FOURTH SECTION

CASE OF BLACKSTOCK v. THE UNITED KINGDOM

(Application no. 59512/00)

JUDGMENT

STRASBOURG

21 June 2005

FINAL

21/09/2005

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 Blackstock **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 G. Bonello,
Mr R. Maruste,
Mr S. Pavlovschi,
Mr L. Garlicki,
Mr J. Borrego Borrego, *judges*,
and Mrs F. Elens Passos, *Deputy Section Registrar*,

Having deliberated in private on 31 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 59512/00) 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 a British national, Mr Stuart **Blackstock** ("the applicant"), on 17 April 2000.

2. The applicant, who had been granted legal aid, was represented by Mr S. Creighton, a lawyer practising in UK. The British Government ("the Government") were represented by their Agent, Ms E. Willmott of the Foreign and Commonwealth Office, London.

3. The applicant complained about the lapse of time between reviews concerning his continued detention as a discretionary life prisoner. Issues arose under Article 5 §§ 4 and 5 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 27 May 2004, the Court declared the application partly admissible.

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

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1954 and lives in Bedford.

9. On 5 June 1981 the applicant was convicted of wounding (the deliberate shooting of a police officer) with intent to resist arrest, for which he was sentenced to life imprisonment. He was also sentenced to concurrent terms of 15 years for attempted robbery and firearms offences. His tariff was set at 17 years.

10. On 8 June 1998, upon the expiry of his tariff, the applicant's detention was reviewed by a "Discretionary Lifer Panel" ("DLP") of the Parole Board. At the time of his review, the applicant was a "category B" prisoner (prisoners being given a security classification ranging from category A (most serious) to category D). Life prisoners are normally expected to pass through each of the categories prior to release. While he would therefore ordinarily have been expected to progress to a

category C prison before being considered suitable for transfer to a category D ("open") prison, the applicant applied to be transferred directly to an open prison. His legal representative at the review hearing made it clear that he was seeking a transfer only, not release on licence.

11. Among the material which the DLP had before it were two reports (from Mr Cochrane, the prison probation officer, and Dr Williams, a psychiatrist commissioned on behalf of the applicant) which recommended a transfer of the applicant to a category D prison. Those reports stated that the applicant needed to be tested with a view to preparing him and considering him for release on licence, and that such testing could not take place in a category C prison and needed to take place in category D conditions. They were of the view that the risk to the safety of the public of a transfer to category D was acceptable. The third report in front of the DLP from Dr Narayana, a visiting consultant psychiatrist, was unfavourable to the applicant and neither recommended transferring him to category D nor directing his release. Mr Cochrane and Dr Williams gave oral evidence to the DLP. Dr Narayana did not. The conclusions of the latter were criticised by Dr Williams as being unsupported by evidence or reasoning.

12. The DLP did not recommend that the applicant should be released. However, it recommended that he should be transferred from a category B to a category D prison. Were that recommendation not to be accepted by the Secretary of State, the DLP recommended an early review after 12 months (*i.e.* in June 1999).

13. The decision letter of the DLP to the applicant of 10 June 1998 stated, in relevant part:

> "1. The Crime (Sentences) Act 1997 requires the Parole Board to direct your release only if it is satisfied that it is no longer necessary for the protection of the public that you be confined. The panel of the Board who considered your case on 8 June 1998 were not so satisfied and therefore have not directed your release at this stage. This decision is binding upon the Secretary of State.
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> ...
>
> 2. In reaching their decision that you are not yet suitable for release on licence, the panel took particular account of the contents of the reports which were before them, most of which did not recommend release and concluded that you remain a risk, at least until further work has been done on social skills and enhanced thinking. The panel noted the fact that your representative expressly stated that she did not ask for a recommendation for release at this stage.
>
> 3. The panel recommended to the Secretary of State that you should be transferred to a category D prison. They made this recommendation on the basis of the opinions expressed by Mr Cochrane and Dr Tegwyn Williams that while recognising the progress which you have made, and improved behaviour and attitude, further work remains to be done, but that this could more appropriately be carried out in open conditions, which would give an opportunity to test out your commitment in less structured conditions which are closer to the community. The panel concluded, on the basis of the opinions of these witnesses, that the risk of a transfer to category D conditions would be acceptable.
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> 4. The panel preferred the evidence and report of Dr Tegwyn Williams to the report of Dr Narayana. The panel felt that Dr Narayana's conclusions (upon which the Secretary of State relied) were not supported by evidence or by any reasoning which preceded them.
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> 5. The panel made no recommendation to the Secretary of State with regard to an early review. However, in the event of the Secretary of State not accepting the panel's recommendation for transfer to category D conditions, the panel would recommend an early review in 12 months time, and would hope that consideration would be given to a transfer to less secure conditions meanwhile.
>
> 6. The decision not [to] release you is binding upon the Secretary of State but it is for him to decide whether to accept the recommendation to transfer to category D conditions."

