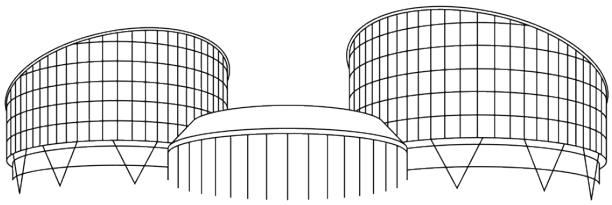

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 32968/11
Sabure MALIK
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 28 May 2013 as a Chamber composed of:

Ineta Ziemele, *President,*
David Thór Björgvinsson,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Paul Mahoney, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 18 May 2011,

Having regard to the request of the Government to deal with the admissibility of the case separately,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Sabure Malik, is a British national, who was born in 1979 and lives in Benfleet. He is represented before the Court by Ms C. Ferguson of Liberty, a lawyer practising in London. The United Kingdom Government ("the Government") were represented by their Agent, Ms Y. Ahmed, Foreign and Commonwealth Office.

A. The circumstances of the case

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

3. On 9 November 2010 the applicant flew to Saudi Arabia on an organised package tour to undertake the Hajj. On his return on 23 November 2010, he flew on Gulf Air from Jeddah, via Bahrain, to London Heathrow airport. The applicant was tired due to the five-hour flight and the change of aircraft in Bahrain. He also had a chest and ear infection and was taking antibiotics. Because of his attendance on Hajj, he had let his beard grow and had his head shaven.

4. Having exited from the aeroplane, the applicant proceeded to immigration control at Terminal 4 and presented his United Kingdom passport to the immigration officer at the passport desk in the normal way. At approximately 2.50 p.m. the applicant was approached by two police officers, one of whom told the applicant that he had been flagged for having two passports and that this was illegal. The applicant explained that he had been advised to apply for a second passport by the United Kingdom Passport Agency, since visa stamps from a previous trip to Israel would otherwise have led to the Saudi authorities denying him a visa for Hajj. The officer accepted this explanation, but asked the applicant to step into a side room.

5. Once in the room, the applicant was told to place his mobile phone on the desk. He was then patted down to discover whether he had any additional means of communication. At approximately 3 p.m. he was served with two notices: a "TACT 1" entitled "Notice of Examination under Schedule 7 of the Terrorism Act 2000", recorded as served at 15.00 and a "TACT 2" entitled "Notice of Detention", recorded as served at 15.01. The latter specified that he had been detained "under paragraph 6 of Schedule 7 to the Terrorism Act 2000", his duties under the Act, the risk of criminal penalty for non-compliance, and his right to inform someone of his detention or consult with a solicitor. The applicant requested that his mother be informed and was advised to arrange for a solicitor to assist him.

6. One of the police officers made it clear to the applicant that he was not known to the police and that there was no reason to detain him other than his possession of two passports. The applicant was subsequently asked a few questions, mostly pertaining to his identity. He confirmed his name, date of birth, address and other basic information requested. The only question which the applicant refused to answer was what religion he followed, which the applicant considered to be a ridiculous and insulting question given that he had just returned on a flight from Saudi Arabia filled with Hajj pilgrims. The applicant also refused to consent to providing DNA material and fingerprints, although he said he would not resist them being

taken. He was told he would be taken to a police station where the officers would have the power to compel this.

7. The applicant was then marched through the terminal by the police officers, in plain view of all of his fellow Hajj group members. He felt humiliated by the group members seeing him treated like a common criminal. Placed in the back of a police van, the lack of food and sleep coupled with anxiety and the cold in the van led him to feel unwell. Upon arrival at Heathrow police station, the officer who opened the van referred to the applicant as "the prisoner" and had him booked into the station at 4.36 p.m.

8. The Custody Officer's risk assessment and detention log recorded the applicant as in need of a doctor or other health care professional because of a chest and ear infection. Following the receipt of basic telephone advice from his solicitor, advising him to answer questions but not to answer any to do with his religion or beliefs, he was then obliged to give a mouth swab for DNA and his fingerprints on the authority of the relevant officer holding the rank of superintendent.

