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

FOURTH SECTION

CASE OF SAADI v. THE UNITED KINGDOM

(Application no. 13229/03)

JUDGMENT

STRASBOURG

11 July 2006

THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT IN THE CASE ON
. . .

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Saadi v. the United Kingdom,

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

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr T.L.. EARLY, *Section Registrar*,

Having deliberated in private on 20 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 13229/03) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Iraqi national, Mr Shayan Baram Saadi ("the applicant"), on 18 April 2003.

2. The applicant was represented by Messrs Wilson & Co., a firm of lawyers practising in London. The United Kingdom Government ("the Government") were represented by their Agent, Mr Derek Walton, of the Foreign and Commonwealth Office, London.

3. The applicant alleged that his detention at Oakington was not compatible with Articles 5 § 1 and 14 of the Convention, and that he was not given adequate reasons for it, contrary to Article 5 § 2.

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

5. By a decision of 27 September 2005, the Court declared the application admissible.

6. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*). The parties did not submit observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1976 and lives in London.

8. The applicant fled Iraq and arrived at London Heathrow Airport on 30 December 2000. On arrival at the immigration desk he spoke to an immigration officer and claimed asylum. He was granted "temporary admission" by the immigration officer and was asked to return to the airport at 8.00 am the following morning. Overnight the applicant was permitted to stay at a hotel of his choice. On the morning of 31 December 2000 he reported as required and was again granted temporary admission until the following day, 1 January 2001 at 10.00 am. When the applicant again reported as required he was (for the third time) granted temporary admission until the following day, 2 January 2001 at 10.00 am. Again the applicant reported as required. On this occasion the applicant was detained and transferred to Oakington Reception Centre ("Oakington").

9. On 4 January 2001 the applicant was given the opportunity to consult with legal representatives. The representative telephoned the Chief Immigration Officer on 5 January, and was told that the reason for the detention was that the applicant was an Iraqi who met the criteria to be detained at Oakington. On the same day, the applicant was interviewed by an official of the Secretary of State for the Home Department ["SSHD"] in relation to his claim. When his asylum claim was refused on 8 January 2001 he was formally refused leave to enter the UK. The applicant submitted a notice of appeal against the asylum refusal and was released on 9 January.

10. In the subsequent asylum proceedings, the applicant's appeal was allowed by an adjudicator on 9 July 2001 on the ground that the Home Office had failed to specify how the applicant could be returned to the autonomous region of Iraq. The SSHD's appeal to the Immigration Appeal Tribunal was allowed on 22 October 2001, and the case was remitted to an adjudicator. On 14 January 2003 the adjudicator found that the applicant was a refugee within the meaning of the 1951 Refugee Convention, and also that there was a real risk that his return to Iraq would expose him to treatment contrary to Articles 3 and 8 of the Convention. The applicant was subsequently granted asylum.

11. The applicant, together with three other Kurdish Iraqi detainees who had been held at Oakington, applied for permission for judicial review of their detention, claiming that it was unlawful under domestic law and under Article 5 of the Convention.

12. At first instance, Mr Justice Collins did not consider the detention to be unlawful under domestic law, essentially because he was not prepared to imply into the legislative provisions a requirement that the exercise of the

power to detain had to be "necessary" for the purpose of carrying out an examination of an asylum claim. He did, however, find that the detention was not compatible with Article 5 § 1 (f) of the Convention on the basis that once an applicant had made a proper application for asylum and there was no risk that he would abscond or otherwise misbehave, it could not be said that he needed to be detained "to prevent his effecting an unauthorised entry". He also considered detention disproportionate because it could not be shown that it was reasonably necessary to the stated purpose for the detention which was the speedy examination of the asylum claim.

13. In connection with the reasons given for the detention, Mr Justice Collins noted that it apparently took the Home Office three months to realise that the wording of the form handed to detainees was not appropriate, and on 7 June 2000 and again on 21 December 2000 the form was under revision. As from 12 April 2001 (2 February 2001, according to the Government), a form of words was available which stated

> "Reason for Detention
>
> I have decided that you should be detained because I am satisfied that your application may be decided quickly using the fast track procedures established at Oakington Reception Centre. In reaching this decision I have taken into account that, on initial consideration, it appears that your application may be one which can be decided quickly".

