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

SECOND SECTION

CASE OF McGLINCHEY AND OTHERS v. THE UNITED KINGDOM

(Application no. 50390/99)

FINAL

29/07/2003

JUDGMENT

STRASBOURG

29 April 2003

In the case of McGlinchey and Others v. the United Kingdom,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Sir Nicolas BRATZA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 28 May 2002 and 1 April 2003,

Delivers the following judgment, which was adopted on the last mentioned date:

PROCEDURE

1. The case originated in an application (no. 50390/99) against the United Kingdom of Great Britain and Northern Ireland 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 Andrew George McGlinchey, Ms Natalie Jane Best and Ms Hilary Davenport ("the applicants"), on 17 June 1999.

2. The applicants, who had been granted legal aid, were represented by Mr K. Lomax, a lawyer practising in Leeds. The United Kingdom Government ("the Government") were represented by their Agent, Mr D. Walton, of the Foreign and Commonwealth Office, London.

3. The applicants alleged in particular that Judith McGlinchey, the mother of the first two applicants and daughter of the third applicant, had suffered inhuman and degrading treatment in prison prior to her death and that there was no effective remedy available to them concerning this complaint.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court).

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 28 May 2002, the Chamber declared the application admissible.

7. The Government, but not the applicants, filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants Andrew George McGlinchey and Natalie Jane Best, born in 1985 and 1990 respectively, are the children of Judith McGlinchey (born in 1968). The applicant Hilary Davenport, born in 1945, is the mother of Judith McGlinchey.

9. On 3 January 1999, Judith McGlinchey died in Pinderfields Hospital, Wakefield, West Yorkshire, whilst in the care of the Home Office of the United Kingdom government as a convicted prisoner.

10. Judith McGlinchey had a long history of intravenous heroin addiction and was asthmatic, for which she had been admitted to hospital on six occasions during the previous year.

It is purported that Judith McGlinchey had, prior to being imprisoned, told her mother, who now cares for her children Andrew and Natalie, that she wanted rehabilitation assistance to rid herself of the heroin addiction. She told her solicitor that she had tried to refer herself for help but that it was impossible to obtain appointments without inordinate delays.

11. After having been convicted of theft, Judith McGlinchey was sentenced at Leeds Magistrates' Court, on 7 December 1998, to four months' imprisonment, despite an alternative proposal for a probation order with a condition that she be treated for her addiction. Thereafter, she was detained at New Hall Prison, Wakefield. She stated to her solicitor that she intended to use the period in custody as an opportunity to rid herself of her addiction to heroin.

12. At the health screening on her arrival at the prison on 7 December 1998, Judith McGlinchey was noted as not seeming excessively withdrawn, depressed or anxious. She weighed 50 kg. She complained of swelling to her left arm, withdrawal symptoms from her addiction and suffering from severe asthma especially when withdrawing, and was kept in the health-care centre pending an examination by a doctor. That evening, Judith McGlinchey telephoned her mother complaining of her infected arm and asthma. During the night, when she was observed to be wheezing, she was given an inhaler. She was also given paracetamol.

13. The prison medical records showed thereafter that she was complaining of withdrawal symptoms and that she was vomiting frequently.

The records consisted of the continuous medical record, prescription and administration charts and the nursing assessment notes. Her blood pressure, temperature and pulse were checked daily.

14. On 8 December 1998 Judith McGlinchey was examined by Dr K., the prison senior medical officer, who prescribed antibiotics for her arm, inhalers for her asthma and medication, Lofexidine, to appease the symptoms of heroin withdrawal. The nursing notes stated that she threw a cup of tea across the cell, was "locked in for education" and that during the night she was very loud and demanding. Lofexidine was not administered at 12 noon. The applicants alleged that this was a punishment, while the Government submitted that it was on the instructions of the doctor due to a drop in Judith McGlinchey's blood pressure. The entries in the nursing notes show that Judith McGlinchey was seen by a medical officer that morning and the drugs record sheet, signed by Dr K., indicates that after a blood pressure reading of 80/60 the next dose of Lofexidine was omitted at 12 noon.

15. On 9 December 1998 the record noted that she remained demanding. She had been told to clean her cell prior to education, which was a reference to the routine tidying-up of the cell and in accordance with normal practice. It was noted that she refused to comply. She was locked in during the education period and declined every meal. In the evening her weight was recorded as 43 kg. It was noted that she had vomited during the evening and had complained of vomiting during the night. She was encouraged to take fluids and given two doses of a mild anti-nausea drug (magnesium trisilicate) by the nursing staff.

16. Her situation was reviewed by Dr K. on 10 December 1998. As stated later in a statement to the coroner dated 4 January 1999, her medical readings (temperature, pulse and blood pressure) remained satisfactory. She did not appear dehydrated – it was noted that her tongue was moist and clean – but as she was still complaining of vomiting she was given an injection of anti-emetic medication. She complained of diarrhoea and stomach cramps to the nurse on duty during the night. A dose of magnesium trisilicate was given for nausea but it was recorded that this had little effect.

17. On 10 December 1998 Judith McGlinchey called her mother in tears, complaining that despite having been given an injection, she could not stop vomiting and was getting no other medical support to assist her to come off drugs. She said that she was having to clean up her own vomit and thought she was going to die. The Government stated that there was a lavatory in her cell which she would have been able to reach and that the practice was for nursing staff to clean up if vomit landed on the floor or any other area. The only member of staff involved in the care of Judith McGlinchey who remains with the Prison Service and who is head of nursing care at the prison has informed the Government that a prisoner would not have been

asked to clean up her own vomit and she has no recollection of Judith McGlinchey being asked to do so.

18. On 11 December 1998 she was recorded as keeping down a cup of tea and a glass of juice but was vomiting again during the afternoon and evening. At 6.10 a.m. she was found smoking in bed and when asked what the matter was, she replied "nothing". The next day, she was found to be "opiate positive".

19. The doctor examined her on 11 December 1998. She was given a further injection of medication to help with her symptoms. He found her general condition to be stable. In his statement of 4 January 1999 he noted that, following the injection, she was able to keep down oral fluids during the day, although she vomited again in the evening. The Government stated that the doctor checked her for signs of dehydration but did not find any. This was confirmed by Dr K.'s evidence to the coroner. The notes stated that her tongue was moist and clean. In the case of a person who was severely dehydrated, he would have expected the person to be physically very weak and possibly bedridden, to have a fast pulse rate and low blood pressure and, on examination, the eyes would appear sunken, the tongue dry and cracked, the lips drawn and the skin drawn and thin.

