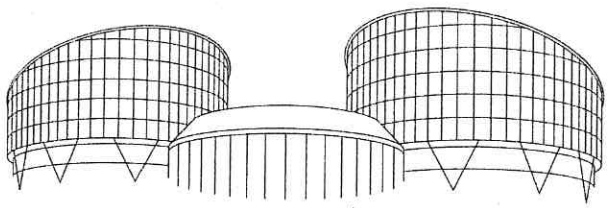

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 17233/08
Thomas MCCABE
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 26 June 2012 as a Chamber composed of:

Lech Garlicki, *President,*
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 28 March 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Thomas McCabe, is a British national who was born in 1964 and lives in Lisburn. He was represented before the Court by Madden & Finucane, a firm of lawyers practising in Belfast. The United Kingdom Government ("the Government") were represented by their Agent, Ms J. Neenan, Foreign and Commonwealth Office.

A. The circumstances of the case

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

3. The applicant was born in Northern Ireland, but subsequently moved to England. He became an alcoholic and was convicted of a number of violent offences. On 1 February 1990 he was arrested and charged with the murder of an 18 year old youth, his partner's cousin. On 29 October 1990 at the Central Criminal Court in London he pleaded guilty to the offence of murder and was sentenced to imprisonment for life. On the same date the trial judge, who described the offence as a "sudden unpremeditated attack in a moment of drunken and unreasoned jealousy upon a complete stranger", expressed the view that the length of detention necessary to meet the requirements of retribution and general deterrence was 10 years. On 4 November 1990 the Lord Chief Justice of England and Wales expressed the view that he took a slightly more severe view of the case and recommended "that 11 years would be the appropriate minimum" (hereafter referred to as the "tariff"). The Home Secretary duly fixed the tariff at 11 years and the applicant was informed of this.

4. On 21 January 1992 an order pursuant to section 26(1) of the Criminal Justice Act 1961 was made, transferring the applicant to Northern Ireland to serve the remainder of his sentence. The effect of such an order for a life prisoner was that his release would be regulated by the law and practice of Northern Ireland relating to life sentence prisoners. Under the Northern Irish system at that time, the Life Sentence Review Board, an administrative body whose membership included the Permanent Under-Secretary of the Northern Ireland Office and other senior Northern Ireland officials, advised the Home Secretary as to when a life prisoner should be released on licence, but had no power to order release. The Board would generally carry out a review after the prisoner had served three, then six, then ten years in custody, and thereafter at intervals fixed by the Board. This was set out in an explanatory memorandum provided to the applicant. On 23 January 1992 he signed a transfer document agreeing to the transfer to Northern Ireland and acknowledging that the differences between the England and Northern Ireland Prison Systems had been explained to him.

5. On 17 October 1991 the Northern Ireland Prison Authorities were informed by their English counterparts that a tariff of 11 years had been set in respect of the applicant and that a first review should take place in approximately February 1998. In accordance with the Northern Irish procedure, however, the Life Sentence Review Board considered the applicant's case on 11 April 2000. The result of that review was communicated to the applicant by letter dated 21 April 2000. This stated, *inter alia*, that the Board had decided that "the appropriate retributive period in this instance would fall at around 11 years in line with the tariff set by the

Home Office". The Board considered that alcohol, drugs and relationships with women were risk factors for the applicant and that a controlled and structured pre-release programme and supervision in the community would be necessary. On that basis the Board recommended that the applicant's case be referred for consultation with the judiciary with a view to his release on life licence after expiry of the 11-year period. It considered that the combined consultation and anticipated pre-release phase of around a year would be sufficient to test whether or not the applicant was a suitable candidate for release on licence.

6. On 7 July 2000 the applicant was informed by letter, that on 17 July 2000 he would join the Pre-Release Scheme. He was reminded that the setting of a provisional release date did not automatically mean that release on licence would follow. He was further informed that his release was subject to his continued good behaviour and to suitable resettlement arrangements being made. Phase One of the Pre-Release Scheme began immediately. On 31 July 2000 the applicant commenced Phase Two. This involved working at approved jobs and staying in the Pre-Release Unit hostel, with extended paroles at weekends.

