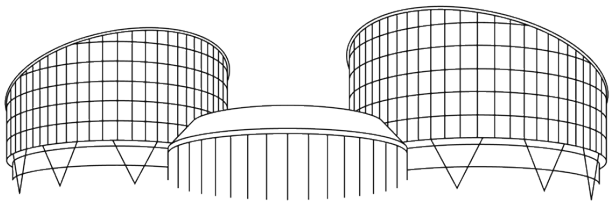

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF CARSON AND OTHERS v. THE UNITED KINGDOM

(Application no. 42184/05)

JUDGMENT

STRASBOURG

16 March 2010

In the case of Carson and Others v. the United Kingdom,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Jean-Paul Costa, *President*,
Christos Rozakis,
Nicolas Bratza,
Peer Lorenzen,
Françoise Tulkens,
Josep Casadevall,
Karel Jungwiert,
Nina Vajić,
Dean Spielmann,
Renate Jaeger,
Danutė Jočienė,
Ineta Ziemele,
Isabelle Berro-Lefèvre,
Päivi Hirvelä,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,
and Vincent Berger, *Jurisconsult*,

Having deliberated in private on 2 September 2009 and on 27 January 2010,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 42184/05) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 24 November 2005 by thirteen British nationals: Ms Annette Carson, Mr Bernard Jackson, Mrs Venice Stewart, Mrs Ethel Kendall, Mr Kenneth Dean, Mr Robert Buchanan, Mr Terence Doyle, Mr John Gould, Mr Geoff Dancer, Ms Penelope Hill, Mr Bernard Shrubsole, Mr Lothar Markiewicz and Mrs Rosemary Godfrey ("the applicants").

2. The applicants were represented by Mr T. Otty QC and Mr B. Olbourne, lawyers practising in London, and by Mr P. Tunley and Mr H. Gray, lawyers practising in Toronto. The United Kingdom Government ("the Government") were represented by their Agent, Ms H. Upton, Foreign and Commonwealth Office.

3. The applicants complained under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14, and under Articles 8 and 14 of the Convention taken together, about the refusal of the United Kingdom authorities to uprate their pensions in line with inflation.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 17 February 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. On 18 September 2007 the Court decided to adjourn its examination of the case pending delivery of judgment in *Burden v. the United Kingdom* ([GC], no. 13378/05, ECHR 2008.

5. In a joint decision and judgment dated 4 November 2008 a Chamber of that Section composed of Lech Garlicki, Nicolas Bratza, Giovanni Bonello, Ljiljana Mijović, Davíd Thór Björgvinsson, Ledi Bianku and Mihai Poalelungi, judges, and Fatoş Aracı, Deputy Section Registrar, unanimously declared the complaint under Article 1 of Protocol No. 1 taken alone inadmissible and the complaint under Article 14 taken in conjunction with Article 1 of Protocol No. 1 admissible; found, by six votes to one, no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1; and held, unanimously, that it was not necessary to consider the complaint under Article 14 taken in conjunction with Article 8. Judge Garlicki delivered a dissenting opinion.

6. On 6 April 2009, following a request by the applicants, a panel of the Grand Chamber decided to refer the case to the Grand Chamber in accordance with Article 43 of the Convention.

7. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

8. The applicants and the Government each filed observations on the merits. In addition, third-party comments were received from Age Concern and Help the Aged, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 2 September 2009 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Ms H. UPTON, *Agent*,
Mr J. EADIE QC, *Counsel*,
Ms J. ANTILL,
Mr C. HEDLEY,
Mr P. LAPRAIK,
Mr L. FORSTER-KIRKHAM,
Ms C. PAYNE, *Advisers*;

(b) *for the applicants*
Mr T. OTTY QC,
Mr B. OLBOURNE, *Counsel*,
Mr P. TUNLEY, *Adviser*.

The Court heard addresses by Mr Otty and Mr Eadie, as well as their answers to questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicants

1. Annette Carson

10. Ms Carson was born in 1931. She spent most of her working life in the United Kingdom, paying National Insurance contributions (NICs) in full, before emigrating to South Africa in 1989. From 1989 to 1999 she paid further NICs on a voluntary basis (see paragraph 37 below).

11. In 2000 she became eligible for a basic State pension of 67.50 pounds sterling (GBP) per week. Her pension has remained fixed at this rate since 2000. Had her pension benefited from uprating in line with inflation, it would now be worth GBP 95.25 per week (see paragraphs 41-42 below).

12. Ms Carson brought domestic proceedings challenging the refusal to uprate her pension (see paragraphs 25-36 below).

2. Bernard Jackson

13. Mr Jackson was born in 1922. He spent fifty years working in the United Kingdom, paying NICs in full. He emigrated to Canada on his retirement in 1986 and became eligible for a State pension in 1987. His basic State pension was then GBP 39.50 per week, and it has remained fixed at that level since 1987. Had his State pension benefited from uprating since 1987 it would now be worth GBP 95.25 per week.

3. Venice Stewart

14. Mrs Stewart was born in 1931. She spent fifteen years working in the United Kingdom, paying NICs in full, before emigrating to Canada in 1964. She became eligible for a reduced State pension in 1991. Her basic State pension was then GBP 15.48 per week, and it has remained fixed at that level since 1991.

4. Ethel Kendall

15. Mrs Kendall was born in 1913. She spent forty-five years working in the United Kingdom, paying NICs in full, before retiring in 1976. She became eligible for a State pension in 1973, and emigrated to Canada in 1986, at which point her State pension had increased to GBP 38.70 per week. It has remained fixed at that level, whereas the current uprated pension is worth GBP 95.25 (see paragraph 39 below).

5. Kenneth Dean

16. Mr Dean was born in 1923. He spent fifty-one years working in the United Kingdom, paying NICs in full, before retiring in 1991. He became eligible for a State pension in 1988, and emigrated to Canada in 1994, when his weekly State pension was GBP 57.60. It has remained fixed at that level since 1994. Had it benefited from uprating, it would now be worth approximately GBP 95.25 per week.

6. Robert Buchanan

17. Mr Buchanan was born in 1924. He spent forty-seven years working in the United Kingdom, paying NICs in full, before emigrating to Canada in 1985. He became eligible for a State pension in 1989. His basic State pension was then GBP 41.15 per week, and it has remained fixed at that level since 1989. Had his State pension benefited from uprating, it would now be worth approximately GBP 95.25 per week.

7. Terence Doyle

18. Mr Doyle was born in 1937. He spent forty-two years working in the United Kingdom, paying NICs in full, before retiring in 1995 and

emigrating to Canada in 1998. He became eligible for a State pension in 2002. His basic State pension was then GBP 75.50 per week, and it has remained fixed at that level since then. Had it benefited from uprating, it would now be worth approximately GBP 95.25 per week.

8. John Gould

19. Mr Gould was born in 1933. He spent forty-four years working in the United Kingdom, paying NICs in full, before retiring and emigrating to Canada in 1994. He became eligible for a State pension in 1998. His basic State pension was then GBP 64.70 per week, and it has remained fixed at that level since then. Had his State pension benefited from uprating, it would now be worth approximately GBP 95.25 per week.

