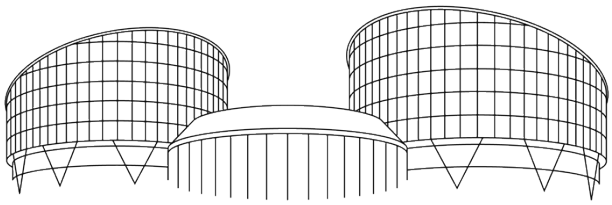

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CLIFT v. THE UNITED KINGDOM

(Application no. 7205/07)

JUDGMENT

STRASBOURG

13 July 2010

FINAL

22/11/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Clift v. the United Kingdom**,**

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

Lech Garlicki, *President,*
Nicolas Bratza,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Päivi Hirvelä,
Ledi Bianku, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 22 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 7205/07) 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, Mr Sean Clift ("the applicant"), on 29 January 2007.

2. The applicant, who had been granted legal aid, was represented by Amal Solicitors, a firm of lawyers practising in Huddersfield. The United Kingdom Government ("the Government") were represented by their Agent, Mr D. Walton, of the Foreign and Commonwealth Office.

3. The applicant alleged under Article 5 together with Article 14 of the Convention that his continued imprisonment following the recommendation of the Parole Board on 25 March 2002 that he be released on licence violated his rights under the Convention on account of the difference in treatment between prisoners serving fixed-term sentences of less than fifteen years or discretionary life sentences, where in both cases a recommendation of the Parole Board resulted in release; and those serving fixed-term sentences of fifteen years or more, where in addition to the recommendation of the Parole Board, the approval of the Secretary of State was required.

4. On 16 April 2009 the President of the Chamber decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in Westcliff on Sea.

A. The background facts

6. On 30 April 1994 the applicant was sentenced to eighteen years' imprisonment for serious crimes including attempted murder, which carried a maximum sentence of life imprisonment. Under the legislative regime applicable at the time, he became eligible for release on parole on 13 March 2002 and entitled to release on 18 March 2005 (see paragraphs 24 and 27 below).

7. On 25 March 2002 the Parole Board recommended the applicant's release on parole on the grounds that the risk to the public had been significantly reduced; that the proposed resettlement plan would secure his rehabilitation; and that the applicant would comply with the licence conditions.

8. Under the legislation in force at the time, the final decision on early release in cases involving prisoners serving determinate sentences (i.e. fixed-term sentences) of more than fifteen years' imprisonment lay with the Secretary of State (see paragraphs 27-29 below). For prisoners serving determinate sentences of less than fifteen years and for prisoners serving indeterminate (i.e. life) sentences, the approval of the Secretary of State following a positive recommendation of the Parole Board was not required. On 25 October 2002 the Secretary of State rejected the recommendation of the Parole Board in the applicant's case, concluding that the release of the applicant would present an unacceptable risk to the public. As a result, the applicant was not released.

B. The domestic proceedings

1. Proceedings before the Divisional Court

9. On 17 February 2003, the applicant was granted leave to bring judicial review proceedings in respect of the decision of the Secretary of State to refuse his early release. His principal ground of challenge was that it was a breach of Article 5 of the Convention taken together with Article 14 that the Secretary of State should retain the power to determine the release on parole licence of only one group of prisoners, i.e. those who were serving

determinate terms of imprisonment of fifteen years or more (see paragraphs 23-31 below for details of the law in force at the relevant time).

10. The Parole Board subsequently reconsidered the applicant's case and on 17 March 2003 did not recommend release. The Court has not been provided with details of the reasons for this decision.

11. On 9 June 2003, the Divisional Court dismissed the applicant's judicial review claim. For the purposes of the proceedings, the Secretary of State accepted that the question of early release from a determinate sentence fell within the ambit of Article 5 of the Convention and that Article 14 was therefore engaged. Hooper J found that there was differential treatment between analogous groups, namely those serving sentences of fifteen years or more and those serving sentences of almost fifteen years, in that prisoners serving sentences of fifteen years or more had to secure a recommendation from the Parole Board and approval from the Secretary of State whereas those serving almost fifteen years needed only a recommendation from the Parole Board. However, he considered that the differential treatment pursued the legitimate aim of reserving to a politically and democratically accountable minister the power to control the release of those serving long determinate sentences. He further considered that the power was proportionate in light of the problems posed by such prisoners for public safety and public order. Accordingly, he found that there was no violation of Article 5 together with Article 14.

2. Court of Appeal proceedings

12. On 30 October 2003, the applicant was granted leave to appeal to the Court of Appeal.

13. The Parole Board subsequently reconsidered the applicant's case and on 25 February 2004 once again recommended the applicant's release. On this occasion the Secretary of State accepted the recommendation, and on 10 March 2004 Mr Clift was released on licence.

14. On 29 April 2004, the Court of Appeal endorsed the judgment of Hooper J and dismissed the applicant's appeal. It found the question of release from a determinate sentence to be arguably within the ambit of Article 5 of the Convention and agreed with Hooper J that although there was differential treatment between two comparable groups, this difference in treatment was objectively justified in that it pursued a legitimate aim and was proportionate.

3. Proceedings before the House of Lords

15. The applicant was granted leave to appeal to the House of Lords.

16. On 13 December 2006, their Lordships unanimously dismissed the applicant's appeal. They agreed that the right to seek early release, where domestic law provided for such a right, was clearly within the ambit of

Article 5 of the Convention. Lord Bingham of Cornhill noted (at paragraphs 17-18):

> "The Convention does not require member states to establish a scheme for early release of those sentenced to imprisonment. Prisoners may, consistently with the Convention, be required to serve every day of the sentence passed by the judge, or be detained until a predetermined period or proportion of the sentence has been served, if that is what domestic law provides. But this is not what the law of England and Wales provided, in respect of long-term determinate prisoners, at the times relevant to these appeals. That law provided for a time at which (subject to additional days of custody imposed for disciplinary breaches) a prisoner must, as a matter of right, be released, and an earlier time at which he might be released if it was judged safe to release him but at which he need not be released if it was not so judged.
>
> A number of grounds (economy and the need to relieve over-crowding in prisons) have doubtless been relied on when introducing pre-release schemes from determinate sentences such as those under consideration here. But one such consideration is recognition that neither the public interest nor the interest of the offender is well served by continuing to detain a prisoner until the end of his publicly pronounced sentence; that in some cases those interests will be best served by releasing the prisoner at the earlier, discretionary, stage; and that in those cases prisoners should regain their freedom (even if subject to restrictions) because there is judged to be no continuing interest in depriving them of it. I accordingly find that the right to seek early release, where domestic law provides for such a right, is clearly within the ambit of article 5, and differential treatment of one prisoner as compared with another, otherwise than on the merits of their respective cases, gives rise to a potential complaint under article 14."

