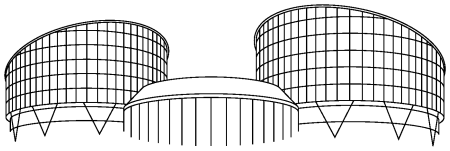

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF V.M. v. THE UNITED KINGDOM

(Application no. 49734/12)

JUDGMENT

STRASBOURG

1 September 2016

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 V.M. v. the United Kingdom,

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

Mirjana Lazarova Trajkovska, *President,*
Ledi Bianku,
Linos-Alexandre Sicilianos,
Paul Mahoney,
Aleš Pejchal,
Robert Spano,
Pauliine Koskelo, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 5 July 2016,

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

PROCEDURE

1. The case originated in an application (no. 49734/12) 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 Nigerian national, Ms V.M. ("the applicant"), on 6 August 2012. The President of the Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Mr. S. Vnuk of Lawrence Lupin Solicitors, a firm of solicitors practising in Wembley. The United Kingdom Government ("the Government") were represented by their Agent, Ms M. Macmillan of the Foreign and Commonwealth Office.

3. On 19 February 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1977 and lives in West Drayton.

A. The factual background

5. The applicant claims to have entered the United Kingdom illegally on 18 November 2003 with her son ("S"), who was born on 13 July 2000. On 22 November 2003 S was admitted to hospital with serious injuries.

6. On 3 December 2003 S became the subject of an interim care order and the applicant was later charged with child cruelty under section 1(1) of the Children and Young Persons Act 1993 and with Grievous Bodily Harm with intent.

7. On 29 January 2004 the applicant claimed asylum on the basis that if returned to Nigeria she would be killed by the wife of a man who, she alleged, had sexually assaulted her. Her application was rejected by the Secretary of State for the Home Department on 26 April 2004.

8. On 25 May 2004 the applicant was diagnosed with a psychotic illness and detained in hospital for one week.

9. In July 2004 the Asylum and Immigration Tribunal dismissed the applicant's appeal against the refusal of her asylum claim on asylum and human rights grounds, finding, *inter alia*, that she was not a credible witness.

10. On 24 August 2004 the applicant pleaded guilty to one count of child cruelty. She was granted bail pending a further hearing set for 7 February 2005. She then absconded for a period of over two years.

11. In March 2005 a residence order was made in favour of S's father and the child was returned to Nigeria.

12. On 14 July 2005 the applicant gave birth to her second child ("M"), who had a different father to S.

13. On 26 September 2007 the applicant was arrested and charged with possession of false documentation with intent to commit fraud. She was convicted and on 12 December 2007 she was sentenced to nine months' imprisonment.

14. On 7 April 2008 the applicant was convicted of child cruelty. Before sentencing the applicant for the offence of child cruelty, the Crown Court asked Dr O, a specialist registrar in forensic psychiatry, to produce a report. The report, which was dated 29 May 2008, indicated that the applicant suffered from a recurrent depressive disorder and emotionally unstable personality disorder. However, at the date of the report her depressive and psychotic symptoms were being managed with medication and therapy, with the result that her mental illness was not considered to be of a nature or degree to warrant treatment either in the prison healthcare wing or in hospital. She did not, therefore, fulfil the criteria for treatment under the Mental Health Act 1983 ("the 1983 Act").

15. On 21 July 2008 the applicant was sentenced to twelve months' imprisonment for the offence of child cruelty. She also pleaded guilty to the offence of failure to surrender to bail and was sentenced to three months'

imprisonment, to be served concurrently. The judge recommended deportation in view of the seriousness of the offences.

B. The applicant's immigration detention

16. On 5 August 2008 the United Kingdom Border Agency decided to deport the applicant. She therefore remained in detention under immigration powers when her criminal sentence ended on 8 August 2008.

17. On 12 August 2008 the applicant appealed against the decision to deport her. In her notice of appeal she reiterated her claim that she was at risk of being killed in Nigeria and that she had no family connections there. As M had been taken into the care of the local authority and was the subject of care proceedings, she also asserted a right to remain in the United Kingdom until those proceedings had concluded.

18. On 5 December 2008 the Asylum and Immigration Tribunal dismissed her appeal but found that it would be proportionate to allow her to remain in the United Kingdom for the short period that it would take to complete the care proceedings in respect of M.

19. The applicant was refused bail on 12 January 2009 and again on 17 March 2009 on the grounds that she could not be relied on to comply with bail conditions, she offered no sureties and she represented a danger to herself and to others.

20. On 30 April 2009 the applicant obtained a report from Professor K, a medical expert, on her mental health. He agreed with the diagnosis of Dr O and concluded that the applicant was not suitable for compulsory treatment under the 1983 Act as she was not in need of in-patient psychiatric care and her mental health needs could be met in the community. She was taking medication and if necessary could be admitted to hospital on a voluntary basis. Professor K did, however, note that the applicant's mental health was likely to deteriorate in response to continued detention, although it should improve in response to release in the community.

21. Bail was again refused by the authorities on 1 June 2009 in view of the risk of the applicant once again absconding.

22. On 19 June 2009 the applicant made representations requesting that the decision to deport be reversed or, alternatively, that the representations be treated as a fresh asylum claim pursuant to the relevant immigration rules. In these representations the applicant claimed that she faced a real risk of treatment contrary to Articles 3 and 8 of the Convention if she were deported to Nigeria due to her mental health status and the poor standard of treatment facilities in the destination country. Additionally, the applicant claimed that her family life with M would be irrevocably disrupted.