14. That form of words was not available at the time the applicant was detained, and Collins J. regarded it as a "disgrace" that the form lagged behind the policy. He continued:

> "The form [in use at the time] clearly indicated that detention was only used where there was no reasonable alternative. All the reasons and factors reflect some possible misconduct by the detainee or the need for him to be cared for by detention ...it was wholly inappropriate for Oakington detention and it is, for example, difficult to follow what reason could conceivably have been close to fitting [the applicant's] case. Unfortunately, the copy of the [form] which should have been retained on the file has disappeared and so I do not know, nor does [the applicant] why it was said that he should be detained."

15. The shortcomings as to the reasons for detention did not affect the lawfulness of the detention.

16. The Court of Appeal upheld the SSHD's appeal on 19 October 2001, and the House of Lords dismissed the applicant's appeal on 31 October 2002. Both the Court of Appeal and the House of Lords held that the detention was lawful under domestic law. In connection with Article 5 § 1 (f), and by reference to the case of *Chahal* (*Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V), they each held that the detention was for the purpose of deciding whether to authorise entry and that the detention did not have to be "necessary" to be compatible with the provision. The detention was

therefore "to prevent ... unauthorised entry", and in addition was not disproportionate, Lord Slynn holding:

> "The need for highly structured and tightly managed arrangements, which would be disrupted by late or non-attendance of the applicant for interview, is apparent. On the other side applicants not living at Oakington, but living where they chose, would inevitably suffer considerable inconvenience if they had to be available at short notice and continuously in order to answer questions.... Getting a speedy decision is in the interest not only of the applicants but of those increasingly in the queue."

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The Immigration Act 1971 provides for the administrative detention of those subject to immigration control "pending examination and pending a decision whether to give or refuse ... leave to enter" (Schedule 2, paragraph 16). Temporary admission is used as an alternative to detention. It is a form of licensed consent to enter the United Kingdom which may be subjected to conditions, including reporting requirements and restrictions on the person's residence, employment or occupation (Schedule 2, paragraph 21).

18. In general (that is, in cases other than those involving Oakington), the SSHD's guidance requires an individual assessment of the need to detain to prevent absconding.

19. On 16 March 2000 Barbara Roche MP, Minister of State at the Home Office, announced a change in detention policy specifically and exclusively related to the new Oakington Reception Centre. Oakington asylum applicants could be detained where it appeared that their application was capable of being decided 'quickly', including those which may be certified as being 'manifestly unfounded'. To assist immigration officers, lists of nationalities – and categories within nationalities - were drawn up in respect of which consideration at Oakington could be justified because they were expected to be simple to deal with. It was said that Oakington would strengthen the ability of the Home Office to deal quickly with asylum applications.

20. Further guidance was issued in the Operational Enforcement Manual in respect of individuals who were said to be *unsuitable* for Oakington detention. Cases in which detention at Oakington would not be suitable included the following:

- any case which did not appear to be one in which a quick decision could be reached or in which there were complicating factors;
- unaccompanied minor asylum seekers;
- cases in which there was a dispute as to age;
- disabled applicants;
- persons with special medical needs;

- cases involving disputes as to nationality; and
- cases where the asylum seeker was violent or uncooperative.

21. In addition, all persons believed to be at risk of absconding (from Oakington) were *not* deemed suitable for detention at Oakington.

22. The Oakington Reception Centre has high perimeter fences, locked gates and twenty-four hour security guards. The site is large, with space for outdoor recreation and general association and on-site legal advice is available. There is a canteen, a library, a medical centre, social visits room and a religious observance room. The following description was used in the present case:

> "All of the normal facilities provided within an immigration detention centre are available – restaurant, medical centre, social visits room, religious observance and recreation. The practical operation and facilities at Oakington are, however, very different from other detention centres. In particular, there is a relaxed regime with minimal physical security, reflecting the fact that the purpose is to consider and decide applications. The site itself is very open with a large area for outdoor recreation and general association or personal space. Applicants and their dependents are free to move about the site although, in the interests of privacy and safety, there are two areas where only females and families may go."

23. The 'House Rules' for Oakington require, *inter alia*, that detainees must vacate or return to their room when required; that mail may be required to be opened in front of officers; that detainees must eat at set times and that visits can only be received at particular times. Further, detainees must carry identification at all times (to be shown to officers on request); must obey all staff and attend roll-calls. Male detainees are accommodated separately from their spouses and children and cannot stay with them overnight.

