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

FOURTH SECTION

CASE OF HILDA HAFSTEINSDÓTTIR v. ICELAND

(Application no. 40905/98)

JUDGMENT

STRASBOURG

8 June 2004

FINAL

08/09/2004

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 Hilda Hafsteinsdóttir v. Iceland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 May 2004,

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

PROCEDURE

1. The case originated in an application (no. 40905/98) against the Republic of Iceland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Icelandic national, Ms Hilda Hafsteinsdóttir ("the applicant"), on 25 October 1996.

2. The applicant was represented by Mr Ragnar Adalsteinsson, a lawyer practising in Reykjavík. The Icelandic Government ("the Government") were represented by their Agent, Mrs. Björg Thorarensen.

3. The applicant alleged, in particular, that her detention in police custody for drunkenness and disorderly conduct on six occasions on various dates between 31 January 1988 and 24 June 1997 had not been justified for the purposes of Article 5 § 1 of the Convention.

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

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr Gaukur Jörundsson, the judge elected in respect of Iceland, withdrew from the case (Rule 28). The Government did not appoint another elected judge or an *ad hoc* judge to sit in his place and thus waived their right under Article 27 § 2 of the Convention.

6. By a decision of 22 October 2002, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1), the Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*). The parties replied in writing to each other's observations.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). The case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1949 and lives in Reykjavík.

10. Her complaints under the Convention stem from her arrest and detention in police custody in Reykjavík on six occasions as described below.

A. Six incidents of detention of the applicant in police custody

11. The applicant was arrested and held on remand in police custody on six occasions on different dates between 31 January 1988 and 11 January 1992. Each time, she spent the night in a cell and was released in the morning. Further details about these events are given in the police reports compiled by the responsible police officers for the Reykjavík Police Commissioner and are set out below.

(i) In the night of Sunday 31 January 1988 at 3.40 a.m., the applicant went to a local police station in a Reykjavík suburb accompanied by two taxi drivers. Although she only had ISK 100 in her possession, the taxi fare amounted to ISK 1.825. According to a police report (signed by Police Officer R.B.), the taxi drivers had stated that "they had been driving [the applicant] during the night, but since she had refused to pay they had driven her to the nearest police station." The police report further stated that she was "obviously drunk and agitated" and that she was "very agitated, foul-mouthed and disruptive." The applicant was then transferred to Reykjavík Police Headquarters where she was, on the decision of Assistant Police Inspector H.Ó., detained in custody until the next morning.

A further police report of 31 January 1988 (signed by R.B.) relating to a police interrogation the next morning at 8.55 a.m. stated that the reasons for her "being summoned [had] been explained to her", namely a "case ... concerning taxi fraud, intoxication, etc." She had replied *inter alia* that she had intended to pay her fare to the driver in an amount of ISK 1.325 when

returning home, but had refused to pay an invoice of ISK 500, which she would only pay after consultation with her lawyer. She expressed surprise over the fact that not only had she been subjected to a string of accusations by the police but also she had been held in detention without being given any reasons. She was released at 9.25 a.m.

(ii) On Friday 18 May 1990 at 0.05 a.m., the applicant arrived at the Reykjavík police headquarters at Hverfisgata. A police report (signed by Assistant Police Inspector H.Ó.) entitled "Intoxication and detention", described the applicant's condition as "Very obviously drunk" and gave "Drunken behaviour" as the reason for her arrest. The report included the following passage:

> "As far as she could make herself understood she had arrived by taxi and there was some dispute between her and the driver. The driver and the taxi were nowhere to be seen.
>
> [After the police inspector had] talked with Hilda for a while it became clear that the cause of the dispute no longer existed. She suddenly began to stride about in the corridors and the personnel lounge of the police station, confronting the police personnel present and exhibiting drunken behaviour. She would not calm down despite repeated requests and finally it became necessary to restrain her by placing her in police custody."

According to the Government, the police had repeatedly requested the applicant to desist and to leave the police station but, as these requests were ignored, she was placed in police custody as a last resort. Since the relevant hand-written card file was no longer available, the time of her release could not be confirmed.

(iii) On Saturday 8 December 1990 at 10.15 p.m., the applicant went again to the Reykjavík police headquarters. A police report (signed by Police Officer M.M. and addressed to the Police Commissioner) entitled "Intoxication, arrest and detention in police custody" was drawn up on her arrival:

> "Hilda arrived at the police guardroom in a state of heavy intoxication. It was not clear what she wanted; to a large extent she was incoherent. She was abusive and threatened to assault the police officers present at the station.
>
> Police Officers nos. 41 and 89 brought her to the detention facility... where Inspector R.A. interviewed her.
>
> Hilda was given the opportunity to leave freely, which she flatly refused. When her overcoat was being removed from the cell, she lashed out at her surroundings with a leather belt without, however, hurting anybody..."

The report described the applicant's condition as "very obviously drunk" and indicated "intoxication and aggressive behaviour" as the reasons for her arrest, which decision was taken by Inspector R.A.

According to an entry in a more recent computerised police custody record, her detention lasted from 10.37 p.m. until 8.24 a.m. the next day.

The reason for her detention was recorded as: "Alcoholic Beverages Act, drunkenness in a public place (section 21 [see paragraph 26 below])".

(iv) On Saturday 19 January 1991 at 0.15 a.m., the applicant went to the same police station. The relevant police report (signed by Police Officer M.M.), entitled "Intoxication, improper behaviour, and detention in police custody", stated that her visit did not seem have any purpose and that she was very obviously drunk. Before she could be stopped, she had burst into the office of the inspector in charge and addressed him in derogatory terms as a "son of a bitch" and a "eunuch". She was then arrested and held in police custody. The reason for her arrest according to the police report was that she had directed a stream of verbal abuse at the inspector. The decision had been taken by Inspector B.S.

The relevant custody record indicated that the applicant had been held in detention from 0.18 a.m. until 10.38 a.m. the following morning. The reason for her detention was registered as: "policemen; violent behaviour towards policemen (106-107)". The reference in brackets appears to be Articles 106 and 107 of the General Penal Code (see paragraphs 27 below).

A police note dated 20 January 1991 suggests that the applicant was offered, but refused, a judicial settlement of the matter.

