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

THIRD SECTION

CASE OF HUTCHISON REID v. THE UNITED KINGDOM

(Application no. 50272/99)

JUDGMENT

STRASBOURG

20 February 2003

FINAL

20/05/2003

In the case of Hutchison Reid v. the United Kingdom,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Sir Nicolas BRATZA,
Mr P. KŪRIS,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 January 2003,

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

PROCEDURE

1. The case originated in an application (no. 50272/99) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a United Kingdom national, Mr Alexander Lewis Hutchison Reid ("the applicant"), on 13 August 1998.

2. The applicant, who had been granted legal aid, was represented by Ms Y. McKenna, a lawyer practising in Glenrothes. The United Kingdom Government ("the Government") were represented by their Agent, Mr H. Llewellyn, of the Foreign and Commonwealth Office.

3. The applicant alleged that he was being wrongly detained in a mental hospital and that he had not been provided with a prompt or adequate review of the continued lawfulness of his detention. He relied on Article 5 §§ 1 and 4 and Article 13 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second 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.

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

7. By a decision of 15 November 2001, the Chamber declared the application admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1950 and is currently detained in Carstairs Hospital, Lanarkshire.

10. On 8 September 1967 the applicant, then aged 17, was convicted, after a guilty plea, of culpable homicide. The court was satisfied on the oral evidence of two consultant psychiatrists that the applicant was suffering from "mental deficiency", a mental disorder within the meaning of the Mental Health (Scotland) Act 1960 and such as would warrant his detention (sections 6 and 23(1)). It ordered that he be detained in a mental hospital under a hospital order. It also made an order restricting his discharge from detention without limit of time (sections 55(1) and (7) and 60(1) of the 1960 Act). Although one doctor gave the opinion that the applicant suffered from a psychopathic or personality disorder, this was not the basis for the detention.

11. On 24 April 1972 the applicant escaped from the State hospital but was recaptured the same day.

12. By no later than 1980, he was no longer regarded as suffering from a mental deficiency. The sole medical basis for his detention since that date has been a diagnosis of anti-social personality or psychopathic disorder.

13. After 1983, patients under a restriction order were provided with the opportunity of applying annually to the sheriff to obtain discharge. According to the Mental Health (Scotland) Act 1984 ("the 1984 Act"), the criteria for admission for both civil and criminal patients were amended. Section 17 provided that where the mental disorder from which the person suffered was a persistent one manifested only by abnormally aggressive or seriously irresponsible conduct (that is, a psychopathic or anti-social personality disorder), he could only be detained where medical treatment was likely to alleviate or prevent a deterioration of his condition. This reflected general medical pessimism as to the benefits of medical treatment for psychopaths. The sheriff was required to release a restricted patient where the patient was not suffering from a mental disorder making it appropriate for him to be detained in a hospital for medical treatment, or it was not necessary for the health and safety of the patient or the protection of other persons that he receive such treatment (section 64 of the 1984 Act).

14. In 1985 the applicant was transferred to an open hospital. On 6 August 1986 he reoffended, was arrested and remanded to prison. He was charged on a summary complaint with the assault and attempted abduction of an 8-year-old child. Psychiatric reports were obtained from two consultant psychiatrists. In their reports of 14 August 1986, both referred to the applicant's personality disorder but neither considered him to be suffering from mental disorder making it appropriate for him to receive hospital treatment. He was found sane and fit to plead. Accordingly, on conviction of assault and attempted abduction by a sheriff on 26 September 1986, he was sentenced to three months' imprisonment, not to a hospital disposal.

15. On completion of his sentence in prison, the applicant was recalled to the State hospital by the Secretary of State on the basis of the 1967 hospital and restriction orders, pursuant to section 68(3) of the 1984 Act. This had been on the recommendation of a consultant psychiatrist consulted by the Secretary of State, who in his report of 8 August 1986 found that there was no continuing evidence of mental subnormality or of any evidence of mental illness other than persistent abnormally aggressive or seriously irresponsible conduct. While he was not convinced that the applicant's period of treatment in the open hospital had improved his behaviour in any consistent fashion, the only possible reason to continue his detention in hospital was to attempt to modify his aggressive and seriously irresponsible conduct. In his view the only appropriate type of hospital management would be the more secure and structured organisation within the State hospital. It was further noted that the incident with the child raised grave doubts concerning the safety to other people of allowing the applicant to be released from institutional care and it was for that reason that he recommended the applicant's return to the State hospital. On 7 October 1986, on the day of the applicant's release from prison, the applicant was transferred back to the State hospital.

16. The applicant sought discharge from hospital on a number of occasions. Between February 1987 and June 1994 he obtained some eighteen reports from six psychiatrists, the majority of which were to the effect that he did not suffer from a mental disorder of a nature or degree justifying continued detention as he was not treatable. Some of the reports indicated that the continuing detention was leading, or was likely to lead, to a deterioration of his condition and that he required rehabilitation from his institutionalisation. Between August 1986 and May 1994, ten psychiatric reports on the applicant were prepared for government agencies by eight psychiatrists, in which varying opinions were also given as to the applicant's amenability to treatment.

17. The applicant's appeals to the sheriff on 29 February 1988, 20 October 1988, and 12 May 1992 for absolute or conditional discharge were unsuccessful.

18. On 8 April 1994, the applicant lodged a further appeal with the sheriff under section 63(2) of the 1984 Act. Between May and June 1994, psychiatric reports were prepared. On 14 June and 1 July 1994, the sheriff heard evidence.

