



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF CROMPTON v. THE UNITED KINGDOM

(Application no. 42509/05)

JUDGMENT

STRASBOURG

27 October 2009

FINAL

10/05/2010

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 Crompton v. the United Kingdom,
The European Court of Human Rights (Fourth Section), sitting as a
Chamber composed of:
Lech Garlicki, *President*,
Nicolas Bratza,
Giovanni Bonello,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,
Having deliberated in private on 6 October 2009,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 42509/05) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Mr Thomas John Crompton (“the applicant”), on 20 November 2005.
2. The applicant was represented by Levys Solicitors, a firm of solicitors based in Manchester. The United Kingdom Government (“the Government”) were represented by their Agent, Ms H. Moynihan, Foreign and Commonwealth Office.
3. On 13 May 2008 the acting President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).
4. The parties requested an oral hearing. However, the Chamber decided not to hold a hearing in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Thomas John Crompton, is a British national who was born in 1954 and lives in Stalybridge, Cheshire.

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

7. In 1989 the applicant joined the Territorial Army ("TA") as a pay and accounts clerk, a military post, carrying out duties such as filing, photocopying and maintaining a stationery store. In July 1993 the applicant was informed that he was to be made redundant, following organisational changes in the TA pursuant to a process of civilianisation. He was subsequently informed that the clerical post which he had occupied was to become a civilian post and was to be converted to that of a technical store-man. The applicant applied for this new post, but was informed in February 1994 that he could take it only if he undertook a training course, but that all relevant training courses had been cancelled. He also applied for a number of other clerical posts within the Army but was refused for them all.

8. The applicant was therefore made redundant. His discharge from the Army, dated 18 February 1994, was formally made, incorrectly, on the basis that his services were no longer required. The applicant later discovered that his former duties were being carried out by an untrained civilian, while the technical store-man post remained vacant.

9. On 3 May 1994 the applicant complained about his redundancy to the Industrial Tribunal, but his claim was rejected because the Industrial Tribunal did not have jurisdiction over matters involving military personnel.

10. On 19 December 1994 the applicant claimed redress in respect of his redundancy from his Commanding Officer, under sections 180 and 181 of the Army Act 1955.

11. On 22 March 1995 the Commanding Officer issued a brief in which he concluded that the applicant had a weak case for redress. He further requested the Army Board of the Defence Council to determine whether the applicant was subject to military law. The applicant's solicitors, on 6 December 1996, submitted observations in reply. The matter was then placed before the Army Board.

12. In January 1998, the applicant applied for judicial review in respect of the Army Board's failure to determine the case within a reasonable time. His application was granted by the High Court on 2 February 1998 and the Army Board was ordered to deal with the case expeditiously.

13. The Army Board, without holding an oral hearing or directing a Board of Inquiry to be convened, issued its decision on 7 May 1998, refusing the applicant's claim for redress.

14. The applicant applied for judicial review of the decision not to hold an oral hearing or convene a Board of Inquiry.

15. On 3 November 1998, while the judicial review application was pending, the Army Board directed that a Board of Inquiry should be convened. The Board was convened by an order dated 10 February 1999. It sat in March 1999, considered oral and documentary evidence and issued a summary of its factual findings on 6 May 1999. It found in the applicant's

favour as regards his argument that he ought to have been, but was not, given priority before five selection boards. It was anticipated that the level of compensation would be fixed by negotiation between the Army Board and the applicant.

16. The Army Board met to reach a determination on 11 April 2001. It issued its decision on 16 July 2001, ordering that the applicant be offered compensation in respect of the failure to offer him alternative employment within the Army. On 10 August 2001, an award of compensation was notified to the applicant but he disputed the calculation of the compensation.

17. In November 2001 a further offer of settlement was made to the applicant, which he rejected.

18. On 11 April 2003 the Army Board made a further compensation offer of GBP 94,016.67. The sum was made up of three parts: loss of salary (minus the applicant's actual earnings during the relevant period); a redundancy payment estimated on the basis that the applicant would have had an extra six years' service; and loss of pension rights, again based on a six-year period. The applicant rejected the offer on the basis that it did not include costs or a sum to compensate him for the stress he had suffered.

