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

FOURTH SECTION

CASE OF BECK, COPP AND BAZELEY v. THE UNITED KINGDOM

(Applications nos. 48535/99, 48536/99 and 48537/99)

JUDGMENT

STRASBOURG

22 October 2002

FINAL

22/01/2003

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 Beck, Copp and Bazeley v. the United Kingdom,

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

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mr A. PASTOR RIDRUEJO,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 1 October 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in three applications (nos. 48535/99, 48536/99 and 48537/99) against the United Kingdom lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three United Kingdom nationals, Mr John Beck, Mr Howard Copp and Mr Kevin Bazeley ("the applicants"), on 11, 12 and 11 January 1999, respectively.

2. The applicants were represented by Ms J. Gould, a solicitor practising in Birmingham, England. The United Kingdom Government ("the Government") were represented by their Agent, Mr C. Whomersley, of the Foreign and Commonwealth Office.

3. The applicants alleged that an investigation into their sexuality and their discharge from the armed forces on the basis of their homosexuality as a result of the absolute policy against the presence of homosexuals in the armed forces that existed at the time, violated their rights under Articles 3, 8 and 10 of the Convention, read on their own and in conjunction with Article 14. They further contended that they did not have any effective remedy in the domestic courts in relation to those violations, in violation of Article 13 of the Convention.

4. The applications were allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. On 5 October 1999 the Chamber decided to join the proceedings in the applications (Rule 43 § 1).

6. Legal aid was granted to the first applicant on 31 January 2000.

7. By a decision of 5 September 2000 the Court declared the applications admissible.

8. The Chamber decided that no hearing on the merits was required (Rule 59 § 2 *in fine*).

9. The applicants' claims for just satisfaction pursuant to Article 41 of the Convention were received on 15 January 2001 and on 13 March 2001 the Government's observations on those claims were received.

10. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

I. THE CIRCUMSTANCES OF THE CASE

11. The applicants were born in 1959, 1957 and 1967 and live in Lancashire, Tyne and Wear and Worcester, respectively.

A. The first applicant

12. On 4 May 1976 the first applicant joined the Royal Air Force ("RAF"). By 1993 he had reached the rank of sergeant in the Electronic Warfare Operational Support Establishment ("EWOSE") where he was employed as a communications systems analyst and he submitted that he was well placed for promotion. During his service he was awarded the Air Officer Commanding Commendation for Meritorious Service and the Long Service and Good Conduct medal. The first applicant was divorced in 1988.

13. The first applicant's service evaluations covering the period June 1990 to January 1993 all recorded his conduct as exemplary and, for the most part, his trade proficiency, supervisory ability and personal qualities were assessed at 8 out of 10. He was highly recommended for promotion during each assessment. The detailed evaluations were all positive. In a report in early 1993, the first reporting officer (with whom the second and third reporting officers essentially agreed) noted, in his final evaluation, that the first applicant was an intelligent, caring, self-assured and mature senior non-commissioned officer who continued to work extremely hard; while his forthright opinions could detract from his popularity, the first applicant always seemed to have the best interests of his subordinates at heart and he was highly recommended for promotion without hesitation. He was said to be "widely recognised as one of the most experienced [senior non-commissioned officers] in the trade".

14. By 1993 the first applicant was studying theology and was considering ordination. From 7 to 9 May 1993 he attended a course designed to help individuals assess their suitability for ordination. During that course the first applicant claimed that he realised that he could no longer deny his homosexuality and that he felt morally bound to reveal his

sexual orientation as he was aware of the policy against homosexuals in the armed forces. He discussed his homosexuality with the Station Padre and told him that he had decided that he could no longer live a lie.

15. Accordingly, on 10 May 1993 the first applicant informed the EWOSE security officer that he was homosexual and he made it clear that he had always been a celibate homosexual. Since he considered his discharge inevitable, he requested that it take place as soon as possible. Later that day he saw his immediate superior to whom he also admitted his homosexuality. On 11 May 1993 the first applicant was interviewed by the officer commanding EWOSE. On 12 May 1993 security services were advised. He was suspended from his duties from 17 May 1993.

16. A service police investigation commenced on 20 May 1993 which included their completing a Character Defect Enquiry ("CDE") on the first applicant. The CDE report was dated 8 June 1993, briefly described the first applicant and his service career noting that he was currently engaged to serve until February 2006 and outlined the detailed observations made by a number of persons to the service police, which are summarised below.

17. The EWOSE security officer to whom the first applicant had spoken on 10 May 1993 described the first applicant's visit to his Squadron Leader when the first applicant had admitted his homosexuality. The security officer reported on information provided by the first applicant on his family and on how he had lived his homosexuality in the armed forces and he proffered the view that the first applicant was, in fact, homosexual and not attempting to secure early release. That officer also described the first applicant's visit to a medical officer, said to be as a result of being in a highly charged emotional state, and, on referral, to a visiting psychiatrist, the latter of whom had indicated that the first applicant was not suffering from a clinical disorder.

18. The submissions of the officer who had interviewed the first applicant on 11 May 1993 were also noted in the CDE report. He considered that the first applicant was genuinely homosexual and was not making the claim in order to obtain early discharge. The report also recorded the information received from the first applicant's immediate superior who had described the first applicant's character and his interest in theology and who had proffered the view that he was not surprised that the first applicant had claimed to be homosexual. However, that officer confirmed that the first applicant had not given any indication that he was homosexual and that, while he believed him, he had not seen or heard anything that would substantiate the first applicant's story. He also described the first applicant's admission to him that he was homosexual and the first applicant's reasons for his admitting his sexual identity at that stage.

19. The statements of two colleagues of the first applicant were also recorded in the CDE report. The first had been a close friend of the first applicant and the first applicant had admitted his homosexuality to him two

weeks before he did so to the armed forces' authorities. That colleague described his relationship with the first applicant and the first applicant's wish to be ordained and also spoke about the first applicant's financial problems. The second colleague described a striking change in the first applicant's personality a few weeks after he arrived in the Sergeant's Mess (he had become miserable and withdrawn). This change could now be explained, according to that colleague, by the first applicant's admission. Both colleagues described the first applicant as a 'man's man' who gave no indication of his homosexuality.

20. The Station Padre's evidence to the service police was also recorded in the CDE report. His meeting with the first applicant on 9 May 1993 was detailed in the report, the first applicant's religious studies and ambitions were also outlined as was the Station Padre's conversation about the first applicant with another Padre who had been involved in the course from 7 to 9 May 1993. The Station Padre's views on the likelihood of the first applicant being accepted into the priesthood were also set out together with the opinion that the first applicant was a clever individual who would attempt to get what he wanted, the way he wanted.

21. The first applicant's ex-wife (also in the armed forces) provided a detailed statement to the service police which was recorded in the CDE report. She described her hesitations in marrying the first applicant, their marital difficulties, their financial difficulties, their separation in 1987 and their divorce in 1988.

22. The CDE report concluded that no signs of homosexual tendencies were identified by the first applicant's ex-wife, colleagues or friends, that the only evidence was the first applicant's own admission and that the enquiry had not revealed anything to rebut the first applicant's submissions that he had not had a homosexual physical relationship. Various identified matters could imply that the first applicant had mercenary reasons for wishing to be discharged and it was noted that he had threatened to go to the press if he was not treated properly. It was recommended that the first applicant's financial problems should be included in any further personal security report.

