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

FOURTH SECTION

Application no. 1573/11
by Anthony PRITCHARD
against the United Kingdom
lodged on 20 December 2010

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Anthony Pritchard, is a British national who was born in 1944 and lives in Rhonda, Wales. He is represented before the Court by Mr D. Feery, a lawyer practising in Leeds.

A. The circumstances of the case

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

1. Dewi Pritchard's death

The applicant is the father of Dewi Pritchard, who was born in 1967 and who was married with two children. Dewi Pritchard was an electronics engineer and a member of the Territorial Army, which is the volunteer part of the United Kingdom reserve force.

In mid-2003 Dewi Pritchard received compulsory call up papers to serve in Iraq. He attended a two-week training session before being deployed to Southern Iraq.

Dewi Pritchard served as a Corporal with the Provost Company (Volunteers), part of the 4th Regiment of the Royal Military Police (RMP). It appears that at all times he was deployed at the Palace in Basrah, charged with training local Iraqi police officers. He was killed on 23 August 2003.

The applicant has not been provided with detailed information about his son's death. From the witness statements taken by the RMP after the incident, the basic facts appear to be as follows:

Some time on the evening of 22 August 2003, presumably at what must have been a British base at "the Palace, Al-Basrah" soldier "A" (rank unknown) was briefed, apparently along with Corporal S., that the next morning they would carry out an operation to transport 200 AK47 rifles to the Maysan Province. The order was apparently to load these 200 rifles into a non-armoured Wolf Land Rover to be ready to be moved the next morning. There is no information about how public this was. It is not known whether any precautions were taken to keep the operation secret or whether information about the operation could have come to the knowledge of those outside the base. It is also not known whether anyone apart from Corporal S and Soldier A was briefed. Nor is the content of the briefing that was given, including any safety precautions, known to the applicant.

At around 8 a.m. on 23 August 2003 the Wolf Land Rover was driven by Corporal S to the "POL point" (probably a re-fuelling station). The location of the POL point is unknown. The vehicle in which Dewi Pritchard was travelling was apparently waiting at the POL. This vehicle was a non-armoured Nissan Pathfinder. According to Soldier A, the Nissan contained four people: the Officer in Command of his unit, Major T, the Command Sergeant Major, Warrant Officer W, Corporal L and Corporal Dewi Pritchard, who was in the driver's seat. Soldier A stated that they were all wearing body armour but not helmets. He stated that he and Corporal S had SA80 rifles with them in the Land Rover and that he believed that the occupants of the Nissan also had such rifles.

According to Soldier A, the Nissan was being driven about 20 metres ahead of the Land Rover that contained the 200 rifles. He saw a red Chevrolet truck coming up alongside the Land Rover at a location unknown to the applicant. The five or six individuals in that vehicle apparently looked into the Land Rover after which they continued on towards the Nissan. According to Soldier A the 200 rifles "could clearly [be seen] stacked in the back, through the rear window of [the] vehicle". After the truck overtook the Land Rover and moved alongside the Nissan ahead of them, Soldier A describes seeing "the male with the short beard reach down into the back of his vehicle and pull out an AK47 Rifle. This same man then stood up in the back of the truck, one foot on the wheel arch, one foot inside, pointed the weapon at the side window of the Nissan and fired an automatic long burst of fire into the Nissan". At this point Soldier A tried to get in touch with Dewi Pritchard by radio but got no response.

When Corporal S, who was driving the Land Rover, saw what was happening she stopped the vehicle sharply on the middle of the road. The Nissan accelerated and then veered across the path of the truck and disappeared in a cloud of dust. The truck meanwhile continued driving at speed along the road. Soldier A insisted that he and Corporal S return at once to the Palace, because he believed that the people in the truck were "after the rifles" as they had seen them stacked in the back of the Land Rover. No attempt appears to have been made to call for reinforcements or report the incident at that time. Soldier A stated that it was only when they "eventually arrived back at the Palace" that they informed those in

command of what had happened. No timings are given and it is unclear how long it took for that information to get back to military headquarters.

Around 8-20 to 8-30 a.m. it appears that a two-vehicle patrol coming from a different base came across a dead Iraqi woman and the Nissan, which had crashed into a wall. One of the soldiers in the patrol gave evidence that he looked into the Nissan and saw that the driver and front passenger had been thrown forward and crushed. He attempted to radio for assistance but was unable to establish communication, so drove the short distance to the base to fetch an ambulance. Within five minutes he was back at the scene accompanied by an ambulance. On arrival he found that his Commanding Officer was present and assisting with immediate force protection responsibilities. One passenger in the Nissan was alive. After he had been extracted from the vehicle the three dead soldiers, who included Dewi Pritchard, were removed. From the statements taken from the military witnesses, it does not appear that the men in the Nissan were wearing helmets.