7. On 30 October 2000 the applicant was due to commence Phase Three. On that date he failed to attend at an alcohol management programme or to report to work. As a result he was posted as unlawfully at large and remained so for 13 days. He was returned to the prison on 12 November 2000 and formally suspended from the Pre-Release Scheme. On 29 December 2000 the Lifer Management Unit wrote to the applicant confirming that he had been suspended from the Pre-Release Scheme. On 6 September 2001 the decision was taken to restore him to the Pre-Release Scheme, on the condition that he complete an intensive alcohol management programme. The applicant completed the residential course and moved through Phase Two of the Pre-Release Scheme. On 18 February 2002 he commenced Phase Three. On 15 April 2002 he failed to report for work and on 17 April 2002 he was posted unlawfully at large. He was arrested by the police in Newry in an intoxicated state and returned to the prison on 23 April 2002.

8. On 24 April 2002 the applicant was informed by letter that he was formally suspended from the Pre-Release Scheme. He was invited to make written representations to the multi-disciplinary team which would decide whether he should be readmitted to the Scheme. On 7 June 2002 the applicant's solicitors wrote to the Lifer Management Unit, stating *inter alia*:

> "'Our client was admitted to the Pre-Release Scheme by the Secretary of State acting through a lawfully constituted body, namely the Life Sentence Review Board. While our client has not yet received a tariff under the provisions of the Life Sentence Order it is clear that the punishment element of our client's sentence has been served. To suggest otherwise would be contrary to the findings of the LSRB who found him suitable for the scheme in both June 2000 and September 2001.

Our client was therefore clearly serving that part of his sentence which relates to the prevention of risk and his perceived dangerousness to, society. To our knowledge it has not been alleged that our client has committed any crime whatsoever. We are instructed that the sole reason for his arrest on 23 April was the request by the prison service. This is further supported by the fact that our client has not been charged with any criminal offence and has not been questioned by police in relation to any offence whatsoever.

Furthermore we would contend that for any decision to be taken to revoke our client's status on the Pre-Release Scheme that any such allegations or offences would have to create a belief that our client was at risk of committing a further violent offence. We contend that any such belief is simply untenable in these circumstances. We would contend that to recall our client to HMP Maghaberry without recourse to a judicial authority is therefore unlawful and in breach of our client's Article 5 and 6 rights as protected under the European Convention of Human Rights."

9. The Lifer Management Unit replied on 11 July 2002 as follows:

"Mr McCabe's continued suspension from the pre-release scheme is primarily because of his risk of violent offending. The key factors in this assessment are:

1. Alcohol was a significant factor in Mr McCabe's index offence. In spite of the best efforts of the staff at Carlisle House, Mr McCabe admits to drinking alcohol and to being drunk since his completion of the alcohol programme. Indeed, Mr McCabe now admits to drinking alcohol prior to his suspension from the pre-release scheme on 30 October 2000, during his subsequent period unlawfully at large, prior to his second suspension from the pre-release scheme on 23 April 2002 and during his most recent period unlawfully at large.

2. Mr McCabe had been posted unlawfully at large by the NI Prison Service on 23 April 2002. However, Mr McCabe came to the attention of [the police] because of the disturbance he was causing in the street.

3. Mr McCabe was in an intoxicated state when arrested by Police in Newry on 23 April 2002. Upon his return to HMP Maghaberry he became abusive to Prison Staff during a cell search and was later found guilty of assaulting a Prison Officer. He was awarded two days cellular confinement for this incident, which involved him in pushing his fist into an Officer's face.

4. Mr McCabe's behaviour during periods of temporary release clearly shows a pattern where he can not be trusted to comply with the terms and conditions of his release. He has now been found guilty of being unlawfully at large on four occasions as set out below. ...

These failures, coupled with his alcohol problem, not reporting for work and not attending alcohol management sessions in October 2000, raise serious questions about Mr McCabe's ability to comply with the elements of risk management designed to prevent further violent offences. ...

Further consideration is required regarding how best to address the risk factors in this case and the investigation into the circumstances surrounding Mr McCabe's suspension from the pre-release scheme is also still ongoing. In these circumstances,

and for all the concerns listed above regarding Mr McCabe's potential for relapse and violence, Mr McCabe will remain suspended from the pre-release scheme."