23. The Unit Commander's recommendation for administrative disposal of the matter was dated 18 June 1993 and included the first applicant's conduct and trade assessments from 1982 to January 1993. His conduct throughout his career was recorded as exemplary and he had been highly recommended for promotion since October 1986. It dealt briefly with his relationships with his family members, noting that his brother was a practising homosexual. It went on to record that:

> "[The first applicant] has been a loyal and trustworthy serviceman for 17 years and has worked hard to become a [senior non-commissioned officer]. Despite grave emotional and personal problems, [the first applicant's] performance as a tradesman and supervisor has remained unaffected until his disclosure on 10 May 1993 ...

> Despite the devious and deliberate concealment of his homosexual tendencies, [the first applicant's] honesty and character have caused him finally to admit to the truth. [The first applicant] is five years away from a substantial gratuity and pension, which he has now lost together with his career ... The fact that [the first applicant] has lost so much in material terms to gain some inner personal peace should be seen as a mitigating factor. ... [The first applicant] has few friendships outside his working environment and those remaining will now be under much strain. He has nowhere to live outside the Sergeant's Mess ... As such this lonely and solitary individual, who has had to face up to a situation not of his own making, deserves to be treated in a compassionate and dignified manner. ... [The first applicant] has had to cope with extreme personal difficulties which have not previously impacted on the Service. These difficulties, which have been beyond his control, have caused him to become a lonely and solitary man, and finally to admit to his true personality. His homosexual tendencies cannot be reconciled easily in the Royal Air Force and his continued retention is not consistent with good discipline or morale. Nevertheless, [the first applicant] has earned the right to be treated in a dignified manner and should be given all possible assistance in reconciling his situation."

24. A statement of the first applicant was attached to the above recommendation in which he took exception to the reference to the sexual orientation of his brother which he considered to be of no concern to the RAF and which he found offensive. He also objected to the reference to "devious and deliberate concealment" which he regarded as a disgraceful attack on his personal integrity. He also noted that since the outset of the case he had been treated "with very considerable kindness by all concerned" and that "it would be quite wrong if I did not mention this fact", the first applicant commending in particular the EWOSE security officer (to whom he had spoken on 10 May 1993) for his kindness and human approach to the matter. In his additional remarks, the Unit Commander noted:

> "With the current official policy on homosexuality, the simple fact is that [the first applicant] cannot be retained. This is a sad case and I am very keen to see that [the first applicant] is treated as fairly and with as much dignity as can be afforded. He should be discharged as soon as is administratively possible and hence I strongly advise that this case is processed with all haste. Furthermore, I believe very strongly that he should receive his full entitlement of resettlement training/leave, and terminal leave. His dedicated and diligent service over many years warrants a sympathetic and understanding approach to his final weeks in the Service."

25. On 10 August 1993, a Board of the RAF, two of whose members thought it apt to liken the first applicant's case to "a murder inquiry without a body" in that he confessed to being a homosexual "without any evidence to confirm or deny his claim", recommended his administrative discharge on grounds of his homosexuality.

26. Further to the intervention of the first applicant's Member of Parliament, the Parliamentary Under-Secretary of State for Defence apologised for the delay in processing the first applicant's case and, on 27 November 1993, the first applicant was discharged from the RAF on grounds of his homosexuality. His certificate of discharge indicated that his

services were no longer required, the first applicant being unable to meet his service obligations because of circumstances beyond his control.

B. The second applicant

27. The second applicant joined the Royal Army Medical Corps on 1 June 1978 and was indexed as a pupil nurse on 12 November 1979. He passed his autumn assessment in 1981. At the time of his discharge on 29 January 1982 he was a Private, training as a pupil nurse in a military hospital.

28. In his assessment dated 14 January 1982 he was recommended for promotion and rated above the standard required of his rank and service. The reporting officer in that evaluation noted that he was a conscientious and reliable young man with good nursing potential, that he had a polite and cheerful manner and got on well with his colleagues. It was considered that he carried out his regimental duties satisfactorily and was ready for immediate promotion.

29. In June 1981 the second applicant commenced a homosexual relationship with a civilian. Six months later he received a posting order to Germany and applied for a home posting as he wished to remain in the United Kingdom with his partner. His application was refused. He submitted that he then realised that he could not lead a double life or face separation from his partner. Although he knew that revealing his homosexuality would lead to his discharge, he informed his nurse tutor. The latter informed the personnel officer who conducted four interviews with the second applicant on the subject of his homosexuality.

30. The second applicant was then required to undergo a psychiatric assessment and was advised that this was necessary in order to ascertain whether he was, in fact, homosexual. The psychiatrist's clinical notes dated 25 January 1982 indicated that it was felt that the second applicant was not suffering from any psychiatric disorder, that there were no reasons to doubt his allegation that he was homosexual and that there was, therefore, no psychiatric contra-indication to his being discharged on grounds of homosexuality. He was discharged from the army on 29 January 1982 on grounds of his homosexuality.

31. The reasons for discharge were outlined in a note from the second applicant's commanding officer dated 26 January 1982 where it was confirmed that the second applicant had admitted to homosexual acts with civilians. It was also noted that there was no evidence of such activity with soldiers and it was considered that at no time had good order and military discipline been affected. It was felt that, while his "work has as yet not deteriorated", the "problems of his relationship" would affect his work and reliability in the near future. It was further noted that he had not yet lost the respect of his superiors nor suffered ridicule at the hands of his

contemporaries but that this could well be so if his "problem" were to become common knowledge.

32. The assessment of his military conduct and character contained in his certificate of service signed on his discharge noted his conduct as exemplary, describing the second applicant as conscientious and reliable with good nursing potential. A letter dated 7 December 1984 from Army Medical Services noted that ward reports throughout the second applicant's training showed that he was an "above average nurse" who was well liked by his colleagues and patients. He was described as a keen and intelligent worker who applied himself well to all aspects of nursing.

C. The third applicant

33. The third applicant joined the RAF on 10 November 1985 and commenced officer training at the RAF college. He was commissioned as Acting Petty Officer on 27 March 1986, achieved the rank of Flight Lieutenant in September 1991 and served as a second navigator at a RAF base in Scotland.

34. In his evaluation covering the period July 1993 to March 1994, the first reporting officer pointed out that the third applicant, who had recently changed posting, was progressing satisfactorily in his current post and that, with more experience, he should be a contender to become a first navigator in due course. Although he was not yet recommended for further promotion, he was considered to have good potential for the future if he could resolve his domestic difficulties. The second and third reporting officers also spoke of the impact on the third applicant of the breakdown of his marriage, considering that he should rather consolidate his current position. Accordingly, none of the three reporting officers recommended him for further promotion. Two out of the three reporting officers referred to him as being prone to air sickness in the posting that he held at that time.

35. In August 1994 the third applicant's credit card holder, which he had previously lost, was found by an officer of the service police in the latter's internal mail and its contents aroused suspicion that the third applicant might be homosexual. On 3 August 1994 the third applicant was interviewed by an officer of the service police and he was shown two membership cards of homosexual clubs which were in his name. The third applicant confirmed that the cards were his and that he was homosexual. During that interview he was pressed to give names of service personnel with whom he had had a sexual relationship. He stated that his homosexual activity was limited to members of the civilian population and that he had never had a sexual relationship with a member of the service.