2. The investigation and inquest

A post-mortem examination of Dewi Pritchard on 1 September 2003 found evidence of multiple gunshot wounds, principally to the head.

An investigation was carried out by the RMP Special Investigation Branch, with the aim of establishing the identity of the men who had fired at the Nissan, but no information was forthcoming. The RMP also produced a "Learning Account" following the incident, but the applicant was not provided with a copy.

On 19 September 2005 the applicant wrote to the Coroner seeking detailed information about the circumstances of his son's death, including the planning and security arrangements for the transport.

The Coroner replied on 29 September 2005 stating that "most of the information you require is well outside the sphere of a Coroner's enquiry", although he enclosed copies of the statements taken by the military witnesses and the ballistic report.

On 3 October 2005 the applicant was refused funding for legal representation at the inquest. On 4 October 2005 his solicitors wrote again to the Coroner seeking clarification as to whether the inquest would comply with the investigatory obligations contained in Article 2 of the Convention. In a telephone conversation, the Coroner stated that he would not be carrying out an Article 2 compliant investigation because the Convention did not apply to British soldiers overseas unless they were within an embassy or on a British ship.

The inquest into the death of Dewi Pritchard and two of the other soldiers killed in the same incident took place on 11 October 2005. It lasted two and a half hours.

On 13 October 2005 the Coroner wrote to the applicant's solicitors enclosing a copy of the inquisition, which stated:

> "Injury causing death: gunshot wounds
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> Time place and circumstances at or in which injury sustained: On the morning of Twenty-third August 2003 he was on duty and the driver of a pathfinder vehicle in Basra when it came under fire from another vehicle carrying civilian personnel

Conclusion of the coroner as to the death: He was unlawfully killed".

3. The subsequent legal proceedings

On 9 June 2006 the applicant contacted new solicitors who were sent the file on 11 October 2006 and made applications for funding for a proposed judicial review on 27 October 2006. On 20 November 2006 the applicant was refused legal aid. His appeal against that decision was rejected.

On 22 November 2007 the applicant's new solicitors wrote to the Coroner requesting that he re-open the inquest. The letter was sent again and on 18 January 2008 the Coroner replied that he was *functus officio*. However, on 11 April 2008 the Coroner sent the notes of evidence of the inquest to the applicant's solicitor.

On 15 April 2008 the applicant's solicitor wrote to the Coroner drawing his attention to the judgment of the High Court of 11 April 2008 *in R (Smith) v Oxfordshire Assistant Deputy Coroner and Secretary of State for Defence* (henceforth, "*Smith"*), finding a Territorial Army soldier who died of heat stroke in Iraq in August 2003 remained subject to United Kingdom jurisdiction for the purposes of Article 1 of the Convention. The Coroner's solicitors replied on 22 April 2008 stating that the Coroner was *functus.*

Accordingly, the applicant's solicitor applied again for legal aid to challenge the inadequacy of the inquest by way of judicial review.

On 21 July 2008 full legal funding was provided and judicial review proceedings were lodged on 8 August 2008. The applicant sought an order quashing the original inquisition of 11 October 2005 and remitting the matter for a fresh inquest carried out in a way that was compatible with Article 2. An extension of time was sought for bringing the claim.

The Coroner's grounds of resistance were not related to the substantive merits of the claim. Rather the Coroner argued that the claim for judicial review was too late and that the applicant had waived any right he had to an Article 2 compliant inquest by not taking steps earlier. The Secretary of State, who was an interested party, argued that the investigatory obligation contained in Article 2 did not apply to Dewi Pritchard's death because he was killed off-base and therefore was not within United Kingdom jurisdiction. In the alternative, the Secretary of State argued that the Article 2 procedural obligation only applied to cases involving the deliberate taking of life by State agents; cases where there was a serious, direct and immediate risk to the deceased and steps were not taken that could reasonably have been taken to protect the deceased; cases involving deaths in custody because of arguable negligence on the part of the State; and cases in which persons have died through the gross negligence of medical authorities. The Secretary of State did not explain why, even on his analysis, Dewi Prichard's death did not in any event fall under his second category of cases.