THE LAW

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

24. The applicant contended that his detention at the Oakington Reception Centre from 2 to 9 January 2001 was not compatible with Article 5 § 1 of the Convention. That provision reads, so far as relevant, 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."

A. The parties' submissions

1. The Government

25. The Government accepted that the applicant's stay at Oakington constituted a "deprivation of liberty" for the purposes of Article 5. They considered, however, that the wording of the first limb of Article 5 § 1 (f) – detention "to prevent his effecting an unauthorised entry" - described the factual state of affairs where a person was seeking to effect an entry but had no authorisation, that being a matter under consideration by the State of entry, and that it did not require the additional feature of an attempted evasion of immigration control. If it were otherwise – that is, if a person who applied for asylum could not be detained under Article 5 § 1 (f) because he was seeking to effect an authorised, rather than an unauthorised entry – States would be required to authorise entry to all who seek it. It would not even be possible to detain for short periods to make arrangements and verify identity.

26. The Government also contested the applicant's thesis that asylum seekers may only be detained where detention is "necessary" in order to prevent the person absconding or otherwise misbehaving. They noted that Article 5 § 1(c) contains such a provision, but Article 5 § 1 (f) does not, and underlined that in the context of detention with a view to deportation, the Court confirmed such an interpretation in *Chahal* (*Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 112). The Government considered that the conclusion in *Chahal*, which was confirmed in *Čonka* (*Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I), applies equally to detention with a view to preventing unauthorised detention.

27. Finally, the Government contended that, in any event, the applicant's detention was not disproportionate in the circumstances: it was only possible to interview large numbers of applicants in a short time-frame if the applicants were available at short or no notice; the use of nationality as a criterion for choosing candidates for Oakington was only one of a number of criteria and was perfectly proper and justified, and the applicant's contention that the use of detention was influenced by the reaction of local residents and planning committees was not made out, as the domestic courts which considered the point had also found.

2. The applicant

28. The applicant maintained his claim that to detain a person who presented no threat to immigration control simply in order to accelerate a decision concerning their entry did not "prevent" unauthorised entry, and was not compatible with Article 5 § 1 (f): there was no risk of the applicant absconding, and indeed Oakington was only used to detain those who were not at risk of absconding. Article 5 §1 (f) did not, however, prevent detention, for example, while an assessment was being made of whether an individual presented an unacceptable risk of absconding and thereby effecting an unauthorised entry.

29. The applicant underlined that the detention in his case was wholly unrelated to whether he was granted entry: he was granted temporary admission both before and after the period of detention in question, and entry at those times was not "unauthorised". After a person has been assessed not to present a risk of absconding, examination of his claim and immigration control could be carried out without detention.

30. For the applicant, detention was such a serious measure that it was only justified where other, less severe measures had been considered and found to be insufficient. The applicant cited with approval the first instance judge who said "Surely measures short of detention should be tried first and detention should be regarded as the last resort".

B. The Court's assessment

1. General principles of detention under Article 5 § 1 (f)

31. Article 5 § 1 (f) permits the lawful arrest or detention of a person in two circumstances. The first is arrest or detention to prevent the person effecting an unauthorised entry into the country. The second is the arrest or detention of a person against whom action is being taken with a view to deportation or extradition.

32. In a number of cases, the Court has had to consider the meaning of the second limb. In the case of *Kolompar*, it accepted that the applicant's detention was in principle justified under Article 5 § 1 (f) where an extradition request had been made and the applicant was no longer detained under Article 5 § 1(a) or (c) (*Kolompar v. Belgium*, judgment of 24 September 1992, Series A no. 235-C, § 36). The Court did not consider whether the applicant's detention was necessary in order to ensure that he could be extradited, or whether a less intrusive measure would have achieved the same aim.

33. In the above-mentioned case of *Chahal*, the Court expressly determined (at § 112) the question whether the second limb of Article 5 § 1 (f) contained a "necessity" test:

> "... it is not in dispute that Mr Chahal has been detained with a 'view to deportation' within the meaning of Article 5 § 1 (f) (...). Article 5 § 1 (f) does not demand that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing; in this respect Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c).
>
> Indeed, all that is required under this provision is that 'action is being taken with a view to deportation'. It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law"

The Court then noted (at § 113) that any such deprivation of liberty was justified under Article 5 § 1 (f) only for as long as deportation proceedings were in progress. If the proceedings were not prosecuted with due diligence, the detention would cease to be permissible under the provision. The Court further examined whether the detention was "lawful" for the purposes of Article 5 § 1 (f) with particular reference to the safeguards provided by the national system (§ 118).