36. A report dated August 1994 from the service police described the above interview and indicated that there was no evidence whatsoever to suggest that there was an abuse of rank, that the circumstances were

particularly "deviant, sordid or persistent" or that "assault, violence, ill-treatment or other criminal or disciplinary offences" were involved. Accordingly, the third applicant had not been interviewed under caution and was "content to make a voluntary statement". That statement, dated 3 August 1994, confirmed that he was homosexual and pointed out that he had realised he was homosexual in 1992 and that, in hindsight, this was a major contributory factor in the break-up of his marriage. He indicated that his wife knew at the time of his statement of his homosexuality and he confirmed the statements made during his interview as to his previous homosexual relationships. He made it clear that he did not wish to provide the names of those persons with whom he had had a homosexual relationship and stated that he had not made the statement to get a discharge from service.

37. On 24 August 1994 the third applicant was suspended from his normal primary duties with immediate effect. A report was prepared recommending that he be ordered to resign his commission on the grounds of unsuitability.

38. On 31 August 1994 the third applicant lodged a petition challenging this recommendation. On 6 January 1995 the decision of the Air Force Board, rejecting the third applicant's petition, was promulgated. On 19 May 1995 he was informed that the decision of the Air Force Board would not be reviewed. On 4 September 1995 he was discharged from the RAF on grounds of his homosexuality.

D. The domestic proceedings

39. On 24 January 1996 Mr Perkins, who had also been dismissed from the Royal Navy in 1995 on grounds of his homosexuality, applied to the High Court for leave to take judicial review proceedings on the basis that the Ministry of Defence policy against homosexuals serving in the armed forces was "irrational", that it was in breach of Articles 8 and 14 of the European Convention on Human Rights and that it was contrary to the EU Council Directive on the Implementation of the Principle of Equal Treatment for Men and Women as regards Access to Employment, Vocational Training and Promotion and Working Conditions 76/207/EEC ("the Equal Treatment Directive").

40. On 30 April 1996 the European Court of Justice ("ECJ") decided that transsexuals were protected from discrimination on grounds of their transsexuality under European Community law (*P. v. S. and Cornwall County Council* [1996] Industrial Relations Law Reports 347). On 3 July 1996 Mr Perkins was granted leave by the High Court.

41. On 13 March 1997 the High Court referred the question of the applicability of the Equal Treatment Directive to differences of treatment based on sexual orientation to the ECJ pursuant to former Article 177 of the

Treaty of Rome *(R. v. Secretary of State for Defence, ex parte Perkins*, 13 March 1997).

42. On 17 February 1998 the ECJ found that the Equal Pay Directive 75/117/EEC (which, like the Equal Treatment Directive, prohibited discrimination "on grounds of sex") did not apply to discrimination on grounds of sexual orientation (*Grant v. South West Trains Ltd* [1998] ICR 449). Consequently, on 2 March 1998 the ECJ enquired of the High Court in the *Perkins* case whether it wished to maintain the Article 177 reference. After a hearing between the parties, the High Court decided to withdraw the question from the ECJ *(R. v. Secretary of State for Defence, ex parte Perkins*, 13 July 1998). Leave to appeal was refused.

43. The applicants issued proceedings, along with a number of other individuals, in the Industrial Tribunal claiming unfair dismissal and sexual discrimination on 10 August 1995, in September 1995 and in October 1995 respectively. They argued, *inter alia*, in favour of the applicability of the Equal Treatment Directive to a difference of treatment based on sexual orientation. Following a hearing before the Industrial Tribunal in August 1996, their cases together with a series of similar cases, were stayed pending the outcome of the above-described *Perkins* case then pending before the High Court. That stay was renewed in May 1997 and in June 1998. However, further to the High Court decision of 13 July 1998 in the *Perkins* case, the applicants, following legal advice, withdrew their applications before the Industrial Tribunal, which tribunal consequently dismissed their applications on 23 December 1998.

II. RELEVANT DOMESTIC LAW AND PRACTICE

44. The domestic law and practice relevant to the present applications is described in the judgments of the Court in the cases of *Lustig-Prean and Beckett v. the United Kingdom* (nos. 31417/96 and 32377/96, §§ 22-34 and 37-61, 27 September 1999, unreported) and *Smith and Grady v. the United Kingdom* (nos. 33985/96 and 33986/96, §§ 29-41 and 44-68, 27 September 1999, ECHR 1999-VI).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3, 8 AND 10 OF THE CONVENTION, ALONE AND IN CONJUNCTION WITH ARTICLE 14, AND OF ARTICLE 13 OF THE CONVENTION

45. The applicants complained about both the intrusive investigations into their private lives and about their subsequent discharges from the armed forces pursuant to the absolute policy of the Ministry of Defence against homosexuals in the armed forces. They invoked Article 8, both alone and in conjunction with Article 14 of the Convention.

46. They also considered that they were treated in a manner inconsistent with Article 3, either taken alone or in conjunction with Article 14 of the Convention. They referred both to the intrusive investigations into their private lives and to their being singled out for investigation and discharge because of their homosexuality.

47. The applicants further complained about the decision to adopt and apply the policy against homosexuals in the armed forces, about the investigations conducted and about their having been discharged because of their homosexuality, invoking Article 10, both alone and in conjunction with Article 14 of the Convention.

48. Finally, the applicants invoked Article 13 of the Convention, arguing that they had no effective domestic remedy in relation to the above violations of the Convention.

49. The relevant Articles of the Convention read, in so far as relevant, as follows:

Article 3:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety..."

Article 10:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, ...”

Article 13:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ...”

Article 14:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. The parties’ submissions

50. By their letter to the Court dated 14 January 2000 the Government stated that they did not believe that the Court’s consideration of the present cases should lead to conclusions on the substantive issues different from those reached in the above-cited cases of *Lustig-Prean and Beckett* and *Smith and Grady*. By their letter to the Court dated 18 February 2000 the applicants confirmed that they agreed with the Government on this point.

B. The Court’s assessment

1. Article 8 of the Convention, alone and in conjunction with Article 14

51. The Court recalls that in its judgments in the above-cited cases of *Lustig-Prean and Beckett* (§§ 63-68 and 80-105) and *Smith and Grady* (§§ 70-75 and 87-112) it found that the investigation of the applicants’ sexual orientation, and their discharge from the armed forces on the grounds of their homosexuality pursuant to the absolute policy of the Ministry of Defence against the presence of homosexuals in the armed forces, constituted direct interferences with the applicants’ right to respect for their private lives which could not be justified under the second paragraph of Article 8 of the Convention as being “necessary in a democratic society”. A violation of Article 8 was therefore found.

52. The Court further recalls that, in those cases, it considered (at §§ 108 and 115, respectively) that the applicants’ complaints under Article 14 of the Convention that they had been discriminated against on grounds of their sexual orientation by reason of the existence and application of the policy of the Ministry of Defence amounted in effect to the same complaint, albeit

seen from a different angle, that the Court had already considered in relation to Article 8 of the Convention.

