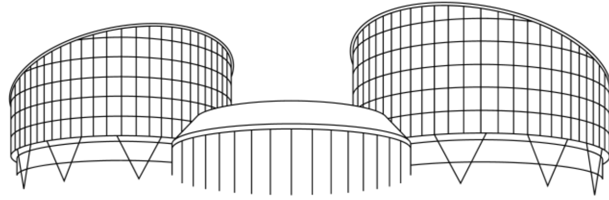

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ADEN AHMED v. MALTA

(Application no. 55352/12)

JUDGMENT

STRASBOURG

23 July 2013

FINAL

09/12/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

In the case of Aden Ahmed v. Malta,

The European Court of Human Rights (Fourth Section), sitting 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 Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 July 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 55352/12) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Somali national, Ms Aslya Aden Ahmed (“the applicant”), on 27 August 2012.

2. The applicant was represented by Dr M. Camilleri and Dr K. Camilleri, lawyers practising in Valletta. The Maltese Government (“the Government”) were represented by their Agent, Dr P. Grech, Attorney General.

3. The applicant alleged that she had suffered a violation of Article 3 in respect of her conditions of detention. She complained further that her detention had not been in accordance with Article 5 § 1 and that she had not had an effective remedy as required by Article 5 § 4 to challenge the lawfulness of that detention.

4. On 22 October 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1987 and at the time of the introduction of the application was detained in Lyster Barracks Detention Centre, Hal Far, Malta.

A. Background to the case

6. In 2001 the applicant's parents fled to Eritrea, where she joined them in 2003. In 2004 the applicant married Abdi Mohammed Omar in Eritrea; a son, Ahmed, was born of this union on 24 June 2005. In 2008 the applicant left Eritrea, leaving her son in the care of her parents as it was too dangerous for her to travel with him. She has not seen him since.

7. After leaving Eritrea, the applicant travelled through Sudan and Libya. She entered Malta irregularly, by boat, on 5 February 2009.

8. Upon her arrival in Malta she was registered by the immigration authorities, given the identification number 09C-020 and served with a Removal Order under Article 14(1) of the Immigration Act, Chapter 217 of the Laws of Malta (see Relevant Domestic Law, below), as she was deemed to be a "prohibited immigrant" under Article 5 of that Act. She was then immediately placed in detention at Ta' Kandja Detention Centre pursuant to Article 14(2) of that Act, which stipulates that a person on whom a removal order is served "shall be detained in custody until he is removed from Malta" (see Relevant Domestic Law, below). According to the applicant, the said Removal Order did not contain specific reasons for her detention. The Government contested that statement. According to the applicant, in Ta' Kandja she was placed in a dormitory with forty other people, including single women and children, with only occasional access to the adjoining yard for air.

9. On 18 February 2009 the applicant filled in a Preliminary Questionnaire, thereby registering her wish to apply for asylum under Article 8 of the Refugees Act, Chapter 420 of the Laws of Malta (see Relevant Domestic Law, below). However, the applicant was not sure about the content and purpose of the form since it was in English. At the time forms were simply distributed to asylum seekers by the Detention Service staff without any accompanying information. The Government explained that migrants used to interpret to each other in cases where some of them did not understand how to fill in the questionnaire and that several NGOs also assisted in filling it in. As the applicant could not read or speak any English, she relied heavily on fellow detainees to complete the form, both for practical assistance and for information as to what she should say. On the advice of fellow detainees, who were her only source of information

about the asylum procedures in the circumstances, the applicant did not divulge the fact that she and the rest of her family were refugees in Eritrea, for fear that her application would be rejected and she would be sent back there.

10. According to the Government, the applicant was taken to receive primary health care on 15 March 2009 and medical appointments were fixed for her on 19 May and 20 June 2009.

11. On 27 March 2009 the applicant was called by the Office of the Refugee Commissioner to complete a formal application for recognition of refugee status in Malta and to attend an interview to present the grounds on which she was requesting protection. In her application and subsequent interview, the applicant repeated what she had said earlier, namely that her family was poor, there was no government in Somalia and that she had left because she could not find a job there. She did not attempt to remedy the situation by correcting the inaccurate information she had submitted earlier in the procedure.

12. On 9 May 2009 the Office of the Refugee Commissioner rejected her application for refugee status on the grounds that it failed to meet the relevant criteria.

13. The applicant did not appeal against that decision. Instead, a few days later, in May 2009 she escaped from detention. Sometime after her escape, she travelled to the Netherlands in an irregular manner. Upon her arrival in the Netherlands she immediately approached the authorities to ask for asylum. From there she was hoping to be able to go to Sweden in order to be reunited with her family (her father, siblings and minor son) who had been granted refugee status in Eritrea and were awaiting resettlement in Sweden. The family were eventually resettled there on 17 March 2011.

14. On 11 February 2011 the applicant was returned to Malta under the Dublin II Regulation and detained at Safi Barracks, despite repeated attempts by her lawyer to prevent her return to Malta. At the time of her return to Malta, the applicant was two months pregnant.

B. Criminal proceedings and consequent detention

15. On 17 February 2011 the applicant was arraigned before the Court of Magistrates and charged with i) escaping from a place of public custody, namely Ta’ Kandja Detention Centre, on 17 May 2009; ii) as a person embarking or disembarking from Malta, making, or causing to be made, a false return, statement or representation and/or furnishing the Principal Immigration Officer with false information during the months prior to 17 May 2009; iii) in the same circumstances, in the Maltese Islands, knowingly making use of forged documents.

16. The applicant pleaded guilty to all of the charges. On the same day she was therefore found guilty as charged and sentenced to a period of six

months' imprisonment. As she was pregnant at the time, when giving judgment, the Court of Magistrates drew the attention of the Director of the Corradino Correctional Facility to this fact so that she would be given all the necessary medical attention that she might require in relation to her pregnancy whilst she was detained in prison.

17. Two days after the court judgment, on 19 February 2011, the applicant was admitted to hospital as she was very unwell. On an unspecified date she was discharged and returned to the prison, which, she alleged, had small cells and where she was subjected to constant passive smoking. She contended that she had suffered from a lack of medical attention while there. Shortly afterwards she was admitted to the Asylum Seekers' Unit of Mount Carmel Hospital (also known as Ward M8B, the ward in the psychiatric hospital where male and female immigration detainees and female prison inmates are kept) for in-patient treatment. She miscarried in March 2011 while in Mount Carmel Hospital and subsequently contracted an infection for which she needed to be hospitalised for a period. She stated that the rooms in the ward were small with no space for exercise and that there were no proper blankets. She further alleged that the staff had failed to assist her when she had started bleeding, which had finally led to her miscarrying, and that her post-operation requests for drinking water were denied as were her requests for proper washing facilities.

C. The detention and procedures related to immigration

18. On 17 June 2011 the applicant was released from prison, having served her sentence. She was placed in Hermes Block in Lyster Barracks Detention Centre (Zone C) with a view to her removal from Malta. During her time in detention she was never approached by the immigration authorities regarding her removal and had no way of knowing whether any proceedings were under way with a view to her removal. In practice, it is common knowledge that no deportations to Somalia or Somaliland have ever been effected. This is no doubt due in part to the UNHCR recommendation on return to Somalia (which relates primarily to South-Central Somalia) as well as to the very real logistical difficulties inherent in such returns.

19. While in detention the applicant remained severely depressed. Her psychological distress was due to a number of factors, not least her prolonged detention, her miscarriage and the very limited prospects of being reunited with her son in Sweden. She described the conditions of detention as problematic, noting that although she had been placed with single women, they had been guarded by male officers (barring one female officer who had repeatedly abused Somali detainees until she was apparently transferred, following a complaint by the applicant); there were twenty-two

persons in a room, which made it difficult to sleep; they were only allowed outside exercise for one or one and a half hours a day, and from April to July 2012 they were not allowed outside at all; they were fed chicken, pasta or rice on a daily basis and were not given any telephone cards.

20. The applicant approached the Jesuit Refugee Service ("the JRS") for assistance in obtaining a review of the decision rejecting her application for international protection. On 23 September 2011 JRS staff wrote to the Refugee Commissioner requesting a copy of the relevant documents from her case file, such as the application form, interview notes and decision which she had lost when she escaped from detention.

21. On 10 October 2011 social workers with JRS Malta, who were monitoring the applicant in detention and offering psycho-social support, referred the applicant to the Agency for the Welfare of Asylum Seekers ("AWAS") with a view to obtaining her release from detention in accordance with government policy on grounds of her vulnerability due to her mental health, given her deteriorating psychological condition as supported by medical evidence (also submitted to the Court) (see below for details about this procedure).

22. On 16 November 2011 the documents requested by the applicant in September had still not been provided. Thus, she wrote to the Refugee Commissioner again, through the JRS, explaining some of the developments in her case since her interview and requesting copies of the documents relating to her first asylum application. She further requested a reconsideration of her application for asylum.

23. On 30 November 2011 the Refugee Commissioner informed the applicant of his unfavourable decision. Noting the difference between the facts as alleged by the JRS and those as presented by the applicant, he considered that on the basis of the information submitted by the applicant, as provided in her initial application and interview, she did not face a real risk of harm and did not satisfy any of the requisite criteria for the granting of temporary humanitarian protection.

24. The applicant was not given a copy of the documents she requested or allowed to make further submissions before that decision was taken. She was finally provided with a copy of the decision and the interview notes in her case at the end of February 2012.

25. On 14 February 2012, while still awaiting the outcome of AWAS's assessment (see below), the applicant lodged an application with the Immigration Appeals Board ("IAB") for release from detention under Article 25A(9) of the Immigration Act (see Relevant Domestic Law, below). In her application she claimed that her continued detention was no longer reasonable and requested the Board to order her release from custody in view of the fact that there was no reasonable prospect that the immigration authorities would be able to enforce her removal to Somalia within a reasonable time. In her application she also noted that, in practice,

no one was ever deported from Malta to Somalia. She also submitted a social worker's report attesting to the fact that her psychological health was suffering as a result of her prolonged detention and noting that she had also miscarried while in prison.

26. On 29 February 2012 the Principal Immigration Officer (who in effect was the Commissioner of Police) filed a response. He agreed with the facts as presented by the applicant. He further stated that, as the applicant had escaped from detention she now had to remain in detention, although it was not necessarily obligatory that she be held for eighteen months. Indeed she could potentially be released from detention earlier. Regarding the applicant's psychological problems caused by her separation from her child, he noted that the applicant could avail herself of the provisions of the Dublin Regulation to request to be reunited with her son in Holland [*sic*]. Regarding the applicant's request for release from custody, he noted that, in the first place, the applicant should never have escaped from detention in order to solve her personal problems. The time she had spent as a fugitive was time she had spent residing illegally in Malta and Holland, thus, her detention was a situation that she had brought upon herself and in consequence she should now be held in detention by law. Moreover, he considered that by escaping from detention without being medically cleared, as required by law, she had created a public health risk. Lastly, since she was receiving continued psychological care in detention he considered that her release from detention was not currently advisable.