34. The Court's approach in *Chahal* was reiterated in the above-mentioned case of *Čonka* (*Čonka v. Belgium*, no. 51564/99, ECHR 2002-I) in which it stated that Article 5 § 1 (f) did not require that the detention of a person against whom action was being taken with a view to deportation be reasonably considered necessary (§ 38).

35. In *Amuur* the Court explained that although it was possible for the holding of aliens in an international zone to be interpreted as a restriction on liberty rather than a deprivation of liberty, in the circumstances of the case, the applicants were deprived of their liberty, such that Article 5 § 1 (f) applied (*Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, §§ 43-49). The Court concluded in the case that the provision had been violated because the domestic legal rules at the relevant time did not sufficiently guarantee the applicants' right to liberty (§ 54). It was not required to arrive at any detailed conclusions as to the test to be applied to detention contended to fall within Article 5 § 1 (f) because the case turned on the quality of the domestic rules which were applicable. It did, however, comment generally on the way in which Article 5 § 1 (f) was to be interpreted. In particular, it held at § 50 that:

> "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, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see, among many other authorities, the Kemmache v. France (no. 3) judgment of 24 November 1994, Series A no. 296-C, pp. 19-20,§ 42).
>
> In laying down that any deprivation of liberty must be effected 'in accordance with a procedure prescribed by law', Article 5 § 1 primarily requires any arrest or detention to have a legal basis in domestic law. ..."

36. By contrast, the Court has considered the stringency of the test to be applied in cases under other heads of Article 5 § 1. In the case of Article 5 § 1(b), for example, it has underlined the need for a "reasonable balance ... between the importance of securing the fulfilment of the obligations in general and the importance of the right to liberty" (*Vasileva v. Denmark*, no. 52792/99, § 38, 25 September 2003). In the context of Article 5 § 1 (e), the Court has emphasised that "it does not suffice that the deprivation of liberty is executed in conformity with national law but it must also be necessary in the circumstances" (*Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III). As the Court noted in *Chahal* (see above), Article 5 § 1(c) of the Convention provides in terms that detention must be "reasonably considered necessary to prevent [a person's] committing an offence or fleeing after having done so" to be compatible with the provision.

2. Application of the general principles

37. The Court notes that the facts in the present case are not in dispute. The applicant was not detained for the first three days of his presence in the United Kingdom, and he was then detained at the Oakington Centre, a centre which was used for those who were not likely to abscond and who could be dealt with by a "fast-track" procedure.

38. The present case therefore turns on whether the applicant's detention at Oakington fell within the first limb of Article 5 § 1 (f), which permits the lawful detention "of a person to prevent his effecting an unauthorised entry into the country".

39. The first question which the Court must address is whether a person who has presented himself to the immigration authorities and has been granted temporary admission to the country can be considered as a person who is seeking to effect an "unauthorised entry" into the country.

40. The Court does not accept that, as soon as a potential immigrant has surrendered himself to the immigration authorities, he is seeking to effect an "authorised" entry, with the result that detention cannot be justified under the first limb of Article 5 § 1 (f). In particular, it is a normal part of States' "undeniable right to control aliens' entry into and residence in their country" (*Amuur v. France*, cited above, § 41) that States are permitted to detain would-be immigrants who have applied for permission to enter, whether by way of asylum or not. Such detention must be compatible with the overall purpose of Article 5, which is to protect the individual from arbitrariness, but it is evident from the tenor of the judgment in *Amuur* (referred to above) that the detention of potential immigrants is capable of being compatible with Article 5 § 1 (f). As to the difference between a short period of detention on arrival in a country in order to assess the risk of absconding (which the applicant accepts is compatible with Article 5 § 1 (f)) and subsequent detention in order to facilitate the processing of cases (which he does not), the Court agrees with the Government that, until a

potential immigrant has been granted leave to remain in the country, he has not effected a lawful entry, and detention can reasonably be considered to be aimed at preventing unlawful entry.

