

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

**BETWEEN:**

**THE QUEEN**  
**(on the application of MANSON)**

*Claimant*

**-and-**

**HER MAJESTY'S ATTORNEY GENERAL**

*Defendant*

**THE SECRETARY OF STATE FOR DEFENCE**

*Interested Party*

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**SUMMARY GROUNDS OF RESISTANCE**

**OF THE ATTORNEY GENERAL AND THE SECRETARY OF STATE FOR  
DEFENCE**

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1. The Claimant is part of a group called Public Interest Case Against Trident ("PICAT") which seeks to bring a private prosecution against the Prime Minister and the Secretary of State for Defence (both individually and as corporate offices). The proposed prosecution is for the alleged offence of "*a conspiracy to commit a war crime (per a plan to launch a disproportionate nuclear attack) under s.51 of the International Criminal Court Act 2001 and s.1 of the Criminal Law Act 1977.*" The Claimant asserts that, by maintaining the UK's nuclear deterrent, the Prime Minister and the Secretary of State for Defence have committed, and are committing, the crime of conspiracy to commit war crimes, identified as a conspiracy to cause excessive incidental death, injury or damage contrary to Article 8(2)(b)(iv) of the Rome Statute.
2. The premise of the proposed prosecution, and of the present claim for judicial review, is thus a surprising one. The Claimant appears to suggest that the Government's

maintenance, without more, of a nuclear deterrent is criminal. The logic of the Claimant's case would also appear to entail the commission of criminal offences by past Governments and by a wide range of Secretaries of State who are and have been members of the Cabinet.

3. The present claim for judicial review challenges the Attorney General's decision of 10 November 2017 not to consent to the proposed private prosecution. The Claimant alleges that the Attorney General's explanation for refusing consent is "*wantonly inadequate, irrational and lacking anything like a reasonable degree of specificity.*"<sup>1</sup>

## **FACTUAL BACKGROUND**

4. The Claimant, acting as the Secretary of the Pembrokeshire PICAT Group, attempted to initiate the proposed private prosecutions in Haverfordwest Magistrates' Courts on 20 April 2016.<sup>2</sup> Similar attempts were made by other PICAT subgroups. The Magistrates' Courts correctly refused to consider the proposed prosecutions absent the Attorney General's consent pursuant to s.53(3) of the International Criminal Court Act 2001. The Claimant and others then wrote to the Attorney General in five separate but substantively identical letters sent in the first half of 2016. These invited the Attorney General to consent to the institution of proceedings against the Prime Minister and the Secretary of State for Defence.
5. On 3 August 2016 the Attorney General responded, explaining that in cases of this nature his practice was first to consider whether there is sufficient evidence to provide a realistic prospect of conviction and then whether a prosecution is required in the public interest. He requested "*a clear and comprehensive explanation by the prosecutor of what their case is*". The letter outlined several specific concerns regarding the inadequacy of the proposed case being put forward by PICAT, which would need to be addressed.

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<sup>1</sup> Claimant's Statement of Grounds, §31

<sup>2</sup> Claimant's Application Bundle, RLM 002, p 2

6. PICAT provided some further information under cover of a letter by Counsel then acting for the relevant PICAT groups, dated 1 October 2016. The letter identified the alleged crime as a conspiracy to cause excessive incidental death, injury or damage contrary to Article 8(2)(b)(iv) of the Rome Statute and set out PICAT's analysis. PICAT relied on several professed expert reports concerning the potential outcome should any nuclear strike be carried out, and historic UK nuclear policy. Following further correspondence, on 4 February 2017, PICAT also provided a draft indictment.
7. On 10 November 2017 the Attorney General notified PICAT that he would not consent to the proposed prosecution on the grounds that the material provided by PICAT was "*insufficient to show any offence had been committed*" and there was therefore insufficient evidence to provide a realistic prospect of conviction.<sup>3</sup>
8. The Claimant sent a letter dated 5 December 2017 requesting the Attorney General to reconsider his decision and consent to the proposed prosecution. The Attorney General responded on 24 January 2018,<sup>4</sup> indicating that he saw no reason to revise his refusal of consent for the proposed private prosecution.

## SUBMISSIONS

9. **First**, having carefully considered all the material provided by the Claimant / PICAT, the Attorney General concluded that the material provided was insufficient to show that any offence has been committed and that there was no realistic prospect of conviction of any of the proposed defendants. The burden rests on the person proposing to bring the prosecution to identify adequate evidence in respect of each of the elements of the alleged crime.<sup>5</sup> It is not for the Attorney General to seek to supplement that evidence or to provide detailed advice on its shortcomings.

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<sup>3</sup> See Attorney General's letter of 10 November 2017, Claimant's Application Bundle RLM 001.

<sup>4</sup> The Claimant's Chronology of Correspondence, Claimant's Application Bundle RLM 006, does not include this response.

<sup>5</sup> See e.g. *Protocol between the Attorney General and the Prosecuting Departments*, July 2009, §4(a)3

10. **Secondly**, reasons were given by the Attorney General: see his letters of 3 August 2016 (Annex 1), 10 November 2017 (Annex 2), and 24 January 2018 (Annex 3). The reasons are clear and plainly sufficient.
11. **Thirdly**, the proposed prosecution and the present claim for judicial review, in reality, appear to be a challenge to this (and indeed successive) Government's policy on maintaining nuclear weapons. That foundation is hopeless.
12. The Claimant's case appears to involve the proposition that extremely serious criminal offences have been, and continue to be, committed by the Prime Minister and the Secretary of State for Defence. On the Claimant's / PICAT's analysis, it is difficult to see why the commission of the offence alleged is confined to those two Ministers / individuals. It has been the continuous policy of successive Governments for many years to maintain a nuclear deterrent. That is a policy for which, under the principle of collective cabinet responsibility, all Cabinet Ministers have been and are responsible. The logic of the Claimant's / PICAT's case appears therefore to be that every Cabinet Minister, under numerous successive Governments has been guilty of the same offence.
13. The proposed prosecution appears to be based on the premise that any actual use of the UK's nuclear deterrent would necessarily be criminal regardless of the circumstances. The consequence of the Claimant's / PICAT's arguments would be to preclude the maintenance by the British Government of a nuclear deterrent. The suggestion that it is prohibited under international law even to maintain a nuclear deterrent is an extraordinary and untenable one. It is also contrary to the conclusions of the International Court of Justice ("ICJ") in its *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* [1996] ICJ 2. There is a plain and fundamental distinction between the maintenance of such a deterrent, on the one hand; and its use, or a decision as to its use, in circumstances that are or would be, in summary, excessive on the other hand.
14. Moreover, the allegations made appear to cut directly across the will of Parliament. As recently as July 2016, Parliament, by a majority of 355 and with substantial cross-party support, voted for the maintenance and renewal of Britain's nuclear deterrent, the

Trident programme. On the Claimant's / PICAT's analysis, acting in accordance with this Parliamentary mandate would entail the Government engaging in criminal conduct.

15. For that avoidance of doubt, the Attorney General does not accept that his decision not to consent to a proposed private prosecution is amenable to judicial review: see *Gouriet v Union of Post Office Workers* [1978] AC 435. However, given that the substantive claim is unarguable in any event, this point is not developed at this Summary Grounds stage.

## **CONCLUSION**

16. In these circumstances, the Attorney General invites the Court to refuse permission. He seeks the costs of preparing the Acknowledgment of Service, in the sum to be confirmed in the Costs Schedule (N260) to be filed and served within 7 days of these Summary Grounds of Resistance.

**JAMES EADIE QC**  
**NIKOLAUS GRUBECK**

**Date: 07 March 2018**