



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

FOURTH SECTION

CASE OF BEET AND OTHERS v. THE UNITED KINGDOM

(Applications nos. 47676/99, 58923/00, 58927/00, 61373/00 and 61377/00)

JUDGMENT

STRASBOURG

1 March 2005

FINAL

06/07/2005

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 Beet and Others v. the United Kingdom,

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

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Mr J. BORRERO BORRERO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 21 October 2003 and on 1 February 2005,

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

PROCEDURE

1. The case concerned five applications (nos. 47676/99, 58923/00, 58927/00, 61373/00 and 61377/00) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ms Julie Beet and four others ("the applicants"), who are United Kingdom nationals, on various dates from 1 April 1999 to 13 February 2001.

2. The applicants, several of whom had been granted legal aid, were represented by Dicksons HMB, solicitors practising in Stoke-on-Trent. The United Kingdom Government ("the Government") were represented by their Agent, Ms Emily Willmott of the Foreign and Commonwealth Office, London.

3. The applicants alleged that their detention ordered by the magistrates for failure to pay local taxes or court-imposed fines were unlawful contrary to Article 5 § 1 of the Convention and that they had not been entitled to compensation under domestic law contrary to Article 5 § 5 of the Convention. They further complained under Article 6 §§ 1 and 3 (c) that they were not offered legal representation and were not represented at the hearing at which they were sentenced to a term of imprisonment.

4. The applications were 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.

5. On 1 November 2001, these cases were assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 21 October 2003, the Court declared admissible the claims under Article 5 of the applicant *Beet* (47676/99) and the claims under Article 6 of all the applicants, except *Beet* (47676/99). The remainder of the applicants' complaints were declared inadmissible.

7. The applicants 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. On 1 November 2004 these cases were assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

8. The details concerning the date of birth and place of residence of the five applicants are contained in their application forms and are available in the respective case files.

9. Each applicant failed to pay sums due in respect of either local taxes (community charge or council tax), or court-imposed fines. In respect of the failure to pay local taxes, the magistrates' court had in each case determined that the applicant was liable to pay (issuing a "liability order"); in fines cases, the magistrates' court had imposed the fine as the sentence following a criminal conviction.

10. Each applicant fell into arrears with the payments due from them. These cases involve the enforcement proceedings in respect of their arrears in the magistrates' court. Each applicant appeared before the court, following the issuing of an application for their committal to prison as a result of their failure to pay the sums due. At that hearing the magistrates found that the non-payment was due to the applicant's wilful refusal or culpable neglect. As a result each applicant was sentenced to a period of imprisonment, suspended on terms that the applicant make periodic payments towards the outstanding sum. The applicants failed to comply with the terms imposed. A further hearing was thereafter held in the magistrates' court at which the suspended term of imprisonment was activated. Each applicant spent a period of time in prison. Legal aid (free legal representation where the applicant did not have sufficient means to pay for it) was not available for these enforcement proceedings prior to 1 June 1997 and none of the applicants was legally represented at the hearings in front of the magistrates.

11. Following their imprisonment, an application was made on behalf of each applicant, by way of either judicial review or case stated, which resulted in the High Court quashing the orders made by the magistrates. The applicants were released from prison on bail at the time of making their applications to the High Court. In all five cases the orders were quashed following the High Court's approval of a consent order agreed between the applicants and the magistrates who had sentenced them.

12. The Court has set out the relevant facts pertaining to each applicant in the table which appears at the end of the decision on admissibility (47675/99, *McAndrew and Others v. the United Kingdom*, decision of 21 October 2003). That table sets out the following information in respect of each applicant: their name and application number; whether their case involved non-payment of community charge ("CC"), council tax ("CT") or fines ("F") and the number of days which they spent in prison; whether their proceedings in the magistrates' court took place before or after legal aid became available on 1 June 1997; and the grounds upon which the High Court quashed the orders of the magistrates. A summary of the terms of the consent order whereby the orders of the magistrates were quashed is also set out in the table.

