

The European Commission of Human Rights sitting in private on 11 November 1986, the following members being present:

MM. C.A. NØRGAARD, President
F. ERMACORA
E. BUSUTTIL
S. TRECHSEL
B. KIERNAN
A.S. GÖZÜBÜYÜK
A. WEITZEL
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs G.H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ

Mr. J. RAYMOND, Deputy Secretary to the Commission

Having regard to Article 25 (art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 4 June 1984 by Mr. L. and Mrs. L. against the United Kingdom and registered on 16 August 1984 under file No. 11089/84;

Having regard to:

- the report provided for by Rule 40 of the Rules of Procedure,
- the Government's observations of 16 August 1985,
- the applicants' observations of 16 December 1986,
- the second report provided for by Rule 40 of the Rules of Procedure,
- the Government's further observations of 8 August 1986,
- the submissions of the parties at the hearing on 11 November 1986;

Having deliberated;

Decides as follows:

THE FACTS

The facts as submitted by parties may be summarised as follows.

The applicants were married in 1959 and remain married. They have three children. Their complaint relates to the functioning of the UK tax legislation concerning married couples, and in particular that legislation as it refers to income tax.

Concerning the taxation of income a distinction is made in the legislation between "earned" income and "investment" income. Broadly speaking, the former relates to an individual's salary or profits from a trade, profession or vocation whilst the latter covers, as its name suggests, income received from any investments.

The husband applicant has earned income from his full time job. The wife is fully engaged in running the family home and looking after the children and has no earned income. The applicants each have a half share in the income from their joint investments, and in addition the

wife has a small sum of investment income from a settlement made by her deceased father. The precise sums involved are set out below.

The application concerns specifically the tax computed on the applicant's income for the year ending 5 April 1983. The relevant provisions of the United Kingdom tax legislation as it applies to the application are set out below.

Each single person in the United Kingdom has a personal allowance in respect of his liability to income tax. This personal allowance entitles the individual to earn up to a certain sum in the tax year without being subject to any income tax (£1565 in the tax year 1982/83). It amounts to an exemption from tax up to the limit of the allowance. Once the allowance is exhausted (i.e. if the individual earned more than £1565 in the tax year 1982/83) he or she will pay income tax upon any such further income. The tax is payable at rates which increase progressively in direct relation to the amount of money earned. In the year 1982/83 the basic rate of tax was thirty per cent and the highest rate was seventy-five per cent with gradations in between.

However, once a couple marry this basic rule no longer applies. Pursuant to Section 37 of the Income and Corporation Taxes Act 1970 (ICTA) if and for so long as a wife is living with her husband and she has no earned income, then any income she may have will be aggregated with that of her husband for the purposes of taxation. A married couple, save in the first year of marriage when special rules apply, are no longer treated as two separate people but as a single taxable unit. As a result the wife ceases to have a personal allowance. At the same time the husband's personal allowance is increased to the level of the "married man's allowance". The married man's allowance is only approximately one and a half times the value of the personal allowance. It is alleged that the practical effect is that the married couple have "lost" one half of one personal allowance. These circumstances only apply to those women who have investment income but no earned income, the category into which the wife applicant falls.

If, on the other hand, a wife has earned income (i.e. she is in receipt of a salary), her husband will be entitled to the wife's earned income allowance pursuant to Section 8 (2) of ICTA. It is to be noted that the husband's personal allowance is not dependant upon him having an income earned or unearned. He will continue to have the personal allowance even if he is not in receipt of a salary, for example if the wife were to be employed and the husband took over the role of running the house and looking after the family.

In addition, the husband may set his investment income against his personal allowance if he has insufficient earned income to utilise his full exemption. However, the wife's personal allowance can only be set against earned income. Any balance (for example, in the event of her earning less than £1565 in the tax year 1982/83) must remain unused.

The table set out below reproduces the particular facts of the applicants' income for the tax year 1982/83 and shows the results achieved by the tax legislation in given circumstances.

The applicants' income in 1982/83 was as follows:

Source of income	Husband	Wife
Remuneration from employment (earned income)	£16,110.00	-
Joint Investment		

income	£2,657.50	£2,534.50
Wife's separate Investment income	-	£1,079.00

The income tax actually paid by the applicants amounted to £ 6,948.40, being the tax on the joint aggregate income attributed to the husband of £ 22,381.00. The applicants complain of the iniquity of this result when compared with the following possible alternatives:

(i) Had the applicants been cohabiting as an unmarried couple, and all the other circumstances had remained the same, then the respective incomes would not have been aggregated for tax purposes. The male applicant's tax liability would have been £ 5,706.12 and the female applicant's tax liability would have been £ 614.55. The aggregate tax liability of the couple would therefore have been £6,320.67. (The Government calculates instead £ 6,298.10 tax liability in this situation.)

