CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF GRANT v. THE UNITED KINGDOM

(Application no. 32570/03)

JUDGMENT

STRASBOURG

23 May 2006

FINAL

23/08/2006

In the case of Grant v. the United Kingdom,

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

Josep Casadevall, *President*,
Nicolas Bratza,
Giovanni Bonello,
Matti Pellonpää,
Kristaq Traja,
Ljiljana Mijović,
Ján Šikuta, *judges*,
and Michael O'Boyle, *Section Registrar*,

Having deliberated in private on 19 May 2005 and on 4 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 32570/03) 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 United Kingdom national, Ms Linda Grant ("the applicant"), on 8 October 2003.

2. The applicant was represented by Ms J. Sawyer, a lawyer working for Liberty, London. The United Kingdom Government ("the Government") were represented by their Agent, Mr D. Walton, of the Foreign and Commonwealth Office, London.3. The applicant complained of the lack of legal recognition of her change of gender and the refusal of the Department of Social Security (DSS) to pay her a retirement pension at the age of 60 as was the case for other women. She relied on Article 8 of the Convention and Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention.

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 19 May 2005, the Chamber declared the application partly 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*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. According to the applicant's birth certificate, she is male. She served in the army for three years from the age of 17 and then worked as a police officer. Aged 24, she gave up attempting to live as a man, and had gender reassignment surgery two years later. She has presented as a woman since 1963, is identified as a woman on her National Insurance card and paid contributions to the National Insurance scheme at the female rate (until 1975, when the difference in rates was abolished). In 1972 she became self-employed and started paying into a private pension fund.

8. By a letter dated 22 August 1997, the applicant applied to the local government benefits office for State pension payments. She wished these to commence on 22 December 1997, her 60th birthday. Her application was refused by a decision of the Adjudication Officer issued on 31 October 1997. He stated that she had applied "too early", and was only entitled to a State pension from the age of 65, the retirement age applicable to men.

9. Her appeal against this decision was heard by Birmingham Social Security Appeal Tribunal on 12 March 1998, which dismissed it on the basis of established case-law. At this time she claimed that she was no longer able to work due to a spinal collapse fracture of osteoporotic origin.

10. On 1 October 1998 the applicant submitted her appeal to the Social Security Commissioner. Leave to appeal was granted but, by a decision of 1 June 2000, her appeal was dismissed following an oral hearing. The Commissioner felt compelled to follow previous decisions and also held that the DSS had not entered into an agreement to treat the applicant as a woman.

11. In the light of the judgments of 11 July 2002 given by the Grand Chamber in *Christine Goodwin v. the United Kingdom* ([GC], no. 28957/95, ECHR 2002-VI) and *I. v. the United Kingdom* ([GC], no. 25680/94), in which the Court found that the Government's continuing failure to take effective steps to effect the legal recognition of the change of gender of post-operative transsexuals was in breach of Article 8, the applicant wrote to the Office of Social Security on 12 July 2002 asking for her case to be reopened. The Commissioner notified her on 14 August 2002 that leave to appeal to the Court of Appeal had been granted.

12. On 5 September 2002 the Department for Work and Pensions refused to award the applicant a State pension in light of the judgment in *Christine Goodwin*.

13. In the Court of Appeal, the applicant sought, *inter alia*, a declaration that she was entitled to her full retirement pension from her 60th birthday, and damages for breach of the Human Rights Act 1998, in force from

2 October 2000. Meanwhile, on 22 December 2002, the applicant reached the age of 65 and her pension payments began.

14. By agreement, her case was adjourned to await the House of Lords judgment in *Bellinger v. Bellinger*. In that case the claimant, a transsexual, sought a declaration of validity in respect of a marriage contracted following gender reassignment surgery. By a decision of 10 April 2003, their Lordships, whilst finding the Government's continuing failure to legislate to be a breach of Articles 8 and 12, deemed the formulation of legal norms to remedy that breach best left to Parliament ([2003] WLR 1174). Further, the House of Lords disapproved of attempts to seek recognition even in the clearest cases on the basis that (a) eventually a line would have to be drawn and (b) such demarcation required detailed consideration by the legislature of the likely social consequences. Following this decision, the applicant was advised by her legal representative that the prospects of persuading the Court of Appeal to depart from the *Bellinger* judgment, and thus of obtaining an effective remedy, were nil. If proceedings were continued, she would further risk punitive costs orders. Accordingly, the applicant consented to a court order dismissing her appeal with no order as to costs. The Government further refused to make any *ex gratia* payment of a sum representing her lost State pension.