13. Throughout the text of this decision, where there is a reference to a specific applicant, the Court has set out the surname of the applicant followed by their application number in brackets. The words "justices" and "magistrates" are synonymous in domestic law.

14. The Court sets out the facts of one case more fully below.

Julie BEET (47676/99)

15. The applicant's proceedings before the magistrates arose in respect of her arrears in payment of the community charge and took place after 1 June 1997. She spent a total of 2 days in prison. The orders of the magistrates' court were quashed by the High Court as a result of a consent order in which it was agreed that:

"(i) The decision of the justices that the applicant had culpably neglected to pay her community charge without having conducted a proper inquiry into her circumstances as of the time that the liability became due was unlawful, see *R. v. Leeds Justices ex parte Kennett* [1996] RVR 53.

(ii) The decision of the justices to issue a sentence of committal to prison and to make an order postponing the issue of the warrant that would have left the threat of imprisonment over her for over 4 years was unlawful having regard to the principles laid down in *R. v. Oliver and Oliver* [1989] 11 Cr App R(S) 10 and *R. v. Ealing Justices ex parte Cloves* [1991] RVR 169 and *R. v. Newcastle upon Tyne Justices ex parte Devine* [1998] RA 97.

(iii) In view of the circumstances of the applicant and [her] detention, and the period of detention served, all parties agreed that the matter be remitted back to the magistrates and that the magistrates, upon reviewing the matter, agreed to remit the

outstanding community charge arrears, see Brooke LJ in *R. v. St Helens Justices ex parte Jones* CO/3328/95.”

In respect of costs, it was further agreed that:

“... in view of the fact that the Hull Justices had acknowledged the same ground in quashing the committal in *R. v. Hull Justices ex parte Shawcross* (CO/265/98) costs be borne by the respondent justices see *R. v. Newcastle upon Tyne Justices ex parte Devine* [1998] RA 97.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant statutory provisions and domestic case-law are set out in *Lloyd and Others v. the United Kingdom*, nos. 29798/96 and others, judgment of 1 March 2005, §§ 35-87; hereinafter “*Lloyd*”). Of additional relevance in this case is the case-law set out below.

The length of the threat of imprisonment

17. In *R. v. Ealing Justices ex parte Cloves* [1991] RVR 169, the Divisional Court held that a committal order which had been suspended on the basis of the debtor paying one pound sterling (GBP) per week in discharge of the arrears of rates due was quashed since it would have taken over eight years for the debt to be discharged and the risk of committal removed. During the course of his judgment, Lord Justice Nolan stated as follows:

“ ... The criminal courts, when imposing fines upon convicted defendants of limited means, frequently provide for the fines to be paid by instalments over a period. There is no fixed limit to the period over which payment can be ordered. It has recently been indicated by the Court of Appeal that in appropriate circumstances a period of three years might not be excessive. ...

... In my judgment it would be a very rare case indeed in which a defaulting rate-payer could properly be ordered, on pain of a sentence of imprisonment, to make payments in discharge of the arrears for a period anywhere near approaching eight years. In my judgment, with great respect to the Justices, unless they were confident that she could pay it off more quickly they should not have made the order in those terms.”

18. In the above-cited case of *R. v. Newcastle-upon-Tyne Justices ex parte Devine*, Mr Justice Latham referred to the above-cited *ex parte Cloves* case in stating that the magistrates should not have imposed a suspended committal order which would have lasted for three and a half years. He was of the opinion that such an order should not be suspended for more than three years.

THE LAW

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

19. The Court declared admissible the complaint of applicant *Beet* (47676/99) that her detention was unlawful and contrary to Article 5 § 1 of the Convention which reads, in so far as relevant:

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

...

(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;”

A. The parties’ submissions

1. *Beet* (47676/99)

20. The applicant noted from the consent order agreed in her case that her costs were to be paid by the justices. She referred to the domestic case of *R. v. York City Justices ex parte Farmery* (see *Lloyd*, cited above, § 20) to submit that it was only in the most exceptional circumstances that the High Court ordered that costs were to be paid by magistrates. The applicant submitted that, given that the high threshold for a costs order was met in her case, the high ‘jurisdictional’ threshold imposed in *Benham* was also satisfied.

