

Press release issued by the Registrar

CHAMBER JUDGMENT
CARSON AND OTHERS v. THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Carson and Others v. the United Kingdom* (application no. 42184/05).

The Court held, by six votes to one, that there had been **no violation of Article 14** (prohibition of discrimination) **in conjunction with Article 1 of Protocol No. 1** (protection of property) to the European Convention on Human Rights. (The judgment is available only in English.)

1. Principal facts

The applicants are 13 British nationals: Annette Carson, Bernard Jackson, Venice Stewart, Ethel Kendall, Kenneth Dean, Robert Buchanan, Terrance Doyle, John Gould, Geoff Dancer, Penelope Hill, Bernard Shrubsole, Lothar Markiewicz and Rosemary Godfrey, born between 1913 and 1937. The applicants spent most of their working lives in the United Kingdom, paying National Insurance Contributions in full, before emigrating or returning to South Africa, Australia or Canada.

The case concerned the applicants' complaint about the United Kingdom authorities' refusal to up-rate their pensions in line with inflation.

In 2002, Ms Carson brought proceedings by way of judicial review to challenge the failure to index-link her pension. She claimed that she had been the victim of discrimination as British pensioners were treated differently depending on their country of residence. In particular, despite having spent the same amount of time working in the United Kingdom, having made the same contributions towards the National Insurance Fund and having the same need for a reasonable standard of living in her old age as British pensioners who were living in the United Kingdom or in other countries where up-rating was available through reciprocal agreements, her basic State pension was frozen at the rate payable on the date she left the United Kingdom.

Her application for judicial review was dismissed in May 2002 and ultimately on appeal before the House of Lords in May 2005.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

In the House of Lord's judgment all but one of the judges who examined Ms Carson's complaint held that she was not in an analogous, or relevantly similar, situation to a pensioner of the same age and contribution record living in the United Kingdom or in a country where up-rating was available through a reciprocal bilateral agreement. Social security benefits, including the State pension, were part of an intricate and interlocking system of social welfare and taxation which existed to ensure certain minimum standards of living for those in the United Kingdom. Contributions to the National Insurance Fund could not be equated to contributions to a private pension scheme, because the money was used, together with money provided from general taxation, to finance a range of different benefits and allowances. Quite different economic conditions applied in other countries: for example, in South Africa, where Ms Carson lived, although there was virtually no social security, the cost of living was much lower, and the value of the rand had dropped in recent years compared to sterling.

The domestic courts further held that Ms Carson and those in her position had chosen to live in societies, or more pointedly economies, outside the United Kingdom; to accept her arguments would be to lead to judicial interference in the political decision as to the redeployment of public funds.

Ms Carson receives a basic State pension of 67.50 pounds sterling (GBP) per week. It has been frozen at that rate since 2000. Had that basic pension been up-rated in line with inflation, it would now be worth GBP 82.05 per week. Ms Carson, now retired, is almost entirely dependent on her British pension to support her.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 24 November 2005.

The non governmental organisation, *Age Concern*, was granted leave to intervene in the proceedings as a third party on 24 January 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Lech **Garlicki** (Polish), *President*,
Nicolas **Bratza** (British),
Giovanni **Bonello** (Maltese),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina),
David Thór **Björgvinsson** (Icelandic),
Ledi **Bianku** (Albanian),
Mihai **Poalelungi** (Moldovan), *judges*,

and also Fatoş **Aracı**, *Deputy Section Registrar*.

3. Summary of the judgment¹

Complaint

¹ This summary by the Registry does not bind the Court.

The applicants alleged, in particular, that the United Kingdom authorities' refusal to up-rate their pensions in line with inflation was discriminatory and that some of them had to choose between surrendering a large part of their pension entitlement or living far away from their families. They relied on Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination) and Article 1 of Protocol No. 1 (protection of property) to the Convention.

Decision of the Court

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

First, as regards the question of whether the applicants were in an analogous situation to British pensioners who had chosen to remain in the United Kingdom, the Court noted that the Contracting State's social security system was intended to provide a minimum standard of living for those resident within its territory. Insofar as concerned the operation of pension or social security systems, individuals ordinarily resident within the Contracting State were not therefore in a relevantly analogous situation to those residing outside the territory.

Furthermore, the Court was hesitant to find an analogy between applicants who live in a "frozen pension" country and British pensioners resident in countries outside the United Kingdom where up-rating was available through a reciprocal agreement. National Insurance Contributions were only one part of the United Kingdom's complex system of taxation and the National Insurance Fund was just one of a number of sources of revenue used to pay for the United Kingdom's Social Security and National Health systems. The applicants' payment of National Insurance Contributions during their working lives in the United Kingdom was not therefore any more significant than the fact that they might have paid income tax or other taxes while domiciled there. Nor was it easy to compare the respective positions of residents of States in close geographical proximity with similar economic conditions, such as the United States of America and Canada, South Africa and Mauritius, or Jamaica and Trinidad and Tobago, due to differences in social security provision, taxation, rates of inflation, interest and currency exchange.

As emphasised by the British domestic courts, the pattern of reciprocal agreements was the result of history and perceptions in each country as to perceived costs and benefits of such an arrangement. They represented whatever the Contracting State had from time to time been able to negotiate without placing itself at an undue economic disadvantage and to apply to provide reciprocity of social security cover across the board, not just in relation to pension up-rating. In the Court's view, the State did not therefore exceed its very broad discretion to decide on matters of macro-economic policy by entering into such reciprocal arrangements with certain countries but not others.

At any rate, the Court concluded that the difference in treatment had been objectively and reasonably justified. While there was some force in the applicants' argument, echoed by *Age Concern*, that an elderly person's decision to move abroad might be driven by a number of factors, including the desire to be close to family members, place of residence was nonetheless a matter of choice. The Court therefore agreed with the Government and the national courts that, in that context, the same high level of protection against differences of treatment was not needed as in differences based on gender or racial or ethnic origin. Moreover, the State had taken steps, in a series of leaflets which had referred to the Social

Security Benefits Up-rating Regulations 2001, to inform United Kingdom residents moving abroad about the absence of index linking for pensions in certain countries.

It followed that there had been no violation of Article 14 taken in conjunction with Article 1 of Protocol no. 1.

Article 14 taken in conjunction with Article 8

The Court held unanimously that it was not necessary to consider separately the applicants' complaint under Article 14 in conjunction with Article 8.

Judge Garlicki expressed a dissenting opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Adrien Raif-Meyer (telephone: 00 33 (0)3 88 41 33 37)

Tracey Turner-Tretz (telephone: 00 33 (0)3 88 41 35 30)

Sania Ivedi (telephone: 00 33 (0)3 90 21 59 45)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.