FOURTH SECTION

CASE OF WALKER v. THE UNITED KINGDOM

(Application no. 37212/02)

JUDGMENT

STRASBOURG

22 August 2006

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 case of Walker v. the United Kingdom,

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

Mr J. CASADEVALL, *President,*
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA, *judges,*
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 16 March 2004 and 11 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 37212/02) 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 a British national, Mr Timothy **Walker** ("the applicant"), on 17 October 2001.

2. The applicant was represented by Mr A. Gask, a lawyer working for Liberty, London. The British Government ("the Government") were represented by their Agent, Mr D. Walton of the Foreign and Commonwealth Office, London.

3. The applicant alleged that the obligation imposed on him as a man in employment over age 60 to pay national insurance contributions, which did not apply to a woman in work of over that age, was in violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 16 March 2004, the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

7. Following the judgment of the Grand Chamber in *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, 12 April 2006), the applicant and the Government submitted further observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1942 and lives in Shipston Stour, Warwickshire.

9. Under current United Kingdom law, the state pension age is 65 for men and 60 for women. Until these ages, men and women who work are required to pay national insurance contributions ("NICs") if their earnings are above a threshold amount, currently 385 pounds sterling (GBP) per month.

10. The applicant is over 60 years old and works as an administrator. Since he has not reached the state pension age for men of 65, he is required to pay NICs on his earnings. At the time of introduction of the application, his monthly salary was GBP 2,970 and he paid 10% of his earnings (between the primary threshold of GBP 385 and the upper earnings limit of GBP 2,535) in NICs (Class 1), amounting to GBP 215 per month and GBP 2,580 per annum. From April 2003, NICs increased to 11% of the amount up to the upper earnings limit, plus an additional 1% on all earnings

above the limit. The applicant's NICs increased to GBP 241.34 per month.

11. The applicant will be required to pay national insurance contributions from his earnings until he reaches the age of 65.

12. A woman of 60 years or more who continued to work would not be required to pay any NICs on her earnings.

13. The applicant wrote to his Member of Parliament and the Paymaster General complaining about the difference in treatment for men and women. Both replied stating that since liability to pay national insurance contributions is linked to the state pension age, the treatment of men and women would equalise in 2020 when the state pension age will equalise.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The National Insurance Act 1946, which first established the basis for the national social security scheme in the United Kingdom, set out a system of funding under which all employers and the majority of the working population, whether employed or self-employed, are liable to pay compulsory NICs contributions. This legislation has since been replaced, most recently, by the consolidating provisions of the Social Security Contributions and Benefits Act 1992 ("SSCBA 1992") and the Social Security Administration Act 1992.

15. Section 1(2) of the SSCBA 1992 sets out the various classes of NIC. Of these, the largest category is Class 1 contributions which consist of earnings-related contributions paid by employers and employees. Such contributions are levied as a percentage of earnings which varies according to the employee's earnings band. The NIC scheme is financed on a "pay as you go" basis, that is, current NICs fund current benefits: thus an individual's contributions fund not his or her own benefits but those of others (*R. (Carson) v. Secretary of State for Work and Pensions* [2002] 3 All ER paragraphs 25-26).

16. A substantial contribution has been made to the National Health Service from NICs for many years. Following the National Insurance Act 2002, which imposed an additional deduction of 1% of earnings above the upper earnings limits, the element of calculation of the NHS allocation was also increased from 1.05% of earnings paid in the tax year to 2.05%.

17. Section 6(2) of the Act provides that only those under the state pension age are liable to pay NICs from their earnings. The state pension ages are currently set as 65 for men and 60 for women according to section 122.

18. Section 126 of the Pensions Act 1995 provides for the equalisation of state pension ages for men and women to the age of 65. The state pension age for women will increase gradually from 2010 and the equalisation will be complete in 2020. At the same time, the age until which women are liable to pay NICs will gradually increase in line with the increase in the state pension age.

III. EUROPEAN UNION LAW

19. Council Directive 79/7/EEC of 19 December 1978 provides for the progressive implementation of the principle of equal treatment for men and women in matters of social security. However, in Article 7(1)(a) the Directive provides for derogation in the matter of "the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences therefore for other benefits".