19. On 19 July 1994 the sheriff rejected the applicant's application for discharge. He noted that it was common ground that the onus of proof lay on the applicant to satisfy him, on the balance of probabilities, that the conditions in section 64(1)(a) or (b) were made out (see "Relevant domestic law and practice" below, paragraph 32). He had before him the written and oral evidence of seven consultant psychiatrists. He found that they were unanimous that the applicant suffered from a mental disorder, namely a persistent and permanent psychopathic/anti-social personality disorder, manifested by abnormally aggressive and seriously irresponsible behaviour. In the event of the applicant being released, he found there was a very high risk of his reoffending and that any such offence was likely to have a sexual connotation. He accepted that the evidence was such that the applicant's disorder would not be likely to justify his admission to hospital had his original offence been committed in 1994 and noted that the majority of the opinions were to the effect that the applicant's condition was not curable and that the medical treatment provided by the State hospital had not alleviated and would not alleviate his condition. However, he nonetheless found that the applicant's disorder was severe and that it was appropriate for him to be detained in a hospital for medical treatment. He stated that nowhere in the Act did it state that a criminal ordered by the High Court to be detained without limit of time should be discharged if his condition was not being alleviated. However, in any event, he agreed with Dr White, the medical officer responsible for the applicant, who stated in his report:

> "... in the structured setting of the State hospital in a supervised environment [the applicant's] anger management improves, resulting in his being less physically aggressive. There is evidence that when this structure or supervision is lessened [the applicant] poses more of a danger to others e.g. his abuse of parole ... Medical treatment has alleviated his condition and should continue to do so."

20. The sheriff also referred to Dr Smith's report which stated:

> "At that time (1967) he was emotionally immature and illiterate. Since then there have been marked improvements in his educational attainments. He has benefited from nursing and medical care in the stable environment provided by the State hospital."

21. The sheriff concluded:

> "The majority medical opinion is that rehabilitation should take place in another hospital. It is a matter for Dr White to consider whether he can prepare the applicant for a transfer; and it is for Dr White to decide and not for me to advise. Presumably rehabilitation will alleviate his condition. ... I am told that psychiatrists would today be unlikely to recommend admission to the State hospital. However, the applicant was properly admitted and detained and I have not been satisfied that he is now not

suffering from a mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment."

22. No appeal lay against the sheriff's decision.

23. On 28 February 1995 the Secretary of State received notice that the applicant had applied for legal aid to challenge the sheriff's decision by way of judicial review application. In March 1995 legal aid was refused. On 16 October 1995 the Secretary of State received intimation of the applicant's fresh application for legal aid. On 17 November 1995 legal aid was granted by the Scottish Legal Aid Board.

24. On 21 February 1996 the applicant lodged a petition with the Outer House of the Court of Session for judicial review of the sheriff's decision, claiming that the sheriff had erred in law or that he had reached a decision on the appeal which was irrational having regard to the evidence. A hearing took place on 16 May 1996 before Lord Rodger. On 29 May 1996 Lord Rodger dismissed the petition, finding that the sheriff's conclusion that it was appropriate that the applicant should be liable to be detained in hospital for treatment was entirely justifiable. He dismissed the applicant's claim that the sheriff had imposed an excessively high burden of proof on the applicant, considering that the sheriff had applied the proper standard and had made a positive finding that he was satisfied that it was appropriate for the applicant to be detained for treatment.

25. On 14 June 1996 the applicant renewed his application to the Inner House of the Court of Session. On 28 June 1996 the case was sisted (adjourned) to enable the applicant to apply for legal aid. On 30 August 1996 the Scottish Legal Aid Board granted legal aid. On 7 November 1996 the applicant applied to end the adjournment. On 12 November 1996 the Inner House recalled the sist. On 23 January 1997 a hearing was set for 24-26 June 1997. The hearing took place.

26. On 22 August 1997 the Inner House of the Court of Session allowed the appeal and quashed the decision of the sheriff. It held that in the case of a psychopath the discharge criteria in section 64 of the 1984 Act incorporated the "treatability" criterion in section 17 of the Act, namely the criterion that, in the case of a person suffering from a mental disorder manifested only by abnormally aggressive or seriously irresponsible conduct, the medical treatment must be such as was likely to alleviate or prevent a deterioration in his condition. Having reviewed the evidence, it found that the sheriff had wrongly concluded that the applicant was treatable and that the sheriff was obliged to discharge a restricted psychopathic patient who was not treatable.

27. On 11 November 1997 the Secretary of State appealed to the House of Lords. On 9 December 1997 and 25 February 1998 the parties agreed to an extension of time to lodge court documents. On 31 March 1998 the case was set down for hearing on 12 and 13 October 1998.

28. Following that hearing, on 3 December 1998, the House of Lords allowed the appeal. In their judgment, the Lords agreed with the Inner House that the treatability criterion was incorporated into the discharge criteria in section 64 but rejected its approach to the evidence. They held that treatment which alleviated the symptoms and manifestations of the underlying medical disorder of a psychopath was treatment within the meaning of section 17(1), even if the treatment did not cure the disorder itself. They found that the Inner House, on a judicial review application, was not entitled to substitute its own opinion as to the applicant's treatability for that of the sheriff, although it could have done so on an appeal.

29. Lord Hutton said, *inter alia*:

> "It is clear that there was a difference of opinion between the seven psychiatrists who gave evidence before the sheriff. The sheriff recognised this and stated that 'the majority opinion among the witnesses was that the medical treatment provided by the State hospital had not alleviated and would not alleviate his condition'. But the sheriff referred to the evidence of Dr Chiswick, who was in favour of an absolute discharge of the [applicant], and who stated that 'Dr White's plans for anger management etc. would be regarded by him as treatment'. And it is clear ... that the sheriff accepted the opinion of Dr White, who was the responsible medical officer for the [applicant] that the anger management of the [applicant] in the structured setting of the State hospital in a supervised environment resulted in his being less physically aggressive. In other words, it was Dr White's opinion that the symptoms of his underlying condition were alleviated and this led the sheriff to the conclusion that medical treatment 'should continue' to alleviate his condition.
>
> Therefore in my view contrary to the opinion of the Inner House the Lord Ordinary was right to decide that, given the evidence which was before the sheriff, it would be wrong to hold that no sensible sheriff could have reached the decision which he did."