27. The application was never set down for hearing by the IAB and no decision on the applicant's request was ever delivered.

D. The AWAS procedure

28. In the meantime, following a referral by the JRS, in December 2011 the applicant was interviewed by the Vulnerable Adults Assessment Team of AWAS with a view to determining whether she should be released from detention on grounds of vulnerability according to government policy. The person conducting the interview spoke in English. No interpreter was provided and although the applicant who had learnt some English managed to understand what was happening, she could not communicate fully or explain the full extent of her problems. The applicant was never formally informed of the outcome of this interview or of the decision taken regarding her request. However, some months later, she happened to see the woman who had conducted the interview at the Detention Centre, and, on enquiring, was verbally informed that her request had not been acceded to.

29. The applicant explained that the vulnerability assessment procedure operated by AWAS had been developed by that organisation in order to give effect to a government policy introduced in January 2005 which stated that vulnerable immigrants should not be detained. Although AWAS was not

formally charged with responsibility for this procedure by law, in practice it had full responsibility for it. It was not regulated by law, however, or by publicly available rules or procedures. The determining authority did not give written reasons for its decisions and there was no possibility of appeal, although in practice it might be possible to request a review if more evidence was forthcoming or there was a deterioration in the individual's condition.

E. Release

30. The applicant was released on 30 August 2012 in line with government policy, as she had spent a total of eighteen months in "immigration detention" since her arrival in Malta.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Immigration Act

31. Immigration and asylum procedures are mainly regulated by the Immigration Act ("the Act"), Chapter 217 of the Laws of Malta. Article 5 of the Act defines the term "prohibited immigrant" and, in so far as relevant, reads as follows:

> "(1) Any person, other than one having the right of entry, or of entry and residence, or of movement or transit under the preceding Parts, may be refused entry, and if he lands or is in Malta without leave from the Principal Immigration Officer, he shall be a prohibited immigrant.
>
> (2) Notwithstanding that he has landed or is in Malta with the leave of the Principal Immigration Officer or that he was granted a residence permit, a person shall, unless he is exempted under this Act from any of the following conditions or special rules applicable to him under the foregoing provisions of this Act, be a prohibited immigrant also -
>
> (*a*) if he is unable to show that he has the means of supporting himself and his dependants (if any) or if he or any of his dependants is likely to become a charge on the public funds; or ..."

32. Article 10 of the Act, regarding temporary detention, in so far as relevant reads as follows:

> "(1) Where leave to land is refused to any person arriving in Malta on an aircraft ...
>
> (2) Where leave to land is refused to any person arriving in Malta by any other means, such person at his own request may, with the leave of the Principal Immigration Officer, be placed temporarily on shore and detained in some place approved by the Minister and notified by notice in the Gazette:

Provided that he shall be returned to the vessel by which he is to leave Malta immediately that he makes a request to that effect or that the Principal Immigration Officer so directs, whichever is the earlier.

(3) Any person, while he is detained under sub-article (1) or (2), shall be deemed to be in legal custody and not to have landed."

In practice, upon being apprehended a prohibited immigrant is issued with a Removal Order, in accordance with Article 14 of the Act, which, in so far as relevant, reads as follows:

"(1) If any person is considered by the Principal Immigration Officer to be liable to removal as a prohibited immigrant under any of the provisions of article 5, the said Officer may issue a removal order against such person who shall have a right to appeal against such order in accordance with the provisions of article 25A: ...

(2) Upon such order being made, such person against whom such order is made, shall be detained in custody until he is removed from Malta:

Provided that if the person in respect of whom an expulsion order has been made is subject to criminal proceedings for a crime punishable with imprisonment or is serving a sentence of imprisonment, the Minister may give such directions as to whether the whole or part of the sentence is to be served before the expulsion of such person from Malta, and, in default of such directions, such person shall be removed after completion of the sentence."

33. An "irregular" immigrant is entitled to apply for recognition of refugee status by means of an application (in the form of a Preliminary Questionnaire) to the Commissioner for Refugees within two months of arrival. While the application is being processed, in accordance with Maltese policy, the asylum seeker will remain in detention for a period up to eighteen months, which may be extended if, upon rejection of the application, he or she refuses to cooperate in respect of his or her repatriation.

34. Article 25A of the Act provides that an application may be made to the Immigration Appeals Board if an asylum seeker considers that his or her detention is no longer reasonable. This entails requesting release from custody pending determination of an individual's asylum claim or his or her deportation. The same Article regulates the manner in which, and when, such release may be granted. The relevant provisions read as follows:

"(5) Any person aggrieved by any decision of the competent authority under any regulations made under Part III, or in virtue of article 7 [residence permits], article 14 [removal orders] or article 15 [responsibility of carriers] may enter an appeal against such decision and the Board shall have jurisdiction to hear and determine such appeals.

(6) During the course of any proceedings before it, the Board, may, even on a verbal request, grant provisional release to any person who is arrested or detained and is a party to proceedings before it, under such terms and conditions as it may deem fit, and the provisions of Title IV of Part II of Book Second of the Criminal Code shall, mutatis mutandis apply to such request.

(7) Any appeal has to be filed in the Registry of the Board within three working days from the decision subject to appeal: ...

(8) The decisions of the Board shall be final except with respect to points of law decided by the Board regarding decisions affecting persons as are mentioned in Part III, from which an appeal shall lie within ten days to the Court of Appeal (Inferior Jurisdiction) ...

(9) The Board shall also have jurisdiction to hear and determine applications made by persons in custody in virtue only of a deportation or removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation in accordance with the following subarticles of this article.

(10) The Board shall only grant release from custody under subarticle (9) where in its opinion the continued detention of such person is taking into account all the circumstances of the case, unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time:

Provided that where a person, whose application for protection under the Refugees Act has been refused by a final decision, does not co-operate with the Principal Immigration Officer with respect to his repatriation to his country of origin or to any other country which has accepted to receive him, the Board may refuse to order that person's release.

(11) The Board shall not grant such release in the following cases:

(a) when the identity of the applicant including his nationality has yet to be verified, in particular where the applicant has destroyed his travel or identification documents or used fraudulent documents in order to mislead the authorities;

(b) when elements on which any claim by applicant under the Refugees Act is based, have to be determined, where the determination thereof cannot be achieved in the absence of detention;

(c) where the release of the applicant could pose a threat to public security or public order.

(12) A person who has been released under the provisions of subarticles (9) to (11) may, where the Principal Immigration Officer is satisfied that there exists a reasonable prospect of deportation or that such person is not co-operating with the Principal Immigration Officer with respect to his repatriation to his country of origin or to another country which has accepted to receive him, and no proceedings under the Refugees Act are pending, be again taken into custody pending his removal from Malta.

(13) It shall be a condition of any release under subarticles (9) to (12) that the person so released shall periodically (and in no case less often than once every week) report to the immigration authorities at such intervals as the Board may determine."

B. The Refugees Act

35. Article 8 of the Refugees Act, Chapter 420 of the Laws of Malta, reads as follows:

"(1) A person may apply to the Commissioner, in the prescribed form, and shall be granted refugee protection, where it is established that he faces a well-founded fear of persecution in his country of origin or habitual residence in terms of the Convention.

(2) A well-founded fear of persecution may be based on events which have taken place after applicant has left his country of origin or activities engaged in by applicant since leaving the country of origin, except when based on circumstances which the applicant has created by his own decision since leaving the country of origin.

(3) If the Commissioner recommends the acceptance of the application, the Minister shall make a declaration that applicant is eligible for refugee status, or appeal against such recommendation."

C. Government Policy

36. According to the Irregular Immigrants, Refugees and Integration policy document, issued by the Ministry for Justice and Home Affairs and the Ministry for the Family and Social Solidarity, in 2005:

"Irregular immigrants who, by virtue of their age and/or physical condition, are considered to be vulnerable are exempt from detention and are accommodated in alternative centres".

D. Relevant Subsidiary Legislation

37. Part IV of Subsidiary Legislation 217.12, Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, Legal Notice 81 of 2011 (Transposing Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member States for returning illegally staying third-country nationals) reads, in so far as relevant, as follows:

Regulation 11

"(1) The provisions of Part IV shall not apply to third country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by sea or air of the external border of Malta and who have not subsequently obtained an authorisation or a right to stay in Malta.

(2) A return decision, an entry-ban decision and a removal order shall be issued in writing and shall contain reasons in fact and in law and information on legal remedies:

Provided that the reasons in fact may be given in a restrictive way where the withholding of information is regulated by law, in particular where the disclosure of information endangers national security, public policy, and the prevention, detection, investigation and prosecution of criminal offences.

(3) A return decision shall be issued in a standard form and general information as regards such form shall be given in at least five languages which third-country nationals may reasonably be supposed to understand.

(4) The Board shall review decisions related to return on application by the third-country national as referred to in subregulation (2), and may temporarily suspend their enforcement.

(5) For the purposes of sub-regulation (4) a legal adviser shall be allowed to assist the third-country national and, where entitled to, free legal aid shall be provided to the third-country national.

(6) The Principal Immigration Officer shall provide, upon request, a written or oral translation of the main elements of a return decision and information on the legal remedies in a language the third-country national may reasonably be supposed to understand. ...

(8) Where a third-country national is the subject of return procedures, unless other sufficient and less coercive measures are applicable, the Principal Immigration Officer may only keep him in detention in order to carry out the return and removal procedure, in particular where:

(*a*) there is a risk of absconding; or

(*b*) the third-country national avoids or hinders the return or removal procedure:

Provided that the detention shall be for a short period and shall subsist as long as the removal procedure is in progress and is executed with due diligence.

(9) Detention shall be a consequence of the removal order issued by the Principal Immigration Officer and it shall contain reasons in fact and in law.

(10) The third-country national subject to the provisions of sub-regulation (8) shall be entitled to institute proceedings before the Board to contest the lawfulness of detention and such proceedings shall be subject to a speedy judicial review.

(11) Where the third-country national is entitled to institute proceedings as provided in sub-regulation (10) he shall immediately be informed about such proceedings.

(12) The third country-national shall be immediately released from detention where in the opinion of the Board such detention is not lawful."

Sub-regulation (8) referred to in this article reads as follows:

"Where a third-country national is the subject of return procedures, unless other sufficient and less coercive measures are applicable, the Principal Immigration Officer may only keep him in detention in order to carry out the return and removal procedure, in particular where:

(a) there is a risk of absconding; or

(b) the third-country national avoids or hinders the return or removal procedure:

Provided that the detention shall be for a short period and shall subsist as long as the removal procedure is in progress and is executed with due diligence."