19. The applicant, acting as a litigant in person, subsequently applied for judicial review of the decision, claiming that the award had not been properly assessed. Permission was granted on 23 June 2003. The applicant advanced two criticisms: first, that the award was based on the assumption that he would have been discharged from the army six years after the date on which he was actually discharged; second, that the salary base used for the calculation of all three elements of the award was taken to be GBP 15,800 per year gross. The latter criticism was only formally advanced at the hearing itself.

20. On 16 October 2003 the High Court rejected the applicant's complaint regarding the six-year cut-off date. However, in light of evidence produced to the court regarding the level of the applicant's salary at the time of his redundancy, the court accepted the Army Board's undertaking to review the level of the annual salary used in its calculation and, if appropriate, to reassess the award of compensation within 35 days. Although formally the applicant was the unsuccessful party in the litigation, and as a result would normally be required to pay the costs of the Army Board, the court ordered the applicant to pay only half of the Army Board's costs partly on the ground that "the history of this matter displays an inordinate period of delay".

21. On 20 November 2003, a revised offer of GBP 147,682.42 was made to the applicant. The offer was rejected.

22. The applicant again applied for judicial review on 11 January 2004 seeking an order requiring the Army Board to investigate and take steps towards redressing his complaint within a prescribed time-frame and damages for the losses suffered by him as a result of the Army Board's

failure to perform its duties. There was a hearing on 10 February 2004 but no order was made.

23. On 13 April 2004, a further offer was made to the applicant in the sum of GBP 153,000.

24. On 26 July 2004 the applicant again applied for judicial review in respect of the delay but again, following a hearing on 10 August 2004, no order was made.

25. On 19 May 2005, following another application for judicial review, the High Court adjourned the case pending promulgation by the Army Board of its written decision regarding the offer of compensation.

26. On 24 May 2005 the Army Board issued its decision awarding the applicant compensation of GBP 153,864.47.

27. The applicant's application for judicial review was refused on 24 June 2005 on the ground that the Army Board's decision had brought the finality which the applicant had been seeking.

28. The applicant brought a fresh application for judicial review on the ground that the award of 24 May 2005 had been incorrectly reached. The application was refused on the papers on 22 September 2005. Following the applicant's renewed application and an oral hearing, permission was finally refused on 14 November 2005.

II. RELEVANT DOMESTIC LAW

A. Recruitment in the army

29. According to Halsbury's Laws of England (4th Edition), the terms of engagement of members of the armed forces do not constitute a contract of service in the strict sense. Members of the armed forces are appointed by the Crown under the Royal prerogative and hold their appointments "at the Queen's pleasure".

30. The TA, although essentially part-time, has a small number of attached regular army officers and non-commissioned officers responsible for organising and supervising the management and training of the unit. At the relevant time, the routine administration of the TA tended to be vested in a special category of uniformed reservists known as Non-Regular Permanent Staff ("NRPS"). NRPS were recruited into the TA to perform a specific job within a TA unit.

31. Under section 205(1)(h) of the Army Act 1955, NRPS soldiers were subject at all times to military law.

B. Redress in the army

1. Complaint to commanding officer

32. Section 181 of the Army Act 1955 set out, at the relevant time, the redress available to the applicant following his redundancy. It provided as follows:

“(1) If a warrant officer, non-commissioned officer or soldier thinks himself wronged in any matter by any officer other than his commanding officer or by any warrant officer, non-commissioned officer or soldier, he may make a complaint with respect to that matter to his commanding officer.

(2) If a warrant officer, non-commissioned officer or soldier thinks himself wronged in any matter by his commanding officer, either by redress not being given to his satisfaction on a complaint under the last foregoing subsection or for any other reason, he may, in accordance with the procedure laid down in Queen's Regulations, make a complaint with respect thereto to the Defence Council,

(3) It shall be the duty of a commanding officer or, as the case may be, the Defence Council to have any complaint received by him or them investigated and to take any steps for redressing the matter complained of which appear to him or them to be necessary.”

