FOURTH SECTION

CASE OF M.S. v. THE UNITED KINGDOM

(Application no. 24527/08)

JUDGMENT

STRASBOURG

3 May 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of M.S. v. the United Kingdom,

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

Lech Garlicki, *President,*
David Thór Björgvinsson,
Nicolas Bratza,
Päivi Hirvelä,
Zdravka Kalaydjieva,
Nebojša Vučinić,

Vincent A. De Gaetano, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 7 December 2010 and on 10 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 24527/08) 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 a British national, M.S. ("the applicant"), on 9 May 2008. The President of the Chamber decided not to have the applicant's name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant, who had been granted legal aid, was represented by Mr P. Carlin, a solicitor with Peter Edwards Law, a law firm at Hoylake, Wirral. The United Kingdom Government ("the Government") were represented by their Agent, Ms H. Moynihan, of the Foreign and Commonwealth Office, London.

3. The applicant alleged violations of Articles 3 and 13 of the Convention.

4. By a decision of 7 December 2010, the Court declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1970. At the time of filing his application, he was resident in a psychiatric clinic. According to an expert report drawn up during the domestic proceedings in this case, the applicant has a diagnosis of mental impairment and, prior to the facts giving rise to this case, had been admitted to psychiatric hospitals twice. He also had a number of convictions against him, including for indecent assault, burglary and theft.

7. The facts of the case, as submitted by the parties, may be summarised

as follows.

A. The applicant's detention

8. In the early hours of 6 December 2004, police in Birmingham were called out to deal with the applicant, who was sitting in a car sounding its horn repeatedly and behaving in a highly agitated manner. He was arrested at 4.20 a.m. and transferred to a police station, where it was noted that he was clearly suffering from some form of mental illness and that a doctor would be required. His detention was authorised under section 136 of the Mental Health Act 1983 (see paragraph 28 below). The police also went to the applicant's address, where they found his aunt with serious and extensive injuries to her face and upper body, inflicted by the applicant. She was taken to hospital where a medical examination revealed cracked ribs and a collapsed lung.

9. The applicant was examined in his cell at approximately 5 a.m. by the Forensic Medical Examiner, Dr T. In view of the applicant's behaviour, speech and appearance, he assessed him as not fit to be interviewed or charged with any criminal offence. A formal assessment under the Mental Health Act 1983 was requested. This was done at approximately 7 a.m. by the psychiatric specialist registrar on call, Dr O. He concluded that the applicant was suffering from a mental illness of a nature or degree warranting detention in hospital in the interests of his health and safety and for the protection of other persons.

10. A second assessment was carried out shortly after 11 a.m. by another psychiatric specialist, Dr. O'D. He too advised that the applicant be formally admitted to hospital for assessment. He also advised that the applicant be observed via closed circuit television, since the presence of a police officer outside his cell was causing him to become agitated. For the remainder of his time at the police station, the applicant remained under continuous observation by this means.

11. At around midday, the applicant was visited by an approved social worker, Mr G. He was also seen by a community psychiatric nurse, Mr J. Both noted that the applicant was displaying clear signs of mental illness. The social worker filled out the relevant form for admission to a mental hospital, omitting just one point, the name of the establishment, which had yet to be determined.

12. At around 3 p.m. two members of staff from a local psychiatric intensive care unit stated that their establishment would not be able to admit the applicant and advised that he be referred to Reaside Clinic, which had a

medium secure unit. The police thereupon contacted Reaside to inform them of the situation. Shortly after 6 p.m., Dr M., a consultant forensic psychiatrist at Reaside, called back and was informed of the situation concerning the applicant. According to the custody record, he stated that someone would be sent over from the clinic. According to Dr M.'s own notes on the situation, which the Government have provided, he then consulted with a number of colleagues. Believing that the applicant would be charged and remanded in custody and that an assessment from Reaside would be required only afterwards, they considered that there was no need for their involvement before such time. At 7.24 p.m. the police received a call from Reaside informing them that the clinic would not be sending anyone to the station, but would liaise with the social worker.