(ii) Alternatively, if the couple were married but the breadwinner had been the wife, the husband tending to the home and family, then tax on a joint basis (pursuant to Section 8 (2) of ICTA) would have been £ 6,232. (The Government calculates a tax liability of £ 6,209.25 in this situation. Further, if, in this situation, the husband and wife elected for separate assessment under Section 23 of the Finance Act the total tax payable would be £ 5,935.)

The tax legislation has not been substantially altered since the period to which the application refers. A similar result would obtain if the calculations were carried out using the applicant's income for the tax year 1983/84 or the current tax year.

COMPLAINTS

Articles 8 and 12 (art. 8, art. 12)

The applicants contend that the spirit and intention of these Articles (art. 8, art. 12) is to safeguard the institution of marriage and that insofar as the income tax legislation taxes a married couple more heavily than an unmarried couple, who are nevertheless living together, it tends to encourage disrespect for marriage and consequently for family life.

Article 8 (art. 8) read in conjunction with Article 14 (art. 14)

The applicants contend that the UK income tax legislation taxes a married couple more heavily than an unmarried couple which has the effect of causing greater interference to the private and family life of a married couple than to the private and family life of a couple who are unmarried but cohabiting.

Article 1 of Protocol No. 1 (P1-1) read in conjunction with Article 14 (art. 14)

The applicants complain that the aspects of the income tax legislation at present under review have various discriminatory results, namely:

- i) a couple married in church is taxed more heavily than an unmarried couple who cohabit, which it is contended amounts to discrimination against religion and the religious ceremony of marriage;
- ii) a married couple is taxed more heavily than an unmarried couple who cohabit; and,
- iii) married couples in which the man is the main breadwinner are taxed more heavily than married couples in which the woman is the main

breadwinner.

The applicants contend that such different treatment amounts to discrimination on the basis of religion, marital status and sex respectively.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 4 June 1984 and registered on 16 August 1984. On 11 March 1985, the Commission decided to communicate the application to the Government pursuant to Rule 42 (2) (b) of its Rules of Procedure and to invite them to submit written observations on the admissibility and merits. In particular, the Government were asked whether the income tax treatment of the applicants was in conformity with Article 1 of Protocol No. 1 (P1-1) read in conjunction with Article 14 (art. 14) of the Convention.

The Government's observations were received on 16 August 1985 after an extension of eight weeks of the time-limit. The applicants' observations in reply were received on 16 December 1985 following a request for an extension of the time-limit of one month.

On 13 March 1986, the Commission decided to invite the parties to a hearing on the admissibility and merits of the application concerning the issues arising under Article 1 of Protocol No. 1 (P1-1) read in conjunction with Article 14 (art. 14).

On 18 July 1986, the Commission decided to grant to the applicants one-half of the normal legal aid contribution towards the cost of attendance of a lawyer at the hearing.

On 8 August 1986, the Government submitted further observations.

At the hearing which was held on 11 November 1986, the parties were represented as follows:

The Government

Mr. Michael WOOD, Agent, Foreign and Commonwealth Office
Mr. Alan MOSES, Counsel
Mr. Brian CLEAVE, Inland Revenue
Mr. Brian MACE, Inland Revenue
Mr. John GRAINGER, Foreign and Commonwealth Office

The applicants

Mr. David PANNICK, Counsel
Mr. LINDSAY, Applicant, was also present.

SUBMISSIONS OF THE PARTIES

A. The Respondent Government

1. Article 1 of Protocol No. 1 (P1-1) read in conjunction with Article 14 (art. 14)

The Government submit that a tax system must inevitably favour one or more groups of tax payers. The Government contend that the state must enjoy a wide margin of appreciation in the field of taxation in assessing whether differences in treatment are justified. The Government argue that it is in the best position to appreciate what measures are necessary and what are the needs and resources of United Kingdom society. Its decisions in this area should not be reviewed unless they are manifestly without reasonable foundation.