9. The applicant was taken to an interview room where his luggage was examined by the two officers from Heathrow airport. His mobile phone, credit cards, bank details, underwear, clothes and work pass were all exposed. His Qu'ran was hung upside down, shaken and flicked through, in a manner that he regarded as extremely disrespectful. Everything of interest, including pieces of paper, gifts from Saudi Arabia, bank cards, his work pass and phone containing personal text messages, was placed on the table. He was questioned briefly about some of these items.

10. A tape recorded interview began at 6.19 p.m. He was questioned about his trip, including what he did and where he stayed in Saudi Arabia, and he was again asked to explain why he had two passports. The applicant was also questioned in detail on matters including where else in the world he had travelled, whether he had voted in the last general election and why he had a commercial credit card, as well as such matters as his business accounts, his salary and his personal email address. The interview was concluded at 6.44 p.m. Questioning also took place before and after the recorded interview. The applicant protested during this time that the powers used were disproportionate.

11. At 7.20 p.m. the applicant was released. He was refused transport back to Terminal 4 and was left to find a bus. Copies were taken of all his paperwork and credit cards, and his sim cards and mobile phone were retained and only returned to him eight days later by a courier organised and paid for by the applicant, after the police refused to do so. Two local officers attended his house on 3 December 2010 in relation to this.

12. The entire incident left the applicant feeling humiliated and ruined his Hajj experience. All the friends he made during the experience ceased

contact with him after seeing him detained at the airport. He had never been arrested or detained by the police before this.

13. On 24 November 2010 the applicant made a complaint about his detention to Lord Carlile of Berriew QC, the Independent Reviewer of the Terrorism Legislation. The Reviewer is required under section 36 of the Terrorism Act 2006 to review the workings of counter-terrorism legislation including the use of the powers under Schedule 7 (see below). The applicant's complaint was passed on to a Detective Inspector engaged in counter-terrorism work, who investigated the matter. The Detective Inspector sent the applicant a report of his investigation's findings on 7 January 2011, having reviewed documentation generated in the search and "spoken to or directly corresponded with the officers concerned" and considered "all the available facts". The report confirmed that it was the understanding of the police that, having submitted to ordinary passport control, "an examination began under schedule 7 of the Terrorism Act at 2.50 pm" and that the applicant was "detained for examination at 3.01 at which time [he was] served with the Terrorism Act form 1 and 2 informing [him] of his rights and what actions were being taken (as required by the legislation)". The Detective Inspector stressed that under schedule 7, the officer "does not require any reasonable grounds to stop a person and conduct any such examination" and concluded that, in stopping and questioning the applicant and in taking DNA samples and fingerprints, the officers had acted appropriately within the terms of the legislation.

14. The applicant has not brought any proceedings in the domestic courts to challenge the measures applied to him by the police following his arrival at Heathrow.

B. Relevant domestic law and practice

1. Schedule 7 to the Terrorism Act 2000

15. Paragraph 2 of Schedule 7 to the Terrorism Act 2000 ("Schedule 7") empowers an examining officer to question a person arriving or leaving a port or border area, for the purpose of establishing whether he or she appears to be, or to have been, concerned in the commission, preparation or instigation of acts of terrorism, whether or not the examining officer has grounds for suspicion. The "examining officer" may be a police constable, an immigration officer or a designated customs officer.

In accordance with paragraph 6 of Schedule 7:

> "(1) For the purposes of exercising a power under paragraph 2 or 3 an examining officer may -
>
> (a) stop a person or vehicle;

(b) detain a person.

(2) For the purpose of detaining a person under this paragraph, an examining officer may authorise the person's removal from a ship, aircraft or vehicle.

(3) Where a person is detained under this paragraph the provisions of Part I of Schedule 8 (treatment) shall apply.

(4) A person detained under this paragraph shall (unless detained under any other power) be released not later than the end of the period of nine hours beginning with the time when his examination begins."