(v) On Monday 24 June 1991 at 9.10 p.m. the applicant once again went to the police headquarters in Reykjavík. The police report concerning the incident (signed by Police Officer H.D.), stated that she was very obviously intoxicated and agitated and that she made a habit of visiting the police station when under the influence of alcohol. Moreover, she had made a lot of noise, including calling out the names of various police officers. Her noises and screams increased to the point of disturbing the peace required for the work of the station. The applicant grabbed a waste bin standing at the entrance to the police station and prepared herself to throw the bin at Police Inspector R.A. who was helping a man to wash blood off his face. The applicant slammed the bin onto the floor with a loud bang when the policeman raised his hand in order to protect himself. The applicant had been ordered many times to leave the station, but to no avail. Instead, without permission, she had entered a corridor at the station and reached the personnel lounge, while carrying a glass containing a liquor mixture. According to R.A., she had threatened Assistant Inspector K.G. and had become very agitated when kindly requested to stop screaming and to leave the station.

When she refused to leave she was arrested and brought to the detention facility. The decision was taken by Inspector R.A. The police report stated the reason for her arrest as "state of intoxication etc." According to the relevant custody record she was detained from approximately 9.20 p.m. until 7.34 a.m. the following morning. The reason for her detention was recorded as "Alcoholic Beverages Act, drunkenness in a public place (section 21)."

(vi) On Saturday 11 January 1992 at 2.39 a.m., the police was called to the Hotel Saga in Reykjavík. According to the relevant police report (signed by Police Officer H.R.), when the police arrived the applicant had been restrained by the hotel staff. She was very obviously intoxicated and agitated. The applicant was arrested and taken into custody for "intoxication". The decision was taken by Assistant Inspector K.G. According to the relevant custody record (dated 14 February 2001) the applicant was detained from 3.14 a.m. until 9.17 a.m. the following morning. The reason for her detention was registered as "Alcoholic Beverages Act, drunkenness in a public place (section 21)."

B. Other incidents

12. The Government further submitted various pieces of evidence described below.

It included two police reports of 25 May 1991 and 12 June 1992 respectively, concerning refusals by the applicant to pay taxi fares. Another report, dated 5 November 1991, stated that she had been ordered to leave a police station while in an intoxicated state but had left the station after having damaged a toilet and insulted a police officer with offensive language. Later that night she had for no apparent reason disturbed the police by repeatedly telephoning the police assistance and emergency number.

13. On 13 October 1991 Chief Inspector J.J.H. complained to the Prosecutor General that the applicant had sent him gifts and harassed him repeatedly with phone calls both at work and at home. Once she had gone to his home and harassed his pregnant daughter. On 5 February 1992 the Prosecutor General replied that following an investigation by the State Criminal Investigation Police, further measures by the prosecution service were not deemed justified.

14. On 9 September 1993 the State Criminal Investigation Police informed the applicant and the Reykjavík Police Commissioner that no further measures would be taken with respect to the above complaint of 13 October 1991.

C. Complaints by the applicant to the Prosecutor General and to the Parliamentary Ombudsman

15. On 13 December 1991 counsel for the applicant, Mr Hilmar Ingimundarson, requested the Prosecutor General to order the State Criminal Investigation Police to investigate the applicant's complaints against various police officers, notably in relation to events on 8 December 1990 and 24 June 1991. Such an investigation had previously been refused by the State Criminal Investigation Police on

3 December 1991. On 5 February 1992 the Prosecutor General replied that the authority saw no reason to order an investigation. On 2 July 1992 a similar reply was given in relation to another complaint by the applicant concerning events on 18 May 1990.

16. On 15 July 1992 the applicant petitioned the Parliamentary Ombudsman asking for a statement of the reasons for the refusal of her requests for an investigation. On 4 August 1992 the Ombudsman concluded:

> "It is clear from the case file that you and the police differ considerably as to the manner in which the police officers dealt with you on the said dates and the events preceding these incidents. I do not find that a resolution of a dispute of this kind is within the purview of the Parliamentary Ombudsman and, consequently, conclude that there are no grounds for me to consider the matter raised in your petition any further."

17. By a letter to the applicant dated 14 September 1992, the Reykjavík police informed her that no further action would be taken regarding the matter, referring to six reports related to the incidents mentioned in paragraph 11 above.

D. Civil compensation proceedings brought by the applicant

18. On 11 March 1993 the applicant instituted civil proceedings against the State of Iceland claiming compensation for the damage which she had suffered as a result of having been unlawfully arrested and detained by the police as well as for harassment.

19. After a first set of proceedings the Supreme Court ordered the District Court in Reykjavík to re-examine the case with an oral hearing.

20. By a judgment of 11 April 1995 the District Court found that the applicant's claim was time-barred pursuant to the six-month time limit laid down in Article 157 of the Code of Criminal Procedure.

21. On an appeal by the applicant the Supreme Court overturned the District Court's finding by judgment of 10 October 1996. After an examination of the merits it nevertheless found for the State, giving the following reasons:

> "...The judgment under appeal refers to six events which occurred during the period from 31 January 1988 to [11 January 1992]. According to the police reports, on each occasion the [applicant] was arrested and detained on remand because she was intoxicated and agitated and could not be calmed down. The police reports relate how she acted disruptively at the police station, being verbally abusive or behaving in a drunken manner, and that she was placed in a detention cell in order to restrain her. From these descriptions, which have not been refuted, it is clear that the police had good cause and sufficient reason to commit the applicant to a detention cell for a short period of time, cf. the main rule in Article 34 of the Code on Criminal Procedure, no. 74/1974 then in force, and Articles 2 and 3 of the Reykjavík Police Ordinance, no. 625/1987; and the respondent's view that no other remedy was available in the circumstances must be upheld. Consequently, the [applicant's] claim for compensation lacks legal basis and, for that reason alone, the respondent must be released from her claim. ..."

E. Medical certificate

22. The applicant submitted a medical certificate dated 13 December 1996, which included the following:

> "...For two years I, the undersigned, have acted as the [applicant's] general practitioner. During this period, nothing has occurred which would indicate that she has had alcohol related problems. Nor do the reports from her previous doctors give any reason to believe that she has had such problems. ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Maintenance of public order by the police in public places

23. Article 34 of the Code of Criminal Procedure, as in force at the material time (1974:74), read:

> "Police officers shall be vigilant in their work and be clearly aware of the responsibility it entails. Their role is to uphold the law and order, to assist the public, as appropriate, to take measures against unlawful conduct and to work towards detecting criminal offences that are committed and to provide every assistance to official investigators. ...."

24. Articles 2 and 3 of the Reykjavík Police Ordinance (no. 625/1987) provided:

Article 2

> "'Public place' in this Ordinance means streets and places intended for use by the public. The provisions on public places apply also, if appropriate, to other places open to the public - stores, restaurants, parking places, bus shelters, museums, etc."