10. On 3 July 2002 the applicant lodged an application for judicial review of the decision to return him to prison. He claimed that his recall to prison and detention from 23 April 2002 was unreasonable, arbitrary and in breach of Article 5 of the Convention, since the tariff set in his case by the Home Secretary had expired in February 2001. The applicant contended that he should only have been detained after that date if there were a risk that he would commit violent offences if released, and that the events which led to his recall involved breach of the conditions of the Pre-Release Scheme, but not violent offending. In addition, he contended that, having served the penal element of his offence, he was entitled to challenge the lawfulness of his continued detention but had been afforded no such opportunity.

11. On 8 October 2001 the Life Sentences (Northern Ireland) Order 2001 ("the Life Sentences Order") came into effect, changing the system for the release of life sentence prisoners in Northern Ireland. In the case of a prisoner sentenced to imprisonment for life, the trial judge was henceforth required to fix the minimum term the prisoner should serve in order to satisfy the requirements of retribution and deterrence. When the prisoner had served this tariff, the Secretary of State was required to refer his case to the Life Sentence Review Commissioners, a new body created under the Order, which would consider whether it was necessary that the prisoner should be confined further for the protection of the public from serious harm and which was obliged and empowered to order his release if it did not consider further detention necessary. A prisoner was entitled to review by the Life Sentences Review Commission on expiry of the tariff and at two-yearly intervals thereafter. Article 10 of the Life Sentences Order applied the release provisions to life prisoners transferred to Northern Ireland. Article 11 provided that, for existing life prisoners, the tariff would be set by the Secretary of State following a recommendation of the Lord Chief Justice. On 5 November 2002 the Court of Appeal decided that the Lord Chief Justice's recommendation was binding on the Secretary of State (*Re Colin King* [2002] NICA 48).

12. On 20 November 2001, in accordance with the provisions of the Life Sentences Order, the applicant was informed that his case would soon be referred to the Lord Chief Justice for him to decide what tariff to recommend to the Secretary of State. The applicant was given the opportunity to submit representations, which he declined. On 5 March 2003 the Lord Chief Justice recommended that the applicant's tariff be fixed at eleven years. The applicant was advised of this and given a further opportunity to make any representations, which he again declined. His case was referred to the Life Sentences Review Commission on 3 April 2003.

13. The applicant's judicial review application was heard by the High Court, which delivered judgment on 3 July 2003. The court rejected the

applicant's submission that his case was analogous to that of *Stafford v. the United Kingdom* [GC], no. 46295/99, ECHR 2002-IV, where a mandatory life prisoner had completed the tariff part of his sentence and was released on licence, subsequently to be recalled to prison following the commission of an offence unrelated to the index offence of murder. In the applicant's case, once he had been transferred to Northern Ireland, he became subject to the release provisions for mandatory life prisoners which applied in that jurisdiction. He had not been released on licence under section 23 of the Prison (Northern Ireland) Act 1953, nor was he scheduled for such release. According to the decision of the Life Sentences Review Board, the pre-licence part of the applicant's sentence would not be completed until he had successfully passed through a Pre-Release Scheme. As part of that Scheme, he had been allowed out of prison on a temporary basis, subject to conditions, which he understood. The prison authorities were rightly concerned about the applicant's breach of his temporary release conditions, in particular his drinking. As regards the alleged violation of Article 5 § 4, the judge noted that at all stages the applicant would have been able to establish the lawfulness of his detention through judicial review proceedings or an application for *habeas corpus,* although the chances of success in relation to a prisoner lawfully detained following conviction were limited. The Life Sentences Order had introduced a determinate element to the sentences of life prisoners in Northern Ireland, following the expiry of which they would only be lawfully detained if this was necessary to protect the public. The procedure under the Order had been slightly delayed because of the need to determine the legal issues raised by the *Colin King* case, but the applicant's tariff had now been considered by the Lord Chief Justice and his file had been referred to the Life Sentence Review Commission. The applicant had not established that his detention was unlawful or arbitrary nor that he had been denied an opportunity to challenge its lawfulness. The application for judicial review was therefore dismissed.