23. On 25 June 2009 a judge in the Family Court made a care and placement order in respect of M. In concluding that the threshold criteria were met, he stated that:

> "I am satisfied the evidence supports a finding of likelihood, that is to say a real possibility, of harm to [M], founded on [S's] grave injuries; the previous court's findings in respect of those; the mother's mental history; her plea to a seriously abusive offence against [S]; her absenting herself from the care and the criminal processes; the social and practical vulnerability produced by the parties' lack of immigration status; and their criminal offending, with its practical consequences for their availability to [M]. I am satisfied the matters I have outlined placed [M], at the relevant time, at significant risk of physical and emotional harm."

24. Following the decision of the Family Court, on 21 September 2009 Professor K prepared a further report. He noted that the applicant's mental state had deteriorated considerably since he last saw her as she was more depressed and more floridly psychotic. She was also experiencing side-effects from the medication she was taking. Between May 2009 and September 2009 she had fought with another detainee, sustained injuries while being restrained, ingested washing powder, attempted to tie a ligature around her neck, stolen food from other detainees and smashed things in her room. Professor K considered that the deterioration in her mental health was largely due to her continued immigration detention. He expressed the opinion that the applicant would now benefit from hospital assessment and treatment and recommended her transfer under the provisions of section 48 of the 1983 Act.

25. On 10 October 2009 Professor K gave an opinion that the applicant was not fit to act as a litigant. He reiterated that she should be transferred to hospital under section 48 the 1983 Act. However, a transfer to a mental health hospital required the agreement of two clinicians responsible for a patient's care. The applicant was not transferred as there was no agreement about whether she fulfilled the relevant criteria.

26. On 8 December 2009 the United Kingdom authorities contacted the responsible clinicians to request another mental health assessment of the applicant. However, the clinicians indicated that a further assessment was unnecessary as she had had four assessments already. The applicant was seen by the General Practitioner in the Immigration Removal Centre, who was satisfied that the medication being prescribed was best suited to her mental health situation and confirmed that there was no merit in arranging a further psychiatric assessment.

27. On 14 December 2009, following what the Court of Appeal described as a "lengthy delay" the Secretary of State refused to treat the applicant's representations as a fresh claim for asylum. Further similar representations led to a further decision on 26 April 2010 in which the Secretary of State maintained that the conditions for a fresh claim were not met.

28. On 16 December 2009 the applicant lodged a judicial review claim challenging the lawfulness of her detention and the failure to transfer her to a mental hospital for compulsory treatment. She then added a further challenge to the refusal to treat her representations as a fresh claim for

asylum. She was represented in these proceedings by the Official Solicitor as she lacked capacity to conduct the litigation on her own behalf.

29. In or around February 2010 the applicant was admitted to the Acute Assessment Wing of a hospital after attempting suicide.

30. Around this time Professor K examined the applicant once more and produced a report dated 1 March 2010. He noted that her condition had deteriorated due to her continued detention; she was more depressed, was describing mood-congruent auditory hallucinations, and continued to make multiple attempts to self-harm. He once again expressed the view that she should be transferred to hospital for compulsory treatment under section 48 of the 1983 Act.

31. While the applicant was in hospital she was examined by a nurse. She assessed the applicant's risk of harming children as grade three on a scale of zero to three. She was also at a risk of suicide, deliberate self-harm and other offending behaviour at grade two. This gave the applicant a summary risk to herself of two and to others of three. Although the nurse noted that the applicant's mood had improved since 1 March 2010, she still considered that she had ongoing and enduring mental health problems and that her needs could not adequately be met in Yarl's Wood Immigration Removal Centre.

32. The applicant was readmitted to the Acute Assessment Wing on 12 March 2010, following a further attempt to self-harm.

33. On 15 March 2010 the applicant was assessed by Dr R, a consultant psychiatrist, Dr S, Acting Consultant for the Crisis Team, and Dr I of General Adult Psychiatry. They noted that she displayed a tendency to act impulsively and without consideration of the consequences. She also had a tendency to self-harm and exhibited behaviour which could be interpreted as suicidal. Furthermore, they considered her to be in an extremely stressful situation, given her detention and the ongoing care proceedings. In view of these considerations, they concluded that the applicant remained at very high risk due to her impulsivity and unpredictability. Although that risk could only be contained by constant supervision, this need could be met at Yarl's Wood. Hospital admission would not provide management different to that.

34. The applicant was accordingly discharged back to Yarl's Wood.

35. On 23 March 2010 Professor K considered Dr R's report along with other materials. He agreed that the applicant was at high risk of suicide, but considered that this required not only constant supervision but also treatment of the underlying problem, which would be more appropriately managed therapeutically in a hospital setting. He further noted that other doctors had recommended psychological intervention in a secure in-patient setting.

C. Detention reviews

36. Throughout the applicant's detention, monthly detention reviews were carried out. During these reviews any change in circumstances was recorded, the likelihood of removal within a reasonable time was considered, and a proposal was made with regard to whether detention should be maintained.

D. The applicant's legal challenge to her ongoing detention

37. Permission for the applicant's first judicial review challenge was granted on 14 May 2010 and the hearing took place on 22 and 23 July 2010.

38. On 13 August 2010 the judicial review application was dismissed by a High Court judge, who found that while the Secretary of State had failed to take into account paragraph 55.10 of her own policy, *Enforcement Instructions and Guidance* (see paragraphs 58-63 below), when considering the justification for the applicant's detention between 8 August 2008 and 28 April 2010 ("the first period of detention"), that failure had not caused any damage since the decision to detain would have been the same even had the policy been correctly considered and applied. The judge therefore dismissed the claim for false imprisonment.