9. Geoff Dancer

20. Mr Dancer was born in 1921. He spent forty-four years working in the United Kingdom, paying NICs in full, before emigrating to Canada in 1981. He became eligible for a State pension in 1986. His basic State pension was then GBP 38.30 per week, and it has remained fixed at that level. Had it benefited from uprating, it would now be worth approximately GBP 95.25 per week.

10. Penelope Hill

21. Mrs Hill was born in Australia in 1940; it appears that she remains an Australian national. She lived and worked in the United Kingdom between 1963 and 1982, paying NICs in full, before returning to Australia in 1982. She made further NICs for the tax years 1992 to 1999, and became eligible for a British State pension in 2000. Her basic State pension was then GBP 38.05 per week. Between August 2002 and December 2004 she spent over half her time in London. During this period, her pension was increased to GBP 58.78 per week, which included an uprating of the basic State pension. When she returned to Australia, her pension returned to the previous level, that is a basic State pension of GBP 38.05 per week. Her pension has remained at this level subsequently.

11. Bernard Shrubshole

22. Mr Shrubshole was born in 1933. His contribution record in the United Kingdom qualified him for a full basic State pension in 1998. He emigrated to Australia in 2000, at which point his State pension had increased to GBP 67.40 per week. Save for a period of seven weeks when he returned to the United Kingdom (during which time his pension was increased to take into account annual upratings), his State pension has remained fixed at that level since 2000. Had his State pension benefited from uprating, it would now be worth approximately GBP 95.25 per week.

12. Lothar Markiewicz

23. Mr Markiewicz was born in 1924. He spent fifty-one years working in the United Kingdom, paying NICs in full, and became eligible for a State pension in 1989. In 1993 he emigrated to Australia. His basic State pension was then worth GBP 56.10 a week, and it has remained fixed at that level. Had it benefited from uprating, it would now be worth approximately GBP 95.25 per week.

13. Rosemary Godfrey

24. Mrs Godfrey was born in 1934. She spent ten years working in the United Kingdom between 1954 and 1965, paying NICs in full, before emigrating to Australia in 1965. She became eligible for a State pension in 1994. Her basic State pension was then GBP 14.40 per week, and it has remained fixed at that level.

B. The domestic proceedings brought by Ms Carson

25. In 2002 Ms Carson brought proceedings by way of judicial review to challenge the failure to uprate her pension, relying on Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention.

1. The High Court

26. In a judgment dated 22 May 2002 (*R (Carson) v. Secretary of State for Work and Pensions* [2002] EWHC 978 (Admin)), the first-instance judge, Stanley Burnton J, dismissed Ms Carson's application for judicial review.

27. Applying the principles he drew from the case-law of the Court, the judge found that the pecuniary right that fell to be protected by Article 1 of Protocol No. 1 had to be defined by the domestic legislation that created it. He found that, by the operation of the domestic legislation, Ms Carson had never been entitled to an uprated pension, so that there could be no breach of Article 1 of Protocol No. 1 taken in isolation.

28. The matter nonetheless fell within the ambit of Article 1 of Protocol No. 1 and the judge therefore had to consider whether Ms Carson had suffered discrimination contrary to the provisions of Article 14. The Government initially contended that country of residence was not a prohibited ground of discrimination under Article 14, but this objection was subsequently withdrawn. The judge, however, dismissed Ms Carson's claim on the ground that she was not in a comparable position to pensioners in countries attracting uprating. The differing economic conditions in each country, including local social security provision and taxation, made it impossible simply to compare the amount in sterling received by pensioners. Moreover, even if the applicant could claim to be in an

analogous position to a pensioner in the United Kingdom or a country where uprating was paid subject to a bilateral agreement, the difference in treatment could be justified.

2. The Court of Appeal

29. Ms Carson appealed to the Court of Appeal, which dismissed her appeal on 17 June 2003 (*R (Carson and Reynolds) v. Secretary of State for Work and Pensions* [2003] EWCA Civ 797). For similar reasons to the High Court, the Court of Appeal (Simon Brown, Laws and Rix LJJ) found that, since Article 1 of Protocol No. 1 conferred no right to acquire property, the failure to uprate Ms Carson's pension gave rise to no violation of that provision taken alone.

30. As to the complaint under Article 14 in conjunction with Article 1 of Protocol No. 1, the Court of Appeal noted that the Secretary of State accepted that place of residence constituted a "status" for the purposes of the Article. However, it found that the applicant was in a materially different position to those whom she contended were her comparators. In this connection it was significant that "the scheme of the primary legislation is entirely geared to the impact on the pension of price inflation in the United Kingdom". Laws LJ continued:

> "There is simply no inherent probability that price inflation in other countries where expatriate UK pensioners might have made their home (or, for that matter, any other economic factors) will have a comparable effect on the value of the pension to such pensioners. They may do better, they may do worse. There will also, of course, be the impact of variable exchange rates. There will be, if I may be forgiven a jejune metaphor, swings and roundabouts. While I certainly do not suggest there are no principled arguments in favour of the annual uprate being paid to those in Ms Carson's position, it seems to me inescapable that its being awarded across the board to all such pensioners would have random effects. A refusal by government to put in place a measure which would produce such effects (which in the end is all that has happened here) cannot be said to stand in need of justification by reason if it is being compared with the clear and certain effects of the uprate for UK-resident pensioners."

31. The Court of Appeal also considered, in the alternative, the question of justification and found that the "true" justification of the refusal to pay the uprate was that Ms Carson and those in her position "had chosen to live in societies, more pointedly economies, outside the United Kingdom where the specific rationale for the uplift may by no means necessarily apply". The Court of Appeal thus considered the decision to be objectively justified without reference to what they accepted would be the "daunting cost" of extending the uprate to those in Ms Carson's position. Moreover, the cost implications were "in the context of this case a legitimate factor going in justification for the Secretary of State's position", because to accept Ms Carson's arguments would be to lead to a judicial interference in the political decision as to the deployment of public funds which was not

mandated by the Human Rights Act 1998, the jurisprudence of this Court or by a "legal imperative" which was sufficiently pressing to justify confining and circumscribing the elected Government's macroeconomic policies.

3. The House of Lords

32. Ms Carson appealed to the House of Lords, relying on Article 1 of Protocol No. 1 read together with Article 14. Her appeal was dismissed on 26 May 2005 by a majority of four to one (*R (Carson and Reynolds) v. Secretary of State for Work and Pensions* [2005] UKHL 37).

33. The majority (Lords Nicholls of Birkenhead, Hoffmann, Rodger of Earlsferry and Walker of Gestinghope) accepted that a retirement pension fell within the scope of Article 1 of Protocol No. 1 and that Article 14 was thus applicable. They further assumed that a place of residence was a personal characteristic and amounted to "any other status" within the meaning of Article 14, and was thus a prohibited ground of discrimination. However, because a person could choose where to live, less weighty grounds were required to justify a difference of treatment based on residence than one based on an inherent personal characteristic, such as race or sex.

