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

SECOND SECTION

DECISION

Application no. 42341/21
Mohamed YALAHOW
against the United Kingdom

The European Court of Human Rights (Second Section), sitting on 2 September 2025 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Tim Eicke,
Jovan Ilievski,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Stéphane Pisani,
Juha Lavapuro*, judges*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to the above application lodged on 19 August 2021,

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 Mohamed Yalahow, is a Somali national who was born in 1999 and lives in London. He is represented before the Court by Mr S. Creighton of Bhatt Murphy Solicitors, a lawyer practising in London.

2. The British Government ("the Government") are represented by their Agent, Ms A. Hennedy Goble of the Foreign, Commonwealth and Development Office.

The circumstances of the case

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

1. The applicant's conviction

4. The applicant was convicted of malicious wounding on 13 October 2017 and received a determinate sentence of two years and three months. On 15 January 2018 he was convicted of possession of class A drugs with intent to supply and received a further determinate sentence of one year and six months. In relation to both sentences, the applicant was a fixed-term prisoner for the purposes of the Criminal Justice Act 2003 ("the CJA"- see paragraphs 18-21 below) with a release date from his sentences of 29 March 2021.

2. The applicant's release on licence

5. On 31 May 2019, halfway through his fixed-term determinate sentences, and in accordance with the applicable statutory scheme (section 244 of the CJA – see paragraph 18 below), the applicant was released from prison on licence.

6. On his release, the applicant was accommodated in probation service approved premises ("AP").

7. On 27 July 2019 there was a concerning pattern of behaviour from four residents at the AP, one of whom was the applicant. The incident involved the delivery of drugs to the AP, breaches of the AP rules relating to not being in another resident's room after 11 pm, and aggressive and abusive behaviour towards AP staff, which appeared to include the acquisition of an improvised weapon.

8. On 31 July 2019 the applicant's licence was revoked by the Secretary of State under section 254 of the CJA (see paragraph 19 below). A decision was taken to recall the applicant to prison on 1 August 2019 and the applicant was returned to custody on 2 August 2019. The applicant was invited to make representations in relation to his recall to prison, which he did on 4 September 2019.

9. The applicant's case was referred to the Parole Board in accordance with section 255C(4) of the CJA (see paragraph 20 below). The applicant's parole dossier (which included his written representations) was sent to the Parole Board on 16 September 2019.

10. On 1 October 2019 a member of the Parole Board considered the applicant's case on the papers and decided that it was not appropriate to direct his release on the papers due to concerns expressed by his Offender Manager about his "aggressive comments, unmet intervention needs and persistent drug misuse". The Parole Board member directed that there be an oral hearing and gave specific directions as to documents that were to be prepared in advance of the hearing and witnesses who were to attend the hearing.

11. On 4 January 2020 a Panel Chair of the Parole Board reviewed the readiness of the applicant's case for a hearing and gave further directions in relation to steps that needed to be taken in advance of the oral hearing, which had by then been listed for 11 February 2020. The Panel Chair set the date by

which further reports were to be submitted by the applicant's Offender Manager and Offender Supervisor and identified the two witnesses who were to attend the hearing.

12. Further reports were duly prepared, including an Offender Supervisor report dated 13 January 2020, a security report dated 7 January 2020, a Part C Report (in which the Offender Manager assessed risk and set out recommendations) dated 14 January 2020, a further Offender Supervisor report dated 27 January 2020 and a further Part C Report dated 30 January 2020.

13. The oral hearing took place on 11 February 2020, six months after the applicant's recall to prison. The Parole Board heard from two witnesses (the manager of the applicant's Offender Manager and the applicant's Offender Supervisor). The Parole Board also heard from the applicant and his representative.

14. Having considered all the evidence and evaluated the effectiveness of plans to manage the risk posed by the applicant, the Parole Board declined to order his re-release.