21. She further submitted that a perfunctory enquiry equated to no enquiry at all or disclosed a “gross and obvious irregularity”. She referred to the above-cited cases of *R. v. Manchester City Magistrates’ Court ex parte Davies*, *R. v. Stafford Justices ex parte Johnson*, *R. v. South Tyneside Justices ex parte Martin*, *R. v. Woking Justices ex parte Johnstone* and *DPP v. Meara*, cited in *Lloyd*, §§ 32, 48-50, 54). A failure to undertake an appropriate inquiry, or to follow the conditions precedent set out in the statutory provisions rendered the determination of the magistrates outside their jurisdiction and therefore in breach of Article 5 § 1. The applicant further referred to the domestic case of *R. v. Leeds City Justices ex parte Kennett* (cited in *Lloyd*, § 52) to submit that it was a condition precedent for the magistrates to inquire into the circumstances of an applicant at the time at which each liability order was made.

2. *The Government*

22. The Government submitted that magistrates acted without jurisdiction if they failed to carry out the inquiries into means required by regulation 41(2) of the Community Charge (Administration and Enforcement) Regulations 1989 (Statutory Instrument 1989/438) (cited in *Lloyd*, § 38) but that they acted within their jurisdiction if they carried out those inquiries, even if the manner in which they did was inadequate or otherwise such as to render the warrant liable to be quashed on the basis that they had not carried out a proper inquiry. The terms of the consent order showed that the magistrates accepted that they did not conduct a proper inquiry, but not that they failed to conduct any inquiry. Nor could it be said in the circumstances of this case that the errors disclosed any “gross and obvious irregularity”.

B. The Court’s assessment

1. *General principles*

23. The Court recalls the following general principles that were stated at paragraphs 39-44 of *Benham v. the United Kingdom* (judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 738; hereinafter “*Benham*”) and reiterated, in large part, at paragraph 62 of *Perks v. the United Kingdom* judgment (nos. 25277/94 and others, 12 October 1999; hereinafter “*Perks*”):

“39. The Court first observes that this case falls to be examined under subparagraph (b) of Article 5 para. 1, since the purpose of the detention was to secure the fulfilment of Mr Benham’s obligation to pay the community charge owed by him.

40. The main issue to be determined in the present case is whether the disputed detention was ‘lawful’, including whether it complied with ‘a procedure prescribed by law’. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness ...

41. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with.

42. A period of detention will in principle be lawful if it is carried out pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention. For this reason, the Strasbourg organs have consistently refused to uphold applications from persons convicted of criminal offences who complain that

their convictions or sentences were found by the appellate courts to have been based on errors of fact or law.

43. It was agreed by those appearing before the Court that the principles of English law which should be taken into account in this case distinguished between acts of a magistrates' court which were within its jurisdiction and those which are in excess of jurisdiction. The former were valid and effective unless or until they were overturned by a superior court, whereas the latter were null and void from the outset.

It was further submitted that the appropriate test under English law for deciding whether or not magistrates acted within their jurisdiction was that laid down by the House of Lords in *McC. v. Mullan* ... The third limb of that test was relevant to the instant case, namely that magistrates exceeded their jurisdiction when they made an order which had no foundation in law because of a failure to observe a statutory condition precedent.

This limb was applied by the Court of Appeal in *Manchester City Magistrates' Court, ex parte Davies* ... In that case the appeal court found that magistrates had acted in excess of jurisdiction when they committed a man to prison for non-payment of rates without having carried out the inquiry required by law as to whether his failure to pay was due to culpable neglect.