38. Subsidiary legislation 12.09, namely the Court Practice and Procedure and Good Order Rules, makes specific reference to constitutional cases. Rule 6 thereof reads as follows:

"Once a case has been set down for hearing the court shall ensure that, consistently with the due and proper administration of justice, the hearing and disposal of the case shall be expeditious, and the hearing of the cause shall as far as possible continue to

> be heard on consecutive days, and, where this is not possible, on dates close to one another.

E. The Civil Code

39. The relevant provisions of the Civil Code, Chapter 16 of the Laws of Malta, regarding actions in tort, read as follows:

Article 1031

> "Every person, however, shall be liable for the damage which occurs through his fault."

Article 1032

> "(1) A person shall be deemed to be in fault if, in his own acts, he does not use the prudence, diligence, and attention of a *bonus pater familias*.
>
> (2) No person shall, in the absence of an express provision of the law, be liable for any damage caused by want of prudence, diligence, or attention in a higher degree."

Article 1033

> "Any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of any act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom."

Article 1045

> "(1) The damage which is to be made good by the person responsible in accordance with the foregoing provisions shall consist in the actual loss which the act shall have directly caused to the injured party, in the expenses which the latter may have been compelled to incur in consequence of the damage, in the loss of actual wages or other earnings, and in the loss of future earnings arising from any permanent incapacity, total or partial, which the act may have caused.
>
> (2) The sum to be awarded in respect of such incapacity shall be assessed by the court, having regard to the circumstances of the case, and, particularly, to the nature and degree of incapacity caused, and to the condition of the injured party."

F. Relevant International Material

40. The 9th General report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (the "CPT") on the CPT's activities covering the period 1 January to 31 December 1998, at point 26, reads as follows:

> "Mixed gender staffing is another safeguard against ill-treatment in places of detention, in particular where juveniles are concerned. The presence of both male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention.

Mixed gender staffing also allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches. In this respect, the CPT wishes to stress that, regardless of their age, persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender; these principles apply *a fortiori* in respect of juveniles."

41. Rule 53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, reads as follows:

(1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

42. The report "Not here to stay: Report of the International Commission of Jurists on its visit to Malta on 26 – 30 September 2011", May 2012, pointed out, *inter alia*, that:

"The ICJ delegation found a lack of leisure facilities in all three detention facilities visited. ... In the Lyster Barracks there was also a small recreation yard, but without direct access from the detention section. Detainees had two hours per day of "air" in the courtyard. They reportedly seldom received visits from outside, apart from the occasional NGO."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicant complained under Article 3 about the conditions in which she had been held throughout almost the entire duration of her time in government custody, that is, the period from 5 February to 17 May 2009, when she was held at Ta' Kandja Detention Centre; the period from 17 February to 17 June 2011, particularly when she was held in the Female Forensic Ward, which like the Asylum Seekers' Unit, forms part of a ward known as M8B at Mount Carmel Hospital; and the period from 17 June 2011 to 30 August 2012, when she was held at Lyster Barracks, Hal Far. She claimed that the conditions of her detention had been in breach of Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

44. The Government contested that argument.

A. Admissibility

1. *The Government's objection of non-exhaustion of domestic remedies*

(a) The parties' submissions

i. The Government

45. The Government submitted that the applicant had not instituted any proceedings before the domestic courts relating to her Article 3 complaint, and consequently had not exhausted domestic remedies. They noted that the applicant could have instituted a civil action for damages (in tort), which could have made good any damage or loss sustained as a result of her detention conditions if she had been able to show, on the balance of probabilities, that she had suffered damage attributable to the Government's acts or omissions (Articles 1031 and 1033 of the Civil Code, see paragraph 39 above). The Government cited the Court's findings in the case of *Sammut and Visa Investments Ltd v. Malta* ((dec.), no. 27023/03, 28 June 2005) and other domestic case-law in relation to the fact that the State could be found responsible for damages in tort. They considered such a remedy to be both adequate and accessible. Nevertheless, in their subsequent observations the Government claimed that they had referred to this remedy in relation to compensation for her Article 3 complaint following release from detention and not as a remedy for a change of conditions of detention. They noted that although the law did not provide for non-pecuniary damage, known as "moral damage" in the domestic context, such an action could have resulted in an award for loss of opportunities, which in the Government's view was a veiled type of "moral damage", that is, non-pecuniary damage as understood in the Convention case-law. Moreover, they considered that civil law did not prohibit such damages and gave two examples of cases (*Dr. J Pace noe vs Dr Fenech Adam*i, Civil Court (First Hall), 1 June 2012 and *Mario Gerada vs The Prime Minister*, Civil Court (First Hall), 14 November 2012) where the applicants had been awarded "moral damage" in cases of breach of contract and unfair dismissal respectively.

46. Furthermore, the Government submitted that the applicant had failed to institute constitutional redress proceedings, which gave the relevant courts wide-ranging powers to grant redress. The applicant could have requested the proceedings to be heard with urgency (such requests were upheld where urgency was merited) in order to have the time span drastically reduced. The Government cited the following cases as examples

of where requests for hearing with urgency had been accepted: (i) in the context of enforcement of a return order of a child following wrongful removal, where the case was decided by two levels of jurisdiction over approximately a month and a half (from 6 July to 24 August 2012); (ii) a second case in the same context, brought on 2 August and decided on 14 August 2012 (where no appeal was lodged). They further noted that it was not correct to say that the aforementioned constitutional proceedings were shorter because they only dealt with points of law. It was also wrong to consider that constitutional proceedings did not assess the facts as this was often the case, given that the complaints differed from those debated before the ordinary courts. In their subsequent observations, the Government submitted further examples, namely, *Stacy Chircop vs Attorney General* (4/2013) concerning a breach of fair trial rights in criminal proceedings (which were still pending), which was lodged on 22 January 2013 and decided at first instance on 8 February 2013 and *Jonathan Attard vs the Commisioner of Police and the Attorney General in representation of the Government* (13/2013) concerning complaints under Articles 5 and 6 of the Convention, which was lodged on 14 February 2013, decided at first instance on 1 April 2013 and was pending on appeal before the Constitutional Court in May 2013.

47. The Government further noted that the applicant's statistical data (see paragraph 51 below) did not reflect the subject matter and the complexity of the cases and did not refer to cases where hearing with urgency was requested and granted. Similarly, in relation to the applicant's reference to the *Tefarra Besabe* case, the applicant had not substantiated that a request for hearing with urgency had been lodged in that case. Indeed, the applicant had merely requested that the case be set down with urgency (as in fact was done, since it was set down for hearing two days after it was lodged) but had not requested it to be heard with urgency. As to the reference to *Essa Maneh*, they noted that in the meantime the case had been decided on 29 April 2013 after various witnesses were heard and various adjournments requested by the applicant. The *Pauline Vella* case, also cited by the applicant, had also not dealt with conditions of detention, but with whether the mental health care had breached the applicant's human rights. The Government considered that delays were exceptional and not the rule.

48. The Government submitted that such a remedy could have directly remedied the applicant's state of affairs both retrospectively and prospectively and that it was not an extraordinary or discretionary remedy. They further submitted that the applicant had had access to such a remedy given that she could have availed herself of legal aid representation had she shown that she had insufficient funds to engage a private lawyer, and had she asked for it. The applicant's failure to do so could not be attributed to the Government. To substantiate their argument, the Government submitted one example (*Mourad Mabrouk vs Ministry for Justice and Home Affairs et*,

4 February 2009) where a legal aid lawyer had instituted constitutional proceedings on behalf of a person in detention.

49. Lastly, the Government noted that the Court should comply with the subsidiarity principle. They considered that it was totally inappropriate for the Court to misapply the exhaustion requirement in a manner which showed a lack of confidence in the domestic system in the circumstances of the present case.

ii. The applicant

50. The applicant considered that she had had no effective remedy in this connection. She noted that although a formal remedy did in fact exist, namely constitutional redress proceedings, there were issues relating to accessibility in practice, particularly for a person in the applicant's situation, namely a foreign national, with a low level of formal education and little or no knowledge of English or Maltese, detained under legislation on aliens, with virtually no access to information, no money to pay for legal assistance and related court fees, and in practice unable to obtain legal aid to initiate proceedings, although in theory this may be available. She noted that in practice there was no system in place to allow immigration detainees to obtain the services of a legal aid lawyer in a systematic and effective manner. In this regard, it was significant that only two cases challenging the conditions of detention had been instituted by detainees before the First Hall of the Civil Court (in its constitutional jurisdiction), and that in both cases the applicants had been assisted by private or NGO lawyers. The fact that, as cited by the Government, only one case had been lodged by an immigrant assisted by a legal aid lawyer (despite some 16,500 immigrants having been detained over a time span of a decade) could not be sufficient proof of the accessibility of this remedy. Moreover, in the case referred to by the Government, the claimant had been married to a Maltese woman, had lived in Malta and was familiar with the legal system. Indeed his removal order had been issued only following his separation from his wife and the consequent revocation of his exempt person status for the purposes of residence.

51. Moreover, the effectiveness of that remedy was highly questionable, not least because of the duration of such proceedings. One case instituted by an asylum seeker concerning his right to liberty, and which had been lodged with a request for hearing with urgency on 8 May 2007, was still awaiting judgment today (*Tefarra Besabe Berhe vs Kummissarju tal-Pulizija noe et*, no. 27/2007). The only other case dealing with this point was *Essa Maneh et vs Kummissarju tal-Pulizija noe et* (53/2008), decided by the First Hall of the Civil Court in its constitutional jurisdiction on 16 December 2009, and, at the time of filing observations (April 2013), was still pending before the Court of Appeal. Another case (*The Police vs Pauline Vella* no. 42/2007) had been decided in 2011. According to the Maltese justice website, 64

applications had been lodged in 2009 and only 8 of them had been decided at first instance, of which 7 had been appealed against and finally decided as follows: 4 in 2010, 2 in 2011 and one remained pending. Of the other 61 cases lodged, 49 had been decided to date, 15 were still pending at first instance, and 5 were pending on appeal. The applicant submitted similar data for subsequent years. As a rule it was clear that such proceedings took over a year to be determined, unless (as explained below) the law set a time-limit, as in the cases cited by the Government, or where urgency was dictated by circumstances (for example *Deborah Schembri et noe vs Broadcasting authority* was decided on 19 May 2011 in view of a national referendum which was due to be held a few days later). However, Article 3 cases did not fall within that category.

