

## **Willis v. United Kingdom (Application no. 36042/97)**

**From DADEL**

### **1) Reference Details**

Jurisdiction: European Court of Human Rights

Date of decision: 11 June 2002

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=698376&portal=hbk&source=externalbydocnumber&table=1132746FF1FE2A468ACCBCD1763D4D8149>

### **2) Facts**

The Applicant, a British national, was refused social security benefits that he would have been entitled to have had he been a woman in a similar position, namely a widowed mother's allowance and a widow's payment. He claimed that he and his wife were discriminated against in violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 and of Article 14 taken in conjunction with Article 8 of the Convention. He made an identical claim as regards his future non-entitlement to a widow's pension. He also alleged there was a violation of Article 13.

At the death of the Applicant's wife, the Applicant stopped working in order to care full time for their two children. The Applicant applied to the Benefit Agency for the payment of social security benefits equivalent to those which a widow whose husband had died in similar circumstances to the Applicant's wife would have been entitled, payable under the Social Security and Benefits Act 1992. The Benefits Agency informed the Applicant that the benefits he claimed did not exist for widowers and thus his claim was not valid.

### **3) Admissibility**

No objection regarding admissibility was noted.

### **4) Merits**

The Court noted that Article 14 of the Convention complements other substantive provisions of the Convention and the Protocols. The Court decided that the right to a widow's payment and a widowed mother's allowance is a sufficiently pecuniary right that falls within the ambit of Article 1 of Protocol No. 1 since the entitlement to receive benefits is conditional on the payment of contributions to the system. The Court felt it unnecessary to address whether a social security benefit must be contributory in nature in order for it to constitute a possession for purposes of Article 1 of Protocol No. 1, as the Court did not consider it significant that the statutory condition requiring payment of contributions into the National Insurance Fund required the contributions to have been made by the Applicant's late wife and not by the Applicant.

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 realized." The Court noted that in the circumstances of this case, the Applicant's wife had worked throughout the best part of her marriage to the Applicant and had paid full social security contributions as a man in her position would have done. The Court also noted that the Applicant gave up work to take care of his sick wife and children and that it was uneconomical for him to return to work on a part time basis following his wife's death. Yet, despite these facts, the Applicant was entitled to less benefits than he would have been had he had been a woman and his wife a man. The Court said that the authorities refused to grant the Applicant a widow's payment and a widowed mother's allowance based exclusively on the fact that he was a man and that this difference was not based on any objective and reasonable justification. Thus there was a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

With regards to a widow's pension, the Court found that even if the Applicant was a woman and there was no discrimination, he would not currently qualify for a widow's pension and may never qualify. Thus, the Court found no discrimination contrary to Article 14 on the facts of this case and did not consider whether the Applicant's complaints in this context fell within the scope of Article 1 of Protocol No. 1.

With regards to the widowed mother's allowance and widow's payment, the Court found it unnecessary to examine the Applicant's complaints of whether there has been a violation of Article 14 of the Convention taken in conjunction with Article 8 since the Court concluded that there has been a breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. With regards to the widow's pension, the Court had already concluded that no issue of discrimination contrary to Article 14 arose and thus it was unnecessary to consider whether the Applicant's complaints fell within the scope of Article 8 of the Convention.

The Court found that the alleged discrimination suffered by the Applicant's late wife did not raise any issues separate from those raised in respect of the discrimination alleged to have been suffered by the Applicant himself and did not consider this aspect of the complaint. The Court also found no violation of Article 13.

## **5) Decision**

The Court reiterated 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". It unanimously held that there was a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 concerning non-entitlement to the widow's payment and the widowed mother's allowance. There was no violation in connection with non-entitlement to a widow's pension. The Court also held that Article 13 was not violated.

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