Article 3

> "Breaches of the peace, fights, disorderly conduct or other behaviour that disturb the peace in public places shall be prohibited, and the public shall not assemble in groups in public places if doing so interferes with traffic or causes inconvenience to passers-by.
>
> In public places, no one may harass others or indulge in unseemly behaviour."

The above provisions had a statutory basis in Act No. 1 of 3 January 1890, section 2 of which stipulated:

> "A police ordinance shall contain provisions on such matters as may be required in the circumstances obtaining in each place:
>
> (a) On order and good behaviour on the streets, roads and places to which the public has access, on all measures that are necessary in order to facilitate or prevent obstruction to traffic, on all matters that may cause danger, on the preservation and protection of public property, on public order in restaurants and places of

entertainment accessible to the general public or public gatherings such as tournaments. ...”

Section 5 provided that a breach of police ordinances adopted under the Act was punishable by a fine.

B. Powers of arrest at the relevant time

25. Article 61 of the Code of Criminal Procedure contains the following provisions regarding arrest:

“The police shall make an arrest if ordered by a judge. The police may also make arrests without a judicial warrant:

1. if they observe a person committing a punishable act, provided the act is subject to public indictment;

2. if a person is suspected of having committed an offence and does not provide police with information as to his name and address, or if he is a vagrant;

3. if the arrest of a suspected person is deemed necessary for the protection of others;

4. if an arrest is deemed necessary for preventing a suspected person from destroying evidence, leaving the police district or otherwise obstructing an investigation and it is not thought advisable to wait for a judicial warrant;

5. if a person has escaped from custody or evaded lawfully ordered supervision;

6. if a person has, unless he was prevented from so doing, failed to act upon a police summons to provide a statement in a criminal case, or

7. if a person loses control in a public place or causes public outrage, or does not have permission to remain in Iceland.

In each case a police officer shall assess the need for immediate arrest, for example on account of the danger of concealment of evidence, escape of an offender, continuation of criminal conduct, etc.”

26. At the relevant time, the Alcoholic Beverages Act 1969 (later replaced by Act 15/1998) included in its Sections 21 and 33 provisions to the effect that any person causing disorder, danger or disgrace in a public place in breach of the Act or a regulation issued under it was punishable by payment of “fines, punitive custody or imprisonment for up to 6 years”.

27. Assault and threatening behaviour committed against a public servant in the performance of his or her official duties constituted a criminal offence under Articles 106 and 107 of the 1940 General Penal Code.

C. Detention in police custody for breach of the peace under the influence of alcohol or other intoxicating substances

28. The Government submitted extracts from three instructions applicable to the case: (1) Announcement by the Reykjavík Police Commissioner No. 1/1975 on Rules for Police Officers and Wardens Concerning Treatment of Arrested Persons, Accommodation of Detainees, etc (hereinafter referred to as "the 1975 Rules"); (2) General Rules of the Reykjavík Police Commissioner of 1 July 1988 on Detention and the Treatment of Arrested Persons (hereinafter referred to as the "1988 Rules") , and (3) General instructions of the Reykjavík Police Commissioner on Arrest, an excerpt from an information booklet for police personnel, issued on 1 April 1991.

29. The 1975 Rules provided that in carrying out an arrest no more force should be applied than necessary (Article 1). An arrested person who was in a state of unconsciousness or similar condition should be taken to hospital (Article 2). A police officer who had carried out an arrest had to draw up a detailed report which should indicate the state of intoxication and the reasons for arrest (Article 3). The 1975 Rules further contained provisions on notification of relatives under the age of 20 and, if appropriate, the households of persons arrested for being intoxicated (Article 4). An arrested person under the age of 16 should in principle not be detained in a closed cell but should be kept in an open room under the care of the police until brought home or fetched by a relative (Article 5).

Article 6 provided:

> "The inspector shall decide whether an intoxicated person who has been arrested shall be detained or whether any other measures shall be taken."

Article 11 read:

> "The inspector shall decide when a person shall be released from detention. If a person has been detained for some reason other than intoxication, he shall not be released except with the approval of a judge or the investigating officer in charge of his case."

The 1975 Rules further contained provisions (Articles 8 to 10 and 12 to 14) relating to such matters as hygiene and safety, limitations on the number of persons per cell, the frequency of cell patrols (at intervals not exceeding 20 minutes).

30. Provisions largely similar to those described above were included in the 1988 Rules, which replaced the 1975 Rules on 1 July 1988. For instance, under Chapter B, section 1, decisions on detention should be taken by or under the supervision of a police inspector, and the inspector was to decide when a person detained on account of intoxication was to be released. Unlike the 1975 Rules, however, the 1988 Rules stated in Chapter A the criteria on which the police should base its decision to place a person in detention:

> That the condition of the person in question is such as to be a danger to himself or to others, or that another dangerous situation may arise if he is allowed to remain free, or if the person may cause damage to property. Also if a person, as a result of the use of alcohol or other intoxicating substances, causes public outrage or disorder or significant disturbance or inconvenience, provided the situation is highly likely to persist if he remains free.

The 1988 Rules also specified in what circumstances detention would not be justified:

> A.4.
>
> In cases involving intoxication only, when measures other than detention can be taken, for example taking a person home.

According to the Government, when a person was committed to a detention cell on the basis of Section A.1, the police would decide on the time of release by assessing when the condition warranting detention had ceased. Generally in police practice that meant that detention would last for the relatively short period it took for the inebriating effects of alcohol to wear off, or for a person in a highly agitated state of mind to calm down, thereby reducing the likelihood of a continuation of the conduct that gave rise to the measure.

The Government added that the police were chiefly involved with intoxicated persons late in the evening and at weekends, for example due to drinking lasting the entire day. It was common in such cases for the intoxicated person, after having fallen asleep in the cell, to be released in the morning when the immediate effects of his or her drinking had worn off.

31. The General Instructions on Arrest of 1 April 1991 set out, *inter alia*, the duty of discretion and diligence to be observed by the police as well as the obligation to use no more force than necessary in making an arrest.

D. Compensation for unlawful detention

32. Compensation from the State for unlawful detention was available under Article 151 of the 1974 Code of Civil Procedure, subject to the time-limits set out in Article 157:

> Article 151
>
> "By way of judgment, an award of compensation may be made with respect to arrest, personal search, a medical examination or any other measure involving interference with liberty, other than detention on remand and imprisonment under Articles 152 and 153, as well as with respect to house search and seizure:
>
> 1. if the conditions provided for by law for the taking of such measures were not fulfilled;

2. if the circumstances did not provide a sufficient reason for taking the measures in question, or if they were taken in an unnecessarily dangerous, harmful or offensive manner."