20. On 12 December 1998 she continued to vomit and suffered from diarrhoea and abdominal discomfort. Her weight was recorded as 40 kg. She ate nothing. The nursing notes recorded that she had had a better night. There was a reference: "Continues to vomit on occasions? hand down throat." The medical record stated that she had been observed with fingers down throat and vomit on her hand.

21. On 13 December 1998 according to the nursing entries, there was no vomiting complained of or witnessed apart from twice at the beginning of the night. It was also recorded that she ate a small dinner and slept for long periods that night. There were no entries in the medical record on this day. The doctor stated in his statement of 4 January 1999 that on 12 and 13 December 1998 her temperature, pulse and blood pressure all remained within normal limits. Oral doses of anti-emetic drugs (metoclopromide) were prescribed to follow the injections, and administered on four occasions between 10 and 12 December 1998. In her evidence to the coroner, the head of nursing care stated that the drugs were not given on 13 December as Judith McGlinchey had stopped vomiting.

22. However, at 8.30 a.m. on 14 December 1998, the following was noted in the continuous medical record:

> "... went to see inmate in cell, as she got out of bed she collapsed against me vomiting (coffee ground). Laid on floor in recovery position and summoned help. Patient appeared unresponsive and appeared to be having a fit. Ambulance called (999). Regained consciousness, still vomiting, 2 nurses helped her onto bed. Oxygen *in situ*. ECG taken. Unable to obtain pulse or BP. Unable to gain IV access due to abscesses on arms and previous drug use. Next of kin rung at 0915 hours at Judith's request, unavailable, son to pass on message within half an hour. Taken to hospital by

ambulance. Ambulance arrived at 0845 hours and left at 0853 hours for Pinderfields General Hospital, Wakefield."

23. Lots of "coffee-ground" vomit (altered blood in the stomach) was recorded as being found on her bed. Pinderfields Hospital medical records showed that she was admitted at 9.18 a.m. Her mother was informed around that time that Judith McGlinchey was in hospital and that she was ill but had stabilised. She was recorded as being

"... drowsy but movable and responsive. Staff nurse informed me that the white cell count was raised, with abnormal kidney and liver function ... possible diagnosis of ... drug abuse".

24. Her mother later learned from the nursing staff that on admission Judith McGlinchey's hair was matted with vomit.

25. On 15 December 1998 at 8 a.m., the following entry was recorded:

"Transferred to Ward 7; Ward 7 contacted in the middle of an emergency with her, arrested, but has been resuscitated (*sic*) and now is having a blood transfusion and an airway [made] ..."

At 10.30 a.m.:

"... Ward 7 contacted to ask if relatives have been informed of deterioration, they are with her now, they are going to reassess her in half an hour and if no improvement turn off the ventilator."

26. The hospital informed the family that Judith McGlinchey was in a critical condition and might have suffered brain damage due to the cardiac arrest. Her liver and kidneys were failing and they could not stabilise her. She was ventilated by hand as there were no beds in the Intensive Care Unit (ICU). The doctors said that they would stop the medication to see if she came round and breathed on her own and, if not, they would leave her. A Roman Catholic priest was called. The family was advised to say goodbye to Judith McGlinchey and did. She then recovered a little and at 7.15 p.m. she was moved to Bradford Royal Infirmary where there was an ICU bed available. She was stable on the ICU ward although she was kept on life support and was heavily sedated.

27. On 16 December 1998 at 6.45 a.m., Judith McGlinchey's condition was recorded as stable but critical. At 1 p.m. she was given a very poor prognosis. By 2 p.m. on 18 December 1998, her condition had improved a little. She remained on a ventilator, although sedation had then been stopped. She made jerking movements at times and appeared to be waking up slowly. On the night of 23 December 1998, she opened her eyes and responded to light, although the brain scan did not reveal any activity.

28. On 27 December 1998 Judith McGlinchey was transferred to Pinderfields General Hospital to the High Dependency Unit and from there to Ward 7. It was recorded on 31 December that although her eyes were open, she remained unresponsive and in a critical condition. On 2 January 1999 her mother visited with the children. Her eyes were open but she

appeared dark yellow in colour and making jerky movements associated with brain damage.

29. On 3 January 1999 the hospital advised the family to go to the hospital immediately. The prison medical record stated that Judith McGlinchey died at 1.30 p.m.

30. The autopsy report, following the post-mortem examination of 4 January 1999, noted that Judith McGlinchey weighed 41 kg. It stated that although one symptom of heroin withdrawal can be vomiting, the cause of the applicant's vomiting was never fully established. Episodes of severe vomiting could have caused a tear in the upper gastro-intestinal tract ("a Mallory Weiss tear") though this would most likely have healed by the time she died. This was the most likely cause of haemorrhaging in the stomach which could result in coffee-ground vomiting. If she had lost a substantial amount of blood, rendering her anaemic, this could have triggered the cardiac arrest. The cardiac arrest precipitated hypoxic brain damage and multi-organ failure with an inevitably fatal outcome.

31. In a letter dated 18 January 1999, the coroner informed the family that an inquest would be held before a jury. At the inquest, which took place on 6 December, evidence was given by Dr K., the prison doctor, Sister N., the head of nursing care at the prison, the forensic pathologist who carried out the post mortem, three consultants from the Pinderfields and Bradford Hospitals who had been involved in treating Judith McGlinchey and the third applicant, Judith McGlinchey's mother. The latter was represented during the proceedings by a solicitor who put questions to the witnesses on her behalf.

32. During the evidence it emerged that the scales used to weigh Judith McGlinchey in prison were inaccurate and incompatible, those used on reception being two to three pounds out compared with those used subsequently in the health-care centre. Due to this discrepancy, Dr K. explained that he placed greater importance on his clinical impressions of Judith McGlinchey regarding any effect of possible weight loss, but was aware of the potential problem and had given instructions for her weight to be monitored. Notwithstanding that antibiotics had been prescribed for her septic arm, it was also indicated that these had not been given to her over a number of days – out of twenty doses that she should have received over five days, she received sixteen. The head of nursing care, Sister N., was unable to explain the omissions although she suggested that the nurse could have forgotten to sign the medicine card.