33. Queen's Regulation (“QR”) 5.204(b) provided:

“Every complaint is to be fully and distinctly stated and any explanation or other evidence as may be necessary for the proper investigation and speedy determination of the complaint is to be annexed to it.”

34. QR 5.205 provided:

“A complaint is to be submitted, in writing, to the complainant's commanding officer no matter if the commanding officer has previously refused to redress the matter complained of; has not the power to grant the redress sought; or if the complaint has been made against the action or refusal of action by the commanding officer himself.”

35. QR 5.206 provided:

“Any complaint under Section ... 181(2) of the Army Act 1955 is, when received by the commanding officer, to be forwarded by him, with any comments, to his next higher authority. That authority is to examine the complaint and is himself to grant redress if he has power to do so and thinks he should. If redress is not then granted, or is not granted to the complainant's satisfaction, that authority is to forward the complaint, together with any comments by the commanding officer and himself, to the next higher authority, and the procedure repeated. In this way, unless full redress is granted at an intermediate level, the complaint will come up through the chain of command to the Ministry of Defence and will be presented to the Army Board of the Defence Council. The complainant is to be informed of progress at each stage and given the opportunity to withdraw his complaint if he wishes.”

36. New primary legislation governing redress of complaints was introduced in the Armed Forces Act 1996 but this new legislation applied only to complaints brought on or after 1 October 1997.

2. Procedure before the Defence Council

37. The Defence Council is appointed by Letters Patent from Her Majesty to have command of the armed forces. It is composed of the defence ministers, the most senior Ministry of Defence civil servants and the most senior officers of the armed forces.

38. Under section 1(5) of the Defence (Transfer of Functions) Act 1964, the functions of the Defence Council may be discharged by the Army Board.

39. The requirements of fairness to be observed in the procedure before the Defence Council were set out in *R v Army Board ex parte Anderson* [1992] 1 QB 169 (“the *Anderson* principles”). The Divisional Court considered that the Army Board must achieve “a high standard of fairness” and, in particular, there must be a proper hearing at which all relevant evidence is considered; the members of the Board must meet for this purpose; where appropriate, an oral hearing must be held with opportunity for cross-examination of witnesses; there must be a proper examination; all material seen by the Board must be disclosed to the complainant (subject to public interest immunity exceptions); and the complainant must be given an opportunity to respond to material and have his response considered by the Board.

3. The Board of Inquiry

40. Under section 135(1) of the Army Act 1955, the Defence Council had the power to convene a Board of Inquiry (“the Board”) to investigate and report on the facts relating to a matter referred to it by the Defence Council.

41. The composition of the Board was specified in section 135(2) as consisting of a president, who shall be an officer not below the rank of captain or corresponding rank and be subject to military law, and not less than two other members each of whom shall either be a person subject to military law or a person not so subject who is in the service of the Crown.

42. The applicable rules were set out in the Board of Inquiry (Army) Rules 1956 (“the Rules”), which established, under Rule 3, a duty for the Board to investigate and report on the facts relating to any matter referred to it and, if directed to do so, to express its opinion on any question arising.

43. Rule 8(2) provided that:

“The President shall lay the terms of reference before the board and the board shall proceed to hear and record evidence in accordance with the provisions of these Rules.”

44. Rule 10(1) provided:

“A board shall hear the evidence of the witnesses who have been made available by the authority and may hear the evidence of such other persons as they think fit.”

45. Rule 12 provided:

“A board may receive any evidence which they consider relevant to the matter referred to the board, whether oral or written, and whether or not it would be admissible in a civil court.”

46. Rules 15(1) provided:

“The president shall record, or cause to be recorded, the proceedings of the board in writing and in sufficient detail to enable the authority to follow the course of the proceedings.”

47. The relevant QR (5.009) provided as follows:

“Administrative instructions relating to boards of inquiry convened in accordance with the Board of Inquiry (Army) Rules 1956 ... are contained in Annex A to this Chapter. These instructions are to be followed in all cases.”