30. Lord Hutton adverted to the danger which could arise under the mental health provisions that a sheriff could be obliged to release an untreatable psychopath who might well harm members of the public. The balancing of the protection of the public against the claim of a psychopath convicted many years ago that he should not continue to be detained in hospital when medical treatment would not improve his condition was, however, an issue for Parliament to decide, not the judges.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Mental Health (Scotland) Act 1984 ("the 1984 Act")

31. Section 17(1) of the 1984 Act provided:

> "A person may, in pursuance of an application for admission under section 18(1) of the Act, be admitted to a hospital and there detained on grounds that-

(a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and

(i) in the case where the mental disorder from which he suffers is a persistent one manifested only by abnormally aggressive or seriously irresponsible conduct, such treatment is likely to alleviate or prevent a deterioration of his condition ...

... and

(b) it is necessary for the health or safety of that person or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this Part of the Act."

32. Section 64(1) of the 1984 Act provided:

"Where an appeal is made by a restricted patient who is subject to a restriction order, the sheriff shall direct the absolute discharge of the patient if he is satisfied –

(a) that the patient is not, at the time of the hearing of the appeal, suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or

(b) that it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; and (in either case)

(c) that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment."

B. Subsequent developments

33. The Crime and Punishment (Scotland) Act 1997 provided, from its coming into force, that any person convicted of an offence for which a hospital order could be made could now be made subject of a hospital direction (or hybrid order) whereby the offender, although sent to hospital, also had a sentence imposed on him. If the offender's mental condition improved to the extent that detention in hospital was no longer justified, he could be transferred to prison to complete the remainder of his sentence. These provisions, which were not retrospective, did not affect the applicant.

34. On 2 August 1999, in *Noel Ruddle v. the Secretary of State*, the sheriff ordered the release of a patient suffering from a psychopathic disorder where the treatability test was not satisfied. The release into the community of this patient caused considerable public controversy and led to the first Act of the new Scottish Parliament.

35. On 8 September 1999, the Parliament passed the Mental Health (Public Safety and Appeals) Scotland Act 1999 which amended section 64 of the 1984 Act so as to require the sheriff to dismiss an appeal by a patient where he was suffering from a mental disorder which required him to be detained in hospital, whether for medical treatment or not, in order to protect the public from serious harm.

Section 64(A1) of the 1984 Act now provided:

> "Where an appeal to the sheriff is made by a restricted patient who is subject to a restriction order, the sheriff shall refuse the appeal if satisfied that the patient is, at the time of the hearing of the appeal, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not."

This Act also gave a right of appeal from the sheriff's decision to the Court of Session for both the applicant and the Secretary of State.

36. Proceedings were taken by hospital detainees concerning, *inter alia*, whether the Act was within the powers of the Parliament. On 16 June 2000 the Lord President gave the judgment of the Inner House of the Court of Session, rejecting the challenges to the Act, taking into account, in particular, the principles laid down in Article 5 §§ 1 and 4 of the Convention (see *A. v. the Scottish Ministers*, 2000 Session Cases 1). On 18 October 2001 the Judicial Committee of the Privy Council dismissed the further appeal, also finding that it was not incompatible with Article 5 § 1 (e) to require the continued detention of a restricted patient in a hospital where this was necessary on the grounds of public safety, whether or not the mental disorder was treatable (see *A. v. the Scottish Ministers*, 2001 Scots Law Times 1331).

37. The Report of the Millan Committee on the Review of the Mental Health (Scotland) Act 1984 made a number of recommendations concerning the 1999 Act. In particular, it criticised the fact that entry and exit criteria to hospital no longer coincided:

> "[T]he justification for continuing to detain a patient should reflect the basis on which detention was initiated. This is an important principle which we have emphasised throughout our report: no one should be detained if they no longer meet the grounds for detention. ... The effect of the public safety test in the 1999 Act is that some restricted patients may be required to remain in hospital when they no longer meet the criteria for admission to hospital."

38. In January 1999 the Report of the Committee of Inquiry into the Personality Disorder Unit, Ashworth Special Hospital was issued concerning the treatment and detention of psychopathic offenders:

> "6.3.1 Whether or not a convicted offender is diagnosed as suffering from psychopathic disorder and becomes the subject of a hospital order is, to a considerable extent, a matter of chance. ...
>
> Because [the definition of the personality disorder category] is legal, not clinical, and is unlikely to be the subject of scrutiny, it is possible for almost any violent offender to slip into this category ...
>
> ...
>
> 6.3.8 The uncertainties in this process have been called a 'lottery' ...
>
> ...
>
> General Conclusions

6.10.1 It is evident from all the evidence which we have heard and read that there continues to be a wide diversity of opinion among experts from all the professions about the treatment and management of personality disorder and particularly severe personality disorder ...

...

6.10.5 A few generalisations can be made with which there is general agreement:

1. Some personality disorders are more treatable than others and they are conditions which are less severe and which have a low association with violence.

2. Some personality disorders are sometimes treatable.

3. Some, particularly severe personality disorders, are resistant to treatment or frankly untreatable, although they may benefit from management and humane containment. ...

...

6.10.11 We see no rational justification for keeping this very manipulative and troublesome sub-group in expensive therapeutic units providing management and treatment techniques from which they gain no benefit."