On 4 September 2008 permission to bring the claim was refused on the papers. There was a subsequent oral hearing before Sullivan J, who gave judgment on 28 October 2008 refusing permission, on the ground that the application was too late.

An application for permission to appeal was filed on 4 November 2008.

On 18 May 2009 the Court of Appeal gave judgment in the *Smith* case, finding that British soldiers remained within the jurisdiction of the United Kingdom wherever they were serving. However, the Court of Appeal granted the Secretary of State permission to appeal the case to the Supreme Court.

Subsequently, on 22 July 2009, the Court of Appeal granted the applicant permission to appeal the ruling of Sullivan J on the basis of its ruling in *Smith*. The hearing of that application was adjourned pending the outcome of the Supreme Court judgment in *Smith*.

The Supreme Court gave judgment in *Smith* on 30 June 2010 (see further below). The majority of the House of Lords held that British soldiers were only subject to United Kingdom jurisdiction under the Convention when they were physically on a British military base.

Accordingly, the applicant's pending appeal to the Court of Appeal no longer stood any prospects of success and it was withdrawn on legal advice.

B. Relevant domestic law

In *R (on the application of Smith) (FC) (Respondent) v Secretary of State for Defence (Appellant) and another* [2010] UKSC 29, the Supreme Court considered two issues. The first issue required the court to determine whether the applicant's son, a soldier serving in Iraq who died of heatstroke in August 2003, was within the "jurisdiction" of the United Kingdom within the meaning of Article 1 of the Convention. Secondly, assuming that he was within jurisdiction, the court considered whether there was an obligation under Article 2 to carry out a full investigation when a soldier dies in these circumstances.

On the first issue, the majority of the Supreme Court (Lords Phillips, Hope, Rodger, Walker, Collins and Brown) held that a soldier serving overseas was within the Article 1 jurisdiction of the United Kingdom only when he was physically within premises under the effective control of the army. Lord Phillips, with whom Lords Hope and Brown agreed, observed as follows:

> "53. ... Under domestic law and in accordance with public international law, members of the armed forces remain under the legislative, judicial and executive authority of the United Kingdom, whether serving within or outside United Kingdom territory. From the viewpoint of domestic law they can thus be said to be within the jurisdiction of the United Kingdom wherever they are. It is not attractive to postulate that, when they are outside the territorial jurisdiction in the service of their country they lose the protection afforded by the Convention and the [Human Rights Act]. That, however, is not the question. The question is whether, in concluding the Convention, the contracting States agreed that Article 1 jurisdiction should extend to armed forces when serving abroad as an exception to the essentially territorial nature of that jurisdiction. What were the practical implications of so doing?
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> ...
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> 55. It is not practicable for a State to secure many of the Convention rights and freedoms for troops in active service abroad. Article 2 is, however, plainly capable of being engaged. The safety of the lives of those fighting abroad can depend critically on the acts or omissions of State agents, covering the equipment with which they are supplied, the missions on which they are sent, and strategic and tactical decisions taken by commanders in the field. If the troops are within the article 1 jurisdiction of the State the question arises of how far these matters fall within the substantive

obligations imposed by article 2. Insofar as they do, the question then arises of whether the procedural obligation arises every time a serviceman is killed in circumstances which may involve a shortcoming in the performance of those substantive obligations. ...

58. The contracting States might well not have contemplated that the application of article 2 to troop operations abroad would have involved obligations such as those I have discussed above, but whatever the implications might have seemed, it is unlikely that they would have appeared a desirable consequence of the Convention. So far as this country is concerned, it is significant that when the Crown Proceedings Act 1947 rendered the Crown susceptible to civil suit an exception was made in relation to the armed forces. Only in 1987 did the Crown Proceedings (Armed Forces) Act remove that exception. This does not lie happily with the proposition that the United Kingdom bound itself to the observance of the Convention obligations toward its armed forces abroad when it ratified the Convention in 1951.

59. Today the size of the forces maintained by contracting States is a fraction of those that they maintained when the Convention was agreed. Every death of a British serviceman abroad is now reported in the British press. The bodies of British servicemen who die on active service are flown back and buried in this country, and it is this fact which makes it mandatory to hold an inquest in each case. The care that is taken to avoid casualties and the procedures that are followed when casualties occur are to be commended, but they would not have seemed practicable in 1953.