17. However, unlike the lower courts, and with some hesitation, their Lordships did not find the difference in treatment in the applicant's case to be the result of his "status", such as to fall within the prohibition on discrimination in Article 14 of the Convention. Lord Bingham said (at paragraph 28):

> "I do not think that a personal characteristic can be defined by the differential treatment of which a person complains. But here Mr Clift does not complain of the sentence passed upon him, but of being denied a definitive Parole Board recommendation. Is his classification as a prisoner serving a determinate sentence of 15 years or more (but less than life) a personal characteristic? I find it difficult to apply so elusive a test. But I would incline to regard a life sentence as an acquired personal characteristic and a lifer as having an 'other status', and it is hard to see why the classification of Mr Clift, based on the length of his sentence and not the nature of his offences, should be differently regarded. I think, however, that a domestic court should hesitate to apply the Convention in a manner not, as I understand, explicitly or impliedly authorised by the Strasbourg jurisprudence, and I would accordingly, not without hesitation, resolve this question in favour of the Secretary of State and against Mr Clift."

18. Lord Hope of Craighead made similar observations (at paragraphs 46-49):

> "It could be said in Mr Clift's case that the length of his sentence did confer a status on him which can be regarded as a personal characteristic. This is because prisoners

are divided by the domestic system into broadly defined categories, or groups of people, according to the nature or the length of their sentences. These categories affect the way they are then dealt with throughout the period of their sentences. As a result they are regarded as having acquired a distinctive status which attaches itself to them personally for the purposes of the regime in which they are required to serve their sentences. This is most obviously so in the case of prisoners serving life sentences and where distinctions are drawn between short-term and long-term prisoners serving determinate sentences. It is less obviously so in the case of long-term prisoners serving determinate sentences of different lengths.

It must be accepted, as Lord Bingham points out, that a personal characteristic cannot be defined by the differential treatment of which a person complains. It is plain too that the category of long-term prisoner into which Mr Clift's case falls would not have been recognised as a separate category had it not been for the Order which treats prisoners in his group differently from others in the enjoyment of their fundamental right to liberty. But he had already been sentenced, and he had already acquired the status which that sentence gave him before the Order was made that denied prisoners in his group the right to release on the recommendation of the Parole Board. The question which his case raises is whether the distinguishing feature or characteristic which enables persons or a group of persons to be singled out for separate treatment must have been identified as a personal characteristic before it is used for this purpose by the discriminator.

The function of article 14, read with article 1 of the Convention, is to secure to everyone within the jurisdiction of the High Contracting Parties the enjoyment of the rights and freedoms set out in section 1 of the Convention without discrimination on grounds which, having regard to the underlying values of the Convention, must be regarded as unacceptable. This suggests that a generous meaning should be given to the words 'or other status' while recognising, of course, that the proscribed grounds are not unlimited. It seems to me, on this approach, that the protection of article 14 ought not to be denied just because the distinguishing feature which enabled the discriminator to treat persons or groups of persons differently in the enjoyment of their Convention rights had not previously been recognised.

But the Strasbourg jurisprudence has not yet addressed this question and, as my noble and learned friend Baroness Hale of Richmond points out, it is possible to regard what he has done, rather than who or what he is, as the true reason for the difference of treatment in Mr Clift's case ... [T]he duty of national courts is to keep pace with the Strasbourg jurisprudence as it evolves over time. A measure of self-restraint is needed, lest we stretch our own jurisprudence beyond that which is shared by all the States Parties to the Convention. I am persuaded, with some reluctance, that it is not open to us to resolve the second agreed issue in Mr Clift's favour."

19. Baroness Hale of Richmond considered (at paragraphs 62-63) that:

"it is plain ... that a different parole regime for foreigners who are liable to deportation from that applicable to citizens or others with the right to remain here, falls within the grounds proscribed by article 14 and thus ... requires objective justification. The same would surely apply to a difference in treatment based on race, sex or the colour of one's hair. But a difference in treatment based on the seriousness of the offence would fall outside those grounds. The real reason for the distinction is not a personal characteristic of the offender but what the offender has done.

> The result is that the difference of treatment between Mr Clift and people sentenced either to shorter determinate sentences or to life imprisonment is not covered by article 14 at all. The law may look odd. But not every apparent anomaly is a breach of Convention rights. This one is the result of what the Home Secretary chose to do in relation to people sentenced to shorter terms of imprisonment and what he was obliged by the terms of article 5 itself to do in relation to life imprisonment. The law has since been changed and one can well understand why. But it is not for us to declare legislation which Parliament has passed incompatible with the Convention rights unless the Convention and its case law require us so to do. For the reasons given above, in amplification of those given by my noble and learned friend, Lord Bingham of Cornhill, we are not required to do so in this case."

20. Notwithstanding the conclusion of the House as to the applicability of Article 14, Lords Bingham and Brown of Eaton-under-Heywood went on to consider whether, had there been "status", the difference in treatment would have been objectively justified. Lord Bingham (at paragraph 33) was of the view that:

> "When, in October 2002, the Secretary of State rejected the Parole Board's recommendation that Mr Clift be released on parole, discretionary lifers and HMP detainees had already been brought within the definitive jurisdiction of the Parole Board, and *Stafford v United Kingdom* (2002) 35 EHRR 1121, requiring the same procedure for mandatory lifers, had already been decided. The differential treatment of prisoners serving 15 years or more had, in my opinion, become an anomaly. That would not, in itself, be a ground for holding it to be unjustified. Anomalies are commonplace. But by 2002 it had, in my opinion, become an indefensible anomaly because it had by then come to be recognised that assessment of the risk presented by any individual prisoner, in the application of publicly promulgated criteria, was a task with no political content and one to which the Secretary of State could not (and did not claim to) bring any superior expertise. I would accordingly resolve this issue in favour of Mr Clift and against the Secretary of State."