41. The Court therefore considers that, although the applicant had applied for asylum and had been granted temporary admission to the country on 30 December 2000, and had been at large (albeit after being granted only temporary admission and subject to conditions) until 2 January 2001, his detention from that date was nevertheless to prevent his effecting an unlawful entry because, absent formal admission clearance, he had not "lawfully" entered the country.

42. The next question for the Court, which is also the question which taxed the domestic courts, is whether it is permissible for a State to detain a potential asylum seeker or immigrant in circumstances where there is no risk of his absconding or other misconduct. The question is particularly well-defined in the present case as the applicant was held at Oakington, a centre used only for those who did not present a risk of absconding (see paragraphs 20 and 21 above) and where the application could be considered quickly (paragraphs 19 and 20 above).

43. Mr Justice Collins, the first-instance judge in the present case, found that domestic law did not impose a "necessity" test, with the result that the detention was compatible with the domestic law. In considering Article 5 § 1 (f), however, he did not accept that the applicant needed to be detained because there was no risk that he would abscond or otherwise misbehave. That finding was overturned by the Court of Appeal, which considered that Article 5 § 1 (f) required immigration authorities not to prolong unduly the detention of aliens pending consideration of applications for leave to enter, or for deportation, but that it did not apply a necessity test to those procedures. The House of Lords underlined that the aim of detention at Oakington was to speed up immigration procedures by using a "fast-track" procedure which could be applied in relatively straightforward cases. It, too, considered that in the absence of any express or implied necessity test in the Convention or the Convention case-law, immigration detention could be compatible with Article 5 § 1 (f) even though it was not "necessary". The House of Lords added, in connection with the question whether detention was a disproportionate response to the reasonable requirements of immigration control, that the need for speedy determination of claims favoured accepting the Oakington procedure as proportionate and reasonable.

44. Detention of a person is a major interference with personal liberty, and must always be subject to close scrutiny. Where individuals are lawfully at large in a country, the authorities may only detain if – as the Court expressed the position in *Vasileva* (referred to above) – a "reasonable balance" is struck between the requirements of society and the individual's freedom. The position regarding potential immigrants, whether they are

applying for asylum or not, is different to the extent that, until their application for immigration clearance and/or asylum has been dealt with, they are not "authorised" to be on the territory. Subject, as always, to the rule against arbitrariness, the Court accepts that the State has a broader discretion to decide whether to detain potential immigrants than is the case for other interferences with the right to liberty. Accordingly, and this finding does no more than apply to the first limb of Article 5 § 1 (f) the ruling the Court has already made as regards the second limb of the provision, there is no requirement in Article 5 § 1 (f) that the detention of a person to prevent his effecting an unauthorised entry into the country be reasonably considered necessary, for example to prevent his committing an offence or fleeing. All that is required is that the detention should be a genuine part of the process to determine whether the individual should be granted immigration clearance and/or asylum, and that it should not otherwise be arbitrary, for example on account of its length.

45. It is plain that in the present case the applicant's detention at Oakington was a *bona fide* application of the policy on "fast-track" immigration decisions. As to the question of arbitrariness, the Court notes that the applicant was released once his asylum claim had been refused, leave to enter the United Kingdom had been refused, and he had submitted a notice of appeal. The detention lasted a total of seven days, which the Court finds not to be excessive in the circumstances. The Court is not required to set a maximum period on permitted detention, although it notes that the present form of detention is ordered on administrative authority alone.

46. The Court considers that other claims of arbitrariness made by the applicant – for example that the detention was arbitrary precisely because its aim was to decide more speedily, rather than for any reason related to the applicant, or because it involved the use of lists of countries whose nationals could or could not be detained at Oakington – are in effect re-statements of the claim that there should be a "necessity" test for such detention. Moreover, domestic law provided a system of safeguards which enabled the applicant to challenge the lawfulness of his detention, as is shown by the domestic decisions in the present case.

47. It follows that the applicant's detention from 2 to 9 January 2001 was not incompatible with Article 5 § 1 (f) of the Convention. There has therefore been no violation of that provision.