60. In *Al-Skeini* at para 107 Lord Brown expressed the view that the House should not construe article 1 as reaching any further than the existing Strasbourg jurisprudence clearly shows it to reach. I endorse that comment. We are here dealing with the scope of the Convention and exploring principles that apply to all contracting States. The contention that a State's armed forces, by reason of their personal status, fall within the jurisdiction of the State for the purposes of article 1 is novel. I do not believe that the principles to be derived from the Strasbourg jurisprudence, conflicting as some of them are, clearly demonstrate that the contention is correct. The proper tribunal to resolve this issue is the Strasbourg Court itself, and it will have the opportunity to do so when it considers *Al-Skeini*."

Also within the majority, Lord Collins (with whom Lords Hope, Rodger, Walker and Brown agreed) reviewed the case-law of this Court on jurisdiction and concluded:

"307. This case comes within none of the exceptions recognised by the Strasbourg court, and there is no basis in its case-law, or in principle, for the proposition that the jurisdiction which states undoubtedly have over their armed forces abroad both in national law and international law means that they are within their jurisdiction for the purposes of article 1. For the reasons given in the preceding sections of this judgment, jurisdiction cannot be established simply on the basis that the United Kingdom's armed forces abroad are under the 'authority and control' of the United Kingdom, or that there is a 'jurisdictional link' between the United Kingdom and those armed forces. To the extent that *Issa v Turkey* states a principle of jurisdiction based solely on "authority and control" by state agents over individuals abroad, it is inconsistent with *Banković*, and with *Al-Skeini*, where it was comprehensively criticised by the House of Lords. Nor is there anything in *Markovic v Italy* or in Lord Rodger's opinion in *Al-Skeini* to support a 'jurisdictional link' as a free-standing basis for jurisdiction under article 1.

308. Nor are there policy grounds for extending the scope of the Convention to armed forces abroad. On the contrary, to extend the Convention in this way would ultimately involve the courts in issues relating to the conduct of armed hostilities which are essentially non-justiciable."

Lord Brown observed that that:

"139. Are our armed services abroad, in Iraq, Afghanistan or wherever else they may be called upon to fight, within the United Kingdom's jurisdiction within the

meaning of article 1 of the European Convention on Human Rights? That is the critical first issue for decision on this appeal. If they are, then the United Kingdom is required to secure to them all the Convention rights and freedoms. Some will say that this is no less than they deserve. They are brave men and women, undoubtedly entitled to these rights and freedoms whilst serving (sometimes, as recently in Northern Ireland, on active service) at home. Why should they not enjoy the same rights when, whether they like it or not, they are called upon to face dangers abroad? When abroad, they are, after all, still subject to UK military law and, indeed, remain generally under the legislative, judicial and executive authority of the UK. Others, however, will say that to accord Convention rights and freedoms to our services whilst engaged in armed combat with hostile forces abroad makes no sense at all. It could serve only to inhibit decision-making in the field and to compromise our services' fighting power.

140. For my part I can readily see the force of both arguments and do not pretend to have found this an easy case to decide. In the end, however, I have concluded that, save in an exceptional case like that of Private Smith himself whose death resulted from his treatment on base, Convention rights do not generally attach to our armed forces serving abroad."

In the minority, Lord Mance, with whom Baroness Hale and Lord Kerr agreed, held that the United Kingdom had Article 1 jurisdiction over its armed forces in Iraq, for the following reasons:

"191. In the light of the above, it is in my view possible to give a clear answer to the question whether the United Kingdom had jurisdiction under international law over its armed forces wherever they were in Iraq. If the United Kingdom did not, then no state did. The invasion clearly and finally ousted any previous government. The United Kingdom was the only power exercising and having under international law authority over its soldiers. In so far as there was any civil administration in Iraq, it consented to this. If the CPA's consent is disregarded as coming from what was, in effect, an emanation of the two occupying powers, then the United Kingdom was, and was by Security Council Resolution 1483 recognised as, an occupying power in Iraq. *Bankovic* indicates that one basis on which the UK could be regarded as having had jurisdiction over its forces in Iraq would have been by consent of the state of Iraq. It would be strange if the position were different in the absence of any Iraqi government to give such consent, or therefore to object, to the exercise of such jurisdiction by the UK over its occupying forces. As an occupying power, the UK was necessarily in complete control of the armed forces by which it achieved such occupation, and had under international law "an almost absolute power" as regards their safety (Oppenheim, para 169, above), as well as duties regarding the effective administration of Iraq and the restoration of security and stability, to be performed through such forces. ...