Paragraph 47 of Annex A provided:

“... all persons who may be affected by the findings are to be given an opportunity to attend or be [re]presented.”

Although the Army Board was not strictly bound by the findings of a Board of Inquiry, it would be rare for the Army Board to substitute its own findings for those of the Board.

C. Access to employment tribunals

48. Members of the armed forces have access to civilian employment tribunals in relation to issues regarding equal pay and unlawful discrimination on grounds of race, sex, religion, belief or sexual orientation.

49. Although at the relevant time the right not to be unfairly dismissed was a statutory right, under section 54(1) of the Employment Protection (Consolidation) Act 1978, its application to service as a member of the armed forces was excluded under section 138 of the Act. Accordingly, the Industrial Tribunal did not have jurisdiction to hear a claim for unfair dismissal brought by a member of the armed forces.

D. The scope of judicial review of administrative decision-making

50. The scope of judicial review in administrative decision-making in the United Kingdom is set out in the Court's judgment of *Tsfayo v. the United Kingdom*, no. 60860/00, §§ 25-33, 14 November 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

51. The applicant complained that the proceedings took eleven years to reach their conclusion. He contended that this was a breach of the requirement of a hearing within a reasonable time under Article 6 § 1 of the Convention, which reads as follows:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

52. He further complained that the Army Board and the Board of Inquiry did not constitute an independent and impartial tribunal as required by Article 6 § 1 of the Convention.

A. Applicability of Article 6 to the proceedings

53. The Government accepted that the applicant's civil rights were determined in the domestic proceedings and that Article 6 was applicable.

54. The Court recalls that, in accordance with its previous case-law, access to court may be excluded in respect of employment disputes regarding a certain category of civil servants where such exclusion is both expressly set out in national law and justified on objective grounds in the State's interest (see, *inter alia*, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-....). The Court notes that the Government do not allege that any such situation arises in the present application.

55. The Court therefore agrees with the parties that the applicant's claim concerned his civil rights and that, accordingly, the guarantees in Article 6 § 1 apply to the proceedings.

B. Complaint regarding the length of the proceedings

1. Admissibility

56. The Court considers that the complaint regarding the time taken for the proceedings in relation to the applicant's complaint to be finalised is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

a. The parties' submissions

57. The applicant argued that the resolution of his grievance regarding his dismissal from his post was substantially delayed, in violation of his rights under Article 6 § 1 of the Convention. Although he made his complaint to his commanding officer in December 1994, the Army Board did not consider the complaint until April 1998. A Board of Inquiry was subsequently convened in January 1999 and despite its findings in May 1999 upholding a number of the applicant's complaints, the Army Board did not take any further action until July 2001 when it was agreed that the applicant should be awarded compensation. An offer of compensation was eventually made in April 2003. Following judicial review proceedings, a further offer was made on 24 May 2005, some 11 years after his discharge from the armed forces.

58. The Government accepted that the time which elapsed between the applicant making his claim for redress on 19 December 1994 and the final determination of his claim on 24 May 2005 was not reasonable, within the meaning of Article 6 § 1.

b. The Court's assessment

59. The Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see *Selmouni v. France* [GC], no. 25803/94, § 112, ECHR 1999-V; *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). On the latter point, the importance of what is at stake for the applicant in the litigation has also to be taken into account (see e.g. *Glaser v. the United Kingdom*, no. 32346/96, § 93, 19 September 2000; and *Frydlender*, cited above, § 43).

60. The Court considers that the proceedings in the present case were of some financial importance to the applicant. Furthermore, the issues raised were not factually or administratively complex. The Court notes that there were significant periods of inactivity on the part of the authorities and that the High Court commented on the “inordinate period of delay” in the proceedings. The Court is therefore not persuaded that the proceedings were pursued with the diligence required by Article 6 § 1. In this regard, the Court refers to the Government's admission that the proceedings were not concluded within a reasonable time. These considerations are sufficient to enable the Court to conclude that the “reasonable time” prescribed by Article 6 § 1 was exceeded.

