed Mother's Allowance is compatible with the Convention for same reasons as those set out at paragraph 1. above.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

3. The applicant finally claims that she has no effective remedy under Article 13 of the Convention. In the absence of any "arguable claim" of a substantive right under the Convention (see the *Boyle and Rice v the United Kingdom* judgment of 27 April 1988, Series A no. 131, p. 24 § 54), the complaint under Article 13 is also not made out.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Elisabeth Palm
President