192. The actual feasibility of the United Kingdom assuring and providing protection for its armed forces in Iraq depends on the circumstances, including the circumstances and place in which such forces are serving. But to distinguish fundamentally between the existence of the protective duties on the part of the United Kingdom towards its armed forces at home and abroad also appears to me as unrealistic under the Convention as it is at common law. The relationship between the United Kingdom and its armed forces is effectively seamless. ..."

On the second question, the Supreme Court unanimously rejected the argument that Article 2 always required a full investigation to be carried out whenever a member of the armed forces died in service. Lord Phillips, with whom Lords Walker, Brown, Collins and Kerr and Baroness Hale agreed, observed:

"84. The obligation to hold an article 2 investigation is triggered by circumstances that give ground for suspicion that the State may have breached a substantive obligation imposed by article 2. That in its turn raises the question of the scope of the

substantive obligations that a State owes in relation to its armed forces, which I have raised above. Whatever the scope of those obligations I do not consider that the death of a soldier on active service of itself raises a presumption that there has been a breach of those obligations. Troops on active service are at risk of being killed despite the exercise of due diligence by those responsible for doing their best to protect them. Death of a serviceman from illness no more raises an inference of breach of duty on the part of the State than the death of a civilian in hospital. For these reasons I reject the submission that the death of a serviceman on active service, assuming that this occurs within the article 1 jurisdiction of a State, automatically gives rise to an obligation to hold an article 2 investigation."

Lord Hope distinguished the position of members of a volunteer force, such as the British Army, and conscripted soldiers:

"100. The single characteristic which currently unites all our service personnel is that they have volunteered for the branch of the service to which they belong. This applies to those who have made their profession in the armed services as well as those, like Private Smith, who chose to serve part-time in reserve forces such as the Territorial Army. Mandatory military service no longer exists in this country. For this reason I would be reluctant to follow the guidance of the Strasbourg Court that is to be found in cases such as *Chember v Russia*, (Application No 7188/03) (unreported) 3 July 2008. The applicant in that case was called up for two years mandatory military service in the course of which he was subjected to ill-treatment and harassment. The court was careful to stress in para 49 that many acts that would constitute degrading or inhuman treatment in respect of prisoners may not reach the threshold of ill-treatment when they occur in the armed forces, provided they contribute to the specific mission of the armed forces in which they form part, for example training for battle-field conditions: *Engel v The Netherlands* (No 1) (1976) 1 EHRR 647. But the description which it gave in para 50 of the duty that the State owes to persons performing military service was directed specifically to cases where it decides to call up ordinary citizens to perform military service. That description cannot be applied to those who serve in the armed forces as volunteers."

Lord Rodger, with whom Lord Walker, Baroness Hale and Lord Brown agreed, explained the position as follows:

"118. I would apply precisely the same reasoning [as that applied to prisoners who commit suicide] if, say, a raw recruit to the armed forces committed suicide during initial military training. It is obvious – and past experience shows - that recruits, who are usually very young and away from their families and friends for the first time, may be unable to cope with the stresses of military discipline and training. In these circumstances I would regard such recruits as vulnerable individuals for whom the military authorities have undertaken responsibility. So the authorities must have staff trained, and structures in place, to deal with the potential problems which may, quite predictably, arise. Therefore, if a suicide occurred in such circumstances, this would suggest that there might have been a failure on the part of the authorities to discharge their obligation to protect the recruits. There would need to be an independent inquiry – especially since recruits are trained in a closed environment.

119. I would take much the same view of Private Smith's death in this case. It may well be that, in the circumstances in Iraq at the time, a soldier could die of heatstroke without there having been any violation of the Army's obligations under article 2. Nevertheless, the likelihood of extreme heat and its possible effects on soldiers were known to the military authorities. There was an obvious need to take appropriate precautions. So, where, as here, a soldier suffers so badly from heatstroke, while in his living accommodation, that he dies shortly afterwards, it is at least possible that the Army authorities failed in some aspect of their article 2 obligation to protect him. For that reason I am satisfied that, given his concession on jurisdiction, the Secretary of State was correct to concede the need for a Middleton inquest into Private Smith's death.

120. I would, however, take an entirely different view of the death of a trained soldier in action – e g, when a roadside bomb blows up the vehicle in which he is patrolling, or when his observation post is destroyed by a mortar bomb. The fact that the soldier was killed in these circumstances raises no prima facie case for saying that the United Kingdom army authorities have failed in their obligation to protect him and that there has, in consequence, been a breach of his article 2 Convention rights.

