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

FOURTH SECTION

CASE OF RUNKEE and WHITE v. THE UNITED KINGDOM

(Applications nos. 42949/98 and 53134/99)

JUDGMENT

STRASBOURG

10 May 2007

FINAL

25/07/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the cases of Runkee v. the United Kingdom and White v. the United Kingdom,

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

Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr K. TRAJA,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,

and Mr T. L. EARLY, *Section Registrar*,

Having deliberated in private on 12 April 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The cases originated in two applications (nos. 42949/98 and 53134/99) 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") by two British nationals, Mr George Runkee and Mr Brian White ("the first and second applicants"), on 20 July 1998 and 4 October 1999 respectively.

2. The United Kingdom Government ("the Government") were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office, London. The applicants were represented by Mr S. Right, Legal Officer of the Child Poverty Action Group.

3. The applicants complained that, as men, they were not entitled to receive widows' benefits, including Widow's Pension, equivalent to those available to comparable bereaved women.

4. By decisions dated 7 June 2001 and 4 April 2002, respectively, the Court declared the applications admissible. On 9 September 2003 the applications were adjourned pending the conclusion of related domestic proceedings (see paragraphs 22-24 below). On 18 May 2005 the Court invited the parties to submit observations on the merits.

5. The Government and the applicants requested a hearing on the merits, but the Court decided that it would not be necessary.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

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

A. Mr Runkee

7. Mr Runkee was born in 1938 and lives in Hull.

8. He married in 1964. He and his wife had three children, born in 1965, 1966 and 1974. On 15 March 1998 his wife died. She had worked full time for eight years until becoming pregnant and had made full social security contributions.

9. The applicant notified the Benefits Agency of his wife's death and of his intention to claim “widowers' benefits” on 31 March 1998. By a letter dated 16 April 1998, the Benefits Agency informed the applicant that because he was not a woman he was not entitled to widow's benefits. The applicant lodged a statutory appeal against this decision on 1 May 1998, but abandoned it when advised that the appeal was bound to fail.

10. At the time of his application to the Court, Mr Runkee was in receipt of means-tested statutory benefits, including Income Support and Housing and Council Tax Benefits. Were he a woman, his entitlement to Widow's Pension would have been offset against these benefits, to the extent that, in his present circumstances, he would have received no additional money in respect of Widow's Pension.

B. Mr White

11. Mr White is a United Kingdom national, born in 1942 and living in Warrington.

12. He married in 1960. He and his wife had two children, one of whom was adopted and born in 1955, the other of whom was born in 1968.

13. On 8 March 1999 his wife died. She had worked until the birth of her son in 1968 and had made reduced social security contributions.

14. The applicant notified the Benefits Agency of his wife's death and of his intention to claim “widowers' benefits” on 10 March 1999. On 21 June and 8 September 1999, Angela Eagle, a Minister from the Department of Social Security, wrote to the applicant's Member of Parliament confirming that as a man he was not entitled to claim widows' benefits.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Widow's Pensions 1925-2001

15. The following history of the Widow's Pension ("WP") is taken from Lord Hoffmann's speech in *R. v. Secretary of State for Work and Pensions* ex parte *Hooper and Others* [2005] UKHL 29, paragraphs 18-30:

> "[WP was] first introduced by the Widows', Orphans' and Old Age Contributory Pension Act 1925. The Act provided a pension of 10 shillings a week to any widow whose husband had paid sufficient contributions. There was no age qualification or time limit on payment. Widows were as such entitled to support. But during the Second World War, large numbers of women worked in the armed forces or civilian employment, replacing men on active service. Public attitudes to widowhood changed. Sir William Beveridge said in his 1942 Report on Social Insurance and Allied Services (Cmd 6404, paragraph 153) that there was no reason why a childless widow should get a pension for life. If she was able to work she should do so. He recommended that all widows should be paid a 13 week transitional allowance to help them adjust to their new circumstances but that longer term pensions should be confined to widows with dependent children. The Government did not accept this advice in full. It considered that an older widow, who had in accordance with convention stayed at home during a long marriage to look after husband and children, would often be severely disadvantaged if she was required to earn her own living. The National Insurance Act 1946 therefore not only gave effect to Beveridge's recommendations by introducing [Widowed Mother's Allowance: 'WMA'] and a widow's allowance for 13 weeks after bereavement but also provided WP for widows who were over 50 at the date of the husband's death or who ceased to qualify for WMA when they were over 40.
>
> The secular trend in the position of women in employment over the next half century reinforced Beveridge's view that being a widow should not, as such, entitle one to a pension. More and more women entered the labour market. But the trend was a slow one and crude comparisons of the numbers of economically active men and women are misleading. Far more women than men worked part-time and the great majority of women were (and remain) unable to escape from the traditional low-paid activities of cooking, caring and cleaning. So the trend to equality was counteracted by political pressure from groups representing widows who claimed that, as the United Kingdom became more prosperous, benefits for widows should be increased rather than reduced. The policies pursued by successive governments were therefore not entirely consistent. The Family Allowances and National Insurance Act 1956 raised to 50 the age at which a woman could claim WP after ceasing to be entitled to WMA. On the other hand, the National Insurance (Old persons' and widows' pensions and attendance allowance) Act 1970 reduced to 40 the age at which WP would be payable (at a reduced rate), whether as a result of bereavement or the cessation of WMA.
>
> In 1985 the government published a Green Paper on Social Security Reform which pointed out (in paragraph 10.9) that the current system of benefits dated from days when far fewer married women worked:

> 'Today two thirds of all married women with children over school age, and over a half of widows between 40 and 60, go to work. The present pattern of benefits nonetheless provides support without regard to widows' other income, in many cases long after they have ceased to be responsible for bringing up children. The Government's view is that it is right to give greater emphasis to providing for widows of working age who have children to support, and for older widows less able to establish themselves in work.'

Despite this acknowledgement of changes in social conditions, the Social Security Act 1986 made relatively modest adjustments to the system. The 26 week transitional widow's allowance was abolished and the lump sum [Widow's Payment: 'WPt'] of £1,000 substituted. The age at which WP became payable, whether on bereavement or cessation of WMA, was raised to 45 and entitlement to the full rate postponed until 55. These provisions were subsequently consolidated in the 1992 Act.

The 1986 changes were opposed by a strong lobby on behalf of widows. But no one suggested in the course of the Parliamentary debates that WP should be extended to men. It is true that Cruse, a non-governmental organisation for 'the widowed and their children', which had taken widowers on board in 1980, said in their 1986-87 annual report:

> 'We ... continued to press for a widower's pension, based on his wife's national insurance contributions, and for an allowance to be paid to widowed fathers.'

But this pressure does not appear to have persuaded anyone to raise the question of WP for widowers in Parliament. The first serious suggestion that widowers should in principle be paid the same benefits as widows came from the European Commission. There had been a Council Directive 79/7/EEC in 1978 on 'the progressive implementation of the principle of equal treatment for men and women in matters of social security' which expressly excluded survivors' benefits. In 1987 the Commission produced a proposal for a new Directive (Com (87) 494 Final). It drew attention in an explanatory memorandum to a statement of the Court of Justice in *Razzouk and Beydoun v Commission of the European Communities* (Cases 75/82 and 117/82), [1984] ECR 1509, 1530, para 16 (a case concerning survivors' pensions under the Community's own Staff Regulations) that the principle of equal treatment of men and women 'forms part of the fundamental rights the observance of which the court has a duty to ensure.' Article 4 of the draft Directive provided that there should be no discrimination on grounds of sex in the payment of survivorship benefits:

> 'and to this end:
>
> (a) either the recognition on the same terms for widowers of entitlement to the pensions and other benefits provided for widows;
>
> (b) or the replacement of widows' benefits by the creation or extension of a system of individual rights open to all surviving spouses regardless of sex.'