61. There has accordingly been a violation of Article 6 § 1 of the Convention in this regard.

C. Complaint concerning the independence and impartiality of the tribunal

1. Admissibility

62. The Court considers that the complaint regarding the independence and impartiality of the tribunal is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for ruling it inadmissible have been established. It must therefore be declared admissible.

2. Merits

a. The parties' submissions

63. The applicant alleged that he was denied a fair and impartial hearing before an independent fact-finding tribunal. He pointed out that his complaint was first determined on 30 April 1998 by the Army Board, composed of members of the armed forces, without a prior hearing. The Army Board concluded that his version of events was inaccurate. Although the complaint was later considered by the Board of Inquiry, this body was also composed of members of the armed forces. Accordingly, the applicant's complaints were at all stages determined by members of the very organisation whose conduct was the subject of the complaint.

64. According to the applicant, this was not remedied by the availability of judicial review, as judicial review proceedings did not provide an effective method of determining his factual complaint. The High Court was not bound to consider oral evidence and its supervisory role, absent evidence of perversity, was limited by any factual determination made by the relevant bodies of the armed forces. The applicant therefore concluded that his factual complaint had never been considered by an independent and impartial body.

65. The Government argued that even if the proceedings before the Army Board and the Board of Inquiry were not strictly speaking independent, their determination was subject to challenge in the High Court, which had sufficient jurisdiction in the judicial review proceedings to ensure that the process as a whole complied with Article 6 § 1.

66. Relying on *Tsfayo v. the United Kingdom*, no. 60860/00, § 42, 14 November 2006, the Government argued, first, that the nature of the complaint was not such as to require determination at first instance by an Article 6-compliant body. On the contrary, it was appropriate that the

complaint be determined by the Army Board, exercising its administrative discretion and professional judgment and applying a high standard of fairness enforceable by judicial review, with the added protection of referral to a Board of Inquiry to consider disputed issues of fact.

67. Second, as regards the manner in which the decision was reached, the Government considered each of the two decisions taken by the Army Board separately. In respect of the decision to award compensation, the Government noted that the Army Board accepted the findings of the Board of Inquiry. Although the Board of Inquiry was made up of members of the armed forces, none were in the applicant's immediate chain of command or had any connection with the events in respect of which the applicant sought redress. The procedure before the Board of Inquiry was set out in the relevant rules and the *Anderson* principles applied throughout. The applicant was present at those proceedings and was represented by counsel, who was able to cross-examine witnesses and lodge written submissions. Accordingly, the Government concluded that the factual questions were examined by a quasi-judicial body whose process had most of the hallmarks of a judicial process and was attended by numerous quasi-judicial safeguards. As regards the decision on the amount of compensation to award, although this was taken administratively, the *Anderson* principles applied and, in any case, the decision was subject to challenge by way of judicial review. It was therefore entirely appropriate in the present case.

68. Third, in respect of the content of the dispute, the question whether compensation ought to have been awarded was determined by the Board of Inquiry in a manner which complied with the requirements of Article 6. The level of compensation was determined administratively, but subject always to the *Anderson* principles. Both decisions were open to challenge by way of judicial review. It was clear that a court on judicial review could quash a decision not only if it was vitiated by legal misdirection, procedural impropriety or unfairness, bias, irrationality or bad faith, but also if there was no evidence to support factual findings, if they were plainly untenable or if the decision-maker was shown to have misunderstood or been ignorant of an established and relevant fact (*Begum v. London Borough of Tower Hamlets* [2003] UKHL 5, as recorded by the Court in *Tsfayo*, cited above, § 26).

69. The Government accordingly concluded that the High Court had “full jurisdiction” in respect of the applicant's complaint, which was therefore determined by an independent and impartial tribunal.

b. The Court's assessment

i. General principles

70. The Court recalls that even where an adjudicatory body determining disputes over “civil rights and obligations” does not comply with Article 6

§ 1 in some respect, no violation of the Convention can be found if the proceedings before that body are “subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1” (*Albert and Le Compte v. Belgium*, 10 February 1983, § 29, Series A no. 58).