44. In each of the two cases referred to above it was necessary for the courts to decide the jurisdictional issue, because at the relevant time damages could be awarded against magistrates who acted in excess of jurisdiction. However, section 108 of the Courts and Legal Services Act 1990 has since changed the law to provide that there is no right to damages unless magistrates acted in bad faith ... For this reason, when the Divisional Court reviewed the magistrates' order for Mr Benham's detention, there was no reason under English law for it to decide whether or not the order had been made in excess of jurisdiction."

24. The Court has considered, and rejected in its decision on admissibility of 21 October 2003, the applicant's arguments that the cases of *Benham* and *Perks* were wrongly decided on the basis that the distinction drawn between decisions to detain which were within and outside the jurisdiction of the sentencing tribunal was artificial and erroneous. It finds no basis on which to re-open this assessment.

25. It examines below, in light of those principles, the circumstances of this application.

2. Application to the present case

26. In this case the order of the magistrates was quashed following a consent order agreed between the applicant and the magistrates, which referred to the decision of the justices that the applicant had culpably neglected to pay her community charge as being unlawful due to a failure to conduct a proper means inquiry as of the time that the liability became due.

27. The Court recalls that the express words of regulation 41(2) of the 1989 Regulations require a magistrates' court to inquire into an applicant's means in her presence and to inquire whether the failure to pay which led to

the liability order concerned being made was due to a wilful refusal or culpable neglect. The regulation 41(2) inquiry was held to be a statutory condition precedent to the exercise by the magistrates of their power to issue a warrant of commitment in the domestic case of *ex parte Davies*; it was also stated to be an express condition precedent to the magistrates' jurisdiction in the judgment of the Court in *Perks* (judgment cited above, § 41).

28. As the Government pointed out, it cannot be deduced from the order in this case that no inquiry at all was carried out as opposed to an inadequate one. However, the Court recalls that in the domestic case of *ex parte Johnson*, where there had not been a proper means inquiry, the order committing the applicant to prison was held to be "entirely vitiated" (see *Lloyds*, § 49). The quotation further confirms that the means inquiry required by regulation 41(2) was at the centre of the enforcement procedure which was laid down by the 1989 Regulations, and that, without it, the magistrates plainly could not properly arrive at a conclusion as to whether the failure to pay had been due to the applicant's wilful refusal or culpable neglect. The Court recalls that the *ex parte Johnson* case was subsequently considered by the Commission, which unanimously concluded that it could be said, with the practically possible degree of certainty, that the magistrates had acted in excess of jurisdiction in the circumstances of that case and that therefore there had been a violation of Article 5 of the Convention (*Johnson v. the United Kingdom*, Commission report of 9 September 1998, see §§ 41-44). The Court further notes that in the domestic case of *Meara v. DPP* (see *Lloyd*, § 50) "the holding of a full means inquiry" was held to be an essential prerequisite of a finding of culpable neglect. The Government have not been able to point to any previous case which draws a distinction, under the applicable regulations, between the holding of no means inquiry and no proper means inquiry, as being a distinction of decisive importance for the question whether or not there has been a breach of a condition precedent or a lack of jurisdiction.

29. Furthermore, while it is true that there have been no judicial determinations as such that no proper means inquiry was held, the Court considers that the consent order which was agreed by the parties must be regarded, for the purposes of the present applications, as equivalent to a finding by the court. It is not required for the applicant to establish that the concessions made by the magistrates were justified.

30. The Court therefore concludes that the lack of proper means inquiry in the present application can only logically mean that the inquiry required by the legislation was not undertaken and therefore that the magistrates' order must be regarded as having been made in excess of jurisdiction within the meaning of domestic law. The detention of the applicant under that order was, as a result, unlawful and there has been a breach of Article 5 § 1 of the Convention.

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

31. Article 5 § 5 of the Convention provides:

“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.”

32. The applicant *Beet* (47676/99) submitted that she had no opportunity under domestic law of recovering damages for her unlawful imprisonment.

