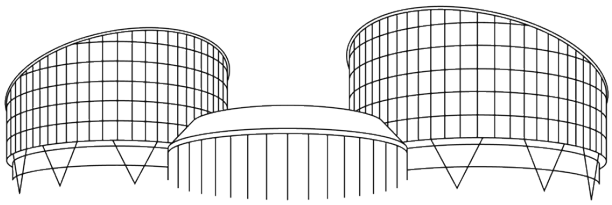

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 26252/08
Susan V. RICHARDSON
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 10 April 2012 as a Chamber composed of:

Lech Garlicki, President,
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, judges,

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 29 May 2008,

Having regard to the observations submitted by the respondent Government and the applicant's failure to submit observations in reply,

Having regard to the President's decision of 11 October 2011 to decide the case on the basis of the file as it stood,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Susan Richardson, is a British national who was born in October 1955 and lives in Huntingdon. Her application was lodged on 29 May 2008. The United Kingdom Government ("the Government") were represented by their Agent, Ms J. Neenan, Foreign and Commonwealth Office.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. In 2006, the applicant requested a pension forecast from the Department for Work and Pensions ("DWP"). The forecast, provided on 28 April 2006, was calculated on the basis that the applicant would become entitled to receive her State Pension from the age of 65.

4. In 2008, the applicant requested a further pension forecast. In that forecast, provided on 4 November 2008, the applicant's pension forecast was similarly calculated on the basis of the applicable State Pension age being 65. It stated that at the age of 65 the applicant was expected to be entitled to a weekly pension of GBP 109.84.

5. Both State Pension forecasts expressly stated that the pension the applicant might receive could be different from the forecast, either because of changes in the applicant's circumstances or the law. Both also stated that they were not formal decisions about her pension.

B. Relevant domestic and EU law

1. The Pensions Act 1995

6. Under the law of the United Kingdom, prior to the enactment of the Pensions Act 1995 ("the 1995 Act") the State Pension age was 65 for men and 60 for women. The relevant parts of the 1995 Act, which came into force on 19 July 1995, put in place a mechanism to equalise the respective pension ages for men and women to 65. The equalisation was to take place progressively over a period of ten years starting from 6 April 2010. Any woman born before 6 April 1950 would continue to receive the State Pension from the age of 60. Women born after 5 April 1955 would attain pensionable age at 65. Women born between those two dates would become eligible for the Pension at various ages between 60 and 65, in accordance with a graduated scale set out in Schedule 4 to the Act.

2. European Union Directive on Equal Treatment in Social Security

7. Council Directive 79/7/EEC of 19 December 1978 ("the Directive") concerns the progressive implementation of the principle of equal treatment for men and women in matters of social security. Article 4(1) of the Directive prohibits all discrimination on grounds of sex, in particular as concerns the calculation of benefits. Such discrimination can be justified only under Article 7(1)(a), which provides that the Directive is to be without prejudice to the right of Member States to exclude from its scope the determination of pensionable age for the purposes of granting old-age and

retirement pensions and the possible consequences thereof for other benefits.

COMPLAINTS

8. The applicant complained about the raising of the pension age and contended that she had suffered discrimination on grounds of her age and sex.

THE LAW

9. In her application the applicant complained of a violation of Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] 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."

A. The parties' arguments

10 The applicant maintained that the deferral of the payment of her State Pension until she reached the age of 65 would cause her financial hardship, since she had budgeted to retire at 60. She argued that she was the victim of sex and age discrimination, because women born before 6 April 1950 would receive the State Pension at the age of 60.

11. She did not specify which of her rights under the Convention had not been secured in a manner free from discrimination. However, when the Court communicated the case to the Government, the Government were asked whether they considered the facts to give rise to a violation of Article 1 of Protocol No. 1 to the Convention, either taken alone or in conjunction with Article 14. Article 1 of Protocol No. 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."

12. Following the communication of her application to the Government, the applicant declined to appoint a legal representative, as required by the Rules of Court, or to submit further written observations.

13. In their observations, the Government accepted that, although the applicant had made no effort to raise the issue with any relevant domestic authority, she had not failed to exhaust domestic remedies, as required by Article 35 of the Convention. In particular, the Government accepted that the applicant would have been unable to bring an effective legal challenge to the provisions of the Pensions Act 1995 in the domestic courts at the time it was passed.

14. However, the Government argued that the application was inadmissible on a number of other grounds. First, the applicant had no property right to a State Pension at the age of 60. It was a long-standing principle of the Court's case-law that Article 1 of Protocol No. 1 applied only to existing possessions and did not guarantee the right to acquire possessions. Any claim under Article 1 of Protocol No. 1 taken alone was, therefore, outside the scope of the Convention (incompatible *ratione materiae*).

15. Secondly, the Government argued that the complaint under Article 14 taken in conjunction with Article 1 of Protocol No. 1 was manifestly ill-founded. The applicant was unable to establish any difference of treatment on grounds of sex. A man with the same date of birth as the applicant would become eligible for a State Pension at the same age as the applicant. Indeed, the express purpose of the Pensions Act 1995 was to remove any potential discrimination on grounds of sex by equalising the State Pension age for men and women.