34. The majority observed that in certain cases it was artificial to treat separately the questions, firstly, whether an individual complaining of discrimination was in an analogous position to a person treated more favourably and, secondly, whether the difference in treatment was reasonably and objectively justified. In the present case, the applicant was not in an analogous position to a pensioner resident in the United Kingdom or resident in a country with a bilateral agreement with the United Kingdom. The State pension was one element in an interconnected system of taxation and social security benefits, designed to provide a basic standard of living for the inhabitants of the United Kingdom. It was funded partly from the NICs of those currently in employment and their employers, and partly out of general taxation. The pension was not means-tested, but pensioners with a high income from other sources paid some of it back to the State in income tax. Those with low incomes might receive other benefits, such as income support. The provision for index-linking was intended to preserve the value of the pension in the light of economic conditions, such as the cost of living and the rate of inflation, within the United Kingdom. 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.

35. Lord Hoffmann, who gave one of the majority opinions, put the arguments as follows:

> "18. The denial of a social security benefit to Ms Carson on the ground that she lives abroad cannot possibly be equated with discrimination on grounds of race or sex.

It is not a denial of respect for her as an individual. She was under no obligation to move to South Africa. She did so voluntarily and no doubt for good reasons. But in doing so, she put herself outside the primary scope and purpose of the UK social security system. Social security benefits are part of an intricate and interlocking system of social welfare which exists to ensure certain minimum standards of living for the people of this country. They are an expression of what has been called social solidarity or *fraternité*; the duty of any community to help those of its members who are in need. But that duty is generally recognised to be national in character. It does not extend to the inhabitants of foreign countries. That is recognised in treaties such as the ILO [International Labour Organization] Social Security (Minimum Standards) Convention 1952 (Article 69) and the European Code of Social Security 1961.

19. Mr Blake QC, who appeared for Ms Carson, accepted the force of this argument. He agreed in reply that she could have no complaint if the United Kingdom had rigorously applied the principle that UK social security is for UK residents and paid no pensions whatever to people who had gone to live abroad. And he makes no complaint about the fact that she is not entitled to other social security benefits like jobseeker's allowance and income support. But he said that it was irrational to recognise that she had an entitlement to a pension by virtue of her contributions to the National Insurance Fund and then not to pay her the same pension as UK residents who had made the same contributions.

20. The one feature upon which Ms Carson seizes as the basis of her claim to equal treatment (but only in respect of a pension) is that she has paid the same National Insurance contributions. That is really the long and the short of her case. In my opinion, however, concentration on this single feature is an oversimplification of the comparison. The situation of the beneficiaries of UK social security is, to quote the European Court in *Van der Mussele v. Belgium* (1983) 6 EHRR 163, 180, para. 46, 'characterised by a corpus of rights and obligations of which it would be artificial to isolate one specific aspect'.

21. In effect Ms Carson's argument is that because contributions are a necessary condition for the retirement pension paid to UK residents, they ought to be a sufficient condition. No other matters, like whether one lives in the United Kingdom and participates in the rest of its arrangements for taxation and social security, ought to be taken into account. But that in my opinion is an obvious fallacy. National Insurance contributions have no exclusive link to retirement pensions, comparable with contributions to a private pension scheme. In fact the link is a rather tenuous one. National Insurance contributions form a source of part of the revenue which pays for all social security benefits and the National Health Service (the rest comes from ordinary taxation). If payment of contributions is a sufficient condition for being entitled to a contributory benefit, Ms Carson should be entitled to all contributory benefits, like maternity benefit and jobseeker's allowance. But she does not suggest that she is.

22. The interlocking nature of the system makes it impossible to extract one element for special treatment. The main reason for the provision of State pensions is the recognition that the majority of people of pensionable age will need the money. They are not means-tested, but that is only because means-testing is expensive and discourages take-up of the benefit even by people who need it. So State pensions are paid to everyone whether they have adequate income from other sources or not. On the other hand, they are subject to tax. So the State will recover part of the pension from people who have enough income to pay tax and thereby reduce the net cost of

the pension. On the other hand, those people who are entirely destitute would be entitled to income support, a non-contributory benefit. So the net cost of paying a retirement pension to such people takes into account the fact that the pension will be set off against their claim to income support.

23. None of these interlocking features can be applied to a non-resident such as Ms Carson. She pays no United Kingdom income tax, so the State would not be able to recover anything even if she had substantial additional income. (Of course I do not suggest that this is the case; I have no idea what other income she has, but there will be expatriate pensioners who do have other income.) Likewise, if she were destitute, there would be no saving in income support. On the contrary, the pension would go to reduce the social security benefits (if any) to which she is entitled in her new country.

State and private pensions

24. It is, I suppose, the words 'insurance' and 'contributions' which suggest an analogy with a private pension scheme. But, from the point of view of the citizens who contribute, National Insurance contributions are little different from general taxation which disappears into the communal pot of the consolidated fund. The difference is only a matter of public accounting. And although retirement pensions are presently linked to contributions, there is no particular reason why they should be. In fact (mainly because the present system severely disadvantages women who have spent time in the unremunerated work of caring for a family rather than earning a salary) there are proposals for change. Contributory pensions may be replaced with a non-contributory 'citizen's pension' payable to all inhabitants of this country of pensionable age. But there is no reason why this should mean any change in the collection of National Insurance contributions to fund the citizen's pension like all the other non-contributory benefits. On Ms Carson's argument, however, a change to a non-contributory pension would make all the difference. Once the retirement pension was non-contributory, the foundation of her argument that she had 'earned' the right to equal treatment would disappear. But she would have paid exactly the same National Insurance contributions while she was working here and her contributions would have had as much (or as little) causal relationship to her pension entitlement as they have today.

Parliamentary choice

25. For these reasons it seems to me that the position of a non-resident is materially and relevantly different from that of a UK resident. I do not think, with all respect to my noble and learned friend, Lord Carswell, that the reasons are subtle and arcane. They are practical and fair. Furthermore, I think that this is very much a case in which Parliament is entitled to decide whether the differences justify a difference in treatment. It cannot be the law that the United Kingdom is prohibited from treating expatriate pensioners generously unless it treats them in precisely the same way as pensioners at home. Once it is accepted that the position of Ms Carson is relevantly different from that of a UK resident and that she therefore cannot claim equality of treatment, the amount (if any) which she receives must be a matter for Parliament. It must be possible to recognise that her past contributions gave her a claim in equity to some pension without having to abandon the reasons why she cannot claim to be treated equally. And in deciding what expatriate pensioners should be paid, Parliament must be entitled to take into account competing claims on public funds. To say that the reason why expatriate pensioners are not paid the annual increases is to

save money is true but only in a trivial sense: every decision not to spend more on something is to save money to reduce taxes or spend it on something else.

26. I think it is unfortunate that the argument for the Secretary of State placed such emphasis upon such matters as the variations in rates of inflation in various countries which made it inappropriate to apply the same increase to pensioners resident abroad. It is unnecessary for the Secretary of State to try to justify the sums paid with such nice calculations. It distracts attention from the main argument. Once it is conceded, as Mr Blake accepts, that people resident outside the UK are relevantly different and could be denied any pension at all, Parliament does not have to justify to the courts the reasons why they are paid one sum rather than another. Generosity does not have to have a logical explanation. It is enough for the Secretary of State to say that, all things considered, Parliament considered the present system of payments to be a fair allocation of available resources.