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

48. The applicant contended the first reasons he was given for his detention were given, orally and to his representative, some 76 hours after his arrest and detention, in contravention of Article 5 § 2 of the Convention, which provides as follows:

"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

1. The Government

49. The Government pointed to the general statements of intent as to Oakington. They accepted that the forms in use at the time of the applicant's detention were deficient, but contended that the reasons given orally to the applicant's on-site representative (who knew the general reasons) on 5 January 2001 were sufficient to enable the applicant to challenge the lawfulness of his detention under Article 5 § 4 if he wished.

2. The applicant

50. The applicant underlined that unsolicited reasons were not given at any stage, and that solicited reasons were given orally in the afternoon of 5 January 2001, some 76 hours after the arrest and detention. He contended that mere reference to policy announcements cannot displace the requirement to provide sufficiently prompt, adequate reasons to the applicant in relation to his detention.

B. The Court's assessment

51. Article 5 § 2 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with Article 5 § 4. Whilst this information must be conveyed 'promptly', it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Bordovskiy v. Russia*, no. 49491/99, §§ 55, 56, 8 February 2005; *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, § 40). When a person is arrested on suspicion of having committed a crime, Article 5 § 2 neither requires that the necessary information be given in a particular form, nor that it consists of a complete list of the charges held against the arrested person (see *X v. Germany*, no. 8098/77, Commission decision of 13 December 1978, DR 16, p. 111). When a person is arrested with a view to extradition, the information given may be even

less complete (see *K. v. Belgium*, no. 10819/84, Commission decision of 5 July 1984, DR 38, p. 230).

52. As to the question of whether information has been given "promptly", the Court recalls that in the above-mentioned case of *Čonka*, the Court found no violation of Article 5 § 2 where the applicant was given broad reasons for his detention when he was detained, and written reasons were supplied two days later. In *Fox, Campbell and Hartley*, which concerned detention under Article 5 § 1(c) of the Convention, the applicants were given reasons for their arrest within a maximum of seven hours after arrest, which the Court accepted as "prompt" (referred to above, § 42). A violation was found where applicants who had been detained pending extradition were not given any information for the first four days' detention (*Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 416, ECHR 2005-...).

53. The Court first notes, in reply to the Government's reference to the general statements of intent about Oakington, that it is plain from the wording of Article 5 § 2 that the duty on States is to furnish specific information to the individual or his representative. General statements – parliamentary announcements in the present case – cannot replace the need for the individual to be informed of the reasons for his arrest or detention.

54. It became apparent in the course of the domestic proceedings in the present case that if the applicant had been given a form to explain the reasons for his detention, that form would have been inaccurate in that it would not have included the true reason, which was that the immigration officer was satisfied that his case could be decided quickly using the "fast-track procedure" established at Oakington. There has been no suggestion in the proceedings before the Court that the applicant was informed orally on 2 January 2001 of the reason for his detention.

55. The first time the real reason for the applicant's detention was given was when his representative was informed by telephone on 5 January 2001 that the applicant was an Iraqi who met the criteria for Oakington. At that time, the applicant had been in detention for some 76 hours. Assuming that the giving of oral reasons to a representative meets the requirements of Article 5 § 2 of the Convention, the Court finds that a delay of 76 hours in providing reasons for detention is not compatible with the requirement of the provision that such reasons should be given "promptly".

56. It follows that there has been a violation of Article 5 § 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

57. The applicant contended that the preparation of lists of nationalities in respect of which detention at Oakington would be considered amounted

to a violation of Article 14 of the Convention taken together with Article 5 § 1 (f), as the applicant was detained because of his Iraqi nationality.

The Court has dealt with the substance of this complaint in its determination of the issues under Article 5 § 1 (f) of the Convention, and holds that it is not necessary to consider it separately under Article 14.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed EUR 5,000 compensation for non-pecuniary damage in respect of the seven days he spent in detention in Oakington, referring specifically to the distress he felt at the decision to detain him.

60. The Government noted that the period of detention was relatively short, and considered that if there were a violation of Article 5 § 1 (f), the sum of EUR 2,000 represented adequate non-pecuniary compensation. As regards Article 5 § 2 of the Convention, the Government considered that a finding of a breach would provide sufficient just satisfaction.

61. The Court has found a violation only of Article 5 § 2 of the Convention, and agrees with the Government that in these circumstances the finding of a breach provides sufficient just satisfaction for the violation established.