39. On 28 March 2001 the Court of Appeal held in *R. v. the Mental Health Review Tribunal North and East London Region and the Secretary of State for Health, ex parte H.* that sections 72 and 73 of the Mental Health Act 1983 (which contains provisions similar to those set out in section 64 of the Mental Health Act (Scotland) 1984) were contrary to Articles 5 §§ 1 and 4 of the Convention in so far as they imposed a test which required the continued detention of a patient where it could not be shown that his mental condition did not warrant detention. On 26 November 2001 the Mental Health Act (Remedial) Order 2001 came into force, amending sections 72 and 73 to require the tribunal to discharge the patient if it was not satisfied that he fulfilled the conditions for detention. In a recent case in Scotland brought by a patient under section 64 of the 1984 Act (*Lyons v. the Scottish Ministers*, 17 January 2002, First Division of the Court of Session), the Scottish court noted that the Scottish ministers had accepted, concerning the burden of proof in proceedings for release, that they were required to establish that the patient suffered from a mental disorder of a nature or degree making it appropriate for him to be detained in a hospital.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

40. Article 5 § 1 of the Convention provides in its relevant parts:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

..."

A. The parties' submissions

1. The applicant

41. The applicant accepted that he had been lawfully liable to be detained as a matter of domestic law since 1967, although he noted that the initial diagnosis of mental deficiency was of questionable accuracy at the time and that the diagnosis of psychopathic disorder was not definitively made until many years later. However, Article 5 § 1 (e) did not permit the detention of a person simply because his views or behaviour deviated from the norms prevailing in society. His disorder manifested itself only by abnormally aggressive or seriously irresponsible behaviour and he argued that Article 5 § 1 (e) could not permit his detention because of a propensity to reoffend in the absence of any possibility or intention of provision of medical treatment.

42. Even if the national authorities were better placed to evaluate the evidence in a case, he submitted that the most authoritative consideration of the medical evidence in his case was given by the Inner House of the Court of Session, which found that he was not treatable. The House of Lords had stated that if it had been sitting as a court of appeal it would have been justified in reaching such a conclusion. If the applicant's condition warranted detention in prison rather than hospital, and the applicant maintained that he would not now, as a psychopath, be considered as suitable for detention in hospital, his present detention was not in an institution appropriate to the purpose for which it was being effected. The clear majority view of the experts was that he was not treatable and in 1986 he was sentenced to prison rather than hospital.

43. The applicant submitted that the definition of medical treatment as including nursing or care and supervision in a structured hospital environment was not in accordance with accepted clinical views of what constituted medical treatment. This kind of treatment was in fact indistinguishable from containment. He disputed that risk of reoffending should be a valid ground for maintaining a person in hospital, as this rendered the admission criteria, which were linked to the possibility of medical treatment, different from the discharge criteria. He denied that it was appropriate to detain him in hospital. The nature and degree of his

disorder was indistinguishable from that of many persons in the prison population and he did not require care and supervision in hospital.

2. The Government

44. The Government submitted that the applicant's detention was justified under Article 5 § 1 (e) as the lawful detention of a person of unsound mind. The national authorities had found that the applicant was suffering from a mental disorder warranting confinement. Where the medical experts had expressed conflicting opinions and the patient posed a risk to public safety, they considered that the Court should be slow to disturb their conclusions. Article 5 § 1 (e) was in any event not concerned with suitable treatment or conditions and it was not a precondition of the lawful detention of a person of unsound mind that treatment was available to him or that available treatment was to any extent beneficial. A person could be detained in conformity with the Convention where this was necessary in his own interests, or for the protection of the public or on both medical and social grounds. Therefore, a person suffering from a psychopathic disorder could be lawfully detained in order to protect the public even if it was considered that the disorder could not be treated.

45. In this case, they argued that the applicant was lawfully detained in 1967 on the basis of hospital and restriction orders made on the objective medical expertise of two doctors that he was suffering from a mental disorder and those orders had been in force ever since, providing the lawful basis for his continuing detention. Since 1967, he had continued to suffer from a persisting mental disorder established by objective medical expertise and warranting his compulsory confinement in the State hospital. Although by 1980 his problems no longer included mental deficiency, his medical history showed that he continued to suffer from a persisting mental disorder, namely a psychopathic personality disorder. He also remained a risk to the public and the treatment available to him in the structured environment of the State hospital prevented deterioration in his condition. Even if there was disagreement in 1994 amongst the experts as to his treatability, there was sufficient evidence that the care under medical supervision in the hospital prevented deterioration and constituted medical treatment.

46. The Government further submitted that it was hypothetical to postulate that, if his case arose today, the psychiatrists would be unlikely to recommend admission to hospital. There was a proper relationship between the ground on which the applicant had been deprived of his liberty and the place and conditions of his detention. It would be entirely inappropriate to detain a person such as the applicant in an ordinary prison when he required care and supervision not available in such an environment.

B. The Court's assessment

1. General considerations

47. In order to comply with Article 5 § 1 of the Convention, the detention in issue must take place "in accordance with a procedure prescribed by law" and be "lawful". The Convention here refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the aim of Article 5, namely to protect the individual from arbitrariness (see, amongst many authorities, *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, pp. 17-18, 19-20, §§ 39 and 45; *Bizzotto v. Greece*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1738, § 31; and *Aerts v. Belgium*, judgment of 30 July 1998, *Reports* 1998-V, pp. 1961-62, § 46).

48. For the purposes of Article 5 § 1 (e), an individual cannot be deprived of his liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see *Winterwerp*, cited above, pp. 17-18, § 39; *Johnson v. the United Kingdom*, judgment of 24 October 1997, *Reports* 1997-VII, p. 2409, § 60; and, more recently, *Varbanov v. Bulgaria*, no. 31365/96, § 45, ECHR 2000-X).

49. Furthermore, there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. In principle, the "detention" of a person as a mental health patient will only be "lawful" for the purposes of sub-paragraph (e) of paragraph 1 if effected in a hospital, clinic or other appropriate institution (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, p. 21, § 44, and *Aerts*, cited above, loc. cit.).