15. On 18 February 2021 the Secretary of State referred the applicant's case to the Parole Board in accordance with section 256A of the CJA (see paragraph 21 below), which required that such a referral be made not later than the first anniversary of the Parole Board's decision on recall. For the purposes of that review of the applicant's continuing detention, further reports were prepared, including a revised Part C Report dated 14 January 2021, a further Offender Supervisor report dated 7 January 2021, and a further security report dated 30 December 2020. The applicant's parole dossier (including those reports) was then disclosed to the applicant and he provided written representations from his solicitors on 8 March 2021.

16. A member of the Parole Board then considered the applicant's case on the papers on 12 March 2021. The Parole Board decided not to direct the applicant's release. It found that as matters stood, there was no appropriate risk management plan and insufficient evidence of insight and understanding such that the applicant could manage himself in the community without accommodation, even in the short period of licence available (the applicant's sentence being due to expire seventeen days later, on 29 March 2021).

17. On 29 March 2021 the applicant was released from imprisonment on the expiry of his determinate sentences in accordance with the sentences that had been imposed on him on 13 October 2017 and 15 January 2018. His liability to be subject to a licence expired on the same day.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. The Criminal Justice Act 2003 ("CJA")

18. Pursuant to section 244 of the CJA, as soon as a fixed-term prisoner had served the requisite custodial period (being one-half of the sentence, or, in relation to a person serving two or more concurrent or consecutive sentences, a period to be determined), it was the duty of the Secretary of State to release him on licence.

19. Section 254 provided as follows:

"Recall of prisoners while on licence

(1) The Secretary of State may, in the case of any prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.

(2) A person recalled to prison under subsection (1)—

(a) may make representations in writing with respect to his recall, and

(b) on his return to prison, must be informed of the reasons for his recall and of his right to make representations.

(2A) The Secretary of State, after considering any representations under subsection (2)(a) or any other matters, may cancel a revocation under this section.

(2B) The Secretary of State may cancel a revocation under subsection (2A) only if satisfied that the person recalled has complied with all the conditions specified in the licence.

(2C) Where the revocation of a person's licence is cancelled under subsection (2A), the person is to be treated as if the recall under subsection (1) had not happened.

...

(6) On the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large."

20. Section 255C(2)-(5) provided that:

"(2) The Secretary of State may, at any time after P is returned to prison, release P again on licence under this Chapter.

(3) The Secretary of State must not release P under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that P should remain in prison.

(4) The Secretary of State must refer P's case to the Board—

(a) if P makes representations under section 254(2) before the end of the period of 28 days beginning with the date on which P returns to custody, on the making of those representations, or

(b) if, at the end of that period, P has not been released under subsection (2) and has not made such representations, at that time.

(5) Where on a reference under subsection (4) the Board directs P's immediate release on licence under this Chapter, the Secretary of State must give effect to the direction."

21. Section 256A provides that:

"(1) The Secretary of State must, not later than the first anniversary of a determination by the Board under section 256(1) or subsection (4) below, refer the person's case to the Board.

(2) The Secretary of State may, at any time before that anniversary, refer the person's case to the Board.

(3) The Board may at any time recommend to the Secretary of State that a person's case be referred under subsection (2).

(4) On a reference under subsection (1) or (2), the Board must determine the reference by—

(a) directing the person's immediate release on licence under this Chapter,

(b) fixing a date for his release on licence, or

(c) making no direction as to his release.

(5) The Secretary of State—

(a) where the Board makes a direction under subsection (4)(a) for the person's immediate release on licence, must give effect to the direction; and

(b) where the Board fixes a release date under subsection (4)(b), must release the person on licence on that date."

B. Case-law

1. *R (West) v the Parole Board; R (Smith) v. the Parole Board (2) [2005] UKHL 1*

22. These appeals concerned the procedure to be followed by the Parole Board when a determinate sentence prisoner, released on licence, sought to resist subsequent revocation of his licence. The appellants contended that such a prisoner should be offered an oral hearing at which he could appear and present his case. They based their argument on, *inter alia*, Article 5 of the Convention.