27. The comparison with residents in treaty countries seems to me to fail for similar reasons. Mr Blake was able to point to government statements to the effect that there was no logical scheme in the arrangements with treaty countries. They represented whatever the UK had from time to time been able to negotiate without placing itself at an undue economic disadvantage. But that seems to me an entirely rational basis for differences in treatment. The situation of a UK expatriate pensioner who lives in a country which has been willing to enter into suitable reciprocal social security arrangements is relevantly different from that of a pensioner who lives in a country which has not. The treaty enables the government to improve the social security benefits of UK nationals in the foreign country on terms which it considers to be favourable, or at least not unduly burdensome. It would be very strange if the government was prohibited from entering into such reciprocal arrangements with any country (for example, as it has with the EEA [European Economic Area] countries) unless it paid the same benefits to all expatriates in every part of the world."

36. Lord Carswell, dissenting, found that Ms Carson could properly be compared to other contributing pensioners living in the United Kingdom or other countries where their pensions were uprated. He continued:

"How persons spend their income and where they do so are matters for their own choice. Some may choose to live in a country where the cost of living is low or the exchange rate favourable, a course not uncommon in previous generations, which may or may not carry with it disadvantages, but that is a matter for their personal choice. The common factor for purposes of comparison is that all of the pensioners, in whichever country they may reside, have duly paid the contributions required to qualify for their pensions. If some of them are not paid pensions at the same rate as others, that in my opinion constitutes discrimination for the purposes of Article 14 ..."

Lord Carswell therefore considered that the appeal turned on the question of justification. He accepted that the courts should be slow to intervene in questions of macroeconomic policy. He further accepted that, had the Government put forward sufficient reasons of economic or State policy to justify the difference in treatment, he should have been properly ready to yield to its decision-making power in those fields. However, in the present case the difference in treatment was not justified: as the Department of Social Security itself accepted, the reason all pensions were not uprated was

simply to save money, and it was not fair to target the applicant and others in her position.

II. RELEVANT NATIONAL AND INTERNATIONAL LAW

A. Domestic law and practice

1. National Insurance contributions (NICs)

37. NICs are payable by employees and the self-employed who earn income over a set limit and by employers in respect of employees earning over a set limit. It is also possible for individuals who are not liable to pay compulsory contributions, because for example they are resident outside the United Kingdom, to make voluntary contributions to protect the right to certain social security benefits. The amounts paid by employees and employers depend on income. In the current tax year (2009/10), employees earning between GBP 110 and GBP 844 per week pay 11% of their income, with an additional 12.8% paid by the employer. The basic rate for the self-employed is currently GBP 2.40 per week and the voluntary contributions rate is GBP 12.05 per week.

38. The social security benefits paid for from NICs include contribution-based jobseeker's allowance, incapacity benefit (now replaced by employment and support allowance), maternity allowance, widow's benefit, bereavement benefit, retirement pensions of certain categories, child's special allowance and guardian's allowance. These benefits are financed on a "pay as you go" basis from NICs paid in the current year. If necessary, additional funding can be provided from money received in income tax and other forms of taxation, but this has not been necessary since 1998. NICs also partly pay for the cost of the National Health Service.

2. State pension

39. The basic State pension is, in the current financial year 2009/10, GBP 95.25 per week. To qualify for a State pension, it is necessary to have reached State pension age and to have paid or been credited with (or have a husband, wife or civil partner who has been paid or been credited with) NICs for a sufficient number of "qualifying years". The State pension age is currently 65 for men and 60 for women. It will increase gradually for women from 2010, so that by 2020 it will be 65 for both sexes. At present, men need 44 qualifying years by the age of 65 to get a full basic State pension and women who reach the age of 60 before 2010 need 39 qualifying years. The Pensions Act 2007 reduced the number of qualifying years needed for a full basic State pension to 30 for people who reach State

pension age on or after 6 April 2010. A percentage of the full basic State pension is payable to an individual without the full number of qualifying years. To get the minimum basic State pension (25%) it is normally necessary to have 10 or 11 qualifying years.

40. Individuals resident in the United Kingdom who do not have sufficient qualifying years to entitle them to a State pension may be entitled to non-contributory welfare benefits, such as means-tested income support and housing benefit.

3. Pension uprating and reciprocal agreements

41. Under section 150 of the Social Security Administration Act 1992, the Secretary of State is required to make an order each year to increase the basic State pension to maintain its value "in relation to the general level of prices obtaining in Great Britain".

42. Although the basic State pension is payable to individuals resident outside the United Kingdom, non-residents are disqualified from receiving uprated pensions. Instead, unless or until they return to live in the United Kingdom, they continue to receive the State pension at the weekly rate applicable in the year in which they emigrated or, if they emigrated before reaching retirement age, at the rate applicable in the year in which they attained retirement age. A non-resident who returns to the United Kingdom for a short period receives the uprated pension while in the United Kingdom, but, when he returns to his country of residence, the pension reverts to its previous amount.

43. The exception to this rule concerns individuals who move to States which have concluded a bilateral reciprocal social security agreement with the United Kingdom which provides for the pensions paid to qualifying individuals to be uprated in line with United Kingdom inflation.

44. States enter into bilateral agreements to provide on a reciprocal basis for wider social security cover for workers and their families moving between the party countries than is available under national legislation alone. Each results from negotiations between the party States, taking into account the scope for reciprocity between the two social security schemes. In all cases the agreement establishes the social security scheme which is to be applied to persons moving from one country to work in the other. Generally, the scheme applicable is that of the country of employment. Whether a reciprocal social security agreement with another country is entered into depends on various factors, among them the numbers of people moving from one country to the other, the benefits available under the other country's scheme, how far reciprocity is possible and the extent to which the advantages to be gained by an agreement outweigh the additional expenditure likely to be incurred by each State. Where an agreement is in place, the flow of funds may differ depending on the level of each country's benefits and the number of people going in each direction.

45. Of the bilateral agreements entered into by the United Kingdom which cover more than liability for contributions, nearly all cover retirement pensions and widow's/bereavement benefits. The majority also cover sickness, incapacity and maternity benefits. Some cover unemployment and child benefits. Where access to a benefit covered by the agreement is dependent on contributions, the agreement generally provides for aggregation of the contributions paid in each country. Each country then calculates a pro-rata pension based on contributions made in that country. Where access to a benefit depends on a period of residence, the agreement is likely to provide for residence in one country to count as residence in the other. Where benefit is paid in one country taking account of residence/contributions in the other, there is usually a provision for reimbursement of the former by the latter. Not all reciprocal agreements to which the United Kingdom is a party, therefore, involve the payment of pension uprating to United Kingdom expatriates.

46. The United Kingdom has reciprocal social security agreements providing for pension uprating with all European Economic Area (EEA) States and with Barbados, Bermuda, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, Israel, Jamaica, Japan, Jersey and Guernsey, South Korea, Mauritius, New Zealand, Philippines, Turkey and the United States of America. Residents of the EEA countries and the countries listed above who qualify for a United Kingdom State pension receive the same level of uprating as United Kingdom residents; the uprating is based on the rate of inflation in the United Kingdom and no regard is paid to inflation in the country of residence.