20. In the Case C-9/91 *The Queen v. Secretary of State for Social Security, ex parte Equal Opportunities Commission* [1992] ECR1-4297 ("the EOC case" concerning reference for a preliminary ruling from the High Court), the European Court of Justice found that:

- Article 7(1)a had to be interpreted as authorising the determination of a statutory pensionable age which differs according to sex for the purposes of granting old-age and retirement pensions and also forms of discrimination which are necessarily linked to that difference;
- Inequality between men and women with respect to the length of contribution periods required to obtain a pension constitutes such discrimination where, having regard to the financial equilibrium of the national pension system in the context in which it appears, it cannot be dissociated from a difference in pensionable age;

- In view of the advantages allowed to women by national pension systems, in particular as regards statutory pensionable age and length of contribution periods, and the disruption that would necessarily be caused to the equilibrium of those systems if the principle of equality between the sexes were to be applied from one day to the next in respect of those periods, the Community legislature intended to authorise the progressive implementation of that principle by the member States and that progressive nature could not be ensured if the scope of the derogation authorised by Article 7(1)a were to be interpreted restrictively. (Summary of judgment)

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1

21. The applicant, aged over 60, complained that he was required to pay NICs whereas a woman of the same age who was working would not. The relevant provisions of the Convention provide:

22. Article 14 of the Convention:

> "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:

> "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."

A. The parties' submissions

1. The applicant

23. The applicant submitted that it was in violation of Article 14 of the Convention that he was required to pay NICs from his earnings while a 60 year old woman who was working would not have to pay such contributions. These contributions now included an extra 1% added under the National Insurance Act 2002, the proceeds of which were included within the National Health Service allocation. He disputed that there was any direct or necessary link between the age of entitlement to the basic state pension (60 for women, 65 for men) and liability to pay NICs. Employers had to pay for female employees regardless of their ages and it was open to women to defer their state pension after the age of 60 and to continue to make contributions to enhance their contribution record.

24. The applicant submitted that "very weighty reasons" had to be provided to justify sex discrimination and that the more lenient test under Article 1 of Protocol 1, whereby only measures "manifestly without reasonable foundation" were challengeable, did not apply in such cases. There was no reason why he should have to pay towards the NHS for a longer period than women, which obligation had no objective connection with the state pension age. The recent increase in deductions from the NI Fund for NHS funding purposes was manipulating NICs as a general taxation source which aggravated the existing inequality. As the NI Fund was not in fact self-financing but could be topped up by money from general taxation, it could not be said that changes in contributions would prejudice the equilibrium of the scheme. If women were required to pay, it would in fact boost the amount of funds. Any differences in entitlement were a consequence only of the way in which the Government had chosen to structure the benefit system.

25. The applicant submitted that the Grand Chamber's judgment in *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, 12 April 2006) did not decide the issues in his case, as

he was primarily complaining of the discrimination, not in the differential eligibility ages for the state pension, but in the differential contribution periods for NICs, a substantial part of which did not go towards funding benefits but was in effect a form of taxation that went to fund the NHS. Even if the Government could justify discrimination in relation to contributions to the social security system, there was no inextricable link between the funding of the NHS and the actual, or notional, working life of an individual. In particular there was no good reason why men between 60 and 64 should contribute to the NHS but that women of the age were exempt. While there was a factual link of sorts between work and contributions, they pointed out that individuals not in work, or who had caring responsibilities could also pay or be credited with contributions. He also pointed out that employers continued to pay NICs on behalf of employees regardless of whether they had reached the state pension age. Finally, he argued that the ECJ in the various rulings on benefits and contributions had not addressed the issues in the case.

2. The Government

26. The Government accepted that Article 14 in conjunction with Article 1 of Protocol No. 1 was applicable to any discrimination in the obligation to make NICs. They claimed that it was not possible to dissociate the obligation on working males between 60 and 65 to pay NICs from the different state retirement ages for men and women. The level and duration of NI contributions were necessarily linked to the assumed working life and thus the fixed state retirement age for men. While women aged 60-65 were able to defer their state pensions and continue to work without paying NICs, men aged 65-70 also had that possibility. It was not correct that women could elect to pay contributions, save in respect of voluntary Class 3 contributions for those years before the tax year when the woman reached the age of 60.

27. The Government disputed that the NICs paid by any individual could be analysed as being in substance two separate contributions, one to the NHS and the other to the NI Fund. The payments were dissociable, as allocations were made at an aggregate level on the basis of forecasts made by the Inland Revenue. If the obligation to pay NICs was discriminatory as a whole, this fell within the scope of Article 7(1)a of the Directive 79/7/EEC (see paragraph 18 above), the purpose and content of which justified any difference in treatment. Even assuming the NICs were two separate contributions, they were capable of separate justification as being in the proportionate pursuit of legitimate aims.