21. Lord Brown agreed with the conclusion of Lord Bingham.

II. RELEVANT DOMESTIC LAW

A. The historical position on release on parole

22. Under sections 59-61 of the Criminal Justice Act 1967, all determinate and indeterminate sentence prisoners were eligible for discretionary release on licence after serving specified minimum amounts of their sentences. In both cases, once the Parole Board had recommended release, the Secretary of State had discretion to decide whether to release a prisoner.

B. The position on release on parole at the relevant time

23. The law regarding release of prisoners on parole was subsequently changed by the Criminal Justice Act 1991 ("the 1991 Act") and the Crime (Sentences) Act 1997 ("the 1997 Act"), as amended.

24. Sections 33 and 34 of the 1991 Act created a duty to release fixed term and discretionary life prisoners once they had served a specified period of detention. Section 33 provided, in so far as relevant, as follows:

"**Duty to release short-term and long-term prisoners**

(1) As soon as a short-term prisoner has served one-half of his sentence, it shall be the duty of the Secretary of State—

(a) to release him unconditionally if that sentence is for a term of less than twelve months; and

(b) to release him on licence if that sentence is for a term of twelve months or more.

(2) As soon as a long-term prisoner has served two-thirds of his sentence, it shall be the duty of the Secretary of State to release him on licence.

...

25. Section 33(5) defined "short-term" and "long-term" prisoners:

"In this Part—

'long-term prisoner' means a person serving a sentence of imprisonment for a term of four years or more;

'short-term prisoner' means a person serving a sentence of imprisonment for a term of less than four years."

26. Section 34 dealt with the early release of discretionary life prisoners:

"**Duty to release discretionary life prisoners**

(1) A life prisoner is a discretionary life prisoner for the purposes of this Part if—

(a) his sentence was imposed for a violent or sexual offence the sentence for which is not fixed by law; and

(b) the court by which he was sentenced for that offence ordered that this section should apply to him as soon as he had served a part of his sentence specified in the order.

...

(3) As soon as, in the case of a discretionary life prisoner—

(a) he has served the part of his sentence specified in the order ...; and

(b) the [Parole] Board has directed his release under this section,

it shall be the duty of the Secretary of State to release him on licence."

27. Section 35 provided for an additional discretionary power to release long-term prisoners before the two-thirds point of their sentence and provided that:

"(1) After a long-term prisoner has served one-half of his sentence, the Secretary of State may, if recommended to do so by the [Parole] Board, release him on licence."

28. Section 50 provided a power for the Secretary of State to reduce the period of detention which had to be served before long-term prisoners became entitled to release upon a recommendation of the Parole Board by converting his discretionary power set out in section 35 into a duty in relation to a specified class of prisoners. It provided that:

"(1) The Secretary of State, after consultation with the [Parole] Board, may by order made by statutory instrument provide that, in relation to such class of case as may be specified in the order, the provisions of this Part specified in subsections (2) to (4) below shall have effect subject to the modifications so specified.

(2) In section 35 above, in subsection (1) for the word 'may' there shall be substituted the word 'shall' ..."

29. The Secretary of State exercised the power provided to him under section 50 of the 1991 Act on two occasions. Under the Parole Board (Transfer of Functions) Order 1992 his section 35 discretion to release long-term prisoners serving a sentence of imprisonment for a term of less than seven years was transformed into a duty. The subsequent Parole Board (Transfer of Functions) Order 1998 transformed the discretion into a duty for prisoners serving a sentence of imprisonment for a term of less than fifteen years. For those serving sentences of fifteen years or more, the Secretary of State retained his discretion to order early release after the half-way point and before two-thirds of the sentence had been served.

30. Section 28 of the 1997 Act was originally enacted and later amended following judgments of this Court in *Hussain v. the United Kingdom*, 21 February 1996, *Reports of Judgments and Decisions* 1996-I and *Stafford v. the United Kingdom* [GC], no. 46295/99, ECHR 2002-IV. It provides, insofar as relevant:

"28. Duty to release certain life prisoners.

(1A) This section applies to a life prisoner in respect of whom a minimum term order has been made and any reference in this section to the relevant part of such a prisoner's sentence is a reference to the part of the sentence specified in the order.

...

(5) As soon as–

(a) a life prisoner to whom this section applies has served the relevant part of his sentence; and

(b) the Parole Board has directed his release under this section,

it shall be the duty of the Secretary of State to release him on licence.

(6) The Parole Board shall not give a direction under subsection (5) above with respect to a life prisoner to whom this section applies unless–

(a) the Secretary of State has referred the prisoner's case to the Board; and

(b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined."

31. Section 34 sets out the definition of "life prisoner", which covers prisoners serving various different types of indeterminate sentence.

C. Subsequent changes to the early release provisions

32. The law regarding the early release of long-term determinate prisoners was amended by the Criminal Justice Act 2003, which entered into force on 4 April 2005. The new provisions regarding release on licence provide, insofar as relevant, as follows:

"244 (1) As soon as a fixed-term prisoner ... has served the requisite custodial period, it is the duty of the Secretary of State to release him on licence under this section.

...

(3) In this section 'the requisite custodial period' means—

(a) in relation to a person serving a sentence of imprisonment for a term of twelve months or more ... one-half of his sentence ..."

33. The above provisions apply to prisoners who committed their offences after 3 April 2005 or whose parole eligibility date fell after 8 June 2008 and whose offence was not a specified violent or sexual offence.

34. Section 145 of the Coroners and Justice Act 2009 further amended the law on early release to remove the difference in treatment of prisoners depending on their conviction or parole eligibility dates. It amended section 35 of the 1991 Act to provide for a duty, instead of a discretion, on the Secretary of State to release all long-term prisoners upon a recommendation from the Parole Board. This provision is not yet in force.