The officer may also search the individual and his possessions and belongings, by virtue of paragraph 8. A search of the person must be carried out by an officer of the same sex as the person searched. Any article given to or found by the examining officer may be retained for examination for up to seven days. Paragraph 10 permits the taking of fingerprints and non intimate samples without consent.

16. Paragraph 5 of Schedule 7 places obligations on the person being questioned, to (a) give the examining officer any information in his possession which the officer requests; (b) give the examining officer on request either a valid passport which includes a photograph or another document which establishes his identity; (c) declare whether he has with him documents of a kind specified by the examining officer; and (d) give the examining officer on request any document which he has with him and which is of a kind specified by the officer.

Paragraph 18 provides that a person commits a criminal offence if he or she wilfully fails to comply with a duty or contravenes a prohibition imposed under or by virtue of Schedule 7, or wilfully obstructs, or seeks to frustrate, a search or examination under or by virtue of the Schedule. The maximum penalty for commission of an offence under paragraph 18 is three months' imprisonment and/or a fine.

2. The Code of Practice

17. A Code of Practice has been issued pursuant to paragraph 6(1) of Schedule 14 of the Terrorism Act 2000. The paragraph includes the proviso at subparagraph (2) that a failure to observe a provision of the Code "shall not of itself" make an examining officer liable to criminal or civil proceedings. The current version of the Code was issued on 2009. Paragraphs 9 and 10 deal with the examination powers under Schedule 7:

"9. The purpose of questioning and associated powers is to determine whether a person appears to be someone who is or has been concerned in the commission, preparation or instigation of acts of terrorism. The powers, which are additional to the powers of arrest under the Act, should not be used for any other purpose.

10. An examining officer may question a person whether or not he suspects that the person is or has been concerned in the commission, preparation or instigation of an act

of terrorism and may stop that person for the purposes of determining whether this appears to be the case. Examining officers should therefore make every reasonable effort to exercise the power in such a way as to minimise causing embarrassment or offence to a person who is being questioned.

Notes for guidance on paragraphs 9 and 10

The powers to stop, question, detain and search persons under Schedule 7 do not require an examining officer to have any grounds for suspicion against any individual prior to the exercise of the powers. Therefore examining officers must take into account that many people selected for examination using Schedule 7 powers will be entirely innocent of any unlawful activity.

The powers must be used proportionately, reasonably, with respect and without unlawful discrimination. All persons being stopped and questioned by examining officers must be treated in a respectful and courteous manner.

Examining officers must take particular care to ensure that the selection of persons for examination is not solely based on their perceived ethnic background or religion. The powers must be exercised in a manner that does not unfairly discriminate against anyone on the grounds of age, race, colour, religion, creed, gender or sexual orientation. To do so would be unlawful. It is the case that it will not always be possible for an examining officer working at a port to know the identity, provenance or destination of a passenger until they have stopped and questioned them.

Although the exercise of Schedule 7 powers is not based on an examining officer having any suspicion against any individual, the powers should not be used arbitrarily. An examining officer's decision to exercise their Schedule 7 powers at ports must be based on the threat posed by the various terrorist groups active in and outside the United Kingdom. When deciding whether to exercise their Schedule 7 powers, examining officers should base their decisions on a number of considerations, including factors such as;

• known and suspected sources of terrorism;

• Individuals or groups whose current or past involvement in acts or threats of terrorism is known or suspected and supporters or sponsors of such activity who are known or suspected;

• Any information on the origins and/or location of terrorist groups;

• Possible current, emerging and future terrorist activity;

• The means of travel (and documentation) that a group or individuals involved in terrorist activity could use;

• Emerging local trends or patterns of travel through specific ports or in the wider vicinity that may be linked to terrorist activity.

Selections for examination should be based on informed considerations such as those outlined above and must be in connection with the threat posed by the various terrorist groups active in and outside the United Kingdom. A person's perceived

ethnic background or religion must not be used alone or in combination with each other as the sole reason for selecting the person for examination.