B. Costs and expenses

62. The applicant claimed a total of GBP 15,305.56 by way of costs before the Court, including counsel's fees.

63. The Government considered that the fees were not necessarily incurred, and suggested that counsel's fees should be reduced from GBP 11,475 plus VAT to a maximum of GBP 4,000. They contended that, if violations were not found on all the provisions of Article 5 that were found admissible, the amount should be reduced proportionately.

64. The Court has found a violation of only one provision of the Convention. It is apparent that the major part of the work on the case, before the Court as before the domestic courts, has been that related to the compatibility of the detention with Article 5 § 1. The Court awards the

applicant the sum of EUR 1,500 in respect of costs and expenses incurred in connection with the complaint under Article 5 § 2 of the Convention.

C. Default interest

65. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* by four votes to three that there has been no violation of Article 5 § 1 of the Convention;

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

3. *Holds* unanimously that it is not necessary to consider Article 14 of the Convention separately;

4. *Holds* unanimously
   (a) that finding a violation of Article 5 § 2 of the Convention constitutes sufficient just satisfaction for non-pecuniary damage;
   (b) 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, EUR 1,500 (one thousand five hundred euros) for costs and expenses, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (c) 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;

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

Done in English, and notified in writing on 11 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Sir Nicolas Bratza;

(b) joint dissenting opinion of Mr Casadevall, Mr Traja and Mr Sikuta.

J.C.M.
T.L.E

CONCURRING OPINION OF JUDGE SIR NICOLAS BRATZA

I am in agreement with the majority of the Chamber on all aspects of the case and only add a few words of my own on the complaint under Article 5 § 1 (f) because of the importance of the question raised.

At the heart of the applicant's case is the claim that to detain a person who presented no threat to immigration control for the sole purpose of facilitating an early decision concerning his entry into the United Kingdom did not serve "to prevent his effecting an unauthorised entry into the country" and was not thus compatible with Article 5 § 1 (f). That the applicant himself presented no such threat was, it is argued, amply demonstrated by the facts of the present case: the applicant had not been detained immediately on arrival in the United Kingdom but had been granted temporary admission to the country during which he had fully complied with the reporting requirements and had given no indication of any intention to abscond or otherwise to effect an unauthorised entry into the country. The fact that his detention was not intended to prevent his unauthorised entry was further confirmed by the fact that, once the decision had been taken formally to refuse him leave to enter the United Kingdom, the applicant was immediately released.

I readily accept that Dr Saadi had no intention to effect an unauthorised entry into the United Kingdom but that, on the contrary, his conduct throughout was consistent only with his intention to effect an authorised lawful entry into the country. However, I consider that to interpret Article 5 § 1 (f) as only permitting detention of a person who is shown to be seeking to effect an unauthorised entry is to place too narrow a construction on the terms of the provision. In this respect, I share the opinion of the House of Lords that, until a State has "authorised" entry, the entry is unauthorised and the State has in principle power to detain under the first limb of Article 5 § 1 (f) until the application has been considered and authorisation has been granted or refused. While the applicant was granted temporary admission on his arrival in the United Kingdom, this did not, by virtue of section 11 of the 1971 Act, constitute the authorisation of entry into the country.

Again, like the House of Lords, I do not consider that on the true construction of Article 5 § 1 (f) it is a precondition of the power to detain that detention should be "necessary" to prevent an unauthorised entry, in the sense that the use of less severe measures would not suffice either to prevent unauthorised entry or to allow a determination to be made as to whether an individual should be granted immigration clearance or asylum. As noted in the judgment, in the case of *Chahal*, the Court expressly rejected the contention that the second limb of Article 5 § 1 (f) demanded that the detention of a person against whom action was being taken with a view to deportation should reasonably be considered necessary to prevent the

applicant from committing an offence or fleeing and that in this respect Article 5 § 1 (f) provided a different level of protection from Article 5 § 1 (c). This interpretation was reaffirmed in the *Čonka* case. While it is true that the first limb of the sub-paragraph ("to prevent his effecting an unauthorised entry") and the second limb ("against whom action is being taken with a view to deportation") are not framed in identical terms, I can find no valid reason for confining the Court's reasoning to the second limb of the sub-paragraph or for holding that a different and stricter test should be applied to the first limb.