35. Once section 145 has entered into force, only prisoners serving life sentences with whole life tariffs will require the approval of the Secretary of

State for early release. For all other prisoners, early release will either be automatic or automatic upon a recommendation of the Parole Board.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 14

36. The applicant complained that his continued imprisonment following the recommendation of the Parole Board on 25 March 2002 that he be released on licence violated his rights under Article 5 taken together with Article 14 of the Convention. He argued that the requirement that prisoners serving determinate sentences of fifteen years or more secure the approval of the Secretary of State in addition to the recommendation of the Parole Board, when prisoners serving determinate sentences of less than fifteen years and prisoners serving indeterminate sentences were required only to obtain the positive recommendation of the Parole Board, amounted to an unjustified difference in treatment.

37. Article 5 provides, insofar as relevant, that:

> "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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> 4. 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."

Article 14 reads as follows:

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

38. The Government disputed that there had been any violation of Article 5 taken together with 14 of the Convention in the present case.

A. Admissibility

1. The parties' submissions

39. The applicant argued that his complaint fell within the ambit of Article 5 of the Convention such that Article 14 was engaged.

40. The Government accepted that the applicant's complaint fell within the ambit of Article 5 for the purposes of the application of Article 14.

2. The Court's assessment

41. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. However, the application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention and to this extent it is autonomous (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 40, ECHR 2000-IV; and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 159, ECHR 2008-...; and *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 63, 16 March 2010). A measure which in itself is in conformity with the requirements of the Article enshrining the right or freedom in question may however infringe the Article when read in conjunction with Article 14 for the reason that it is of a discriminatory nature (see, for example, the *Belgian linguistic case* (merits), 23 July 1968, § 9, Series A no. 6, pp. 33-34). Accordingly, for Article 14 to become applicable it suffices that the facts of the case fall within the ambit of another substantive provision of the Convention or its Protocols (see, for example, *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 39, ECHR 2005-X; and *Burden v. the United Kingdom* [GC], no. 13378/05, § 40, ECHR 2008-...).

42. As the Court has previously held, Article 5 of the Convention does not guarantee a right to automatic parole (see, for example, *Gerger v. Turkey* [GC], no. 24919/94, § 69, 8 July 1999). However, where procedures relating to the release of prisoners appear to operate in a discriminatory manner, this may raise issues under Article 5 of the Convention taken together with Article 14 (see *Webster v. the United Kingdom*, no. 12118/86, Commission Decision of 4 March 1987, unreported; and *Gerger*, cited above, § 69). The Court therefore considers that the applicant's complaint falls within the scope of Article 5 and that Article 14 is accordingly applicable. It further notes that this was accepted by the Government.

43. The Court concludes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether the applicant had "other status"

a. The parties' submissions

i. The Government

44. The Government emphasised that Article 14 was subject to two important limitations. First, it only applied for the purpose of securing the enjoyment of the rights and freedoms set out in the Convention. Second, it only applied to discriminatory measures that were taken on one or more of the grounds specified in Article 14, including "other status". As to whether the applicant had "other status", the Government made four points.

45. First, relying on *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, § 56, Series A no. 23, the Government argued that the words "other status" should be construed *ejusdem generis* with the other grounds listed in Article 14.

46. Second, relying on *Gerger*, cited above, § 69, and *Taxquet v. Belgium*, no. 926/05, § 87, ECHR 2009-... (extracts) (currently pending before the Grand Chamber), the Government contended that the consistent jurisprudence of the Court, in application of *Gerger*, was that differences of treatment based on different laws providing for criminal penalties and procedures, being necessarily impersonal, fell outside the scope of Article 14 (see, for example, *Budak and Others v. Turkey* (dec.), no. 57345/00, 7 September 2004; and *Yılmaz and Barım v. Turkey* (dec.), no. 47874/99, 26 May 2005). In particular, the Court had held in *Gerger* that differences in treatment between prisoners in relation to parole would not give rise to "other status" where the difference in treatment was based on the legislature's view of the gravity of the offence. In the present case, the Government argued that the difference in treatment was a consequence of the view taken by the legislature of the gravity of the offence: for offences so serious that they justified a determinate sentence of imprisonment of fifteen years or more, the legislature had agreed that the Secretary of State should decide on possible release on licence, by contrast with less serious offences attracting sentences of less than fifteen years. In this regard, the Government disagreed with the applicant's submission that the Court in *Gerger* had considered the justification for the difference in treatment in deciding that there was no evidence of discrimination. In the Government's view, it was clear that the Court was applying the "personal characteristic"

principle in order to assess whether the difference of treatment complained of fell within the meaning of "other status".

47. Third, the Government submitted that the treatment about which the applicant complained had to exist independently of the personal characteristic upon which he based his complaint of discrimination. Otherwise the very matter complained of would bring the complaint within the scope of Article 14 which would render the limitation on the scope of Article 14 nugatory (citing *Jones v. the United Kingdom* (dec.), no. 42639/04, 13 September 2005). The Government argued that to the extent that the applicant sought to compare himself to prisoners serving determinate sentences of less than fifteen years, this difference did not exist independently of the matter of which he complained. The length of the sentence had as such no relevance to the law that governed how a prisoner served his sentence, although the Government accepted that being a prisoner could constitute "other status" for the purpose of Article 14.

48. Finally, as a specific manifestation of their third submission, the Government argued that where measures imposed to safeguard Convention rights did not apply outside the scope of those Convention rights, this difference could not itself bring a case within the scope of Article 14. To find otherwise would render nugatory the limit on Article 14. By way of example, the Government cited Article 5 § 4: in the case of a determinate sentence, that Article was satisfied by the sentencing exercise carried out by the trial court. The argument that, because Article 5 § 4 does not require a review of a determinate sentence prisoner's continuing detention, whereas it does require a review of the lawfulness of the continuing detention of a prisoner serving an indeterminate sentence, the determinate sentence itself constitutes "status" was, in the Government's view, circular.