14. At the Life Sentence Review Commission hearing on 18 August 2003, the Commissioners found that the applicant remained a risk to the public because of his tendency to react to stress by abusing alcohol. They declined to order his release and recommended that he should continue with the therapy he was receiving in prison. The applicant re-entered the Pre-Release Scheme in September 2003, but was unlawfully at large again between 27 December 2003 and 18 February 2004. His case came before the Life Sentence Review Commission again on 25 November 2004, on which date the hearing was adjourned to March 2005 in order to obtain psychiatric evidence. Again, the Commission did not direct his release, but recommended that he complete a cognitive self-change programme. At a further hearing in October 2006 the applicant's case was adjourned for one

year to permit him to be tested in a Pre-Release Scheme which commenced in November 2006.

15. The applicant appealed to the Court of Appeal of Northern Ireland against the judgment of the High Court. His appeal was dismissed on 24 April 2007. The Court of Appeal held that, in the light of recent domestic case-law and the *Stafford* judgment (cited above), the fixing of the applicant's tariff by the Home Secretary in 1990 or 1991 had been a sentencing exercise rather than an administrative act. When the applicant was transferred to Northern Ireland, therefore, he came as a prisoner sentenced to a mandatory life sentence with a tariff of 11 years. At the expiry of this tariff, the applicant became entitled to a review of the need to continue detaining him on grounds of dangerousness by a tribunal compliant with Article 5 § 4 of the Convention. However, such a review did not take place until April 2003, when a review was carried out by the Life Sentence Review Commission. There had, therefore, been a violation of Article 5 § 4. Nonetheless, the Court of Appeal underlined that although the Life Sentence Review Board had not had the power to order release, as required by Article 5 § 4, it had considered the applicant's case from April 2000 until the coming into force of the 2001 Order with exemplary care. The applicant was an alcoholic who, at the age of 26, had murdered a young man in a violent attack motivated by jealousy which was without foundation. Despite all the efforts made to keep him off alcohol and to provide him with a release date he had been unable to control his alcoholism. Inevitably, the Board, and subsequently the Life Sentence Review Commission, had been unable to release him on licence since he remained a serious risk to the public. If an independent tribunal had examined his case in February 2001, it would have been bound to reach the same conclusion, namely to require the applicant to complete a Pre-Release Scheme, which he had not been able successfully to complete to date. The applicant had, therefore, suffered no damage as a result of the breach of Article 5 § 4 of the Convention. Furthermore, there had been no breach of Article 5 § 1 as a result of an independent review immediately following the expiry of the tariff, because the detention continued to be justified under the terms of the mandatory life sentence and the delay in fixing the tariff in Northern Ireland and carrying out an independent review was not arbitrary. The Court of Appeal further held that, even if there had been a breach of Article 5 § 1, the declarations sought by the applicant would have been rejected on the same grounds as under Article 5 § 4.

16. The applicant sought permission to appeal to the House of Lords, which was refused by the Court of Appeal on 23 May 2007 and by the Appellate Committee of the House of Lords on 23 October 2007, on the grounds that there was no arguable point of law of public importance involved.

COMPLAINTS

17. The applicant complained under Article 5 §§ 1, 4 and 5 and Article 13 of the Convention that the lawfulness of his detention was not reviewed by a "court" after the expiry of his tariff term in February 2001 until August 2003 and that he was not awarded compensation in respect of the breach.

THE LAW

18. Article 5 of the Convention provides, as relevant:

> "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.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 13 states:

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

A. The parties' submissions

19. The Government accepted that Article 5 § 4 required an independent tribunal to review the applicant's ongoing detention following the expiry of his tariff in February 2001. They further accepted that the Life Sentence Review Board did not comply with the requirements of Article 5 § 4, since it was an administrative body, lacking in independence from the executive, without the power to order a prisoner's release. It followed that the requirements of Article 5 § 4 were not met until the Life Sentence Review Commission reviewed the applicant's case in August 2003. The Government did not contend that, just because review by an independent tribunal would have led to the same result, the applicant ceased to be a victim of the breach of Article 5 § 4. However, in these circumstances, the

Court of Appeal's finding that there had been a breach of Article 5 § 4 was sufficient just satisfaction and did not give rise to any violation of Article 5 § 5. Furthermore, the absence of an independent review during this period did not render the applicant's detention unlawful nor give rise to a violation of Article 5 § 1 of the Convention. The applicant had been sentenced to life imprisonment for murder. His continued detention was causally linked to and consistent with this sentence, since the body appointed under domestic law to determine whether he presented a risk of harm to the public decided that the risk still existed. This was the case even though that body did not comply with the separate requirement of independence under Article 5 § 4. A similar conclusion had been reached by the majority of the Court of Appeal in *R. v. Home Secretary* ex parte *Noorkoiv* [2002] EWCA Civ 770 and by the Court of Appeal of Northern Ireland in the present case. This conclusion was, moreover, consistent with the Court's case-law, in particular *Weeks v. the United Kingdom*, 2 March 1987, Series A no. 114.