52. In reply to the Government's argument relating to requests for urgent treatment, the applicant noted that the two cases mentioned by the Government concerned proceedings related to the Hague Convention on the International Aspects of Child Abduction, and that the courts exercising constitutional jurisdiction were only concerned with legal issues, the facts having been examined previously by the ordinary courts. Moreover, by law such proceedings had to be terminated within six weeks.

53. Lastly, referring to the Court's case-law as to effectiveness of remedies under Article 3, the applicant considered that the Government had failed to substantiate that an action in tort could have been effective and relevant to the applicant's situation. In particular, the applicant stressed that such an action could only address real damage and not non-pecuniary damage (known as "moral damage" in the Maltese context). She noted that the case of *Sammut and Visa Investments* (cited above), which dealt with a building permit and complaints under Article 1 of Protocol No. 1 and Article 6, was not comparable to the present one. Moreover, an action in tort could not bring about a change in her conditions of detention. Furthermore, the issue of access – given the applicant's situation – would also have been problematic, as stated above, and the same aforementioned considerations regarding length of proceedings were also relevant to such civil proceedings.

(b) The Court's assessment

54. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity –, that there is an effective remedy available to deal with the substance of an "arguable complaint" under the Convention

and to grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

55. An applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available both in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 94, 10 January 2012)

56. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports of Judgments and Decisions* 1996-IV).

57. In the context of complaints about inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention, and compensation for the damage or loss sustained on account of such

conditions (see *Roman Karasev v. Russia*, no. 30251/03, § 79, 25 November 2010, and *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007). If an applicant has been held in conditions in breach of Article 3, a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment is of the greatest value. However, once the applicant has left the facility in which he or she has endured the inadequate conditions, he or she should have an enforceable right to compensation for the violation that has already occurred. Where the fundamental right to protection against torture, inhuman and degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3. Indeed, the special importance attached by the Convention to this provision requires, in the Court's view, the States parties to establish, over and above a compensatory remedy, an effective mechanism in order to put an end to such treatment rapidly (see *Ananyev and Others*, cited above, §§ 98-99, 10 January 2012, and *Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, § 50, 8 January 2013). The need, however, to have both of these remedies does not imply that they should be available in the same judicial proceedings.

58. According to the Court's case-law, in the event of a breach of Articles 2 and 3, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of possible remedies (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V; *Keenan v. the United Kingdom*, no. 27229/95, § 130, ECHR 2001-III; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 97-98, ECHR 2002-II). In *Keenan*, for example, the Court found that there had been significant defects in the medical care provided to a mentally ill person known to be at risk of suicide, which amounted to a violation of Article 3. The Court concluded that the applicant should have been able to apply under Article 13 for compensation for the non-pecuniary damage she and her son had suffered before the latter's death (see also, as a more recent authority, *Ciorap v. Moldova (no. 2)*, no. 7481/06, §§ 24-25, 20 July 2010, where the Court held that the applicant still had victim status as a result of the low amount of non-pecuniary damages awarded by the domestic courts in relation to a finding of inhuman treatment in breach of Article 3).

59. The Court notes that, as acknowledged by the Government, an action in tort could only be seen as a remedy in relation to compensation for the applicant's Article 3 complaint following release from detention and not as a remedy for a change of conditions of detention. In consequence it cannot be considered an effective mechanism in order to put an end to such

treatment rapidly, as required by the Convention. The Court notes, moreover, that such a remedy does not in general provide for an award of non-pecuniary damage. While it is true that the Government submitted two very recent examples of such damages being awarded, they were unable to identify a legal provision for awards of such non-pecuniary damages. Moreover, against a background of decades during which the domestic courts have consistently interpreted Article 1045 of the Civil Code (see paragraph 39 above) as excluding non-pecuniary damage ("moral damage" as understood in the Maltese context), and in the light of the fact that one of these two judgments (delivered by the same judge) has been appealed against by the Government and is still pending before the Court of Appeal, a civil claim for compensation cannot be considered to be a sufficiently certain remedy in practice as regards compensation for allegedly inadequate detention conditions. Moreover, the Court further notes that loss of opportunity, to which the Government had originally referred, is a type of pecuniary, and not non-pecuniary, damage.

60. It follows that, given that it has not been satisfactorily established that an action in tort may give rise to compensation for the non-pecuniary damage suffered and that it clearly is not a preventive remedy in so far as it cannot impede the continuation of the violation alleged or provide the applicant with an improvement in the detention conditions (see *Torregiani and Others*, cited above, particularly § 50, and the case-law cited therein), it cannot be considered an effective remedy for the purposes of a complaint about conditions of detention under Article 3.

61. As to the remedy provided by the courts exercising constitutional jurisdiction, the Court considers that, as can be seen from the cases brought before it, such an action provides a forum guaranteeing due process of law and effective participation for the aggrieved individual. In such proceedings, courts can take cognisance of the merits of the complaint, make findings of fact and order redress that is tailored to the nature and gravity of the violation. These courts can also make an award of compensation for non-pecuniary damage and there is no limit on the amount which can be awarded to an applicant for such a violation (see, *mutatis mutandis*, *Gera de Petri Testaferrata Bonici Ghaxaq v. Malta*, no. 26771/07, § 69, 5 April 2011, in relation to Article 1 of Protocol No. 1, and *Zarb v. Malta*, no. 16631/04, § 51, 4 July 2006, in relation to Article 6). The ensuing judicial decision will be binding on the defaulting authority and enforceable against it. The Court is therefore satisfied that the existing legal framework renders this remedy capable, at least in theory, of affording appropriate redress. The question that arises is whether it can be said that the proceedings are conducted diligently (see, by implication, *Ananyev and Others*, cited above, § 109). The Court observes that the speed of the procedure for remedial action may also be relevant to whether it is practically effective in the particular circumstances of a given case for the purposes of Article 35 § 1

(see, *mutatis mutandis*, *McFarlane v. Ireland* [GC], no. 31333/06, § 123, ECHR 2010).

62. The Court notes that two of the cases cited by the Government as having been dealt with in a timely manner both concerned return orders of children following wrongful removal. The other two cases mentioned in their supplementary observations are more recent, and while on the one hand one of them (concerning Article 6) had been dealt with speedily, although it is unclear for what reason this was so, the second case (concerning Article 5 § 3) on the other hand was still pending on appeal three months after it was lodged. Moreover, this has to be seen against the background of the statistics supplied by the applicant. While it is true that those statistics failed to mention whether a request for hearing with urgency had been granted in any of the cases concerned, the Government failed to shed light on that matter. Likewise, the Government did not submit any details as to how often requests for hearing with urgency were granted; nor did they argue that such requests in proceedings regarding conditions of detention were, as a rule, acceded to by the courts exercising constitutional jurisdiction. It cannot be ignored that the example submitted by the applicant *(Tefarra Besabe Berhe*) concerning the lawfulness of immigrants' detention and the conditions of such detention was still pending six years after it was lodged. The Government's argument that in that case the request had been only for the case to be set down for hearing with urgency and had not been a request for hearing with urgency is out of place and cannot suffice to convince the Court that six years to hear a case about conditions of detention can in any event satisfy Convention standards under any relevant provision. Similarly, the Court notes that the second example submitted by the applicant, namely the *Essa Maneh* case, concerning conditions of detention, which was lodged in 2008, was not concluded until May 2013. Against this background, little comfort can be found in the subsidiary legislation cited by the Government which states that constitutional cases "shall be expeditious".

63. The Court considers that the Government should normally be able to illustrate the practical effectiveness of a remedy with examples of domestic case-law (see *Ananyev and Others*, cited above, § 109), but it is ready to accept that this may be more difficult in smaller jurisdictions, such as in the present case, where the number of cases of a specific kind may be fewer than in the larger jurisdictions. However, the only two cases comparable to the present one which have been brought to the Court's attention illustrate the ineffectiveness of this remedy, given the delay in those proceedings.

64. Thus, while the Court cannot rule out that where constitutional redress proceedings are dealt with urgently (as should be the case with complaints such as the present one) this may in future be considered an effective remedy for the purposes of complaints of conditions of detention under Article 3, the current state of domestic case-law does not allow the

Court to find that the applicant was required to have recourse to such a remedy.

65. It follows that the Government's objection must be dismissed.

66. The Court would finally point out that had these remedies been effective in terms of scope and speed, there may still have been an issue in relation to accessibility. The Court is struck by the apparent lack of a proper structured system enabling immigration detainees to have concrete access to effective legal aid. Indeed, the fact that the Government were able to supply only one example of an immigration detainee making use of legal aid (moreover, in different and more favourable conditions than those of boat people) despite the hundreds of immigrants who reach the Maltese shores each year and are subsequently detained, and who often have no means of subsistence, only highlights this deficiency.

2. Other admissibility issues

67. The applicant noted that at the time of the introduction of her application her detention was still ongoing. She argued that her continuing detention potentially constituted a continuing situation rendering the six-month requirement inapplicable to her complaint (*Iordache v. Romania*, no. 6817/02, § 50, 14 October 2008).

68. The Court points out that it is not open to it to set aside the application of the six-month rule solely because the respondent Government in question have not made a preliminary objection to that effect, since the said criterion, reflecting as it does the wish of the Contracting Parties to prevent past events being called into question after an indefinite lapse of time, serves the interests not only of respondent Governments, but also of legal certainty as a value in itself. It marks out the temporal limits of the supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I, and *G.O. v Russia*, § 77, no. 39249/03, 18 October 2011).

69. The Court reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months from the final decision in the process of exhaustion of domestic remedies. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), nos. 62566/00 et seq., 10 January 2002).

70. A complaint about conditions of detention must be lodged within six months of the end of the situation complained of if there was no effective domestic remedy to be exhausted. The Court's approach to the application of the six-month rule to complaints concerning the conditions of an applicant's detention may be summarised in the following manner: a period

of an applicant's detention should be regarded as a "continuing situation" as long as the detention has been effected in the same type of detention facility in substantially similar conditions. The applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation" (see *Ananyev and Others*, cited above, § 78).

71. The Court has already found that there was no effective remedy for the purposes of the applicant's Article 3 complaint in respect of her conditions of detention.

It notes that the first period of detention, namely at Ta' Kandja Detention Centre, came to an end sometime in May 2009, when the applicant escaped. It was not followed by any immediate detention and consequently cannot be considered as being part of the subsequent detention in such a way as to constitute a continuing violation.

As to the second period of detention, namely the period during which the applicant served her sentence in prison, including in Mount Carmel Hospital, which ended on 17 June 2011, the Court considers that it was under a different type of detention regime from that pertaining to the subsequent detention in Lyster Barracks. It follows that it cannot be considered as part of the subsequent detention in such a way as to amount to a continuing violation.