53. The Court does not consider there to be any material difference between those cases and the present one. Accordingly, the Court finds that in the present case there has been a violation of Article 8 of the Convention in respect of each applicant. In addition, the Court does not consider that the applicants' complaints under Article 14 of the Convention in conjunction with Article 8 give rise to any separate issue.

2. Article 3 of the Convention, alone and in conjunction with Article 14

54. The Court further recalls that in its above-cited judgment in *Smith and Grady* (§§ 122-123) it found no violation in respect of the applicants' complaints under Article 3, taken either alone or in conjunction with Article 14 of the Convention. It considered that, while the policy of the Ministry of Defence together with the investigation and discharge which ensued were undoubtedly distressing and humiliating for the applicants, the treatment did not reach, in the circumstances of the cases, the minimum level of severity which would bring it within the scope of Article 3 of the Convention.

55. The Court does not find that there is any material difference between that case and the present one. Accordingly, the Court concludes that in the present case there has been no violation of Article 3 of the Convention, taken alone or in conjunction with Article 14.

3. Article 10 of the Convention, alone and in conjunction with Article 14

56. The Court further considered in its above-cited *Smith and Grady* judgment (§§ 127-128) that it was not necessary to examine Ms Smith and Mr Grady's complaints under Article 10 of the Convention, either alone or in conjunction with Article 14. It did not rule out that the policy of the Ministry of Defence could constitute an interference with the applicants' freedom of expression. However, it noted that the sole ground for the investigation and discharge of the applicants was their sexual orientation which was an essentially private manifestation of human personality and it considered that the freedom of expression element of the present case was subsidiary to the applicants' right to respect for their private lives which was principally at issue.

57. The Court does not find that there is any material difference between that case and the present one. Accordingly, the Court concludes that in the present case it is not necessary to examine the applicants' complaints under Article 10 of the Convention, either taken alone or in conjunction with Article 14.

4. Article 13 of the Convention

58. In its above-cited *Smith and Grady* judgment (§§ 135-139), having reviewed the domestic remedies available to the applicants including judicial review proceedings, the Court found that the applicants had no effective remedy in relation to the violation of their right to respect for their private lives guaranteed by Article 8 of the Convention and that there had been, accordingly, a violation of Article 13 of the Convention.

59. The Court does not find that there is any material difference between that case and the present one. Consequently, the Court concludes that in the present case there has been a violation of Article 13 in conjunction with Article 8 of the Convention on the basis that the applicants did not have any effective remedy in relation to the violation of their right to respect for their private lives.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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."

61. The applicants claimed compensation for pecuniary and non-pecuniary losses and the reimbursement of legal costs and expenses.

A. Non-pecuniary loss

62. The applicants submitted that the investigations into their sexuality, notwithstanding their admissions of homosexuality, and their resulting discharges, were serious, insulting and unnecessary intrusions into their personal lives. They emphasised the negative effects that their investigations and discharges had had upon them. Each applicant claimed just satisfaction for non-pecuniary loss of 19,000 pounds sterling (GBP).

63. The Government accepted that an award of GBP 19,000 should be made to each of the applicants in respect of non-pecuniary loss.

64. The Court recalls its judgments in *Lustig-Prean and Beckett v. the United Kingdom* (just satisfaction), nos. 31417/96 and 32377/96, § 12, 25 July 2000, unreported ("*Lustig-Prean and Beckett* (just satisfaction)") and *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 13, 25 July 2000, ECHR 2000-IX ("*Smith and Grady* (just satisfaction)"), in which it gave its reasons as to why the interferences with the applicants' private lives were considered to be especially grave: the investigation process was particularly intrusive; the discharge of the applicants had a profound effect upon them and their

careers; and the absolute and general character of the policy led to the discharge of the applicants on the grounds of an innate personal characteristic irrespective of their conduct or service records. In those cases an award of GBP 19,000 was made to each applicant.

65. The Court finds that similar considerations apply to the present applicants. Accordingly, the Court awards, on an equitable basis, 30,300 euros (EUR) to each applicant in compensation for non-pecuniary loss.

B. Pecuniary loss

1. The applicants' submissions

66. The pecuniary loss claims of the applicants were based upon the difference between their civilian income and benefits and their service income and benefits had they not been discharged. The period used to calculate past loss was taken from the date of their discharges to 5 April 2001, from which date their claims for future losses were calculated. Each of the applicants based their claims for pecuniary loss upon assumptions about the future course of their service careers had they not been discharged.

(a) Career assumptions

67. Notwithstanding that each of the applicants believed that they would in fact have retired in higher ranks (Warrant Officer, Captain and Wing Commander, respectively) and, in the case of the first and third applicants, served for longer (until they were 55 years of age), they submitted that just satisfaction would be achieved if compensation for pecuniary loss were based upon the following, more modest, career assumptions. In the case of the first applicant, that he would have been promoted to Chief Technician in 1995 and retired in that rank in February 2006. In the case of the second applicant, that he would have been promoted to Lance Corporal in 1982 and Corporal in 1984, in which rank he would have retired in December 2000. In the case of the third applicant, that he would have remained a Flight Lieutenant until his retirement in July 2005.

(b) Past pecuniary loss

68. All three applicants relied upon Ministry of Defence data to calculate what their earnings in the armed forces would have been had it not been for their discharges.

69. The first applicant submitted that, following his discharge, his self-esteem had been badly affected, he had not received any emotional support to assist him in re-establishing himself in civilian life and he suffered from

ongoing psychological and emotional problems. He argued that he made every effort to mitigate his loss, finding a secretarial job in London between 1994 and 1996. However, he contended that he had to leave London as he could not afford to live there on his salary. He therefore moved back to the area in which his family lived in Lancashire, a place of high unemployment where he submitted that he had been unable to find any further paid work, had received only state benefits from 1996 onwards and had continued to look for work. The first applicant submitted that his RAF earnings from November 1993 to April 2001 would have ranged from GBP 19,578.60 to GBP 29,433.60 and that his loss of earnings during that period had been GBP 137,210.98. He further calculated compound interest thereon to be GBP 46,910.45.

70. The second applicant submitted that, following his discharge, he started work in the National Health Service ("NHS") as an enrolled nurse in October 1982. As a result of an accident at work in 1986, he took ill-health early retirement in 1994, after which he received benefits and undertook some agency work. For the period prior to 1994, as he had not retained records of his earnings, he relied upon national salary figures provided by the Royal College of Nursing ("RCN"). Where RCN figures were not available for a particular year, he provided an estimate based upon figures which were ascertainable for surrounding years. The second applicant accepted that he could only claim for losses which were directly attributable to the Convention violations. For the period from 1994 onwards, he therefore based his claim only upon the average annual difference between his military and civilian earnings during the period from 1982 to 1994 (approximately GBP 3,500). He accepted that any loss which he had suffered over and above that amount was attributable to his accident at work and not to the Convention violations. He submitted that his armed forces earnings from 1982 to 2000 would have ranged from GBP 6,679.25 to GBP 20,415.48 and calculated his past loss of earnings to be GBP 63,743.85, with compound interest thereon of GBP 52,062.18.