Article 157

"The right to compensation shall lapse on the expiry of six months after the date on which the person concerned became aware of a decision to discontinue the investigation or not to prosecute, was acquitted, or was released from punitive custody or imprisonment. If a criminal case has been subject to appeal to the Supreme Court, the period shall be counted from the date of the Supreme Court's judgment."

According to the Government, there were no instances of any compensation proceedings having been brought by a person on account of his or her having been detained on grounds of being drunk and disorderly in a public place.

E. Police Act 1997

33. With effect from 1 July 1992 a new Code of Criminal Procedure (Act No. 19/1991) replaced the 1974 Code. By virtue of Article 98, sub-paragraph (e), the police could arrest a person who lost control in a public place, or caused public outrage or a danger of public disturbance.

Subsequently, the provisions on arrests in the interests of public peace and order (i.e. arrests that did not directly relate to a criminal investigation) were removed from the Code of Criminal Procedure and incorporated in the new Police Act (No. 90/1997), which entered into force on 1 July 1997. The new provisions reproduced former Article 34 of the 1974 Code of Criminal Procedure and codified some of the rules previously found in customary police powers and police instructions, notably the limited powers conferred on the police (by a so-called general mandate) to take such measures as are necessary to maintain law and order and the rule of proportionality applying to the use of force. Sections 14 to 16 contain the following provisions:

Section 14 - Use of force

Persons who exercise police powers may use force in the course of their duties. At no time, however, may they use force to any greater extent than necessary on each given occasion.

Section 15

Measures taken in the interests of public peace and quiet, public order, etc.

1. The police may intervene in the conduct of citizens in order to maintain public peace and quiet and public order or to prevent an imminent disturbance in order to protect the safety of individuals or the public or to avert or put a stop to criminal offences.

2. For this purpose, the police may, among other things, take over the control of traffic, prohibit persons from remaining in particular places (e.g. by cordoning the areas off or restricting movement through them), seize dangerous items, order people to move away, or remove them, order an end or a change to actions or an activity, enter privately-owned areas and order the removal of persons from such places.

3. If a person disobeys police instructions under paragraph 2, the police may take the necessary measures at the person's expense to prevent his disobedience causing damage or injury or constituting a hazard to the public.

4. The police may require any person to give his name, ID number and address, and to present an identification document to substantiate the information given.

5. The police may concern themselves with matters which by law come under other authorities if it is considered necessary to stop or prevent a serious disturbance of public peace and quiet and public order and it is not possible to contact the relevant authority or it is impossible for it to take measures, or if such measures are ineffective or it is foreseeable that they would be taken too late. The appropriate authority shall be informed of the police's actions as soon as possible.

Section 16 - Power to make arrests

1. A person exercising police powers may arrest a person and take him to a police station or other place where the police have facilities:

a. for the purpose of maintaining law and order, for example if the person loses control or causes public outrage in a public place or a danger of public disturbance,

b. if he does not hold a permit to remain in the country.

2. The police shall explain to the person the reason why he is being taken to the police facility. No person may be held for longer than is necessary.

THE LAW

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

34. The applicant alleged a violation of Article 5 § 1 of the Convention. She submitted that the deprivation of her liberty by the Reykjavík police on six occasions between 31 January 1988 and 24 June 1991 had not been "lawful"; the measures had not been authorised under any Icelandic statutory provision or regulation and had not been ordered "in accordance with a procedure prescribed by law". Nor had they been based on any of the grounds set out in sub-paragraphs (a) to (f) of paragraph 1 of Article 5, which provisions read:

> "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;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (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."

35. The Government, while accepting that the impugned measures "restricted the applicant's liberty" for the purposes of paragraph 1 of Article 5 of the Convention, maintained that the various instances of detention were "in accordance with a procedure prescribed by law", were "lawful" and justified under sub-paragraph (e) of paragraph 1. In the event that the Court should find sub-paragraph (e) inapplicable, the Government relied on sub-paragraph (c).

A. Scope of the case

36. The Court observes from the outset that, as was not disputed by the parties, the applicant's confinement on the six occasions at issue in a cell at various Reykjavík Police stations amounted to deprivation of liberty within the meaning of Article 5 § 1 of the Convention.

The first question to be considered is whether the detention was covered by any of the permitted grounds of deprivation of liberty listed exhaustively in paragraph 1. Noting that the Government centred their arguments on the ground set out in sub-paragraph 1(e) the Court will first examine whether the deprivation was "the lawful detention of ... alcoholics" within the meaning of this provision.

B. The applicability of Article 5 § 1 (e)

1. The applicant's submissions

37. As regards the Government's submission that the detention was covered by Article 5 § 1 (e), the applicant argued that it would be a distortion of the meaning of the term "alcoholics" to include persons temporarily under the influence of alcohol. All the categories of persons referred to in that provision had one common denominator, namely the permanent or continuing state of their condition or attitude.

38. According to the applicant, she had since the very outset disputed the accuracy of the information contained in the police reports suggesting that there was a basis for her arrest and detention. She denied having been an alcoholic. Invoking the medical certificate of 13 December 1996 referred to in paragraph 22 above, she asserted that she had not been abusing alcohol or using it harmfully. She had not behaved dangerously after consuming alcohol and had not endangered public safety; nor had her detention in a prison cell been necessary for the protection of her own interests. Had her detention been ordered for such reasons, the police could have been expected to have secured evidence in support, for instance by means of medical observation pursuant to the Alcoholic Beverages Act 1998 or a criminal investigation. Even the police reports did not state that public safety was jeopardised by the applicant's behaviour. The real reason for her detention was that the police had become annoyed.

The applicant further stressed that at no stage had any evidence been adduced to the effect that she had been obviously drunk or might have been a danger to persons or property or herself at any time. She had submitted witness statements to the contrary, for instance by taxi drivers who had been present at the scene when she was arrested. The Government did not go beyond alleging that the police had reason or might have had reason to believe that she was intoxicated.

39. The applicant stressed that, unlike the applicant in the case of *Witold Litwa v. Poland* (no. 26629/95, ECHR 2000-III), she was not examined by a medical doctor or a health worker upon either arrest or release. Rather than being taken into custody in a health establishment she was locked up in a prison cell. Her treatment was that of a criminal suspect and was unrelated to social policy.

2. The Government's submissions

40. In the first place, the Government argued that the medical certificate of 13 December 1996 relied on by the applicant had been issued almost five years after she had last been detained and did not confirm conclusively that she had not been an alcoholic or had not been suffering from alcohol-related problems at the material time.