15. On 26 April 2005 the applicant was issued with a Gender Recognition Certificate following her application under the Gender Recognition Act 2004 which had come into force on 1 July 2004 (see paragraphs 30-31 below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

Social security, employment and pensions

16. A transsexual continues to be recorded for social security, National Insurance and employment purposes as being of the sex recorded at birth.

(a) National Insurance

17. The DSS registers every British citizen for National Insurance (NI) purposes on the basis of the information in their birth certificate. Non-British citizens who wish to register for NI in the United Kingdom may use their passport or identification card as evidence of identity if a birth certificate is unavailable.

18. The DSS allocates every person registered for NI with a unique NI number. The NI number has a standard format consisting of two letters followed by three pairs of numbers and a further letter. It contains no indication in itself of the holder's sex or of any other personal information. The NI number is used to identify each person with an NI account (there are at present approximately 60 million individual NI accounts). The DSS is

thereby able to record details of all NI contributions paid into the account during the NI account-holder's life and to monitor each person's liabilities, contributions and entitlement to benefits accurately. New numbers may in exceptional cases be issued to persons, for example, under the witness protection scheme or to protect the identity of child offenders.

19. NI contributions are made by way of deduction from an employee's pay by the employer and then by payment to the Inland Revenue (for onward transmission to the DSS). At present employers will make such deductions for a female employee until she reaches the pensionable age of 60 and for a male employee until he reaches the pensionable age of 65. The DSS operates a policy for male-to-female transsexuals whereby they may enter into an undertaking with the DSS to pay direct to the DSS any NI contributions due after the transsexual has reached the age of 60 which have ceased to be deducted by the employer in the belief that the employee is female. In the case of female-to-male transsexuals, any deductions which are made by an employer after the age of 60 may be reclaimed directly from the DSS by the employee.

20. In some cases employers will require proof that an apparent female employee has reached, or is about to reach, the age of 60 and so entitled not to have the NI deductions made. Such proof may be provided in the form of an Age Exemption Certificate (form CA4140 or CF384). The DSS may issue such a certificate to a male-to-female transsexual where such a person enters into an undertaking to pay any NI contributions direct to the DSS.

21. Documents received to date do not explain why National Insurance payments at the lower female rate were accepted from the applicant between 1963 and 1975.

(b) State pensions

22. A male-to-female transsexual was, prior to 4 April 2005, only entitled to a State pension at the retirement age of 65 applied to men and not the age of 60 which is applicable to women. In those circumstances, a full pension was payable only if she had made contributions for 44 years as opposed to the 39 years required of women.

23. A person's sex for the purposes of pensionable age was prior to 4 April 2005 determined according to biological sex at birth. This approach was approved by the Social Security Commissioner (a judicial officer, who specialises in social security law) in a number of cases.

24. In the *R(P) 2/80* case, a male-to-female transsexual claimed entitlement to a pension at the age of 60. The Commissioner dismissed the applicant's appeal and stated at paragraph 9 of his decision:

> "(a) In my view, the word 'woman' in section 27 of the [1992 Social Security Contributions and Benefits] Act means a person who is biologically a woman. Sections 28 and 29 contain many references to a woman in terms which indicate that a

person is denoted who is capable of forming a valid marriage with a husband. That can only be a person who is biologically a woman.

(b) I doubt whether the distinction between a person who is biologically, and one who is socially, female has ever been present in the minds of the legislators when enacting relevant statutes. However that may be, it is certain that Parliament has never conferred on any person the right or privilege of changing the basis of his National Insurance rights from those appropriate to a man to those appropriate to a woman. In my judgment, such a fundamental right or privilege would have to be expressly granted.

