CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 8681/02
by John SCHOFIELD
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 10 January 2006 as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 25 January 2002,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr John Schofield, is a British national who was born in 1970 and lives in Preston, Lancashire. He is represented before the Court by Matthew Gold & Company, a firm of solicitors based in London.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows. The applicant was, at the material time, a lance corporal (a non-commissioned officer) in the British army.

On 16 May 2000 he was convicted by a General Court Martial ("GCM") of two offences of rape of a junior female army officer (a Lieutenant). The applicant was sentenced to nine years' imprisonment and dismissed with disgrace from the service. The GCM comprised four officers (not below the rank of Captain), a permanent president and a judge advocate. The Reviewing Authority did not alter the GCM's finding or sentence.

The appeal to the Courts-Martial Appeal Court ("CMAC") was dismissed on 30 July 2001. The applicant had argued that trial by court-martial comprised exclusively of officers violated the impartiality guarantee of Article 6 of the Convention where the complainant was an officer, the accused was a soldier from the ranks and the issues in the case turned on the credibility of the evidence of those individuals. The CMAC noted that:

> "We have already referred to the fact that the members of the court swear a judicial oath for each case they are to try. The following passage formed part of the judge advocate's summing-up ...:
>
> > "What is required of you at this stage is cold, clinical dissection of the evidence. You are a panel of five commissioned officers, trying the factual issues in this case. The complainant... is a commissioned officer. It would, of course, be entirely wrong for you to prefer the evidence of [the complainant] because she is a commissioned officer as against the evidence of the accused because he is a non-commissioned officer. That would be to show partiality and I remind you again of the oath you took at the outset of this case, to try this case without partiality, favour or affection. Your commonsense will no doubt tell you that commissioned officers do not always tell the truth any more than non-commissioned officers do not always tell the truth. It may be, I know not, that you were unimpressed with [the complainant's] career to date. It's not been without its problems. She was short-toured from Bosnia and I suspect you will conclude that on occasions she drank rather more than was good for her. These are factors about her that you are entitled to consider, but again it would be wrong to say ... that simply because of those problems in her career to date, she is not worthy of belief. Similarly with the accused, bear in mind all you know about him, the fact that he is a non-commissioned officer is one of the things you know about him. You also know about his career to date, his achievements and what other people think of him and his qualities. Weigh that in the balance when deciding the weight that you feel is appropriate to attach to his evidence."

> These directions were clear, robust, and balanced. The court can have been left in no possible doubt but that it was their duty to assess the evidence free of the least influence exerted by the protagonists' respective ranks. In our judgment no apparent bias ... is shown, and there was no violation of Article 6."

In its judgment of that date the CMAC also refused to certify a point of law of public importance to the House of Lords concerning the applicant's ground of appeal to the CMAC.

B. Relevant domestic law and practice

The Armed Forces Act 1996 (the "1996 Act") came into effect on 1 April 1997, amending the Army Act 1955 (the "1955 Act"). The relevant domestic law and practice applicable to air-force courts-martial following the entry into force of the 1996 Act is set out in the case of *Cooper v. the United Kingdom* ([GC], no. 48843/99, §§ 15-77, ECHR 2003-XII). The relevant regulatory framework governing post-1996 Act army courts-martial is the same in all material respects (the *Cooper* judgment, at § 107).

At the relevant time, a GCM was required to consist of a permanent president, not less than four serving military officers of at least three years' military experience and a judge advocate (section 84D of the 1955 Act, prior to amendment by the 2001 Act).

The Armed Forces Act 2001 (the "2001 Act") has since inserted a new section 84D into the 1955 Act. The new section provides, *inter alia*, that membership of a GCM may include two (non-commissioned) warrant officers where the accused is a person of a rank below that of the warrant officers concerned. In giving evidence on 6 March 2001 to the Select Committee on this draft legislation, the Chief of the Defence Staff stated:

> "There are some areas where [the Bill] will improve the way we actually conduct our discipline. The idea, for example, of having warrant officers able to sit on courts-martial gives us the opportunity to use the experience of these excellent people within the service, and I am sure that will be perceived as a good thing, which in turn must reflect on the overall discipline."

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention that he did not have a fair hearing by an independent and impartial tribunal.

THE LAW

The applicant maintained that his court-martial did not constitute a fair hearing by an independent and impartial tribunal. Article 6 § 1 of the Convention reads, in so far as relevant, as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

A. The applicant's submissions

As to the admissibility of his complaint, the applicant argued that he had exhausted all domestic remedies given the ruling on 30 July 2001 of the CMAC refusing to certify a question of public importance for consideration by the House of Lords.

On the merits, he mainly submitted that the court-martial system was structured in such a manner as to offend the requirements of independence, impartiality and, consequently, fairness. In so submitting, he disagreed with, and distinguished, various findings in the above-cited *Cooper* judgment.