41. Secondly, prior medical confirmation of whether a person was an alcoholic was not a prerequisite for detention to be justified under Article 5 § 1 (e). That provision would otherwise become nugatory, as such confirmation was normally unavailable when police became involved with intoxicated persons. The purpose of that provision must be borne in mind, namely to permit national authorities to take measures with respect to persons who were under the influence of alcohol or other inebriating substances, or persons whose mental condition was otherwise such as to present a danger to themselves or their environment. In that connection the Government prayed in aid the Court's judgment in *Witold Litwa v. Poland* case (cited above) and decision in *Dieudonné Duriez-Costes v. France* (no. 50638/99, dec. 24.10.2000). As indicated in the relevant police reports, on all of the six occasions when the applicant had been deprived of her liberty, she bore all the external signs of intoxication, which could explain why her behaviour was unrestrained. Thus the measures were covered by Article 5 § 1 (e).

3. The Court's assessment

42. While agreeing with the Government's view as to the non-conclusive character of the medical certificate of 13 December 1996, the Court does not find that the other evidence before it enables it to ascertain that - five years ago or more, at the time of the impugned events - the applicant was addicted to alcohol or was an alcoholic in the narrow medical meaning of the term. However, it is not necessary to establish whether this was the case. The Court reiterates that, according to its case-law, Article 5 § 1 (e) of the Convention when read in the light of its object and purpose cannot be interpreted as only allowing the detention of “alcoholics” in the limited sense of persons in a clinical state of “alcoholism”. Under this provision, persons who are not medically diagnosed as “alcoholics”, but whose conduct and behaviour under the influence of alcohol pose a threat to public

order or themselves, can be taken into custody for the protection of the public or their own interests, such as their health or personal safety. It does not, however, permit the detention of an individual merely because of his alcohol intake (see, in particular, the above-cited *Witold Litwa v. Poland* judgment, §§ 60 to 63).

Accordingly, what is decisive for the issue of applicability of sub-paragraph (e) to the case under review is whether the applicant behaved when drunk in such a way as to pose a threat to public order.

It appears from the relevant police reports that, on each of the six occasions, the applicant was under the heavy influence of alcohol and displayed aggressive and disruptive behaviour at the police station (see paragraph 12 above). Each time, this included verbal abuse against the officers. On one occasion, she threatened to assault the officers and lashed about with a leather belt (see paragraph 12, sub-paragraph (iii) above). On another occasion, she prepared to throw a waste bin at an officer while he was assisting another member of the public (see paragraph 12, sub-paragraph (v) above). After the officer raised his arm in order to protect himself, she slammed the bin on the floor. The Icelandic Supreme Court concluded that the descriptions contained in the police reports had not been refuted. The Court, seeing no reason for reaching a contrary conclusion, finds it established that the applicant's conduct and behaviour were under the strong influence of alcohol and could reasonably be considered to entail a threat to public order. It is further satisfied that the purpose of the measures was to avert that kind of threat. In other words, the matter was covered by the notion of "alcoholic" in sub-paragraph (e), which is therefore applicable.

43. Having reached the conclusion that Article 5 § 1 (e) was applicable, the Court finds no need to deal with the Government's alternative argument that sub-paragraph (c) was applicable, nor with the applicability of any of the remainder of the grounds listed in sub-paragraphs (a), (b), (d) or (f).

C. Whether the detention was "lawful" and free from arbitrariness

1. The applicant's submissions

44. The applicant maintained that, at the time of the events complained of, there existed no provision of Icelandic statutory law conferring on the police powers to order detention on remand in circumstances such as those at issue in her case. Such powers could not be inferred from Article 34 of the Code of Criminal Procedure or Articles 2 and 3 of the Reykjavík Police Ordinance, an administrative regulation. The applicant disagreed with the Government's view that Article 61 § 1, sub-paragraph 7, of the Code of Criminal Procedure could provide a basis for her detention. That provision empowered the police to make an arrest under certain conditions as a first

step in order to resolve a problem. However, she had neither lost control in a public place nor caused a public outrage. Nonetheless, she had been both arrested and detained in a prison cell.

Had the police been of the opinion that the applicant suffered from alcoholism, certain measures could, under certain provisions of Act no. 39/1964 on the Treatment of Intoxicated Persons and Alcoholics, have been taken with the involvement of the police. However, since the police had not done so, those provisions were irrelevant.

The applicant further stressed that there existed no case-law to the effect that the police had powers to carry out arrest and detention in the applicant's case.

Moreover, the Government's suggestion that the 1997 Police Act was an attempt to codify police powers in the area in question that already existed under customary law was incorrect. Quite the contrary, it was a response to the vagueness of the existing law and hence the need to establish precise rules on the authority of the police.

In the light of the above, the applicant contended that the disputed measures lacked a legal basis in Icelandic law.

45. In any event, the applicant submitted, Icelandic law did not meet the requirements of quality under the Convention. At least it did not do so at the relevant time. Other less stringent measures were not considered by the police and found insufficient. The detention of the applicant had not been necessary in the circumstances. There were no legal rules accessible to the applicant and she could not have foreseen that she would be detained in the way already explained.

46. Lastly, the applicant disputed the Government's submission that the rules on which the police had based their measures were published and were accessible to the public. According to her, the instructions they referred to had been for internal use only and had not been published.

2. The Government's submissions

47. The Government maintained that, as confirmed by the Icelandic Supreme Court in its judgment of 10 October 1996 in the compensation proceedings, the detention at issue had had a legal basis in Article 34 of the Code of Criminal Procedure and in Articles 2 and 3 of the Reykjavík Police Ordinance. The measures had all been made necessary by the applicant's own conduct and behaviour vis-à-vis the police, namely her repeated disturbances by noise and harassment while police officers were carrying out their routine duties. From time to time over a certain period she had visited the police station, either to see Police Officer J.J.H. or for no apparent purpose. On most occasions she had left the police station without any difficulty. In some instances she had completely lost control while in a state of heavy intoxication and had thus created a danger both for the police

personnel working at the station and for members of the public present in the reception area.

48. Although the above-mentioned provisions did not specify what measures the police were to take in order to prevent such conduct, on each occasion the police had resorted to the most lenient types of measures. Before the applicant was detained, attempts had first been made to take less severe measures, notably to walk with her and calm her down. For example, on 25 May 1991 she had agreed to be driven home by the police; on 5 November 1991 and 12 June 1992 she had complied with police orders to leave the station. But on 31 January 1988 she had been detained, since her state of heavy intoxication and unruly behaviour had made it impossible to talk to her and to take a statement from her. On 18 May and 8 December 1990 and on 19 January and 24 June 1991 she had come to the police station of her own accord late at night under the influence of alcohol, had ignored repeated requests to leave and had behaved in a threatening and hostile manner towards the police officers, thereby seriously disturbing their work and public order in the station's reception area. Yet again, on 11 January 1992, her intoxication and agitation in a hotel had made her detention necessary.