13. The custody record for the applicant's first day at the police station refers at several points to his disturbed behaviour: clapping loudly, shouting, banging on the door, lowering his trousers and waving his testicles about, and licking the wall of his cell. Dr T. noted that the applicant repeatedly hit his head against the wall, causing himself bruising. He was provided with, and accepted, food and drink at intervals throughout the day.

14. The next day, 7 December, there were further telephone contacts between the police station and Reaside regarding the applicant's case. The police also contacted other mental health officials, but admission to Reaside remained the only viable solution. During the morning Dr M. spoke with the duty solicitor of the Crown Prosecution Service, who informed him that should there be any evidence of the applicant assaulting his aunt then he would be charged and remanded in custody. In the event of no charge being brought, they agreed that the matter would be referred back to the doctor and social worker who had assessed the applicant the previous day. In discussion with the clinical director of Reaside, Dr M. noted that at that point there was no immediate action to be taken. He was later told by Dr O. that the applicant would be charged with assault, and arranged an appointment to assess the applicant on 9 December at HMP Birmingham.

15. An entry in the custody record at 1.46 p.m. states that the duty solicitor of the Crown Prosecution Service had concluded that there was insufficient evidence to charge the applicant. An entry at 5.01 p.m. states that there was an "internal argument" between doctors and the social services regarding the applicant. At 8.41 p.m. an entry was made in the custody record expressing concern and frustration at the lack of progress in relation to the applicant.

16. The applicant's behaviour was observed to deteriorate over the course of the day. By midday he had removed all of his clothing. Later he drank

water from the bowl of the toilet in his cell. He accepted three meals, in the early morning, mid-morning and in the mid-afternoon. He accepted a drink at 4.17 p.m., but, according to the custody record, refused all further offers of food and drink for the remainder of the day.

17. On the third day of the applicant's detention, 8 December, the duty Inspector made an entry in the custody record at 8.53 a.m. noting his concern at the environment in which the applicant was detained, given his obvious illness. The applicant was still naked and was observed during the morning rocking to and fro on a bench, talking to himself, banging his chest and ranting.

18. Dr M. arrived at the police station shortly before 11 a.m., accompanied by other mental health professionals from Reaside to assess the applicant. The police refused to open the door of the applicant's cell on the ground that this would endanger everyone's safety. The assessment was conducted through the hatch. Dr M. noted that the applicant appeared agitated and was shouting loudly, and that his naked body appeared to be smeared with food or faeces. The applicant was elated, and his speech was incoherent at times. Dr M. concluded that the applicant was clearly unwell and required inpatient treatment in a medium-secure setting with adequate nursing resources and a clear and effective care plan. He also advised that the applicant be charged so that he could be dealt with under the criminal justice and mental health systems. The police indicated that their advice from the Crown Prosecution Service was that there could be no charge at that point in time, given the impossibility of interviewing the applicant. Dr M. said he would endeavour to get a place for the applicant at Reaside, although it would not be possible to receive him there until the following morning, i.e. beyond the 72-hour limit laid down by the Mental Health Act 1983. That afternoon, the Chief Superintendent spoke to the clinical director of Reaside, who agreed to receive the applicant the same evening.

19. Informed of this, Dr M. discussed the situation with nursing staff at Reaside. He was informed that the resources needed to admit the applicant could be made available for the following morning at 8 a.m. at the earliest. He considered that an admission in the middle of the night, i.e. just before the expiry of the permitted period of detention, would pose unmanageable risks for all concerned. He suggested to the Chief Superintendent that the applicant could be transferred to Reaside at the end of the 72-hour period, but that police assistance would be required to maintain him in safe conditions until it was possible to admit him. He was informed that the presence of the police could not be guaranteed for the whole period.

20. At 7.46 p.m. a call was received from Reaside to say that the applicant

could not be taken until the following morning. Late that night, an Approved Social Worker from Reaside came to the police station to complete the necessary forms for the application's admission under the Mental Health Act 1983.