...

(d) I fully appreciate the unfortunate predicament of the claimant, but the merits are not all on her side. She lived as a man from birth until 1975, and, during the part of that period when she was adult, her insurance rights were those appropriate to a man. These rights are in some respects more extensive than those appropriate to a woman. Accordingly, an element of unfairness to the general public might have to be tolerated so as to allow the payment of a pension to her at the pensionable age of a woman."

25. On 1 June 2000 this decision was followed by a Commissioner determining the applicant's appeal.

26. By 11 July 2002, when the Grand Chamber gave judgment in *Christine Goodwin*, the Government had instituted plans to eradicate the difference between men and women concerning the age of entitlement to State pensions. Section 126 of the Pensions Act 1995 provides for the State pensionable age to increase progressively, beginning in 2010 and reaching complete equalisation of the pensionable age at 65 by 2020.

(c) Recent developments

27. Up to 15 October 2002, the Government had received 101 applications from transsexual people seeking to have their birth certificate changed. An Interdepartmental Group on Transsexual People was reconvened and reported to Ministers. On 13 December 2002 the Government announced draft legislation and a commitment to legislate as soon as possible.

28. In its *Bellinger* judgment published on 10 April 2003 (see above), the House of Lords did not expressly deal with the issue of pension entitlements, but took cognisance of the Government's concession that domestic legislation failing to recognise the acquired gender of transsexual people infringed Articles 8 and 12 of the Convention.

29. On 14 April 2003 the Government confirmed in response to a parliamentary question that proposed legislation would include rights to claim a State pension from the date of legal recognition of the new gender.

30. The Gender Recognition Act 2004 has been adopted by Parliament since the introduction of this application. It received the Royal Assent on 1 July 2004. Under the Act, individuals who satisfy certain criteria are able to apply to a Gender Recognition Panel for a Gender Recognition Certificate. From the date of the grant of such a certificate, which is

prospective in effect, an individual is afforded legal recognition in their acquired gender. In particular, social security benefits and the State retirement pension are paid according to the acquired gender.

31. From 4 January 2005, the Secretariat to the Gender Recognition Panel has been in operation and receiving applications. The Panel itself came into legal existence on 4 April 2005, from which date certificates could be issued.

(d) The Human Rights Act 1998

32. On 2 October 2000 the Human Rights Act 1998 came into force, permitting the provisions of the Convention to be relied on in domestic proceedings in the United Kingdom.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. The applicant complained that the law relating to transsexual persons in general and the decision of the DSS in particular denying her a retirement pension at the age of 60 amounted to a violation of her rights under Article 8 of the Convention.

34. The relevant parts of Article 8 of the Convention provide:

> "1. Everyone has the right to respect for his private ... life ...
>
> 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."

A. The parties' submissions

1. The applicant

35. The applicant emphasised that she had been issued with a National Insurance card as a woman and had made contributions at the female rate and as a result believed that she was being treated for all National Insurance purposes as a woman. She had never been informed otherwise. Referring to European Union case-law on temporal effects of judgments, the applicant argued that the judgment in *Christine Goodwin* (cited above) had not been expressed as having limited temporal effect in the sense identified in *Marckx v. Belgium* (13 June 1979, § 58, Series A no. 31); that it had not dispensed the Government from re-examining legal acts or situations which

predated the judgment; and that the Government had not requested such limitation and had not identified any mandatory reasons of legal certainty that would justify such limitation. Since there was a violation in *Christine Goodwin*, where the applicant had been informed in 1997 about her ineligibility for a State pension, a similar violation must have arisen in the present case from the refusal given to the applicant on 31 October 1997, and certainly on 5 September 2002 when she was refused again. In any event, the situation was a continuing one, not based on any one-off act.

36. Even if there was a temporal limitation in the earlier judgment, the applicant argued that this could not apply to her, as she had already made an equivalent claim and instituted legal proceedings to assert her rights. In so far as the Government sought to argue that no breach arose after the judgment in *Christine Goodwin*, this was contrary to the House of Lords judgment in *Bellinger* itself and contrary to Convention case-law. On the latter point, she referred to *Vermeire v. Belgium* (29 November 1991, Series A no. 214-C), in which the Court rejected the Belgian Government's argument that the judgment in *Marckx* required a thorough revision of the legal status of children born out of wedlock and found that Article 46 did not allow a State to suspend the application of the Convention while waiting for reform.

