



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

**FOURTH SECTION**

**CASE OF THOMPSON v. THE UNITED KINGDOM**

*(Application no. 36256/97)*

JUDGMENT

STRASBOURG

15 June 2004

**FINAL**

*15/09/2004*

*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 Thompson v. the United Kingdom,**

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

Mr M. PELLONPÄÄ, *President*,

Sir Nicolas BRATZA,

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 20 March and 7 June 2001 and on 25 May 2004,

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

**PROCEDURE**

1. The case originated in an application (no. 36256/97) against the United Kingdom of Great Britain and Northern Ireland 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 United Kingdom national, Mr Albert Thompson ("the applicant"), on 16 May 1997.

2. The applicant was represented by Mr J. Mackenzie, a lawyer practising in Oxfordshire. The United Kingdom Government ("the Government") were represented by their Agent, Mr C. Whomersley, of the Foreign and Commonwealth Office.

3. The applicant mainly complained under Article 5 §§ 3 and 5 of the Convention about his pre-trial detention and under Article 6 §§ 1 and 3 of the Convention about his summary trial before his Commanding Officer.

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. It was allocated to the Third 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.

6. On 20 March 2001 the application was declared partly admissible.

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

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1) and the present 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 1965 and lives in Durham. At the relevant time he was a Lance Corporal in the British army stationed in Northern Ireland.

10. In August 1996 he was reported to his Commanding Officer on a wounding charge, which incident had allegedly occurred in May 1996. On 21 November 1996 he was arrested on two unrelated charges of failing to attend and disobeying a lawful command. On 22 November 1996 he appeared, on the orders of his Commanding Officer, on the latter two charges and he was reduced to the ranks. On the same day he was also remanded for an abstract of evidence (see paragraph 21 below) to be compiled on a charge of wounding with intent to do grievous bodily harm contrary to section 18 of the Offences Against the Person Act 1861.

11. In early December 1996 he went missing from his unit. On 27 January 1997 he was arrested in England by the civilian police, charged with aggravated burglary and handed over to the military authorities. When it was discovered that he had been absent without leave, he was placed in close arrest in the guardroom of Catterick garrison. On 28 January 1997 he was escorted under close arrest back to Northern Ireland.

12. The Government maintained that a copy of the information pamphlet entitled “The rights of a soldier charged with an offence under the Army Act 1955” (1994 edition) would have been available to the applicant at Catterick garrison and would have been provided to him against signature of a form acknowledging receipt. Since the relevant disciplinary file was lost, the Government could not provide a copy of the form. The applicant accepted that he received a copy of the pamphlet while in close arrest in Northern Ireland and that it was likely to have been the 1994 version of the pamphlet.

13. On 30 January 1997 he appeared before his Commanding Officer who remanded him in close arrest and ordered an abstract of evidence to be compiled on the absence without leave charge with a view to that Officer applying for power to award extended detention (paragraphs 21 and 24 below). No such application was in fact made. During that hearing the

applicant received a copy of the charge sheet (the absence without leave charge).

The applicant maintained, and the Government denied, that at that same meeting he was asked by his Commanding Officer whether he would be pleading guilty or not guilty and that he had indicated the former.

14. On 13 February 1997 the applicant appeared before his Commanding Officer when the latter read the charge of absence without leave and formally asked the applicant whether he pleaded guilty or not guilty. He pleaded guilty and he was awarded 28 days' military detention. On that day he was also remanded for trial on the wounding charge.

The applicant claimed that he was not afforded the opportunity of electing trial by court-martial whereas the Government submitted that he would have been given this option by the Commanding Officer before the finding of guilty was recorded on 13 February 1997.

15. On 26 February 1997 the applicant appeared before a Magistrates' Court in Newcastle (England) on the aggravated burglary charge and was remanded on bail until 28 March 1997. He completed his military sentence of imprisonment on 7 March 1997. He was then informed by his Commanding Officer that he was to be retained in close arrest until his trial by court-martial on the wounding charge. He was then released to open arrest on 12 March 1997 following representations by his civilian solicitor. In March 1997 the civilian prosecuting authorities discontinued the burglary proceedings. In June 1997 a notice of temporary discontinuance issued as regards the court-martial proceedings on the wounding charge. No further action on that charge has been taken against the applicant who was subsequently administratively discharged in August 1997 for reasons not related to the afore-mentioned charges or conviction.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Military detention

16. The relevant domestic law and practice contained in the Army Act 1955 ("the 1955 Act"), the Rules of Procedure (Army) 1972 and the Queen's Regulations ("QR") are outlined in the *Hood v. the United Kingdom* judgment ([GC], no. 27267/95, ECHR 1999-I, §§ 20-43).