20. The applicant emphasised that although his tariff had expired in February 2001, the need for his continued detention on grounds of risk was last examined by the Life Sentence Review Board in April 2000 and was not examined by an independent tribunal until August 2003. The review then carried out by the Life Sentences Review Commission did not retrospectively justify the intervening detention. Instead, the detention between February 2001 and August 2003 was unjustified by the decision of a court or judicial officer and merely continued by default, which was inconsistent with the requirement under Article 5 § 1 that detention should comply with the rule of law. The Government's submission that the detention was not arbitrary and did not, therefore, violate Article 5 § 1 did not reflect the cumulative requirements under that provision of both observation of the rule of law and prevention from arbitrariness. In the light of the Court's approach to the life sentence in *Stafford* (cited above), reliance on the *Weeks* judgment (cited above) was inappropriate and the majority in the domestic *Noorkoiv* case had been considering a short delay of three months post-tariff, rather than the 30 months at issue in the present case. The applicant therefore contended that the lack of review gave rise to violations of Article 5 §§ 1 and 4. He agreed with the Government's analysis to the effect that he could still claim to be a victim of the breach of Article 5 § 4 and did not accept the Court of Appeal's conclusion that he had suffered no damage. On the contrary, he had suffered distress and frustration because of the refusal of the State authorities for almost two and a half years to recognise his tariff and to give him a possibility to have the lawfulness of his detention reviewed by a body which could order his release. The Court of Appeal's refusal to award him compensation gave rise to violations of Articles 5 § 5 and 13 of the Convention.

B. The Court's assessment

21. The Court notes that the applicant was convicted of murder in 1990 and sentenced to life imprisonment. Following the recommendation of the Lord Chief Justice, the Home Secretary decided that the applicant would have to remain in prison for at least 11 years in order to meet the requirements of retribution and deterrence. This minimum period, or "tariff", expired in February 2001. It is accepted by the Government that, following the expiry of the tariff, the applicant became entitled under Article 5 § 4 to have the need to continue detaining him, on the ground of the risk he represented to the public, reviewed by an independent tribunal with power to order release, but that this did not occur until August 2003. It is not, however, accepted by the Government that this lack of independent review also gave rise to a breach of Article 5 § 1 during the period in question.

22. As regards the alleged violation of Article 5 § 1, the Court must determine whether between February 2001 and August 2003 the applicant was lawfully detained after conviction. Where the "lawfulness" of detention is in issue, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. This primarily requires any arrest or detention to have a legal basis in domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. In addition, any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Stafford*, cited above, § 63). Furthermore, the word "after" in Article 5 § 1 (a) does not simply mean that the detention must follow the conviction in point of time: in addition, the detention must result from, follow and depend upon, or occur by virtue of, the conviction. In short, there must be a sufficient causal connection between the conviction and the deprivation of liberty at issue (see *Stafford,* cited above, § 64; *Weeks,* cited above, § 42; *Waite v. the United Kingdom*, no. 53236/99, § 65, 10 December 2002; *Van Droogenbroeck v. Belgium*, 24 June 1982, § 39, Series A no. 50).

23. In *Stafford* (cited above, § 80) the Court held, in respect of convicted murderers sentenced to mandatory life imprisonment, that once the punishment element of the sentence (as reflected in the tariff) has been satisfied, the grounds for the continued detention must be based on considerations of risk and dangerousness. In the present case, the Court finds it established that the applicant's post-tariff detention was based on considerations of risk closely connected to the circumstances of his conviction for murder. In July 2000 as part of a Pre-Release Scheme, prior even to the expiry of the tariff, the applicant was allowed to leave prison and live in a supervised hostel, with visits to his family home at weekends.