The House of Lords Select Committee on the European Communities (Sub-Committee C) held an inquiry into the proposal in 1989. Miss Joan C. Brown, a writer on social security matters, said in evidence to the Committee that there was no case

for paying older widowers the same pensions as older widows. The only way to produce equality was to level down. But hasty action would cause real hardship to large numbers of older widows who had chosen many years earlier to follow the conventional path of staying home to look after husband and children:

> 'the effect of earlier social patterns on women still have to be worked through. This suggests the need to phase out the older widow's pension over a long period—in the order of 10-15 years. Without this, there would be a serious risk of poverty among older widows who had followed the social norms of their day and now find themselves at a severe disadvantage in a changed world as a result.'

The Select Committee accepted Miss Brown's evidence and reported (Session 1988-89, 10th Report, HL Paper 51):

> 'In the United Kingdom...there might be reluctance to reproduce for widowers the pension a childless widow can receive under the national insurance scheme, irrespective of her earnings, if she is aged 45 or more when her husband dies. This is in recognition of the difficulty the widow may find in re-establishing herself in the labour market—whereas a widower's earning ability would not ordinarily be prejudiced in this way.
>
> The Committee consider that, despite these difficulties, the concept of equal treatment must require that, eventually, men and women should be provided with survivors' benefits on the same terms. Employment patterns are changing and, if it becomes the norm for married couples to be dependent on the earnings of both partners for most of their working lives, it will make sense for equal survivors' benefits to be available. There is also a need to avoid putting families at a disadvantage if the mother, rather than the father, becomes the principal breadwinner. It would, however, be perverse to deprive widows of benefits they still need in the interests of sex equality. To reduce this danger, a substantial period should be allowed—at least 15 years—before Member States are obliged to equalise survivors' benefits. Community law recognises a principle of 'legitimate expectation' which would support this approach.'

The Government published its response on 4 April 1990 (Cm 1038). It said at para 15:

> 'Within the state social security system the Government do not think there is any merit in introducing a universal state insurance benefit for widowers on a par with those currently provided for widows. To extend the current provisions for widows to widowers would cost about £350 million a year. The available evidence indicates that widowers are more likely to be in full time work than widows, are more likely to have higher earnings than widows and are less likely to have dependent children. As a consequence the Government have made it clear to the Commission that the equalisation of survivors' benefits should be removed from this draft directive entirely.'

In 1991 the Commission withdrew the draft directive pending further consultation with Member States and there has been no further European Union initiative on the question.

> ...[O]ver the next few years the question of paying WMA to widowed fathers was raised on more than one occasion (see, for example, a Private Member's Bill introduced by Mr Hartley Booth MP on 13 April 1994 (Hansard HC Debates (6th Series) vol 241, cols 212-213) and a Written Answer by the Secretary of State for Social Security (Hansard HC Deb (6th Series) vol 255, 1 March 1995, col 621)). No one suggested paying WP to widowers or, unsurprisingly, abolishing WP for widows. Cruse said in evidence in these proceedings that Mr Hartley Booth's decision to confine his Private Member's Bill to WMA was 'tactical' but the need for such tactics suggests that there would have been little support for anything more.
>
> The abolition of WP came as part of a wider reform of survivorship and other social security benefits in the 1999 Act. It was preceded in 1998 by a Consultation Paper which drew attention to the fact that, in 1995, 7 out of 10 married women worked compared with 1 in 8 in 1946. Half of widows under 60 worked and 47% of widows now had income from occupational pension schemes. The Government took the view that widows without dependent children no longer needed long term support. The extension of WP to men was 'not acceptable': it would cost another £250 million a year and would mean giving help to people who were, as a class, unlikely to need it.
>
> But the abolition of WP was strongly opposed by some members of Parliament, partly on the ground that elderly widows were still disadvantaged compared with men or younger widows and partly on the ground that WP was a contributory benefit and that it would be a breach of faith to deny it to the widows of men who had made contributions and arranged their affairs on the assumption that it would be available. An opposition amendment deferring the abolition of WP until 2020 was defeated but the Government agreed that the changes should not come into force until 9 April 2001 and that the rights of women bereaved before that date should be preserved."

B. WP under the Social Security and Benefits Act 1992

16. Under Section 38 of the 1992 Act, a woman who had been widowed was entitled to a WP if her husband satisfied the contribution conditions set out in a Schedule to the Act; and

(i) at the date of her husband's death she was over the age of 45 (40 for deaths occurring before 11 April 1988), but under the age of 65; or

(ii) she ceased to be entitled to a WMA at a time when she was over the age of 45 (40 for deaths occurring before 11 April 1988), but under the age of 65.