47. All the above agreements were concluded between 1948 and 1992, and from 1979 onwards the agreements were to fulfil earlier commitments made by the United Kingdom Government. Since June 1996, the Government's policy has been that future reciprocal agreements should normally be limited to resolving questions of liability for social security contributions. Agreements with Australia, New Zealand and Canada came into force in 1953, 1956 and 1959 respectively, but these did not require payment of uprated pensions. The agreement with Australia was terminated by Australia as from 1 March 2001, because of the refusal of the United Kingdom to pay uprated pensions to its pensioners living in Australia.

48. During the passage of the Pensions Bill through Parliament in 1995, amendments tabled in both Houses, calling for uprating to be paid to all expatriate pensioners, were defeated by large majorities. According to the Government, it would cost approximately GBP 4 billion (4 thousand million) to pay the backdated claims to uprating of all United Kingdom pensioners resident abroad in "frozen" countries together with an ongoing annual bill of over GBP 500 million (0.79% of the GBP 62.7 billion spent in total by the United Kingdom in 2008/09 on pensions).

B. Relevant international law

49. Article 69 of the 1952 International Labour Organization's Social Security (Minimum Standards) Convention ("the 1952 ILO Convention") provides that a benefit to which a protected person would otherwise be entitled in compliance with the 1952 ILO Convention (including old-age benefit) may be suspended, in whole or in part, by national law as long as the person concerned is absent from the territory of the State concerned. The above provision is echoed in Article 68 of the 1964 European Code of Social Security and Article 74 § 1 (f) of the 1990 European Code of Social Security (Revised).

50. Part IV of the 1982 ILO Convention concerning the Establishment of an International System for the Maintenance of Rights in Social Security envisages that equal treatment of the nationals of the Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation whatever the movements the persons protected might undertake between Contracting States, may be secured by the conclusion of appropriate bilateral and multilateral agreements. Bilateral agreements are the most utilised method of coordination of social security laws and vary greatly in both personal and material scope. Some bilateral agreements cover only nationals of the Contracting Parties, while others apply to any person who has been covered by the social security systems of at least one of the Contracting Parties. They sometimes cover both contributory and non-contributory benefits; sometimes they are confined to contributory benefits only.

51. In April 2008 a Council of Europe initiative to draw up a new framework agreement for the coordination of social security schemes within the member States, to enable in particular the export of benefits throughout the Council of Europe region, was abandoned when it became clear that most countries preferred to maintain the present system of bilateral agreements (see CM(2008)71, paragraph 11, 17 April 2008).

THE LAW

52. All the applicants complained that the failure to uprate their pensions violated their rights under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14. Six of the applicants also complained, under Article 8 of the Convention taken in conjunction with Article 14, that the failure to uprate their pensions had touched on their decisions to live with their families outside the United Kingdom in a discriminatory manner.

Article 14 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."

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."

Article 8 provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

I. ADMISSIBILITY ISSUES

A. The Chamber's conclusions

53. The Chamber declared the complaint under Article 1 of Protocol No. 1 taken alone inadmissible, on the ground that this provision did not guarantee the right to acquire possessions or to receive a social security benefit or pension payment of any kind or amount, unless provided for by national law. It declared the complaint under Article 14 taken in conjunction with Article 1 of Protocol No. 1 admissible and, without making any decision as to its admissibility, decided that it was not necessary to examine the complaint under Article 14 taken in conjunction with Article 8.

B. The parties' submissions

54. The applicants submitted that their complaint under Article 1 of Protocol No. 1 had two limbs. Firstly, they claimed that the imposition of a residence condition on the right to receive uprated pension payments involved a deprivation or interference with the right to an uprated pension. Secondly, they complained that, without uprating, the year-on-year

reduction in the value of the pension eroded the possession it represented. They claimed that the Chamber had been wrong to declare the complaint under Article 1 of Protocol No. 1 inadmissible. Moreover, they claimed that the Chamber had addressed only the first limb of this complaint.

55. The applicants accepted that, among them, only Ms Carson had brought domestic proceedings. However, they reasoned that once the House of Lords had found against her, there would have been no purpose in the other applicants attempting to pursue a domestic remedy. While it was true that the complaint under Article 14 taken in conjunction with Article 8 had not been raised in the national proceedings, the applicants should nonetheless be permitted to pursue it before the Court, since the Government had not previously challenged it on grounds of non-exhaustion and since the applicants were elderly and should not be required to wait any longer for a conclusion.

56. The Government submitted, firstly, that the application should be declared inadmissible for non-exhaustion as far as it related to the twelve applicants other than Ms Carson, since they had not brought any domestic proceedings. Secondly, they contended that in any event the complaint under Article 14 taken in conjunction with Article 8 should be declared inadmissible for non-exhaustion since it had never been raised before the domestic courts.

C. The Court's assessment

57. With regard, firstly, to the question under Article 1 of Protocol No. 1 taken alone, the Court considers that what the applicants refer to as the second limb of their complaint amounts to no more than a restatement of the first limb. There is no right under national law for a resident of a country which has not concluded a reciprocal agreement with the United Kingdom to have his pension increased annually in line with inflation in the United Kingdom. The Chamber's decision to declare the complaint under Article 1 of Protocol No. 1 taken alone inadmissible was a final decision and this part of the application is not, therefore, before the Grand Chamber (see *K. and T. v. Finland* [GC], no. 25702/94, § 141, ECHR 2001-VII, and *Šilih v. Slovenia* [GC], no. 71463/01, §§ 119-21, 9 April 2009).

58. As regards the Government's preliminary objections, the Court considers that it would be wrong to declare the complaint under Article 1 of Protocol No. 1 inadmissible as regards the twelve applicants who did not bring domestic proceedings. Once Ms Carson's case had been rejected by the House of Lords, these applicants would have had no prospect of success before the domestic courts.

59. However, it considers that the complaint under Article 14 taken in conjunction with Article 8 should be declared inadmissible. The applicants do not contend that the available domestic remedies would not have been

effective and Ms Carson pursued her complaints under Article 14 of the Convention and Article 1 of Protocol No. 1 through three tiers of the domestic courts, which gave considered and detailed judgments. In contrast, the issues arising under Article 14 taken in conjunction with Article 8 have never been raised before the domestic courts.

60. In conclusion, therefore, the Court rejects the Government's preliminary objection as to the admissibility of the complaints of the applicants other than Ms Carson. It accepts the Government's objection, however, as regards the applicants' complaint under Article 14 taken in conjunction with Article 8, which it declares inadmissible.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

A. The Court's general approach

61. The Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, § 56, Series A no. 23). Moreover, 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 (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV, and *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008). Such a difference in 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 (see *Burden*, cited above, § 60). 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 *Stec and Others v. the United Kingdom* [GC], no. 65731/01 and 65900/01, § 52, ECHR 2006-VI).

62. The Court observes at the outset that, as with all complaints of alleged discrimination in a welfare or pensions system, it is concerned with the compatibility with Article 14 of the system, not with the individual facts or circumstances of the particular applicants or of others who are or might be affected by the legislation (see, for example, *Stec and Others*, cited above, §§ 50-67; *Burden*, cited above, §§ 58-66; and *Andrejeva v. Latvia* [GC], no. 55707/00, §§ 74-92, ECHR 2009). Much is made in the applicants' submissions and in those of the third-party intervener of the extreme financial hardship which may result from the policy not to uprate pensions and of the effect that this might have on the ability of certain persons to join their families abroad. However, the Court is not in a position to make an assessment of the effects, if any, on the many thousands in the same position as the applicants and nor should it try to do so. Any welfare system, to be workable, may have to use broad categorisations to distinguish between different groups in need (see *Runkee and White v. the United Kingdom*, nos. 42949/98 and 53134/99, § 39, 10 May 2007). As in the cases cited above, the Court's role is to determine the question of principle, namely whether the legislation as such unlawfully discriminates between persons who are in an analogous situation.