The Government suggest that the question asked by the Commission is based on the mistaken assumption that husband and wife are regarded by

the tax system as two separate individuals, each entitled to their own personal allowance. The present tax system treats husband and wife as a unit; their incomes are added together and the personal allowances which accrue to that unit are claimed by the husband. If a wife works, the husband may claim an extra personal allowance which may be deducted from the part of their income representing the wife's earnings. Thus, the wife cannot be regarded as having her own personal allowance. Neither can the higher personal allowance accruing to the husband be regarded as entirely belonging to him, since if a wife, with investment income only asks to be separately assessed, then a proportionate part of the higher allowance is set against her investment income.

The structure of a tax system inevitably depends on the social and economic objectives of successive Governments. Treatment of spouses as a single unit was considered to have realistically reflected their taxable capacity. It was following the war, when it was felt that there was an economic need to encourage wives to work, that the legislation increased a wife's earned income allowance to the same level as an individual's personal allowance. Any difference in treatment in respect of whether the husband or the wife is the sole earner is therefore justified by the aim of encouraging married women to work and thereby promoting the equality of the sexes.

Insofar as the applicants complain of being treated differently from unmarried couples, the Government argue that in questions of discrimination one can only compare like with like. A married couple with its specific legal status is not in an analogous position to an unmarried couple. But even assuming there can be said to be difference of treatment for the purposes of Article 14 (art. 14), the Government contend that the system treating married couples as a unit has an objective and reasonable justification and that the means used are proportionate to that end. The choice of a married couple as a taxable unit is a rational choice based on the principle of taxable capacity. Further, 97% of married couples either benefit from lower taxation or pay no more than if they were individuals. This shows that the means employed are proportionate to the ends sought to be achieved.

2. Proposals for legislation

The Government has published a Green Paper proposing the reform of personal taxation. It is proposed that everyone, married or single, would have the same standard allowance. However, if one spouse was unable to make full use of his or her allowance, the unused portion could be transferred to the other.

However, the proposed system cannot be introduced until 1990, as it depends on the completion of the current computerisation programme. When introduced however, it will achieve all the objects sought by the applicants.

B. The Applicants

1. Article 1 of Protocol No. 1 (P1-1) read in conjunction with Article 14 (art. 14)

For the purposes of Article 14 (art. 14), a difference in treatment is discriminatory if it has "no objective and reasonable justification" or if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised". In assessing whether differences in treatment are justified, the scope of the margin of appreciation enjoyed by a State will vary according to the background and subject matter. In ABDULAZIZ (Eur. Court H.R. judgment of 28.5.85), the Court emphasised that the advancement of the equality of the sexes was a major goal and weighty reasons would be required to justify a difference in treatment. The applicants contend that the

principle applies also to a difference of treatment on grounds of marital status. Adverse treatment may have the effect of discouraging people from marrying and marriage should not lead to people being treated less favourably. The decision of the Irish Supreme Court, MURPHY v. A.G. (1982, 1R, 241) held that a law which had that effect was contrary to their Constitution and cited similar decisions in the Federal Republic of Germany, Italy and Cyprus.

The applicants submit that the Government has failed to advance sufficiently weighty factors to justify the difference of treatment on grounds of sex and marital status. It is irrelevant that there are few victims if there is no compelling reason for discrimination against these. The present law clearly contravenes the principle stated by the 1920 Royal Commission that taxation should depend on the amount of income accruing to the married pair and not upon the way it happens fortuitously to be owned by the members of the union.

The Government could avoid the anomaly whereby the wife's investment income, unlike her earned income, is added to the income of the husband without receiving the benefit of any allowance. No justification has been put forward for not doing this. If it was recognised in 1971 as unfair not to allow the wife to have a separate assessment of her earned income, there can be no objective justification in denying the same opportunity in respect of investment income. Any encouragement for women to work resulting from the system is likely to be incidental and outweighed by the effects of adverse discrimination. While the original aim of the system might have been to encourage married women to work, the applicants dispute that this can be said to be the position today.

2. Proposal for reform

Since the Government have acknowledged a strong case for change in the law, it is inconsistent to contend that there is a compelling reason for the discrimination complained of. The applicants do not accept that the new system cannot be introduced until 1990 i.e. after four years. The option for separate taxation was made available in 1971 without any delay and the discriminatory anomalies only affect 3% of married couples.

THE LAW

1. The applicants first complain that their rights under Article 1 of Protocol No. 1 (P1-1) have not been secured without discrimination and invoke Article 14 (art. 14) read in conjunction with this provision. In particular the applicants allege that the United Kingdom income tax legislation has the effect of taxing comparable couples in a discriminatory fashion on the separate grounds of sex, marital status and religion.