23. The House of Lords held, by a majority, that the revocation decision had to comply with Article 5 § 4 of the Convention. That meant that the Parole Board should be empowered (a) to examine whether circumstances had arisen sufficient in law to justify further detention of a determinate sentence prisoner released on licence and, if so, (b) to decide whether the protection of the public called for the further detention of the individual detainee. The Parole Board was empowered to discharge those functions and its review would satisfy the requirements of Article 5 § 4 provided it was conducted in a manner that met the requirement of procedural fairness.

2. R (on the application of Whiston) v. Secretary of State for Justice [2014] UKSC 39

24. The question raised on this appeal was whether a person released from prison on a home detention curfew, and then recalled to prison under section 255 of the Criminal Justice Act 2003, had rights pursuant to Article 5 § 4 of the Convention. More broadly, the appeal raised the issue of how far it was open to a person who was still serving a sentence imposed by a court to invoke Article 5 § 4 of the Convention.

25. Lord Neuberger, with whom Lord Kerr, Lord Carnwath and Lord Hughes agreed, held that under Strasbourg jurisprudence, where a person was lawfully sentenced to a determinate term of imprisonment by a competent court, he was not, at least in the absence of unusual circumstances, able to challenge his loss of liberty during that term on the ground that it infringed Article 5 § 4. Where the Secretary of State exercised her discretion to release a prisoner before the end of the requisite custodial period of the sentence, Article 5 § 4 was not infringed if that licence was subsequently revoked. This outcome was consistent with the Court's decisions in *Ganusauskas v. Lithuania* ((dec.), no. 47922/99, 7 September 1999) and *Brown v. the United Kingdom* (dec.), no. 968/04, 26 October 2004), and the decision of the Supreme Court in *West* was *per incuriam* (that is, lacking due regard to the law or the facts) so far as it involved holding (or assuming) that Article 5 § 4 was engaged.

26. Lady Hale agreed that the revocation of a discretionary licence did not infringe Article 5 § 4. However, in her view the law drew a principled distinction between those determinate prisoners who had reached the point in their sentence at which they were entitled to be released on licence and those who had not. If the former were recalled from their licence, and their representations to the Secretary of State were unsuccessful, they were entitled to have their case referred to the Parole Board. The latter, whose release on licence was discretionary, were not. Once a prisoner had passed the point of mandatory release on licence, the basis for any later recall and detention was the risk of reoffending rather than the original order of the court, and, therefore, Article 5 § 4 applied.

3. Brown v. The Parole Board for Scotland, The Scottish Ministers and another [2017] UKSC 69

27. The question which arose in this appeal was whether, and if so how, the obligation to provide an opportunity for rehabilitation applied to a prisoner sentenced to an extended sentence.

28. Lord Reed, in giving the unanimous judgment of the court, which included Lady Hale, held that:

> "58. Prisoners who are detained during the custodial term, or during a period ordered to be served under section 16 of the 1993 Act, are during that period in an analogous

> position to prisoners serving determinate sentences. They are serving a period of imprisonment of a term of years which the court has stipulated as appropriate for the offence committed. If they are released on licence and then recalled during that period, they continue to serve the period of imprisonment imposed by the court. It follows, according to the Strasbourg jurisprudence relating to determinate sentences, and the majority view in *Whiston*, that the order of the court imposing that period of imprisonment is sufficient to render their detention during the custodial term 'lawful' for the purposes of article 5(1)(a), and the judicial supervision required by article 5(4) is incorporated in the original sentence."

4. R (on the application of Shimei Youngsam) v. the Parole Board and the Secretary of State for Justice [2019] EWCA Civ 229

29. The primary legal issue in this appeal was whether Article 5 § 4 of the Convention applied to determinate sentence prisoners who were recalled to prison following release on parole licence. According to the Court of Appeal, *Whiston* represented a clear case of the Supreme Court laying down a firm principle (as to the non-applicability of Article 5 § 4 to determinate sentence prisoners), having expressly considered all the relevant authorities. Given the clarity of the reasoning in *Whiston*, together with the subsequent affirmation of *Whiston* by the Supreme Court in *Brown*, the court considered itself bound by those two authorities.