2. The Government

37. The Government accepted that the applicant had genuinely believed that she would be entitled to a pension at the age of 60 but submitted that this mistake was not caused by the authorities. They also accepted that from the time of the judgment in *Christine Goodwin* (cited above) on 11 July 2002 those parts of English law which failed to give legal recognition to the acquired gender of transsexual persons were in principle incompatible with Articles 8 and 12 of the Convention. It was clear, however, that the judgment did not apply to the past or overrule previous judgments but expressly recognised the prospective nature of the judgment. Accordingly, there was no violation in the present case when the applicant was refused a pension on 31 October 1997, a one-off act or decision, the compatibility of which with the Convention should be assessed at that date.

38. Furthermore they submitted that the judgment in *Christine Goodwin* indicated that it was for the Government to implement measures in due course and the relevant domestic legal authorities were to be afforded a reasonable period within which to change clear statutory provisions for the future and were not to be treated as having been in breach of the Convention in other cases retrospectively (*Marckx v. Belgium*, cited above; *Walden v. Liechtenstein* (dec.), no. 33916/96, 16 March 2000; and *J.R. v. Germany*, no. 22651/93, Commission decision of 18 October 1995, Decisions and Reports 83-A). There were inevitable difficulties and important repercussions in any major change in the system and there had been a

prompt legislative response. There had accordingly been no breach of Article 8 of the Convention in respect of the applicant.

B. The Court's assessment

39. The Court notes that it has dealt with a series of cases concerning the position of transsexuals in the United Kingdom (*Rees v. the United Kingdom*, 17 October 1986, Series A no. 106; *Cossey v. the United Kingdom*, 27 September 1990, Series A no. 184; *X, Y and Z v. the United Kingdom*, 22 April 1997, *Reports of Judgments and Decisions* 1997-II; *Sheffield and Horsham v. the United Kingdom*, 30 July 1998, *Reports* 1998-V; and, most recently, *Christine Goodwin* and *I. v. the United Kingdom*, both cited above). In the earlier cases, it held that the refusal of the United Kingdom Government to alter the register of births or to issue birth certificates whose contents and nature differed from those of the original entries concerning the recorded gender of the individual could not be considered as an interference with the right to respect for private life (see *Rees*, § 35; *Cossey*, § 36; and *Sheffield and Horsham*, § 59). However, at the same time, the Court was conscious of the serious problems facing transsexuals and on each occasion stressed the importance of keeping the need for appropriate legal measures in this area under review (see *Rees*, § 47; *Cossey*, § 42; and *Sheffield and Horsham*, § 60). In the latest cases, it expressly had regard to the situation within and outside the Contracting State to assess "in the light of present-day conditions" what was at that time the appropriate interpretation and application of the Convention (see *Christine Goodwin*, § 75). Following its examination of the applicants' personal circumstances as a transsexual, current medical and scientific considerations, the state of European and international consensus, impact on the birth register and social and domestic law developments, the Court found that the respondent Government could no longer claim that the matter fell within their margin of appreciation, save as regards the appropriate means of achieving recognition of the right protected under the Convention. As there were no significant factors of public interest to weigh against the interest of these individual applicants in obtaining legal recognition of their gender reassignment, it reached the conclusion that the fair balance that was inherent in the Convention now tilted decisively in favour of the applicants and that there had accordingly been a failure to respect their right to private life in breach of Article 8 of the Convention.

40. In the present case, the Court finds that the applicant – a post-operative male-to-female transsexual in an identical situation to the applicant in *Christine Goodwin* – may also claim to be a victim of a breach of her right to respect for her private life contrary to Article 8 of the Convention due to the lack of legal recognition of her change of gender.