33. The Government stated, that if the Court found a violation of Article 5 § 1 of the Convention, they would not, in light of the terms of domestic legislation, make any submissions on this head. They would however draw the Court’s attention that from 2 October 2000 the Human Rights Act 1998 provided to anyone imprisoned in violation of Article 5 a right to claim such compensation as the Crown would be liable to pay under Article 5 § 5 of the Convention.

34. The Court recalls that it has found above that this applicant was detained unlawfully in breach of Article 5 § 1. It is not contested that there was no enforceable right to compensation in domestic law for that detention. There has, accordingly, been a violation of Article 5 § 5.

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

35. The Court declared admissible the complaints of the applicants, *Fogg* (58923/00), *Moore* (58927/00), *Telfer* (61373/00) and *Rigby* (61377/00) under Article 6 §§ 1 and 3 (c) that they were not offered legal representation and were not represented at the hearing at which they were sentenced to a term of imprisonment.

36. Article 6 reads, in so far as relevant, as follows:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ...

...

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”.

37. The parties were in agreement that the considerations relevant to the present complaints under Article 6 concerning the availability of legal aid were examined by the Court in *Benham* (§§ 57-64) and in *Perks* (§§ 75-76)

and the Government accepted that in these cases there was no feature to distinguish them from the findings in those cases.

38. The Court observes that it is not in dispute that the proceedings before the magistrates fell within the scope of Article 6 §§ 1 and 3(c) of the Convention and that the applicants were not given free legal representation at the hearings which decided on their committal to prison. The Court recalls that where deprivation of liberty is at stake, the interests of justice in principle call for legal representation (e.g. *Benham*, § 61).

39. The Government have not contested that legal aid for free legal representation was not available for these applicants before 1 June 1997 at which point they introduced regulations to make provision for legal aid before a magistrates' court following *Benham* (see *Lloyd*, § 87). Nor is it contested that what was at stake for them and the complexity of the issues before the magistrates, as in *Benham*, required that in order to receive a fair hearing these applicants ought to have benefited from free legal representation during the proceedings before the magistrates which led to their committal to prison.

40. There has, accordingly, been a violation of Article 6 §§ 1 and 3(c) of the Convention in these cases.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

1. The parties' submissions

(a) The applicants

42. The applicant *Beet* (47676/99) claimed compensation for non-pecuniary loss, not only for her loss of liberty but also for the absence of any enforceable rights to compensation in the domestic courts. The remaining four applicants, *Fogg* (58923/00), *Moore* (58927/00), *Telfer* (61373/00) and *Rigby* (61377/00), claimed compensation for non-pecuniary damage for the absence of free legal representation in the proceedings which led to their detention in those cases where there was a causal link between the Article 6 violation and the imprisonment. Even where the

complaints under Article 5 had been found inadmissible, it was submitted that compensation should be paid for breaches of Article 6 as there was a causal link between the breach and the committal. At the time of the applicants' committals, the case law was so overwhelming and clear that any competent lawyer would have been able to show the justices that it was wrong in principle to commit the applicants to prison. Representation would therefore have made a difference. Further, they pointed out that they made use of legal representation as soon as they were able and where the High Court quashed the committal orders, none of the applicants was returned to prison

43. As regarded the level of awards, they submitted that they should be paid the compensation which should have been available but for the immunity of the magistrates under section 108 of the Courts and Legal Services Act 1990: otherwise the Government would profit from their breach. Even where the complaints under Article 5 had been declared inadmissible, the facts were so similar to domestic cases that it would unfairly prejudice the applicants to award less. These domestic scales, as represented on a graph, varied from 500 pounds sterling (GBP) for the first hour to GBP 25,000 for 42 days. In many cases there were additional aggravating features, causing distress and suffering above that ordinarily associated with imprisonment: they proposed that they fell in certain cases within the minor or moderate categories, entitling them to additional awards of between GBP 750 and GBP 10,000.