30. There was nothing in *Etute v. Luxembourg* (no. 18233/16, 30 January 2018) which altered the analysis of Lord Neuberger in *Whiston*, still less did it entitle or require the court to depart from that authority. On the contrary, the factual position in *Etute* was fundamentally different from that of a prisoner who was released pursuant to United Kingdom law, who continued to serve his sentence on licence following release at the half-way point and who underwent no release, conditional or otherwise, from the requirement to serve the sentence. Furthermore, it did not begin to demonstrate a "clear and constant" line of Strasbourg authority to the effect that Article 5 § 4 would apply to the facts of the case.

COMPLAINT

31. The applicant complained under Article 5 § 4 of the Convention about the process following his recall to prison.

THE LAW

32. The applicant complained under Article 5 § 4 of the Convention that his recall to prison raised a new question as to the legality of his detention and the Parole Board's review of the legality was too slow, arbitrary and, in the absence of an oral hearing, unfair.

Article 5 § 4 of the Convention reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Compliance with the time-limit in Article 35 § 1 of the Convention

33. The Government argued that insofar as the applicant's complaint related to the alleged period of delay between his initial return to custody following his recall to prison on 2 August 2019 (see paragraph 8 above) and the Parole Board's decision on 11 February 2020 not to direct his release (see paragraph 13 above), it had been brought out of time as it was not made within six months of the date when the final decision was made (six months being the period provided for in Article 35 § 1 of the Convention at the material time). In this regard, the Government accepted that no effective domestic remedy had been available to the applicant, as there was no realistic prospect of a domestic English Court reaching a different conclusion from that reached by the Supreme Court in *Whiston* and *Brown* (see paragraphs 24-28 above).

34. The applicant pointed out that the Supreme Court had refused permission to appeal to the appellant in *Youngsam* (see paragraphs 29-30 above) on 26 February 2021. Up until this moment it could not be said that an appeal was doomed to failure and an application by the applicant to the Court would have been premature.

35. In any event, the applicant argued that in the present case the alleged breach of Article 5 § 4 of the Convention was a continuing course of conduct until the date of the final determination by the Parole Board on 12 March 2021 (see paragraph 16 above).

36. In light of its conclusions at paragraph 54 below, it is not necessary for the Court to determine whether any part of the applicant's complaint has been brought out of time.

B. The well-foundedness of the application

1. The parties' submissions

(a) The Government

37. The Government argued that the applicant's complaints were manifestly ill-founded as Article 5 § 4 of the Convention did not apply following his recall to prison. As the applicant was a determinate sentence prisoner, following his recall to prison his detention continued to be governed by the original sentence with the review required by Article 5 § 4 being incorporated into the original sentence passed by the sentencing court.

38. According to the Government, there was a proper and principled distinction to be drawn between (a) prisoners who were subject to an

indeterminate sentence (where, once their minimum term (tariff) had expired, they were being held in prison for reasons connected to the prevention of crime); and (b) prisoners who were subject to a determinate sentence (where the date of their ultimate release from their sentence could be ascertained, even if they were recalled to prison following a release on licence and where the whole of the sentence represented the penalty for their offending, whether it was spent in prison or on licence). In those circumstances, the approach adopted by the Supreme Court in *Whiston* and *Brown* (see paragraphs 24-28 above) had a rational and logical basis.