16. Finally, in the Government's view, the argument that the applicant was discriminated against on grounds of age was equally misconceived. Her argument necessarily implied that all women should always continue to receive the State Pension at the age of 60, even though men received it at 65. However, in *Stec and Others v. the United Kingdom* [GC], no. 65731/01, ECHR 2006-VI, the Court had held that, although the difference in pensionable age had in the past been objectively justified because it mitigated financial inequality between the sexes, it was no longer justified by the time the Pensions Act 1995 was passed. Moreover, the use of cut-off dates for implementation of changes to women's pensionable age was a measure of social and economic policy, in respect of which the Contracting States enjoyed a wide margin of appreciation.

B. The Court's assessment

1. Article 1 of Protocol No. 1 taken alone

17. The Court recalls that Article 1 of Protocol No. 1 does not create a right to acquire property. It places no restriction on the Contracting States' freedom to decide whether or not to have in place any form of social security or pension system, or to choose the type or amount of benefits or pension to provide under any such scheme. However, where a Contracting State has in force legislation providing for the payment as of right of a welfare benefit or pension – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 for persons satisfying its requirements (see, *mutatis mutandis, Stec and Others v. the United Kingdom*, [GC], (dec.) no. 65731/01 and 65900/01, § 54, ECHR 2006-). Further, where the amount of a benefit or pension is reduced or discontinued, this may constitute an interference with possessions which requires to be justified in the general interest (*Kjartan Ásmundsson v. Iceland*, judgment of 12 October 2004, ECHR 2004-IX; see also *Valkov and Others v. Bulgaria*, nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, § 84, 25 October 2011). Where, however, the person concerned does not satisfy, or ceases to satisfy, the legal conditions laid down in domestic law for the grant of any particular form of benefits or pension, there is no interference with the rights under Article 1 of Protocol No. 1 (*Bellet, Huertas and Vialatte v. France*, (dec.) no. 40832/98 27 April 1999; *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009). Finally, the Court observes that the fact that a person has entered into and forms part of a State social security system (even if a compulsory one, as in the instant case) does not necessarily mean that that system cannot be changed either as to the conditions of eligibility of payment or as to the *quantum* of the benefit or pension (see in a similar vein, though in a slightly different context, *Carson and Others v. the United Kingdom* [GC], no. 42184/05, §§ 85-89, ECHR 2010).

18. The Court notes that the applicant was born in October 1955 and has not yet reached pensionable age. Under the legislation currently in force, the applicant is not entitled to receive a State Pension until she reaches the age of 65. She has no right under domestic law to receive pension payments between the ages of 60 and 65. It follows that she has no proprietary interest in such payments for the purposes of Article 1 of Protocol No. 1. The complaint under that provision must, therefore, be declared incompatible *ratione materiae.*

2. Article 14 taken in conjunction with Article 1 of Protocol No. 1

19. The Court recalls that Article 14 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. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Article of the Convention, for which the State has voluntarily decided to provide. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see *Carson and Others v. the United Kingdom*, § 63).

20. While, as stated above, there is no obligation on a State under Article 1 of Protocol No. 1 to create a welfare or pension scheme, the Court has held that if a Contracting State does decide to enact legislation providing for the payment as of right of a welfare benefit or pension - whether conditional or not on the prior payment of contributions - that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (*Stec and Others v. the United Kingdom*, § 54). In cases, such as the present, concerning a complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 that the applicant has been denied all or part of a particular benefit on a discriminatory ground covered by Article 14, the relevant test is whether, but for the condition of entitlement about which the applicant complains, he or she would have had a right, enforceable under domestic law, to receive the benefit in question. Although Protocol No. 1 does not include the right to receive a social security payment of any kind, if a State does decide to create a benefits scheme, it must do so in a manner which is compatible with Article 14 (*Stec and Others*, cited above, § 55).

21. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, 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. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject-matter and the background. A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better

placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see *Carson and Others v. the United Kingdom*, § 61).

22. The applicant complained that she was the victim of sex and age discrimination. As regards sex discrimination, however, the Court does not find that the applicant will be treated any differently under the Pensions Act 1995 from a man with the same date of birth: they will both become entitled to a State Pension at the age of 65.

23. As regards age discrimination, it is true that the age threshold for entitlement of women to the State Pension was, under the terms of the 1995 Act, progressively raised from 60 to 65. Women born before April 1950 have been entitled to receive the Pension from the age of 60 and women such as the applicant, born after April 1955, will not receive it until they reach 65. However, the changes brought about by the 1995 Act pursued the legitimate aim of removing inequality between men and women. As the Court found in *Stec and Others,* cited above, §§ 61-65, providing for women to receive the State Pension five years earlier than men was originally justified as a means of mitigating financial inequality arising out of women's traditional unpaid role of caring for the family in the home rather than earning money in the workplace. However, as social conditions changed and increasing numbers of women were no longer substantially prejudiced because of a shorter working life, the difference in the pensionable age for men and women ceased to be justified.

24. The Court is of the view that changes as to the pensionable age fall within the margin of appreciation of the State, and the Court will not interfere with such changes provided it is shown that the said changes have been made in the general interest, are reasonable, and do not in effect amount to total loss of pension entitlement (see *Kjartan Ásmundsson*, cited above, §§ 43-44). The applicant in this case, who declined to appoint a legal representative or to submit written observations other than the application form (see paragraph 12 above), has not established before the Court that the legislature's policy choice was "manifestly without reasonable foundation", particularly with regard to the cut-off dates of April 1950 and April 1955 (see *Twizell v. the United Kingdom*, 20 May 2008 no. 25379/02, § 24; *Maggio and Others v. Italy*, 31 May 2011 nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, § 71).

25. It follows that the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 is manifestly ill-founded and therefore inadmissible, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Lech Garlicki
President