33. Both Sister N. and Dr K. gave evidence that Judith McGlinchey did not give a clinical impression of being very ill during this period, stating that she was up and about and associating with others. Dr K. stated that her symptoms had been diminishing and that given her blood pressure, temperature, pulse and her general condition, he had no concern that she was gravely ill or that there was any need to admit her to an outside

hospital. It was revealed that Dr K. did not work in the prison on weekends and was not present therefore on 12 and 13 December 1998 before Judith McGlinchey's collapse. A part-time doctor attended on Saturday mornings and the prison depended on calling a doctor on agency if required. This explained the lack of any record in the notes for 13 December 1998. Sister N. explained that the entry in the nursing notes on 8 December which stated that Judith McGlinchey had been "locked in for education" referred to the routine procedure whereby those prisoners not participating in the education class were detained in their cells during that period.

34. Evidence was also given by the three consultants who treated Judith McGlinchey in hospital, concerning her state on arrival and her subsequent deterioration. They were unable to say with any certainty what had caused her collapse or the bleeding in her stomach. Dr Tobin considered that she was dehydrated on arrival at hospital but, due to her disturbed state, he was unable to put in a central line which would have allowed an accurate analysis to be made. Under questioning, he stated that the signs consistent with dehydration could also have been caused by fresh bleeding but not by one episode of coffee-ground vomiting.

35. In his summing-up to the jury, the coroner summarised the evidence as follows:

> "... for the first day Judith was admitted in the Health Care Centre ... she was then seen by the doctor, [Dr K.], on the second day, on 8 December. He examined her and made a note. She was still retained in the Health Care Centre but as the week proceeded, Judith started to become unwell. You have heard evidence of the fact that she was a heroin abuser and it was known that if she was to withdraw from heroin she might develop some unpleasant symptoms ... those symptoms might manifest themselves for example with diarrhoea and vomiting, possible stomach cramps, depleted sleep patterns and the like and in fact the information that Judith gave to her mother when she first rang rather gave you the impression that she knew that possibly she was to have a rough road ahead but she was prepared to put up with that.
>
> Certainly throughout that week ... it is well-documented that Judith was vomiting profusely. Although she was given medication for that on occasions it only worked for a very short time and it is fair to say that from about midweek onwards she was vomiting at some stage every day. There was also reference to the fact that she had diarrhoea and she was generally unwell.
>
> Her nutritional state may well have been not all that it should have been and although drinks were available for her there was no means of monitoring how much liquid she was taking in. It was not possible to monitor whether she was actually drinking and vomiting it back or not drinking at all. There was no attempt at measuring fluid during the course of that week and her vomiting actually progressed and on some occasions it was described as a lot of vomiting. It was referred to in the notes "vomiting +++" which means rather a lot and although she was seen by nursing staff every day and by the doctor on other occasions the medical staff at New Hall Prison were under the impression all along that Judith was showing no signs of being dehydrated. In other words, she was not being depleted of fluids and [Dr K.] explained in his evidence his findings and the fact that he could see no real evidence that she was

dehydrated at the time and felt that even with hindsight there was no necessity for her to be admitted into hospital.

Almost a week after her admission to [prison] on a particular morning when she woke up ... she virtually collapsed in the presence of nursing staff and she vomited a large amount of ... coffee ground vomit ...

There was some discussion during the evidence ... as to whether Judith had actually had a cardiac arrest at that time. In fact all the doctors who subsequently examined her ... felt that that was not likely to have been the case, although there was certainly a collapse and although she may well have lost a fair amount of blood as a consequence of that. There was no evidence at that particular time that she had experienced a cardiac arrest.

She was taken by ambulance to Pinderfields Hospital ... where she was immediately placed under the care of Dr Tobin ... His working diagnosis at the time was that Judith may well have some degree of liver failure and that there could also be some ... bleeding from the upper gastro-intestinal tract, the oesophagus ... because of the fact that she had vomited the coffee ground vomit.

The evidence of Dr Naomi Carter, the Pathologist ... found some residual material in Judith's stomach which could well have resembled blood or changed blood but ... was at pains to explain that she could find no source of any bleeding within Judith's internal organs ... one possible likely cause of the bleed that had produced itself in the coffee ground vomiting was that the retching which she had sustained... might have caused a small tear either in her oesophagus at the point where it reaches the stomach or alternatively in the lining of the stomach itself ... that is a medical condition known as a Mallory Weiss tear but she could not find evidence of that. Her view was that possibly that small tear might well have healed by the time that she saw Judith's body which was obviously by then some days later. That is the only explanation as to why there was any bleeding ... The significance of that bleed is appropriate because it is highly likely that as a consequence ... Judith will have lost some volume of blood which will have meant that her heart might have had to work harder in order to overcome that and certainly when she was at Pinderfields Hospital she was extremely unwell.

Dr Tobin was of the view that he felt that Judith was in fact dehydrated but he could not prove that specifically because you will recall from Dr Tobin's evidence that it was not possible for him to insert a central line. Had he been able to do that then it might have been that could have been used as a diagnostic tool ... certainly Dr Tobin was of the opinion that there would seem to be some suggestion that Judith was dehydrated, notwithstanding, according to the medical staff at New Hall, they felt that that was not the case as the week had gone on.

On the morning of 15 December ... unfortunately Judith experienced a cardiac arrest and it was felt that as a consequence of that she had become deprived of oxygen and ... there would have been a deprivation of oxygen to her brain which would have caused her to sustain what was called hypoxic brain damage.

... The post-mortem evidence ... explained the cause of death and Dr Carter was able to confirm that the cause of death was hypoxic brain damage, deprivation of oxygen to the brain, caused by a cardiac arrest which Dr Carter felt was as a consequence of an upper gastro-intestinal haemorrhage of an undetermined cause ..."

36. The coroner invited the jury to return a verdict of death through natural causes or an open verdict. The jury unanimously returned an open verdict.

37. Legal aid was granted to the three applicants to pursue domestic remedies for compensation. Their solicitors sent a notice of issue, under cover of a letter dated 12 February 1999, to the Treasury Solicitor requesting disclosure of medical and prison records in view of a claim for damages with respect to the death of Judith McGlinchey.