49. For these reasons, the Government concluded that any extension of Article 14 in the manner called for by the applicant would be contrary to the language of that provision and the principles that underlay it, as well as the Court's consistent jurisprudence. They further pointed out that the House of Lords had unanimously found that the length of the applicant's sentence was not "other status". The Government therefore invited the Court to find that Article 14 did not apply in the present case.

ii. The applicant

50. The applicant contended that the different treatment of different categories of prisoners depending on the sentences imposed was based on "other status" within the meaning of Article 14 of the Convention. He contested the Government's submission that only a status which met the requirement of being obviously analogous to one of the specific examples listed in Article 14 could constitute "other status" within the meaning of that Article. He argued that account should be taken of the purpose of the Convention, namely that it was designed to maintain and promote the ideals

and values of a democratic society (citing *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 53). Accordingly, the words "other status" should not be so strictly construed as to undermine the purposes of the Convention, as set out in its preamble where it states its aim of "securing the universal and effective recognition of rights" and reflected in Article 1 of the Convention. Relying on *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, § 28, ECHR 1999-IX and *Engel and Others v. the Netherlands*, 8 June 1976, § 72, Series A no. 22, the applicant argued that there was a need for a wide construction of Article 14, and that the categories expressly set out in that provision were illustrative and not exhaustive. He further referred to the French text, which does not mention "status" but "situation" ("*toute autre situation*") and argued that this supported his argument for a wider construction.

51. The applicant further submitted that in any case not all the expressly listed grounds of prohibited discrimination in Article 14 fell within the notion of "personal characteristic". He pointed to the inclusion of the word "property" in the list and the Court's conclusion in *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III that the different treatment of landowners based on the size of the property they owned was discriminatory and in breach of Article 14. Accordingly, the applicant concluded that even if a *ejusdem generis* construction were to be considered appropriate, this would not lead to a limitation of the scope of Article 14 based on personal characteristics. The applicant further referred to a number of cases in which he claimed that the Court had found Article 14 to be applicable without insisting on a "personal characteristic" (citing, *inter alia*, *Stubbings and Others v. the United Kingdom*, 22 October 1996, *Reports* 1996-IV; *National Union of Belgian Police v. Belgium*, 27 October 1975, Series A no. 19; *Larkos v. Cyprus* [GC], no. 29515/95, ECHR 1999-I; and *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, ECHR 2004-VIII). He further pointed out that being a prisoner has previously been found by the Court to constitute "status" (see *Shelley v. the United Kingdom*, no. 23800/06, 4 January 2008) and argued that the correct test for deciding whether Article 14 applied was whether there was a distinct legal situation which was inextricably bound up with the individual's personal circumstances and existence. In the applicant's case, he was a member of a group to whom a differential legal regime applied, which was a regime that controlled his release into society and his relationships with his family, which were clearly matters of personal circumstances and existence.

52. As to the Government's submission that differences of treatment based on different laws providing criminal penalties and procedures were outside the scope of Article 14 because they were impersonal, the applicant reiterated that the test was not one of personal characteristics but personal circumstances. He disputed that *Gerger* was authority for the proposition

that there was no "status" in his case, arguing that the Court's conclusion in *Gerger* was that there was no discrimination as a result of the differential treatment. The same was true of the other cases cited by the Government in support of their argument.

53. The applicant also disputed that the treatment about which an applicant complained had to exist independently of the "status" upon which he relied. Provided that the relevant treatment fell within the scope of a Convention right, the failure to accord people equivalent treatment on the basis of their different circumstances could constitute a breach of Article 14. The applicant further insisted that the length of his sentence had significant consequences, including but not limited to, the different regime applicable to early release. For example, the length of his sentence also affected his prison security categorisation which in turn affected matters such as family contact.

54. Accordingly, the applicant concluded that he had "other status" for the purposes of Article 14. His personal circumstances were affected by various aspects of the legal regime to which he was subjected by virtue of the length of his sentence. He further argued that the House of Lords did not reject his proposition that he enjoyed "other status" for the purposes of Article 14 but merely considered it appropriate to defer the question until the Court had had the opportunity to review the matter in full.

b. The Court's assessment

55. Article 14 does not prohibit all differences in treatment but only those differences based on an identifiable, objective or personal characteristic, or "status", by which persons or groups of persons are distinguishable from one another (see *Kjeldsen Busk Madsen and Pedersen*, cited above, § 56; *Berezovskiy v. Ukraine* (dec.), no. 70908/01, 15 June 2004; and *Carson and Others*, cited above, §§ 61 and 70). Article 14 lists specific grounds which constitute "status" including, *inter alia*, sex, race and property. However, the list set out in Article 14 is illustrative and not exhaustive, as is shown by the words "any ground such as" (in French "*notamment*") (see *Engel and Others*, cited above, § 72; and *Carson*, cited above, § 70) and the inclusion in the list of the phrase "any other status" (in French "*toute autre situation*"). In the present case, the treatment of which the applicant complains does not fall within one of the specific grounds listed in Article 14. In order for the applicant's complaint to be successful, he must therefore demonstrate that he enjoyed some "other status" for the purpose of Article 14.

56. The Court recalls that the words "other status" (and *a fortiori* the French "*toute autre situation*") have generally been given a wide meaning (see *Carson*, cited above, § 70). The Government have argued for a more limited interpretation, calling in particular for the words to be construed *ejusdem generis* with the specific examples listed in Article 14. The Court

observes at the outset that while a number of the specific examples relate to characteristics which can be said to be "personal" in the sense that they are innate characteristics or inherently linked to the identity or the personality of the individual, such as sex, race and religion, not all of the grounds listed can be thus characterised. In this regard, the Court highlights the inclusion of property as one of the prohibited grounds of discrimination. This ground has been construed broadly by the Court: in *James and Others v. the United Kingdom*, 21 February 1986, § 74, Series A no. 98, the difference in treatment of which the applicant complained was between different categories of property owners; in *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 90 and 95, ECHR 1999-III, the difference was between large and small landowners. In both cases, the Court accepted that the provisions of Article 14 were applicable.

57. As to its interpretation of "other status", it is unsurprising that the Court has considered to constitute "other status" characteristics which, like some of the specific examples listed in the Article, can be said to be personal in the sense that they are innate or inherent. Thus in *Salgueiro da Silva Mouta*, cited above, § 28, it found that sexual orientation was "undoubtedly covered" by Article 14 and in *Glor v. Switzerland*, no. 13444/04, § 80, ECHR 2009-..., it held that physical disabilities fell within the phrase "other status".