49. The power to make the arrests was provided for by law in an unequivocal manner, and the rules governing the act of committing a person to a detention cell were also clear. Those rules had been adhered to in every respect by the policemen involved in arresting the applicant. The above-mentioned provisions in Article 61 of the 1974 Code of Criminal Procedure were both very clear and adequately circumscribed to enable the applicant to assume that her conduct could lead to her arrest, as they were based on the fundamental role and duty of the police to maintain law and order in society. Thus Article 61 § 1 sub-paragraph 7 clearly provided that the police could arrest a person who had lost control in a public place or had caused public outrage, following an assessment of the need for such a measure, as provided for in Article 61 § 2.

Sub-paragraph 1 of Article 61 § 1 clearly provided that the police could arrest a person observed in the commission of a punishable act, though the public order offences that the applicant had committed were not serious enough to warrant detention on remand.

50. The laws and rules on which the police had based their actions had been published and were accessible to anyone, and the applicant could therefore plainly expect them to apply to her. It was important also to draw attention to the fact that the clear and defined provisions establishing the powers of the police in situations such as those in the applicant's case had been applied, recognised and accepted for a long time, when no other measure was available but to arrest drunk and disorderly people and confine them to a cell for a brief period until they were not deemed likely to commit further such offences. It was also worth mentioning the applicant's earlier

experience of the police response to such conduct. Thus the applicant, in addition to her obvious opportunities and occasions to familiarise herself with the rules applicable in such situations, had had ample reason to foresee the consequences of her continuing to cause disturbance or cause public outrage in public places.

The decisions of the police in all six instances to commit the applicant to a detention cell were in full conformity with the professional rules and instructions to police personnel in force at the time of the events in question.

In addition, the Government relied on the general mandate of the police to take proportionate measures for the protection of public peace and order, which they submitted were largely codified by sections 14 and 15 of the 1997 Police Act and even section 16 (see paragraph 33 above).

3. The Court's assessment

51. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof.

Moreover an essential element of the "lawfulness" of the detention within the meaning of Article 5 § 1 (e) is the absence of arbitrariness. The detention of an individual is such a serious measure that it is only justified where other, less stringent measures have been considered and found to be insufficient to safeguard the individual or the public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law, it must also be necessary in the circumstances (see the above cited *Witold Litwa v. Poland*, § 78).

In addition, the Court stresses that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently accessible and precise to allow the person – if necessary with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Varbanov v. Bulgaria*, no. 31365/96, § 51 ECHR 2000-X; *Amann v. Switzerland* [GC], no. 27798/95, § 50, ECHR 2000-II; the *Steel and Others v. the United Kingdom* judgment of 23 September 1998, Reports 1998-VII, p. 2735, § 54 and the *Amuur v. France* judgment of 25 June 1996, Reports 1996-III, pp. 850-51, § 50).

52. The Court observes that in its judgment of 10 October 1996 in the compensation case brought by the applicant, the Icelandic Supreme Court found it established that the impugned measures had been taken on account

of her conduct in a state of heavy intoxication, causing a breach of the peace or disturbance as described in Articles 2 and 3 of the Reykjavík Police Ordinance. It further considered that the police had sufficient reasons for detaining the applicant for a short period and had no other means at their disposal. Thus the Supreme Court appears to have reached the view that the impugned arrest and detention of the applicant on six occasions between 31 January 1988 and 24 June 1991 had a legal basis and were justified. The Court, bearing in mind the primary role played by national authorities, notably the courts, in interpreting and applying national law, has considered the matter itself and sees no reason for arriving at a contrary conclusion. Although the Supreme Court's reasoning made no express reference to some of the legal sources relied on by the Government, notably Article 61 of the Code of Criminal Procedure, the general customary powers of the police and various police instructions, the Court is satisfied on the evidence before it that the arrest and detention in question conformed to the national substantive and procedural rules. It appears that on each occasion the police had contemplated less serious measures and could reasonably have considered that it was necessary to arrest and detain the applicant.

53. What remains to be examined is whether the relevant national law was of a sufficient quality to meet the autonomous requirement of "lawfulness" in Article 5 § 1.

54. In this regard, the Court first notes that the provisions relied on by the national Supreme Court in the applicant's case referred to disorderly conduct in public places but did not specify what kind of measures the police were authorised to take in respect of a person who, as here, disturbed public order in a state of intoxication.

In the view of the Government, the applicant's arrests were plainly authorised by Article 61 of the Code of Criminal Procedure, in particular § 1, sub-paragraph 7, and § 2. These provisions empowered the police to arrest a person without judicial warrant if the person "loses control in a public place or causes public outrage" and if an immediate arrest was necessary.

However, the applicant disputed that her condition and conduct were such as to fall within those provisions, which in her opinion did not apply.

The Court does not need to resolve the disagreement between the parties in relation to the facts of the case. As far as the law is concerned, it observes that, even though it may be true that, as argued by the Government, the applicability of Article 61 § 2 sub-paragraph 7 to such cases was supported by longstanding and consistent administrative practice, its applicability was not expressly confirmed by the Supreme Court's judgment in the applicant's case nor supported by any other case-law brought to the Court's attention. Moreover Article 61 § 2 only addressed the necessity of "immediate arrest". Neither this nor any other relevant statutory provisions relied on by the Government specifically dealt with detention or the maximum duration of

detention or release, as did, for instance, the last sentence of section 16 (2), of the more recent Police Act 1997 ("No person may be held for longer than is necessary" – see paragraph 33 above).

55. It is true that more detailed provisions on these matters were included in the instructions issued by the Reykjavík Police Commissioner (see paragraph 28 above). They contained a number of substantive and procedural rules circumscribing the discretion enjoyed by a police officer in ordering detention for disorderly conduct resulting from the use of alcohol. This is in particular the case of the 1988 Rules, which entered into force on 1 July 1988 and applied, not to the first instance of detention occurring in January 1988, but to the five instances which occurred after 1 July 1988. Under those rules, conduct resulting from the use of alcohol and causing disorder or significant disturbance or inconvenience could warrant detention, provided it was highly likely that this situation would continue if the person were to remain at liberty. Detention was not justified in cases involving intoxication only and when alternative measures could be used, for instance taking the person home. However, the Court notes, although they implied that detention could be ordered only if it was necessary, even those provisions omitted to specify when detention ceased to be justified and the detainee had a right to be released.