38. In a report dated 13 September 2000, the doctor consulted by the applicants stated, *inter alia*, as follows:

> "It is my understanding that repeated vomiting can be a symptom of heroin withdrawal and while I have no personal experience in managing people undergoing a detoxification programme, I would, however, be very unhappy about managing anyone who was vomiting repeatedly, without the use of intravenous fluids, the intravenous administration of anti-emetic drugs and the facility to monitor blood chemistry frequently.
>
> ... Judith was severely under weight.
>
> Her poor overall nutritional state was almost certainly longstanding and probably connected to her heroin addiction but any prolonged bout of vomiting, from whatever cause, was likely to cause a serious imbalance of her blood chemistry very quickly. Apart from electrolyte disturbance and dehydration, she would be very likely to have had difficulty maintaining an adequate blood sugar level, as she would have had no reserves in the form of stored carbohydrate substances within the body, that could have been utilised, when she was unable to absorb adequate nutrients from her gastrointestinal system due to her persistent vomiting.
>
> In such circumstances a vicious circle can occur. A low blood sugar level itself can cause more nausea and vomiting. Multiple metabolic pathways can be interfered with. The subject can become irritable. The level of consciousness may be severely reduced and coma can even occur.
>
> Intravenous access is often very difficult in intravenous drug abusers, even for clinicians such as anaesthetists who routinely insert needles. Central lines are likely to be needed. These are special long catheters, often with more than one lumen, that are inserted into major blood vessels close to the heart. I would not expect the average prison medical officer to be proficient in inserting such a line.
>
> It is preferable for these lines to be inserted in hospital, by personnel with the necessary skills. After insertion, the correct positioning ... needs to be checked by X-ray before it is used to administer drugs and fluids. Once inserted their maintenance requires skilled, aseptic nursing care ...
>
> I would be inclined to attribute the agitation and apparent lack of cooperation displayed by Judith after her admission ... and before her second collapse to cerebral irritation. Cerebral irritation is often seen following a period of cerebral hypoxia. Certainly, a degree of cerebral hypoxia probably occurred at the time of her collapse [in prison] and continued up to the time that resuscitation was underway at Pinderfields ...

> The bleeding that occurred, following a period of persistent and violent vomiting, could certainly have been caused by a Mallory Weiss tear as suggested ... in the autopsy report.
>
> If Judith had been admitted to hospital earlier, it might still have proved difficult to control the vomiting and, in view of her poor general and nutritional state, if the cause of her bleeding was a Mallory Weiss tear, this might still have occurred, but she would not have had such a degree of dehydration and/or biochemical disturbance, and the consequences of such an occurrence would probably have been less serious.
>
> Alternatively, if her vomiting had been brought under control at an earlier stage, the subsequent sad sequence of events might have been prevented."

39. In his opinion of 30 October 2000, counsel advised the applicants in the light of this medical report that there was insufficient evidence to establish the necessary causal link between Judith McGlinchey's death and the allegedly negligent care afforded to her in custody. They did not pursue their claims in negligence.

II. RELEVANT DOMESTIC LAW

40. A person who suffers injury, physical or psychiatric, in consequence of the negligence of another may bring an action for damages for that injury. An exacerbation of an existing condition constitutes such injury. Upset and injury to feelings resulting from negligence in the absence of physical or psychiatric damage or exacerbation, do not entitle a plaintiff to damages. Any personal injury action maintainable by a living person survives for the benefit of his estate and may be pursued after his death.

41. Claims arising from the death of an individual caused by negligence are brought under the Fatal Accidents Act 1976 or the Law Reform (Miscellaneous Provisions) Act 1934. The former enables those who were financially dependent upon the deceased to recover damages for the loss of dependency. The scheme of the 1976 Act is compensatory and save for the sum of 7,500 pounds sterling for bereavement to the spouse of a deceased or parent of a deceased child under 18 at the time of death, damages are awarded to reflect the loss of support. The latter enables damages to be recovered on behalf of the deceased's estate and may include any right of action vested in the deceased at the time of his death together with funeral expenses.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. Article 3 of the Convention provides:

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

A. The parties' submissions

43. The applicants complained that the prison authorities inflicted inhuman and degrading treatment on Judith McGlinchey during her detention in prison. They submitted that the prison authorities failed to administer her medication for her asthma and that they did not give her medication for her heroin withdrawal. On one occasion, the prison authorities deliberately omitted giving her an injection as a punishment for her difficult behaviour. The prison authorities also permitted her to dehydrate and vomit unnecessarily and delayed unjustifiably in transferring her to a civilian hospital where she could be expertly treated. She was forced to clean up the vomit in her cell and was left lying in her own vomit. They drew attention to Judith McGlinchey's vulnerability, the period of time over which she suffered serious symptoms and the fact that she was not a high-security risk prisoner.

44. The Government submitted that Judith McGlinchey received appropriate medication for her withdrawal symptoms and was transferred to hospital as soon as it became clear that her situation required more intensive medical treatment than the prison could provide. In particular, she was provided with anti-emetic medication, which was, pursuant to the prison doctor's instructions, injected on a number of occasions. When it was not administered on 8 December 1998, this was on the instructions of the doctor due to a drop in Judith McGlinchey's blood pressure. There was no evidence that she was left to clean up her own vomit, the practice being for nursing staff to take care of any such necessities. While it was noted that she was soiled with vomit on arrival at the hospital, this was explained by the speed with which she had been rushed to hospital when she collapsed, not by a deliberate refusal to clean her.

B. The Court's assessment

1. General principles

45. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Tekin v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1517, § 52).

46. Under this provision the State must ensure that a person is detained in conditions which are compatible with respect for her human dignity, that the manner and method of the execution of the measure do not subject her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, her health and well-being are adequately secured by, among other things, providing her with the requisite medical assistance (see, *mutatis mutandis*, *Aerts v. Belgium*, judgment of 30 July 1998, *Reports* 1998-V, p. 1966, §§ 64 et seq., and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

2. Application in the present case

47. The Court observes that the applicants have raised a number of complaints that the prison authorities inflicted inhuman and degrading treatment on Judith McGlinchey, while the Government have maintained that she received appropriate medication for her withdrawal symptoms and was transferred to hospital as soon as it became clear that her situation required more intensive medical treatment than the prison could provide.