He submitted, in particular, that the greater the risk of outside pressure on members of the court-martial, the more effective the safeguards had to be against such pressure and, in the circumstances, the safeguards were not sufficient. A tribunal, composed exclusively of officers, decided his case which centred on the resolution of a conflict of evidence between the complainant (an officer) and the accused (an ordinary soldier). The right of the accused to object to any member sitting could not have cured that concern. Section 84D of the 1955 Act (as amended by the 2001 Act) subsequently allowed the alteration of the composition of courts-martial: one reason for this was to use the experience of warrant officers but the State might also have had "broader considerations" in mind. In addition, all the officers on his court-martial were junior in rank to the Permanent President and one was significantly more junior. Moreover, the members of a court-martial were predisposed to act in a way conditioned by rank irrespective of their judicial oath and the judge advocate's summing-up: the alleged offence was very serious and would have been perceived as striking at the heart of army discipline. Furthermore, the confidentiality of the deliberations was an inadequate safeguard since the collective decision of the court-martial was not confidential and the rule whereby the member most junior in rank expressed his or her view and voted first during deliberations did little to prevent that officer from having already been influenced by senior ranking officers during the deliberations and, indeed, it acknowledged the importance of rank. In addition, the possibility of a prosecution for perverting the course of justice did not constitute a

"sufficient" safeguard. Finally, the briefing notes provided to ordinary members were not an effective safeguard.

B. The Government's submissions

The Government mentioned without more that the applicant had not exhausted domestic remedies as he did not apply for leave to appeal to the House of Lords against the decision of the CMAC.

On the merits, they maintained that the court-martial system at the relevant time complied with the Convention and they relied on the above-cited *Cooper* judgment. There were sufficient safeguards in place to guarantee the independence and impartiality of the court including, *inter alia*, the briefing notes given to members of the court-martial, their judicial oath and the directions given to them by the judge advocate.

As to the reason for the amendment of section 84D of the 1955 Act (by the 2001 Act), the Government relied on the evidence of the Chief of the Defence Staff to the Select Committee cited above.

C. The Court's assessment

1. Exhaustion of domestic remedies

The Court notes that the applicant petitioned the CMAC to certify a point of law of public importance to the House of Lords concerning his ground of appeal to the CMAC (that his court-martial was composed of officers). On 30 July 2001 the CMAC refused the applicant's request and the Government did not suggest that leave to appeal to the House of Lords would lie following such a refusal. In addition and as regards the more general compatibility of the applicant's court-martial with the independence and impartiality requirements of Article 6 § 1, the Court notes that certain of the applicant's co-appellants before the CMAC did have that general point subsequently reviewed by the House of Lords (*R. v. Boyd and Others*, judgment of 18 July 2002). That House of Lords found their courts-martial (both air force and army) to be compatible with Article 6 § 1 of the Convention.

The Court does not, therefore, consider that the application can be declared inadmissible for failure to exhaust domestic remedies.

2. Merits of the complaint under Article 6 § 1 of the Convention

The Court recalls that, in the case of *Morris v. the United Kingdom*, the Court found the army court-martial system, put in place by the 1996 Act, to violate, *inter alia*, the independence and impartiality requirements of Article 6 § 1 of the Convention (no. 38784/97, ECHR 2002-I). Subsequently, the

House of Lords held that air-force and army court-martial systems following the passing of the 1996 Act were compliant with the independence and impartiality requirements of Article 6 (the above-cited *R. v. Boyd and Others*) noting, *inter alia*, that all relevant information had not been put before this Court in the *Morris* case. Subsequently, the Grand Chamber found, in concluding that there had been no violation in the above-cited *Cooper* case, that the applicant's misgivings about the independence and impartiality of his air-force court-martial proceedings were not objectively justified so that those proceedings could not consequently be said to have been unfair. The relevant regulatory framework governing post-1996 Act army courts-martial (the present case) is the same in all material respects as that governing air-force courts-martial (the *Cooper* judgment, at § 107).

Following the adoption of the above-cited *Cooper* judgment, the parties' observations were requested in the present case. The parties disputed the relevance of this Court's findings in the *Cooper* case. However, the Court finds no reason in the present case to depart from its finding in the above-cited *Cooper* judgment.

In particular, it has not found persuasive the submissions of the present applicant which were not made, or therefore addressed, in the *Cooper* case. In the *Cooper* judgment, the Court pointed out that the exclusively military make-up of the court-martial did not, in principle, violate Article 6 § 1 since the essential point was that the guarantees of independence and impartiality were sufficiently strong (see § 110 of the *Cooper* judgment). Similarly, the fact that courts-martial were at the time necessarily and exclusively composed of officers, even when the complainant was an officer, does not of itself give rise to a violation of Article 6 § 1: the Court's concern is rather the sufficiency of the safeguards in place. The Court notes the findings as to the strength of the relevant guarantees of independence and impartiality in the *Cooper* judgment, it does not find those safeguards undermined by fact that the charge in the present case was serious and, indeed, the Court has noted the directions giving by the judge advocate in his summing up in the present case and agrees with the CMAC's assessment of those directions as being "clear, robust and balanced". The fact that the 2001 Act provided (in amending section 84D of the 1955 Act) for the alteration of the composition of courts-martial does not constitute an acknowledgement by parliament of an independence issue in cases such as the present: the applicant himself accepted that one reason for this new provision was to utilise the experience of warrant officers (see the evidence of the Chief of Defence Staff cited above) and the Court cannot speculate as to any other legislative intent.

The Court therefore concludes, for the reasons set out in detail in the above-cited *Cooper* judgment, that this complaint is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and *declares* the application inadmissible.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President