39. The judge found that the policy had been taken into account from 29 April 2010 up to the date of the hearing on 22 July 2010 ("the second period of detention"). He therefore found that continuing detention was lawful during this second period. The judge also rejected submissions that the period of detention had become unreasonable and unlawful under the principles set out in *R v. Governor of Durham Prison, ex parte Hardial Singh* [1974] 1 WLR 704 ("the *Hardial Singh* principles") (see paragraph 54 below). In this regard, he noted that, taking an analytical approach to each of the periods of detention following 8 August 2008, the applicant's detention was explicable by steps she had taken, or failed to take (for example, cooperation in relation to emergency travel documents, and the conflicting advice in the hands of the authorities as to the effect of detention on her mental condition and the possibility of treating it while in detention). In relation to the applicant's own conduct, the judge noted that:

> "It is clear from the *Hardial Singh* principles that obstacles to the Claimant's removal caused by the Claimant's conduct do not count in the formula. The initial conduct of the Claimant was her commission of the offence on her son. Relevant to the decision to deport and to detain pending deportation were her conviction for absconding and her conviction for fraud. The Claimant's utilisation of the rights available under the legislation to challenge the Defendant's decisions allowed her to remain in the UK. In a sense she is rightfully in the United Kingdom while these processes unwind. On the other hand, they are of her choosing since she could repatriate herself voluntarily to Nigeria. Put neutrally as the authorities do, without tendentious issues such as fault, it is her conduct which has caused her to be here. She

appealed asylum and deportation decisions, engaged at some stages in the family proceedings and issued a purported fresh claim and judicial review."

40. With regard to the Secretary of State's refusal to accept the applicant's representations as a fresh claim, the judge found that the further representations were not "significantly different" from material that had already been considered. Further, and in any event, the judge found that there was no Article 3 issue within the meaning of *N. v. the United Kingdom* [GC], no. 26565/05, ECHR 2008 and that any interference with the applicant's rights under Article 8 § 1 was justified under sub-paragraph 2.

41. The applicant appealed to the Court of Appeal against the dismissal of her judicial review claim on 13 August 2010. Permission was granted in light of the recent judgment of 23 March 2011 by the Supreme Court in *R (Walumba Lumba and Kadian Mighty) v. Secretary of State for the Home Department* [2011] UKSC 12 ("*Lumba and Mighty*") (see paragraphs 64-65 below), in which the application by the Secretary of State of a "secret policy" in respect of immigration detention was held to be unlawful in violation of public law principles.

42. On 31 August 2010 the applicant applied for assisted return to Nigeria under the Facilitated Reintegration Scheme (a scheme under which financial incentives are provided for a voluntary return by an individual to his or her country of nationality) but the application was refused in all the circumstances of the case.

43. The applicant was served with a deportation order on 25 November 2010. Although she submitted further representations for a fresh asylum and human rights claim the immigration authorities refused to revoke the deportation order. The immigration authorities also declined to give her a further statutory appeal right in relation to that decision and removal directions were set for 27 January 2011. The applicant challenged this decision by way of judicial review and obtained an injunction preventing removal until this judicial review claim had been determined.

44. On 6 July 2011, shortly before the Court of Appeal hearing, the applicant was released on bail by the Asylum and Immigration Tribunal.

45. At the court hearing, the Secretary of State conceded that following the decision of the Supreme Court in *Lumba and Mighty* the applicant's detention between 8 August 2008 and 28 April 2010 had been unlawful on account of a failure to consider the guidance on detention of mentally ill persons in the published policy on immigration detention (see paragraphs 58-63 below). As a result, on 28 July 2011 the Court of Appeal allowed the applicant's appeal against the High Court's judgment. However, as the Secretary of State had continued to detain the applicant after the relevant policy had been taken into account (from 29 April 2010 onwards), the court was satisfied that she would have been detained during the earlier period even if the policy had been considered. Moreover, having assessed all the evidence in the case – in particular, the risk of the applicant

reoffending, self-harming, or absconding – the court concluded that it had been open to a reasonable decision-maker to detain the applicant in all the circumstances of the case. Despite the concerns over her mental health, the balance of expert advice was that her needs could be managed appropriately in detention. It therefore concluded that not only would the applicant have been detained during this period, but that she could have been detained lawfully.

46. With regard to the *Hardial Singh* principles, the court did not consider that the period of detention had become unreasonable by the date of the hearing before the judge, either on account of its length or because it should have been apparent that it would not be possible to effect deportation within a reasonable period. On the contrary, the court considered that deportation within a reasonable period had remained a sufficient prospect at every stage. In this regard, it noted that there was no external barrier to removal and no case-specific problem such as the absence of travel documentation. The only intermittent delaying factor was the applicant's legal challenges but that did not oblige a finding that the prospects of removal were fanciful. Although it accepted that the Secretary of State could have responded sooner to the "fresh claim" representations, the "lengthy delay" only had a minor effect overall and did not constitute a failure to act with due diligence.

47. Finally, in relation to the Secretary of State's refusal to treat the new representations as a fresh claim, the court found that he had been entitled to reach the conclusion he did.

48. Consequently, the court awarded the applicant nominal damages of GBP 1 in relation to the period which had been conceded to be unlawful. Permission to appeal was refused by the Supreme Court on 7 February 2012.

E. Subsequent events

49. The applicant succeeded in quashing the decision not to give her a further statutory appeal right in relation to the decision to refuse to revoke the deportation order in light of the second set of representations for a further fresh claim (see paragraph 43 above). This case is now being reconsidered by the authorities in light of all the current circumstances.

50. In the meantime, the applicant has brought further judicial review claims (not related to the present application). She has also been litigating in the Family Court and is bringing a personal injury claim against the immigration authorities.