48. As regards the allegation that the prison authorities failed to provide Judith McGlinchey with medication for her heroin withdrawal as punishment, the Court notes that it appears from the medical records that the prescribed drug Lofexidine was not administered at 12 noon on 8 December 1998. Although the applicants complained that this was withheld for misbehaviour, the Government submitted that it was in fact omitted on the instructions of the doctor due to a drop in Judith McGlinchey's blood pressure. This is supported by the medication notes which indicated that blood pressure had to be monitored with this drug and a drop in Judith McGlinchey's blood pressure had been recorded at this time. The notes also showed that she had been seen by the medical officer that morning and the drug record was signed by the doctor.

49. While there is a reference in the nursing notes, after the entry about omitting the medication, to Judith McGlinchey throwing a cup of tea across the room and then being "locked in for education", it was explained at the inquest that it was normal procedure for prisoners who were not going to classes to be detained in their rooms during that period. The Court finds therefore that it is not substantiated that relief for her withdrawal symptoms was denied to Judith McGlinchey as a punishment.

50. As regards the allegation that Judith McGlinchey was left to lie in her vomit, the Government pointed out that this appears to derive from the comments of the hospital staff that when Judith McGlinchey arrived at the hospital her hair and clothing were matted with vomit. The medical and nursing notes indicated that Judith McGlinchey had not been seen to vomit during the night and that she collapsed, vomiting, in the morning. The Court does not find that in the urgency of her immediate transferral to hospital the failure to ensure that Judith McGlinchey was adequately cleaned discloses any element of treatment that could be characterised as degrading. As regards complaints made to her mother that she was having to clean up her own vomit, there is no substantiation of this in the hospital or prison records although one entry refers to Judith McGlinchey refusing to clean her cell. The Government, relying on a statement by the head of nursing care, submitted that this was a general tidying requirement, not in response to a vomiting incident. The Government asserted that the practice was for nurses to clean any vomit which landed on the floor or elsewhere in the cell. The Court finds that there is insufficient material before it to reach any findings on this matter.

51. As regards the allegation that asthma medicine was not administered, the Court notes that the nursing notes indicate that inhalers were provided on 7 December 1998 during the night when Judith McGlinchey was seen to be wheezing. In so far as the applicants also mentioned irregularity in administering the antibiotic medicine for Judith McGlinchey's arm, it appears that out of twenty doses over a five day period, some four were omitted. Sister N. was unable to provide an explanation for this at the inquest, although she suggested the possibility that the nurse in question had forgotten to complete the drugs record. In either case, it indicates a regrettable lapse in procedure. However, the Court does not find any evidence in the material before it to show that this failure had any adverse effect on Judith McGlinchey's condition or caused her any discomfort.

52. Finally, the Court considered the complaints that not enough was done, or done quickly enough, by way of treating Judith McGlinchey for her heroin withdrawal symptoms, preventing her suffering or a worsening of her condition.

53. The Court observes that she was screened by a nurse on entry to the prison on 7 December 1998. On 8 December 1998 she was seen by Dr K., the prison doctor who set up a course of treatment for her various problems.

For the heroin withdrawal symptoms, he initially prescribed a withdrawal drug, Lofexidine. One dose of this drug was omitted at midday due to her low blood pressure. On 10 December 1998 she was seen again by Dr K., who prescribed an intra-muscular injection for the continuing withdrawal symptoms. He found no signs that she was dehydrated and placed more importance on his clinical impressions than her apparent drop in weight from 50 kg to 43 kg since there was known to be a discrepancy between the scales used on admission and those in the health-care centre. He was aware however that there was a potential problem and gave instructions for her weight to be monitored. On 11 December 1998 she was examined again by Dr K., who found no signs of dehydration and considered that her condition was generally stable. He ordered a further injection which was observed to have some effect as she was able to keep down fluids during the rest of the day. Oral doses of the anti-emetic drug were prescribed to continue over the weekend. The nursing notes indicate that on occasion during this period the nurses administered mild anti-nausea medication to assist Judith McGlinchey with her symptoms and were encouraging her to take fluids.

54. While it appears therefore that Judith McGlinchey's condition from 7 to 12 December 1998 was subject to regular monitoring, with the medical and nursing staff taking steps to respond to Judith McGlinchey's withdrawal symptoms, the Court notes that during this period she was vomiting repeatedly, taking very little food and losing considerable weight in an undefined amount. Although injections had been given twice, these had had, at most, a short-term effect and by the evening of 11 December 1998 she was vomiting again. The evidence of any improvement in her condition by this point is, in the Court's view, slim.

55. In the two following days, the weekend, according to the staffing arrangements at the prison, Dr K. was not present. A locum doctor visited the prison on the Saturday morning, 12 December, but the records do not indicate that he saw Judith McGlinchey. If a doctor was required at any other time over the weekend, the nursing staff were expected to call out a doctor or arrange for transfer to hospital. It appears therefore that Judith McGlinchey was not examined by a doctor for two days. On 12 December 1998 her temperature, blood pressure and pulse were observed to be normal. She was however continuing to vomit and her weight was recorded as dropping to 40 kg, a further 3 kg decrease since 9 December and a possible 10 kg decrease since her admission five days earlier. Notwithstanding this further deterioration, the nursing staff did not find any cause for alarm or the need to obtain a doctor's opinion on her condition.

56. The Government have pointed to positive signs over this period – that she slept better during the night and on 13 December took a small meal. However, she vomited on both days and after the meal in question. Dr K. emphasised that, throughout, her vital signs were within the normal range, and that a person suffering serious dehydration would be expected to show

lassitude and identifiable physical symptoms which were not present in Judith McGlinchey. However, at the inquest, Dr Tobin considered that, although it had not been established by specific analysis that Judith McGlinchey was dehydrated on entry to hospital due to an inability to insert a central line, there were strong indications to that effect. While the findings could be accounted for by significant blood loss, one episode of coffee-ground vomiting would not provide an adequate explanation.