However, the applicant failed to comply with the residential, work and reporting conditions, got drunk and absconded. He was therefore returned to prison in April 2002. Both the decision to require him to complete a Pre-Release Scheme and the decision to return him to prison were reasonable and justified, in the Court's view, given that the applicant had a history of alcoholism and violent loss of control when intoxicated, culminating in the murder of a young man in a drunken, unprovoked attack. The applicant's case is closer on the facts to *Weeks* or *Waite* than to *Stafford* (all cited above). His continued detention during this period was motivated by concern about his unreliability and incapacity to abstain from alcohol.

24. It is not contended that the applicant's detention during this period was unlawful under domestic law. Nor does the Court consider that the fact that, following the expiry of the tariff in February 2001, the applicant's dangerousness was not assessed by an independent tribunal until August 2003 rendered the detention arbitrary. For the purposes of Article 5 § 1 (a), the justification for the detention was the murder conviction and life sentence, and there was a strong connection between the facts of the offence which led to the applicant's conviction and his suspension from the Pre-Release Scheme and return to prison.

25. Turning to the issue under Article 5 § 4, the Court observes that in its judgment of 26 April 2007 the Court of Appeal found that there had been a violation of this provision. However, it declined to award monetary compensation, taking the view that the applicant had not suffered any loss or damage because an Article 5 § 4-compliant tribunal would have had no choice but to make the same decisions as the Life Sentence Review Board which in fact considered his case.

26. The Court recalls that under Article 34 of the Convention it "... may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ...". According to the Court's case-law, a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 180, ECHR 2006 V and the cases cited therein). However, where the national authorities have found a violation and their decision constitutes appropriate and sufficient redress, the party concerned can no longer claim to be a victim within the meaning of Article 34 of the Convention (see *Scordino*, cited above, § 181).

27. The Court of Appeal's judgment in the present case contained a clear acknowledgement that the applicant's rights under Article 5 § 4 had been violated. The Court must therefore determine whether the applicant has received reparation for the damage caused, comparable to just satisfaction

as provided for under Article 41 of the Convention (see, *mutatis mutandis, Scordino*, cited above, § 181).

28. In this connection, the Court recalls that it is not generally its practice to award damages for mere loss of procedural opportunity, where no causal link can be established between the procedural shortcomings and the outcome for the applicant (see *Kingsley v. the United Kingdom* [GC], no. 35605/97, §§ 41-42, ECHR 2002-IV). Furthermore, the Court does not accept that the applicant suffered distress and frustration requiring financial compensation as a result of the violation. It is noteworthy that, throughout the period in question, attempts were being made by the authorities safely to reintegrate the applicant into the community. The applicant, however, was not able to abstain from drinking alcohol, which had been the trigger for his violent offending in the past, and absconded. The applicant must have realised that in these circumstances his return to prison was inevitable (see, *mutatis mutandis, Lynch v. the United Kingdom* (dec.), no. 19504/06, 6 October 2009). Any frustration or distress experienced by the applicant should have been directed at his own failure to demonstrate that he was no longer a danger to others, rather than at any failure on the part of the authorities. It follows that the Court considers the finding of a violation by the Court of Appeal constituted appropriate and sufficient redress, so that the applicant can no longer claim to be a victim of the violation of Article 5 § 4 which took place during the period February 2001-August 2003.

29. The applicant further contended that the failure of the Court of Appeal to award damages gave rise to violations of Articles 5 § 5 and 13. However, Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. It does not prohibit the Contracting States from making the award of compensation dependent upon the ability of the person concerned to show damage resulting from the breach (see *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). Similarly, Article 13 requires that where an individual has an arguable claim to be the victim of a violation of the rights set forth in the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress (see, for example, *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61). In the present case, the applicant had access to an effective remedy, namely judicial review. The fact that the national court did not consider an award of damages to be appropriate does not make the remedy ineffective in breach of Article 13.

30. In conclusion, the Court finds that the applicant's complaints under Article 5 §§ 1 and 5 and Article 13 are manifestly ill-founded and therefore inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention. It further concludes that the applicant's complaint under Article 5 § 4 is

incompatible *ratione personae* with the terms of the Convention, since the applicant can no longer claim to be victim a in accordance with Article 34.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Lech Garlicki
President