F. Contact between the applicant and M

51. By the end of July 2010 contact between the applicant and M had been limited to two hours every two months with a view to further reduction and the prospect of a goodbye meeting once the applicant was deported or M adopted. However, the local authority subsequently agreed not to proceed with adoption and instead opted for long-term fostering for M. The applicant had her first contact with M in July 2012 and the local authority have agreed to further contact every three months.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Detention pending deportation

52. The power to detain a person pending deportation is contained in Paragraph 2 of Schedule 3 to the Immigration Act 1971 ("the 1971 Act"), which provides as relevant:

> "(1) Where a recommendation for deportation made by a court is in force in respect of any person, [and that person is not detained in pursuance of the sentence or order of any court] , he shall, unless the court by which the recommendation is made otherwise directs [or a direction is given under sub-paragraph (1A) below,] be detained pending the making of a deportation order in pursuance of the recommendation, unless the Secretary of State directs him to be released pending further consideration of his case [or he is released on bail].-
>
> (2) Where notice has been given to a person in accordance with regulations under [section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision)] of a decision to make a deportation order against him, [and he is not detained in pursuance of the sentence or order of a court] , he may be detained under the authority of the Secretary of State pending the making of the deportation order.
>
> (3) Where a deportation order is in force against any person, he may be detained under the authority of the Secretary of State pending his removal or departure from the United Kingdom (and if already detained by virtue of sub-paragraph (1) or (2) above when the order is made, shall continue to be detained unless [he is released on bail or] the Secretary of State directs otherwise).Where notice has been given to a person in accordance with regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision) of a decision to make a deportation order against him, and he is not detained in pursuance of the sentence or order of a court, he may be detained under the authority of the Secretary of State pending the making of the deportation order."

B. Challenges to detention

53. Any individual who is imprisoned under executive powers at any time can issue a "writ" of application for release in the High Court for *habeas corpus*. Alternatively, he or she may issue an application for judicial

review of a decision to detain which can result in a quashing order, prohibition or mandatory order for release.

54. The lawfulness of detention is subject to judicial scrutiny in respect of all the principles of public law including whether the custodian has power to detain, that the detention is for the purpose for which power is given, and that the power is exercised rationally and reasonably. In the context of detention pending deportation, these principles were summarised by Dyson LJ in *R v Governor of Durham Prison, ex parte Hardial Singh* [1984] WLR 704 as follows:

> "i. The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;
>
> ii. The deportee may only be detained for a period that is reasonable in all the circumstances;
>
> iii. If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention;
>
> iv. The Secretary of State should act with reasonable diligence and expedition to effect removal."

55. In the case of *R (Walumba Lumba and Kadian Mighty) v. Secretary of State for the Home Department* [2011] UKSC 12 ("*Lumba and Mighty*"), the Supreme Court briefly considered the *Hardial Singh* principles. In his leading judgment, which was accepted by the majority of the court, Lord Dyson found that in assessing the reasonableness of the length of the period of detention, the risk of re-offending would be a relevant factor. In this regard, he noted that if a person re-offended, there was a risk that he would abscond either to evade arrest or, if he was arrested and prosecuted, that he would receive a custodial sentence. Either way, his re-offending would impede his deportation. He also considered that the pursuit of legal challenges by the Foreign National Prisoner could be relevant. However, he considered the weight to be given to the time spent on appeals to be fact-sensitive. In this regard, he noted that much more weight should be given to detention during a period when the detained person was pursuing a meritorious appeal than to detention during a period when he was pursuing a hopeless one.

56. Lord Dyson further noted that while it was common ground that the refusal to return voluntarily was relevant to the assessment of the reasonableness of the period of detention because a risk of absconding could be inferred from the refusal, he warned against the danger of drawing such an inference in every case. On the contrary, he considered it necessary to distinguish between cases where the return to the country of origin was possible and cases where it was not. Where return was not possible for reasons extraneous to the person detained, the fact that he was not willing to return voluntarily could not be held against him since his refusal had no

causal effect. If return was possible, but the detained person was not willing to go, it would be necessary to consider whether or not he had issued proceedings challenging his deportation. If he had done so, it would be entirely reasonable that he should remain in the United Kingdom pending the determination of those proceedings, unless they were an abuse of process, and his refusal to return voluntarily would be irrelevant. If there were no outstanding legal challenges, the refusal to return voluntarily should not be seen as a trump card which enabled the Secretary of State to continue to detain until deportation could be effected, otherwise the refusal would justify as reasonable any period of detention, however long.

C. Bail

57. There is a dedicated statutory regime giving detained persons a right to apply for bail. He or she may apply to the Secretary of State, the Chief Immigration Officer and the First Tier Tribunal (Asylum and Immigration Chamber). Although a bail hearing is not concerned with assessing the lawfulness of the detention, it does consider a number of matters relevant to that issue (including the risk of absconding, the risk of reoffending, the risk of public harm and the prospects of removal or deportation).

D. The Secretary of State's policy concerning mentally ill immigration detainees

58. The Secretary of State for the Home Department's policy publication, *Enforcement Instructions and Guidance*, contains specific provisions pertaining to the use of immigration detention. The *Guidance* provides that, in general terms, there is a presumption in favour of temporary admission or release and that, wherever possible, alternatives to detention should be used.

59. This presumption is qualified in paragraph 55.1.2 by the "risk that ... a person will abscond" or otherwise pose a risk to the public. In such circumstances the presumption in favour of release can be displaced after a global assessment of "the need to detain in the light of the risk of re-offending and/or risk of absconding."

60. A further qualification is contained within paragraph 55.10 of the *Guidance* which lists cases in which detention may be unsuitable for certain individuals. In particular the policy provides:

> "The following are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated immigration detention accommodation or prisons:
>
> - those suffering from serious medical conditions or the mentally ill...."

61. The effect of paragraph 55.10 was subsequently qualified in that the words "which cannot be satisfactorily managed in detention" were added with effect from 25 August 2010.

62. The High Court in *R (Anam) v Secretary of State for the Home Department* [2009] EWHC 2496 (Admin) gave advice on the interpretation and application of paragraph 55.10 of the *Guidance*:

> "To be factored in, in individual cases, are matters such as the risk of further offending or public harm and the risk of absconding. When the person has been convicted of a serious offence substantial weight must be given to these factors. In effect paragraph 55.10 demands that, with mental illness, the balance of those factors has to be substantial indeed for detention to be justified."