57. The evidence indicates to the Court that by the morning of 14 December 1998 Judith McGlinchey, a heroin addict whose nutritional state and general health were not good on admission to prison, had suffered serious weight loss and was dehydrated. This was the result of a week of largely uncontrolled vomiting symptoms and an inability to eat or hold down fluids. This situation, in addition to causing Judith McGlinchey distress and suffering, posed very serious risks to her health, as shown by her subsequent collapse. Having regard to the responsibility owed by prison authorities to provide the requisite medical care for detained persons, the Court finds that in the present case there was a failure to meet the standards imposed by Article 3 of the Convention. It notes in this context the failure of the prison authorities to provide accurate means of establishing Judith McGlinchey's weight loss, which was a factor that should have alerted the prison to the seriousness of her condition, but was largely discounted due to the discrepancy of the scales. There was a gap in the monitoring of her condition by a doctor over the weekend when there was a further significant drop in weight and a failure of the prison to take more effective steps to treat Judith McGlinchey's condition, such as her admission to hospital to ensure the intake of medication and fluids intravenously, or to obtain more expert assistance in controlling the vomiting.

58. The Court concludes that the prison authorities' treatment of Judith McGlinchey contravened the prohibition against inhuman or degrading treatment contained in Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

59. Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

60. The applicants submitted that there was no adequate remedy for their complaints about the treatment of Judith McGlinchey in prison, or a remedy that would address the defects in management and policy which allowed the

neglect and ill-treatment. Any cause of action in negligence was dependent on establishing the necessary causal link between the negligent acts and the death and/or personal injury, which was not present in this case. The treatment in issue was nonetheless inhuman and degrading treatment contrary to Article 3 of the Convention. No other remedies, which could provide compensation and an acknowledgement of the breach, existed.

61. The Government stated that remedies were available as required by Article 13 of the Convention. Judith McGlinchey could have used the internal prison complaints system to complain about her treatment. Intolerable conditions of detention were also the proper basis for an application for judicial review. The applicants had available to them a range of causes of action, including negligence and misfeasance in public office. This was not a case where national law did not provide a viable cause of action at all. The fact that the applicants could not prove negligence on the facts did not mean that there was no remedy available.

B. The Court's assessment

62. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 95; *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103; and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, pp. 329-30, § 106).

63. In the case of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be part of the range of available remedies (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V).

64. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 of the Convention for inhuman and degrading treatment suffered by Judith McGlinchey prior to her collapse in custody. The applicants' complaints in this regard are therefore "arguable" for the purposes of Article 13 in connection with Article 3 of the Convention (see *Boyle and Rice v. the*

United Kingdom, judgment of 27 April 1988, Series A no. 131, p. 23, § 52; *Kaya*, cited above, pp. 330-31, § 107; and *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2442, § 113).

65. While the Government referred to internal prison remedies as being available to Judith McGlinchey to complain about any ill-treatment prior to her death, the Court observes that they would not provide any right to compensation for any suffering already experienced. The Court has already found, in its decision on admissibility, that no action in negligence could be pursued in the civil courts where the impugned conduct fell short of causing physical or psychological injury. It is not apparent that, in an action for judicial review, which Judith McGlinchey could have brought alleging that the prison had failed in its duty to take reasonable care of her in custody and which could have provided a means of examining the way in which the prison authorities carried out their responsibilities, damages could have been awarded on a different basis. Although the Government argued that this inability to pursue a claim for damages flowed from the facts of the situation and not from any omission in the law, it remains the case that no compensation is available under English law for the suffering and distress which has been found above to disclose a breach of Article 3 of the Convention.

66. The question arises whether Article 13 in this context requires that compensation be made available. The Court itself will often award just satisfaction, recognising pain, stress, anxiety and frustration as rendering appropriate compensation for non-pecuniary damage. In the case of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of possible remedies.

67. In this case therefore, the Court concludes that Judith McGlinchey, or the applicants acting on her behalf after her death, should have been able to apply for compensation for the non-pecuniary damage suffered by her. As there was no remedy which provided a mechanism to examine the standard of care given to Judith McGlinchey in prison and the possibility of obtaining damages, there has, accordingly, been a breach of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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."

A. Damage

69. The applicants claimed damages for the treatment of Judith McGlinchey for her estate and in respect of their own shock and distress at the suffering experienced by Judith McGlinchey. They submitted that she had been given insufficient and inadequate medical care and was thereby put through unnecessary suffering, including seven days of continued vomiting, an inability to eat or drink and acute fear and mental distress, including the belief that she was going to die. They also referred to their belief that she had been forced to clean up her own vomit and punished by the withdrawal of medication. They also referred to the distress and anguish which they suffered by the realisation of the conditions in which their daughter/mother spent her last conscious days and hours. They claimed a sum of 20,000 pounds sterling (GBP).

70. The Government made no comment on these claims.

71. The Court notes that it has made a finding of a violation of Article 3 in respect of shortcomings in the treatment which Judith McGlinchey received while in prison. It did not find it established however that Judith McGlinchey had been forced to clean up her vomit or that medication had been withheld by way of punishment. Noting that much of Judith McGlinchey's suffering derived from the heroin withdrawal itself, but that the failure of the prison authorities to take more effective steps to combat her withdrawal symptoms and deteriorating condition must have contributed to her pain and distress, the Court decides, making an assessment on an equitable basis, to award a sum of 11,500 euros (EUR) in respect of Judith McGlinchey's estate and EUR 3,800 each to the applicants, making a total of EUR 22,900.

B. Costs and expenses

72. The applicants claimed GBP 5,480.54 in respect of legal costs incurred in domestic procedures. This included the costs of being represented at the inquest and seeking advice about the cause of Judith McGlinchey's death and the existence of any domestic remedies. They

claimed GBP 844.43, inclusive of value-added tax, in respect of costs and expenses in bringing the case to the Court in Strasbourg. This made a total claim of GBP 6,324.97

73. The Government made no comment on these claims.

74. The Court observes that the costs incurred in obtaining legal advice and attending the inquest were connected at least in part in regard to issues as to the cause of Judith McGlinchey's death and any possible responsibility of the authorities. The complaint under Article 2 of the Convention however was not pursued before the Court. Making an assessment on an equitable basis, the Court awards EUR 7,500 under this head.

C. Default interest

75. The Court considers it appropriate that the default interest 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

1. *Holds* by six votes to one that there has been a violation of Article 3 of the Convention;

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

3. *Holds* unanimously
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, plus any tax that may be chargeable, the following amounts, to be converted into pounds sterling at the rate applicable at the date of settlement:
      (i) EUR 22,900 (twenty-two thousand nine hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 7,500 (seven thousand five hundred euros) in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence EARLY	Jean-Paul COSTA
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Mr Costa;

(b) partly dissenting opinion of Sir Nicolas Bratza.

J.-P.C.
T.L.E.