Article 1 of Protocol No. 1 (P1-1) provides:

"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.

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."

Article 14 (art. 14) provides:

"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."

The Commission considers that taxation is in principle an interference with the right guaranteed by the first paragraph of Article 1 (P1-1-1) but that this interference is justified according to the second paragraph of that Article (P1-1-2) which expressly provides for an exception in regard to the payment of taxes and other contributions. However, as taxation falls within the general scope of Article 1 (P1-1), it follows that the prohibition against discrimination in Article 14 of the Convention (art. 14) is applicable to taxation.

a) The applicants complain first that married couples in which the husband is the sole breadwinner, as in their case, are more heavily taxed than married couples in which the wife is the sole breadwinner. They complain that this is discrimination on the grounds of sex contrary to Article 1 of Protocol No. 1 (P1-1) read in conjunction with Article 14 (art. 14) of the Convention.

It is clearly established on the facts of the present case that there is a difference in taxation provisions depending on whether the husband or the wife in a married couple is the sole breadwinner. When the husband is the sole breadwinner, he is entitled to a taxable allowance known as the married man's allowance, which is equivalent to about one and half times the normal single person's allowance. When the wife is the breadwinner, she is entitled to an allowance equal to a single person's allowance to set off against her earned income. Her husband will also continue to have a married-man's allowance. Since the taxation provisions treat the wife's income as accruing to her husband, the couple will have therefore the benefit of an extra tax allowance against their income.

In examining the applicants' complaints of discrimination, the Commission recalls the principles established by the European Court of Human Rights in the Belgian linguistic case (Eur. Court H.R., Belgian linguistic judgment of 9 February 1967, Series A No. 5 p. 35):

"On this question the Court, following the principles which may be extracted from the legal practice of a large number of democratic States, holds that the principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 (art. 14) is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised."

The Commission must therefore consider whether the difference of treatment in the present case has a legitimate aim within the meaning of the principles outlined above.

The present tax system in the United Kingdom treats a husband and wife as a unit for tax purposes. Their incomes are added together and treated as one, the personal allowances accrue to the unit and are claimed by the husband. The Government contend that the system of treating married couples as taxable units reflects most realistically their taxable capacity. The Royal Commission on Income Tax reviewed this system in 1920 and stated, inter alia:

"The aggregation for Income Tax purposes of the income of husband and wife is not dependent upon any medieval conception of the subordination of women... The incomes are aggregated because the law of taxable capacity is the supreme law in matters of taxation, and taxable capacity is, in fact, found to depend on the amount of the

income that accrues to the married pair, and not upon the way in which that income happens fortuitously to be owned by the members of that union. It is beyond question that in the immense majority of cases where the wife has separate means she contributes to the common purse, either by the actual merger of her income with her husband's, or by bearing expenses which in less fortunate households would fall upon the husband."

During the Second World War however, it was considered desirable to give encouragement to married women to go out to work. The wife therefore received an earned income allowance equivalent to a single person's allowance to set off against her earned income. The Government argue that the present system accordingly has the legitimate aim of encouraging married women to work and thereby advances the equality of the sexes. The Government submit that one of the principal causes of discrimination against women and of the equality of the sexes has been the prejudice in the minds of men as to the capability of women to take up work. Such prejudice, it is argued, is only broken down by more women obtaining work and demonstrating that any belief that they are less capable is wholly prejudiced. The grant of an extra allowance is therefore said to encourage married women to work and thereby help to break down unjustifiable prejudices.

The applicants contend that there is no evidence that the present system in fact still serves this aim and argue that the rule whereby the husband is always liable for the investment income of the wife, which is the cause of the problem in their case, is a blunt tool to use to further this alleged goal.

The Commission is of the opinion however that it is for the national authorities to make the initial assessment, in the field of taxation, of the aims to be pursued and the means by which they are pursued: accordingly, a margin of appreciation is left to them. The Commission is also of the view that the margin of appreciation must be wider in this area than it is in many others. The Commission recalls in this respect that systems of taxation inevitably differentiate between different groups of tax payers and that the implementation of any taxation system creates marginal situations. The applicants have themselves stated that the situation of which they complain affects only 3% of the tax payers. Also, attitudes as to the social and economic goals to be pursued by the State in its revenue policy may vary considerably from place to place and time to time. A government may often have to strike a balance between the need to raise revenue and reflecting other social objectives in its taxation policies. The national authorities are obviously in a better position than the Commission to assess those needs and requirements.