41. The Court has noted the submissions of the parties concerning the date from which the applicant can claim, if at all, to be a victim of such a breach. While it is true that the Government had to take steps to comply with the judgment in *Christine Goodwin*, which involved drafting and passing in Parliament new legislation, which they achieved with laudable expedition, it is not the case that this process can be regarded as in any way suspending the applicant's victim status. The Court's judgment in *Christine Goodwin* found that from that moment there was no longer any justification for failing to recognise the change of gender of post-operative transsexuals. The applicant as such a transsexual did not have at that time any possibility of obtaining such recognition and could claim to be prejudiced from that moment. This situation may be distinguished from that in *Walden* (cited above), relied on by the Government, where the domestic courts did not act unreasonably or disproportionately in taking into account the time necessary for passing remedial legislation when considering the applicants' claims for redress under domestic law,. The present applicant's victim status came to an end when the Gender Recognition Act 2004 came into force, thereby providing the applicant with the means on a domestic level to obtain the legal recognition previously denied.

42. The Court must also therefore reject the applicant's claims that her victim status should be regarded as existing before the *Christine Goodwin* case and in particular encompassing the decision taken in October 1997 which first denied her the pension payable to women. Contrary to the applicant's argument, the Court did not make any finding in *Christine Goodwin* that the refusal of a pension at an earlier time violated that applicant's rights. The differences applicable to men and women concerning pensionable ages and National Insurance contributions were adverted to in the context of examining the consequence of the lack of legal recognition of transsexuals. The finding of a violation was, in light of previous findings by the Court that the Government had been acting within their margin of appreciation, made with express reference to the conditions pertaining at the time the Court carried out its examination of the merits of the case (see, *mutatis mutandis*, in expulsion cases, *Chahal v. the United Kingdom*, 15 November 1996, § 97, *Reports* 1996-V).

43. Consequently, in so far as the applicant complains specifically of the refusal to accord her the pension rights applicable to women of biological origin, she may claim to be a victim of this aspect of the lack of legal recognition from the moment, after the judgment in *Christine Goodwin*, when the authorities refused to give effect to her claim, namely, from 5 September 2002.

44. Subject to the above considerations, the Court finds that there has been a breach of the applicant's right to respect for her private life contrary to Article 8 of the Convention.

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

45. The applicant complained of the refusal to pay her a State pension at 60, relying on the provisions below.

46. Article 1 of Protocol No. 1 provides in its first paragraph:

> "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."

47. Article 14 of the Convention 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."

A. The parties' submissions

48. The applicant submitted that the denial of her pension must be regarded as an interference with a property right, namely a deprivation of five years' worth of pension payments (about 20,000 pounds sterling), for which no legitimate justification had been provided. Nor had any reasonable and objective justification been provided for any differential treatment between her and other women.

49. The Government accepted that the applicant's entitlement to a State retirement pension, which was a contributory benefit, was a "property" right for the purposes of this provision. However, for the reasons given under Article 8 of the Convention, the refusal to recognise the applicant's acquired gender for the purposes of the State pensionable age on 31 October 1997 was within their margin of appreciation and not in violation of Article 1 of Protocol No. 1. Her complaints were in any event more appropriately examined under Article 8 and no separate issue, in their view, arose.

B. The Court's assessment

50. The Court would note that under domestic law as it stood at the relevant time the applicant had no right to be paid a State pension at 60 and, on the same basis, it may well be that no proprietary right arose capable of engaging Article 1 of Protocol No. 1 taken alone. The Court does not consider it necessary, however, to decide this point.

51. As regards Article 14 of the Convention, this provision complements the other substantive provisions of the Convention and its Protocols and there can be no room for its application unless the facts in issue fall within

the ambit of one or more of them (see, among other authorities, *Gaygusuz v. Austria*, 16 September 1996, § 36, *Reports* 1996-IV). Assuming that issues relating to the eligibility for a State pension are sufficiently pecuniary to fall within the scope of Article 1 of Protocol No. 1 for the purposes of Article 14, the Court observes that any failure by the domestic authorities to accord the applicant her pension at the age applicable to women must be regarded, at the time of the first refusal in 1997, as within the Government's margin of appreciation (see paragraph 39 above). In so far as her pension was again refused after the judgment in *Christine Goodwin*, in which a violation of Article 8 was found, the Court observes that the applicant has already complained of this aspect also in the context of Article 8. Since this refusal indeed flowed as a consequence from the failure to accord due respect to the applicant's private life, the Court considers that it is essentially an Article 8 matter and that no separate issue arises for the purposes of Article 1 of Protocol No. 1 either taken alone or in conjunction with Article 14 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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. Damage

