

GLS Human Rights Webinar

CASE REFERENCE

Grievs v United Kingdom (57067/00)

European Court of Human Rights

16 December 2003

Westlaw Case Analysis 6 pages

Status:  Positive or Neutral Judicial Treatment

Grieves v United Kingdom (57067/00)

European Court of Human Rights

16 December 2003

Case Analysis

Where Reported

[\(2004\) 39 E.H.R.R. 2](#); [2004] Crim. L.R. 578

Case Digest

Subject: Human rights

Keywords: Courts martial; Navy; Right to fair trial; Right to independent and impartial tribunal

Summary: right to fair trial; courts martial; criminal charges; independence and impartiality of navy tribunal

Abstract: G, a member of the Royal Navy, complained that his trial by court martial breached the European Convention on Human Rights 1950 Art.6(1). G had been convicted of a criminal offence following trial by the relevant service tribunal. His conviction had been upheld upon review and he had appealed unsuccessfully to the Courts Martial Appeal Court.

Held, upholding the complaint, that the absence of a full time Permanent President of the Courts Martial deprived the the navy courts martial system of an important contribution to the independence of the tribunals. Navy judge advocates were serving naval officers appointed by the Chief Naval Judge Advocate, himself a serving officer. The lack of a civilian in the key role of judge advocate significantly undermined the independence enjoyed by other service tribunals. Consequently, the navy courts martial system lacked the requisite degree of independence and impartiality and the proceedings brought against G violated his rights under Art.6(1).

Judge: Judge Wildhaber (President)

All Cases Cited

Cooper v United Kingdom (48843/99)

(2004) 39 E.H.R.R. 8; [2004] Crim. L.R. 577; Times, January 12, 2004; ECHR; 2003-12-16

Ezeh v United Kingdom (39665/98)

[\(2002\) 35 E.H.R.R. 28](#); [12 B.H.R.C. 589](#); [\[2002\] Prison L.R. 354](#); [\[2002\] Crim. L.R. 918](#); [Times, July 30, 2002](#); ECHR; 2002-07-15

R. v McKendry (Mark Allan)

[\[2001\] EWCA Crim 578](#); [Times, March 16, 2001](#); [Official Transcript](#); CMAC; 2001-02-20

Moore v United Kingdom

[\(2000\) 29 E.H.R.R. 728](#); ECHR; 1999-09-29

Smith v United Kingdom (33985/96)

[\[1999\] I.R.L.R. 734](#); [\(2000\) 29 E.H.R.R. 493](#); [\(1999\) 11 Admin. L.R. 879](#); [Times, October 11, 1999](#); ECHR; 1999-09-27

Incal v Turkey

[\(2000\) 29 E.H.R.R. 449](#); [4 B.H.R.C. 476](#); [\[1998\] H.R.C.D. 650](#); ECHR; 1998-06-09

Findlay v United Kingdom (22107/93)

[\(1997\) 24 E.H.R.R. 221](#); [Times, February 27, 1997](#); [Independent, March 4, 1997](#); ECHR; 1997-02-25

Engel v Netherlands (A/22)

[\(1979-80\) 1 E.H.R.R. 647](#); ECHR; 1976-06-08

Key Cases Citing

Applied

Farhi v France (17070/05)

[\(2009\) 48 E.H.R.R. 34](#); ECHR; 2007-01-16

R. v Stow (Matthew Gary)

[2005] EWCA Crim 1157; [2005] U.K.H.R.R. 754; Official Transcript; CMAC; 2005-05-10

Whitfield v United Kingdom (46387/99)

[\(2005\) 41 E.H.R.R. 44](#); [Times, April 27, 2005](#); ECHR; 2005-04-12

R. v Dundon (Richard John)

[\[2004\] EWCA Crim 621](#); [\[2004\] U.K.H.R.R. 717](#); [\(2004\) 148 S.J.L.B. 536](#); [Times, April 28, 2004](#); Official Transcript; CMAC; 2004-03-18

Considered

R. v Ballinger (Paul)

[\[2005\] EWCA Crim 1060](#); [\[2005\] 2 Cr. App. R. 29](#); Official Transcript; CA (Crim Div); 2005-04-27

R. v Dudley (Stephen Mark)

[\[2005\] EWCA Crim 719](#); Official Transcript; CMAC; 2005-03-15

All Cases Citing

Mentioned by

Dunn v United Kingdom (Admissibility) (62793/10)

[\(2013\) 56 E.H.R.R. SE5](#); ECHR; 2012-10-23

Mentioned by

R. (on the application of Mousa) v Secretary of State for Defence

[\[2010\] EWHC 3304 \(Admin\)](#); [\[2011\] U.K.H.R.R. 268](#); [\[2011\] A.C.D. 32](#); Official Transcript; DC; 2010-12-21