14. On 29 September 1998 the Secretary of State rejected the Parole Board's recommendation that the applicant should be transferred to a category D prison. He directed that the applicant should be moved to a category C prison. The reasons for his decision were set out as follows in a memorandum of 29 September 1998:

> "The Secretary of State has carefully considered all the papers which were prepared for your recent Parole Board review, including the reports from staff at both Full Sutton and Nottingham, your own and your solicitor's representations and the recommendation of the Parole Board. He is not prepared to accept the Parole Board's recommendation for your transfer to open conditions for the reasons set out below.

The Secretary of State notes the recommendations made by the Board and by report writers, the majority of whom support a progressive move. He notes in particular, your willingness to co-operate with offence-related treatment work and the progress you have made as a result, your improved behaviour and the remorse you have shown. However, he is concerned by references to your tendency, on occasions, to be aggressive, unwilling or unable to consider fully the likely consequences of your actions or behaviour or see how others perceive your behaviour.

In considering the Parole Board's recommendation for your transfer to open conditions, which is generally a time of final testing in more normal conditions as a prelude to release, the Secretary of State needs to be satisfied that you have made sufficient progress towards tackling your behavioural problems so as to minimise the risk of your reoffending, or risk to the public while in open conditions or when release takes place.

The Secretary of State notes that you have not been tested in category C conditions. Life sentenced prisoners are normally required to spend a period in the lower security conditions of a category C prison to enable them to adjust to, and experience, a less secure environment before eventually progressing to open conditions. He considers this to be all the more important in your case in view of the very long period you have spent in maximum security conditions, much of which has been spent in segregation units, and notes that you are still held in category B conditions.

He also considers that, although you have attended offending behaviour courses, and appear to have benefited from them, that work needs to be reinforced and tested in the lower security environment of category C conditions before consideration is given to your transfer to open conditions. In particular, further offence-related work needs to be tackled, together with continuing work to develop more mature, reflective styles of thinking and behaving and enhanced interpersonal skills.

You will therefore be transferred to a suitable category C establishment. However, in the light of the positive reports from staff at both Full Sutton and Nottingham, your next review will begin 12 months thereafter."

15. On 7 October 1998, transfer instructions were issued for the applicant's transfer to HMP Ranby, a Category C prison. This was endorsed as a "priority career move" in view of the need for a review of the applicant's continued detention to commence twelve months after transfer.

16. On 14 October 1998, the applicant submitted a complaint/request form objecting to the transfer to HMP Ranby as inconvenient for social visits and stating his preferences for other category C prisons.

17. In December 1998, it was decided to move the applicant to HMP Wayland (category C) and the applicant was informed that the other prisons which he had listed were either unsuitable or had long waiting lists. At this time no place at Wayland was immediately available: he was fifth on the list.

18. On 1 April 1999, the applicant was moved to Wayland.

19. On 3 November 1999 the applicant's application for judicial review of the Secretary of State's decision not to reclassify him from a category B to a category D prisoner was dismissed by the High Court. This was on the basis that there had not been any procedural irregularity in the decision-making process. During the course of his judgment, Mr Justice Jowitt said the following:

"It is clear that the decision which the Secretary of State had to make in this case was an important one. It was important because such a decision has a potential to affect the release date of a prisoner in that delay in transfer to category D has the potential to delay of release on parole."