121. In the first place, even if an active service unit is, in some ways a closed world, it would be quite wrong to construct any argument around the idea that ordinary members of the forces are 'vulnerable' in the same way as prisoners or detained patients or, even, conscripts doing military national service in Russia or Turkey. I have already accepted that, in the initial stages of their training, recruits to the United Kingdom forces may indeed be vulnerable in this sense. But those who pass through training and are accepted into the forces are often the reverse of vulnerable: their training and discipline make them far more self-reliant and resilient than most members of the population and, so far from being isolated, they form part of a group whose members are supportive of one another.

122. Even more importantly, any suggestion that the death of a soldier in combat conditions points to some breach by the United Kingdom of his article 2 right to life is not only to mistake, but - much worse - to devalue, what our soldiers do. It is not just that their job involves being exposed to the risk of death or injury. That is true of many jobs, from steeplejacks to firemen, from test-pilots to divers. Uniquely, the job of members of the armed forces involves them being deployed in situations where, as they well know, opposing forces will actually be making a determined effort, and using all their resources, to kill or injure them. While steps can be taken, by training and by providing suitable armour, to give our troops some measure of protection against these hostile attacks, that protection can never be complete. Deaths and injuries are inevitable. Indeed it is precisely because, in combat, our troops are inevitably exposed to these great dangers that they deserve and enjoy the admiration of the community. The long-established exemption from inheritance tax of the estates of those who die on active service is an acknowledgment of the fact that members of the armed forces can be called upon to risk death in this way in the defence of what the government perceives to be the national interest.

...

124. At present our troops are exposed to great dangers in Afghanistan. Inevitably, many have been killed and many more have been wounded. To suggest that these deaths and injuries can always, or even usually, be seen as the result of some failure to protect the soldiers, whether by their immediate companions or by more senior officers or generals or ministers, is to depreciate the bravery of the men and women who face these dangers. They are brave precisely because they do the job, knowing full well that, however much is done to protect them, they are going to be up against opposing forces who are intent on killing or injuring them and who are sometimes going to succeed.

125. This is the background to any inquest into the death of a soldier on active service. In most cases the starting-point is that the soldier died as a result of a deliberate attack by opposing forces – by, say, a mortar bomb, or a roadside bomb, or by sniper fire. Usually, at least, that will also be the end-point of the coroner's investigation because it will be an adequate description not only of how the soldier was killed, but also of the circumstances in which he was killed. Of course, it will often – perhaps even usually – be possible to say that the death might well not have occurred if the soldier had not been ordered to carry out the particular patrol, or if he had been in a vehicle with thicker armour-plating, or if the observation post had been better protected. But, even if that is correct, by itself, it does not point to any failure by the relevant authorities to do their best to protect the soldiers' lives. It would only do so if – contrary to the very essence of active military service – the authorities could normally be expected to ensure that our troops would not be killed or injured by opposing forces. On the contrary, in order to achieve a legitimate peacekeeping objective, a commander may have to order his men to carry out an operation when he knows that they are exhausted or that their equipment is not in the best condition.

> Indeed the European Convention on Human Rights owes its very existence to countless individuals who carried out operations in just such circumstances.
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> 126. For these reasons, I am satisfied that, where a serviceman or woman has been killed by opposing forces in the course of military operations, the coroner will usually have no basis for considering, at the outset, that there has been a violation of any substantive obligation under article 2. ... Of course, as his investigation proceeds, the coroner may uncover new information which does point to a possible violation of article 2. To take an extreme example, it may emerge from the evidence that the soldier actually died as a result of friendly fire from other British forces. At that point, the legal position will change because there will be reason to believe that the military authorities may indeed have failed in their article 2 duty to protect the soldier's life. So the coroner will conduct the inquest in the manner required to fulfil the United Kingdom's investigatory obligation under article 2."

COMPLAINTS

The applicant complains under Articles 2 and 13 of the Convention that the United Kingdom has failed to carry out a full and independent investigation into the death of his son.

QUESTIONS TO THE PARTIES

1. Did the applicant's son fall within the jurisdiction of the United Kingdom under Article 1 of the Convention at the time of his death?

2. If so, was there an obligation under Article 2 of the Convention to carry out an investigation into the circumstances of his death? Has the United Kingdom complied with any such procedural obligation under Article 2?