Mentioned by

R. v Twaite (Timothy)

[\[2010\] EWCA Crim 2973](#); [\[2011\] 1 W.L.R. 1125](#); [\[2011\] 1 Cr. App. R. 19](#); [Times, April 6, 2011](#); Official Transcript; CMAC; 2010-12-21

Mentioned by

Gorostiaga Atxalandabaso v European Parliament (C-308/07 P)

[\[2009\] E.C.R. I-1059](#); [\[2009\] 2 C.M.L.R. 48](#); ECJ (1st Chamber); 2009-02-19

Mentioned by

Olujic v Croatia (22330/05)

[\(2011\) 52 E.H.R.R. 26](#); ECHR; 2009-02-05

Mentioned by

R. (on the application of Haase) v Independent Adjudicator

[\[2008\] EWCA Civ 1089](#); [\[2009\] Q.B. 550](#); [\[2009\] 2 W.L.R. 1004](#); [\[2009\] H.R.L.R. 2](#); [\[2008\] U.K.H.R.R. 1260](#); [\[2008\] Prison L.R. 391](#); [\[2009\] Prison L.R. 241](#); [\[2009\] A.C.D. 14](#); [\(2008\) 105\(41\) L.S.G. 21](#); [Times, October 28, 2008](#); [Official Transcript](#); CA (Civ Div); 2008-10-14

Mentioned by

R. (on the application of Haase) v Independent Adjudicator

[\[2007\] EWHC 3079 \(Admin\)](#); [\[2008\] 1 W.L.R. 1401](#); [\[2008\] H.R.L.R. 19](#); [\[2008\] Prison L.R. 378](#); [\[2008\] A.C.D. 26](#); [Times, February 11, 2008](#); [Official Transcript](#); QBD (Admin); 2007-12-20

Applied

Farhi v France (17070/05)

[\(2009\) 48 E.H.R.R. 34](#); ECHR; 2007-01-16

Mentioned by

R. (on the application of Director of Revenue and Customs Prosecutions) v Criminal Cases Review Commission

[\[2006\] EWHC 3064 \(Admin\)](#); [\[2008\] 1 All E.R. 383](#); [\[2007\] 1 Cr. App. R. 30](#); [\[2007\] Crim. L.R. 383](#); [\[2007\] A.C.D. 39](#); [Official Transcript](#); DC; 2006-12-05

Mentioned by

Martin v United Kingdom (40426/98)

[\(2007\) 44 E.H.R.R. 31](#); [Times, November 27, 2006](#); ECHR; 2006-10-24

Mentioned by

Kyprianou v Cyprus (73797/01)

[\(2007\) 44 E.H.R.R. 27](#); ECHR; 2005-12-15

Mentioned by

Baines v Army Prosecuting Authority

[\[2005\] EWHC 1399 \(Admin\)](#); [\(2005\) 155 N.L.J. 1207](#); [Official Transcript](#); DC; 2005-07-12

Applied

R. v Stow (Matthew Gary)

[\[2005\] EWCA Crim 1157](#); [\[2005\] U.K.H.R.R. 754](#); [Official Transcript](#); CMAC; 2005-05-10

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R. v Ballinger (Paul)

[\[2005\] EWCA Crim 1060](#); [\[2005\] 2 Cr. App. R. 29](#); [Official Transcript](#);

CA (Crim Div); 2005-04-27

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Whitfield v United Kingdom (46387/99)

[\(2005\) 41 E.H.R.R. 44; Times, April 27, 2005](#); ECHR; 2005-04-12

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R. v Dudley (Stephen Mark)

[\[2005\] EWCA Crim 719; Official Transcript](#); CMAC; 2005-03-15

Mentioned by

Thompson v United Kingdom (36256/97)

[\(2005\) 40 E.H.R.R. 11; Times, June 24, 2004](#); ECHR; 2004-06-15

Applied

R. v Dundon (Richard John)

[\[2004\] EWCA Crim 621; \[2004\] U.K.H.R.R. 717; \(2004\) 148 S.J.L.B. 536; Times, April 28, 2004; Official Transcript](#); CMAC; 2004-03-18

Legislation Cited

[Armed Forces Act 1996 \(c.46\)](#)

[Armed Forces Act 1996 \(c.46\) Sch.1](#)

[Armed Forces Act 1996 \(c.46\) Sch.I](#)

Armed Forces Act 1996 Part II

[Armed Forces Act 2001 \(c.19\)](#)

Bar Code of Conduct

Code for Service Prosecutors

Court-Martial Order of Procedure

[Courts-Martial \(Appeals\) Act 1968 \(c.20\) s.16A](#)

[Courts-Martial \(Appeals\) Act 1968 \(c.20\) s.28](#)

[Courts-Martial \(Appeals\) Act 1968 \(c.20\) s.8](#)