20. Mr Justice Jowitt also made, *inter alia*, the following observations:

(a) there had not been any finding by the DLP that there would be a regression in the behaviour or the attitude of the applicant were he to be placed in a category C prison;

(b) the DLP had taken "an unusual course" in recommending that the applicant should be transferred from a category B to a category D prison, as, ordinarily, a life prisoner would pass through the categories from which he had started, therefore going through category C into category D;

(c) counsel for the applicant had not suggested that the decision of the Secretary of State not to accede to the recommendation of the DLP was open to attack other than on procedural grounds.

21. The applicant did not seek leave to appeal and was advised that he did not have any right of appeal against the judgment of the High Court.

22. The applicant's subsequent review by the DLP took place at an oral hearing on 25 April 2000, over 12 months after his arrival in category C conditions and over 22 months after his

previous review in June 1998. On that occasion, the DLP decided not to direct his release, but recommended that he should be transferred to open conditions. Its decision letter to the applicant of 2 May 2000 stated, *inter alia*, as follows:

> "5. Until your arrival at Wayland you had been in conditions of greater security. During your year at Wayland the panel accepts that you have continued to make progress and your behaviour has been good. You have done all that has been required by your sentence plan and you have made sufficient progress towards tackling your offending behaviour to justify your move to open conditions. So far as risk is concerned, however, you have experienced testing only in closed conditions.
>
> 6. Having regard to your serious offending, your behaviour in prison up to May 1994 and the fact that you have never been tested in open conditions, the panel considers that your risk is not as yet sufficiently reduced to justify your immediate release.
>
> 7. ... Most report writers recommended you for open conditions but not for release. Until you have been tested in open conditions the panel cannot be satisfied that your risk is sufficiently reduced for your release.
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> 8. Furthermore your release plan was not realistic or reasonable ...
>
> 9. Your move to open conditions is needed primarily to test further your motivation to remain of good behaviour and your ability to cope with stress and frustration and to enable you to be gradually reintroduced to life in the community outside prison. ... In view of the fact that in June 1998 you were recommended as suitable for release and your progress since then, the panel recommended that you should move to open conditions at the earliest opportunity. Although several report writers recommended a review after 12 months from your arrival in open conditions the panel considered that this period was probably insufficient to enable you to complete the testing which you need and therefore made no recommendation for an early review."

23. The recommendation that the applicant be moved to open conditions was accepted by the Secretary of State on 24 July 2000.

24. At the applicant's subsequent review on 30 April 2002, the DLP was satisfied that it was no longer necessary for the protection of public that he be detained and therefore directed his release from prison.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Life sentences and tariffs

25. A person convicted of certain serious offences may be sentenced to life imprisonment at the discretion of the trial judge. At the time of sentence, a "tariff" is imposed which represents the minimum period which the prisoner will have to serve to satisfy the requirements of retribution and deterrence. A life prisoner will not be released on licence until after the tariff period has been completed.

2. The role of the Parole Board

26. Pursuant to section 28 of the Crime (Sentences) Act 1997, after the tariff has expired, a discretionary life prisoner may require the Secretary of State to refer his case to the Parole Board which has the power to order his release if it is satisfied that it is no longer necessary to detain him for the protection of the public.

27. The Parole Board further has power, should it choose not to direct the release of a prisoner, to make recommendations to the Secretary of State concerning the detained person's future progress.

28. Following a review, a discretionary life prisoner has a statutory right to have his case reviewed again by the Parole Board two years after the previous review.

29. If the Parole Board decides not to order release, it frequently gives a recommendation as to the timing of the next review. That is only a recommendation and the decision whether to accept that recommendation is taken by the Secretary of State. If the prisoner seeks an earlier review, he can make representations to the Secretary of State, whose decision may be challenged by judicial review. The Secretary of State, of his own motion, can direct an earlier review.

3. Categorisation of prisoners

30. The categorisation of prisoners is the function of the Secretary of State. There are four categories of classification of prisoners, namely:

(i) category A prisoners, whose escape would be highly dangerous to the public or to the police or to the security of the nation;

(ii) category B prisoners, for whom the very highest conditions of security are not necessary but for whom escape must be made very difficult;

(iii) category C prisoners, who cannot be trusted in open conditions, but who do not have the ability or the resources to make a determined escape attempt;

(iv) category D prisoners, who can be trusted in open conditions.