39. Furthermore, the applicant's reliance on *Etute v. Luxembourg (no. 18233/16, 30 January 2018)*, and in particular on the Concurring Opinions, was misplaced (see paragraphs 43-45 below). *Etute* concerned a "conditional release" that had been afforded to the applicant under Article 100 of the Luxembourg Criminal Code. As a matter of Luxembourg law, the "conditional release" of a prisoner under Article 100 had the effect of delaying the time at which the sentence would expire; time spent on conditional release was not assigned to the duration of the sentence, and the "conditional release" decision constituted an interruption of the serving of the sentence imposed by the competent court (see *Etute*, cited above, §§ 17, 18 and 30). In effect, therefore, where "conditional release" was granted, the sentence imposed by the Luxembourg Court ceased to be a determinate sentence and was instead transformed into a form of indeterminate sentence, where the end date for the sentence was no longer ascertainable.

40. The situation in the United Kingdom was quite different. When a determinate sentence prisoner was released on licence in the United Kingdom, there was no interruption in the execution of the sentence and the prisoner would be released from the sentence on the expiry of the fixed term. There was no room for the sentence to be extended beyond that final end date. In consequence, where a determinate sentence prisoner was released on licence in the United Kingdom, that release was itself part of the execution of the sentence, as demonstrated by the fact that time spent on conditional release counted against the sentence.

(b) The applicant

41. For the applicant, it was inconsistent with the case-law of the Court and of the domestic courts to suggest that the lawfulness of detention throughout the entire term of a determinate prison sentence was determined once and for all and in all circumstances by the imposition of that sentence.

42. In *Ezeh and Connors v. the United Kingdom* ([GC], nos. 39665/98 and 40086/98, ECHR 2003-X) the Court had found that Article 6 was applicable to disciplinary proceedings brought against prisoners serving determinate sentences, which resulted in additional days being imposed on the prisoner and applied to his or her early release date. According to the applicant, if the lawfulness of detention for the entire sentence did not require any further

form of judicial supervision, internal disciplinary issues that delayed the conditional release date but could not alter the overall length of the sentence could not constitute a "penalty" under Article 6 that would require such supervision. The statutory right to release was the critical and determining factor. This analysis was supported by domestic law, in particular the case of *Evans v. Governor of HMP Brockhill* [2001] 2 AC 19, in which the House of Lords had held that the failure to release a prisoner on the date required by law constituted the tort of false imprisonment. Lord Hope noted that the original warrant for imprisonment issued as a result of the sentence after imprisonment was not enough to prevent a breach of Article 5 § 1 occurring.

43. While neither of those cases concerned Article 5 § 4 of the Convention, *Etute* did concern that Article. Judge Pinto de Albuquerque indicated in his Concurring Opinion that he was unable to see any distinction between *Brown v. the United Kingdom* (dec.), no. 968/04, 26 October 2004) and *Etute*. Judge Kūris was even more explicit in his Concurring Opinion, observing that the judgment of the Court created an unresolved conflict with the broad principles of *Brown* (cited above) and *Ganusauskas v. Lithuania* ((dec.), no. 47922/99, 7 September 1999).

44. Furthermore, the applicant argued that it was simply wrong to say that the Luxembourg penal code made a determinate sentence indeterminate following conditional release (see paragraph 39 above). Although the time under conditional release did not reduce the remainder of the sentence if the person was recalled, the period of time for which the prisoner was liable to be detained after release remained the same, as it was limited to the overall length of the original determinate sentence imposed by the criminal court. The critical issue in both cases was that the recall to custody was based on new allegations of misbehaviour not connected to the original sentence of imprisonment. Recall was therefore dependent upon fresh issues or new questions arising that required determination by a judicial body. Without judicial control of the process, there was a risk that further detention would be arbitrary.

45. Moreover, in the case of *Etute*, the applicant's release had been discretionary. In the present case, the applicant was entitled to be free. Therefore, if anything, his case was stronger than that of *Etute*.