B. Whether the facts underlying the complaint fall within the scope of Article 1 of Protocol No. 1

63. The Court notes 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 *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 39, ECHR 2005-X, and *Andrejeva*, cited above, § 74).

64. The Chamber found that although there was no obligation on a State under Article 1 of Protocol No. 1 to create a welfare or pension scheme, if a State did 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 had to be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1

for persons satisfying its requirements (see the decision in *Stec and Others*, cited above, § 54). In the present case, therefore, the facts fell within the scope of Article 1 of Protocol No. 1.

65. The Grand Chamber agrees with this finding, which is not, moreover, disputed by the Government.

C. Whether "country of residence" falls within the phrase "or other status" in Article 14

1. The Chamber's conclusions

66. The Chamber held that, in the circumstances of the case, ordinary residence, like domicile and nationality, was to be seen as an aspect of personal status and that place of residence, applied as a criterion for the differential treatment of citizens in the granting of State pensions, was a ground falling within the scope of Article 14.

2. The parties' submissions

67. The applicants submitted that the Chamber's conclusion on this point was manifestly correct, for the reasons it gave. Its treatment of residence as an aspect of personal status was also consistent with the approach of "other pre-eminent constitutional courts", such as the Supreme Court of Canada, which, in *Godbout v. Longueuil (City)* [1997] SCR 844, characterised an individual's choice of place of residence as a "quintessentially private decision going to the very heart of personal or individual autonomy". The applicants further submitted that it was artificial and inaccurate to treat an individual's country of residence as a matter of free choice, since it might be driven by the need or desire to be close to family members.

68. Before the domestic courts, the Government conceded that Ms Carson's foreign residence was a ground protected under Article 14 as falling within the phrase "or other status" (see paragraphs 28 and 30 above). In their observations before the Court, however, the Government contended that place of residence was not within the concept of "other status", since it was a matter of choice, rather than an inherent personal characteristic or deeply held conviction or belief.

69. The third-party interveners, Age Concern and Help the Aged, emphasised the importance of family support in old age and referred to research indicating that the existence of family ties outside the United Kingdom could be an important factor in the decision to emigrate.

3. The Court's assessment

70. The Grand Chamber agrees with the Chamber's conclusions on this issue. It has established in its case-law that only differences in treatment based on a personal characteristic (or "status") by which persons or groups of persons are distinguishable from each other are capable of amounting to discrimination within the meaning of Article 14 (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 56). However, the list set out in Article 14 is illustrative and not exhaustive, as is shown by the words "any ground such as" (in French *notamment*) (see *Engel and Others v. the Netherlands*, 8 June 1976, § 72, Series A no. 22). It further notes that the words "other status" (and *a fortiori* the French equivalent *toute autre situation*) have been given a wide meaning so as to include, in certain circumstances, a distinction drawn on the basis of a place of residence. Thus, in previous cases the Court has examined under Article 14 the legitimacy of alleged discrimination based, *inter alia*, on domicile abroad (see *Johnston and Others v. Ireland*, 18 December 1986, §§ 59-61, Series A no. 112) and registration as a resident (see *Darby v. Sweden*, 23 October 1990, §§ 31-34, Series A no. 187). In addition, the Commission examined complaints about discrepancies in the law applying in different areas of a single Contracting State (see *Lindsay and Others v. the United Kingdom*, no. 8364/78, Commission decision of 8 March 1979, Decisions and Reports 15, p. 247, and *Gudmundsson v. Iceland*, no. 23285/94, Commission decision of 17 January 1996, unreported). It is true that regional differences of treatment, resulting from the application of different legislation depending on the geographical location of an applicant, have been held not to be explained in terms of personal characteristics (see, for example, *Magee v. the United Kingdom*, no. 28135/95, § 50, ECHR 2000-VI). However, as also pointed out by Stanley Burnton J (see paragraphs 26-28 above), these cases are not comparable to the present case, which involves the different application of the same pensions legislation to persons depending on their residence and presence abroad.

71. In conclusion, the Court considers that place of residence constitutes an aspect of personal status for the purposes of Article 14.

D. Whether the applicants are in a relevantly similar position to pensioners receiving uprating

1. The Chamber's conclusions

72. The Chamber held that, given that the United Kingdom's social security and pension system was primarily designed to provide a minimum standard of living for those resident within its territory, the applicants were not in a relevantly similar position to British pensioners who decided to

remain in the country. It was "hesitant" to find an analogy between the positions of pensioners, such as the applicants, who did not receive uprating and pensioners resident in countries which had concluded bilateral agreements with the United Kingdom providing for uprating. In this connection, it noted that NICs were only one part of the United Kingdom's complex system of taxation and that the National Insurance Fund was one of a number of sources of revenue used to pay for the social security and National Health systems. It did not therefore consider the applicants' payment of NICs during their working lives in the United Kingdom to be of any more significance than the fact that they might have paid income tax or other taxes while domiciled there. Moreover, even between States in close geographical proximity, such as the United States of America and Canada, South Africa and Mauritius, or Jamaica and Trinidad and Tobago, differences in social security provision, taxation, rates of inflation, interest and currency exchange made it difficult to compare the respective positions of residents.

2. The parties' submissions

(a) The applicants

73. The applicants contended that they were in a relevantly similar position to United Kingdom pensioners with the same employment and National Insurance records but now living either in the United Kingdom or in countries party to a reciprocal agreement providing for uprating.

74. They adopted the dissenting views expressed by Lord Carswell in the House of Lords and Judge Garlicki in the Chamber and argued that pensioners in each group would have spent a significant part of their working lives in the United Kingdom; all would have made the same NICs for the purpose of obtaining the basic State pension; all would have become entitled to the same amount of basic State pension at pensionable age. The State pension was a true contributory, or earned, benefit in that the level of entitlement was directly related to the number of years over which contributions are made. The United Kingdom authorities had themselves chosen to make the State pension, unlike other welfare benefits, payable to individuals resident abroad.

75. Moreover, regardless of the country of residence, all pensioners would have an identical interest in maintaining their standard of living beyond retirement. There was no evidence of any differences in the social and economic conditions applying in the countries where uprating was paid and those where it was not, nor any evidence that the United Kingdom based its approach on the existence of such differences.

76. It would be wrong to place too great an emphasis on the provisions of the 1952 ILO Convention or the 1964 European Code of Social Security (see paragraph 49 above). Both instruments focused on social security

systems in general, rather than on contributory pensions in particular; there was no suggestion that either instrument authorised the suspension of some benefits to some individuals resident abroad, but not to others and there was no evidence that the United Kingdom's approach had been informed by either instrument.