4. Policy statements and directions by the Secretary of State

31. On 7 December 1994 the Secretary of State stated:

> "In recent years, successive Secretaries of State have recognised that, for the majority of life sentenced prisoners, a period in open prison conditions is generally vital in terms of testing the prisoner's suitability for release and in preparing him for a successful return to the community. It is, therefore, now normally the practice to require the prisoner to spend some time in open conditions before release and to arrange a further review while the prisoner is in an open prison for a formal assessment of his or her progress. I intend to continue with this practice and the first Parole Board review will therefore normally serve the purpose of assessing the prisoner for open conditions."

32. On 9 July 1998 the Secretary of State stated:

> "... the first Parole Board review in the case of a life sentenced prisoner begins three years before the expiry of tariff. The purpose of this review is normally to enable the prisoner to be assessed for, and, where appropriate, transferred to, open conditions (category D) where he or she may be tested in conditions of lower security, fully assessed by staff and prepared for release. A further Parole Board review is then held to determine whether the level of risk is low enough to enable the prisoner to be safely released on life licence. Where the level of risk is considered to be acceptable, the objective is to release the prisoner on or very shortly after tariff expiry."

33. A direction to the Parole Board from the Secretary of State under section 32(6) of the Criminal Justice Act 1991 (which preceded the Crime (Sentences) Act 1997) stated:

> "A period in open conditions is essential for most life sentence prisoners ("lifers"). It allows the testing of areas of concern in conditions which are nearer to those in the community than can be found in closed prisons. Lifers have the opportunity to take home leave from open prisons and, more generally, open conditions require them to take more responsibility for their actions."

5. The Human Rights Act 1998

34. On 2 October 2000, the Human Rights Act 1998 came into force, permitting the provisions of the Convention to be invoked in domestic proceedings in the **United Kingdom**.

THE LAW

I.. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

35. The applicant complained that the lapse of time between reviews of his condition infringed the requirements of speed contained in Article 5 § 4 of the Convention which provides:

> "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. The parties' submissions

1. The applicant

36. The applicant emphasised that Article 5 § 4 required a review of detention at an oral, adversarial hearing before a body empowered to direct release. Those reviews took place in June 1998 and April 2000, a gap of 22 months, and the administrative procedures preceding those reviews were entirely separate. He therefore did not understand the rationale for the Government distinguishing between DLP hearings and the Parole Board review. He submitted that the fact that the second review started one year after his arrival in category C conditions was immaterial. There was no explanation for the delay in transfer to those conditions and in any event it was for the Government to ensure that its procedures were properly organised and resourced. One year to reinforce and test work already completed was more than sufficient. He further contended that the fact that the Parole Board did not recommend his release, nor an early review of his detention, in April 2000 was irrelevant to the question of whether the 22 month period between the 1998 and 2000 reviews complied with Article 5 § 4.

37. The applicant submitted that, on the facts of his case, the lawfulness of the 22 month period had to be considered in the light of the fact that the Parole Board had recommended an earlier review. He submitted that he had made considerable recent progress in prison and that the Parole Board had not identified any futher specific work to be completed nor was any further work later offered; that his life sentence had originally been imposed on the grounds of a diagnosis of a psychiatric condition which was no longer extant; and that an independent body had recommended a review after 12 months and the Secretary of State's reasons for departing therefrom were unconvincing: the nature of his index offences and prison history were of little, if any, relevance as the interval between reviews had to be based on the prisoner's current pace of progress; and the Government had given no reasons for its assessment that the relevant work would take two years to complete, which went directly against the assessment of the Parole Board.