72. In consequence, the application having been introduced on 27 August 2012, the parts of the complaint relating to the first and second periods of detention, namely at Ta' Kandja Detention Centre and in prison (including in Mount Carmel Hospital), were lodged outside the six-month time-limit. It follows that those parts of the complaint are inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

73. The same cannot be said of the complaint relating to the conditions of detention in Lyster Barracks from 17 June 2011 to 30 August 2012.

74. The Court further notes that the part of the complaint relating to detention in Lyster Barracks is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

A. Merits

1. The parties' submissions

(a) The applicant

75. The applicant complained that the conditions in which she had been detained amounted to cruel, inhuman and degrading treatment for the purposes of Article 3 of the Convention. Referring to *Dougoz v. Greece*

(no. 40907/98, ECHR 2001-II), she submitted that account had to be taken of the cumulative effects of those conditions and of her specific allegations.

76. The facilities in Lyster Barracks, where the applicant had been detained for fourteen and a half months, were prison-like and basic. Zone C, where she had been held with other single women, contained (like the other zones) three dormitories (containing bunk beds but no lockers or cupboards for personal belongings), ten showers and toilets, a small kitchen with a cooker and a fridge (no further storage for food, which was contained in open boxes accessible to insects, was available) and a common room with six basic tables and benches screwed to the ground, together with a television. Access to the zones was through metal gates which were kept locked all day, and detainees could leave the zone for one and a half hours per day, which they could spend in a small dusty yard. Windows were barred and most of them glazed with opaque Perspex (which was removed in the summer months for air, though they then let air through in the cold winter months). On the one hand, in summer the facility was often crowded and heat would become oppressive despite ceiling fans. On the other hand, in winter it was unbearably cold as the facility was not heated and, moreover, was exposed to the elements as there were no adjoining buildings. The applicant complained that the facility was shared by too many people – in summer the applicant's dormitory was shared by twenty women – and agreement amongst so many different persons was difficult. Blankets hanging from bunk beds were the only means of privacy. The food in detention left much to be desired both in terms of quality and quantity. According to reports by Médecins Sans Frontières and the JRS (relevant links submitted to the Court) the diet provided had led to a number of gastro intestinal problems among detainees. The applicant had suffered heartburn.

77. Detainees had little to do all day, and only limited access to open air. In particular, between April and July 2012 access to the yard was completely blocked (another detainee's statement in support of this has been submitted). Moreover, detainees had little access to the outside world; while a phone was provided, credit for phone calls did not allow for long-distance calls and they had no access to internet, thereby restricting their access to information. A further source of distress was that the detention centre was run mostly by males (only two female members of staff), who entered their dormitories to carry out headcounts, distributed their underwear and accompanied them to doctors when necessary. On this issue the applicant referred to the CPT's 9th General report (see paragraph 40 above). She also referred to the concern expressed on the matter in the observations of the Human Rights Committee and to the UN Standard Minimum Rules for the Treatment of Prisoners (see paragraph 41 above).

78. The applicant referred to the report of the ICJ (see paragraph 42 above). Furthermore as could be seen from the results of the JRS Europe study on detention of vulnerable asylum seekers, the physical conditions of

detention and their impact on the physical and mental well-being of detainees were exacerbated by other factors[1]. These factors included: length of detention, lack of constructive activities to occupy detainees, overcrowding, limited access to open air, difficulties in communication with staff and with other detainees, and lack of information about one's situation. Moreover, there was a lack of any real possibility of obtaining effective redress and inmates knew that detention was not serving any useful purpose and was in no way proportionate to the aim to be achieved.

79. The applicant submitted that all of those objective factors had had a particular impact on her because of her personal circumstances, in particular her psychological condition, which had been brought about by a number of factors, including her separation from her son and the lack of any real prospect of being reunited with him in the foreseeable future, the miscarriage she had suffered in detention, and her prolonged detention. Other factors that had had a significant impact on the applicant's experience were her inability to speak English or Maltese, her low level of formal education, and the fact that she was a woman held in centres staffed almost exclusively by men. The conditions of detention she had suffered had affected her health in so far as she had been suffering from insomnia, physical pain, irregular menstrual cycles and periods of depression (as confirmed by medical reports). Nevertheless, her requests for release on grounds of vulnerability had been rejected.

(b) The Government

80. The Government submitted that due allowance had to be made for the practical exigencies of detention. They considered that it was only when strain was imposed on a sick detainee that the conditions of detention could be considered as having attained the prohibited level of severity under Article 3.

81. Following her release from prison, the applicant in the present case had been placed in Hermes Block at Lyster Barracks, Zone C, a block assigned to females (children were housed there only for short periods). The block had been designed to accommodate immigrants since 2002, and refurbishing (including electricity, sanitary facilities, drainage and openings) had been started in 2008. All rooms were fitted with heaters and ceiling fans. The applicant had thus been housed in a sheltered compound with adequate personal space, ventilation and bedding - there were no cells in Hermes Block. She had been given a new mattress and bedding on arrival

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[1] *Becoming Vulnerable in Detention*, National Report on Malta, July 2010, which may be accessed at: http://jrs.attmalta.org/wp-content/uploads/downloads/2011/02/Becoming-Vulnerable-in-Detention-MT.pdf.
The Regional Report on the DEVAS project, published by JRS Europe in June 2010 may be accessed at: http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_FULL%20REPORT.pdf
both last accessed on 2 July 2013.

and had slept in her own bed cordoned off from the other beds. She had been provided with breakfast, lunch and dinner (according to medical needs if prescribed and respecting religious beliefs) on a daily basis together with mineral water as prescribed to her by the doctor. She had also been given clothing and hygiene products, together with access to sanitary facilities equipped with hot and cold water and private showers. The Government explained that, upon arrival, immigrants were provided with a bag containing essentials for their well-being, including T-shirts, trousers, underwear, blankets, bed linen, a plate, a glass and plastic cutlery, soap for personal hygiene, towels, a toothbrush and tooth paste and other essentials. Every two weeks washing detergents were supplied to each room.

82. Furthermore, well-equipped custody clinics had been set up in all compounds housing immigrants and during silent hours and weekends, when medical staff were not on site, the immigrants had access to local health centres. They noted that the applicant had made use of medical facilities at least fourteen times during her detention.

83. Hermes Block, Zone C, consisted of three rooms of equal size (having twenty bunk beds each) that together had a total capacity of sixty persons. During the applicant's detention this capacity had been exceeded only during the months of May and August 2012 when it had housed sixty-one and sixty-nine detainees respectively, as a result of the heavy influx of migrants during that period. However, the Government submitted that there had been no overcrowding during the applicant's stay. The zone was well maintained as the Government allocated funds for this purpose.

84. Lyster Barracks consisted of five different zones, one of which was Hermes Block, Zone C, and access to outside exercise was limited to one and a half hours daily per zone. If one zone refused to use its time the allotted time would be added to that of the other zones. The Government submitted that during the period of April to July 2012 access to the yard had only been limited because of the significant number of break-outs. However, the applicant could circulate with other detainees inside as she had not been locked up in a cell, she could also use the yard save when it was closed because works were being carried out on the window grilles following the break-outs. Moreover, recreation also included access to television. The applicant was supplied with telephone cards on 28 March, 16 May, 8 July and 24 August 2012. She could also participate in integration projects but had declined to do so. Thus, according to the Government, the conditions of the applicant's detention had respected her dignity and well-being. In particular, they noted that, according to the Board of Visitors for Detained Persons, the applicant had never been mistreated or subjected to inhuman treatment by the detention staff.

2. *The Court's assessment*

(a) General principles

85. The Court reiterates that according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, §§ 95-96, 24 January 2008).

86. Under Article 3, the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the prisoner's health and well-being are adequately secured (see *Riad and Idiab*, cited above § 99, *S.D. v. Greece*, no. 53541/07, § 47, 11 June 2009 and *A.A. v. Greece*, no. 12186/08, § 55, 22 July 2010). When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz*, cited above, § 46). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, § 143, 8 November 2005 and, by implication, *Tabesh v. Greece*, no. 8256/07, § 43, 26 November 2009).

87. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005). In deciding whether or not there has been a violation of Article 3 on account of the lack of personal space, the Court has to have regard to the following three elements:

(a) each detainee must have an individual sleeping place in the cell;

(b) each detainee must dispose of at least three square metres of floor space; and

(c) the overall surface area of the cell must be such as to allow the detainees to move freely between the furniture items.

The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3.

(d) Other aspects (see *Ananyev and Others*, cited above § 148).

88. The Court reiterates that, quite apart from the necessity of having sufficient personal space, other aspects of physical conditions of detention are relevant for the assessment of compliance with Article 3. Such elements include, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements (see *Ananyev and Others,* cited above, § 149; et seq. for further details and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 222, ECHR 2011).

89. Cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. Accordingly, applicants might experience certain difficulties in procuring evidence to substantiate a complaint in that connection. Still, in such cases applicants may well be expected to submit at least a detailed account of the facts complained of and provide – to the greatest possible extent – some evidence in support of their complaints (see *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010). However, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Gubin v. Russia*, no. 8217/04, § 56, 17 June 2010, and *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts)).

90. As it has noted recently, the Court is well aware that the States which form the external borders of the European Union are currently experiencing considerable difficulties in coping with the increasing influx of migrants and asylum seekers and it does not underestimate the burden and pressure this situation places on the States concerned, which are all the greater in the present context of economic crisis. The Court is particularly aware of the difficulties involved in the reception of migrants and asylum seekers and of the disproportionate number of asylum seekers when compared to the capacities of some of these States. However, having regard to the absolute character of Article 3, that cannot absolve a State of its obligations under that provision (see *M.S.S.,* cited above, § 223).

(b) Application of these principles to the present case

91. In the present case, the Court finds that the applicant's allegations in respect of this complaint were mainly formulated as general statements. Nevertheless, the Court notes the lack of proper documentation submitted by the Government. It is unclear whether this was due to a general system which does not provide for keeping records or to a failure to actually submit such records in the present case.

92. Turning to the facts of the present case, and on the basis of the documents submitted by the parties, the Court considers that the fact that the detention centre was basic cannot in itself raise an issue, particularly given that from the Government's explanation it appears that sanitary and other standards were better than those often assessed by this Court. Nevertheless, the Court notes with concern the applicant's statements that dormitories were shared by so many people with little or no privacy, that she suffered from heat and cold, that an inadequate diet was provided, that there was a lack of female staff to deal with the women detainees and above all that there was a lack of access to open air. In that connection the applicant contended in particular that the detainees had had no access to the recreation yard from April to June 2012, as had been corroborated by another detainee.