63. This interpretation was subsequently approved on appeal in the same case ([2010] EWCA Civ 1140 (Black LJ) at paragraph 81).

E. *R (Walumba Lumba and Kadian Mighty) v. Secretary of State for the Home Department* [2011] UKSC 12

64. The applicants in the case of *Lumba and Mighty* were foreign national prisoners detained pursuant to a "secret" policy creating a presumption in favour of detention pending deportation, while at all material times the Secretary of State's published policy indicated that there was a presumption in favour of release. The question of whether the applicants were lawfully detained divided the Supreme Court, which concluded, by a narrow margin, that the unpublished policy applied to the applicants was unlawful. As a consequence, they were unlawfully detained and their claims for false imprisonment had to succeed. However, as the court found that the power to detain would have been exercised even if the lawful, published policy had been applied, it concluded – once again by a narrow majority – that the applicants should receive only nominal damages.

65. Lord Phillips, Lord Brown and Lord Roger dissented, preferring to find that the applicants' detention was not unlawful because they would have been detained even if the published policy had been applied.

THE LAW

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

66. The applicant complained that her detention from 8 August 2008 to 22 July 2010 had been in breach of Article 5 § 1 of the Convention as it had not been lawful under domestic law and it had been unreasonable, disproportionate and arbitrary. She did not complain about her detention from 22 July 2010 until her release on 6 July 2011, presumably because this

period was not considered by the domestic courts. Article 5 § 1 reads as follows:

> "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:
>
> ... ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

67. The Government contested that argument.

A. Admissibility

1. "Victim" status

68. The Government argued that the applicant could not claim to be a "victim" of a violation of Article 5 § 1 in relation to the period of detention from 8 August 2008 to 28 April 2010 as the Court of Appeal had expressly acknowledged that it had been unlawful under domestic law. Although the Government accepted that the applicant had only been awarded nominal damages, they submitted that a "declaration" could suffice as a remedy where the violation resulted from a "technical" breach of the law (see, for example, *Hilda Hafsteinsdóttir v. Iceland*, no. 40905/98, § 60, 8 June 2004).

69. The applicant argued that she remained a "victim" as her complaint under Article 5 § 1 was much wider than the "unlawfulness" found by the domestic courts, both in terms of the period complained of and the complaints raised. The Court of Appeal had only found that there had been a failure to consider the relevant policy between 8 August 2008 and 28 April 2010. Her complaint before this Court was that her detention from 8 August 2008 to 22 July 2010 had been arbitrary, disproportionate, and unreasonably long. In any case, the applicant argued that an acknowledgement of a breach was not sufficient to deprive a person of victim status unless appropriate redress was also provided (see, for example, *Scordino v. Italy (no. 3)* (just satisfaction), no. 43662/98, § 180, 6 March 2007), and compensation of GBP 1 could not be considered "appropriate redress".

70. The Court recalls that an individual can no longer claim to be a victim of a violation of the Convention when the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (*Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 66; and, more recently, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 81, ECHR 2012).

71. In the present case the applicant complains that her detention from 8 August 2008 to 22 July 2010 was in breach of Article 5 § 1 because it was unlawful under domestic law, and because it was unreasonable,

disproportionate and arbitrary and not "lawful" for other reasons. The Court of Appeal expressly acknowledged that, following the Supreme Court's judgment of 23 March 2011 in *Lumba and Mighty* (see paragraphs 41 and 64-65 above) the applicant's detention from 8 August 2008 to 28 April 2010 had been unlawful because during this period the Secretary of State's published policy on immigration detention (which included a provision concerning mentally ill immigration detainees) had not been taken into account, and awarded her nominal damages of GBP 1 as it concluded that she would have been detained even if the published policy had been considered (see paragraph 45 above). Insofar as the applicant now seeks to complain about the lack of "lawfulness" of her detention between 8 August 2008 and 28 April 2010 by reason of the failure to apply the relevant policy concerning mentally ill immigration detainees, the Court concludes that this issue has been dealt with adequately by the national courts. It will therefore not re-examine this aspect of her complaint, going specifically to the issue of "lawfulness".

72. Within the framework of the *Hardial Singh* principles, which the Court has accepted to be "almost identical" to its own test for "arbitrariness" (*J.N. v. the United Kingdom*, no. 37289/12, § 96, 19 May 2016), the domestic courts also considered whether the applicant's detention from 8 August 2008 to 22 July 2010 was "unreasonable", "disproportionate" and "arbitrary". However, the Administrative Court rejected these complaints and the Court of Appeal dismissed the applicant's appeal on this ground. The issue of "victim" status cannot, therefore, arise in respect of these complaints, since it cannot be said that the national authorities have acknowledged the alleged breach, expressly or in substance, and afforded appropriate redress.

73. Accordingly, insofar as the applicant complains that her detention from 8 August 2008 to 22 July 2010 was "unreasonable", "disproportionate" and "arbitrary" or not "lawful" on other grounds, she can continue to claim to be a "victim" of a violation of the Convention within the meaning of Article 34 of the Convention.

2. Manifestly ill-founded

74. The Government further submitted that the applicant's complaint under Article 5 § 1 was manifestly ill-founded. However, the Court is satisfied that the applicant's Article 5 § 1 complaint raises complex issues of fact and law, such that it cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further considers that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

75. The applicant complained that her detention from 8 August 2008 to 22 July 2010 was unlawful under domestic law as the factors justifying detention did not amount to "exceptional circumstances" as required by the Secretary of State's policy on mentally ill immigration detainees.

76. She further submitted that when she was first detained under immigration powers (on 8 August 2008) it was clear that there was no prospect of removing her within a reasonable timeframe on account of the ongoing care proceedings in respect of M, which only concluded at first instance on 25 June 2009.