Accordingly they made the following claims:

Beet (47676/99): the applicant, a mother of two children, was committed without warning and spent two days in prison at a time that she was taking medication for depression which worsened after leaving prison: she claimed GBP 4,000 for loss of liberty and GBP 1,500 for suffering caused by separation from her children and worsening of her mental health;

Fogg (58923/00): the applicant, a mother of five children, was committed to prison for two days for non-payment of only GBP 20: she claimed GBP 4,000 for loss of liberty and GBP 1,000 for separation from her children;

Telfer (61373/00): the applicant, under 21 at the time, spent seven days in prison and shared a cell with a prisoner who made a suicide attempt, which was a traumatic experience for the applicant: he claimed GBP 6,750 for loss of liberty and GBP 3,000 for extreme suffering and distress resulting from the circumstances of his detention;

Moore (58927/00): the applicant, partially blind, was the main carer for his wife who suffered from rheumatoid arthritis and spent three days in prison, following which he suffered severe depression and took an overdose in a suicide attempt: he claimed GBP 4,500 for loss of liberty and GBP 2,000 for severe distress caused by that imprisonment;

Rigby (61377/00): the applicant was the mother of two very young children (aged six months and two years) and was caused severe anxiety by having to leave them during one day's imprisonment, suffering from depression for a short while on her release: she claims GBP 3,400 for loss of liberty and GBP 1,500 for severe distress resulting from the separation from her children and the effect on her mental health.

(b) The Government

44. The Government noted that none of the applicants had submitted documents in support of their claims. They submitted that in any case the applicants had not established that their imprisonment was caused by the alleged violations of Articles 5 or 6 and that the Court could not speculate as to whether the applicants would have been detained if there had been no violation. They also invited the Court to follow its practice in Article 5 and 6 cases in holding that the finding of a violation constituted sufficient just satisfaction. While as in *Perks* there might, in some individual cases, be exceptional circumstances enabling such a conclusion without engaging in speculation, this was not the case here. They also emphasised that the majority of the applicants had not paid the taxes or fines due and that their failure to pay had been found to be the result of wilful refusal or culpable neglect.

45. Even assuming the Court was to find a causal link, the Government submitted that the award of damages should be made on an equitable basis and not by reference to domestic levels. It was not required by Convention case-law to apply domestic rates and findings of violations of Article 5 § 5 did not lead to an automatic award of financial compensation. The measure of domestic damages would not be tort based as alleged but flow from the claim for damages under the Human Rights Act 1998. They did not accept the applicants' graph of awards, as it was based only on two cases and did not reflect the necessary flexibility. The sums claimed were also disproportionate when compared with awards in other Article 5 cases.

2. The Court's assessment

46. As concerns the breach of Article 5 found in respect of *Beet* (47676/99), the Court recalls that it found that the detention was unlawful in that the magistrates did not have jurisdiction to make the order of committal due to a failure properly to inquire into the applicant's means. It is true, as pointed out by the Government, that in cases concerning procedural defects under Article 5, in particular Article 5 §§ 3 and 4, the Court has held that just satisfaction was to be awarded only in respect of damage resulting from a deprivation of liberty that the applicant would not have suffered if he or she had had the benefit of the missing guarantees (*e.g. Nikolova v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II, § 76). However where there are findings of unlawfulness in the detention itself under the first paragraph of

Article 5, it may be noted that generally the Court makes an award which reflects the importance of the right to liberty which should not be removed save under the conditions provided for in domestic law and in conformity with the rule of law. As well as the length of the detention, the degree of arbitrariness disclosed by the circumstances of the case may be a factor influencing the appropriateness of making any award (e.g. *Conka and Others v. Belgium*, no. 51564/99, ECHR 2002-I; *Assanidzé v. Georgia*, no. 71503/01, ECHR 2004-...). Domestic scales of damages are not decisive, or, in all cases, relevant to applications under the Convention.

47. In the present case, making an assessment on an equitable basis, therefore, the Court considers it appropriate to make an award to this applicant. Having regard to the circumstances, including the lack of substantiation or supporting documents, the Court awards EUR 5,000.