71. The Court has previously held that in order to determine whether the Article 6-compliant second-tier tribunal had “full jurisdiction”, or provided “sufficiency of review” to remedy a lack of independence at first instance, it was necessary to have regard to such factors as the subject-matter of the decision appealed against, the manner in which that decision was arrived at and the content of the dispute, including the desired and actual grounds of appeal (see *Bryan v. the United Kingdom*, 22 November 1995, §§ 44 to 47, Series A no. 335-A; and *Tsfayo*, cited above, § 43).

72. In *Bryan*, cited above, the Court found it reasonable that the jurisdiction of the High Court to review findings of fact made at first instance be limited to considering whether the findings of fact, or the inferences based on them, were perverse or unreasonable. It reached this conclusion in light of the specialised area of law in issue in the dispute and the expertise of the inspector in establishing the facts and exercising discretion on a wide range of policy matters. Accordingly, judicial review in that case offered “sufficiency of review” and the proceedings complied with Article 6 § 1 of the Convention. The Convention organs followed the approach set out in *Bryan* to find that judicial review did provide “sufficiency of review” in a number of cases against the United Kingdom (for example, *X. v. the United Kingdom*, no. 28530/95, Commission decision of 19 January 1998, concerning a determination by the Secretary of State that the applicant was not a fit and proper person to be chief executive of an insurance company; *Stefan v. the United Kingdom*, no. 29419/95, Commission decision of 9 December 1997, concerning proceedings before the General Medical Council to establish whether or not the applicant was mentally ill and thus unfit to practise as a doctor; and *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 32, ECHR 2002-IV).

73. However, in *Tsfayo*, cited above, the Court reached a different conclusion, concluding that the decision-making process was significantly different from previous cases. Whereas in *Bryan*, the issues to be determined required a measure of professional knowledge or experience and the exercise of administrative discretion pursuant to wider policy aims, in *Tsfayo* the Housing Benefits Review Board (“HBRB”) was deciding a simple question of fact, namely whether there was “good cause” for the applicant's delay in making a housing benefit claim. On this question, the applicant had given evidence to the HBRB that the first that she knew that anything was amiss with her claim for housing benefit was when she received a notice from her landlord – the housing association – seeking to repossess her flat because her rent was in arrears. The HBRB found her

explanation to be unconvincing and rejected her claim for back-payment of benefit essentially on the basis of their assessment of her credibility. No specialist expertise was required to determine this issue. Nor could the factual findings in *Tsfayo* be said to be merely incidental to the reaching of broader judgments of policy or expediency which it was for the democratically accountable authority to take. Accordingly, the Court concluded that judicial review proceedings did not offer, in the circumstances raised in *Tsfayo*, “sufficiency of review” in light of the fact that the High Court had no jurisdiction to rehear the evidence or substitute its own views as to the applicant's credibility. As a result, the central issue in the dispute was not determined by an independent and impartial tribunal.

ii. Application of the general principles to the facts of the case

74. The Court recalls that there were two contested issues in the applicant's case before the Army Board: first, whether there was a failure to give him the correct priority when he sought alternative posts within the armed forces; and, second, whether the level of compensation offered was correct.

75. As regards the first issue, the Court observes that the Board of Inquiry and the Army Board found in favour of the applicant and upheld his complaint that he should have been, but was not, given priority consideration before five selection boards and that he had as a result been materially disadvantaged. They agreed that, as a consequence, the applicant should be offered compensation. There is therefore no longer any dispute between the parties on this first issue. It follows that the dispute between the applicant and the armed forces for consideration by the Court relates solely to the calculation of the compensation award by the Army Board.

76. The Court notes that the Army Board was composed of members of the armed forces, the organisation from which the applicant was seeking compensation. The Government do not expressly concede that the Army Board lacked structural independence. However, in arguing that the applicant had his proceedings determined by an independent and impartial tribunal, they rely on the fact that, in their contention, the High Court had sufficient jurisdiction to ensure compliance of the proceedings as a whole with Article 6.