CONCURRING OPINION OF JUDGE COSTA

(Translation)

In the end, having weighed up the pros and cons in this difficult case, I found a violation of Article 3 of the Convention. However, I would like to explain my views, as the judgment, with which I concur for the most part, does not fully represent them.

1. I would observe in the first place, because I feel it is right to do so, that I did not discern in this case any intention on the part of the British judicial, prison or medical authorities to humiliate or maltreat Judith McGlinchey, who was sentenced to four months' imprisonment and accordingly incarcerated in New Hall Prison, Wakefield, on 7 December 1998. But I would add immediately that in the Court's view "the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3" (see *V. v. the United Kingdom*, no. 24888/94, § 71, ECHR 1999-IX, and *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III). That case-law has to be taken into account.

2. Nor do I think that it is desirable to lower the threshold of severity below which the Court will not hold that treatment is inhuman or degrading. Article 3 should not be cheapened or trivialised through overuse. However, I think that the present judgment does not lower that threshold. Moreover, I firmly believe that the facts of the case should not be assessed with "the wisdom of hindsight", nor should one be influenced by the fact that Judith McGlinchey unfortunately died, on 3 January 1999, as a result of the cardiac arrest she suffered on 14 December 1998 and its after-effects. But, for the reasons I shall give, even if I confine my attention to the position at the time of her incarceration, disregarding its tragic outcome, I can reach the conclusion that the treatment suffered by Judith McGlinchey was *objectively* inhuman and/or degrading.

3. What counts in my opinion is a nexus of facts. The victim was a heroin addict and suffered from asthma – she had been taken into hospital six times in the previous year on that account. In spite of her run-down state of health she was sentenced to prison, although there had been an alternative proposal for a probation order. As soon as she entered New Hall Prison she began to suffer frequent attacks of vomiting. Although she had stated that she wished to come off heroin and the prison doctor had immediately prescribed her medicine to ease the withdrawal symptoms, this drug was not given to her on her second day in prison (perhaps for good reasons, but the fact remains). She was also twice locked in her cell as a punishment for bad conduct. But above all, the vomiting did not cease, day or night, and it was accompanied by a steep and heavy loss of weight – 7 kg in forty-eight hours and 10 kg between the Monday of her arrival and the following Saturday. I can accept that the prison doctor's absence during the weekend was not

decisive, as there was a locum doctor in attendance, and she could have asked to see him. But I cannot understand why the prisoner was not taken into hospital during the first few days of her sentence, when she was vomiting continually, had lost 20% of her body weight in five days and was known to be simultaneously trying to come off drugs. It was only on Monday morning, that is one week after she began her sentence, that she was taken to hospital by ambulance, because she had collapsed and the appearance of her vomit revealed the presence of blood in her stomach. That factual nexus is the reason why I and the majority of my colleagues reached the finding of a violation.

4. Moreover, that finding must be placed in a wider context, that of the special treatment to be given to prisoners whose state of health gives cause for concern. In cases like that of the victim, such concern might even entail a decision that their state of health is incompatible with committal to prison, or in any case with continued detention.

5. The growing awareness of such a necessity, which in itself is a separate matter from the issue I mentioned above of the threshold of suffering to be taken into account, is reflected in numerous Council of Europe instruments. I could cite three recommendations of the Committee of Ministers to member States: the Recommendation of 12 February 1987 on the European Prison Rules (No. R (87) 3), the Recommendation of 8 April 1998 concerning the ethical and organisational aspects of health care in prison (No. R (98) 7) and the Recommendation of 29 September 2000 on improving the implementation of the European rules on community sanctions and measures (Rec(2000)22). I could also cite the third general activity report of the European Committee for the Prevention of Torture, covering the period from 1 January to 31 December 1992, which includes a chapter (no. 3) on health services in prisons.

6. Our Court itself is becoming more and more sensitive to this concern. It has frequently stated in its judgments that assessment of the question whether treatment reaches the minimum level of severity for the purposes of applying Article 3 may depend on the sex, age and *state of health* of the victim (see, for example, *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, pp. 2821-22, § 55). I might also mention, although the facts were different (the prisoner being seriously disabled), *Price v. the United Kingdom* (no. 33394/96, ECHR 2001-VII), with the separate opinion of Sir Nicolas Bratza, whom I joined, and the separate opinion of Judge Greve; the authors of those opinions considered that the very principle of committing the applicant to prison was incompatible with Article 3 on account of her condition. See also the recent *Mouisel v. France* (no. 67263/01, ECHR 2002-IX) in which the Court unanimously held that there had been a violation of Article 3 on account of the conditions of treatment and continued detention of a person suffering from an incurable illness.

7. I naturally do not underestimate the difficulties the judicial authorities have to face when they are required to determine what kind of sentence to impose on an offender in bad health or those of the prison authorities and health services when they have to choose between treatment on the spot and admission to a hospital outside prison, especially as ill health among prisoners is unfortunately not an exceptional circumstance, particularly on account of the ravages of drugs among offenders. But if I return to the instant case, I think that all those authorities, for their part, underestimated the seriousness of Judith McGlinchey's personal condition. The accumulation of errors was such, in my opinion, as to constitute in the final analysis a violation of Article 3 of the Convention. And I would have reached the same conclusion if the victim had in the end survived; the emotion aroused by her death must not be allowed to distort the assessment of her detention and conditions of treatment as such.

PARTLY DISSENTING OPINION OF JUDGE Sir Nicolas BRATZA

To my regret, I am unable to agree with the majority of the Chamber that there has been a violation of Article 3 of the Convention in the present case.

The general principles governing the application of Article 3 are well summarised in the judgment of the Chamber. The case-law of the Court sets a high threshold, requiring that ill-treatment must attain a minimum level of severity if it is to fall within the scope of the Article. In the specific context of conditions of detention, the Court has held, *inter alia*, that while Article 3 cannot be interpreted as laying down a general obligation to release a detainee on health grounds, the Article obliges States to ensure that a person is detained in conditions which are compatible with respect for human dignity and that, given the practical demands of imprisonment, the health and well-being of a prisoner are adequately secured by, among other things, providing him or her with the requisite medical assistance (see, for example, *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI).

The central question raised in the present case is whether the material before the Court establishes to the required standard of proof that the treatment, including the medical treatment, of Judith McGlinchey by the prison authorities was in all the circumstances so deficient as to give rise to a breach of Article 3.