21. The applicant was provided with food and drink at 8.18 a.m., and further drinks of water during the day (9.34 a.m. and 2.28 p.m.). At the end of the afternoon a meal was not offered because the applicant was sleeping. He requested food at 7.08 p.m., which was provided but which he dropped on the floor. He refused an offer of a meal and a drink at 10.56 p.m.

22. On the fourth day, 9 December, the applicant was released from police custody at 7.27 a.m. and escorted, in handcuffs, to Reaside. According to the Government, it took eight members of the nursing staff to restrain him once admitted. He was assessed as having pressure of speech, flight of ideas, a labile mood, thought disorder and persecutory delusions. The diagnosis was of a manic episode with psychotic features. The applicant was put into seclusion and given rapid tranquilisation on account of his bizarre behaviour and aggressive, threatening manner. He received continued medication over the following days and showed sustained improvement.

B. The applicant's legal action against the local health authority

23. On 5 June 2006, the applicant lodged claims against the Birmingham and Solihull Mental Health NHS Trust for negligence, for breaches of Articles 3 and 8 of the Convention, and for misfeasance in public office. The defendant applied for summary judgment on the ground that the applicant had no real prospect of succeeding. A hearing was held on 14 March 2007 before a District Judge. The applicant's counsel submitted a report prepared by a Consultant Forensic Psychiatrist, Dr E., who had not interviewed the applicant but had reviewed the relevant documents. Dr E. considered that Dr M. should have assessed the applicant within 24 hours of being made aware of the situation, since by that stage the applicant had been detained for about 12 hours. The delay in assessing him and in admitting him to Reaside had in turn delayed the applicant's treatment and recovery.

24. The judge granted the order for summary judgment. He held that although the defendant had owed the applicant a duty of care, and that that duty had been breached, it had not caused the applicant any physical or psychological injury. The action in negligence therefore failed on causation and loss. In any event, any loss had been absolutely minimal. A delay of 31 hours in the hospitalisation of the applicant could only lead to minimal damages. The judge also rejected the claim based on the Human Rights Act

on the grounds that Dr M. could not be seen as a public authority for the purposes of the Act, and that the situation did not meet the minimum level of severity inherent in Article 3 of the Convention. The applicant's claim for damages based on Article 8 of the Convention was also dismissed, the judge finding that this was not an exceptional case in which compensation would be justified. The claim for misfeasance in public office could only succeed if the applicant could show complete and reckless disregard on the part of the defendant, which he had not done.

25. The applicant was granted permission to appeal. The case was heard at Birmingham County Court by Judge M., who dismissed the appeal in a judgment of 14 November 2007. The judge described the applicant's claim in negligence as "hopeless", there being no details in the medical evidence submitted of any physical or psychiatric injury caused to the applicant. It was unrealistic to suggest that a delay of a given number of hours (the applicant's counsel having conceded that the delay was considerably less than 31 hours) in some way caused that number of hours of psychosis.

26. In relation to the claim under the Human Rights Act, the judge considered that Dr M. should be viewed in that context as a "public authority". However, the claim failed because the situation did not fall within Article 3. The applicant had been lawfully detained and his basic needs had been met. The fact that he had spent an extra 12-24 hours at the police station did not make the situation so appalling as to breach Article 3. The judge found that there had been no breach of Article 8 because there had been no arbitrary or deliberate interference with the applicant's rights. As regards the claim for malfeasance, he concurred with the decision of the District Judge.

27. In light of these findings, the applicant's legal representatives advised him that legal aid would not be available for him to appeal the decision further.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. Section 136 of the Mental Health Act 1983 provides:

> "Mentally disordered persons found in public places.
>
> (1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 135 above.
>
> (2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved social

worker and of making any necessary arrangements for his treatment or care."