77. Furthermore, the applicant submitted that her detention from 8 August 2008 to 22 July 2010 was not reasonable in all the circumstances of the case. First, this period of immigration detention was the equivalent of a four- to five-year sentence, which was completely disproportionate to the criminal offences committed (which had attracted concurrent sentences of twelve months and three months). Secondly, the length of the period of immigration detention was also disproportionate to the risk factors involved. In particular, the twelve-month sentence related to harm against the applicant's own child, but, as she was no longer the carer of any children, this offence was unlikely to be repeated. Moreover, in view of the ongoing immigration and childcare proceedings there was strong motivation for her not to abscond. Thirdly, the applicant pointed out that her mental illness – and the effect of detention on that illness – was also a key consideration in assessing the reasonableness and proportionality of detention. Fourthly, she complained that her detention during this period had been arbitrary because, in the absence of any fixed time-limit, it had been of potentially indefinite duration.

(b) The Government

78. Insofar as the applicant was seeking to assert that she had been detained in breach of the policy on mentally ill immigration detainees, the Government pointed out that the Court of Appeal had expressly found that from 8 August 2008 to 28 April 2010 she could have been detained lawfully under the policy, and from 29 April 2010 to 22 July 2010 she had been detained lawfully under it.

79. The Government further submitted that the major influence on the length of the applicant's detention between 8 August 2008 and 22 July 2010 was her resistance to deportation and the risk of her absconding. There were numerous judicial assessments indicating that there was a substantial risk of absconding and in such a case a grant of bail subject to a reporting condition

was not considered to be an effective safeguard. Moreover, the applicant's mental illness had rendered other alternatives to detention, such as electronic monitoring, unsuitable.

80. Furthermore, the Government submitted that the applicant's contentions concerning the reasonableness of the length of her detention amounted to no more than a disagreement with the findings of the Court of Appeal. However, in view of the similarities between the *Hardial Singh* principles and the requirements of Article 5 of the Convention, there was no sound basis for reaching a diametrically opposite conclusion to that of the Court of Appeal. Moreover, in deciding whether the applicant's detention was reasonable, the Court of Appeal had access to all the relevant medical evidence. As those responsible for the applicant's care had indicated that her mental health issues could be managed satisfactorily in detention, it could not be said that the decision to detain fell outside the margin of reasonable decisions open to the authorities.

81. Finally, the Government argued that the domestic legal regime was fully compliant with Article 5 of the Convention and did not lack the "quality of law" required by that Article, despite the absence of fixed time-limits on detention.

2. The Court's assessment

(a) General principles

82. Article 5 of the Convention enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds. One of the exceptions, contained in sub-paragraph (f), permits the State to control the liberty of aliens in the immigration context (see, as recent authorities, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008, and *A. and Others v. the United Kingdom* [GC], no. 3455/05, §§ 162‑63, 19 February 2009).

83. It is well established in the Court's case-law under the sub-paragraphs of Article 5 § 1 that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), be "lawful". In other words, it must conform to the substantive and procedural rules of domestic law (*Amuur v. France*, 25 June 1996, § 50, Reports 1996‑III, and *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 130, 22 September 2009).

84. In addition to the requirement of "lawfulness", Article 5 § 1 also requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Saadi v. the United Kingdom*, cited above, § 6; and *Chahal*

v. the United Kingdom, 15 November 1996, § 118, *Reports of Judgments and Decisions* 1996-V).

85. While the Court has not formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. One such principle established in the case-law is that detention will be "arbitrary" where, despite complying with the letter of domestic law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano v. France*, 18 December 1986, Series A no. 111, and *Čonka v. Belgium*, no. 51564/99, ECHR 2002-I). Furthermore, the condition that there be no arbitrariness further demands that both the order to detain and the execution of the detention genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33). There must in addition be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention (see *Aerts v. Belgium*, 30 July 1998, § 46, Reports 1998-V; and *Enhorn v. Sweden*, no. 56529/00, § 42, ECHR 2005-I).

86. Where a person has been detained under Article 5 § 1(f), the Court, interpreting the second limb of this sub-paragraph, held that, as long as a person was being detained "with a view to deportation", that is, as long as "action [was] being taken with a view to deportation", Article 5 § 1(f) did not demand that detention be reasonably considered necessary, for example, to prevent the individual from committing an offence or fleeing. It was therefore immaterial whether the underlying decision to expel could be justified under national or Convention law (see *Chahal*, cited above, § 112; *Slivenko v. Latvia* [GC], no. 48321/99, § 146, ECHR 2003 X; *Sadaykov v. Bulgaria*, no. 75157/01, § 21, 22 May 2008; and *Raza v. Bulgaria*, no. 31465/08, § 72, 11 February 2010).

87. Consequently, the Court held in *Chahal* that the principle of proportionality applied to detention under Article 5 § 1 (f) only to the extent that the detention should not continue for an unreasonable length of time; thus, it held that "any deprivation of liberty under Article 5 § 1(f) will be justified only for as long as deportation proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible" (*Chahal*, § 113; see also *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 74, ECHR 2007-II).