58. However, in finding violations of Article 14 in a number of other cases, the Court has accepted that "status" existed where the distinction relied upon did not involve a characteristic which could be said to be innate or inherent, and thus "personal" in the sense discussed above. In *Engel and Others*, cited above, the Court held that a distinction based on military rank could run counter to Article 14, the complaint in that case concerning a difference in treatment as regards provisional arrest between officers on the one hand and non-commissioned officers and ordinary servicemen on the other. In *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 64, Series A no. 222, the Court found a violation where there was a difference in treatment between the applicants and other holders of planning permissions in the same category as theirs. Although the Court did not specifically address the question of the relevant "status" in that case, it would appear that the distinction of which the applicants complained was between holders of outline planning permission who benefited from new legislation and holders of outline planning permission who did not (in that case, by virtue of the fact that the applicants' planning complaint had already been determined by the Court and that the outline planning permission had been found to be invalid – see § 26 of the judgment). In *Larkos v. Cyprus*, cited above, § 21, where the Court found a violation of Article 14 as a result of a distinction between tenants of the State on the one hand and tenants of private landlords on the other, the parties did not dispute that Article 14 applied and the Court saw no reason to hold

otherwise. In *Shelley*, cited above, the Court considered that being a convicted prisoner could fall within the notion of "other status" in Article 14. In *Sidabras and Džiautas v. Lithuania*, cited above, again the Court did not specifically address the question of "other status" but in finding a violation of Article 14 and Article 8 implicitly accepted that status as a former KGB officer fell within Article 14. Most recently, in *Paulík v. Slovakia*, no. 10699/05, § 54, ECHR 2006-XI (extracts), the Court accepted that the applicant, a father whose paternity had been established by judicial determination, had a resulting "status" which could be compared to putative fathers and mothers in situations where paternity was legally presumed but not judicially determined.

59. The Court therefore considers it clear that while it has consistently referred to the need for a distinction based on a "personal" characteristic in order to engage Article 14, as the above review of its case-law demonstrates, the protection conferred by that Article is not limited to different treatment based on characteristics which are personal in the sense that they are innate or inherent. Accordingly, even if, as the Government contended, a *ejusdem generis* construction were appropriate in the present case, this would not necessarily preclude the distinction upon which the applicant relies.

60. Further, the Court is not persuaded that the Government's argument that the treatment of which the applicant complains must exist independently of the "other status" upon which it is based finds any clear support in its case-law. In *Paulík*, cited above, there was no suggestion that the distinction relied upon had any relevance outside the applicant's complaint but this did not prevent the Court from finding a violation of Article 14. The question whether there is a difference of treatment based on a personal or identifiable characteristic in any given case is a matter to be assessed taking into consideration all of the circumstances of the case and bearing in mind that the aim of the Convention is to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37; and *Cudak v. Lithuania* [GC], no. 15869/02, § 36, 23 March 2010). It should be recalled in this regards that the general purpose of Article 14 is to ensure that where a State provides for rights falling within the ambit of the Convention which go beyond the minimum guarantees set out therein, those supplementary rights are applied fairly and consistently to all those within its jurisdiction unless a difference of treatment is objectively justified.

61. The Government have relied in particular upon the Court's conclusion in *Gerger*, cited above, that the distinction in that case was made not between different groups of people but between different types of offence, according to the legislature's view of their gravity, to support their argument that the applicant is unable to demonstrate that he enjoyed "other status". The Court observes that the approach adopted in *Gerger* has been

followed in a number of cases, but all concerned special court procedures or provisions on early release for those accused or convicted of terrorism offences in Turkey (see, for example, *Budak and Others*, cited above; *Yılmaz and Barım*, cited above; *Akbaba v. Turkey*, no. 52656/99, § 28, 17 January 2006; and *Tanrıkulu and Deniz v. Turkey*, no. 60011/00, § 37, 18 April 2006). Thus while *Gerger* made it clear that there may be circumstances in which it is not appropriate to categorise an impugned difference of treatment as one made between groups of people, any exception to the protection offered by Article 14 of the Convention should be narrowly construed. In the present case the applicant does not allege a difference of treatment based on the gravity of the offence he committed, but one based on his position as a prisoner serving a determinate sentence of more than fifteen years. While sentence length bears some relationship to the perceived gravity of the offence, a number of other factors may also be relevant, including the sentencing judge's assessment of the risk posed by the applicant to the public.

62. The Court has frequently emphasised the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities (see, for example, *Çakıcı v. Turkey* [GC], no. 23657/94, § 104, ECHR 1999-IV). Where an early release scheme applies differently to prisoners depending on the length of their sentences, there is a risk that, unless the difference in treatment is objectively justified, it will run counter to the very purpose of Article 5, namely to protect the individual from arbitrary detention. Accordingly, there is a need for careful scrutiny of differences of treatment in this field.

63. The Court accordingly concludes that, in light of all the above considerations, the applicant in the present case did enjoy “other status” for the purposes of Article 14.

2. Whether the applicant was in an analogous position to other prisoners treated more favourably

a. The parties' submissions

i. The applicant

64. As to whether the applicant was in an analogous position to other prisoners, he pointed out that to the extent that their Lordships had considered this question, they had resolved it in his favour (see paragraphs 20-21 above). He argued that all other prisoners to whom the discretionary early release on parole provisions applied, whether determinate or indeterminate prisoners, were subject to a risk assessment which the Parole Board was competent to conduct.

ii. The Government

65. The Government accepted that the applicant was in an analogous position to prisoners serving determinate sentences of less than fifteen years. However, they disputed that he was in an analogous position to indeterminate sentence prisoners, on the basis that such a sentence was a different type of sentence from a determinate sentence.

b. The Court's assessment

66. The Court has established in its case-law that in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (*D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007; *Burden*, cited above, § 60; and *Carson*, cited above, § 61). The Court notes that the requirement to demonstrate an "analogous position" does not require that the comparator groups be identical. The fact that the applicant's situation is not fully analogous to that of shorter-term or life prisoners and that there are differences between the various groups does not preclude the application of Article 14 (see, *mutatis mutandis*, *Petrov v. Bulgaria*, no. 15197/02, § 53, 22 May 2008). The applicant must demonstrate that, having regard to the particular nature of his complaint, he was in a relevantly similar situation to others treated differently.