Schedule 7 powers are to be used solely for the purpose of ascertaining if the person examined is or has been concerned in the commission, preparation or instigation of acts of terrorism. The powers must not be used to stop and question persons for any other purpose. An examination must cease and the examinee must be informed that it has ended once it has been ascertained that the person examined does not appear to be or to have been concerned in the commission, preparation or instigation of acts of terrorism.

Unless the examining officer arrests the person using powers under the Act, a person being examined under Schedule 7 need not be cautioned."

3. Home Office Statistics on the operation of Schedule 7

18. Schedule 7 came into force in February 2001. In October 2010 the Home Office published for the first time statistics on the use of the power. The "Home Office Statistical Bulletin on the Operation of Police Powers under the Terrorism Act 2000" stated that in the year 2009/10 there were 85,557 examinations under Schedule 7, of which 2,687 lasted for more than one hour. The total number of examinations in previous years has not been published, but in response to a request under the Freedom of Information Act 2000 the Home Office disclosed statistics on the numbers of examinations which exceeded one hour. These indicate a steady increase in the use of Schedule 7 (from 1,190 in 2004 to 2,473 in 2008). Ethnicity records for Schedule 7 examinations only appear to have begun to be kept in April 2009, when the police service started to collect details of all Schedule 7 examinations including ethnicity. So-called "officer-defined" ethnicity indicates that while Asian individuals are 5.9% of the general population in England and Wales, they represent 27% of those examined (and 44% of those formally detained). African/Caribbean individuals represent 2.8% of the population, but 7% of those examined (and 9 % of those detained).

4. The Human Rights Act 1998

19. The Human Rights Act 1998 entered into force on 2 October 2000. Section 3(1) provides:

"So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights."

Section 4 of the 1998 Act provides (so far as relevant):

"(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility. ...

(6) A declaration under this section ... -

(a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it was given; and

(b) is not binding on the parties to the proceedings in which it is made."

Section 6 provides:

"(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if -

(a) as a result of one or more provisions of primary legislation, the authority could not have acted any differently; or

(b) in the case of one or more provisions of ... primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions. ..."

Section 8 concerns judicial remedies and provides:

"(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—

(a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and

(b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining—

(a) whether to award damages, or

(b) the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention. ...

(6) In this section—

‘court’ includes a tribunal;

‘damages’ means damages for an unlawful act of a public authority; and

‘unlawful’ means unlawful under section 6 (1).”

Section 10 provides:

“(1) This section applies if –

(a) a provision of legislation has been declared under section 4 to be incompatible with a Convention right and, if an appeal lies –

(i) all persons who may appeal have stated in writing that they do not intend to do so; or

(ii) the time for bringing an appeal has expired and no appeal has been brought within that time; or

(iii) an appeal brought within that time has been determined or abandoned; or

(b) it appears to a Minister of the Crown or Her Majesty in Council that, having regard to a finding of the European Court of Human Rights made after the coming into force of this section in proceedings against the United Kingdom, a provision of legislation is incompatible with an obligation of the United Kingdom arising from the Convention.

(2) If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility.”

COMPLAINTS

20. The applicant complained that the use of Schedule 7 powers in his case violated his rights under Articles 5 § 1 and 8 of the Convention.

THE LAW

21. The applicant submitted that the use of the Schedule 7 powers in his case violated his rights under Articles 5 § 1 and 8 of the Convention, which provide as relevant:

"**Article 5**

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; ...

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. The parties' submissions

22. The applicant submitted that the Schedule 7 procedure is compulsory and coercive, and that from the moment he was drawn aside by the first police officer and asked about his passport he was under total restraint, amounting to a deprivation of liberty within the meaning of Article 5 § 1. In addition, the detention, search and examination interfered with his right to respect for his private life under Article 8. The quality of the law which allowed for this examination and detention was insufficiently specific and concrete and was open to arbitrary and discriminatory use, because there was no requirement for the examining officer to act on a reasonable suspicion that the person detained was concerned in terrorism, giving rise to violations of Article 5 § 1 and 8. Moreover, the deprivation of liberty was not carried out for one of the reasons listed in subparagraphs (a) to (f) of Article 5 § 1. In particular, it was not effected to secure the fulfilment of an obligation prescribed by law. The obligation to submit to a Schedule 7 examination was not sufficiently circumscribed, specific and concrete to fall within the terms of Article 5 § 1(b). Even if there was an obligation to submit to examination, it was unnecessary to put him in detention, since there was no prior failure by him to comply. The inflexibility in the legislation inevitably led to a disproportionate result, given that the applicant was a British citizen carrying a valid British passport and was able to verify both his business and home addresses.