17. This benefit was not payable for any period after the widow remarried or in which she and a man to whom she was not married were living together as husband and wife, or for any period in which she was entitled to a WMA.

C. The position from 9 April 2001

18. The Welfare Reform and Pensions Act 1999 ("the 1999 Act") came into force on 9 April 2001. Section 54 introduced the Bereavement Payment which replaced the Widow's Payment. The same conditions applied, except

that the new payment was available to both widows and widowers whose spouse died on or after 9 April 2001. Section 55 introduced the Widowed Parent's Allowance. Identical conditions applied as for Widowed Mother's Allowance, except that the new allowance was available to (i) widows and widowers whose spouse died on or after 9 April 2001 and who were under pensionable age (60 for women and 65 for men) at the time of the spouse's death, and (ii) widowers whose wife died before 9 April 2001, who had not remarried and were still under pensionable age on the that day.

19. Section 55 replaced WP with a Bereavement Allowance for widows and widowers over the age of 45 but under pensionable age at the spouse's death, where no dependent children existed. The deceased spouse had to have satisfied the relevant contribution conditions and died on or after 9 April 2001. The Bereavement Allowance is payable for 52 weeks from the date of bereavement, but is not payable for any period after the survivor reaches pensionable age or remarries or lives with another person as husband and wife, or for any period for which the survivor was entitled to Widowed Parent's Allowance.

20. Widows (but not widowers) whose husbands died before 9 April 2001, and who fulfilled the other conditions of entitlement, continued to be eligible for WP.

D. Other survivors' benefits under the 1992 and 1999 Acts

21. For details of the relevant legislative provisions, see *Hobbs, Richard, Walsh and Geen v. the United Kingdom*, nos. 63684/00, 63475/00, 63484/00 and 63468/00, judgment of 14 November 2006, §§ 29-35 and 38-40.

E. The House of Lords' judgment in *Hooper and Others*

22. On 5 May 2005 the House of Lords delivered a unanimous judgment (cited in paragraph 15 above), in which it found, *inter alia*, that the difference in treatment between men and women as regards WP from 2 October 2000 (when the Human Rights Act 1998 came into force) onwards was objectively justified and involved no breach of Convention rights.

23. Lord Hoffmann, with whom the other Law Lords agreed, observed that WP had, for reasons of administrative economy, never been means-tested, but had been paid to older widows because it was thought that, as a class, they were likely to be disadvantaged because it had been the custom for women to give up work when they got married. The same did not apply to widowers. The question was not, therefore, whether there was justification for not paying WP to men, but rather whether there was justification for not having moved faster in abolishing its payment to women. The history of WP (set out in paragraph 15 above) demonstrated

that the decision to achieve equality between men and women by levelling down survivors' benefits, subject to vested rights, was by no means easy or obvious. It was true that by 2000 the proportion of older women (50-59) who were "economically active" was 65.9% against 72.5% for men. But those figures had to be adjusted to reflect greater part-time working by women (44% as against 9%) and the concentration of women in low-paid occupations. The comparative disadvantage of women in the labour market had by no means disappeared.

24. It was permissible under Article 14 of the Convention for States to treat groups unequally in order to correct "factual inequalities" between them, and the State enjoyed a wide margin of appreciation in determining social and economic policy. Once it was accepted that older widows were historically an economically disadvantaged class which merited special treatment but were gradually becoming less disadvantaged, the question of the precise moment at which such special treatment was no longer justified was a matter of legislative judgment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION AND/OR ARTICLE 1 OF PROTOCOL No. 1

25. Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 8 of the Convention 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."

Article 1 of Protocol No. 1 provides:

> "1. 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.

2. 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."

A. Widow's Pension

1. The parties' arguments

(a) The applicants

26. The applicants argued that their complaints fell within the ambit of both Article 8 and Article 1 of Protocol No. 1, and that Article 14 applied since they had been treated less favourably than women in an analogous situation. The difference in treatment, moreover, lacked objective and reasonable justification.