2. The Court's assessment

(a) Relevant case-law

46. In *Ganusauskas* (cited above) the Court considered the applicability of Article 5 § 4 of the Convention where a prisoner had been rearrested following the quashing of an order for his conditional release on the basis that the order should not have been made. The Court noted that Article 5 § 4 only applied to proceedings in which the lawfulness of detention was challenged. The necessary supervision of the lawfulness of detention "after conviction by

a competent court" was incorporated at the outset in the applicant's original trial and the appeal procedures against the conviction and sentence (see, also, the *De Wilde, Ooms and Versyp v. Belgium* judgment of 18 June 1971, Series A no. 12, p. 40, § 76). Consequently, the Court rejected the applicant's complaint under Article 5 § 4 as manifestly ill-founded.

47. In *Brown* (cited above) the Court considered the situation of a prisoner who had been released on licence at the two-thirds point of his sentence, but was later recalled to prison for breach of his licence conditions. The Court rejected his complaint under Article 5 § 4 as manifestly ill-founded, recalling that where an applicant was convicted and sentenced by a competent court to a determinate term of imprisonment for the purposes of punishment, the review of the lawfulness of detention was incorporated in the trial and appeal procedures. No new issues of lawfulness concerning the basis of the applicant's detention arose on recall and no right to a fresh review of the lawfulness of his detention arose for the purposes of Article 5 § 4 of the Convention.

48. The case of *Etute* (cited above) concerned a prisoner who had been sentenced to thirty months' imprisonment for an offence under the Narcotics Act. Invoking Article 5 § 4 of the Convention, he complained that he had been unable to appeal against a decision revoking his conditional release. The Court once again recalled that in the case of detention following a "conviction by a competent court", within the meaning of Article 5 § 1 (a), the review required by Article 5 § 4 was incorporated into the judgment and that provision did not require a separate review of the lawfulness of the detention (see *Etute*, cited above, § 25). However, it noted that when new questions about the lawfulness of detention arose after the judgment, Article 5 § 4 applied again and required judicial review of the lawfulness of the detention. The Court therefore had to determine whether new questions of legality arose in relation to the applicant's re-incarceration and his subsequent detention in the execution of his sentence (see *Etute*, cited above, § 26). To that end, it had to examine the course of events from the initial conviction to the revocation of the applicant's licence and the repercussions which the various measures had on his situation (ibid., § 27). Without referring to *Ganusauskas* or *Brown* (both cited above), the Court proceeded to find that Article 5 § 4 was applicable following the revocation of the applicant's conditional release. In reaching this conclusion, it considered it relevant that the decision to release him on parole had constituted an interruption in the execution of the sentence imposed on him, and the time spent on parole was not counted against the length of the sentence (see *Etute*, cited above, § 30); and that the applicant's re-incarceration had depended on a new decision, namely that of the revocation of the conditional release (ibid., § 33).

(b) Application of the principles developed in the case-law to the facts of the case

49. In *Brown* (cited above) the Court held that following the recall of a prisoner, who, like the present applicant, had been released on licence while serving a determinate sentence in the United Kingdom, no new issues of lawfulness arose concerning the basis of the prisoner's detention and as a consequence Article 5 § 4 of the Convention was not applicable. This conclusion was entirely consistent with its earlier decision in *Ganusauskas* (cited above), although that case concerned a slightly different set of facts (the applicant having been returned to prison after the order for his conditional release was quashed on the basis that it should not have been made and not, as was the case in *Brown*, for breach of his licence conditions). While the Court is not formally bound to follow any of its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases (see, for example, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 70, ECHR 2001-I). The Court must therefore determine whether, in light of *Etute* (cited above), it should now depart from its previous decisions in *Ganusauskas* and *Brown* (both cited above).

50. In this regard, it is noteworthy that in *Etute* the Court did not refer to either *Ganusauskas* or *Brown*, even though those decisions – and their potential incompatibility with the judgment in *Etute* – were discussed at some length by Judges Pinto de Albuquerque and Kūris in their Concurring Opinions. The Court was therefore aware of its previous case-law and if it had intended to depart from it, it should have provided good reasons for doing so (see, for example, *Chapman*, cited above, § 70). Alternatively, if it considered that the resolution of the Article 5 § 4 question might have had a result inconsistent with its previous case-law, it should have relinquished jurisdiction to the Grand Chamber (see Article 30 of the Convention and Rule 72 of the Rules of Court). The fact that the Court did neither means that – notwithstanding the views expressed in the Concurring Opinions annexed to the judgment – it cannot be taken to have departed from its previous case-law, or to have intended its conclusions to be inconsistent with that case-law.

