

## Case Summary

### ***Vrontou v Cyprus* Application Number 33631/06**

#### **1. Reference Details**

Jurisdiction: European Court of Human Rights (Fourth Section)

Date of Decision: 13 October 2015

Case Status: This judgment will become final in the circumstances set out in Article 44 (2) of the Convention. It may be subject to editorial revision.

Link to full case:

[http://hudoc.echr.coe.int/eng#{"display":\["0"\],"languageisocode":\["ENG"\],"appno":\["33631/06"\],"itemid":\["001-158090"\]}](http://hudoc.echr.coe.int/eng#{)

#### **2. Facts of the Case**

On 19 September 1974, a scheme was introduced by the Council of Ministers of the Republic of Cyprus to provide aid to displaced persons. Under the scheme, displaced persons were entitled to be given refugee cards, and those holding refugee cards were entitled to benefits, including housing assistance. According to a circular note issued on 10 September 1975, children and non-displaced women could be registered on the cards of their displaced fathers and displaced husbands respectively. However, children and husbands of displaced women were expressly excluded from being registered as displaced persons.

Ms Vrontou, the applicant, is a Cypriot national who lives in Kokkynotrimithia. Her mother has been a refugee since 1974 and holds a refugee card, having been displaced from Skylloura. In September 2002, in order to seek housing assistance, the applicant applied for a refugee card on the basis of her mother's displaced status. This request was rejected through a letter of the Civil Registry and Migration Department of the Ministry of the Interior on 6 March 2003, with the reason given that whilst Ms Vrontou's mother was a displaced person, her father was not.

Following the decision to refuse her application, proceedings were brought by Ms Vrontou before a single judge of the Supreme Court of Cyprus, alleging a breach of the principle of equality provided in Article 28 of the Constitution of Cyprus and of two of her human rights under the European Convention on Human Rights, namely the right to an effective remedy (Article 13) and the right to non-discrimination in the protection of property (Article 14 taken in conjunction with Article 1 of Protocol 1). The case was dismissed by the judge on the basis that the Council of Ministers had decided not to expand the law to allow its application to children of displaced mothers. On appeal, a five-judge panel of the Supreme Court upheld the decision, finding that whilst an "extended application of the provision" would find "support in European Community Law", the Court did not have the jurisdiction to extend the application of the provision in a way which parliament had previously declined to approve. Following this, an application was lodged in the European Court of Human Rights on 25 July 2006.

### **3. Law**

#### *National laws:*

- Article 28 of the Constitution of Cyprus.

#### *Regional laws:*

- Article 13, right to an effective remedy, and Article 14, freedom from discrimination (in conjunction with Article 1 of Protocol 1, protection of property) of the European Convention on Human Rights. In the alternative, Article 1 of Protocol 12, general prohibition of discrimination, of the Convention.

### **4. Legal Arguments**

#### ***Applicant's Arguments***

The applicant argued that any decisions about providing assistance to displaced persons had to be rational and lawful. However, restricting the application of the law to children of male displaced persons was both “arbitrary and unjustified”. Article 1 of Protocol 1 was applicable to the benefits that holders of refugee cards were entitled to. As the holder of a refugee card, she would have had a legitimate expectation of being granted housing assistance as she satisfied all other required criteria to be granted such assistance.

Ms Vrontou argued that the provision of refugee cards to children of displaced men but not to children of displaced women was discriminatory, in breach of Article 14 of the Convention (taken in conjunction with Article 1 of Protocol 1). There was no objective and reasonable justification for the differential treatment between children of displaced men and women. The traditional role of men as breadwinners could not provide objective and reasonable justification for differences in treatment based on gender. Further, contrary to the respondent’s argument, children of displaced women were in a worse off position than those of displaced men given women did not receive equal pay and had fewer opportunities for work due to the need to balance family commitments. Finally, there were no budgetary concerns in extending the scheme when it was originally implemented in 1975.

In the alternative, the applicant argued that the scheme violated the general prohibition of discrimination in Article 1 of Protocol 12.

#### ***Respondent's Arguments***

The respondent noted that at the time of the law’s creation men were the primary breadwinners responsible for providing for their family. The children of displaced women were not financially dependent on their mother; when their mother married, they would become dependent on a non-displaced father. As a result, the children of displaced men would suffer far more than those of displaced women, and already limited available funds had to be given, as a matter of priority, to those children worst affected. Further, the refugee assistance scheme had always been offered subject to available funds, and had been continually revised and extended since its adoption. In 1994, the cost of extending the scheme to children whose mother had been displaced was considered economically unviable. A 2008 review estimated the total cost of extending the scheme at around €30,000,000 a year.

The respondent argued that the provision of housing assistance was subject to additional criteria and not provided as of right to holders of refugee cards. Consequently, there was no right to state

assistance under domestic law. As a result, there could be neither pecuniary interest, nor legitimate expectation of such an interest and therefore, no claim under Article 1 of Protocol 1. To hold that the applicant had a pecuniary interest falling within the scope of Article 1 of Protocol 1 would be to effectively hold that the state was not free to prioritise needs or chose the class of persons who were eligible to receive assistance.