77. Under national law, the existence of a reciprocal agreement was not a requirement for the provision of uprated pensions. The existing pattern of reciprocal agreements was arbitrary and seeking to define the class of comparators by reference to their residence in a country with which the United Kingdom had entered into a reciprocal agreement was circular and amounted to no more than a restatement of the differential treatment complained of.

78. Finally, the applicants submitted that no weight should be given to the concession made by Ms Carson's counsel in the domestic proceedings (that Article 14 would not be breached if the State pension was payable only to United Kingdom residents: see paragraph 35 above). As her counsel had also pointed out later in the same hearing, the fact was that the United Kingdom had decided to adopt a scheme whereby it paid a pension to expatriates in recognition of their contributions and, having adopted such a system, it was irrational not to pay the same amount to everyone. In any event, the concession had been made on behalf of Ms Carson but not the other applicants and had been expressly withdrawn for the purposes of the application before the Court.

(b) The Government

79. The Government adopted the reasoning and conclusions of the domestic courts and the Chamber. The applicants could not claim to be in an analogous situation to United Kingdom residents. Most national systems of social security and taxation were tailored to the particular country and intended to be national in character, as was recognised by international law. In the United Kingdom, social security benefits, including the State pension, were part of an interlocking system of taxation and social welfare intended to ensure minimum standards of living for those who lived in the country. It was no doubt in recognition of the national character of social security schemes that Ms Carson's counsel agreed in the course of the domestic proceedings that she could have no complaint if the Government had paid no pensions whatever to people who had gone to live abroad (see paragraph 35 above).

80. Moreover, even if it could be assumed that inflation was common to all States, it would be artificial to isolate the single factor of inflation from other factors, such as different rates of growth and fluctuations in exchange rates. It would be practically impossible, or at least extraordinarily onerous, to require the State authorities to conduct a cost-of-living/value-based comparison between people living in the United Kingdom and those living

in different foreign countries and if a decision were made to pay something to those living abroad, it could not be a finely calibrated amount based on analysis of the cost of living and value of sterling in each country.

81. Focusing simply on the NICs paid by the applicants involved a misleading oversimplification. Contributions required to be made by earners, employers and others to the National Insurance Fund could not properly be equated with or compared to contributions made to a private pension scheme. The National Insurance scheme was a social-insurance scheme, based on a universal pooling of resources. Contribution liability was related to a person's ability to pay rather than to expectation of future entitlement. Not all contributory benefits were payable to non-residents.

82. The Government further contended that the applicants were not in a position analogous to pensioners living in States with which the United Kingdom had entered into reciprocal arrangements. The differences with this comparator group were founded, as the domestic courts at each level recognised, on the fact of reciprocal arrangements either being or not being in place with the relevant foreign State. Those arrangements were concluded in each case on the basis of judgments as to whether the proposed package of arrangements represented an acceptable, advantageous position for the United Kingdom. The applicants' argument necessarily involved the proposition that if a bilateral treaty in the social security sphere were entered into and conferred advantages on some people in relation to one or more aspects of social security, those advantages would necessarily have to be conferred on all others, living in all countries. The result would effectively negate the power to enter into bilateral treaties of this kind.

3. The Court's assessment

83. As noted in paragraph 61 above, the Court has established in its case-law that, in order for an issue to arise under Article 14, the first condition is that there must be a difference in the treatment of persons in relevantly similar situations.

84. The applicants' principal argument in support of their claim to be in a relevantly similar situation to pensioners who receive uprating is that they also have worked in the United Kingdom and paid compulsory contributions to the National Insurance Fund. However, in common with the national courts and the Chamber, the Grand Chamber considers that the applicants' argument misconceives the relationship between NICs and the State pension. Unlike private pension schemes, where premiums are paid into a specific fund and where those premiums are directly linked to the expected benefit returns, NICs have no exclusive link to retirement pensions. Instead, they form a source of part of the revenue which pays for a whole range of social security benefits, including incapacity benefits, maternity allowances, widow's benefits, bereavement benefits and the National Health Service. Where necessary, the National Insurance Fund can

be topped-up with money derived from the ordinary taxation of those resident in the United Kingdom, including pensioners (see paragraph 38 above). The variety of funding methods of welfare benefits and the interlocking nature of the benefits and taxation systems have already been recognised by the Court (see the decision in *Stec and Others*, cited above, § 50). This complex and interlocking system makes it impossible to isolate the payment of NICs as a sufficient ground for equating the position of pensioners who receive uprating and those, like the applicants, who do not. As Lord Hoffmann observed (see paragraph 35 above):

> "... from the point of view of the citizens who contribute, National Insurance contributions are little different from general taxation which disappears into the communal pot of the consolidated fund. The difference is only a matter of public accounting."

85. The Court does not, therefore, consider that the payment of NICs is alone sufficient to place the applicants in a relevantly similar position to all other pensioners, regardless of their country of residence. Moreover, in relation to the comparison with pensioners living in the United Kingdom, it cannot be ignored that social security benefits, including State pensions, are part of a system of social welfare which exist to ensure certain minimum standards of living for residents of the United Kingdom. The duty imposed on the Secretary of State in the Social Security Administration Act 1992 to review the sums specified for the various benefits covered by the Act, including the State pension, is to determine "whether they have retained their value in relation to the general level of prices obtaining in Great Britain" (see paragraph 41 above). The scheme of the primary legislation is, as the Court of Appeal said, "entirely geared to the impact on the pension of price inflation in the United Kingdom" (see paragraph 30 above). The essentially national character of the social security system is itself recognised in the relevant international instruments, the 1952 ILO Convention and the 1964 European Code of Social Security, which empower the suspension of benefits to which a person would otherwise be entitled for as long as the person concerned is absent from the territory of the State concerned (see paragraph 49 above).

86. Given that the pension system is, therefore, primarily designed to serve the needs of those resident in the United Kingdom, it is hard to draw any genuine comparison with the position of pensioners living elsewhere, because of the range of economic and social variables which apply from country to country. Thus, the value of the pension may be affected by any one or a combination of differences in, for example, rates of inflation, comparative costs of living, interest rates, rates of economic growth, exchange rates between the local currency and sterling (in which the pension is universally paid), social security arrangements and taxation systems. As the Court of Appeal noted, it is inescapable that the grant of the uprate to all pensioners, wherever they might have chosen to live, would

have random effects (see paragraph 30 above). Furthermore, as noted by the domestic courts, as non-residents the applicants do not contribute to the United Kingdom's economy; in particular, they pay no United Kingdom tax to offset the cost of any increase in the pension (see, for example, paragraph 35 above).

87. Nor does the Court consider that the applicants are in a relevantly similar position to pensioners living in countries with which the United Kingdom has concluded a bilateral agreement providing for uprating. Those living in reciprocal agreement countries are treated differently from those living elsewhere because an agreement has been entered into; and an agreement has been entered into because the United Kingdom considered it to be in its interests.

88. States clearly have a right under international law to conclude bilateral social security treaties and indeed this is the preferred method used by the member States of the Council of Europe to secure reciprocity of welfare benefits (see paragraphs 50-51 above). Such treaties are entered into on the basis of judgments by both parties as to their respective interests and may depend on various factors, among them the numbers of people moving from one country to the other, the benefits available under the other country's welfare scheme, how far reciprocity is possible and the extent to which the advantages to be gained by an agreement outweigh the additional expenditure likely to be incurred by each State in negotiating and implementing it (see paragraph 44 above). Where an agreement is in place, the flow of funds may differ depending on the level of each country's benefits and the number of people going in each direction. It is the inevitable result of such a process that different conditions apply in each country depending on whether or not a treaty has been concluded and on what terms.