28. The Government pointed out, that along with other EC and Contracting States, they were in the process of phasing out differing pensionable ages for men and women and whilst doing so were protected as a matter of EC law. By phasing out differential treatment in a measured and controlled fashion that maintained the financial equilibrium of the social security system and protected the expectations of older women who had planned to retire and receive their state pension at age 60, the Government submitted that they were acting in an objectively justified and proportionate manner. It was an area undoubtedly attracting a very broad margin of appreciation as it involved complex economic and social judgments as well as economic management.

29. The Government considered that the *Stec* judgment (cited above) had in substance disposed of the issues in this case. They emphasised the wide margin of appreciation recognised by the Grand Chamber as applying to general measures of economic or social strategy and submitted that it fell within that margin to adopt a system which expected all those making NICs to pay a proportion of such contributions to the NHS. Such a system was both coherent and easy to administer, whereas devising a special system of contributions for male employees between 60 and 64 which removed the NHS allocation would be cumbersome, complex and difficult to implement for employers as well as the revenue service.

B. The Court's assessment

30. Article 14 of the Convention has no independent existence; it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. There can be no room for its application unless the facts at issue fall within the ambit of one or more of them (see, amongst other authorities, *Gaygusuz v. Austria*, judgment of 16 September 1996, *Reports of Judgments and Decisions*, 1996-IV, § 36). The Court notes that the Government does not contest in this case that the

obligation on the applicant to pay NICs falls within the scope of Article 1 of Protocol No. 1 and thus that Article 14 is applicable to any complaint of discrimination in that respect. It would also recall that there is authority that such a situation involves the right of the State to "secure the payment of taxes or other contributions" and therefore comes within the ambit of Article 1 of Protocol No. 1(see *Van Raalte v. the Netherlands*, judgment of 21 February 1997, Reports 1997-I, § §34-35). Article 14 is accordingly engaged.

31. The principal issue in this case is whether the difference in treatment whereby this applicant is required to pay NICs when working over the age of 60, whereas a woman of that age would not, discloses discrimination contrary to Article 14 of the Convention.

32. According to the Court's case-law, a difference in treatment is discriminatory for the purposes of Article 14 if it "has no objective and reasonable justification", that is 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 States enjoy a certain margin of appreciation in assessing whether or not and to what extent differences in otherwise similar situations justify a different treatment. However, very weighty reasons are required before the Court would regard a difference of treatment based exclusively on the grounds of sex as compatible with the Convention (see, among other authorities, *Willis v. the United Kingdom,* no. 36042/97, ECHR 2002-IV, § 39).

33. Against this must be balanced the countervailing proposition that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one (see, *inter alia*, *James v. the United Kingdom*, judgment of 21 February 1986, Series A, no. 98, § 46). This applies to systems of taxation or contributions which must inevitably differentiate between groups of tax-payers and the implementation of which unavoidably creates marginal situations. A Government may often have to strike a balance between the need to raise revenue and reflecting other social objectives in taxation policies. The national authorities are obviously in a better position than the Court to assess those needs and requirements, which in the present case involve complex concerns about the financing of pensions and the national health service which impact on the community as a whole. In such an area the Court will generally respect the legislature's policy choice unless it is manifestly unreasonable (see, as the latest authority, *Stec and Others v. the United Kingdom*, cited above, § 53).

34. The Court recalls that in the afore-mentioned *Stec* case the Grand Chamber had occasion to examine the alleged inequality arising out of entitlement to the reduced earnings allowance ("REA") which was linked to the age of eligibility to the state pension. Similarly, in this case, the applicant's obligation to pay NICs was linked to the date at which he was eligible to obtain his state pension. Much argument has been devoted by the parties to the nature of NICs, in particular the extent to which they fund benefits, including the pension and thus are logically and necessarily linked to the date at which a person received his or her pension and whether the element paid towards the NHS is a form of general taxation without such linkage. In *Stec*, the REA was found to be a benefit designed to compensate a person for financial loss as a result of their inability to work due to ill-health or incapacity and thus connected to employment and working life. The Court would note that in the present case, the applicants have accepted that there was clearly a factual link between work and contributions since most people making such contributions did so by virtue of their earnings as employees or because they were employees. The use of the state pension age as a cut-off point for contributions made, the Government argued, the scheme easy to understand and to administer. As in *Stec*, the Court accepts that such questions of administrative economy and coherence are generally matters falling within the margin of appreciation referred to above (§ 57). The fact that over time an increasing percentage of the NI fund has been diverted to the NHS and that there are exceptions to the general position (as in voluntary contributions and the ongoing contributions of employers regardless of age) does not render the policy choice manifestly unreasonable. While it is true that women who continue to work over their pension age do not have to pay NICs, the same also applies to men who work over their pension age.