27. The Court had repeatedly applied a strict test, requiring very weighty reasons to justify sexual discrimination, even in cases concerning inequalities in a welfare system and thus involving issues of social and economic strategy (see, for example, *Van Raalte v. the Netherlands*, judgment of 21 February 1997, *Reports of Judgments and Decisions* 1997-I; *Wessels-Bergervoet v. the Netherlands*, no. 34462/97, ECHR 2002-IV; *Willis v. the United Kingdom*, no. 36042/97, ECHR 2002-IV). It would be retrograde and would seriously weaken the protection given to the fundamental principle of equality of treatment between the sexes were the Court now to adopt an approach allowing a broad margin of appreciation to States which maintain sex discrimination in the operation of their social security systems, and the House of Lords in *Hooper* had been wrong to allow such a broad margin (see paragraphs 22-24 above).

28. Even where the difference in treatment pursued the aim of positive discrimination, it would still be necessary for the State to show that the discriminatory means were reasonably necessary and proportionate to the aim pursued. The existence of "factual inequalities" between the sexes, even if proved, did not without more justify the blanket and unqualified discrimination at issue, where every widower was excluded from entitlement to the pension, and every widow who met the qualifying conditions was entitled, regardless of the individual's financial circumstances. It was fundamental to the principle of equal treatment that every individual was entitled to respect as an individual, and should not be treated as a "statistical unit" on the basis of a personal characteristic, such as race or sex.

29. The justifications for the inequality found by the Grand Chamber to apply in *Stec* did not apply in the present case, since, despite the fact that there was now no significant factual difference between the working lives of

men and women, the 1998 Act preserved the discriminatory treatment of widowers bereaved before 1 April 2001. Moreover, the overwhelming majority of Contracting States provided social security benefits to bereaved spouses without sex discrimination, and did so at the time the applications were lodged.

30. It was accepted that Mr Runkee, who was in receipt of means-tested social security benefits, would not, in his current financial circumstances, have received more money had he been entitled to WP (see paragraph 10 above). However, if his circumstances were to improve and his entitlement to means-tested benefits cease, he would be less well-off than a woman in his position, who would retain the right to WP.

(b) The Government

31. The Government asked the Court to follow the House of Lords in *Hooper and Others* and its own reasoning in *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, ECHR 2006-..., to find that the difference in treatment between men and women as regards WP was reasonably and objectively justified.

32. They also pointed out that a woman receiving the Income Support and other benefits paid to Mr Runkee would not have been entitled to WP.

2. The Court's assessment

33. The Court considers that the applicants' complaints about the non-payment to them of WP fall within the scope of Article 1 of Protocol No. 1 (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 54, ECHR 2006- ...). Since Article 14 therefore applies, it is not necessary to decide whether the complaints also raise an issue under Article 14 taken in conjunction with Article 8 (see also *Willis v. the United Kingdom*, § 53, ECHR 2002-IV).

34. The Court recalls that Article 1 of Protocol No. 1 does not include a right to acquire property. It places no restriction on the Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a State does decide to create a benefits or pension scheme, it must do so in a manner which is compatible with Article 14 of the Convention (see the *Stec and Others* decision, cited above, §§ 54-55).

35. Article 14 does not prohibit a Member State from treating groups differently in order to correct “factual inequalities” between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the article. A difference of treatment is, however, 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 the *Stec and Others* judgment, cited above, § 51).

36. The scope of this margin will vary according to the circumstances, the subject-matter and the background. As a general rule, very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of sex as compatible with the Convention. On the other hand, a wide margin is usually allowed 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" (*op. cit.*, § 52).