2. The Government

38. The Government referred to previous case-law of the Convention organs setting out that the term "speedily" in Article 5 § 4 had to be determined in the light of the circumstances of the individual case. They submitted that the relevant circumstances in the present case were the seriousness of the applicant's offending, including the offences for which he was convicted, his past criminal history for offences of robbery and the possession of a firearm and his offences of arson and attempted arson which he had committed whilst in prison; the applicant's prison history until 1994, with demonstrations of anti-authoritarian behaviour that had resulted in threats to and assaults upon prison staff; and the need, in the light of his long period in maximum security conditions, to provide sufficient time to enable the applicant to complete the testing which was necessary in his case to ensure that he would remain of good behaviour and have the opportunity to attend offending behaviour courses and vocational courses in the lower security environment of C conditions. The reports had expressed the view that he should undertake social skills and enhanced thinking skills training and it was considered necessary to give him the opportunity to develop "more mature, reflective styles of thinking" and "enhanced interpersonal skills".

39. The Government asserted that it was important to distinguish between Parole Board Reviews and Discretionary Lifer Panel Hearings. The applicant's case had been considered by the Parole Board on three occasions. The Discretionary Lifer Panel Hearings took place in June 1998 and April 2000. The Parole Board Review, which culminated in the hearing of 25 April 2000, began in December 1999. The hearing took place some 12 months after the applicant's arrival in category C conditions. As regarded the lapse in time before the transfer, they explained that the Secretary of State gave careful consideration to the Parole Board recommendation before making his decision on 28 September 1998 and that delay occurred because the applicant objected to a transfer to the first prison proposed and there was no immediate place available in the prison finally allocated.

40. The Government argued that it was significant that the Parole Board did not recommend the applicant's release, nor an early review of his detention, after its review of his case in April 2000. The Government referred to the decision letter of the Parole Board of 2 May 2000 in this context.

B. The Court's assessment

41. The issue to be determined is whether the lapse of time between the reviews of the applicant's continued detention complied with the requirement of Article 5 § 4 of the Convention that such decisions be taken "speedily".

42. It is already established in the case-law of the Convention organs that this requirement implies not only that the competent courts must reach their decisions "speedily" but also that, where an automatic review of the lawfulness of detention has been instituted, their decisions must follow at "reasonable intervals" (see *Herczegfalvy v. Austria*, judgment of 24 September 1992, Series A no. 244, p. 24, § 75). In practice, the system of review of discretionary life prisoners involves automatic reviews set at periods of two years or less, at the direction of the Secretary of State, who may or may not have received a recommendation as to timing by the DLP at the previous review.

43. It is true that the question of whether periods comply with the requirement must – as with the reasonable time stipulation in Article 5 § 3 and Article 6 § 1 – be determined in the light of the circumstances of each case (see *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A no. 107, p. 55, § 55). The Court has stated that it will not attempt to rule as to the maximum period of time between reviews which should automatically apply to this category of life prisoner as a whole and has noted that the system has a flexibility which must reflect the realities of the situation, namely, that there are significant differences in the personal circumstances of the prisoners under review (see *Hirst v. the **United Kingdom***, no. 40787/98, judgment of 24 July 2001, § 38; *Dancy v. the **United Kingdom***, no. 55768/00, (dec.) 21.3.02).

44. In previous cases, the Convention organs have accepted periods of less than a year between reviews and rejected periods of more than one year. In the case of *A.T. v. the **United Kingdom***, the Commission found that a period of almost two years before a review of the detention of a discretionary life prisoner was not justified, where the DLP had recommended that his case should be reviewed within a year (no. 20448/92, Commission report 29 November 1995). The Court in the *Herczegfalvy* case (cited above, pp. 24-25, § 77) found that periods between reviews of fifteen months and two years were not reasonable in the case of a person detained on grounds of mental illness. In the cases of *Oldham v. the **United Kingdom*** (no. 36273/97, judgment of 26 September 2000) and *Hirst v. the **United Kingdom***, cited above), concerning discretionary life prisoners, the Court found that 21 month and 2 year delays between reviews were not reasonable. However, in *Dancy v. the **United Kingdom*** (cited above), concerning a decision setting a further review at a 24 month interval, where the applicant had previously been given 12 month reviews without making progress and considerable offence-related work had been identified as necessary, it was found that the question of review and progress towards release in the applicant's case has been approached with flexibility and due regard to his individual circumstances.

45. In the present case, the Parole Board review issued its recommendation concerning transfer to open conditions and further review on 10 June 1998. The next review did not in fact take place until 25 April 2000, some 22 months later.