77. The Court considers that there is a legitimate concern that the Army Board lacked the necessary structural independence to comply with the requirements of Article 6 in assessing the level of compensation to be awarded to the applicant. However, as noted above (§ 72), it is not always the case that such circumstances will give rise to a violation of Article 6. The Court observes that the Army Board had responsibility, in the main, for making findings of fact. In addition, in the present case, it enjoyed a large degree of discretion in deciding what level of compensation ought to be offered to the applicant, the relevant legislation and internal regulations

laying down no particular method by which any award of compensation ought to be calculated. However, unlike the cases of *Bryan v. the United Kingdom* and *X v. the United Kingdom*, cited above, the exercise of that discretion did not benefit from any specialist knowledge offered by the members of the tribunal in question. Accordingly, there was no compelling reason for the decision on the level of compensation to have been made by the Army Board, rather than by an independent and impartial tribunal. In this respect, therefore, the Court considers that the circumstances are similar to those in *Tsfayo*. There will therefore be a breach of Article 6 unless in the particular circumstances of the case the judicial review proceedings offered “sufficiency of review” such as to ensure that the requirements of Article 6 regarding the independence and impartiality of the tribunal were met.

78. On this question, the Court notes that unlike in *Tsfayo*, the dispute between the parties in the present application did not centre on a question of fact determined by the Army Board which the High Court had no jurisdiction to revisit. The central issue in the applicant's case was whether the approach of the Army Board in assessing the level of the compensation order was appropriate. The Court considers it significant that in its October 2003 judgment, the High Court examined in some detail how the Army Board had arrived at the figure offered. It is clear that the applicant's criticisms were carefully examined by the court, which reached its decision following an analysis of the approach of the Army Board and an assessment of whether or not that approach was reasonable in the circumstances. As regards the applicant's first criticism concerning the exercise of the Army Board's discretion in calculating the award on the basis of a six-year cut-off date, the High Court was able to review all the relevant factors relating to the decision of the Army Board and to assess whether the approach taken was appropriate. The criticism was rejected on the ground that the Army Board had acted entirely properly in selecting a six year cut-off date for the calculation. In respect of the second criticism regarding the salary base used for the calculation of the compensation award, the Court observes that in so far as there was a factual dispute between the parties as to the applicant's salary at the time of the redundancy, the question of fact was in the event revisited: the High Court had regard to papers submitted by the applicant supporting his argument that an incorrect salary base had been used and concluded that further investigation was required. Accordingly, the matter was reviewed by the Army Board, which subsequently made a substantially increased offer of compensation. The applicant does not dispute that the revised salary base used was correct.

79. Having regard to the relevant factors as outlined in *Tsfayo*, the Court concludes that the High Court on judicial review did have “sufficiency of review” to remedy any lack of independence of the Army Board. Although the High Court could not substitute its own view as to an appropriate award in the circumstances of the case, it could and did examine both the method

of calculation and the base figures used for the calculation. In the applicant's case, it found the base figure to be inaccurate and required the Army Board to review the calculation. The applicant's complaint was therefore determined by an independent and impartial tribunal

80. There has accordingly been no violation of Article 6 § 1 in this regard.

II. ALLEGED VIOLATIONS OF OTHER ARTICLES OF THE CONVENTION

81. The applicant complained under Article 8 of the Convention that the wrong reason was given for his discharge from the armed forces and that the reason given carried a stigma which had a negative effect on his future employment prospects. He further complained under Article 13 about the fact that the award of compensation did not take into account his expenses in bringing the claim. Finally, he complained under Article 14 of the Convention that he had been the victim of discrimination as he was unable to afford proper representation and, as a result, his status and standing were called into question.

82. In the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from these complaints.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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.”

84. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the independence and impartiality of the tribunal determining the proceedings.

Done in English, and notified in writing on 27 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President