67. In the present case, the Court notes that the applicant's complaint concerns provisions regulating the early release of prisoners. The decision whether to allow early release is a risk-assessment exercise: failure to approve early release is not intended to constitute further punishment but to reflect the assessment of those qualified to conduct it that the prisoner in question poses an unacceptable risk upon release (see, *mutatis mutandis*, *Stafford v. the United Kingdom* [GC], no. 46295/99, § 79, ECHR 2002-IV). The Court accordingly considers that, insofar as the assessment of the risk posed by a prisoner eligible for early release is concerned, there is no distinction to be drawn between long-term prisoners serving less than fifteen years, long-term prisoners serving fifteen years or more and life prisoners. The methods of assessing risk and the means of addressing any risk identified are in principle the same for all categories of prisoners.

68. The Court therefore concludes that the applicant can claim to be in an analogous position to long-term prisoners serving less than fifteen years and life prisoners in the circumstances of the present case.

3. Whether the difference in treatment was objectively justified

a. The parties' submissions

i. The applicant

69. The applicant again pointed out that, to the extent that this question was considered by the House of Lords, it was decided in his favour (see paragraphs 20-21 above). He argued that the different treatment was not justified, in particular because it seemed likely that those sentenced to a discretionary life sentence rather than a determinate sentence were so sentenced because they were considered to pose a higher level of risk. To make such persons subject only to a recommendation of the Parole Board while requiring the lower-risk, determinate sentence prisoners to secure, in addition, the approval of the Secretary of State, lacked objective justification. He noted in this regard that the Government did not argue that the Secretary of State had a superior knowledge or ability than the Parole Board in assessing the matter of the risk he posed upon release. He reiterated that the effect of the different treatment was that he spent two additional years in custody.

ii. The Government

70. The Government relied on two grounds which they considered justified the difference in treatment between determinate and indeterminate sentence prisoners. First, they argued that the difference in treatment was justified by the difference in the nature of the sentence. Second, they submitted that the difference was justified by the requirement under Article 5 § 4 that the initial release of indeterminate sentence prisoners, unlike determinate sentence prisoners, had to be determined by a court (in this case, the Parole Board).

71. As to the difference in treatment between determinate sentence prisoners depending on the length of their sentences, the Government argued that it was justified for the Secretary of State to retain discretion to order the early release of prisoners in some cases, subject to the requirements of Article 5 § 4. In particular, it was justified for him to retain this discretion in respect of those prisoners serving the longest sentences. In this regard, the Government emphasised that the Secretary of State was accountable to Parliament for the operation of the prisons and for the criminal justice system as a whole and that Parliament had decided that the Secretary of State should continue to be responsible for the early release of long-term determinate sentence prisoners. Although the fifteen year mark was an arbitrary cut-off point, this was an area in which bright lines had to be drawn (citing *James and Others v. the United Kingdom*, 21 February 1986, § 68, Series A no. 98; and *Mellacher and Others v. Austria*,

19 December 1989, §§ 52-53, Series A no. 169). The making of the 1992 and 1998 orders (see paragraph 29 above) demonstrated how Parliament had kept the scope of the Secretary of State's powers under review.

72. The Government called for a wide margin of appreciation in this area, emphasising that the case did not concern any of the "suspect" grounds, such as sex or race. They invited the Court to find that there had been no violation of the applicant's rights under Articles 5 and 14.

b. The Court's assessment

73. A difference of treatment is discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (*Burden*, cited above, § 60; and *Carson*, cited above, § 61). The scope of this margin will vary according to the circumstances, the subject-matter and the background. A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (*Stec and Others v. the United Kingdom,* [GC], nos. 65731/01 and 65900/01, § 52, ECHR 2006). While in principle a similar wide margin of appreciation applies in questions of prisoner and penal policy, the Court must nonetheless exercise close scrutiny where there is a complaint that domestic measures have resulted in detention which was arbitrary or unlawful.

74. The Government considered that the measure in the present case was justified on the basis of the risk posed by the category of prisoners in question and the need to maintain public confidence in the criminal justice system. As to the latter, as the Court noted in *Stafford*, cited above, § 80, it is not apparent how public confidence in the system of criminal justice could legitimately require the continued incarceration of a prisoner who has served the term required for punishment for the offence and is no longer a risk to the public. However, the Court considers that more stringent early release provisions in respect of some prisoners may be justified where it can be demonstrated that those to whom they apply pose a higher risk to the public upon release. The Court therefore accepts that in principle such differences in treatment between groups of prisoners pursue the legitimate aim of protecting the public.

75. In respect of the difference in treatment between prisoners serving determinate sentences of fifteen years or more and those serving

indeterminate sentences, the Court observes that the imposition of a determinate sentence rather than an indeterminate sentence would appear to indicate that the individual in question poses a lower, and not a higher, risk upon release. The Court has found that only considerations of risk could justify the imposition of different early release requirements in the present case (see paragraph 74 above). Given the apparently greater risk posed by life prisoners, the Court is of the view that a system which imposes on them less stringent conditions for early release while prisoners serving fixed-term sentences of fifteen years or more are subject to more stringent conditions appears to lack any objective justification. In this regard, the requirements of Article 5 § 4 concerning the right of life prisoners to have their initial release determined by a judicial body cannot provide the justification for treating long-term prisoners less favourably.

76. As regards the difference in treatment between those serving less than fifteen years and those serving fifteen years or more, the Government argued that while the cut-off point might appear arbitrary, a bright line distinction was necessary and justified. The Court accepts in principle that the application of more stringent early release provisions may have to be dependent on a bright-line cut-off point and considers that such a bright-line distinction will not of itself fall foul of the Convention (see *Twizell v. the United Kingdom*, no. 25379/02, § 24, 20 May 2008; *Amato Gauci v. Malta*, no. 47045/06, § 71, 15 September 2009; and *Allen and others v. the United Kingdom* (dec.), no. 5591, 6 October 2009). Accordingly, in the present case, the fact that different early release provisions applied to those serving determinate sentences of fifteen years or more, compared to those serving less than fifteen years, does not of itself suggest unlawful discrimination.