The Court further notes the disagreement between the parties as to whether the instructions in question were accessible to ordinary members of the public. The applicant objected to the Government's general submission that "the laws and rules on which the police based their actions were published and accessible to anyone" by submitting that the instructions were "internal documents of the police that [had] never been made public and accessible". The Government responded to the applicant's objection by referring to and maintaining their earlier general submission, but failed to provide the Court with any concrete explanation or information as to how the instructions should have made accessible to the public.

56. Against this background, the Court finds that, at the time of the six disputed events, in one essential respect, namely the duration of the relevant type of detention, the scope and the manner of exercise of the police's discretion were governed by administrative practice alone and, in the absence of precise statutory provisions or case-law, lacked the necessary regulatory framework (see the *Kruslin v. France* and *Huvig v. France* judgments of 24 April 1990, Series A no. 176-A and –B, respectively §§ 35 and 34). Moreover, it appears that, at the time of the first event in January 1988, before the entry into force on 1 July 1988 of the 1988 Rules, not only the duration of the detention but also the decision to detain suffered from that defect.

Moreover the Court is not convinced that the more detailed provisions contained in the above-mentioned instructions had been made accessible to the public.

For these reasons, the Court is not satisfied that the law, as applicable at the material time, was sufficiently precise and accessible to avoid all risk of arbitrariness. Accordingly, it finds that the applicant's deprivation of liberty was not "lawful" within the autonomous meaning of Article 5 § 1 of the Convention, which has therefore been violated.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed ISK 6,000,000 (approximately 70,000 Euros) in compensation for non-pecuniary damage suffered as a result of having been held arbitrarily on six occasions in solitary confinement for the whole night in the custody of the Reykjavík police. She had not been allowed access to the outside world, to be visited by a medical doctor or to seek legal advice before or during her detention or upon release. She had also been uncertain about the duration of the detention and unaware of the reasons. She lived in fear of being subjected to further arbitrary detention.

The above amount, the applicant submitted, was to be increased by 17,5%, the "punitive" default interest applicable in Iceland.

59. The Government disputed the above claim. They stressed that her submission as to the anguish that she had allegedly suffered was entirely new. Not until a year after the last of the impugned events had the applicant sought compensation before the Icelandic courts and even then she had not complained of having been prevented from contacting her relatives or a doctor. The instances of deprivation of liberty in question were only for brief periods and could not be described as solitary confinement. On four of the disputed occasions the arrest followed the applicant's visits to the police station of her own initiative and without any apparent purpose. She was well placed to foresee the measures taken and the reasons. Her submissions now before the Court that she had suffered considerable anguish as a result of the events in question were unsubstantiated and unfounded. The Government invited the Court to hold that the finding of a violation would constitute sufficient just satisfaction in the present case.

60. The Court, having regard to the technical nature of its finding of a violation of Article 5 § 1 of the Convention (see paragraphs 42, 52 and 56 above), which does not in any way call into question the necessity of the

detention, considers that this finding should in itself constitute adequate just satisfaction for the purposes of Article 41 of the Convention.

B. Costs and expenses

61. The applicant further sought the reimbursement of legal costs and expenses with respect to the following items:

(a) ISK 49,800 (inclusive of Value Added Tax (V.A.T.), approximately 580 Euros) for translation costs;

(b) ISK 537,840 (inclusive of V.A.T., approximately 6,270 Euros) for her lawyer's work (for 48 hours' work at the rate of ISK 9,000 per hour, totalling ISK 432,000, exclusive of V.A.T.) before the Commission and the Court from 1997 until 2003.

62. The Government did not offer any specific comment.

63. The Court finds that item (a) should be awarded in its entirety, but does not consider that all the costs under item (b) were necessarily incurred in order to obtain redress for the violation of the Convention found by the Court. Deciding on an equitable basis it awards the applicant 6,500 Euros under this head.

C. Default interest

64. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Held* by five votes to two that there has been a violation of Article 5 § 1 of the Convention;

2. *Held* unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

3. *Held* unanimously

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 6,500 (six thousand, five hundred Euros inclusive of V.A.T.) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 8 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting and partly concurring opinion of Mr Garlicki and the dissenting opinion of Mr Casadevall and Mr Maruste are annexed to this judgment.

N.B.
M.O.B

PARTLY DISSENTING AND PARTLY CONCURRING OPINION OF JUDGE GARLICKI

I have voted with the majority because I too find that the Icelandic law applicable to the first of the six disputed events occurring in January 1988 was not of a sufficient quality to meet the autonomous requirement of "lawfulness" in Article 5 § 1 (see paragraph 56, first sub-paragraph, of the judgment).

However, to my regret, I am unable to agree with the Court's conclusion that there has also been a violation of Article 5 § 1 of the Convention in respect to the five other events which took place after the entry into force on 1 July 1988 of the Police Rules of 1988, on the ground that the relevant law also after that date was not sufficiently precise and accessible to avoid all risk of arbitrariness (*ibidem*). I am not convinced that this was a correct approach.

This case is about the police detention of a person who is intoxicated. On each occasion the applicant was thought to be obviously drunk and was detained for several hours during the night at the premises of a police station in Reykjavik and released the next morning.

It is true that, also after 1 July 1988 the legal basis for the police action was only partly based on statutory provisions. Several important provisions were adopted only in the form of police rules (the Police Rules of 1988). This led the Court to the conclusion that as regards "the duration of the relevant type of detention, the scope and manner of exercise of police's discretion were governed by administrative practice alone and, in the absence of precise statutory provisions, lacked the necessary statutory framework" (see paragraph 56 of the judgment).

However, the requirement of "legality", under the Convention, does not unconditionally require that the legal regulation must have statutory rank. While, in several Member-States, such requirement results from national Constitutions, no universally binding standard on the European level has as yet emerged. Instead, the Court always examines the quality of the relevant legal provisions, and assesses whether they enabled the applicant to foresee the legal consequences of his/her behaviour and whether they provided sufficient guarantees against arbitrariness by the police. In my opinion, both questions should be discussed separately.

In regard to possible arbitrariness by the police, it seems to me that the 1988 Rules provided sufficient guidance for the police. Rule A.1 (see paragraph 30 of the judgment) dealt, at first, with the substantive requirements, indicating that detention was permissible if the condition of the person in question "is such as to be a danger to himself or to others, or that another dangerous situation may arise if he/she is allowed to remain free...". In my view this formulation was precise enough to allow an

assessment to be made whether it applied to the case of an intoxicated woman particularly on a December or January night, as it was the case on four occasions. It is true that the 1988 Rules did not determine, in a clear manner, the duration of the detention. But, since the detention was allowed only if there was a component of a "danger", it could be assumed that once that danger no longer existed, there was no legal basis for the continuation of the detention. In plain language, it meant that once the person in question sobered up, he/she must be released. This was exactly what happened on each occasion to which the 1988 Rules applied.