### B. Courts-Martial

17. The relevant provisions of the Army Act 1955 which regulated court-martial procedures are set out in the *Findlay v. the United Kingdom* judgment (25 February 1997, *Reports of Judgments and Decisions* 1997-I, §§ 32-51).

18. Following the Armed Forces Act 1996 (Commencement No. 2) Order (adopted on 12 February 1997), the Armed Forces Act 1996 (“the 1996 Act”) came into force on 1 April 1997. Article 3 of the Order reads as follows:

“Nothing in Article 2 of this Order insofar as it relates to section 5 of and Schedule 1 [the new procedures for dealing with offences under the various Services Acts] to the Act shall have effect in relation to –

- (a) any summary dealing or summary trial,
- (b) any trial by a court-martial or a standing civilian court, or
- (c) the hearing of any appeal by the Courts-Martial Appeal Court,

which commenced before 1st April 1997.”

19. The 1996 Act significantly amended court-martial procedures and the new system is also summarised in the *Findlay* judgment (at §§ 52-57) and is outlined in more detail in the case of *Cooper v. the United Kingdom* ([GC], no. 48843/99, §§ 15-76, ECHR 2003-XII). The references below are to the 1955 Act prior to its amendment.

20. Absence without leave is an offence under the 1955 Act, the punishment for which includes imprisonment for a maximum of two years.

### **C. Summary trial**

21. An allegation that a person subject to military law had committed an offence had to be reported in the form of a charge to the Commanding Officer, who would investigate. When a Commanding Officer did so, he had to read and, if necessary, explain the charge to the accused. He had to either hear evidence orally himself (summary of evidence) or cause it to be reduced to writing (abstract of evidence). The latter was obligatory if it was considered that the matter could be dealt with summarily and extended detention could be awarded on any finding of guilt (see “summary punishment” below). Having heard the evidence, the Commanding Officer had to determine whether the accused was guilty or not and had either to dismiss the charge or record a finding of guilty in which case he could award one or more of the prescribed punishments.

22. If, having heard the case, the Commanding Officer considered the accused to be guilty and that he would award a punishment greater than a reprimand or a minor punishment or a punishment involving a forfeiture of pay, he could not record a finding of guilty until he had afforded the accused the opportunity to elect trial by court-martial (section 78(5) of the 1955 Act). An accused could have 24 hours to so elect. Even if an accused elected trial by court-martial immediately, the Commanding Officer gave the accused an opportunity to withdraw his election the following day and,

if he did not so withdraw, the accused would be remanded for trial by court-martial. Thereafter he could only withdraw his election with the consent of the Commanding Officer (prior to remand for court-martial) or the court-martial Convening Officer (after remand for court-martial).

23. The pamphlet entitled “The rights of a soldier charged with an offence under the Army Act 1955” (1994 edition) contained the above information (“the information pamphlet”).

#### **D. Summary punishment**

24. If an accused was a soldier, his Commanding Officer (not below the rank of Field Officer) could award detention for up to 28 days or, if extended powers were granted, for up to 60 days (section 78 (3)(a) of the 1955 Act and Regulation 13A of the Army Summary Jurisdiction Regulations 1972).

25. QR 6.089 provided that, following an accused’s election for trial by court-martial, a charge could not be increased in gravity before the court-martial unless evidence of a more serious offence subsequently became available. As to punishment options available to the court-martial, QR 6.121 provided as follows:

“If an accused has elected to be tried by court-martial his punishment is not for that reason to be increased. In ordinary circumstances, the court should not award a heavier punishment than that which could have been awarded summarily. However, the court sentencing him is not bound by the limits imposed on summary awards ...”

26. The information pamphlet contained the above information.

#### **E. Complaints about Commanding Officers**

27. Section 181 of the 1955 Act set down a procedure by which an accused (a warrant officer, non-commissioned officer and a soldier) could complain to the Defence Council if he considered himself to have been wronged in any manner by his Commanding Officer. Section 180 of the 1955 Act made similar provision for complaints by officers.

#### **F. Review of summary findings and awards**

28. Section 115 of the 1955 Act provided that the Defence Council and certain senior officers “may” review a finding or award emerging from a summary trial. On any such review, the reviewing body or officer could quash the finding if it considered it expedient to do so and/or could vary the award by substituting a less severe punishment.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

29. The applicant mainly complained that his Commanding Officer did not constitute a “judge or other officer” within the meaning of Article 5 § 3 for the purposes of his detention from 27 January to 7 March 1997. He also complained about a delay in bringing him before that officer after his arrest.