2. Application to the present case

50. It is not disputed that the applicant's detention in hospital in 1967 was justified both as being "lawful" and as being on grounds of mental illness falling within the scope of Article 5 § 1 (e). Nor does the applicant argue in substance that his detention has become unlawful since. He has brought numerous proceedings challenging his detention and its conformity with domestic law. These proceedings have not resulted in any findings of unlawfulness, procedural or substantive. While the Court exercises a certain power of review, it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see, amongst many authorities, *Kemmache v. France (no. 3)*, judgment of 24 November 1994, Series A no. 296-C, pp. 87-88, § 42). There is no basis in the materials before this Court to interfere with the domestic courts' assessment in the present case. The lawfulness of the applicant's continued detention under domestic law is not however decisive.

51. The principal question which arises, in Convention terms, is whether the applicant's detention offends the aim of protecting the individual from arbitrary detention, in particular whether his continued detention in hospital can be justified under Article 5 § 1 (e). The applicant's argument, essentially, is that he is now recognised as suffering from a psychopathic personality disorder that cannot be treated in hospital and that accordingly his detention in hospital is inappropriate and therefore arbitrary. He supports this argument with reference, *inter alia*, to the reports of the doctors considered at the hearing before the sheriff in June and July 1994, the finding of the Inner House of the Court of Session that the sheriff had erred in considering that he was treatable on the basis of the medical evidence, and the fact that when he was convicted for a new offence in 1986 he was not found to be suffering from a mental disorder making it appropriate for him to receive hospital treatment.

52. This argument however turns on the domestic-law criterion applicable at the time, namely, that detention in a mental hospital was conditional on the illness or condition being of a nature or degree amenable to medical treatment. There is no such requirement imposed by Article 5 § 1 (e) of the Convention (see *Koniarska v. the United Kingdom* (dec.), no. 33670/96, 12 October 2000). The Court's case-law refers rather to the applicant being properly established as suffering from a mental disorder of a degree warranting compulsory confinement. Such confinement may be necessary not only where a person needs therapy, medication or other clinical treatment to cure or alleviate his condition, but also where the person needs control and supervision to prevent him, for example, causing harm to himself or other persons (see, for example, *Witold Litwa v. Poland*, no. 26629/95, § 60, ECHR 2000-III).

53. The Court is not persuaded therefore that there was anything arbitrary in the decision not to release the applicant in 1994. The unanimous medical evidence was that the applicant suffered from a mental disorder of a psychopathic type manifesting itself in abnormally aggressive behaviour. In light of the sheriff's finding that there was a high risk of his reoffending if released, such offending being likely to have a sexual connotation, the decision not to release the applicant may be regarded as justified under Article 5 § 1 (e).

54. Furthermore, the Court does not consider that any issues of arbitrariness are disclosed by the fact that the grounds on which detention in hospital may be ordered in domestic law have altered over the period during which the applicant has been detained. Since he was first detained in 1967, considerable time has elapsed and medical, psychiatric and legal developments have, inevitably, occurred. Most recently, the Court notes that the law has been amended to make it clear in cases such as the applicant's that the fact that the mental disorder is not treatable in clinical terms does not render release compulsory where a risk to the public remains (see "Relevant domestic law and practice" above, paragraph 35).

55. Nor does the Court consider that the detention of the applicant in a mental hospital offends the spirit of Article 5 of the Convention. Generally, in fact, it would be prima facie unacceptable not to detain a mentally ill person in a suitable therapeutic environment (see *Aerts*, cited above). It would note that, even if the applicant's condition is not currently perceived as curable or amenable to treatment, the sheriff found on the basis of the evidence before him that the applicant derived benefit from the hospital environment and that his symptoms became worse outside its supportive structure. In the circumstances, there is a sufficient relationship between the grounds of the detention and place and conditions of detention to satisfy Article 5 § 1 of the Convention.

56. The Court concludes that the applicant's detention is justified under Article 5 § 1 (e) of the Convention and that there has been no breach of Article 5 § 1 in this case.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

57. Article 5 § 4 of the Convention provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. The parties' submissions

1. The applicant

58. The applicant submitted that there was no proper review by a court of the lawfulness of his detention, contrary to Article 5 § 4. The sheriff held the applicant to be treatable and therefore detainable in the face of the great weight of evidence to the contrary. The three judges of the Inner House of the Court of Session reviewing that evidence took the view that the evidence was not such that he was treatable and that he should be discharged. The House of Lords, which did not itself decide whether he was treatable, recognised that the Inner House would have been entitled to form the view it did on an appeal but that on judicial-review principles the sheriff's decision could not be challenged as unlawfully perverse. He was therefore denied a proper decision by a court on the merits on the evidence.

59. The applicant further submitted that the proceedings which commenced in April 1994 and only ended on 3 December 1998 were not conducted speedily. He denied that he failed promptly to expedite the proceedings at any stage. He had difficulties in obtaining legal aid. The proceedings were entirely novel and complex and detailed consideration had to be given by counsel to the legal and factual issues arising. His representatives acted with reasonable expedition in making any necessary applications. He was not responsible for the periods of delay involved in granting legal aid, assigning court hearings and in production of judgments by the courts, which amounted to 1,099 days in total. As regarded the adjournment before the House of Lords, this had been requested by the Secretary of State and he had been advised to agree as one such adjournment would generally be allowed. Although he retained the annual right to appeal to the sheriff, this right was meaningless given the view of the law which prevailed at the time. Until the higher courts overturned or distinguished the erroneous view of the law applied in his case, his prospects of success in a further application to the sheriff in the period 1995-98 were significantly and adversely affected.