The applicants have also relied in their observations on the United Kingdom Government's own proposals, as set out in their Green Paper, to change the present system to one in which both spouses receive identical allowances, which can be transferred between them. They argue that the Government have thereby acknowledged that the present system has no compelling justification. The Commission is of the opinion however that the existence of proposals for new legislation to change the present system does not necessarily have the consequence that the present system must be regarded as infringing the provisions of the Convention. As stated above, the economic or social goals to be pursued by a state in its revenue policies may legitimately vary from time to time. A margin of appreciation must also apply to the moment when a government thinks fit to amend the tax system.

In light of the above considerations, the Commission concludes that the tax provisions which result in extra tax advantages accruing when a wife is the breadwinner of a family can be said to fall within the margin of appreciation accorded to the national authorities. The Commission therefore finds that the difference in treatment in the

present case has an objective and reasonable justification in the aim of providing positive discrimination in favour of married women who work. The Commission also finds that the test of proportionality is satisfied in the present case.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

b) The applicants also complain that they are taxed more heavily than a cohabiting but unmarried couple would be, who received the same income. They complain therefore that the United Kingdom tax legislation discriminates against them as a married couple.

The Commission recalls first of all that Article 14 (art. 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 e.g. Eur. Court H.R., Marckx judgment of 13 June 1979, Series A No. 31 and Eur. Court H.R., Van der Mussele judgment of 23 November 1983, Series A No. 70).

The applicants in the present case seek to compare themselves, a married couple, with a man and woman who receive the same income, but who live together without being married. The Commission is of the opinion that these are not analogous situations. Though in some fields, the de facto relationship of cohabiters 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.

The Commission accordingly concludes that the situation of the applicants is not comparable to that of an unmarried couple and that part of the application therefore does not enclose any appearance of a violation of Article 1 of Protocol No. 1 (P1-1) read in conjunction with Article 14 (art. 14) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

c) The applicants complain further that a couple married in church are taxed more heavily than an unmarried couple who cohabit, and that this amounts to discrimination on the ground of religion, particularly regarding the religious ceremony of marriage. The Commission notes that, under English law, any differential rates of taxation which may apply to married couples as compared to unmarried couples who cohabit result from the fact of marriage, irrespective of the type of wedding ceremony undergone. A couple married pursuant to a civil ceremony will be taxed in exactly the same way as a couple married in a religious ceremony. It follows that the application as it concerns discrimination on the ground of religion does not reveal any difference in treatment between persons married in a religious service and persons married in a civil ceremony.

Accordingly, it follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

2. The applicants also complain that the tax treatment of the income of married couples infringes their right to respect for private and family life, and furthermore that to the extent that a married couple is taxed more heavily than unmarried cohabiters this has the effect of discriminating against such married couples in their enjoyment of their private and family life. They invoke in this respect Article 8 (art. 8) of the Convention and Article 8 (art. 8) read in conjunction with Article 14 (art. 14) of the Convention.

The Commission considers however that the provisions whereby a married couple is taxed more heavily than unmarried cohabitants cannot be said to interfere with their right to respect for private and family life. An examination of this complaint fails to disclose any appearance of any interference with the applicants' right to respect for their private and family life.

As concerns the applicants' complaint of discrimination in this respect, the Commission would refer to its opinion, stated above, that married couples and cohabitants are not in analogous situations and cannot be compared under Article 14 (art. 14) of the Convention.

It follows that the application as it concerns the right to respect for private and family life alone and in conjunction with Article 14 (art. 14) is manifestly ill-founded within the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

3. The applicants further claim that the spirit and intention of Article 12 (art. 12) is to safeguard the institution of marriage, and in so far as the income tax legislation taxes a married couple more heavily than unmarried cohabitants it tends to encourage disrespect for marriage.

The Commission notes however that Article 12 (art. 12) guarantees to men and women of marriageable age the right to marry. An examination of the complaints as submitted by the applicants fails to disclose any interference with the exercise of this right. The Commission notes moreover that, according to both parties' submissions, in most circumstances a married couple either benefit from lower taxation or pay no more than if they were unmarried individuals and that to some extent the tax legislation could therefore be said to encourage persons to marry. It would also be artificial in comparing the respective treatment of married and unmarried couples to consider one particular aspect of taxation in isolation from the general economic, fiscal and social welfare regimes applicable to them.

It follows that the application as it concerns the claim under Article 12 (art. 12) is manifestly ill-founded within the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary
to the Commission

(J. RAYMOND)

President
of the Commission

(C.A. NØRGAARD)