46. The lapse of time is explained by the time taken by the Secretary of State to reach his own decision on 29 September 1998, that the applicant should first serve twelve months in a category C prison before open conditions and then the time taken to implement that decision. Although transfer directions were given on 7 October 1998 and were classified as priority career move, the applicant was not moved until 1 April 1999, an almost six month delay, which the Government explain by referring to the difficulties arising from the applicant's request to move to a prison near his planned place of release and lack of vacancies in suitable prisons. His review then took place some twelve months afterwards.

47. The Court notes that the Secretary of State considered, on the basis of the reports, that the applicant required further testing in C conditions before entering an open prison. However, while the decision of 29 September 1998 stated that further offence-related work needed to be tackled, together with continuing work to develop more mature, reflective styles of thinking and behaving and enhanced interpersonal skills, it is not however apparent that any formal courses were

programmed for the applicant in the category C prison. Nor is it apparent that any consideration was given, in light of the administrative delays, to whether it was necessary to insist on the full 12 months in C conditions before the next review.

48. Given the acknowledged importance of the move to C conditions as part of the applicant's progress towards open conditions and planned release and the absence of any indication of any specific programme of work over this period, as opposed to a general testing of the applicant's capabilities in a less restrictive regime, the Court is not persuaded that the procedure adopted by the authorities, which led to an overall delay of 22 months, paid due regard to the need for expedition.

49. The Court concludes that there has been a violation of Article 5 § 4 in this case.

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

50. The applicant sought compensation for the above alleged violation of Article 5 § 4 under Article 5 § 5 of the Convention, which reads as follows:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."

51. The Court has found above a violation of Article 5 § 4 in that the applicant did not receive a review of the lawfulness of his detention in accordance with the requirements of that provision. No possibility of obtaining compensation existed at the relevant time in domestic law in respect of that breach of the Convention. The applicability of Article 5 § 5 is not dependent on a domestic finding of unlawfulness or proof that but for the breach the person would have been released (see *Thynne, Wilson and Gunnell v. the* ***United Kingdom***, judgment of 25 October 1990, Series A no. 190-A, § 82, and the authorities cited therein).

52. There has, accordingly, been a violation of Article 5 § 5.

III.. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

54. The applicant sought compensation of 5,000 pounds sterling (GBP) for non-pecuniary damage arising from the delay in the period between reviews. The delay had a clear impact on his future release as shown by the fact that once he was transferred to open conditions release followed. This 10 month delay had severe effects, causing frustration, disappointment and fears that he might not be released.

55. The Government did not accept that the impact of the alleged breach was particularly severe and considered that a finding of a violation would be sufficient just satisfaction. In any event, in line with previous cases, no more than GBP 1,000 was appropriate.

56. The Court does not find that any loss of liberty may be regarded as flowing from the finding of a breach of Article 5 § 4, which in this case is limited to the delay in between reviews. However, the applicant must have suffered feelings of frustration, uncertainty and anxiety flowing from the delays in review which cannot be compensated solely by the finding of violation. Making an assessment on an equitable basis, it awards 1,460 euros (EUR) <GBP 1,000> for non-pecuniary damage.

B. Costs and expenses

57. The applicant claimed GBP 9,249.60 for legal costs and expenses. This included 32.8 hours work at GBP 240 pounds per hour and included value added tax (VAT).

58. The Government submitted that the hourly rate was excessive and that there should be a deduction to take into account those complaints which were declared inadmissible.

59. Having regard to the amount of payments made by way of legal aid from the Council of Europe (EUR 685) and the fact that part of the application was declared inadmissible, the Court awards EUR 8,756 <GBP 6,000> for costs and expenses, inclusive of VAT.

C. Default interest

60. 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 § 4 of the Convention;

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

3. *Holds*:
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted into pounds sterling at the rate applicable at the date of settlement:
      (i) EUR 1,460 (one thousand four hundred and sixty euros) in respect of non-pecuniary damage;
      (ii) EUR 8,756 (eight thousand seven hundred and fifty six euros) in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 21 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Josep Casadevall
Deputy Registrar President

BLACKSTOCK v. THE **UNITED KINGDOM** JUDGMENT