71. The third applicant submitted that he started work as an accountant following his discharge in 1995 on a much reduced salary to that which he had earned in the RAF. His earnings as an accountant had ranged from GBP 15,671.37 to GBP 30,499.92 from 1995 to 2001, whereas he submitted that those in the RAF would have ranged from GBP 33,456.06 to GBP 43,245.20 during the same period. He calculated his past loss of earnings to be GBP 97,444.43, with compound interest thereon of GBP 32,071.48.

(c) Future loss of earnings

72. The first applicant submitted that he would continue to be unemployed in the near future given that unemployment remained high in his region and that he still experienced emotional and psychological

difficulties resulting from the lengthy investigation carried out by the RAF. By reference to his average annual past loss of earnings calculations, he submitted that his future loss of earnings would be in the region of GBP 20,000 per annum. To calculate his loss from April 2001 to February 2006, he multiplied GBP 20,000 by six to claim a loss of GBP 120,000.

73. The second applicant submitted that, had he been allowed to serve his full term of engagement, he would have retired voluntarily in 2000. He therefore did not make any claim for future loss of earnings.

74. The third applicant submitted that the average annual difference between what he could have earned in the RAF and his civilian earnings was approximately GBP 16,000 between 1995 and 2001. He multiplied this average annual figure by four to calculate his future loss of earnings from 2001 to 2005, which he claimed to be GBP 64,000.

(d) Loss of pension benefits

75. All three applicants relied upon the expert report of an actuary, which contained, *inter alia*, the following general features. The reports contrasted the immediate military pensions to which the applicants would have been entitled upon their retirement had they not been discharged, with the deferred military pensions which they would now receive upon reaching 60 years of age and any civilian pension benefits which had accrued to them following their discharges. In adopting a "multiplier" to reflect the deduction to be made to allow for the early receipt of the pension benefits and for mortality rates, the reports applied two alternative "rates of return" (the net real rate of interest that would accrue upon the investment of any award made) of 2%, which the expert recommended, ("recommended basis") and 4%, which the expert regarded as a reasonable alternative ("alternative basis"). The reports acknowledged that the House of Lords had held in a personal injury case that the rate of return to be used should be 3% (*Wells v. Wells* [1999] 1 AC 345). The amounts claimed for loss of pension benefits were presented as round figures, the reports stating that they were based upon a number of assumptions about the future and that it was therefore important not to impute a false sense of accuracy to the eventual results. The reports further emphasised that they did not allow for contingencies other than the early receipt of the benefits and mortality rates, such as the applicants not remaining in the armed forces for as long as they had predicted.

76. The reports contained, *inter alia*, the following specific features. The first applicant's report was based upon the assumption that he would have been unemployed from the date of his discharge in 1993 until the date on which he would have ordinarily retired from the RAF in 2006, save for his period of employment between 1994 and 1996. The only deduction made for civilian pension benefits was therefore for those accrued during that latter period (which amounted to a State Earnings Related Pension of

GBP 83 per annum, payable at 65 years of age). His loss of pension benefits was calculated to be GBP 140,000 (recommended basis) or GBP 107,900 (alternative basis).

77. The second applicant's report made an allowance for the pension benefits which had accrued to him during his army service from 1978 to 1982. It did so by calculating and deducting the value of those benefits had they been paid out by way of a standard deferred military pension, once the second applicant reached 60 years of age. The report noted that the second applicant had, in fact, transferred his army pension benefits to the NHS pension scheme that he joined in 1982. However, it stated that, because any loss or gain resulting from that transfer was not caused directly by his discharge, it had ignored it for the purposes of calculating the value of those benefits and had instead adopted the method described above. The report calculated the second applicant's overall pension loss to be GBP 115,800 (recommended basis) or GBP 101,400 (alternative basis).

78. The third applicant's report calculated the civilian pension benefits that he would have received from his discharge in 1995 to his forecasted date of retirement from the RAF in 2005 by reference to the three employers that he would have in that period. In the case of the first employer, the benefits were calculated by reference to the value of a pension scheme which would be payable to him when he reached 60 years of age. In the case of the second and third employers, the benefits were calculated by reference to the total value of the pension contributions made by those employers into their company pension schemes on the third applicant's behalf from 1997 to 2005. His overall pension loss was calculated to be GBP 156,000 (recommended basis) or GBP 114,100 (alternative basis).

(e) Loss of additional benefits

79. All three applicants submitted that, as members of the armed forces, they were entitled to free health and dental care similar to that available with private health insurance. They further submitted that they were entitled to subsidised accommodation and meals, free travel warrants and free sports facilities. They contended that the annual cost of replacing those benefits was approximately GBP 5,000. They claimed losses under this head of GBP 60,000, GBP 90,000 and GBP 50,000 respectively.

2. The Government's submissions

(a) Career assumptions and general observations

80. The Government attached a career forecast for the first applicant which they accepted was in some respects more generous than that relied upon by him, as it allowed for him to have attained the rank of Warrant Officer and to have retired at 55 years of age. However, the Government

submitted that it was more likely that he would have served only until he was 47 years of age in 2006 and that it was quite possible that he would have left the RAF before that time. They further estimated that the first applicant would not have been promoted to Chief Technician until 1997 and, even then, that was only a strong possibility rather than a certainty.

81. The Government submitted that it was most unlikely that the second applicant would have served for 22 years. They referred to army records which showed only six male soldiers entering his cadre, of whom only one, who qualified one year later than the second applicant, was still serving in February 2001. They argued that it was much more reasonable to assume that the second applicant would have left, in common with many others, upon becoming eligible for a resettlement grant after 12 years. The Government attached a career forecast and rates of pay for the second applicant to their submissions, which were based upon his being discharged after having completed 22 years service (described in the career forecast as "likely") and being promoted twice further (to Sergeant and Staff Sergeant) after obtaining the rank of Corporal in 1987.

82. As to the third applicant, the Government attached a career forecast which stated that he would not have progressed beyond the rank of Flight Lieutenant and would have been likely to leave the RAF in around 2005. The Government noted that he had a problem with air sickness, which they submitted would have been particularly serious for him as a navigator.

83. In relation to the claims for pecuniary loss as a whole by all three applicants, the Government submitted that they were excessive. In particular, they contended that the applicants had failed properly to mitigate their loss and that, where the claims involved future loss, they did not allow for any discount where the amounts will be received earlier than they otherwise would have been.

(b) Past pecuniary loss

84. As to the first applicant, the Government contended that he had overstated his rates of pay and they provided rates they submitted would have been applicable to him, ranging from GBP 19,578.60 to GBP 26,769.10 from 1993 to 2001. They further submitted that he had failed to mitigate his loss. They pointed out that his service record was excellent, that he left the armed forces with skills in information technology ("IT") which are highly marketable and that he therefore could and should have obtained a salary commensurate with his earnings in the RAF.

85. As to the second applicant, the Government did not accept that he had substantiated the amount he had claimed. They submitted that his loss of earnings claim was based, in part, upon estimated civilian earnings, did not take account of any industrial injury compensation awarded in relation to his accident at work and was unclear as to whether the figures provided included sick pay prior to his ill-health retirement. For the reasons stated at

paragraph 81 above they emphasised that it was most unlikely that he would have remained in the army for 22 years in any event.