51. The Court further notes that the conclusions in *Etute* concerning the applicability of Article 5 § 4 following the re-incarceration of a prisoner previously released on licence have not been followed in any subsequent cases. They have not, therefore, been applied outside the specific facts of that case. The applicant has not pointed to any similar cases, and the case-law that he does rely on (see paragraph 42 above) does not concern Article 5 § 4 of the Convention.

52. In the absence of any reference in *Etute* to *Ganusauskas* or *Brown*, it is not clear why the Court considered that on the specific facts of that case new issues of lawfulness arose following the applicant's re-incarceration, with the consequence that Article 5 § 4 of the Convention was applicable.

Insofar as it relied on the fact that Mr Etute's re-incarceration depended on a new decision, namely that of the revocation of the conditional release (see *Etute*, cited above, § 33; see also paragraph 48 above), that was also true of the applicant in *Brown* (in *Ganusauskas* the order for conditional release had been quashed). However, the Court also considered it relevant that the decision to release a prisoner in Luxembourg on parole constituted an interruption in the execution of the sentence imposed on him, and the time spent on parole was not counted against the length of the sentence (see *Etute*, cited above, § 30; see also paragraph 48 above). It is clear that the position in the United Kingdom – following the recall of both Mr Brown and the applicant in the present case – was entirely different from that in Luxembourg. As the Government have pointed out (see paragraphs 38 and 40 above), when a determinate sentence prisoner was released on licence in the United Kingdom, that release was itself part of the execution of the sentence, meaning that time spent on conditional release continued to represent the penalty for his offending and therefore counted against the sentence. As there was no room for the sentence to be extended beyond that final end date, the decision to release the prisoner did not interrupt the execution of his sentence.

53. Both the present case and that of *Brown* are clearly distinguishable from *Etute* on this basis. Such a distinction is consistent with the judgment in *Weeks v. the United Kingdom* (2 March 1987, § 58, Series A no. 114), in which the Court held that Article 5 § 4 was applicable following the recall to prison of a prisoner serving an indeterminate sentence of life imprisonment. The Court observed that, unlike the case of a person sentenced to life imprisonment because of the gravity of the offence committed, the grounds relied on by the sentencing judges for deciding that the length of the deprivation of Mr. Weeks' liberty should be subject to the discretion of the executive for the rest of his life (being social protection and rehabilitation) were by their nature susceptible of change with the passage of time. Accordingly, there is clear precedent for distinguishing, in the context of Article 5 § 4 of the Convention, between sentences – such as determinate sentences – where the end date of the sentence is fixed with reference to the gravity of the offence and sentences – such as certain indeterminate sentences – where the end date is not fixed and where the grounds relied on by the sentencing judge are by their nature susceptible of change with the passage of time. The present case undoubtedly falls into the former category, as the end date of the applicant's sentence was fixed and the entirety of the sentence, whether served in prison or on licence, represented the penalty for his offending. In contrast, in *Etute* the end date of the fixed sentence ceased to be ascertainable as soon as it was interrupted by the prisoner's conditional release.

54. In light of the foregoing, the Court finds no good reason to depart from its decision in *Brown* (cited above), where the applicant was serving the same sentence in the same legal jurisdiction as the applicant in the present case. It

therefore concludes that Article 5 § 4 of the Convention did not apply following the present applicant's recall to prison as no new issues of lawfulness arose concerning the basis of his detention.

55. Accordingly, the applicant's complaint under that Article is incompatible *ratione materiae* with the provisions of the Convention and its Protocols within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 25 September 2025.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President