30. Article 5, in so far as relevant, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(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; ...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. ...”

31. Referring to the above-cited judgment in the *Hood* case, the Government accepted that the applicant had been detained in violation of Article 5 § 3 of the Convention from 27 January to 7 March 1997.

#### A. Applicability of Article 5 § 3

32. The parties did not contest the applicability of Article 5 § 3 and the Court finds that it clearly does apply. Given the sentence of imprisonment for which the 1955 Act provided (two years), the sentence risked before a Commanding Officer (sixty days) and the twenty-eight days’ imprisonment actually imposed, it can be considered that the applicant was arrested on reasonable suspicion of having committed an “offence” within the meaning of Article 5 § 1 (c) of the Convention (*De Jong, Baljet and Van den Brink v. the Netherlands* judgment of 22 May 1984, Series A no. 77, §§ 42-44 and *Jordan v. the United Kingdom (no. 1)*, no. 30280/96, § 25, 10 December 2002). His close arrest amounted to detention involving as it did confinement to a cell under supervision (*Engel and Others v. the Netherlands* judgment of 8 June 1976, Series A no. 22, § 63).

## **B. Compliance with Article 5 § 3**

33. It is recalled that, in the above-cited *Hood* case, the Court considered that a Commanding Officer was liable to play a central role in the prosecution of a case against an accused so that an accused's misgivings about his Commanding Officer's impartiality, when the latter decided on the necessity of the pre-trial detention of the former, were considered to be objectively justified. It was also of the view that that officer's responsibility for discipline and order in his command provided an additional reason for an accused reasonably to doubt his Commanding Officer's impartiality in so deciding on pre-trial detention. For each of these reasons, the Court concluded that Mr Hood's Commanding Officer could not be considered independent of the parties and that there had been therefore a violation of Article 5 § 3 of the Convention.

34. The Court finds no ground upon which to distinguish the present case from the above-described *Hood* application as regards the powers and position of the Commanding Officer. It concludes, for the reasons detailed in the *Hood* judgment, that the applicant's Commanding Officer cannot be regarded as independent of the parties and that, accordingly, there has been a violation of Article 5 § 3 of the Convention.

This conclusion renders it unnecessary to address the applicant's additional complaint under Article 5 § 3 about a delay in being brought before his Commanding Officer.

## **II. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION**

35. Article 5 § 5 of the Convention reads as follows:

“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.”

36. The applicant complained under Article 5 § 5 that he did not have an enforceable right to compensation as regards the violation of his rights guaranteed by Article 5 § 3 of the Convention.

37. Given the finding of a violation of Article 5 § 3 (paragraph 34 above) and since the Government accepted that the applicant did not have an enforceable right to compensation in relation to such a contravention, the Court cannot but hold that there has also been a violation of Article 5 § 5 of the Convention (see the *Hood* judgment, at §§ 68-69).

## **III. ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 and 3 OF THE CONVENTION**

38. The applicant complained under Article 6 § 1 that his summary trial did not constitute a fair hearing by an independent and impartial tribunal

and under Article 6 § 3 (c) that legal representation was not available for such trials. Article 6 §§ 1 and 3, in so far as relevant, reads as follows:

“1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal.

3. Everyone charged with a criminal offence has the following minimum rights: ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;”

39. The Government maintained that the applicant had validly waived his rights under Article 6 in opting for a summary trial and, in any event, that there had been no violation of that provision.

40. They argued that the applicant would have been offered the option of electing trial by court-martial (section 78(5) of the 1955 Act). Had he so elected, he would have been tried by a court-martial convened under the Armed Forces Act 1996 (“the 1996 Act”) which fully complied with the requirements of Article 6 § 1 of the Convention (the above-cited *Cooper* judgment) and for which legal representation was allowed. While that election was afforded prior to the entry into force of the 1996 Act, that Act had already received Royal Assent in July 1996 and the relevant commencement order (which provided that the 1996 Act would come into force on 1 April 1997 as published) had already been made on 12 February 1997. While Article 3 of that order provided that a court-martial begun prior to 1 April 1997 would be convened in accordance with the 1955 Act, there was no realistic prospect of any court-martial of the applicant commencing before 1 April 1997 given the time-table of courts-martial in Northern Ireland at the time: the last courts-martial convened under the 1955 Act in Northern Ireland took place on 17-21 February 1997. In addition, the applicant did not risk a significantly heavier penalty before a court-martial (QR 6.121 at paragraph 25 above).