35. Although, unlike the *Stec* case, there is no judgment by the ECJ directly bearing on differential requirements to pay NICs, the Court notes that in the EOC case it found that inequality between men and women with respect to the contributions periods could not be dissociated from a difference in pensionable age (see paragraph 19 above). Its stance as regards the justification in

avoiding disruption to the pension system is therefore of some persuasive value even in the present case.

36. The Court accordingly concludes that, as in the *Stec* case, the linkage of NICs to the notional end of working life or state pensionable age must be regarded as pursuing a legitimate aim and as being reasonably and objectively justified (see § 59).

37. As regards the actual difference in the state pension age between men and women, the Grand Chamber in *Stec* had this to say:

> "61. Differential pensionable ages were first introduced for men and women in the United Kingdom in 1940, well before the Convention had come into existence, although the disparity persists to the present day (see paragraph 32 above). It would appear that the difference in treatment was adopted in order to mitigate financial inequality and hardship arising out of the woman's traditional unpaid role of caring for the family in the home rather than earning money in the workplace. At their origin, therefore, the differential pensionable ages were intended to correct "factual inequalities" between men and women and appear therefore to have been objectively justified under Article 14 (see paragraph 51 above).
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> 62. It follows that the difference in pensionable ages continued to be justified until such time that social conditions had changed so that women were no longer substantially prejudiced because of a shorter working life. This change, must, by its very nature, have been gradual, and it would be difficult or impossible to pinpoint any particular moment when the unfairness to men caused by differential pensionable ages began to outweigh the need to correct the disadvantaged position of women. Certain indications are available to the Court. Thus, in the 1993 White Paper, the Government asserted that the number of women in paid employment had increased significantly, so that whereas in 1967 only 37% of employees were women, the proportion had increased to 50% in 1992. In addition, various reforms to the way in which pension entitlement was assessed had been introduced in 1977 and 1978, to the benefit of women who spent long periods out of paid employment. As of 1986, it was unlawful for an employer to have different retirement ages for men and women (see paragraph 33 above).
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> 63. According to the information before the Court, the Government made a first, concrete, move towards establishing the same pensionable age for both sexes with the publication of the Green Paper in December 1991. It would, no doubt, be possible to argue that this step could, or should, have been made earlier. However, as the Court has observed, the development of parity in the working lives of men and women has been a gradual process, and one which the national authorities are better placed to assess (see paragraph 52 above). Moreover, it is significant that many of the other Contracting States still maintain a difference in the ages at which men and women become eligible for the State retirement pension (see paragraph 37 above). Within the European Union, this position is recognised by the exception contained in the Directive (see paragraph 38 ...).
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> 64. In the light of the original justification for the measure as correcting financial inequality between the sexes, the slowly evolving nature of the change in women's working lives, and in the absence of a common standard amongst the Contracting States (see Petrovic, cited above, §§ 36-43), the Court finds that the United Kingdom cannot be criticised for not having started earlier on the road towards a single pensionable age.
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> 65. Having once begun the move towards equality, moreover, the Court does not consider it unreasonable of the Government to carry out a thorough process of consultation and review, nor can Parliament be condemned for deciding in 1995 to introduce the reform slowly and in stages. Given the extremely far-reaching and serious implications, for women and for the economy in general, these are matters which clearly fall within the State's margin of appreciation.

38. The alleged discrimination in the present case concerns exactly the difference in ages of entitlement to the state pension discussed above. In light of the Grand Chamber's finding that the policy adapted by the legislature in deferring equalisation of the pension age for men and women until 2020 falls within the State's margin of appreciation, the Court cannot but reach the same conclusion in the present case.

39. There has, accordingly, been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

Done in English, and notified in writing on 22 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY Josep CASADEVALL
Registrar President

WALKER v. THE UNITED KINGDOM JUDGMENT

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