Although for these reasons I consider that the detention of the applicant fell within the provisions of Article 5 § 1 (f), I recognise the concern felt that a person should be deprived of his liberty for reasons essentially of administrative efficiency and the risks of arbitrariness which such detention may entail. As has frequently been emphasised in the Court's case-law, any deprivation of liberty must be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness. In the context of detention at the Oakington Centre, this requires not only that the detention of an immigrant lasts for no longer than is required to complete the procedures for deciding whether to grant entry but that the period of detention should be short. The detention in the present case lasted for a total of 7 days, which the majority has found not to be excessive. While I can agree that the period of the applicant's detention at Oakington was within the limits of what could be regarded as acceptable, any period of detention significantly in excess of this period would in my view not be compatible with the first limb of Article 5 § 1 (f).

JOINT DISSENTING OPINION OF JUDGES CASADEVALL, TRAJA AND SIKUTA

1. In the present judgment, the majority (four judges to three) held, *inter alia*, that there had been no violation of Article 5 § 1 (f) of the Convention. We cannot support that conclusion, for the following reasons:

2. Under international law, a State has the right, by virtue of its sovereignty, to control the entry and stay of foreigners on its territory. It is, however, equally well established that a State party to the Convention must be deemed to agree to restrict the free exercise of its rights under general international law to the extent and within the limits of the obligations which it has accepted under that Convention.

3. In the instant case, it was open to the United Kingdom authorities, when the applicant arrived in the United Kingdom, to deprive him of his liberty (that is, to detain him) under Article 5 § 1 (f) on the following condition alone: namely, to prevent his effecting an unauthorised entry into the country. On the basis of the facts in this case, the purpose of the applicant's detention was not, however to *prevent* the applicant's entry at all**.** The applicant arrived at London Heathrow Airport on 30 December 2000 and applied for asylum upon his arrival. If the competent authorities had been of the opinion that there existed grounds for detaining him in order to prevent him from effecting an unauthorised entry into the territory, they could have exercised that "right to control entry" at that moment for the purpose set out in Article 5 § 1 (f). However, the immigration authorities, on the contrary, granted him "temporary admission" and he was permitted to stay at a hotel of his choice inside the country. The grant of temporary admission was subsequently extended twice, on two consecutive days. We therefore strongly believe that the pre-condition for the applicant's detention, namely that it be for the purpose of preventing him from effecting an unauthorised entry into the country, was not met, for the simple reason that the immigration authorities had already admitted him.

4. The applicant applied for asylum upon arrival at London Heathrow Airport, at the immigration desk, in line with the national law. He followed all the instructions given to him by the immigration authorities and reported to them on a regular basis. He did not misuse the asylum procedure and did not hide. On the contrary, he co-operated with the immigration officers. He was granted legally recognized admission, regardless of whether it was temporary or not. From the moment of lodging the asylum application, the asylum procedure started. The asylum procedure is legally recognized and prescribed by national law. It is a procedure which can last for anything

from a few days to several years. The possibility of detaining an asylum seeker at any time during the asylum procedure on the ground that it was to "prevent his effecting an unauthorised entry into the country" would represent great legal uncertainty for the person concerned. States which are parties to international instruments dealing with the legal status of asylum seekers and refugees (e.g. the 1951 UN Convention relating to the Status of Refugees, but also instruments in other systems, e.g. the European Union and the Council of Europe) are obliged to grant an asylum seeker admission to the territory (but not a residence permit) until the final decision in the asylum procedure is taken. This also happened in the instant case, where the respondent Government admitted the applicant to the territory. Paradoxically, as indicated in paragraph 45 of the judgment, the applicant was detained for seven days, and was then released from detention after his asylum claim had been *refused*.

5. Lastly, we are of the opinion that the arguments mentioned in paragraph 54 of the judgment, which led to a finding of a violation of Article 5 § 2 of the Convention (non-communication of reasons for detention), provide support for our argument that there has been a violation of Article 5 § 1 (f) of the Convention, because the true reason for detention of the applicant had nothing to do with that provision. The true reason was purely based on administrative or bureaucratic grounds aiming to place the applicant in Oakington detention and to follow the "fast-track procedure". The majority recognized this explicitly when they affirmed that "...that form would have been inaccurate in that it would not have included the true reason...", which would have justified such detention.

6. For those reasons, since the applicant was not, in our view, detained for the purpose of preventing his effecting an entry into the territory, and since his entry cannot be considered as unauthorised, we do not agree with the conclusion that Article 5 § 1 (f) has not been violated.