77. However, any distinction in treatment between the applicant and either of the comparator groups discussed above would only be justified where it actually achieved the legitimate aim pursued. In the present case, the Government have failed to demonstrate that the approval of the Secretary of State would address concerns regarding the perceived higher risk posed by certain prisoners upon release. As Lord Bingham observed in the House of Lords, by the time the Secretary of State rejected the Parole Board's recommendation that the applicant be released, life prisoners had been brought within the definitive jurisdiction of the Parole Board. The differential treatment of prisoners serving fifteen years or more, whose release continued to be dependent on the decision of the Secretary of State, had become an indefensible anomaly, as the assessment of the risk presented by any individual prisoner, in the application of publicly promulgated criteria, was a task which was at the relevant time recognised to have no political content and one to which the Secretary of State could not, and did not claim to, bring any superior expertise (see paragraph 20 above).

78. In the circumstances, the Court considers that the early release scheme to which the applicant was subject, which entitled those serving long-term determinate sentences of less than fifteen years and those serving indeterminate sentences to be released upon a positive recommendation of the Parole Board but required those serving long-term determinate sentences of fifteen years or more to secure, in addition, the approval of the Secretary of State lacked objective justification.

79. There has accordingly been a violation of Article 5 taken together with Article 14.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

1. Pecuniary damage

81. The applicant claimed an unspecified sum in respect of pecuniary damage, emphasising that but for the discriminatory treatment, he would have been released when the Parole Board recommended his release in March 2002. He noted that while in custody he earned GBP 8 per week. Since release, he had sought work but due to psychological difficulties which he attributed to his lengthy imprisonment, he was not employed and received incapacity benefit of GBP 90 per week. He estimated the difference in income, after payment of food and bills, to be GBP 60 per week.

82. The Government argued that had the applicant been released on 25 October 2002, the date on which the Secretary of State refused to approve release, it was speculation as to what might have happened following that release. They suggested, for example, that he might have been recalled to prison. Any alleged pecuniary loss was therefore also speculative. In any case, the Government contended that the purpose of incapacity benefit was to meet the expenses that a person incapable of work was likely to incur. However, while the applicant was in prison, his needs were met by the prison authorities. Accordingly, the Government submitted that the claim for pecuniary damage should be refused.

83. The Court notes that since his release from prison the applicant has been in receipt of benefits intended to provide him with an adequate level of

income to ensure his basic needs while unable to work. These needs were met by the prison authorities during the time the applicant spent in custody. The Court therefore considers that the applicant has failed to demonstrate any loss of income arising from the additional time spent in prison and accordingly rejects the claim for pecuniary damage.

2. Non-pecuniary damage

84. In respect of non-pecuniary loss, the applicant claimed GBP 60,000 for his disappointment and frustration at his loss of liberty and loss of family life, based on domestic awards in similar circumstances.

85. The Government reiterated that it was speculation what would have happened had the applicant's release been ordered in 2002. In the event that the Court considered that an award ought to be made, the Government suggested that an amount of GBP 5,000 would be appropriate, having regard to the Court's judgment in *Morsink v. the Netherlands*, no. 48865/99, § 74, 11 May 2004.

86. The Court notes that in *Morsink*, compensation was awarded to an applicant who had been detained in an ordinary remand centre while awaiting admission to a custodial clinic. In the present case, the Court has found that but for the discriminatory treatment of the applicant, he would have been at liberty following the positive recommendation of the Parole Board in March 2002. While it is true that the applicant's fate had he been released at that time is a matter for speculation, the Court observes that the applicant remains at liberty following his eventual release in 2004.

87. The Court therefore concludes that the refusal of the Secretary of State to approve the applicant's release following the Parole Board recommendation in March 2002 and the subsequent period of detention from March 2002 to March 2004 must have induced feelings of frustration, uncertainty and anxiety in the applicant which cannot be compensated solely by the finding of a violation. The Court accordingly awards the sum of EUR 10,000 under this head.

B. Costs and expenses

88. The applicant also claimed for the costs and expenses incurred before the domestic courts and before the Court. He pointed out that although he was granted legal aid at domestic level, a costs award was made against him which he argued could be enforced at any time. He requested as just satisfaction in this regard that the Government be required not to enforce any costs order in respect of the domestic proceedings. The applicant further claimed the sum of GBP 48,038.16 in respect of the domestic proceedings which he explained represented the difference between the sum paid to his lawyers under the legal-aid scheme and their

commercial fees. No invoices have been provided in respect of legal fees incurred in the domestic proceedings.

89. As regards proceedings before this Court, the applicant claimed the sum of GBP 12,592.50 inclusive of VAT. The sum was composed of counsel's fees of GBP 7,108.75 for around thirty hours' work drafting the application and the observations, reviewing the Government's observations and drafting comments on the claim for just satisfaction; and solicitors' fees of GBP 5,483.75 representing work done in completing the application, instructing counsel, reviewing the observations and preparing the just satisfaction claim. The applicant has provided invoices in respect of these fees.

90. The Government emphasised that the applicant was not liable to pay his lawyers anything more for their work in the domestic proceedings as he had received legal aid. The fact that the lawyers were unable to receive costs at commercial rates was not a loss suffered by, or recoverable from, the applicant. Accordingly, the Government invited the Court to make no award under this head.

91. As regards costs in the proceedings before this Court, the Government noted that no detailed breakdown had been provided as regards the costs incurred by the solicitors, indicating the time spent or the rate charged. However, in light of the costs claimed by counsel representing fees for more than thirty hours' work, the Government questioned the large amount of the solicitors' fees and invited the Court to make no award in respect of this part of the request.

92. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant was in receipt of legal aid in the domestic proceedings and that he has not incurred any costs in respect of those proceedings. The Court accordingly rejects the claim for costs and expenses in the domestic proceedings. In respect of the proceedings before this Court, the Court notes that no detailed breakdown of the applicant's solicitors' fees has been provided and further observes that the submissions made by the applicant were substantially the same as those advanced before the domestic courts. Taking into consideration the sum of EUR 850 awarded by the Council of Europe by way of legal aid, the Court awards the sum of EUR 7,150 in costs and expenses for the Strasbourg proceedings.

C. Default interest

93. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 taken together with Article 14 of the Convention;

3. *Holds*
   (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 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 7,150 (seven thousand one hundred and fifty euros), inclusive of any tax that may be chargeable, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Lech Garlicki President