41. The applicant maintained that his summary trial did not comply with the requirements of Article 6 §§ 1 and 3 of the Convention. He denied that he was offered an opportunity to choose trial by court-martial. In any event, even assuming he had chosen a summary trial, he did not accept that he could be considered to have waived his Article 6 rights. He referred to the fundamental nature of the rights at issue (including independence and impartiality), he pointed out that he had not been legally advised and he stressed the unequal nature of the relationship between a soldier and his Commanding Officer. While he accepted that it was unlikely that he would have been tried by court-martial before 1 April 1997, he maintained that the post-1996 Act system also breached of Article 6 of the Convention.

42. The Court considers that Article 6 is applicable as the summary proceedings involved the determination of the applicant’s sentence

following a plea of guilty to a “criminal” charge (see paragraph 32 above and the above-cited *Findlay* case, at § 69).

43. However, the Court is not required to decide whether the applicant was, in fact, afforded the opportunity on 13 February 1997 to choose between a summary trial or trial by court-martial because, in any event, it does not consider that any choice by him of a summary trial would have constituted a valid waiver of his rights under Article 6 §§ 1 and 3 of the Convention. In this respect, it is recalled that a waiver of a right guaranteed by the Convention – in so far as it is permissible – must not run counter to any important public interest, must be established in an unequivocal manner and requires minimum guarantees commensurate to the waiver’s importance (*Håkansson and Sturesson v. Sweden* judgment of 21 February 1990, Series A No. 171, § 66 and *Pfeifer and Plankl v. Austria* judgment of 25 February 1992, Series A No. 227, § 37).

44. The Court notes, in the first place, that the applicant was directly subordinate, and in close structural proximity, to his Commanding Officer, a factor which undoubtedly would have affected the free and unambiguous nature of any choice between a summary trial and a court-martial. The applicant would also have been influenced by the fact that a summary procedure involved a maximum sentence of 28 days (and 60 days only if extended powers were granted) whereas trial by a district court-martial could have in theory (and despite the terms of QR 6.121) led to a sentence of up to two years’ imprisonment. Additional evidence emerging after his election for a court-martial could have led to a more serious charge being laid against him (QR 6.089). Moreover, the fact that the option was presented to him at all meant that his Commanding Officer considered him to be guilty as charged and, further, that he warranted more than a minor punishment. The applicant would have been aware of all of these matters from, *inter alia*, the information pamphlet which he accepted he would have obtained in Northern Ireland.

Secondly, the Court observes that the court-martial option would have been presented to the applicant at a time when the court-martial system, found in the above-cited *Findlay* case to violate the independence and impartiality guarantees of Article 6 § 1, remained in place. It is true that the Armed Forces Act 1996 (Commencement No. 2) Order 1997 had been adopted the day before the applicant’s summary hearing (on 12 February 1997). The Court has also noted the timetabling issues in Northern Ireland which the Government considered meant that his trial by court-martial before 1 April 1997 (and therefore under the 1955 Act) was wholly impractical. However, that Order did not amount to a guarantee to the applicant in February 1997 that, if he chose the court-martial option, he would be tried under the new system for which the 1996 Act provided. Indeed, there is no indication that the applicant received any information or guidance, let alone any assurance, to the effect that an election for trial by

court-martial in February 1997 meant a trial under the 1996 Act. The relevant information pamphlet did not cover this issue.

Thirdly, the applicant was a layman not in a position to evaluate his legal position in February 1997 or, consequently, the options to be pursued by him (the above cited *Pfeifer and Plankl* case, at § 38). In addition, legal representation was not allowed at the summary hearing when the opportunity to elect was afforded to an accused which absence, in turn, would have rendered it difficult for a lawyer to comprehensively advise an accused during the following twenty-four hours when the election would have become definitive.

45. Accordingly, and even supposing that the applicant was given the choice between trial by Commanding Officer or by court-martial and that the Article 6 rights in question could be waived, the Court considers that the circumstances surrounding any waiver by the applicant deprived it of any validity from the point of view of the Convention.

46. Turning therefore to the merits of his complaints under Article 6 § 1, the Court considers it clear that the summary proceedings conducted by the Commanding Officer were not compatible with Article 6 § 1 of the Convention. Most fundamentally, the Commanding Officer was central to the prosecution of the charge against the applicant (the *Hood* case described at paragraph 33 above) and, at the same time, he was the sole judge in the case. In such circumstances, the Court finds that the summary trial presented even clearer structural independence and impartiality problems than those established in the above-cited *Findlay* case. The proceedings before the Commanding Officer were, consequently, unfair (*Grievés v. the United Kingdom* [GC], no. 57067/00, § 91, ECHR 2003-XII). Such defects could not be corrected by a subsequent review other than a first instance hearing which met the requirements of Article 6 § 1 of the Convention (the above-cited *Findlay* case, § 79). There has, therefore, been a breach of the independence, impartiality and, consequently, fairness requirements of Article 6 § 1 of the Convention.