[Courts-Martial \(Royal Navy\) Rules 1997 \(SI 1997/170\)](#)

[Courts-Martial \(Royal Navy\) Rules 1997 \(SI 1997/170\) Art.34](#)

[Courts-Martial \(Royal Navy\) Rules 1997 \(SI 1997/170\) Art.41](#)

[Courts-Martial \(Royal Navy\) Rules 1997 \(SI 1997/170\) Art.6\(1\)](#)

[Courts-Martial \(Royal Navy\) Rules 1997 \(SI 1997/170\) r.15](#)

[Courts-Martial \(Royal Navy\) Rules 1997 \(SI 1997/170\) r.28\(1\)](#)

[Courts-Martial \(Royal Navy\) Rules 1997 \(SI 1997/170\) r.75](#)

European Convention on Human Rights Art.29(3)

European Convention on Human Rights Art.34

European Convention on Human Rights Art.41

European Convention on Human Rights Art.6

European Convention on Human Rights Art.6(1)

[Naval Discipline Act 1957 \(c.53\)](#)

[Naval Discipline Act 1957 \(c.53\) s.39](#)

[Naval Discipline Act 1957 \(c.53\) s.42](#)

[Naval Discipline Act 1957 \(c.53\) s.43\(1\)](#)

[Naval Discipline Act 1957 \(c.53\) s.52H](#)

[Naval Discipline Act 1957 \(c.53\) s.53B\(1\)](#)

[Naval Discipline Act 1957 \(c.53\) s.53B\(2\)](#)

[Naval Discipline Act 1957 \(c.53\) s.53C\(4\)](#)

[Naval Discipline Act 1957 \(c.53\) s.53C\(4\)\(b\)](#)

[Naval Discipline Act 1957 \(c.53\) s.62](#)

[Naval Discipline Act 1957 \(c.53\) s.70](#)

[Naval Discipline Act 1957 \(c.53\) s.71\(2\)](#)

[Naval Discipline Act 1957 \(c.53\) s.71\(4\)](#)

[Naval Discipline Act 1957 \(c.53\) s.71A](#)

[Naval Discipline Act 1957 \(c.53\) s.73](#)

[Offences against the Person Act 1861 \(c.100\)](#)

[Offences against the Person Act 1861 \(c.100\) Art.29\(3\)](#)

[Offences against the Person Act 1861 \(c.100\) Art.6\(1\)](#)

Order of Procedure

Journal Articles

Two swords and two standards

Courts martial; Impartiality; Jury trial; Right to fair trial.

[Crim. L.R. 2005, Nov, 850-863](#)

Courts martial: compatibility with European Convention on Human Rights, Article 6

Courts martial; Extensions of time; Indecent assault; Right to fair trial.

[J. Crim. L. 2005, 69\(5\), 375-377](#)

Human rights - naval courts martial - use of serving officers as Naval Judge Advocates

Access to justice; Courts martial; Judges; Naval law; Right to fair trial; Service personnel.

[Arch. News 2004, 4, 2](#)

Human rights - naval courts martial - use of serving officers as Naval Judge Advocates.

Access to justice; Courts martial; Judges; Naval law; Right to fair trial; Service personnel.

[Arch. News 2004, 4, 2](#)

Human rights: trial by Navy court martial.

Courts martial; Judge advocates; Navy; Right to independent and impartial tribunal.

[Crim. L.R. 2004, Jul, 578-579](#)

Article 6.

Courts martial; Right to independent and impartial tribunal.

[H.R. & UK P. 2004, 4\(5\), 20-21](#)

Cooper v United Kingdom (48843/98) and Grieves v United Kingdom (57067/00).

Courts martial; Independence; Right to independent and impartial tribunal.

[H.R. & UK P. 2004, 4\(5\), 5](#)

Cooper v United Kingdom; Grieves v United Kingdom.

Air Force; Courts martial; Navy; Right to independent and impartial tribunal.

[Law & Just. 2004, 153, 184-186](#)

Recent developments in European Convention law (July)

Courts martial; Criminal investigations; Criminal procedure; Disabled persons; Medical treatment; Prosecutions; Rape; Right to fair trial; Right to liberty and security; Right to respect for private and family life; Termination.

[Legal Action 2004, Jul, 24-28](#)

Human rights law update

Clothes; Courts martial; Damages; Delay; Freedom of thought conscience and religion; Human rights; Judicial review; Murder; Photographs; Publication; Right to fair trial; Right to respect for private and family life; Unborn children; Young offenders.

[N.L.J. 2004, 154\(7144\), 1357-1358](#)

Books

Archbold Criminal Pleading Evidence and Practice 2014 Ed.

Chapter: Chapter 16 - Human Rights

Documents: [16-73a Independence of the judiciary](#)