A "place of safety" is defined in section 135(6) as follows:

"In this section "place of safety" means residential accommodation provided by a local social services authority..., a hospital as defined by this Act, a police station, an independent hospital or care home for mentally disordered persons or any other suitable place the occupier of which is willing temporarily to receive the patient."

29. The Code of Practice issued under the Mental Health Act 1983 provided at the relevant time:

"The place of safety

10.5 The identification of preferred places of safety is a matter for local agreement. However, as a general rule it is preferable for a person thought to be suffering from mental disorder to be detained in a hospital rather than a police station. Regard should be had to any impact different types of place of safety may have on the person held and hence on the outcome of an assessment. Once the person has been removed to a particular place of safety, they cannot be transferred to a different place of safety.

…

10.8.c. Where a police station is used as a place of safety speedy assessment is desirable to ensure that the person spends no longer than necessary in police custody but is either returned to the community or admitted to hospital."

III. RELEVANT INTERNATIONAL MATERIALS

30. Extract from Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 November to 1 December 2008:

"148. The CPT also has concerns with respect to the availability of appropriate psychiatric care for persons detained by the police. More than once, members of the CPT's delegation were told that the behaviour of some detained persons became so erratic that custody officers considered it necessary to tie them naked to a chair in order to prevent any acts of self-harm. Such treatment is clearly unacceptable **and should be stopped immediately**. In such cases police officers should immediately call a doctor and act in accordance with his instructions. Further, detained persons who display severe psychiatric disorders should be transferred without delay to a mental health facility.

The CPT recommends that immediate steps be taken to ensure that detained persons with mental health disorders, held in police stations, are provided with appropriate care and treatment, until they are transferred to a mental health facility."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant argued that his experience during the time he was detained by the police had been inhuman and degrading, in violation of Article 3, which reads as follows:

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

32. The Government contested that argument.

A. The parties' observations

1. The applicant

33. The applicant submitted that he had been subjected to inhuman and degrading treatment when inappropriately detained in a police cell during a period of acute mental suffering. He rejected the view that only the last 12-24 hours were relevant to his complaint. It had been obvious from the outset and for the entire duration of his detention by the police that he was severely mentally ill and required hospital treatment as a matter of great urgency. His distress had been prolonged and, as evidenced by the entries in the custody record, exacerbated by the delay in arranging his transfer to Reaside. He maintained that while the Mental Health Act 1983 allowed up to 72 hours' detention, it was only in truly exceptional cases that anything close to this duration should be accepted. Good professional practice demanded that a person detained under that legislation should be moved to a suitable facility as soon as possible, and this was reflected in the official guidance on the use of the section 136 power. This, along with the fact that the power was used with some frequency by the West Midlands police, meant that the Government could not now characterise the situation as one of mere lack of preparedness.

34. While not suggesting that there had been any intention on the part of the authorities to humiliate him or cause him suffering, the applicant noted that the authorities had brought the situation about and had consciously allowed it to endure rather than act to end it, evincing a somewhat cavalier attitude. He stressed that his mental illness had left him in a highly vulnerable state at the time, demanding a prompt response. It was beside the point for the Government to say that the applicant had at least been safe while at the police station. In reality, he had been in dire need of psychiatric care, which was not

provided until the fourth day. There could be no justification for situations that were incompatible with human dignity. Issues such as the limited availability of hospital beds or nursing staff, or the expectation that he would be charged by the police over the assault on his aunt, were irrelevant. The authorities had created the situation by arresting him, and should bear responsibility for the consequences on him. His own behaviour during the period at the police station should not be seen as hindering the authorities' endeavours to arrange for his treatment, but as evidence of the urgency of the case. Although he may not have been able to rationally perceive the nature of his situation at the time, all of the medical professionals who examined him noted that he was in an agitated and anguished state. He had also been in an unhygienic and undignified state. As for food and water, the custody record showed that his intake during the last 40 hours in the police station had been inadequate. Given the applicant's very vulnerable condition, there had been an obligation on the police to ensure his basic physical needs were effectively met.