(b) Application of the general principles to the present case

88. The claim that her detention from 8 August 2008 to 28 April 2010 was not "lawful" by reason of a failure to apply the provision of the published policy relating to mentally ill immigration detainees has been rejected by the Court on the ground that she can no longer claim to be a

"victim" of the alleged violation (see paragraphs 70-73 above). The applicant additionally claims that her detention from 8 August 2010 to 22 July 2010 was not "lawful", either because it would have been in breach of the published policy (from 8 August 2008 to 28 April 2010) or because it was in breach of the published policy (from 29 April 2010 to 22 July 2010). The national courts – that is to say, both the Administrative Court and then the Court of Appeal – expressly considered and rejected this argument, finding that at all times the applicant either was or could have been detained "lawfully" under the policy (see paragraphs 38 and 45 above). As is well-established in the Court's case-law, whilst it is not normally the Court's task to review the observance of domestic law by the national authorities, it is otherwise in relation to matters where, as here, the Convention refers directly back to that law; for, in such matters, disregard of the domestic law entails a breach of the Convention with the consequence that the Court can and should exercise a certain power of review. However, the logic of the system of safeguards established by the Convention sets limits upon the scope of the review. It is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law, even in those fields where the Convention "incorporates" the rules of that law: the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection (see *Winterwerp v. the United Kingdom*, cited above, §§ 40 and 46, as confirmed in multiple other authorities, such as *Creanga v. Romania*, § 101 and *Mooren v. Germany*, § 73).

89. In the present case the applicant has not adduced any sufficient reason for the Court to conclude that the national courts erred in their understanding of domestic law when holding that the requirements of the published policy on immigration detention and, in particular, the provision on detention of persons suffering from mental illness had been complied with in relation to the second period of her immigration detention and that she would in any event have been detained during the earlier period if the policy had been considered and applied.

90. The Court must also ascertain whether the relevant domestic law was itself in conformity with the Convention. In this connection, the Court has emphasised that in matters of deprivation of liberty it is essential that the domestic law define clearly the conditions for detention and that the law be foreseeable in its application (see *Creanga*, cited above, § 101).

91. In this regard, the applicant's complaints include a submission that the system of immigration detention in the United Kingdom – in particular, the absence of fixed time-limits and automatic judicial review – does not comply with the "quality-of-law" requirements of Article 5 § 1(f) of the Convention. In the recent case of *J.N. v. the United Kingdom*, cited above, §§ 90-93, the Court expressly rejected this argument. In doing so, it found that, despite the absence of fixed time-limits and/or automatic judicial

review, the system of immigration detention was sufficiently accessible, precise and foreseeable in its application because it permitted the detainee to challenge the lawfulness and Convention compliance of her ongoing detention at any time. In considering any such challenge, the domestic courts were required to consider the reasonableness of each individual period of detention based entirely on the particular circumstances of that case, applying a test similar to – indeed, modelled on – that required by Article 5 § 1(f) in the context of "arbitrariness" (the *Hardial Singh* test – see paragraph 54 above).

92. Therefore, given that the applicant's detention had a basis in domestic law and that, for the reasons set out above, the applicable law was sufficiently accessible, precise and foreseeable, the applicant's complaints concerning the "lawfulness" of her detention must be rejected. Consequently, the principal question for the Court to consider is whether, at any time between 8 August 2010 (when her criminal sentence ended – see paragraph 16 above) to 22 July 2010 (the date on which her first application for judicial review was heard by the Administrative Court – see paragraph 37 above), the applicant's detention could be said to have been "arbitrary". Generally speaking, as recalled above (at paragraphs 85-87), detention will be arbitrary where there has been bad faith on the part of the authorities, where detention is not closely connected to the grounds relied on by the authorities, where the place and conditions of detention are not appropriate for its purpose, or where the length of the detention exceeds that reasonably required for the purpose pursued.

93. In the present case there is no suggestion that the authorities have at any time acted in "bad faith". Furthermore, it cannot be said that the place and conditions of detention were not appropriate for its purpose. Although the applicant has argued that she should not have been detained in an immigration removal centre on account of her mental health problems, throughout the relevant period she was being detained as a person against whom action was being taken with a view to deportation under Article 5 § 1(f), and not as a person of unsound mind under Article 5 § 1(e). The authorities considered whether she should have been transferred to hospital for compulsory psychiatric treatment but found that there was insufficient medical evidence to satisfy the requirements for a compulsory transfer (see paragraph 25 above). The national courts subsequently reviewed all of the medical evidence and concluded that the authorities' decision not to transfer the applicant to a hospital had been one which was reasonably open to them (see paragraphs 38 and 45 above). In view of the conflicting nature of the available medical evidence, it would not be appropriate for this Court to now find that the national administrative and judicial authorities should have come to a different conclusion.

94. In determining whether detention was closely connected to its purpose, the Court has repeatedly stated that there is no "necessity"

requirement under Article 5 § 1(f). However, in the case of vulnerable individuals it has accepted that the authorities should at the very least have regard to "less severe measures" (see, for example, *Yoh-Ekale Mwanje v. Belgium*, no. 10486/10, § 124, 20 December 2011, which concerned an HIV-positive detainee). In respect of minors, the Court has gone one step further and found that detention should be a "measure of last resort" (see *Rahimi v. Greece*, no. 8687/08, § 109, 5 April 2011 and *Popov v. France*, nos. 39472/07 and 39474/07, § 119, 19 January 2012).

95. In the present case it is of some concern that the period of detention under challenge lasted for nearly two years, during which time the applicant was exercising her right to bring proceedings challenging the decision to deport her. Nevertheless, insofar as any "necessity" test can be said to exist, the Court accepts that it was met in the particular circumstances of this case. First, it observes that pursuant to the Secretary of State's published policy on immigration detention, "wherever possible, alternatives to detention should be used" (see paragraph 58 above). Although that policy, notably the provisions on persons suffering from mental illness, was not properly considered by the domestic authorities in respect of the period of detention from 8 August 2008 to 28 April 2010, both the Administrative Court and the Court of Appeal concluded that the applicant could have been detained lawfully under the policy during this period (and thereafter was detained lawfully under it) in view of the serious risk of her absconding, reoffending, or harming herself or others (see paragraphs 38 and 45 above). Similar conclusions can be found in the decisions rejecting the applicant's bail applications (see paragraphs 19-21 above). Secondly, the Court notes that limited – if any – alternatives to detention were available in the present case. Reporting requirements were generally not considered to be an effective safeguard against a risk of absconding, and electronic tagging was not recommended for detainees with mental health problems. Thirdly, it is apparent, in light of the medical evidence from mid-2009 onwards, that the applicant's release into the community would not have been possible as her mental health had significantly deteriorated and she was repeatedly self-harming (see paragraphs 24, 25, 30, 33 and 35 above). Consequently, the only options available to the authorities were to keep her in immigration detention or transfer her to a hospital for compulsory psychiatric treatment.