53. The applicant claimed 20,000 pounds sterling (GBP) for the loss of her pension between the ages of 60 and 65. She further claimed GBP 10,312 for non-pecuniary damage, namely the suffering, financial hardship, worry and distress flowing from the lack of legal recognition, referring to the award made in *B. v. France* (25 March 1992, Series A no. 232-C).

54. The Government submitted that no award for pecuniary or non-pecuniary damage should be made. To hold otherwise would be to favour this applicant to the prejudice of the applicant in *Christine Goodwin*. In any event, the sum for non-pecuniary damage claimed was excessive, *B. v. France* not being an appropriate comparator.

55. The Court reiterates that there must be a clear causal connection between the pecuniary damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings or other sources of income (see, amongst other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, §§ 16-20, Series A no. 285-C, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV).

56. In the present case, the applicant was refused payment of her State pension on 5 September 2002, that is, after the Court had found in the judgment in *Christine Goodwin* that there was no longer any justification for failing to provide for the legal recognition of the change of gender of post-operative transsexuals. It started to be paid from 22 December 2002. The Court makes a pecuniary award of 1,700 euros (EUR) in respect of the three-month-and-seventeen-day period between those dates.

57. As regards non-pecuniary damage, the Court observes that it considered in *Christine Goodwin* that such an award was not appropriate and that the essence of redress lay in the implementation, in due course, by the Government of the necessary measures to secure compliance with the Article 8 rights.

B. Costs and expenses

58. The applicant claimed GBP 10,708.90, inclusive of value-added tax (VAT), for legal costs and expenses incurred in pursuing her case domestically and GBP 11,463.90, inclusive of VAT, for legal costs and expenses in pursuing her complaints in Strasbourg.

59. The Government considered that the sums claimed for the domestic proceedings were excessive, given the high hourly rate claimed and the relatively short period of time during which the applicant's representatives were instructed (less than a year). They put forward GBP 4,000 as a reasonable figure. As far as the costs before this Court were concerned, they considered that they should be reduced to take into account that part of the application was unsuccessful. They also considered that the sums were not reasonable as to quantum, again given the high hourly rate claimed and the high sums claimed for solicitor and counsel which suggested a degree of duplication of work. They proposed a sum of GBP 5,500.

60. The Court reiterates that where there has been a violation of the Convention it may award the applicant not only actual and necessary costs of the proceedings in Strasbourg, in so far as reasonable in quantum, but also those incurred before the domestic courts for the prevention or redress of the violation (see, for example, *I.J.L. and Others v. the United Kingdom* (just satisfaction), nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001).

61. As regards the costs in domestic proceedings which may be regarded as flowing from the applicant's efforts to prevent a violation of her rights, the Court has taken note of the Government's objections and agrees that the sum is high given the nature and relative brevity of the procedures. It would award the sum of EUR 11,463 in this respect, inclusive of VAT.

62. Turning to the Strasbourg costs, the Court observes that those aspects of the case which were declared inadmissible were a minor part of the application and that a violation has been found on the central issue of

Article 8. It does not find that the sums claimed are unreasonable or that there is any significant element of duplication. It awards EUR 16,686 in this respect, inclusive of VAT.

C. Default interest

63. 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 a violation of Article 8 of the Convention;

2. *Holds* that no separate issue arises under Article 1 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted into pounds sterling at the rate applicable at the date of settlement:
      (i) EUR 1,700 (one thousand seven hundred euros) in respect of pecuniary damage;
      (ii) EUR 28,149 (twenty-eight thousand one hundred and forty-nine euros) in respect of costs and expenses;
   (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 European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'Boyle
Registrar

Josep Casadevall
President