37. The Court notes that the history of WP, as recounted by Lord Hoffmann in the *Hooper and Others* judgment (see paragraph 15 above), is not disputed by the parties to the instant case. The benefit was first introduced in 1925, in recognition of the fact that older widows, as a group, faced financial hardship and inequality because of the married woman's traditional role of caring for husband and family in the home rather than earning money in the workplace. Despite the increase in women entering the workforce over the next sixty years, in 1985, when the Government proposed reforms to the social security system, it was still considered necessary by Parliament to provide support to older widows, only half of whom were in paid employment of any kind. It was not until 1998 that the Government, in a Consultation Paper, proposed the abolition of WP in view of the increasing numbers of women in employment or receiving income from an occupational pension scheme. Even then, the proposal was strongly opposed by some members of Parliament, partly on the ground that elderly widows were still disadvantaged compared with men or younger widows, and partly on the ground that WP was a contributory benefit and that it would be "a breach of faith" to deny it to widows of men who had made contributions and arranged their affairs on the assumption that it would be available. In response to these views, the draft legislation was amended to preserve the rights of women widowed before 9 April 2001 (see paragraph 20 above).

38. It does not appear that at any stage evidence was presented to the Government or Parliament showing that older widowers without dependent children, as a group, were similarly disadvantaged and in need of special financial help, nor has any such evidence been presented to the Court.

39. Since WP was not means-tested, it is no doubt true, as the applicants contend, that the pension has been paid to certain widows who were less in

need than individual widowers who were denied it. However, means-testing can be uneconomical, and any welfare system, to be workable, may have to use broad categorisations to distinguish between different groups in need (see, *mutatis mutandis*, *Lindsay v. the United Kingdom*, no. 11098/84, Commission decision of 11 November 1986, Decisions and Reports 49, p. 181).

40. At its origin, therefore, and until its abolition in respect of women whose spouses died after 9 April 2001, WP was intended to correct "factual inequalities" between older widows, as a group, and the rest of the population. The Court considers that, in the light of all the evidence presented to it, this difference in treatment was reasonably and objectively justified (cf. *Willis v. the United Kingdom*, ECHR 2002-IV, where the benefits in question were designed to ease the financial hardship faced by a spouse in the immediate aftermath of bereavement and to assist the surviving spouse bringing up dependent children alone).

41. Given the slowly evolving nature of the change in women's working lives and the impossibility of pinpointing a precise date at which older widows as a class were no longer in need of extra help – a topic debated by Parliament on several occasions during the 1980s and 1990s, whenever reform was proposed – the Court does not consider that the United Kingdom can be criticised for not having abolished WP earlier (see, *mutatis mutandis*, the *Stec* judgment, cited above, § 64). Moreover, since it was decided to bring about equality through "levelling down", it was not unreasonable of the legislature to decide to introduce the reform slowly, by preserving the rights of women widowed before 9 April 2001 (ibid., § 65).

42. It follows that there has been no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 in respect of the non-payment to the applicants of Widow's Pension or equivalent.

43. In the light of this conclusion, it is not necessary for the Court to determine whether or not, given the sums he receives in means-tested benefits, Mr Runkee can claim to be directly affected by the non-payment of WP (but see *Bland v. the United Kingdom* (dec.), no. 52301/99, 19 February 2002).

B. Widow's Payment

44. Mr Runkee and Mr White complained in addition about the non-payment to them of Widow's Payment.

45. The Court has already held that the non-payment to a widower of Widow's Payment breaches Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention (see *Willis*, cited above, §§ 37-43). The Government have not sought to argue that the difference in treatment between men and women as regards entitlement to this one-off, lump sum payment intended to assist with additional expenses in the immediate

aftermath of the spouse's death, was based on any "objective and reasonable justification", and the Court sees no reason to distinguish the present applications from *Willis.*

46. Again, it is not, therefore, necessary to consider whether any issue also arises under Article 14 taken in conjunction with Article 8 (op. cit., § 53).

47. In conclusion, there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

49. In respect of pecuniary damage Mr Runkee claimed the following amounts in pounds sterling (GBP):

(i) GBP 1,000 for Widow's Payment;

(ii) simple interest at 8%, based on the current statutory rate of interest applicable in the United Kingdom, on arrears of all widow's benefits found owing to him from 15 March 1998 until the date of judgment;

Mr White claimed as follows:

(i) GBP 1,000 for Widow's Payment;

(ii) GBP 12,167.17 for WP from 16 March 1999 to July 2005, and continuing;

(iii) simple interest at 8%, based on the current statutory rate of interest applicable in the United Kingdom, on arrears of all widow's benefits found owing to him from 8 March 1999 until the date of judgment.