86. As to the third applicant, the Government noted that his reported earnings as a qualified accountant appeared to be low. They pointed out that the average earnings of an accountant were stated to be over GBP 33,000 per annum in 2000, that it had not been explained why his earnings in his second and third years as an accountant were lower than those in his first year and that he was under a duty to mitigate his loss. They further provided details of what they submitted were the correct rates of pay that the third applicant would have received had he remained in the RAF between 1995 and 2001, ranging from GBP 30,304.00 to GBP 42,007.85.

87. In the above circumstances, the Government submitted that no award for past pecuniary loss should be made to the first applicant and suggested that awards under this head of GBP 10,000 and GBP 15,000, inclusive of interest, would be reasonable in relation to the second and third applicants respectively.

(c) Future loss of earnings

88. As to the first applicant, the Government submitted that his claim of GBP 20,000 per annum ignored any discount which should be made as a result of his receiving the amount early. They further argued that it was wholly unreasonable for him to put forward a claim on the basis that he would not be able to find future employment at or about the average wage of in the region of GBP 25,000 for someone with comprehensive IT knowledge. The Government contended that, as a result of his failure to mitigate his loss, the first applicant should not be made any award under this head.

89. As to the second applicant, the Government noted that he did not make any claim for future loss of earnings.

90. As to the third applicant, the Government submitted that one would expect that his earnings would increase over the four years claimed for future loss, as he established himself in his profession. They suggested that it would be more reasonable to calculate the figure for annual future loss as being GBP 2,500. They further submitted that it was not appropriate to multiply any alleged annual loss by four, as a multiplier needed to be used to reflect the early receipt of the sum and other contingencies. They submitted that the appropriate award to be made to the third applicant under this head of loss was GBP 8,900.

(d) Loss of pension benefits

91. As to the claims of all three applicants for loss of pension benefits, the Government confirmed that the pensions which had accrued to them from their service at the time of their discharges were index-linked and

payable at 60 years of age. They further submitted that the appropriate rate of return to use in relation to the multiplier was 3%.

92. As to the first applicant, the Government confirmed, in line with the figures used in his actuarial report, that, on discharge, he had accrued a terminal grant of GBP 12,070.38 and a pension of GBP 4,023.46 per annum and that, had he served until 2006, those sums would have amounted to an immediately payable GBP 31,776 and GBP 10,592 respectively. They submitted that there was only a chance, and no certainty, that he would have served for 22 years and that if he had mitigated his loss by securing full-time civilian employment after his discharge it was very probable that he would have joined a company pension scheme.

93. As to the second applicant, the Government did not provide any details of the benefits he was awarded at his discharge and the figures that they provided to represent his immediate terminal benefits had he retired in 2000 related to the rank of Staff Sergeant. (The second applicant had estimated his deferred benefits on discharge as a Private to have amounted to a terminal grant of GBP 854.31 and a pension of GBP 284.77 per annum and he had used Ministry of Defence data to state that his pension benefits would have amounted to an immediately payable terminal grant of GBP 20,253 and a pension of GBP 6,751 per annum had he retired as a Lance Corporal in 2000). The Government submitted that it was unlikely that the second applicant would have served for 22 years until 2000 and that the figures given in the actuarial report to represent his future civilian pension were too low in that they did not include the benefits of his military pension which had accrued from 1978 to 1982 and which he had transferred into his NHS pension scheme.

94. As to the third applicant, the Government confirmed, in line with the figures used in his actuarial report, that, on discharge, he had accrued a terminal grant of GBP 8,805.36 and a pension of GBP 2,935.12 per annum and that, had he served until 2005, those sums would have amounted to an immediately payable GBP 28,884 and GBP 9,628 respectively. The Government submitted that they would have expected that after his return to civilian life, particularly as an accountant, he would have mitigated his loss by participating in his company pension scheme or by purchasing a personal pension scheme.

95. The Government submitted that a reasonable sum to be awarded to each applicant for loss of pension benefits would be GBP 15,000.

(e) Loss of additional benefits

96. The Government did not accept that any award should be made for loss of additional benefits. They did not agree that the medical and dental services provided to the armed services were comparable with those provided by private health insurers. They emphasised that assisted travel was provided to service personnel to undertake periodic journeys from their

unit to their home, and was not therefore relevant to a serviceman who had returned to civilian life. They contended that it was not possible to quantify the value of any sports facilities that were provided and that, in any event, many civilian employers provide free sports facilities. They further argued that, although food and accommodation was supplied to members of the armed forces, this resulted from the nature of their service and was not relevant once they had returned to civilian life. The Government emphasised that, in the case of the third applicant, it would have been expected that, as an officer, he would have purchased a property in which to live or rent out.

3. The Court's assessment

(a) Applicable principles and general observations

97. The Court recalls that, in principle, a judgment in which the Court finds a violation of the Convention imposes on the respondent State a legal obligation to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. However, in cases such as the present, a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by the applicants is prevented by the inherently uncertain and speculative character of the damage flowing from the violation. This is particularly so in relation to the question of how long the applicants would have remained in the armed forces had it not been for their dismissal. Furthermore, in respect of future loss, the greater the interval since the discharge of the applicant the more uncertain the damage becomes.

98. Accordingly, the Court considers that the question to be decided is the level of just satisfaction which it is necessary to award to each applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (the above-cited cases of *Lustig-Prean and Beckett* (just satisfaction), §§ 22-23 and *Smith and Grady* (just satisfaction), §§ 18-19). The Court has also had regard to paragraphs 24 and 20, respectively of those judgments on just satisfaction, where the Court underlined the emotional and psychological impact on those applicants of their dismissals from the armed forces, the differences between service and civilian life and qualifications and the consequent difficulty in finding civilian careers equivalent to their service careers.

99. Furthermore, the Court gives credit to the applicants for the modest manner in which they have presented their career assumptions for the purposes of assessing their claims for just satisfaction. The Court notes that, in certain respects, the career forecasts provided by the Government were more generous than those used by the applicants to calculate their losses.

(b) Past pecuniary loss

100. As to the first applicant, the Court recalls that it is not in dispute that he joined the RAF on 4 May 1976 or that, at the time of his discharge on 27 November 1993, he was a Sergeant. But for his discharge, the Government accepted that there was a strong possibility that he would have been promoted to Chief Technician, the parties disagreeing as to whether this promotion would have been in 1995 or 1997. For the purposes of assessing just satisfaction, the parties also agreed that he would not have been further promoted until he left the RAF. The Court has assumed that the applicant would have been promoted to Chief Technician in 1996.

101. The first applicant has been unemployed since his discharge, except for a period between 1994 and 1996. The Court recognises that the investigation and discharge would have had a profoundly negative effect upon him, he would have undoubtedly faced difficulties in re-adjusting to civilian life and it would not be unexpected that at least an initial period of unemployment would have followed his discharge. Nevertheless, the first applicant has not provided any evidence (medical, employment, job applications or otherwise) to support his contention that in over 7 years after his discharge it was impossible for him to obtain work other than the secretarial job he completed from 1994 to 1996. The Court also notes that the first applicant had attributes which should have been of assistance to him in finding employment, namely a successful career in the RAF and experience, *inter alia*, as a communications systems analyst. In all the circumstances, the Court is not persuaded that he has fully mitigated his loss.