96. Finally, in determining whether the length of detention exceeded that reasonably required for the purpose pursued, the Court must ask whether the authorities acted with "due diligence". Given the deterioration of the applicant's mental health while she was in detention, there was incumbent on the authorities a heightened duty to act with "due diligence" in order to ensure that she was detained for the shortest time possible.

97. Unlike other cases which have arisen under Article 5 § 1(f), in the present case there was no difficulty obtaining travel documents to facilitate the applicant's return (compare, for example, *J.N. v. the United Kingdom*,

cited above) and there were no general obstacles to the conduct of enforced removals to Nigeria (compare the situation in Somalia as described in *Abdi v. the United Kingdom*, no. 27770/08, 9 April 2013). The major obstacle to the applicant's deportation was therefore the ongoing care and immigration proceedings.

98. On the facts, the Court is led to the conclusion that for the most part the authorities could be said to have acted with "due diligence". The applicant lodged her appeal against deportation on 12 August 2008, only four days after the period of immigration detention began (see paragraph 17 above). That appeal was dismissed just under four months later, on 5 December 2008 (see paragraph 18 above). The applicant was nonetheless permitted to stay in the United Kingdom "for the short period that it would take to complete the care proceedings in respect of M". Those care proceedings concluded on 25 June 2009 (see paragraph 23 above). It was while awaiting the outcome of the care proceedings that the applicant made new submissions to the Secretary of State which she wished to be treated as a fresh claim for asylum (see paragraph 22 above). Two days after she was notified of the Secretary of State's decision not to treat those representations as a fresh claim (see paragraph 27 above), the applicant sought permission to apply for judicial review of her ongoing detention. She also made further representations, which the Secretary of State, in a decision dated 26 April 2010, again refused to treat as a fresh asylum claim (see paragraph 27 above). Permission to apply for judicial review was granted five months after the application was lodged (on 14 May 2010 – see paragraph 37 above) and the hearing took place two months later on 22 July 2010 (see paragraph 38 above).

99. Notwithstanding the "diligent" conduct of the authorities during the greater part of the applicant's immigration detention, the Court cannot overlook what the Court of Appeal described as a "lengthy delay" (see paragraph 27 above) between the applicant making new representations (19 June 2009) and the Secretary of State refusing to treat those representations as a fresh claim for asylum (14 December 2009). Although this period was relatively short, it cannot be dismissed as insignificant in view of the overall length of detention and the applicant's deteriorating mental health. The Court therefore finds that during this period of just under six months there was a failure on the part of the authorities to conduct the domestic proceedings with "due diligence".

100. There has accordingly been a violation of Article 5 § 1 of the Convention in regard to the applicant's immigration detention during the period from 19 June till 14 December 2009.

II. ALLEGED VIOLATIONS OF ARTICLE 5 § 5 OF THE CONVENTION AND ARTICLE 13 READ TOGETHER WITH ARTICLE 5 § 1 OF THE CONVENTION

101. The applicant complained that the nominal damages awarded to her violated Article 5 § 5 the Convention and/or Article 13 read together with Article 5 § 1.

102. For the reasons set out at paragraphs 70 to 73 above and, in particular, on account of the absence of any consequential prejudice for the applicant, the Court is satisfied that the award of nominal damages may, in the circumstances of the applicant's case, be regarded as having afforded her "appropriate redress" for the authorities' failure to take into account the published policy on immigration detention, including the provisions on mentally ill immigration detainees. Had the national courts found a wider breach of Article 5 § 1 (in other words, had they accepted that her detention had not been in accordance with the *Hardial Singh* principles), it would have been open to them to order her release and/or increase her award of damages (see paragraph 53 above).

103. Accordingly, these complaints must be rejected as manifestly ill-founded pursuant to Article 35 § 3(a) of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLES 3 AND/OR 8 OF THE CONVENTION

104. The applicant further alleged violation of Articles 3 and 8 of the Convention on the ground that her ongoing detention caused a deterioration in her mental health, leading to episodes of self-harming and a number of suicide attempts.

105. However, neither complaint was raised before the national courts.

106. Accordingly, these complaints must be rejected pursuant to Article 35 § 1 of the Convention on account of the applicant's failure to exhaust domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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

108. The applicant claimed eighty thousand pounds (GBP 80,000) in respect of non-pecuniary damage.

109. The Government argued that this figure was excessive.

110. Taking note of the awards made in similar cases (see, for example, *J.N. v. the United Kingdom*, cited above, where the applicant was awarded EUR 7,500 for a lack of "due diligence" over a period of one year and eight months), and the relatively short period of just under six months during which the authorities failed to act with "due diligence" in the present case, the Court awards the applicant EUR 3,500 in respect of any non-pecuniary damage sustained.

B. Costs and expenses

111. The applicant also claimed twenty-one thousand, three hundred and fifty-seven pounds and fifty pence (GBP 21,357.50) for the costs and expenses incurred before the Court.

112. 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of ten thousand euros (EUR 10,000) for the proceedings before the Court.

C. Default interest

113. The Court considers it appropriate that the default interest rate 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 complaint under Article 5 § 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the period of the applicant's immigration detention between 19 June and 14 December 2009;

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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable in respect of non-pecuniary damage;

(ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 1 September 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Mirjana Lazarova Trajkovska President