93. While it is true that the Court has previously found that the fact that an applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates [70] was itself sufficient to cause distress or hardship of an intensity exceeding the Article 3 threshold (see for example *Belevitskiy v. Russia*, no. 72967/01, § 77, 1 March 2007), in the circumstances of the present case, it does not appear to be the case. Indeed the Court notes that no reference has been made by either of the parties to the actual dimensions of the living space of the dormitory and adjacent rooms, thus precluding any estimation of the living space per detainee. In those circumstances, the mere fact that twenty people were lodged in one dormitory, although this may have caused some discomfort, cannot be considered, by itself, as overcrowding. Despite the absence of any documents to this effect, the Government admitted that in May and August 2012 Hermes Block had housed sixty-one and sixty-nine detainees respectively instead of the sixty it catered for; nevertheless, it has not been submitted that such increase affected the applicant's dormitory, nor has the applicant claimed that she had not had a bed. Moreover, the dormitories were equipped with separate lavatories allowing for a degree of privacy (see, by contrast, *Peers v. Greece*, no. 28524/95, § 73, ECHR 2001-III).

94. The Court considers that suffering from cold and heat cannot be underestimated as such conditions may affect one's well-being, and may in extreme circumstances affect health. Nevertheless, the applicant admits that ceiling fans were in place, and despite the fact that Malta is an extremely hot country in the summer months the Court considers that it cannot be expected of the authorities to provide the most advanced technology.

However, the Court is concerned by the applicant's allegation that detainees were made to suffer the cold and that there were no proper blankets (see paragraph 17 *in fine* above). The Court observes that, while the Government thought it useful to submit photographs of detergents, they failed to submit any evidence substantiating their claim that the dormitories were in fact heated. Accordingly, this is a factor which cannot be ignored in the overall assessment of the conditions of the applicant's detention.

95. For the same reasons highlighted in various reports submitted by the applicant, the Court also finds disconcerting the lack of female staff in the centre. The Government did not deny the applicant's statement that only two females had been working in the detention centre at the time, that centre consisting of multiple blocks (Hermes Block being only one of them) of five zones, and each zone having an average of sixty detainees. The Court accepts that this must have caused a degree of discomfort to the female detainees, particularly the applicant, who suffered from specific medical conditions related to her miscarriage.

96. Of further concern to the Court is the applicant's submission, corroborated by another detainee, that outdoor exercise had been impossible from April to June 2012. The Government contested that argument. However, they observed that at one stage access was limited for what appears to be security reasons following certain break-outs, and at another stage that the yard had been closed off while work was being carried out. In the light of the Government's total failure to submit any evidence corroborating any of their claims or any records regarding when the building works were carried out and when the yard was actually closed off, the Court cannot but give credence to the applicant's corroborated statement and finds it of great concern that for three months the applicant had no access whatsoever to open air and exercise, a factor carrying considerable weight when coupled with the other conditions. To cite some examples, the Court has held that confining an asylum seeker to a prefabricated cabin for two months without allowing him outdoors or to make a telephone call, and with no clean sheets and insufficient hygiene products, amounted to degrading treatment within the meaning of Article 3 of the Convention (see *S.D.*, cited above, §§ 49 to 54, 11 June 2009). Similarly, a period of detention of six days, in a confined space, with no possibility of exercising, no leisure area, sleeping on dirty mattresses and with no free access to a toilet was unacceptable with respect to Article 3 (ibid., § 51) and the detention of an asylum seeker for three months on police premises pending the application of an administrative measure, with no access to any recreational activities and without proper meals, have also been considered to be degrading treatment (see *Tabesh*, cited above, §§ 38 to 44, 26 November 2009). Indeed, the Court further observes that, as can be seen from the photos submitted by the Government, the exercise yard in question was considerably small for use by sixty people (recreation being available in

one zone at a time). It consisted of a rectangular area secured on three sides by wire fencing topped with barbed wire, the fourth side consisting of one of the barrack blocks. In fact, it left much to be desired given that it was the only outdoor access enjoyed by detainees for a limited time daily.

97. Although not acknowledged by the domestic authorities in the AWAS procedure, the Court considers that the applicant was in a vulnerable position, not only because of the fact that she was an irregular immigrant and because of her specific past and her personal emotional circumstances (see also *M.S.S.,* cited above, § 232), but also because of her fragile health. The medical documents submitted by the applicant showed that she suffered from, *inter alia*, insomnia, recurrent physical pain and episodes of depression. The Government also confirmed at least fourteen medical visits during her detention. Accordingly, in addition to adequate surroundings, an appropriate and varied diet was also crucially important for the applicant in view of her state of health. However, the Government put forward no evidence that the food provided was adequate at the material time, as their submissions in this respect are limited to irrelevant points.

98. The Court observes that this situation and the aforementioned conditions persisted for a continuous period of fourteen and a half months. Moreover, the detention was imposed in the context of immigration and was therefore a measure which is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country.

99. In view of all the above-mentioned circumstances taken as a whole which the applicant, as a detained immigrant, endured for a total of fourteen and a half months, and in the light of the applicant's specific situation, the Court is of the opinion that the cumulative effect of the conditions complained of diminished the applicant's human dignity and aroused in her feelings of anguish and inferiority capable of humiliating and debasing her and possibly breaking her physical or moral resistance. In sum, the Court considers that the conditions of the applicant's detention in Hermes Block amounted to degrading treatment within the meaning of Article 3 of the Convention.

100. There has accordingly been a violation of Article 3 of the Convention.

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

101. The applicant further complained that the Maltese legal system had not provided her with a speedy and efficient remedy, as required by Article 5 § 4 of the Convention, which reads as follows:

> "4. 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.

102. The Government contested that argument.

A. Admissibility

1. *The Government's objection* ratione materiae

103. The Government submitted that Article 5 § 4 did not apply to the present case since, according to the Court's case-law, such a remedy is no longer required once an individual is lawfully free. They noted that the applicant had been released on 30 August 2012.

104. The applicant noted that she was entitled to raise this complaint, since she had not had such a remedy during her detention and had instituted proceedings before the Court while she was still in detention.

105. While it is true that the right guaranteed in Article 5 § 4 is only applicable to persons deprived of their liberty, and has no application for the purposes of obtaining, after release, a declaration that a previous detention or arrest was unlawful (see *X v. Sweden*, no. 10230/82, Commission decision of 11 May 1983, Decisions and Reports (DR) 32, p. 304, and *A.K. v. Austria*, no. 20832/92, Commission decision of 1 December 1993, unpublished) meaning that Article 5 § 4 cannot be invoked by a person who is lawfully released (see *Stephens v. Malta (no. 1)*, no. 11956/07, § 102, 21 April 2009), the Court notes that the applicant complained that the remedy she pursued while in immigration detention had not been effective and that she did not have any other effective remedy to challenge the lawfulness of her detention during the time she was detained. In consequence the provision is clearly applicable. Moreover, the Court reiterates that a released person may nonetheless challenge under Article 5 § 4 the speediness of a remedy (see *X v. the United Kingdom*, no. 9403/81, 28 DR 235 (1982)).

106. It follows that the Government's objection must be dismissed.

2. *Conclusion*

107. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

108. The applicant complained that none of the legal remedies allowing detainees to challenge their detention met the requirements of Article 5 § 4,

as outlined in the Court's jurisprudence. Most of the domestic remedies available to challenge the lawfulness of detention (Article 409A of the Criminal Code – Chapter 9 of the Laws of Malta; Article 25A (9) of the Immigration Act – Chapter 217 of the Laws of Malta; and a constitutional application) had already been declared by the Court to be ineffective and insufficient for the purposes of Article 5 § 4 in the case of *Louled Massoud v. Malta* (no. 24340/08, §§ 43-46, 27 July 2010). The applicant's use of the remedy under Article 25A of the Act (see paragraph 25 and 26 above) had in fact also turned out to be ineffective in her case, since in six months the IAB had not conclusively decided the case, the proceedings having subsequently been struck out as the applicant had been released in the meantime (see paragraph 27 above). Since the Court's decision in *Louled Massoud*, the only relevant change made to Maltese legislation was the transposition of the EU Directive on Common Standards for the Return of Illegally Staying Third Country Nationals (also known as the Return Directive) into Maltese law by means of the Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations (S.L. 217.12). Following transposition, certain categories of detainees held by virtue of these regulations were provided with the possibility of challenging the lawfulness of their detention by means of an application to the IAB. Regulation 11(10) of Legal Notice (LN) 81 of 2011 stated that third-country nationals subject to the provisions of sub-regulation (8) (subject to removal) were entitled to institute such proceedings before the Board (see Relevant Domestic Law, above). However, the applicant had not attempted to use this remedy as the restrictions contained in Regulation 11(1) would seem to indicate that she was in fact excluded from the benefits of this provision, as confirmed by the IAB in *Ibrahim Suzo vs PIO*, decided on 5 July 2012. Moreover, even if the said remedy were applicable, in the months since it had been available it had proved to be far from efficient and speedy according to Convention standards. The case of *Ibrahim Suzo*, cited above, had taken one year to be decided. Three other cases that the applicant was aware of had also failed to meet the required standard of speediness. In one case the individual had been released in March 2012, in accordance with government policy (after eighteen months had elapsed), a full nine months after he had lodged his application with the Board. Thus, his application was still pending at the time of his release and was in fact still pending at the time of the introduction of the instant application. In another case the detainee had been released with protection two and a half months after his application had been lodged with the Board, at which point his application was still pending. In the third case, the person had been released on bail two months after his application had been lodged; however, at the date on which the applicant's observations were submitted (March 2013) the Board had not yet decided the question of the lawfulness of his detention, that is, almost

thirteen months after his application had been lodged. Moreover, like the other remedies before it, this "new" remedy had failed to meet the criteria of accessibility and certainty, as the manner in which the law was drafted seemed to exclude certain categories of migrants in detention pending return. There was a lack of information regarding the possibility of using this remedy to challenge the lawfulness of detention, and a lack of access to legal aid to avail oneself of it.

109. The same applied to constitutional redress proceedings, which moreover the Court had repeatedly considered not to be a speedy remedy for the purposes of Article 5 § 4. The applicant referred to her observations in paragraphs 50-52 above. Indeed the case of *Tafarra Besabe Berhe* showed that requests for hearing with urgency were of little avail. A further example, *Maximilain Ciantar v AG* (35/2010) regarding lawfulness of detention, had been lodged on 31 May 2010 and had ended on appeal only on 7 January 2011. Neither was there any evidence to suggest that the Court Practice and Procedure and Good Order Rules cited by the Government had had any effect on the efficacy and speed of proceedings, as shown by the case-law cited.

110. As to the application for bail referred to by the Government (Article 25 A (6)), the applicant noted that such applications were granted usually pending proceedings challenging a removal order and had only been granted once in the context of proceedings challenging the lawfulness of detention under regulation 11 (10) referred to above. In any event, bail was only granted against financial deposits of usually around EUR 1,000 and a third-party guarantee that the individual would be provided with accommodation and subsistence, conditions which as a rule immigrants arriving by boat were unable to fulfil. To the applicant's knowledge, in those circumstances bail was granted only to persons overstaying their visa. More importantly, an application for release on bail did not concern a review of the lawfulness of detention.