In deciding this question, I note at the outset two points which appear to me to be of some importance.

In the first place, it is not alleged, and it has not been found by the majority of the Chamber, that Judith McGlinchey's state of health at the time of her conviction was such that she should never have been committed to, or detained, in prison. In this regard, the situation is materially different from that examined by the Court in its judgment in *Price v. the United Kingdom* (no. 33394/96, ECHR 2001-VII) in which a violation of Article 3 was found in a case involving an applicant who was a four-limb deficient thalidomide victim with numerous health problems and who was committed to prison without any steps being taken to ascertain whether there existed facilities adequate to cope with her severe level of disability. In the present case, by contrast, it has not been argued or found that the facilities in prison were not capable of treating a prisoner who was withdrawing from heroin addiction, with the additional complication of being an asthma sufferer.

Secondly, I note that several of the specific complaints of inhuman and degrading treatment made by the applicants have been rejected by the Chamber or found not to have been established. In particular, the Chamber has found unsubstantiated the complaint that relief for Judith McGlinchey's heroin withdrawal was denied by the prison authorities as a punishment, the medical notes confirming that the prescribed drug was not administered on only one occasion on 8 December 1998, and this on the instructions of the

doctor due to a drop in her blood pressure. The Chamber has similarly found unsubstantiated the allegation that asthma medicine was not administered, the nursing notes indicating that inhalers were provided when Judith McGlinchey was seen to be wheezing. As to the fact that, out of a total of twenty doses of antibiotic medicine for Judith McGlinchey's arm over a five-day period, four were either not administered or not entered in the drugs record, the Chamber, while observing that in either event a regrettable lack of procedure was indicated, has found that there is nothing to show that this failure had any adverse effect on Judith McGlinchey's condition or caused her any discomfort.

It is the complaint that not enough was done, or done quickly enough, to treat Judith McGlinchey for her heroin withdrawal symptoms, or to react to the serious deterioration in her general condition during her period of detention in the prison, that has been found by the majority to give rise to a breach of Article 3 of the Convention.

It is common ground that Judith McGlinchey was screened by a nurse on entry to the prison on 7 December 1998 and that, on the following day, she was seen by the prison doctor, Dr K., who set up a course of treatment for her various health problems. As appears from paragraphs 53 and 54 of the judgment, Judith McGlinchey's condition from 7 to 12 December was subject to regular monitoring by the medical and nursing staff of the prison, who took steps to respond to her withdrawal symptoms. There is, in my view, no indication in the material before the Court that she was neglected or abandoned to cope without assistance.

While it is true, as emphasised by the majority of the Chamber, that during that period Judith McGlinchey continued to vomit, took little food and had lost weight, the evidence of the medical and nursing staff at the inquest was that her condition remained stable and that, although she vomited again in the evening of 11 December, there were signs of improvement in her condition. Both Sister N. and Dr K. gave evidence that Judith McGlinchey did not give a clinical impression of being very ill during this period and both noted that she was active and associating with others. Dr K., in particular, stated in evidence that, given her blood pressure, temperature and pulse and her general presentation, he did not consider that there was any need to admit her to an outside hospital.

Of greater concern is the fact that in the two following days – the weekend of 12 and 13 December – Dr K. was not present in the prison and Judith McGlinchey was not apparently seen by any doctor, even though a locum doctor came to the prison on the Saturday morning. While, according to the evidence at the inquest, Judith McGlinchey's temperature, blood pressure and pulse were observed by the prison medical staff to be normal on 12 December, it was also recorded that she was continuing to vomit and that there had been a sharp drop in her weight to 40 kg – representing a 3 kg decrease since 9 December and, in all probability, a still more substantial

weight loss since her admission to prison.

However, I note that, despite the weight loss, the nursing staff found no cause for alarm and nothing which apparently required them to call out a doctor or arrange for her transfer to hospital in accordance with the practice established in the prison. It is recorded that, on 12 December, Judith McGlinchey had spent a better night. During 13 December, when she took a small dinner and did not vomit during the day, she was regarded by the nursing staff as improving, to the extent that it appears that it was not considered necessary to give her the prescribed anti-emetic medicine. Although she did vomit again twice that evening, no problems were observed during the night. Further, while the lack of any examination of Judith McGlinchey by a doctor, qualified, for example, to discern any problems of dehydration during a two-day period causes me some concern, I note that it was not established by the evidence at the inquest that Judith McGlinchey was in fact dehydrated when she arrived at hospital after her collapse on the morning of 14 December. Dr Tobin was unable to inject a central line due to her condition and, though there were in his view signs consistent with dehydration, he did not exclude that these could also have been the result of significant blood loss. More important still, to my mind, is the fact that none of the doctors who gave evidence at the inquest criticised Dr K. for failing to have Judith McGlinchey admitted earlier to hospital.

In these circumstances, I cannot find it established on the evidence before the Court that the medical treatment of Judith McGlinchey by the prison authorities was so deficient as to cause her distress or hardship or to amount to a violation of her rights under Article 3.

There were, as noted in the judgment, aspects of the arrangements in the prison or of the care given which could be criticised, as for example, the inaccuracy of the scales, the failure to provide or to record all the medication prescribed, and the lack of a doctor's presence in the prison over most of the weekend. Moreover, had Judith McGlinchey been transferred to a hospital earlier, more expert care, and perhaps more palliative nursing, could have been made available. However, even judged with the wisdom of hindsight, I am unable to conclude that it has been shown that the prison authorities subjected Judith McGlinchey to inhuman or degrading treatment.

Accordingly, and not without some hesitation, I have voted against the finding of a violation of Article 3 of the Convention in the present case.

This conclusion does not however, mean that the applicants' complaints fall outside the scope of protection of Article 13. The complaints were not declared inadmissible as manifestly ill-founded and necessitated an examination on the merits. I am satisfied that the various complaints of the applicants raised an arguable claim of a violation of the Convention for purposes of Article 13 and, for the reasons given in paragraphs 71 to 74 of the Chamber's judgment, I consider that the applicants' rights under that Article were violated.

Out of deference for the view of the majority of the Chamber that Judith McGlinchey's rights under Article 3 were also violated, I have voted in favour of the full sums of compensation for non-pecuniary damage and of costs and expenses awarded in the judgment.