60. The applicant further submitted that an onus of proof to a high standard of probability was placed on him in the proceedings before the sheriff. On admission the onus of proof had been placed on the authorities seeking to detain. The placing of the onus of proof on an applicant seeking release by section 64 of the 1984 Act had been recently held in a case dealing with comparable English provisions to be incompatible with Article 5 § 4 (*R. v. the Mental Health Review Tribunal North and East London Region and the Secretary of State for Health, ex parte H.*, Court of Appeal, 28 March 2001 – see paragraph 39 above). In that case the Secretary of State had conceded that the burden of proof should not be on the patient to prove that his detention no longer complied with the legal

requirements. In similar cases in Scotland (for example, *Lyons*, cited at paragraph 39 above), the Scottish ministers had also accepted that the Convention required them to bear the burden of proof and had argued that section 64 should be read to give this effect. The applicant rejected the Government's argument that in the circumstances the burden of proof was irrelevant. The authorities in his case should have had to prove to the sheriff that the applicant was treatable on a balance of probabilities. Instead the applicant had had to prove that he was not treatable. Given the paucity of evidence offered by the State on this point, it could not be safely assumed that placing the burden of proof on the applicant was not material to the outcome.

2. The Government

61. The Government submitted that the applicant was able to challenge the lawfulness of his continued detention in hospital by appealing to the sheriff, who was a legally qualified judge with wide jurisdiction. The sheriff was required to give the applicant or his legal representative an opportunity to be heard, he heard evidence in accordance with the ordinary rules of evidence and was empowered to release if the detention was unlawful. This review was wide enough to bear on all the conditions essential for the lawful detention of a person of unsound mind. They submitted that Article 5 § 4 did not require that an appeal against the sheriff's decision also be available. Judicial review of the decision, although not an appeal system allowing the higher courts to substitute their view on the merits, was a useful supplement to the sheriff's proceedings, as it permitted a close scrutiny by more senior judges of the decision taken, in line with the principles of judicial review which included scrutiny of the nature and sufficiency of the evidence. This was in any event wide enough to satisfy the requirements of Article 5 § 4.

62. As regarded the speediness of the proceedings, the Government submitted that the proceedings before the sheriff were speedily conducted, commencing in April 1994 and culminating with due expedition in July 1994. The applicant however took no further steps until 28 February 1995 when the Government received notice of a legal aid application. Although legal aid was granted on 17 November 1995, the applicant did not lodge his petition until 21 February 1996, some nineteen months after the decision which he sought to review. There was no delay in the Court of Session proceedings, although there was an adjournment to allow the applicant to seek legal aid to apply to the Inner House. This was granted on 30 August 1996, although the applicant did not apply to end the adjournment until 7 November 1996. Similarly, the proceedings in the House of Lords proceeded with due expedition. The Secretary of State lodged an appeal after detailed consideration of the difficult issues on 11 November 1997 and legal aid was granted to the applicant on 28 November 1997. An extension

of time from December 1997 to March 1998 for lodging documents was agreed by both parties. The House of Lords decision was issued without undue delay on 3 December 1998 after a hearing on 12 and 13 October 1998. The case came before four courts and the judicial authorities conducted the case diligently. The applicant also retained during this time an annual right to apply to the sheriff for release, when the lawfulness of his continued detention would have been considered *de novo* with regard to the evidence then heard.

63. As regarded the burden of proof in the sheriff proceedings, the Government submitted that technical distinctions between burdens of proof tended to become artificial once evidence was heard. The burden of proof was not a determining factor of the case unless the court was ultimately unable to come to a definite conclusion on the evidence or some part of it. In practice, both the patient and the State led evidence on the issue of whether the lawful criteria for detention were met and it was normal practice in Scotland for the State to lead evidence that the patient was continuing to suffer from a mental disorder. In the present case, the sheriff, who had had the inestimable advantage of hearing the witnesses, found it to be established that he suffered from a mental disorder and that there was a high probability that he would reoffend. He thus came to a definite conclusion on the evidence and no question of onus arose. The Government agreed that section 64 was broadly analogous to sections 72 and 73 in issue in *Ex parte H.* (cited at paragraph 39 above), since which the law had been changed by a remedial order. The Scottish Ministers in *Lyons* (cited at paragraph 39 above) had accepted that the burden of proof lay on them in appeals brought by a patient and the Government also accepted that the State was required to satisfy the court of the positive facts which warranted the continuing detention of a patient. This accorded with what had been the previous practice. Section 64 of the 1984 Act was therefore not incompatible with Article 5 § 4 of the Convention and the question of the onus of proof was of no significance or materiality.

B. The Court's assessment

1. General principles

64. Article 5 § 4 provides a fundamental safeguard against arbitrary detention in requiring that an individual who is deprived of his liberty has the right to have the lawfulness of that detention reviewed by a court. The "court" referred to in this provision does not necessarily have to be a court of law of the classic kind, integrated within the standard judicial machinery of the country. The term denotes "bodies which exhibit not only common fundamental features, of which the most important is independence of the executive and the parties to the case ..., but also the guarantees" –

"appropriate to the kind of deprivation of liberty in question" – "of a judicial procedure", the forms of which may vary but which must include the competence to "decide" the "lawfulness" of the detention and to order release if the detention is not lawful (see *Weeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, p. 30, § 61, and the authorities cited therein).

65. An arrested or detained person is entitled before such a court to a review of the "lawfulness" of his detention in light not only of domestic-law requirements but also of the text of the Convention, the general principles embodied therein and the aim of the restrictions permitted by paragraph 1 (see, *inter alia*, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65). This does not guarantee a right to judicial review of such a scope as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the lawful detention of a person subject to the type of deprivation of liberty ordered (see *E. v. Norway*, judgment of 29 August 1990, Series A no. 181-A, pp. 21-22, § 50, and *Singh v. the United Kingdom*, judgment of 21 February 1996, *Reports* 1996-I, p. 300, § 65).

