

Press release issued by the Registrar  
Grand Chamber judgment<sup>1</sup>

[Carson and others v. the United Kingdom](#) (application no. 42184/05)

**UK AUTHORITIES' REFUSAL TO INDEX-LINK PENSIONS OF FORMER BRITISH RESIDENTS NOT  
DISCRIMINATORY**

***No Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights***

**Principal facts**

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

In 2002, Ms Carson brought proceedings by way of judicial review in the United Kingdom 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.

With the exception of one dissenting judge in the House of Lords, all the judges who examined Ms Carson's complaint in the British courts 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 or that, in the alternative, the difference in treatment was reasonably and objectively justified. 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.

**Complaints, procedure and composition of the Court**

The applicants alleged, in particular, that the United Kingdom authorities' refusal to up-rate their pensions in line with inflation had been discriminatory and that some of them had 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 European Convention on Human Rights.

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

4 November 2008, 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 Convention and that it was not necessary to examine the complaint under Article 8 taken in conjunction with Article 14.

On 6 April 2009 the case was referred to the Grand Chamber at the applicants' request. A public hearing was held at the Human Rights Building, Strasbourg, on 2 September 2009. Third party comments were received from Age Concern and Help the Aged.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (France), **President**,  
 Christos **Rozakis** (Greece),  
 Nicolas **Bratza** (the United Kingdom),  
 Peer **Lorenzen** (Denmark),  
 Françoise **Tulkens** (Belgium),  
 Josep **Casadevall** (Andorra),  
 Karel **Jungwiert** (the Czech Republic)  
 Nina **Vajić** (Croatia),  
 Dean **Spielmann** (Luxembourg),  
 Renate **Jaeger** (Germany),  
 Danutė **Jočienė** (Lithuania),  
 Ineta **Ziemele** (Latvia),  
 Isabelle **Berro-Lefèvre** (Monaco),  
 Päivi **Hirvelä** (Finland),  
 Luis **López Guerra** (Spain),  
 Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),  
 Zdravka **Kalaydjieva** (Bulgaria), **judges**,

and also Vincent **Berger**, **Jurisconsult**.

### **Decision of the Court**

The applicants' complaint under Article 14 taken in conjunction with Article 8 was declared inadmissible as it had never been raised before the domestic courts.

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

In order for an issue to arise under Article 14, there had to be a difference in the treatment of persons in relevantly similar situations.

The Court did not consider that it sufficed for the applicants to have paid National Insurance contributions in the United Kingdom to place them in a relevantly similar position to all other pensioners, regardless of their country of residence. Claiming the contrary would be based on a misconception of the relationship between National Insurance contributions and the State pension. Unlike private pension schemes, National Insurance contributions had no exclusive link to retirement pensions. Instead, they formed a part of the revenue which paid for a whole range of social security benefits, including incapacity benefits, maternity allowances, widow's benefits, bereavement benefits and the National Health Service. The complex and interlocking system of the benefits and taxation systems made it impossible to isolate the payment of National Insurance contributions as a sufficient ground for equating the position of pensioners who received up-rating and those, like the applicants, who did not.

Moreover, the pension system was primarily designed to serve the needs of and ensure certain minimum standards for those resident in the United Kingdom. Indeed, the essentially national character of the social security system was recognised both at domestic (in the Social Security Administration Act 1992) and international (the 1952 International Labour Organisation's Social Security Convention and the 1964 European Code of Social Security) level.

Bearing that in mind, it was hard to draw any genuine comparison with the position of pensioners living elsewhere, because of the range of economic and social variables which applied from country to country. The value of the pension could 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. Furthermore, as noted by the domestic courts, as non-residents the applicants did not contribute to the United Kingdom's economy; in particular, they paid no United Kingdom tax to offset the cost of any increase in the pension.

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

In that connection, States clearly had a right under international law to conclude bilateral social security treaties and indeed this was the preferred method used by the Member States of the Council of Europe to secure reciprocity of welfare benefits. If entering into bilateral arrangements in the social security sphere obliged a State to confer the same advantages on all those living in all other countries, the right of States to enter into reciprocal agreements and their interest in so doing would effectively be undermined.

In summary, the Court did 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 up-rating, were in a relevantly similar position to residents of the United Kingdom or of countries which were party to such agreements. It therefore held, by eleven votes to six, that there had been no discrimination and no violation of Article 14 taken in conjunction with Article 1 of Protocol No.1.

Judges Tulkens, Vajić, Spielmann, Jaeger, Jočienė and López Guerra expressed a joint dissenting opinion which is annexed to the judgment.

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The judgment is available in English and French. This press release is a document produced by the Registry. It does not bind the Court. Further information about the Court is available on its website (<http://www.echr.coe.int>).

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***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.

<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

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