The Court found that it was unclear whether the 1988 Rules were accessible to ordinary members of the public (see paragraph 55 of the judgment). While am I ready to agree with this finding, I do not think that it affects the issue of arbitrariness. The Rules have been known to the police and have been observed in its actions. Thus, if we are ready to accept that the Rules were formulated with sufficient precision, we also must accept that no room was left for police arbitrariness.

With regard to the question of foreseeability, it may be accepted that the applicant had no access to the Rules. It does not mean, however, that at the material time, Icelandic legislation did not provide any information in this area. Article 61 § 7 of the 1974 Code of Criminal Procedure authorized arrest "if the person loses control or causes public outrage in a public place". The facts of this case demonstrate that, on every occasion, the applicant had been so drunk that she lost control over her behaviour. Therefore, even without being aware of the details of the 1988 Rules, the applicant should have been able to foresee that if she got drunk and lost control in a public place (the police station is clearly a public place), Article 61 § 7 of the Code would have been applicable in her case. More generally, it should be assumed that any reasonable person could and should come to the conclusion that being seriously intoxicated in a public place, may result in a police intervention and may lead to a temporary deprivation of liberty. I do not consider that the applicant was unable to reach this conclusion and that she could not foresee, in a precise manner, that her behaviour would result in overnight detention.

Thus, the legal framework, as in force following the adoption of the 1988 Rules, was adequate to enable the applicant to foresee the consequences of her conduct and to prevent arbitrary behaviour by the police (see *mutatis mutandis* the judgments in *Landvreugd v. the Netherlands*, no. 37331/97, 22.6.00*;* and *Olivieira v. the Netherlands*, no. 33129/96, ECHR 2002-IV).

Of course it may be possible that the police reaction to the applicant's visits to the police station was disproportionately harsh and that, on all or some occasions, it would have been sufficient to drive her home as envisaged in Rule A.4 or to bring her to a hospital. This question could have been addressed in a more elaborate way had the Court not limited its analysis primarily to the quality of the legal framework governing the

applicant's detentions. The Court, however, did not seek to go into this issue and this was the main reason why I decided to dissent from most of its holdings.

The Court was equally unwilling to examine another aspect of this case, namely the problem of the harmonization or balancing of different State obligations. Under Article 5 § 1 of the Convention, the State has a "negative obligation" not to detain anybody unless an adequate legal framework exists. But, in a case of an intoxicated person in a wintry night in Iceland, a question arises whether the very life of such a person was not endangered. Consequently, if it could not be excluded that such person, if ignored by the police, could easily die on the streets, a "positive obligation" to take care of such person may arise. In other words, if the police simply evicted the drunken visitor out of the station and if the consequences had been fatal, a violation of Article 2 would have not been completely unimaginable.

The police must be taken to have been aware of this and in its response it had to balance the negative obligations under Article 5 with the positive obligation to protect life under Article 2. I believe that in the particular circumstances of this case a *sui generis* state of necessity existed with the consequence that the positive obligation to protect life (warranting the necessity to detain the applicant) outweighed the procedural requirements of Article 5. What the police did was beneficial for the applicant and for this reason I am not convinced that she can claim to be a victim in this case.

JOINT DISSENTING OPINION OF JUDGES CASADEVALL AND MARUSTE

(Translation)

We cannot agree with the majority's conclusion in the present case that Iceland has breached Article 5 § 1 of the Convention. While we do not underestimate the relevance of precise legal regulation of such an important sphere as personal liberty and detention, we think that the particular circumstances of this case did not merit to violation of Article 5 § 1.

Our arguments are first that the particular applicant was clearly and repeatedly provocative in her behaviour and has acted against *bonus mores*. Not against some specific rules, which you do not know. It is common knowledge that drunken, provocative, disturbing behaviour is not acceptable and could be punishable for the sake of public peace and in certain circumstances (drunkenness) in the interests of person herself.

The account of the facts leads us to consider that on each occasion the Icelandic police acted towards the applicant with the care and prudence required by the circumstances. The police officers cannot be criticised for "keeping" on police premises for a few night hours a person (apparently well known to them) in a manifestly drunken state, who was not aware what she was doing, was disturbing the peace and was in addition a danger to herself.

Between 1988 and 1992 the applicant spent part of the night at the police station on six occasions. On five of those occasions she went there of her own accord, before or after midnight, and the last time she was taken there after a telephone call from a hotel employee at 2.39 a.m. Each time the applicant was conspicuously intoxicated, manifestly agitated and violent, and, on three occasions at least, refused to leave when requested to do so. For us it is obvious that in her condition the police could not throw her out, causing her to spend the night – in winter – on the street. On the contrary, we consider that the responsibilities arising from the State's positive obligations to protect life and health compelled the police to take the precautionary safety measures which form the subject of the applicant's complaint.

We also do not share the view that the legal regulation of detention for such situations was insufficient. There were legal rules in Article 34 of the Code of Criminal Procedure and in Articles 2 and 3 of the Reykjavik Police Ordinance. Iceland is a small and compact society and the applicant was a national of that state and resident of Reykjavik. She was expected to be familiar with local rules and practices of their application.

The administrative practice was well settled, stable and should have been known and foreseeable to all local reasonable citizens. This clearly enables also the applicant to assume that her (repeated) disorderly conduct could

lead to her arrest. The decision of the police in all cases to commit the applicant to detention was in conformity with generally recognized professional rules of police personnel and were based on the role and duty of the police to maintain law and order.

In our opinion, in circumstances like those of the present case, it was not even necessary to determine whether the applicant's "detention" (we would say "safekeeping") was lawful. In any event it was not arbitrary and the main criterion should rather be that of necessity (a few hours of sleep required to sober up). The 1988 provisions (Rule A1) forms a not open to doubt legal basis for police action if "the condition of the person in question is such as to be a danger to himself or to others ... if ... allowed to remain free. Or if a person, as a result of the use of alcohol or other intoxicating substances ...causes ... disorder". Any arbitrary act could not have begun until the situation of danger or necessity had ended, and that was not the case, since on each occasion the applicant was sent home as soon as morning came, after she had sobered up.

In conclusion we find the relevant legal rules clear and adequate: they were published and accessible and were prudently and not arbitrarily applied to the applicant. Accordingly, in the circumstances of the case, no issue of foreseeability could arise for a citizen of average responsibility.