66. An entitlement to a review arises both at the time of the initial deprivation of liberty and, where new issues of lawfulness are capable of arising, periodically thereafter (see, *inter alia*, *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, p. 1185, § 123, and *Varbanov*, cited above, § 58). In the review procedure, the competent courts are required to reach their decisions "speedily". The question of whether periods comply with the requirement must – as with the "reasonable time" stipulation in Article 5 § 3 and Article 6 § 1 – be determined in the light of the circumstances of each case (see *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A no. 107, p. 20, § 55).

2. The Court's assessment

67. The applicant's appeal for release from detention in hospital was heard before the sheriff in a hearing held on 14 June and 1 July 1994, at which was presented the written and oral evidence of seven consultant psychiatrists. The sheriff issued his judgment dismissing the appeal on 19 July 1994. The Court considers that the sheriff may be regarded as a "court" for the purposes of Article 5 § 4, satisfying the requirements, as judge of civil and criminal jurisdiction, of independence and impartiality and offering judicial guarantees of an adversarial procedure. The applicant's complaints concerning the sheriff's approach to the evidence and application of domestic law do not affect this assessment.

68. Nonetheless, two aspects of the proceedings raise issues which the Court has examined further, firstly, the applicant's complaint that the

burden of proof is on the patient in such proceedings and, secondly, whether the proceedings were sufficiently speedy.

(a) The burden of proof

69. The applicant complained that in the proceedings brought for release under section 64 of the 1984 Act it was for the patient to satisfy the sheriff that he was no longer suffering from a mental disorder requiring his detention in hospital for medical treatment, arguing that under Article 5 of the Convention it was for the State to justify the deprivation of liberty.

70. The Court would observe that there is no direct Convention case-law governing the onus of proof in Article 5 § 4 proceedings, although the imposition of a strong burden of proof on applicants held in detention on remand to show that there was no risk of absconding has previously been taken into account in finding procedures for review of that detention incompatible with the Article 5 § 4 (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 59, ECHR 1999-II, and *Ilijkov v. Bulgaria*, no. 33977/96, § 99, 26 July 2001).

71. That it is however for the authorities to prove that an individual satisfies the conditions for compulsory detention, rather than the converse, may be regarded as implicit in the case-law. In examining complaints under Article 5 § 1, the Court has adopted the approach that both the initial deprivation of a mental patient's liberty and the continued detention can only be lawful under Article 5 § 1 (e) if it can "reliably be shown that he or she suffers from a mental disorder sufficiently serious to warrant detention", namely that the burden lies on the authorities in both cases (see *Winterwerp*, cited above, pp. 17-18, §§ 39-40, and *Johnson*, cited above, pp. 2409-10, § 60). The Court would observe that this position has in effect been acknowledged by the Secretary of State in proceedings taken by a mental patient in England and by the Scottish ministers in recent proceedings in Scotland (see paragraph 39 above). The Government in their observations have accepted this, without however conceding the occurrence of a breach in the applicant's case.

72. The Court does not read the Government's arguments as asserting that the burden of proof did not, in law, lie on the applicant in his appeal in 1994. In any event, the sheriff in the applicant's case stated quite clearly that the onus of proof lay on the applicant. The Government argued rather that in practice the authorities always led evidence in support of the continued detention and that, once evidence was before the court, issues of the burden of proof were largely irrelevant for the sheriff in reaching his findings on the material before him.

73. It is true in this case that there was considerable medical evidence before the sheriff concerning the applicant's condition and that the sheriff made clear and unequivocal findings as to the existence of a serious mental disorder and the risk of the applicant reoffending. These conclusions were

reached on an assessment of the evidence as a whole and the burden of proof does not appear to have played any role. However, there was another issue before the sheriff concerning the domestic-law requirement that the applicant's mental illness was amenable to treatment. On that point, the medical experts differed, the sheriff noting that the majority of the opinions were to the effect that the applicant's condition was not curable and that the medical treatment provided by the State hospital had not alleviated and would not alleviate his condition. Of the seven consultant psychiatrists who had given evidence, he referred to two doctors' assessments that the applicant had improved or benefited from the care and stability provided in the hospital environment. In reaching his decision to reject his appeal, the sheriff stated, in terms referring to the onus of proof placed on the applicant by section 64 of the 1984 Act, that he had not been satisfied that the applicant was not now suffering from a mental disorder of a nature or degree which made it appropriate for him to be liable to be detained in a hospital for medical treatment. The Court also notes that, on reviewing the sheriff's decision, the Inner House of the Court of Session found that the evidence did not support a conclusion that the applicant was "treatable". In those circumstances, the Court is not persuaded that the onus of proof placed on the applicant in the proceedings by the applicable legislation was irrelevant to the outcome. The Government argued that the burden of proof could not be considered a determining factor of a case unless a court was unable to come to a definite conclusion on the evidence or some part of it. It is however sufficient to raise a problem concerning the effectiveness of the proceedings as a mechanism for preventing arbitrary or unlawful detention, if, on the state of evidence before the court, the burden of proof placed on the applicant was capable of influencing the decision. In the applicant's case, where the issue of treatability was subject to conflicting views, this would appear to be the case.

74. The Court finds therefore that in so far as the burden of proof was placed on the applicant in his appeal to establish that his continued detention did not satisfy the conditions of lawfulness it was not compatible with Article 5 § 4 of the Convention.

(b) Speed of review

75. Article 5 § 4 proclaims the right, following the institution of proceedings applying for release, to a speedy judicial decision concerning the lawfulness of detention and to an order terminating it if proved unlawful (see, for instance, *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III).

76. In this case, the applicant applied for release on 8 April 1994. A hearing took place in June and July 1994 and the sheriff issued his decision refusing release on 19 July 1994. A period of three months and eleven days thus elapsed at first instance. The decisions in the applicant's subsequent

appeals were given on 29 May 1996 by the Outer House of the Court of Session, on 22 August 1997 by the Inner House of the Court of Session and, finally, on 3 December 1998, by the House of Lords, three years nine months and twenty five days after the applicant's application.