23. The Government raised a preliminary objection to the application, claiming that it was inadmissible for non-exhaustion of domestic remedies, and asked the Court to deal with it separately, in a preliminary admissibility

stage. They emphasised that, as a result of the applicant's failure to make use of domestic remedies, the Court was deprived of the views of the domestic courts on the relevant primary legislation and the Code of Practice, both in the abstract and as regards the exercise of the powers in respect of the applicant. Moreover, and contrary to the principle of subsidiarity, the United Kingdom was deprived of the opportunity of preventing or putting right any violations which occurred in the applicant's case before the examination of the case by the Court.

24. In the Government's submission, the applicant had had two routes by which he could have challenged his treatment in the domestic courts. First, he could have challenged the legality of his treatment by way of judicial review in the High Court. He could have sought a declaration that his detention pursuant to Schedules 7 and 8 of the Terrorism Act 2000 was unlawful and also claimed damages in respect of unlawful detention and violations of his rights under Articles 5 and 8 of the Convention. This would have been possible because under section 6 of the Human Rights Act 1998 it was unlawful for a public authority, such as an officer exercising powers under the Terrorism Act 2000, to act in a way incompatible with a Convention right. By section 8 of the 1998 Act the domestic court would have been able to grant such relief or remedy as it considered suitable, including damages. Damages were also available at common law in respect of a finding of unlawful detention. Secondly, the Government contended that the applicant could have brought a claim for damages in the County Court. They drew the Court's attention to the fact that a claim in respect of unlawful detention under Schedule 7 of the Terrorism Act was currently pending before the domestic courts (*Fiaz v. the Chief Constable of Greater Manchester Police and the Secretary of State for the Home Department*). Finally, the Government pointed out that the applicant could have appealed in relation to the investigation by the police following his complaint to Lord Carlile QC to the Independent Police Complaints Commission.

25. The applicant responded that his complaints were focused on the general compatibility of Schedule 7 of the Terrorism Act 2000 with the provisions of the Convention. He did not contend that the officers involved acted outside the limits of the domestic law, but instead that the very structure of that law offended Articles 5 and 8. He found it noteworthy that the Government did not appear to contend that a declaration to that effect by the domestic courts under section 4 of the Human Rights Act 1998 would be an effective remedy for the purposes of Article 35 § 1. This was in keeping with the Court's case-law in *Burden v. the United Kingdom* [GC], no. 13378/05, §§ 40-44, ECHR 2008; *Kennedy v. the United Kingdom*, no. 26839/05, § 109, 18 May 2010; and *M.M. v. the United Kingdom*, no. 24029/07, § 178, 13 November 2012. Secondly, the applicant submitted that the Government was wrong to contend that the national courts, whether by judicial review or through the County Court, could have provided an

alternative remedy by way of damages under the Human Rights Act 1998 for acts in violation of his Convention rights. He argued that this was incorrect, as a matter of basic domestic law, and urged the Court to be cautious in accepting the Government's submission at face value. The inability to read sufficient precision into the statute and Codes meant that there could be no remedy for him under the Human Rights Act except a declaration of incompatibility. His case was that the only means of reading the statute compatibly with the Convention would be to insert a reasonable suspicion test into the primary legislation, but this was not an interpretation that it would be open to the domestic courts to apply under section 3 of the Human Rights Act. It would also not be open to him to argue before the domestic courts that the Codes breached Articles 5 and 8 with a view to obtaining damages. The Codes were predicated upon the primary legislation that expressly allowed for a search without reasonable suspicion and did no more than implement it. The particulars of claim in the *Fiaz* case, referred to by the Government, specifically stated that it was a claim under section 7 of the Human Rights Act, seeking only a declaration of incompatibility and an award of damages under section 8 as just satisfaction. In the applicant's view, should the court in that case find that the officers acted within their statutory powers, no damages could be awarded. The situation would be different if the officers applied the scheme improperly, but that was not the allegation in his case. In addition, the applicant submitted that he was not financially eligible for legal aid and that the remedies advanced by the Government were inaccessible to him in practice. It would be invidious to expect him to pay for a test case to proceed to the United Kingdom Supreme Court in circumstances where there was a long line of case-law from this Court emphasising that the remedy he would ultimately receive would not be an effective one.