Finally, the respondent alleged that even if the Court found a difference in treatment, such treatment was objectively and reasonably justified and could not, therefore, constitute discrimination under Article 14. The law had a legitimate aim of providing assistance to those most in need, "taking into account social conditions, budgetary considerations and financial resources". Whilst the socio-economic condition of women had changed since 1975, amendments to the law were not required until such a time as "those changes removed the need for the difference in treatment entirely". Considering that measures of economic and social strategy were within the state's margin of appreciation, the decisions of the state as to the precise timing and means of ending the difference in treatment "were not 'manifestly without reasonable foundation'".

## **5. Decision**

The Court found that there had been a violation of Article 14 of the Convention, taken in conjunction with Article 1 of Protocol 1, and a violation of Article 13. There was no need to examine the merits of the complaint under Article 1 of Protocol 1 taken alone, or of Article 1 of Protocol 12. The Court considered that the discriminatory treatment of the applicant was at the heart of her complaint and therefore turned to Article 14 first.

### ***Article 14***

In determining that there had been a breach of Article 14, in conjunction with Article 1 of Protocol 1, the Court noted that it must consider four questions.

(1) *Whether the facts of the case fall within the ambit of the substantive article (here, Article 1 of Protocol 1)?*

Article 1 does not establish a right to obtain property nor place any restrictions on state's freedom to choose whether to provide social security. However, if a state enacts legislation for the provision of welfare benefits, that legislation creates a proprietary interest falling within the ambit of Article 1 of Protocol 1. The relevant test is "whether, but for the condition of entitlement about which the applicant complains, he or she would have a right, enforceable under domestic law, to receive the benefit in question." The submission of the government that there is a difference between "a scheme which applied in a discriminatory manner and a scheme from which a person has been excluded in a discriminatory manner" was rejected – in both cases, the person has not been given a benefit that members of the scheme are entitled to receive. The facts of the case therefore clearly fell within the ambit of Article 1 of Protocol 1.

(2) *Whether there has been a difference in treatment between the applicant and others?*

(3) *Whether that difference in treatment has been on the basis of one of the protected grounds set out in Article 14 of the Convention?*

A difference in treatment will be established when it can be shown that other persons in a relevantly similar or analogous situation are given preferential treatment. It was not clear to the Court why the proportion of men in work as opposed to women had any bearing on whether the children of displaced men and women were in analogous positions. The fact that more men than women were in the workplace (and by implication more displaced men than displaced women) did not result in the children of displaced men being in a different situation than those of

displaced women. The children all had similar needs and were therefore in entirely analogous situations. In being entitled to a refugee card, “the children of displaced men clearly enjoy preferential treatment”. It was not disputed that the ground of differential treatment was sex (a protected characteristic under Article 14).

*(4) Whether there was a reasonable and objective justification for that difference in treatment?*

A difference in treatment will breach Article 14 when it has no objective and reasonable justification. Where differential treatment is based on sex, very weighty reasons must be put forward to justify this. In particular, references to general assumptions, traditions or social attitudes in a country are not sufficient justification for differential treatment on the basis of sex. “States are prevented from imposing traditions that derive from the man’s primordial role and the woman’s secondary role in the family”. The government’s justification of its differential treatment on the basis that displaced men were breadwinners is precisely the kind of argument that provides insufficient justification because it derives entirely from traditional family roles.

Even if those roles reflected the economic reality in rural Cyprus in 1974, they could not justify treating all displaced men as breadwinners and all displaced women as unable to fulfil that role. Nor could they justify depriving the children of displaced women of benefits, particularly when those benefits were not means tested, such that the child of a displaced man on a higher income would receive benefits that the child of a displaced woman on a lower income was not entitled to receive. This difference in treatment could not be justified simply by the need to prioritise resources.

The Court rejected the government’s argument that, even if the differential treatment could no longer be justified, the government should enjoy a margin of appreciation as to the timing and means employed to phase out the distinction between the children of displaced men and women, given the budgetary implications and also the expansion of the scheme that had occurred since 1975. Neither of those considerations justified the discriminatory nature of the scheme. The expansions of the scheme that had occurred did not change the difference in treatment between the children of displaced men and the children of displaced women, nor were the changes introduced in response to women’s entry into the labour market. Budgetary constraints alone cannot justify a difference in treatment based solely on gender, particularly when the subsequent expansions of the scheme had financial consequences. The fact that the scheme carried on for 40 years based solely on traditional family roles as understood when it was introduced meant that the state “must be taken to have exceeded any margin of appreciation it enjoyed in this field.” No weighty reasons were shown for the difference in treatment and it therefore had no objective and reasonable justification.

### **Article 13**

The reason that the Supreme Court of Cyprus could not consider whether the applicant was entitled to the remedy she sought was because it considered it did not have the jurisdiction to extend the assistance scheme. It was therefore unable to consider the merits of the applicant’s discrimination claim and grant her the appropriate relief. This meant that recourse to the Supreme Court was not an effective remedy for the applicant in relation to her Convention claims, in violation of Article 13.

## **6. Remedy**

The Court awarded EUR 21,500 in respect of pecuniary damage for housing assistance the applicant would have received were it not for the discriminatory treatment; EUR 4,000 for non-pecuniary damage resulting from the nature of the discrimination; and EUR 6,981 for costs incurred by the applicant before the Supreme Court.