2. The Government

35. The Government underlined that they did not seek to defend as acceptable the circumstances and conditions of the applicant's detention, but these did not warrant classification as treatment contrary to Article 3. They explained that Reaside Clinic normally dealt with patients who were subject to the criminal process, and had a waiting list of 14 persons at the time of the applicant's arrest. It did not usually accept patients directly off the street, which explained why staff there expected that the applicant would be charged first, and why it had not been possible to make the necessary staffing arrangements to admit him until the morning after his assessment by Dr M. They had simply been unprepared, which was insufficient to ground a violation of Article 3. While the applicant's symptoms were manifest, his medical history, including his reaction to psychiatric medication, was unknown. This posed risks that had to be carefully managed for the applicant's own safety as well as that of Reaside staff. As stated above, it had taken eight trained staff to restrain the applicant when he arrived there. There was no evidence that the experience had caused any harm to the applicant. Nor was there any evidence from him, or offered on his behalf, that he had in fact experienced fear, anguish or inferiority, or had endured suffering or humiliation.

36. The Government considered that the most the applicant could complain of was an additional 24 hours in the police station, which although regrettable was not sufficient to reach the threshold of Article 3. The cases

cited by the applicant all related to far worse situations that had lasted for far longer periods. The police had no choice but to keep him at the police station while a bed was found for him; the option of releasing the applicant was not open to them. Although the applicant's mental illness could not be treated at the police station, it was nevertheless a place of safety for him since he was under constant surveillance and would have received treatment for any injury or harm inflicted. The police had provided him with adequate food and drink during the period, either on their own initiative or at his request. It had not been established that he had suffered from a lack of nutrition or hydration, or that he would have fared better in this respect in Reaside. The Government strongly rejected any suggestion that the persons who dealt with the applicant displayed a lack of concern. Nor had there been any intention to humiliate or debase him. On the contrary, they had all sought to bring about his transfer as soon as this could be arranged. Once admitted to Reaside, the applicant had received adequate care and his condition had improved.

37. The Government regretted that the treatment of the applicant fell below the standard of best practice set for the health services in England. Following the events in this case, the police and health authorities in that area had agreed on a new policy to deal more rapidly and effectively with such situations.

B. The Court's assessment

38. Article 3 of the Convention enshrines one of the fundamental values of democratic society, prohibiting in absolute terms torture or inhuman or degrading treatment or punishment (see, as a recent authority and for further references, *Stanev v. Bulgaria* [GC], no. 36760/06, § 201, 17 January 2012). It is the consistent case-law of the Court that in order to come within the scope of the interdiction contained in Article 3 the treatment inflicted on or endured by the victim must reach a minimum level of severity. The assessment of this minimum level of severity is a relative one, depending on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (*Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII). As for the concept of degrading treatment, the Court has in its case-law described it as treatment such as to arouse feelings of fear, anguish and inferiority capable of humiliating or debasing the victim and possibly breaking their physical or moral resistance (see *Keenan v. the United Kingdom*, no. 27229/95, ECHR 2001-III, § 110). In considering whether a punishment or treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the

person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (*Ramirez Sanchez v. France* [GC], no. 59450/00, § 118, ECHR 2006-IX; see also *Price*, cited above, § 30).

39. At the heart of this case is the applicant's severe mental illness at the time in question. As the Court has stated in its case-law under this provision of the Convention, the mentally ill are in a position of particular vulnerability, and clear issues of respect for their fundamental human dignity arise whenever such persons are detained by the authorities (*Dybeku v. Albania*, no. 41153/06, § 41, 18 December 2007). The issue is whether the authorities fulfilled their obligation to protect the applicant from treatment contrary to Article 3 (*Keenan*, cited above, § 113).

40. The Court does not doubt that the initial arrest of the applicant on 6 December 2004 was justified. He had just perpetrated a violent assault on his aunt and, in his highly agitated state, posed an obvious danger both to public safety as well as to himself. Given that the arrest occurred during the night, and the real possibility at the outset of serious criminal charges being brought against him, the initial removal of the applicant to a police cell, a designated place of safety under the 1983 Act, is not open to criticism. Moreover, the applicant has not made any complaint under Article 5 of the Convention.