50. The Government accepted that they should pay GBP 1,000 to each applicant in respect of Widow's Payment, but rejected Mr White's claim for WP. They submitted that, as a matter of domestic practice, the Department of Work and Pensions applied an interest rate based on the yearly Average Retail Shares and Deposits rate supplied by the Building Societies Commission when, exceptionally, a welfare clamant had lost the use of a sum of money as a result of a departmental error. These rates varied from 4.881%, being the highest, in 1998–1999 and 2.691%, being the lowest, in 2003-2004. The Government calculated that Mr Runkee should be awarded interest of GBP 266.15 and Mr White should receive GBP 209.51, to cover the period between the refusal of each of their claims and the Government's

Observations of 26 July 2005, continuing at the rate of GBP 0.09 per day until the date of judgment or payment, whichever was sooner.

51. The Court, which has found violations in respect of the denial of Widow's Payment, but no violation because of the lack of WP, awards each applicant the principal sum of GBP 1,000.

52. In addition, interest can be claimed from the dates on which each recoverable element of past pecuniary damage accrued (see *Willis*, § 69). In the present cases, since under national law at the relevant time a widow was not automatically paid the benefit, but had to claim it and to wait for the Benefits Agency to process her claim, the Court takes as the starting point for interest the date of the Benefit's Agency's letter to each applicant informing him that the claim had been refused. An award of pecuniary damages under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred (see, *mutatis mutandis*, *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV). The interest rate applied, which is intended to compensate for loss of value of the award over time, should therefore reflect national economic conditions, such as levels of inflation and rates of interest available to investors nationally during the relevant period (see, for example, *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports* 1997-IV, § 35; *Romanchenko v. Ukraine*, no. 5596/03, 22 November 2005, § 30, unpublished; *Prodan v. Moldova*, no. 49806/99, § 73, ECHR 2004-III (extracts)). In the light of these considerations, the Court considers that the rate proposed by the Government is the more realistic.

53. It therefore awards EUR 2,025 to Mr Runkee and EUR 1,870 to Mr White in respect of pecuniary damage.

B. Non-pecuniary damage

54. The applicants did not claim non pecuniary-damage, and the Court does not award any.

C. Costs and expenses

55. The applicants jointly claimed GBP 21,237.63 in respect of costs and expenses, inclusive of value added tax ("VAT").

56. The Government submitted that it could not be shown that such costs had indeed been incurred and therefore that the claim should be dismissed in its entirety. They noted that the applicant's legal representatives were a campaigning non-governmental organisation, and that it was unlikely that the applicants would be made to pay such high fees. In any case, they submitted that the sums put forward were excessive and unreasonable. Given that the matters at issue had been extensively aired in domestic proceedings, it was doubtful whether so many hours had been needed to

prepare the case and whether it had been necessary to instruct a QC for the purposes of these proceedings.

57. According to its settled case-law, the Court will award costs and expenses in so far as these relate to the violation found and to the extent to which they have been actually and necessarily incurred and are reasonable as to quantum (see, among other authorities, *Schouten and Meldrum v. the Netherlands*, judgment of 9 December 1994, Series A no. 304, pp. 28-29, § 78 and *Lorsé and Others v. the Netherlands*, no. 52750/99, § 103, 4 February 2003). Taking into account all the circumstances, in particular that it has found no violation as regards WP, and that the issues concerning Widow's Payment were established in *Willis* and were not contested by the Government, it awards the applicants jointly EUR 2,000 for legal costs and expenses, in addition to any VAT that may be payable.

D. Default interest

58. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 in connection with non-entitlement to a Widow's Pension;

2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 concerning non-entitlement to a Widow's Payment;

3. *Holds* that it is not necessary to consider either complaint under Article 14 of the Convention taken in conjunction with Article 8*;*

4. *Holds*

   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

      (i) EUR 2,025 (two thousand and twenty-five euros) and EUR 1,870 (one thousand eight hundred and seventy euros) to the first and second applicant respectively in respect of pecuniary damage

(ii) EUR 2,000 (two thousand euros) jointly in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 10 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President