102. However, and in the absence of relevant supporting evidence, the Court is not convinced by the Government's assertion that the first applicant should have been capable of earning an amount equal to his remuneration in the RAF which on the Government's own figures would have ranged from GBP 19,578.60 to GBP 26,769.10 during the relevant period. While the Court may have expected further mitigation from the applicant as noted above, it is prepared to accept that any such civilian remuneration may well have amounted to less than his above-cited RAF earnings during the equivalent period.

103. As to the second applicant, the Court recalls that it is not in dispute that he joined the armed forces on 1 June 1978 and, at the time of his discharge on 29 January 1982, he was a Private who was likely to have been promoted to the rank of Corporal. For the purposes of assessing just satisfaction, having regard to the career assessments provided by both parties, the Court regards it as equitable to assume that the second applicant would have been promoted to Corporal in 1984 and remained in that rank until he left the armed forces. The Court further regards it as reasonable to assume that, subject to contingencies which can only be a matter of speculation, it is likely that the second applicant would, but for his

discharge, have remained in the armed forces for a substantial period. In coming to that conclusion, the Court notes that the dispute between the Government and the second applicant related to whether he would have left after 12 or 22 years. It has further taken into account that, notwithstanding their primary submission on the point, the career forecast provided by the Government was based upon the second applicant having served for 22 years, which was described in that forecast as "likely".

104. The Court notes that the Government did not directly challenge the rates of army pay upon which the second applicant relied to calculate what he would have earned, but for his discharge, from 1982 to 2000 (which ranged from GBP 6,679.25 to GBP 20,415.48 per annum). The Court further finds that the estimates used by the second applicant as to his civilian pay where actual figures were not available appear reasonable and that he made specific allowance for his accident at work in his calculations, as described at paragraph 70 above.

105. As to the third applicant, the Court recalls that it is not in dispute that he joined the RAF on 10 November 1985 and that, at the time of his discharge on 4 September 1995, he was a Flight Lieutenant who would, for the purposes of assessing just satisfaction, have remained in that rank during his claimed period of loss. The Court accepts the rates of pay provided by the Government, ranging from GBP 30,304 to GBP 42,007.85 per annum from 1995 to 2001, as an accurate statement of what his RAF salary would have been. The Court finds that the third applicant has mitigated his loss. It notes that he engaged in an alternative career as soon as his discharge from the RAF took effect and that he has worked continuously thereafter. The Court considers it reasonable that his annual salary was likely to be lower than the national average for an accountant initially (stated by the Government to be GBP 33,000), while noting that it had risen to a figure approaching that amount after only six years in civilian life.

106. In relation to the past loss of earnings claims of all three applicants, the Court notes that they were based upon gross earnings and that an appropriate deduction is therefore required to represent payments that would have been made by them in taxation and national insurance contributions.

107. The Court also finds that the applicants are entitled to claim interest on their past loss of earnings.

108. In the above circumstances, on an equitable basis, the Court awards EUR 67,700, EUR 63,400 and EUR 87,700 to the first, second and third applicants, respectively for their past pecuniary losses. Each award is made inclusive of interest.

(c) Future loss of earnings

109. As to the first applicant, the Court refers to its reasoning above in relation to his claim for past pecuniary loss. It finds that, had the first applicant fully mitigated his loss, it is reasonable to assume that his civilian

earnings would have increased as he became more established in his career. The Court also notes that the period from April 2001 to February 2006, in respect of which future loss is claimed, is a period of less than five years, as opposed to a six year period on which the first applicant based his future loss calculations.

110. The Court notes that the second applicant did not make any claim for future loss of earnings.

111. As to the third applicant, the Court has had regard to the loss experienced by him in the most recent year for which figures are available (GBP 11,507.93 for the year ended 2001). The Court regards it as reasonable to assume that this loss would narrow further over the four ensuing years, in respect of which future loss is claimed, as the third applicant became more established in his civilian career.

112. In relation to the claims of the first and third applicants, the Court has made an appropriate deduction from their gross loss claimed to represent the amounts that they would have had to pay in taxation and national insurance contributions. A further deduction has been made to reflect that the applicants will now be receiving these amounts earlier than they otherwise would have done.

113. In the above circumstances, on an equitable basis, the Court awards the first and third applicants EUR 23,900 and EUR 25,500, respectively for future loss of earnings.

(d) Loss of pension benefits

114. The Court considers significant the loss to the applicants of the non-contributory service pension scheme and accepts that the contributions which would be required in order to achieve an equivalent level of pension from a different pension scheme would be likely to be considerable. It is therefore of the view that they can reasonably claim some compensation to represent their pension loss. The amount of that loss is necessarily speculative, depending as it does on, *inter alia*, the period during which the applicants would have remained in service and on their rank at the time of leaving service. The Court notes, in particular, that had the applicants for any reason left the armed forces before they were entitled to receive an immediately payable pension (after 22 years service in the case of the first two applicants and after 20 years service in the case of the third), they would have been entitled only to a deferred pension, payable at 60 years of age, which would have significantly reduced the amount of their pension loss.

115. In addition, the Court finds the following more specific points to be of relevance in assessing the applicants' claims for loss under this head. As to the first applicant, the Court takes into account that he was only five years away from being entitled to an immediately payable pension at the time of his dismissal. It also refers to its above reasoning in relation to his

claim for past pecuniary loss and regards it as appropriate to assume that he could have benefited from a company or private pension scheme had he fully mitigated his loss by obtaining some form of employment.

116. As to the second applicant and to the Government's submission that his civilian pension loss calculation failed to take account of the benefits of the military pension which had accrued to him from 1978 to 1982 and which he had transferred into his NHS pension scheme, the Court notes that an allowance was made for those military pension benefits, albeit that the actuarial report filed on behalf of the second applicant did so by calculating what the value of those benefits ordinarily would have been once they became due to him had he not transferred them into his NHS pension scheme (see paragraph 77 above). The Court also regards as significant the fact that the second applicant had only served for just over three and a half years at the time of his discharge, which increases the speculation involved in assessing whether he would have remained in the armed forces to become entitled to an immediately payable pension after 22 years.

117. As to the third applicant, the Court notes that his civilian pension benefits were calculated, in part, by reference only to the pension contributions made by his employers as opposed to what the value of the pension fund will be when he reaches retirement age. It further notes that the actuarial report submitted on his behalf does not allow for increased pension contributions, by the third applicant or his employers, as his salary increases in the future.

118. Finally, the Court notes that the applicants' pension loss calculations used a multiplier to make allowance for their early receipt. In relation to that multiplier, in the circumstances of the case, the Court finds that it is reasonable to use a 3% rate of return.

119. Accordingly, and on an equitable basis, the Court awards the applicants EUR 39,800, EUR 23,900 and EUR 31,900, respectively for loss of pension benefits.

(e) Loss of additional benefits

120. The Court does not have any information from which to conclude that the medical and dental services provided by the armed forces were akin to those provided by private health insurers. Furthermore, the Court does not consider that the travel provided by the armed services to enable its personnel to undertake journeys from their units to their homes has a direct equivalent or need in civilian life. Moreover, in the absence of any details or supporting evidence from the applicants demonstrating that they have suffered any actual loss in relation to food, accommodation or sports-related expenses, the Court finds this part of their claim to be unsubstantiated.