2. The Court's conclusions

26. The requirements of the rule of exhaustion of domestic remedies are summarised in *Selmouni v. France* [GC], no. 25803/94, §§ 74-77, ECHR 1999 V.

27. Specifically as regards remedies under the Human Rights Act 1998, the Court recalls its finding in *Burden*, cited above, §§ 40-44, that the Act places no legal obligation on the executive or the legislature to amend the law following a declaration of incompatibility by a domestic court and that such a declaration is not binding on the parties to the proceedings in which it is made and cannot form the basis of an award of monetary compensation. The Grand Chamber in *Burden* nonetheless carefully examined the material provided to it by the Government concerning legislative reform in response to the making of a declaration of incompatibility, and noted that in all the cases where declarations of incompatibility had become final, steps had been taken to amend the offending legislative provision. However, given

that by the date of the *Burden* judgment (April 2008) there had only been a relatively small number of such declarations that had become final, it considered that it would be premature to hold that the procedure under section 4 of the Human Rights Act provided an effective remedy to individuals complaining about domestic legislation. The Court concluded that it did not exclude that at some time in the future the practice of giving effect to the national courts' declarations of incompatibility by amendment of the legislation would be so certain as to indicate that section 4 of the Human Rights Act should be interpreted as imposing a binding obligation. In those circumstances, except where an effective remedy necessitated the award of damages in respect of past loss or damage caused by the alleged violation of the Convention, applicants would be required first to exhaust this remedy before making an application to the Court.

28. In the present case, the applicant is complaining about a provision of domestic legislation, namely that Schedule 7 to the Terrorism Act 2000 allows too wide a discretion to the executive. However, the Government have not asked the Court to consider whether national practice has now reached a point where a declaration of incompatibility would constitute an effective remedy for his complaint. Instead they argue that the applicant could either have brought judicial review proceedings in the High Court, including a claim for damages under section 8 of the Human Rights Act 1998, or a civil claim for damages in the County Court. However, as the applicant points out, a court cannot make such an award where it finds that the public authority in question acted in accordance with a provision of primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights (Human Rights Act 1998, sections 6 and 8). Since the present applicant's complaint is that the applicable primary legislation is incompatible with the Convention, damages would not be available to him.

29. The Court recalls that a similar objection was raised by the Government in *Gillan and Quinton v. the United Kingdom*, no. 4158/05, §§ 50-53, ECHR 2010 (extracts). In that case, which concerned a police power under section 44 of the Terrorism Act 2000 to stop and search individuals without the need to show reasonable suspicion of wrongdoing, the applicants had lodged a claim for damages in the County Court which was rejected because the police had acted within the terms of the legislation. The applicants did not appeal against the County Court judgment and the Government argued that this meant they had not exhausted domestic remedies. The Court rejected the Government's objection, observing that the applicants' complaints were focussed on the general compatibility of the stop and search powers with Articles 5, 8, 10 and 11 of the Convention. Since they did not dispute that the stop and search measures used against them complied with the terms of the 2000 Act, any appeal from the County Court would have been neither relevant nor effective in relation to the

complaints before the Court. The Government have not explained how the present case can be distinguished from *Gillan and Quinton* in this respect.

30. It follows that the Court considers that the Government's preliminary objection as to non-exhaustion must be dismissed. It notes, in addition, that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 1 of the Convention and

Declares the application admissible.

Françoise Elens-Passos
Registrar

Ineta Ziemele
President