47. Moreover, the Court considers that the additional complaint under Article 6 § 3(c) of the Convention about the exclusion of legal representation from summary trials should be considered separately from the structural breaches of Article 6 § 1 of the Convention established above. In this respect, it is recalled that the Convention requires that a person charged with a criminal offence (see paragraphs 32 and 42 above) who does not wish to defend himself in person must be able to have recourse to legal assistance of his own choosing (*Campbell and Fell v. the United Kingdom*, judgment of 28 June 1984, Series A no. 80, § 99 and *Pakelli v. Germany* judgment of 25 April 1983, Series A no. 64, § 31). The Court finds that the exclusion of legal representation from the applicant's summary trial constituted a violation of Article 6 § 3(c) of the Convention (*Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, § 64 and

*Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, §§ 131-134, ECHR 2003-X.

There has therefore also been a violation of Article 6 § 3(c) of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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. Non-pecuniary damage

49. The applicant claimed 5000 pounds sterling (“GBP”) compensation for non-pecuniary damage. The Government considered it speculative to suggest that different arrangements for his pre-trial detention or trial would have meant that he would not have been detained before his trial or convicted and sentenced as he was.

50. The Court recalls that just satisfaction can be awarded only in respect of damage resulting from a deprivation of liberty that the applicant would not have suffered if he had had the benefit of the guarantees of Article 5 § 3 of the Convention. The Court does not find that the evidence in the present case (see the other criminal charges pending against him on 30 January 1997 – paragraphs 10-11 above) gives any reason to suppose that pre-trial detention would not have occurred had the applicant’s remand been a matter within the competence of a judicial officer who did offer the guarantees of Article 5 § 3 (*Huber v. Switzerland*, judgment of 23 October 1990, Series A no. 188, §§ 45-46, the above-cited *Hood* judgment at §§ 84 and 85 and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 76, ECHR 1999-II).

51. As in the above-mentioned *Findlay* case (at §§ 85 and 88) and the above-cited *Ezeh and Connors* judgment (at §§ 141-143), the Court considers that it is impossible to speculate as to the outcome of the proceedings against the applicant had the violations of Article 6 §§ 1 and 3 of the Convention not occurred.

52. Accordingly, the Court finds that the present judgment in itself constitutes sufficient just satisfaction for any non-pecuniary damage arising from the violations established of Articles 5 and 6 of the Convention.

## **B. Costs and expenses**

53. The applicant submitted a bill of costs in the amount of GBP 6139.38 (inclusive of value-added tax – “VAT”). The Government considered this to be excessive and suggested that a reasonable figure would be GBP 3000 (inclusive of VAT). They referred, *inter alia*, to the number of hours of legal work billed as regards the applicant’s response to the Government’s first observations, to the similarity between this case and the above-cited *Hood* case for which latter applicant the present representative also acted and to the fact that certain complaints were declared inadmissible (under Article 5 §§ 4 and 5, Article 6 § 3(a) and (b) and Article 13 of the Convention).

54. The Court recalls that that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, for example, *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX).

55. The Court notes that it is not the case that the inadmissibility of a complaint means, without more, that the associated legal costs were not necessarily incurred (the above-cited *Jordan* judgment, § 42). However, the bulk of the legal work in the present case was completed after the adoption of the judgment in the *Hood* case (on 18 February 1999), the central relevance of which judgment is evident from the Court’s reasoning above. The similarity of the present and the *Hood* cases is all the more relevant given that both applicants had the same legal representative. Further, the Court considers excessive the number of hours (25) for which that representative has billed in respect of the applicant’s response to the Government’s first observations in the case.

56. Deciding on an equitable basis, the Court awards the sum of 5000 euros (“EUR”) in respect of costs and expenses and inclusive of any VAT which may be chargeable, which amount is to be converted into GBP at the rate applicable on the date of settlement.

## **C. Default interest**

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

**FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 3(c) of the Convention;
5. *Holds* that the findings of a violation of Articles 5 and 6 constitute in themselves sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
6. *Holds*
  - (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 5000 (five thousand euros) inclusive of VAT in respect of costs and expenses, to be converted into GBP 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Matti PELLONPÄÄ  
President