

Wessels-Bergervoet v. The Netherlands (Application no. 34462/97)

From DADEL

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of decision: 4 June 2002

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=698370&portal=hbk&source=externalbydocnumber&table=1132746FF1FE2A468ACCBCD1763D4D8149>

2) Facts

The Applicant, a Netherlands national, alleged that her old-age pension had been reduced as a result of discriminatory treatment between married men and married women, contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

The Applicant was granted an old age pension under the General Old Age Pensions Act. The royal decrees contained a provision that rendered the insurance of married women under the Act dependent on their husbands being insured, whereas the decrees did not contain a comparable provision in respect to married men. As a result, the Applicant's pension was reduced by 38%, due to the periods of time when the Applicant's husband had worked in Germany. The Applicant complained that this reduction in her old age pension constituted discriminatory treatment. Although the Act was changed in 1985 so that married women became entitled in their own right to a pension, the effect of the former legal rules continued to have an impact for the Applicant.

3) Admissibility

The application was found to be admissible

4) Merits

The Government's argument was that the proceedings did not concern a right guaranteed by Article 1 of Protocol No. 1 and thus fell outside the scope of Article 14 of the Convention and was rejected by the Court. The Court noted that the Applicant's right to a pension under the General Old Age Pensions Act could be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1 and thus Article 14 of the Convention was applicable. It observed that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification.

In principle, all persons between the ages of 15 and 65 who reside in Netherlands are insured under the General Old Age Pensions Act. The Applicant has always lived in the Netherlands. The only reason for her exclusion from insurance under the Act for a period of time was because she was married to a man who was not insured under the Act during periods of employment abroad. It was undisputed that a married man in the same situation as the Applicant would not have been excluded from the insurance scheme in this manner. The Court found that the reduction in the Applicant's benefits was therefore based exclusively on the fact that she was a married woman.

Very strong reasons would need to be put forward to justify this difference in treatment based exclusively on the grounds of sex and marital status as compatible with the Convention. The Court rejected the Government's argument that the undesirable accumulation of pension rights was an objective and reasonable justification for the difference in treatment, as a married man in the same situation as the Applicant would not be prevented from accumulating pension rights. The Court also rejected the Government's argument that at the material time social attitudes were different, since the inequality in treatment in the former legal rules materialized in 1989, when the aim pursued by the legal provisions concerned could no longer be upheld in light of the modern social attitudes. The Court noted that although the legal rules was changed in 1985 to bring them into conformity with more modern standards of equality between men and women, no measures were taken to remove the discriminatory effect of the former legal rules. The Court found that the difference in treatment between married women and married men as regards entitlement to benefits under the General Old Age Pensions Act was not based on any "objective and reasonable justification."

5) Decision

The Court held unanimously that there was a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.