48. As regards violations of Article 6, the Court's case-law indicates that it will not speculate as to what might have occurred had there been no breach of the procedural guarantees of this provision (the above-cited *Benham* judgment, § 68, and *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, §§ 84-88) unless it finds special features in the case amounting to a "real loss of opportunity" (*Perks*, §§ 80-81, and *Goddi v. Italy*, judgment of 9 April 1984, Series A no. 76, § 35).

49. In the *Goddi* case, both the applicant and his representative had been prevented from attending the relevant court hearing where his sentence had been increased, and it was considered that such a loss of real opportunity warranted the award of just satisfaction (§ 35 of that judgment). In *Perks*, the Court saw no reason to disregard the Government's concession that the situation of Mr Perks was exceptional given that the appeal court had found it unlikely that the magistrates' court would have committed him to prison if they had known more about his health problems and personal circumstances, matters to which, the Government had also accepted, a reasonably competent solicitor would have drawn the magistrates' court's attention. An award for non-pecuniary loss was therefore made to Mr Perks. It is noteworthy that the Court went on to find that there was no basis to speculate, as regards the other applicants in *Perks*, as to the outcome of their proceedings before the magistrates' courts, and found that the finding of a violation constituted sufficient just satisfaction.

50. In the present cases, the Court finds that there is similarly no basis to speculate as to the outcome of the proceedings and is unable to find any factor in the present cases which could justify a departure from the above approach. There is no finding as in the case of Mr Perks, whether in a High Court judgment or by agreement of the parties in a consent order, that it was unlikely that the magistrates would have committed the applicants to prison, whether as a result of having greater knowledge about their circumstances or otherwise. While the applicants argue generally that a reasonably competent solicitor would have made a difference in their cases and that the

High Court, once they were represented, quashed the committal decisions, this was also the position for the other applicants in *Perks*. The Court cannot engage in speculation as to which domestic cases it was likely that the applicant's representative would have brought to the attention of the magistrates nor what action the magistrates would have taken had they been referred to those cases. It requires a more concrete indication that the detention would not have occurred but for the lack of legal aid for representation before the magistrates.

51. Accordingly, it considers that the finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention constitutes, in itself, sufficient just satisfaction for any non-pecuniary damage sustained by these four applicants.

B. Pecuniary damage

52. The applicant *Telfer* (61373/00) claimed pecuniary damage as he was dismissed from his job at the Department of Social Services, earning GBP 27,500 per annum, when he was committed to prison and absent without explanation. Following his release, he was unable to find employment for ten months. He claimed GBP 20,000 for loss of earnings.

53. The Government pointed out that there had been no Article 5 breach in this case and that the applicant had failed to prove that he would not have been detained but for the alleged violation of Article 6 §§ 1 and 3 (c) of the Convention. In any event, he had not produced evidence to substantiate any loss of earnings and any award made would have to take into account tax, national insurance and state benefits received.

54. The Court recalls that, as regards claims for pecuniary loss, its case-law establishes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, amongst other authorities, *Barberà, Messegue and Jabardo v. Spain* (former Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20; *Cakıcı v. Turkey*, judgment of 8 July 1999, *Reports* 1999-IV, § 127). Applying that approach to the present case, the Court finds that there has not been shown to be any causal link between the violation found and the damage claimed. No award is made.

C. Costs and expenses

1. *The parties' submissions*

(a) The applicants

55. The applicants claimed in respect of their solicitors' costs: *Beet* (47676/99) GBP 2,050.69; *Fogg* (58923/00) GBP 2,196.13; *Telfer* (61373/00) GBP 1,919.77; *Moore* (58927/00) GBP 2,152.52; and *Rigby* (61377/00) GBP 2,152.49, inclusive of value-added tax (VAT).

56. For counsel's fees, the applicants each claimed GBP 542.49, inclusive of VAT.

57. The applicant *Rigby* (61377/00) claimed in addition for costs incurred in the domestic legal system solicitors' fees of GBP 766.25 and counsel's fees GBP 556.95, also inclusive of VAT.