89. The Court agrees with Lord Hoffmann that it would be extraordinary if the fact of entering into bilateral arrangements in the social security sphere had the consequence of creating an obligation to confer the same advantages on all others living in all other countries. Such a conclusion would effectively undermine the right of States to enter into reciprocal agreements and their interest in so doing.

90. In summary, therefore, the Court does not consider that the applicants, who live outside the United Kingdom in countries which are not party to reciprocal social security agreements with the United Kingdom providing for pension uprating, are in a relevantly similar position to residents of the United Kingdom or of countries which are party to such agreements. It follows that there has been no discrimination and, therefore, no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint under Article 14 of the Convention taken in conjunction with Article 8 inadmissible;

2. *Rejects* unanimously the Government's preliminary objection concerning the admissibility of the complaints of the applicants other than Ms Carson;

3. *Holds* by eleven votes to six that there has been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 16 March 2010.

Vincent Berger	Jean-Paul Costa
Jurisconsult	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinion of Judges Tulkens, Vajić, Spielmann, Jaeger, Jočienė and López Guerra is annexed to this judgment.

J.-P.C.
V.B.

JOINT DISSENTING OPINION OF JUDGES TULKENS, VAJIĆ, SPIELMANN, JAEGER, JOČIENĖ AND LÓPEZ GUERRA

1. We are unable to find that there has been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

2. Article 14 of the Convention provides that the enjoyment of the rights and freedoms set forth in the Convention are to be secured without discrimination. As the judgment rightly notes, only differences in treatment based on a personal characteristic (or "status") by which persons or groups are distinguishable from each other are capable of amounting to discrimination within the meaning of Article 14. In conformity with previous case-law, the judgment rightly confirms that place of residence constitutes an aspect of personal status (see paragraphs 70 to 71 of the judgment).

3. The applicants are in a relevantly similar situation, the only difference being their place of residence, which, as identified by the British authorities, is a personal characteristic distinguishing them from all other pensioners.

4. The majority consider that there has been no violation of Article 14 of the Convention because the two groups (pensioners residing in the United Kingdom and pensioners residing abroad) are not in relevantly similar positions (see paragraph 85 of the judgment), so that a difference in treatment could be accepted. A genuine comparison (see paragraph 86 of the judgment) would not hold water in the majority's view because of the range of economic and social variables which apply from country to country (ibid.).

5. For us, to begin with, it seems difficult to identify "residence" – quite rightly – as one of the prohibited grounds under Article 14 while at the same time using this characteristic as the main reason for distinguishing between the two groups of pensioners. The majority approach therefore seems self-contradictory and inconsistent with the spirit of this provision.

6. Moreover, the conclusion of the majority is very difficult to accept because all the members of both groups in the comparison (pensioners residing in and outside the United Kingdom) share a wide range of identical characteristics. All of them are members of, and have contributed to, the National Insurance system, according to the rates fixed by law, which are general and binding in nature. All of them have been awarded pensions according to the same general rules, including common rules determining the number of years of contributions required to accrue pension rights, the length of the period to be taken into account in each case, and the amount of the initial pension to which they are entitled according to these general rules. All of them (whether they reside in the United Kingdom or not) have therefore been included, under the same conditions, in a system whose goal is to guarantee that when reaching retirement age they will have an income

based on the number of years they have contributed to the pension system, and on the amount of those contributions.

7. The majority maintain that the fact that both groups have made equal contributions to the National Insurance system does not place them in an equal position, and constitutes an insufficient ground to equate the position of those who receive uprated pensions with the position of those (such as the applicants) who do not. The majority are correct in stating that the funds for the payment of pensions derive from many sources, and not only from the (previous) contributions of current pensioners. But the sources of the funds to pay National Insurance pensions are not relevant in this case. Whatever these sources may be at any given time, the undisputed fact is that all members included in the system who have made contributions to it were equally subject to identical general rules concerning the amount of those contributions, the way in which they were paid, and the conditions required to establish the initial pension. In other words, the right to a pension and the right to be treated equally when receiving a pension derive, for all pensioners, from having complied with the general conditions and rules of the system established on an equal basis for all its members, and do not derive from the material sources from which pensions are paid at any given time.

8. Another very relevant characteristic is common to all the members of both groups: the initial value of their pensions, in real terms, is subject to a continuous loss of purchasing power, owing to the universal and undeniable phenomenon of currency depreciation (in this case, of the United Kingdom currency). The rate of depreciation may vary from year to year, but it is (and this was not denied by the parties to the case) a common and accepted fact.

9. A formula to compensate for depreciation is calculated in the pensions received by pensioners residing in the United Kingdom, so that the initial value of their pensions remains unaffected by inflation. No such formula is applied to non-resident pensioners, so that the progressive depreciation of their pensions is not compensated in any way. The nominal monetary value of the initial pension remains the same, no matter the rate of inflation and the corresponding depreciation of sterling. The consequences of this depreciation are very considerable. In the case of the first applicant, Ms Carson, residing in South Africa, over the first five years (2000-05) the lack of uprating resulted in a loss of 28% of her weekly pension, in comparison with someone in the same circumstances residing in the United Kingdom. Of course, the comparative loss increased further with time.

10. Given the characteristics shared by both groups of contributors to the pension system, no relevant differences can be found to justify such a radical and unfavourable difference in their treatment, and the Government do not provide convincing reasons in this regard. The fact of residing in another country cannot be considered sufficient justification. As indicated

above, such an argument would be inconsistent with the spirit of Article 14 of the Convention.

11. The pension system of the United Kingdom is logically designed to take into account the needs of those residing in the United Kingdom, which is presumably the case of the vast majority of pensioners. But that is no justification for subjecting pensioners who choose not to live in the United Kingdom to extremely unfavourable and unequal treatment in comparison with those who do. There will of course always be differences in depreciation rates for pensioners residing in other countries, depending on exchange rates, the comparative cost of living and other factors. But these factors do not preclude the accepted fact that, at least based on the experience of a century, the depreciation of United Kingdom currency is undeniable and unavoidable, and in the space of a few years such depreciation results in an irreparable deterioration in the real value of pensions paid to persons not residing in the United Kingdom. Therefore, the complete denial (as is the case) of any formula for uprating pensions of pensioners not resident in the United Kingdom (whether or not the above-mentioned factors are taken into account) represents a disproportionate difference in treatment for which there is no convincing justification.

12. In a world of computers, the alleged complexity of such a formula for uprating the pensions of non-United Kingdom pensioners can hardly be regarded as a justification. Nor is it any justification that non-residents are not beneficiaries of the United Kingdom health system, since if anything, this fact further increases their unfavourable position *vis-à-vis* pensioners residing in the United Kingdom. Finally, while it is true that non-residents do not pay taxes in the United Kingdom, it is equally true that they do not receive the services paid for with those taxes, and, in any case, this could be remedied within the terms of an appropriate uprating formula.