(b) The Government

111. The Government noted that the Court had already found a variety of remedies to be ineffective. However, they submitted that the applicant could in particular have sought judicial review of the lawfulness of her detention by instituting constitutional redress proceedings before the domestic courts, which could redress any Convention violation. As to the length of such proceedings, the Government firstly made reference to subsidiary legislation 12.09, namely the Court Practice and Procedure and Good Order Rules dealing also with constitutional matters, which emphasized the need for speedy resolution of such matters. Secondly, they noted that it was possible for an applicant to request that a case be treated, heard and concluded with urgency. The Government strongly objected to the fact that the Court was allowing applicants in cases involving irregular

immigrants to circumvent domestic remedies. They considered that this could only be done when there were no effective remedies, and in *Louled Massoud* (cited above) the Court had erred in finding that constitutional redress proceedings were ineffective.

112. The Government further noted that legal aid was provided to prohibited immigrants at the appellate stage of their asylum application, as well as for the purposes of criminal proceedings and constitutional redress proceedings, together with appropriate facilities where they could meet such lawyers. Moreover, there was unlimited access to legal assistance provided by NGOs.

2. *The Court's assessment*

(a) General principles

113. Under Article 5 § 4, an arrested or detained person is entitled to bring proceedings for a review by a court bearing upon the procedural and substantive conditions which are essential for the "lawfulness" of his or her detention (see *Amie and Others v. Bulgaria*, no. 58149/08, § 80, 12 February 2013). The notion of "lawfulness" under Article 5 § 4 of the Convention has the same meaning as in Article 5 § 1, so that the arrested or detained person is entitled to a review of the "lawfulness" of his detention in the light not only of the requirements of domestic law, but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1 (see *E. v. Norway,* 29 August 1990, § 50, Series A no. 181, and *Louled Massoud v. Malta*, no. 24340/08, § 39, 27 July 2010; and *Rahmani and Dineva v. Bulgaria*, no. 20116/08, § 75, 10 May 2012). Article 5 § 4 does not guarantee a right to judicial review of such breadth as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the lawful detention of a person according to Article 5 § 1 (see *S.D. v. Greece*, no. 53541/07, § 72, 11 June 2009; and *Popov v. France*, nos. 39472/07 and 39474/07, § 94, 19 January 2012).

114. According to the Court's case-law, Article 5 § 4 refers to domestic remedies that are sufficiently certain, otherwise the requirements of accessibility and effectiveness are not fulfilled. The remedies must be made available during a person's detention with a view to that person obtaining a speedy judicial review of the lawfulness of his or her detention capable of leading, where appropriate, to his or her release (see *Kadem v Malta*, no. 55263/00, § 41, 9 January 2003 and *Raza v. Bulgaria*, no. 31465/08, § 76, 11 February 2010). Indeed, Article 5 § 4, in guaranteeing arrested or detained persons a right to bring proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such

proceedings, to a speedy judicial decision concerning the lawfulness of that detention (see *Musial v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

(b) Application of these principles to the present case

115. The Court notes that the courts exercising constitutional jurisdiction in the Maltese legal system would have been competent to examine the lawfulness of the applicant's detention in the light of the Convention. The Court notes, however, that it has held on numerous occasions that constitutional proceedings in Malta are rather cumbersome for Article 5 § 4 purposes, and that lodging a constitutional application does not ensure a speedy review of the lawfulness of an applicant's detention (see *Sabeur Ben Ali v. Malta*, no. 35892/97, § 40, 29 June 2000; *Kadem*, cited above, § 53; *Stephens v. Malta (no. 2)*, no. 33740/06, § 90, 21 April 2009; and *Louled Massoud*, cited above, § 45). Where an individual's personal liberty is at stake, the Court has very strict standards concerning the State's compliance with the requirement of a speedy review of the lawfulness of detention (see, for example, *Kadem*, cited above, §§ 44-45; *Rehbock v. Slovenia*, no. 29462/95, § 82-86, ECHR 2000 XII, where the Court considered periods of seventeen and twenty-six days excessive for deciding on the lawfulness of the applicant's detention; and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where the length of appeal proceedings lasting, *inter alia*, twenty-six days, was found to be in breach of the "speediness" requirement).

116. The Court notes the failure of the Government to submit any case-law capable of showing that proceedings before the courts exercising constitutional jurisdiction, whether brought together with a request for hearing with urgency or otherwise, could be considered speedy for the purposes of Article 5 § 4. Moreover, the Court cannot ignore the statistics and the examples supplied by the applicant: one of these, which concerned the lawfulness of immigrants' detention and the conditions of such detention, was still pending six years after it was lodged and a second example regarding the lawfulness of detention had taken more than six months to be decided. Such examples show little respect, if any, for the standards announced in the subsidiary legislation cited by the Government.

117. To sum up, the Government have not submitted any information or case-law capable of casting doubt on the Court's prior conclusions as to the effectiveness of this remedy. In these circumstances, the Court remains of the view that, in the Maltese system, pursuing a constitutional application would not have provided the applicant with a speedy review of the lawfulness of her detention.

118. The Government can hardly be said to have contested the Court's findings in respect of other available remedies, as they merely noted that the Court had already found these to be inadequate for the purposes of

Article 5 § 4. They did, however, submit that a request for bail was an effective remedy for the purposes of the complaint under Article 5 § 1.

119. In that connection the Court notes that Article 5 § 4 requires a remedy to challenge the lawfulness of detention and providing for release if the detention is not lawful. Thus, even assuming that a request for bail was available in the applicant's situation and that it could have resulted in temporary release, it would not have provided for a formal assessment of the lawfulness of the detention as required under Article 5 § 4. Moreover, the Government failed to submit evidence that bail proceedings under Article 25 A(6) were heard speedily.

120. In this connection the Court notes that it has already held that proceedings before the IAB under Article 25A of the Act could not be considered to determine requests speedily as required by Article 5 § 4 of the Convention (see *Louled Massoud*, cited above, § 44). The Government submitted no new examples capable of altering that conclusion. Moreover, the proceedings instituted by the applicant in the present case reaffirm that finding. Indeed in the applicant's case the IAB failed to deliver a decision for more than six months, after which the proceedings were discontinued as the applicant had been released. The Court reiterates that where a decision is not delivered before the actual release date of the detainee, such a remedy is devoid of any legal or practical effect (ibid., and see, *mutatis mutandis*, *Frasik v. Poland*, no. 22933/02, § 66, 5 January 2010). In this connection the Court finds it relevant to note that a former detainee may well have a legal interest in the determination of the lawfulness of his or her detention even after having been released (see *S.T.S. v. the Netherlands*, no. 277/05, § 61, ECHR 2011).

121. Moreover, it appears that the length of proceedings before the IAB is problematic for the purposes of Article 5 § 4, irrespective of whether they are brought under the Act or under the regulations emanating from LN 81. Indeed the Court considers that proceedings to contest the lawfulness of detention under Regulation 11 (10) of LN 81 which are also lodged before the same board (even assuming they apply to persons in the applicant's position) also fail to fulfil the speediness requirement, as is evident from the cases cited by the applicant, particularly that of *Ibrahim Suzo* where it took the IAB more than a year to determine the claim. Moreover, in the other three cases cited by the applicant the individuals were also released before a decision on the matter had been delivered despite the periods in question having ranged from two to nine months.

122. In the light of the above factors, the Court cannot but reiterate that proceedings before the IAB cannot be considered to determine requests speedily as required by Article 5 § 4 of the Convention.

123. The foregoing considerations are sufficient for the Court to conclude that it has not been shown that the applicant had at her disposal an

effective and speedy remedy under domestic law by which to challenge the lawfulness of her detention.

124. Article 5 § 4 of the Convention has therefore been violated.

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

125. The applicant further complained that her period of detention between 17 June 2011 and 30 August 2012 had been arbitrary since her deportation had not been feasible and the length of her detention had exceeded that reasonably required for the purpose. Moreover, she argued that it could not be considered lawful since the national laws regulating detention in an immigration context were not sufficiently precise and lacked procedural safeguards. She invoked Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

126. The Government contested that argument.

A. Admissibility

127. The Government submitted that the applicant had failed to exhaust domestic remedies, in so far as she had neither made a request for bail before the IAB nor instituted constitutional redress proceedings. They made reference to their submissions under Article 5 § 4 above.

128. The applicant reiterated her submissions under Article 5 § 4 above.

129. The Court has already held that the applicant did not have at her disposal an effective and speedy remedy by which to challenge the lawfulness of her detention (see paragraph 123 above). It follows that the Government's objection must be dismissed.

130. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

131. The applicant complained about her detention from 17 June 2011 to 30 August 2012. She considered that although her detention may have initially been lawful in terms of the Act, her continued detention for a full fourteen and a half months had been arbitrary and unlawful in terms of Article 5 § 1 (f). She submitted that her detention could not be justified as her deportation was not feasible and therefore proceedings for her return were not, and in fact could not, be prosecuted with due diligence. The applicant believed that little, if anything, was done to enforce her removal from national territory because of the very real logistical difficulties involved in deportations to Somalia. In fact, up to the time of the introduction of the application the immigration authorities had never effected any removals of rejected asylum seekers to Somalia or to Somaliland. During the months she had spent in detention the applicant had never been approached by the immigration authorities on the subject of removal; nor had she ever been informed of the stage the procedure for removal had reached. In his response to the applicant's request to the Immigration Appeals Board, the Principal Immigration Officer had acknowledged that there was no reasonable prospect of removal within a reasonable time. It was therefore evident that from the moment it became clear that the applicant's removal was definitely not feasible her detention ceased to be justified for the purposes of Article 5 § 1 (f).

132. Moreover, the applicant's continued detention had been arbitrary as in practice it could not be deemed to be closely connected to the ground relied on by the Government and the length of such detention clearly exceeded that reasonably required for the purpose. It had been clear from the Principal Immigration Officer's response to the applicant's application before the IAB that the decision to detain her and the length of her detention were not determined by an assessment of the effective possibility of return but by a pre-established policy, which was applied in all cases independently of the individual circumstances of the particular case (apart from those considered most vulnerable) as amply clear from numerous reports on detention in Malta [2], together with the Court's judgment in

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[2] Some examples include:
Not here to stay: Report of the International Commission of Jurists on its visit to Malta on 26 – 30 September 2011, May 2012, which may be accessed at http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/08/ICJMaltaMissionReport-Final.pdf; last accessed on 2 July 2013;
Report by Thomas Hammarberg, Commission for Human Rights of the Council of Europe following his visit to Malta from 23 to 25 March 2011, 9th June 2011, which may be accessed at https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1858117&SecMode=1&DocId=1749792&Usage=2; last accessed on 2 July 2013;

Louled Massoud (cited above) and domestic cases such as *Essa Maneh et* (cited at paragraph 51 above).