58. The applicants submitted that their claims were reasonable, their costs having been increased by the unnecessarily long and excessive submissions made by the Government. They accepted that account should be taken of awards of legal aid by the Council of Europe.

(b) The Government

59. The Government submitted that costs should only be awarded to each applicant for pursuing that part of their application which was successful, noting that much of their earlier submissions concerned Article 5, including unsuccessful argument that the Court's earlier case-law was wrongly decided.

60. The Government also submitted that the sums claimed were excessive. They pointed out that the applications followed a standard form, that the issues were limited and clearly defined by virtue of earlier cases and few involved preparation of statements or reports or the assembling of substantial quantities of evidence. The time or hourly rates claimed by the solicitors in some cases were excessive. Further the claims made no allowance for legal aid awarded by the Court and there was no explanation for the inability of *Rigby* (61377/00), unlike the others, to obtain legal aid.

2. *The Court's assessment*

61. The Court recalls 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, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II).

62. While the applications concerned differing factual situations and involved an analysis of considerable domestic case-law, the Court considers

that the issues in the applicants' cases were very similar and submissions necessarily covered the same ground. Although the cases have taken some time to be disposed of, they did not present any particular procedural complexity, apart from their number, involving no hearing or presentation of expert or witness evidence.

63. Accordingly, the Court concludes that the legal costs and expenses for which the applicants claim reimbursement, pursuant to Article 41 of the Convention, cannot, in all cases, be considered to have been "necessarily" incurred or to be "reasonable as to quantum" (see the *Observer and Guardian v. the United Kingdom* judgment of 26 November 1991, Series A no. 216, pp. 37-38, § 80).

64. In such circumstances and having regard to the awards made in similar cases, the Court makes the following awards, inclusive of VAT:

- to each applicant *Beet* (47676/99), *Fogg* (58923/00) and *Moore* (58927/00) EUR 1,716 (one thousand, seven hundred and sixteen euros) for solicitors' fees and EUR 570 (five hundred and seventy euros) for counsel's fees, less EUR 307 (three hundred and seven euros) for legal aid paid by the Council of Europe;

- to *Telfer* (61373/00) EUR 1,716 (one thousand, seven hundred and sixteen euros) for solicitors' fees and EUR 472 (four hundred and seventy-two euros) for counsel's fees.

- to *Rigby* (61377/00), EUR 2,804 (two thousand, eight hundred and four euros) for solicitors' fees and EUR 1,343 (one thousand, three hundred and forty-three euros) for counsel's fees, less EUR 307 (three hundred and seven euros) paid by way of legal aid from the Council of Europe.

D. Default interest

65. 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 § 1 of the Convention in the case of *Beet* (47676/99);
2. *Holds* that there has been a violation of Article 5 § 5 of the Convention in the case of *Beet* (47676/99);

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3(c) of the Convention in respect of *Fogg* (58923/00), *Moore* (58927/00), *Telfer* (61373/00) and *Rigby* (61377/00);
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants as concerns the breach of Article 6 §§ 1 and 3 (c);
5. *Holds*
 - (a) that in *Beet* (47676/99) where there has been a finding of a breach of Article 5 § 1 of the Convention the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) to be converted into pounds sterling at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement:
 - (i) to each applicant *Beet* (47676/99), *Fogg* (58923/00) and *Moore* (58927/00) EUR 1,716 (one thousand, seven hundred and sixteen euros) for solicitors' fees and EUR 570 (five hundred and seventy euros) for counsel's fees, less EUR 307 (three hundred and seven euros) for legal aid paid by the Concil of Europe ;
 - (ii) to *Telfer* (61373/00) EUR 1,716 (one thousand, seven hundred and sixteen euros) for solicitors' fees and EUR 472 (four hundred and seventy-two euros) for counsel's fees;
 - (iii) to *Rigby* (61377/00) EUR 2,804 (two thousand, eight hundred and four euros) for solicitors' fees and EUR 1,343 (one thousand, three hundred and forty-three euros) for counsel's fees.
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 1 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President