41. It is common ground between the parties that there was no intention on the part of the police or the health authorities to treat him in a manner incompatible with Article 3. The Court agrees. The detailed record of his detention that has been provided to the Court evidences real concern on the part of the police to see the applicant transferred to a therapeutic setting as quickly as could be arranged. It is clear that the police endeavoured continuously to bring this about. In the meantime, as the Government have observed, the cell in which the applicant was detained, and kept under observation, was a place of relative physical safety for him. Nevertheless, for as long as he remained there no psychiatric treatment could be provided to him.

42. In his submissions the applicant criticised the reaction of the medical personnel at the clinic to his situation, describing it as cavalier. The Court does not accept this. The information provided by the Government shows that Dr M. did not remain passive. Indeed, it points rather to his readiness to firstly assess the applicant, and then subsequently to admit him to the clinic, subject to adequate staffing arrangements being made to ensure the personal safety of all involved. His expectation until the middle of the third day that the

applicant would become subject to the criminal process does not appear to the Court to be groundless or otherwise unreasonable.

43. The Court will next consider the applicant's criticism of the material conditions of his detention, the allegation being that his intake of adequate liquid and food was not ensured. In this regard the County Court found that his basic physical needs had been met. The Court can agree with this, discerning no real inadequacy, let alone neglect, on the part of the police in this respect. They offered the applicant meals and drinks at intervals. Although the police record states that he did not consume all of these, the Court does not consider this to raise any distinct or additional issue.

44. The fact remains, however, that the applicant was in a state of great vulnerability throughout the entire time at the police station, as manifested by the abject condition to which he quickly descended inside his cell. He was in dire need of appropriate psychiatric treatment, as each of the medical professionals who examined him indicated. The Court considers that this situation, which persisted until he was at last transferred to Reaside early on the fourth day, diminished excessively his fundamental human dignity. It refers here to the opinion of the Committee for the Prevention of Torture, cited above (see § 30 above). It is of some significance that the applicant's situation failed to respect both best medical practice in England as well as the maximum time-limit set by Parliament in the relevant legislation. Throughout the relevant time, the applicant was entirely under the authority and control of the State. The authorities were therefore under an obligation to safeguard his dignity, and are responsible under the Convention for the treatment he experienced.

45. In their submissions the Government regretted the incident and explained how it came about. The Court can accept that the efforts made on the applicant's behalf were genuine, and that those who came in contact with him were sensitive to his distress. The situation appears to have arisen essentially out of difficulties of co-ordination between the relevant authorities when suddenly confronted with an urgent mental health case. The Government have indicated that this incident led to an improvement in the standing arrangements between the police and the health authorities to respond more rapidly in such circumstances. While welcoming these improvements, the Court is required to deal with the treatment to which the applicant was subjected. Even though there was no intention to humiliate or debase him, the Court finds that the conditions which the applicant was required to endure were an affront to human dignity and reached the threshold of degrading treatment for the purposes of Article 3.

46. In conclusion, the Court finds that the applicant suffered degrading

treatment. There has therefore been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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' observations

1. The applicant

47. The applicant complained of the manner in which the domestic courts had examined his case. He argued that they had made an error of fact, failing to take into account that his intake of food and water had not been properly ensured. He also argued that they had not properly followed the Convention case-law, failing to give sufficient consideration to his particular vulnerability as a mentally ill person. In other words, they had mischaracterised his claim. As a consequence, the domestic courts had not been in a position to provide him with a remedy. There had been no full hearing of the case even though the County Court had acknowledged that it was arguable. Instead, the judge had been swayed by the low level of damages potentially available, compared to the cost of proceeding to a full hearing. This disregarded both the applicant's right to receive compensation for non-pecuniary damage and the public interest in seeing a case of this sort proceed to trial. The applicant did not accept that his claim had failed on the facts. A similar line of argument had been rejected by the Court in *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 65, ECHR 2003-V.