77. The Court notes that the hearing of the applicant's application for release involved the preparation and hearing of considerable psychiatric evidence and that complex issues of domestic law arose on which the courts showed some diversity of opinion. It is also apparent that the applicant himself was responsible for some delay in the pursuit of his appeals. In particular, the applicant waited some six months after the sheriff's decision to apply for legal aid for judicial review; after his application for legal aid was refused in March 1995, he did not re-apply until October 1995; he delayed from 30 August 1996, when he was granted legal aid, to 7 November 1996 in applying to lift the adjournment in the proceedings and he agreed to the adjournment of the House of Lords proceedings which delayed the hearing for some months. However, even taking those delays into account, the Court observes that there was a lapse of time of three months and eight days between the applicant's application to the Outer House of the Court of Session and the decision dismissing his appeal; of nine months and ten days between the lifting by the Inner House of the Court of Session of the adjournment (granted for the applicant to obtain legal aid) on 12 November 1996 and its judgment on 22 August 1997; and of seven months and three days between the setting down of the case for hearing by the House of Lords and the delivery of its judgment on 3 December 1998.

78. While it is true that Article 5 § 4 guarantees no right, as such, to an appeal against decisions ordering or extending detention, it follows from the aim and purpose of this provision that its requirements must be respected by appeal courts if an appeal lies against a decision (see *Rutten v. the Netherlands*, no. 32605/96, § 53, 24 July 2001, and *Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, p. 28, § 28). The applicant's applications challenging the sheriff's decision were not, in the domestic sense, full appeals on fact and law but involved judicial review, principally, of lawfulness and propriety of procedure. As the appellate instances were nonetheless involved in ruling on issues concerning the lawfulness of his continued detention and this could have potentially led to his release, the Court sees no reason why they should not be taken into account as part of the proceedings. The fact that in Scotland there is a four-tier system of review cannot serve to justify the applicant being deprived of his rights under Article 5 § 4 of the Convention. It is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of that provision (see, *mutatis mutandis*, *R.M.D. v. Switzerland*, judgment of 26 September 1997, *Reports* 1997-VI, p. 2015, § 54, and *G.B. v. Switzerland*, no. 27426/95, § 38, 30 November 2000).

79. The Court observes that in *Rutten* (cited above) it found a breach of the speed requirement of Article 5 § 4 of the Convention where the first-instance court took two months and seventeen days to issue its decision and the appellate court took a further three months to give judgment concerning the applicant's application for release from the secure institution where he was receiving treatment. The longer delays which appear in this case cannot be justified either by the complexity of the case or the exigencies of internal procedure. While one year per instance may be a rough rule of thumb in Article 6 § 1 cases, Article 5 § 4, concerning issues of liberty, requires particular expedition.

80. The Government pointed out that the applicant could re-apply to the sheriff for release each year. This, however, does not remedy any delay in bringing this particular application for release to the required speedy conclusion. In so far as similar issues of fact or law arose, it could not reasonably be anticipated that subsequent applications would have any prospect of being determined in the applicant's favour or in advance of the appeals in progress.

81. The Court discerns no exceptional grounds such as to justify the delay in determining the applicant's application for release (see *Musiał v. Poland* [GC], no. 24557/94, § 44, ECHR 1999-II). It concludes that there has been in this respect a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

82. The applicant complained, in the alternative to his submissions under Article 5 § 4 of the Convention, that he had no effective remedy for his complaints, contrary to Article 13. Given the Court's findings above, it does not propose to consider this matter further.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed that as he had been detained in hospital since 1986 in contravention of Article 5 § 1 of the Convention he should be awarded a measure of pecuniary compensation to reflect the loss of possibility of obtaining remunerative employment during that period. As he had been deprived of his liberty and his detention had arguably caused his

mental condition to deteriorate, an award should also be made for non-pecuniary damage. He did not refer to any particular amount.

85. The Government submitted that the applicant's claim for pecuniary loss was wholly speculative. No evidence showed that the applicant had in fact suffered any deterioration over the period as alleged. In their view, the finding of a violation would be sufficient just satisfaction for any finding of a breach, in particular as the domestic law concerning the burden of proof had now been adjusted.

86. The Court reiterates that there must be a clear causal connection between the pecuniary damage claimed by the applicant and the violation of the Convention and that this may, where appropriate, include compensation in respect of loss of earnings or other sources of income (see, amongst other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). In the present case, where the Court has found procedural breaches of Article 5 § 4 of the Convention but no breach of Article 5 § 1, it does not consider that any pecuniary damage flowed from the violations found. It cannot speculate as to whether the applicant would have been released if the procedures adopted by the courts had been different.

87. That said, the Court notes the procedural breach under Article 5 § 4 concerning the burden of proof and the long period of delay in the proceedings brought by the applicant for his release and considers that some feelings of frustration and anxiety must have arisen which justify an award of non-pecuniary damage. It awards a sum of 2,000 euros (EUR) in this respect.

B. Costs and expenses

88. The applicant claimed a total of 2,050 pounds sterling (GBP), including GBP 900 for counsel's work on the application and written submissions, GBP 550 for conferences and consultations between solicitor and counsel and GBP 600 for solicitors' communications with the applicant and with this Court.

89. The Government did not comment on these claims.

90. The Court awards the applicant's claims in full, namely, EUR 3,218.

C. Default interest

91. 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 UNANIMOUSLY

1. *Holds* that there has been no violation of Article 5 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the burden of proof imposed on the applicant in the proceedings for release;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the delay in the proceedings;

4. *Holds*
   (a) that the respondent State is to pay the 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 into pounds sterling at the rate applicable at the date of settlement:
      (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 3,218 (three thousand two hundred and eighteen euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 February 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President