133. The applicant submitted that even if removal had in fact been possible in the circumstances of the case, the duration of her detention had been excessive. It had become possible for the immigration authorities to deport the applicant from 11 February 2011. She considered that the fact that she had been serving a sentence of imprisonment for part of the time after that date (from 17 February to 16 June 2011) should not, in itself, have been an obstacle to the initiation of removal proceedings. Indeed, Article 14 (2) of the Act allowed the Minister to order the expulsion from Malta of a person serving a prison sentence, prior to the completion of such sentence.

134. The applicant further submitted that national laws regulating deprivation of liberty in an immigration context were insufficiently precise and lacked the legal and procedural safeguards necessary to avoid all risk of arbitrariness, as concluded by the Court in *Louled Massoud* (cited above). Decisions were not made on a case by case basis and the length of detention was not established by law, but by policy. Similarly, the exceptions to detention, such as those regarding release from detention on grounds of vulnerability, were also prescribed by policy and there were no clear publicly available rules regulating the procedure to be followed, the criteria to be applied, or the time-limit within which a decision was to be taken in such cases (as highlighted by the events in her case). Furthermore, the law failed to provide either an automatic judicial review of the initial administrative decision to detain or a speedy judicial remedy by which a detainee could challenge the lawfulness of his or her detention.

(b) The Government

135. The Government submitted that detention in the applicant's case was required for the purposes of repatriating the applicant, who was a failed asylum seeker, and therefore her detention fell within Article 5 § 1 (f) and was in accordance with domestic law, namely, Article 5 of the Act. They submitted that the detention had been carried out in good faith as the detention centre had been set up specially for the purpose, and that the relevant conditions set out in the case of *Saadi v. the United Kingdom* ([GC], no. 13229/03, § 43, ECHR 2008-...) had all been fulfilled. They considered that it was wrong to consider that there was no purpose for her detention following the determination of her asylum claim, given that she could have appealed against that determination.

Report of the Working Group on Arbitrary Detention on its Mission to MALTA from 19 to 23 January 2009, 18th January 2010, which may be accessed at: http://www2.ohchr.org/english/issues/detention/docs/A-HRC-13-30-Add2.pdf; last accessed on 2 July 2013.

136. The Government submitted that the circumstances of the present case were different from those in *Louled Massoud* (cited above), the present case concerning detention of only fourteen months, and in the Government's view it was clear that detention was compatible with the second limb of Article 5 § 1 (f). Following her imprisonment the applicant had been detained for immigration purposes, thus detention which was not indefinite as she could only be detained for a period of eighteen months. Moreover, the Government considered that following her release on 30 August 2012 the applicant could not invoke a violation of her rights protected under Article 5.

137. The Government submitted that most irregular immigrants reaching Malta did not carry documents and it would thus be a lengthy process, dependent on the immigrant's cooperation, for the authorities to be able to ascertain their identities. Moreover, the detention policy could not be said to be discriminatory as it applied to everyone whose presence was irregular, irrespective of race, colour, or national or ethnic origin. Nevertheless, vulnerable persons were not subject to detention, and the freedom of such vulnerable persons was restricted only as long as was necessary for medical clearance to be obtained. It was common for migrants to claim that they fell within one of the vulnerable categories in order to secure their early release; accordingly, procedures were in place to screen such requests as accurately and expeditiously as possible.

2. *The Court's assessment*

(a) General principles

138. Article 5 enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty (see *Aksoy v. Turkey*, 18 December 1996, § 76, *Reports* 1996-VI). The text of Article 5 makes it clear that the guarantees it contains apply to "everyone" (see *Nada v. Switzerland* [GC], no. 10593/08, § 224, ECHR 2012). Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008). One of the exceptions, contained in sub-paragraph (f), permits the State to control the liberty of aliens in an immigration context.

139. Article 5 § 1 (f) does not demand that detention be reasonably considered necessary, for example to prevent the individual from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease

to be permissible under Article 5 § 1 (f) (see *Chahal v. the United Kingdom*, 15 November 1996, § 113, *Reports* 1996 V, and *Saadi*, cited above, § 72).

140. The deprivation of liberty must also be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. The words "in accordance with a procedure prescribed by law" do not merely refer back to domestic law; they also relate to the quality of this law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention. Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise in order to avoid all risk of arbitrariness (see *Dougoz*, cited above, § 55, ECHR 2001-II, citing *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III).

141. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond a lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi*, cited above, § 67). To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *Louled Massoud*, cited above, § 62).

(b) Application of these principles to the present case

142. The Court notes that this complaint relates to the applicant's detention from 17 June 2011 (after having served her prison sentence) up to 30 August 2012, the date of her release. The duration of the detention therefore amounted to fourteen and a half months. According to the Government, during this period the applicant was detained (in Hermes Block in Lyster Barracks Detention Centre (Zone C)) "with a view to deportation" within the meaning of Article 5 § 1 (f).

143. In relation to the Government's submission in paragraph 136 *in fine* above, the Court firstly notes that the applicant is clearly and fully entitled to complain about the unlawfulness of her detention which eventually came to an end. To hold otherwise would simply deprive the provision of any practical effect and reward defaulting Governments as opposed to holding them responsible for the said breaches.

144. The Court observes that in the present case the entire duration of the detention complained of was subsequent to the rejection of the applicant's asylum claim in May 2009. It reiterates that under the second limb of Article 5 § 1 (f) detention will be justified only for as long as deportation or extradition proceedings are in progress. Nevertheless, the Government did not submit the slightest detail as to whether any return procedures at all were initiated, let alone pursued with due diligence. Indeed, the Court notes that, to date, a year after her release, it would appear that the applicant is still in Malta and that no steps have been taken towards deporting her, as the Court has not been informed otherwise.

145. The Court thus finds that given the total failure of the domestic authorities to take any steps to pursue removal it cannot be said that deportation proceedings were in progress. In consequence, the detention at issue was not permissible under Article 5 § 1 (f). Neither can it be said that that period of detention fell under any other sub-paragraph of Article 5.

146. It follows that the applicant's detention for fourteen and half months in Lyster Barracks was not in accordance with Article 5 § 1 of the Convention, which has therefore been violated.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

147. The applicant further complained that she had not been provided with the legal and factual grounds for her detention for the purposes of Article 5 § 2 of the Convention. This provision reads as follows:

> "2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

A. The parties' submissions

148. The Government submitted that the applicant had failed to exhaust domestic remedies and that in any event the complaints had failed to comply with the six-month rule. If, as in the case of *Louled Massoud* (cited above), the Court were to hold that there was no domestic remedy for the purposes of this complaint, the Government considered that the six months should be calculated from the date of the omission complained of, which in the applicant's case had been more than six months from the date of the lodging of her application.

149. The applicant submitted that she had not been aware, at the time of her arrival, that the paper that the police gave her, which was written in English – a language she could not understand – was a Removal Order. Moreover, there was nothing in the said Removal Order to indicate that this was in any way linked to her detention. She had received no information about the implications of the Removal Order, how she could appeal against

it, or how she could challenge her detention, apart from a brief reference to the possibility to apply to the IAB. That information was published in English, French and Arabic (all languages the applicant did not understand). The applicant alleged that she was not entitled to the services of a legal aid lawyer to take the necessary action within the time-limit prescribed by law and, even if she were, in practice the legal aid system was virtually inaccessible to immigration detainees. The fact that she was in detention had made it impossible for her to obtain the information and assistance she required from other sources. For all of these reasons the applicant considered that it was not possible for her to take action regarding this complaint within six months of the date of the omission complained of.

B. The Court's assessment

150. The Court reiterates at the outset that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months from the final decision in the process of exhaustion. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), nos. 62566/00 et seq., 10 January 2002). Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period may be calculated from the time when the applicant becomes aware, or should have become aware, of those circumstances (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002; and *Bozkır and Others v. Turkey*, no. 24589/04, § 46, 26 February 2013).

151. The Court observes that in the present case the applicant had attempted to bring proceedings before the IAB in 2012, however, those proceedings were found to be inadequate by this Court for the purposes of Article 5 § 4 in the case of *Louled Massoud* (cited above) and again in the present case. No other effective remedy has been brought to the Court's attention. Accordingly, in principle, the six-month time-limit must be calculated from the date of the omission complained of.

152. The Court notes that the applicant argued that she was unable in the early stages of her detention to contest such a measure because of her inability to understand the factual circumstances and her lack of knowledge of the English language. Indeed the Court notes that the information regarding her detention, if any, was given in English, a language which the applicant declared not to understand at the time. Even considering that an information booklet was distributed in various languages, namely French and Arabic as explained by the applicant, the Court observes that these were also languages the applicant was not familiar with. For the same reasons the

applicant claimed that she was unable to understand the information given on the bus. In such circumstances the Court considers that it is clear that the applicant had difficulties communicating with the officers and requesting further information or an interpreter or lodging a complaint under Article 5 § 2 at the initial stages of her detention. Nevertheless, the Court observes that three and a half years passed from the date of the applicant's arrival in Malta and apprehension for immigration purposes (5 February 2009) to the date of the introduction of her application before the Court on 27 August 2012. It has not been established that during that entire period there existed exceptional reasons as a result of which the applicant was unable to bring a complaint.

153. It follows that this complaint is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

154. 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

155. The applicant claimed EUR 50,000 in respect of non-pecuniary damage for the violation of Articles 3 and 5 she had endured.

156. The Government considered that a finding of a violation constituted sufficient just satisfaction, and that in any event damages should not exceed EUR 3,000.

157. The Court notes that it has found a violation of Articles 3, 5 § 1 and 5 § 4 in the present case, and therefore awards the applicant EUR 30,000 in respect of non-pecuniary damage.

B. Costs and expenses

158. The applicant also claimed EUR 4,000 in costs and expenses (covering 60 hours of work charged at a rate of EUR 60 per hour and EUR 400 in clerical costs) for proceedings before this Court.

159. The Government considered that the award of costs should not exceed EUR 2,000.

160. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as

to quantum. In the present case, regard being had to the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs for the proceedings before the Court.

C. Default interest

161. The Court considers it appropriate that the default interest rate 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. *Declares* the complaint under Article 3 in so far as it relates to the detention period at Lyster Barracks Detention Centre, and the complaints under Article 5 § 1 and 5 § 4, admissible, and the remainder of the application inadmissible.

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's detention at Lyster Barracks Detention Centre;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

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

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 23 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President