2. The Government

48. The Government noted that the applicant had had the possibility of pursuing civil proceedings against the relevant health authority on three bases; negligence, misfeasance in public office, and an action for damages under the Human Rights Act. Each of these claims had been duly considered by a District Judge and then, on appeal, by the County Court. Summary judgment had been given against the applicant because the County Court concluded that there was no real chance or prospect of success. Regarding the claim based on Article 3, the County Court had taken account of the relevant Convention case-law. There was nothing inherently ineffective about the claim under the

Human Rights Act. Accordingly, the applicant's complaint amounted to little more than a complaint of an unfavourable outcome.

B. The Court's assessment

49. The Court refers to its settled case-law to the effect that Article 13 guarantees the existence of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. Contracting States are afforded some discretion as to the manner in which they conform to their 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 *McGlinchey*, cited above, § 62). Where, as in the present case, the Court has found a breach of Article 3, compensation for the non-pecuniary damage flowing from the breach should in principle be part of the range of available remedies (ibid., § 63).

50. It necessarily follows from the Court's conclusion under Article 3 that the applicant did have an "arguable complaint" under that provision. He therefore had the right to a remedy capable of dealing with the substance of his complaint, and of granting any appropriate relief

51. The Court considers that an appropriate remedy was available in the domestic law. The two courts that considered the applicant's case assessed it in relation to three possible remedies, in particular a claim for damages under the Human Rights Act. That the outcome was not favourable for him does not mean that the remedy was in principle ineffective. Compliance with Article 13 does not depend on the certainty of a favourable outcome for an applicant (*Ramirez Sanchez*, cited above, § 159). Nor, for the purposes of Article 13, is the domestic courts' assessment invalidated by the fact that this Court has reached the contrary conclusion on the applicant's Article 3 complaint.

52. The applicant criticised the fact that before the District Court his case was disposed of by summary judgment, and that the cost of legal aid was given more weight than the interest in a full determination of his claim. The Court does not consider these points to be significant, it being clear from their judgments that each court heard detailed submissions from the applicant's counsel, and reasoned their decisions at some length.

53. In conclusion, there has been no violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant asked the Court to award him EUR 6,000 as compensation for non-pecuniary damage.

56. The Government considered that the finding of a violation would provide sufficient just satisfaction to the applicant. In any event, it regarded the sum claimed as excessive in comparison with sums recently awarded by the Court to applicants who had ensured significantly more humiliating and debasing conditions of detention.

57. Having regard to all the circumstances in this case, the Court decides to award the applicant the sum of EUR 3,000.

B. Costs and expenses

58. The applicant claimed a total of GBP 13,975 net of VAT for counsel's fees incurred in the proceedings before this Court, plus GBP 506.67 for his solicitor's costs and expenses.

59. The Government submitted that the sums claimed were excessive. The complexity of the case was not such as to justify either the amount of time billed by the first counsel (26.5 hours), or the involvement of additional counsel, who charged for 38 hours' work on the case. It suggested that GBP 2,000 would be an appropriate award for both counsels' fees.

60. The Court shares the Government's view that the present case was not especially complex, and therefore considers the sum claimed for counsels' fees to be too high. Taking account of the EUR 850 already received in legal aid from the Council of Europe, it awards instead EUR 7,500 euros, plus a further EUR 650 for solicitor's costs and expenses, both sums inclusive of VAT.

C. Default interest

61. 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*, unanimously, that there has been a violation of Article 3 of the Convention;

2. *Holds*, by six votes to one, that there has been no violation of Article 13 of the Convention;

3. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable on this sum, in respect of non-pecuniary damage, to be converted into pounds sterling at the rate applicable at the date of settlement;
   (b) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,150 (eight thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant on this sum, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement;
   (c) 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 the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early	Lech Garlicki
Registrar	President