121. In the circumstances, the Court does not regard it as necessary to award just satisfaction to the applicants under this head of loss.

(f) Summary

122. The Court awards the first applicant EUR 67,700 for past pecuniary loss, EUR 23,900 for future loss of earnings and EUR 39,800 for loss of pension benefits, making a total award of compensation for pecuniary loss of EUR 131,400.

123. The Court awards the second applicant EUR 63,400 for past pecuniary loss and EUR 23,900 for loss of pension benefits, making a total award of compensation for pecuniary loss of EUR 87,300.

124. The Court awards the third applicant EUR 87,700 for past pecuniary loss, EUR 25,500 for future loss of earnings and EUR 31,900 for loss of pension benefits, making a total award of compensation for pecuniary loss of EUR 145,100.

C. Costs and expenses

125. The applicants claimed GBP 491.11, GBP 906.29 and GBP 1,024.24, respectively in respect of their domestic proceedings. In relation to the Convention proceedings, they claimed GBP 5,074.43, GBP 5,280.64 and GBP 5,925.13, respectively for solicitors' and other costs incurred up to and including the submission of their claims for just satisfaction. Included within those figures were the costs of the actuarial reports in each case, which were charged at GBP 1,903.50, GBP 2,088.56 and GBP 2,350.00, respectively. Also included, in each case, were counsel's fees of GBP 195.83. The applicants further claimed GBP 35,837.50 each for "anticipated costs...to final hearing" following the submission of their claims for just satisfaction. All costs claimed were inclusive of value-added tax (VAT).

126. The Government submitted that, in accordance with its usual practice, the Court should not make any award for the costs of the domestic proceedings.

127. In relation to costs claimed for the Convention proceedings up to and including the claim for just satisfaction, the Government did not dispute the fee rates charged. However, they submitted that, while the hours spent on each individual application appeared reasonable, there was a very considerable degree of overlap between the three applications and that the overall award of costs should therefore be scaled down to reflect this. They further submitted that it was not clear why counsel had charged GBP 500 three times over. They submitted that a reasonable total award for legal costs and expenses would be GBP 10,000, inclusive of VAT.

128. In relation to the "anticipated costs ... to final hearing" claimed for the Convention proceedings, the Government submitted that no award should be made as they could not see any reason why any further costs should be incurred.

129. The Court recalls that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (the above-cited judgments of *Lustig-Prean and Beckett* (just satisfaction), § 32, and *Smith and Grady* (just satisfaction), § 28). The Court further recalls that the costs of the domestic proceedings can be awarded if they are incurred by applicants in order to try to prevent the violation found by the Court or to obtain redress therefor (see, among other authorities, the Le Compte, Van Leuven and De Meyere v. Belgium judgment of 18 October 1982, Series A no. 54, § 17) and that costs in respect of the domestic proceedings were in fact awarded at paragraphs 30-33 of the above-cited case of *Lustig-Prean and Beckett* (just satisfaction).

130. As to the applicants' domestic proceedings, the Court finds that the actions issued in the Industrial Tribunal sought to obtain redress for the violations of the Convention which have been found in this judgment. It notes that the Government have not challenged the figures claimed, which appear to the Court, from the detailed schedules provided by the applicants' solicitors, to be reasonable. The Court therefore awards the applicants EUR 783, EUR 1,444 and EUR 1,632, respectively in respect of their domestic proceedings.

131. As to the applicants' Convention proceedings up to and including their claims for just satisfaction, the Court accepts the Government's submission that, while the period of time spent on each application appears reasonable, there was an overlap between the cases which should have enabled the three claims, taken together, to have been prepared in less time. The Court finds that this applies, in particular, to the preparation of the actuarial reports. The Court also notes that the fee note submitted in relation to counsel's charges is headed "Re: [Industrial Tribunal] and [Judicial Review] Proceedings re: lesbian and homosexual service women and men v. [Ministry of Defence]." In the absence of further information, these fees therefore appear to relate to the applicants' domestic proceedings and the fee charged appears to include amounts payable in respect of individuals additional to the present applicants. As such counsel's fees cannot be said to have been actually and necessarily incurred in relation to the applicants' Convention proceedings and are not allowed.

132. As to the applicants' claim for "anticipated costs...to final hearing" following the submission of their claims for just satisfaction, the Court emphasises that there has not been any oral hearing in the current case and that it does not consider that it should have been necessary for the applicants to have incurred any more than minimal costs, if any, since the submission of their claims for just satisfaction.

133. Accordingly, and deciding on an equitable basis, the Court awards the applicants the sums of EUR 5,600, EUR 6,100 and EUR 7,000, respectively in respect of the costs and expenses of their Convention

proceedings. The sums are inclusive of VAT. The Court observes that, while legal aid was granted to the first applicant (paragraph 6 above), no legal aid payment has been made to him.

D. Default interest

134. As the award is expressed in euros to be converted into the national currency at the date of settlement, the Court considers that the default interest rate should also reflect the choice of the euro as the reference currency. It considers it appropriate to take as the general rule that the rate of the default interest to be paid on outstanding amounts expressed in euro should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;

2. *Holds* that no separate issue arises under Article 14 of the Convention taken in conjunction with Article 8;

3. *Holds* that there has been no violation of Article 3 of the Convention taken either alone or in conjunction with Article 14;

4. *Holds* that it is not necessary to examine the applicants' complaints under Article 10 of the Convention taken either alone or in conjunction with Article 14;

5. *Holds* that there has been a violation of Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted to pounds sterling at the date of settlement:
      (i) EUR 30,300 (thirty thousand three hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 131,400 (one hundred and thirty one thousand four hundred euros) in respect of pecuniary damage;
      (iii) EUR 783 (seven hundred and eighty three euros) in respect of the costs and expenses of the domestic proceedings;

(iv) EUR 5,600 (five thousand six hundred euros) in respect of the costs and expenses of the Convention proceedings;

(b) that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

7. *Holds*

(a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted to pounds sterling at the date of settlement:

(i) EUR 30,300 (thirty thousand three hundred euros) in respect of non-pecuniary damage;

(ii) EUR 87,300 (eighty seven thousand three hundred euros) in respect of pecuniary damage;

(iii) EUR 1,444 (one thousand four hundred and forty four euros) in respect of the costs and expenses of the domestic proceedings;

(iv) EUR 6,100 (six thousand one hundred euros) in respect of the costs and expenses of the Convention proceedings;

(b) that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

8. *Holds*

(a) that the respondent State is to pay the third applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted to pounds sterling at the date of settlement:

(i) EUR 30,300 (thirty thousand three hundred euros) in respect of non-pecuniary damage;

(ii) EUR 145,100 (one hundred and forty five thousand one hundred euros) in respect of pecuniary damage;

(iii) EUR 1,632 (one thousand six hundred and thirty two euros) in respect of the costs and expenses of the domestic proceedings;

(iv) EUR 7,000 (seven thousand euros) in respect of the costs and expenses of the Convention proceedings;

(b) that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 October 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Matti PELLONPÄÄ
President