



24 July 2013

## PRESS SUMMARY

**R (on the application of Modaresi) (FC) (Appellant) v Secretary of State for Health (Respondent)**[2013] UKSC 53 *On appeal from: [2011] EWCA Civ 1359*

**JUSTICES:** Lord Neuberger (President), Lady Hale, Lord Wilson, Lord Sumption, Lord Carnwath

### BACKGROUND TO THE APPEAL

The appeal arises out of an unfortunate but isolated oversight in the offices of the West London Mental Health NHS Trust at the end of 2010. Mrs Modaresi, who suffers from schizophrenia, was detained under s.2 of the Mental Health Act 1983 (“the Act”) on 20 December 2010 for assessment. By s.66(1)(a) of the Act she had a right to apply to the First-tier Tribunal within 14 days to review her detention. The tribunal would have been obliged to arrange a hearing within 7 days of receiving the application. On the afternoon of 31 December 2010 she gave a completed application form to a member of the hospital staff who faxed it to the appropriate office within the Trust. The administrator was out the office that day and the form was not seen by others in the office. The office was closed over the New Year holiday until 4 January 2011, when the form was found and faxed immediately to the tribunal. Officials in the tribunal’s office deemed it to be out of time.

On 6 January 2011 Mrs Modaresi ceased to be detained under s. 2 but became detained for treatment under s.3 of the Act. As such, she was entitled to make a separate application to the tribunal under s.66(1)(b) of the Act, which has no time limit for holding a hearing. Her solicitors wrote to the Secretary of State asking him, in the circumstances, to exercise his discretion under section 67(1) of the Act, which permits the Secretary of State, if he thinks fit, at any time to refer a patient detained under the Act to the tribunal. The Secretary of State noted that the reason for the delay was no fault of Mrs Modaresi, but having considered all the information, refused the application and suggested that she made a separate application as she was now detained under s.3. However, Mrs Modaresi did not pursue that course, and instead issued proceedings for judicial review against the Secretary of State for unlawfully declining to refer the case under s.67.

The claim for judicial review was dismissed by the High Court and the Court of Appeal dismissed the appeal.

### JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Carnwath gives the lead judgment and Lady Hale adds a concurring judgment.

### REASONS FOR THE JUDGMENT

Mrs Modaresi was not deprived of her right of access to a court or tribunal to review her detention. She had such a right under s.3 of the Act. The issue was not the existence of the right but how speedily it might be exercised and whether it was as advantageous as might have been the case if her original application had been accepted [17]. S.67 did not enable the Secretary of State to insist on a hearing in 7 days, as would have been required under s.2. The timing was in the discretion of the tribunal, as it would be under s.3 and s.66(1)(b). There was no evidence to support the submission that the Secretary of State could have been more persuasive in that respect. An application could have been made under

s.3 with a request for an urgent hearing in the circumstances. A direct approach to the Tribunal offered a much speedier resolution than the roundabout procedure actually adopted [18].

The practical advantage of a s.67 application was to avoid losing a right to make a second reference under s.3. However, Article 5(4) only required that a patient should have an entitlement to take proceedings to have the lawfulness of his or her detention decided speedily by the court. Mrs Modaresi had this entitlement under s.66(1) in respect of her detention under s.3. If there came a time when having unsuccessfully used up her s.3 application, Mrs Modaresi wanted to make a further application, she was entitled to ask the Secretary of State again under s.67, which he indicated that he would consider doing. The Secretary of State had a discretion under s.67 which it needed to exercise in accordance with normal public law principles and judicial review was available [19]. A reference under s.67 also had the advantages of convenience and accessibility over an alternative route [21, 35].

Lady Hale noted that Mrs Modaresi had undoubtedly been let down by the system through no fault of her own and there were some important lessons to be learnt [27]. The hospital failed to transmit her application to the tribunal on the day it was made [29]. The hospital's failure deprived the patient of the right of access to a tribunal which the law provides, and may well be a breach of the patient's Convention rights, and the only safe course is to have a system which ensures this does not happen [31]. The tribunal also failed to accept her application when it arrived. The authorities show that when an Act of Parliament prescribes a period for doing an act which can only be done on a day when the court office is closed, the time is extended to the next day on which it is open [33].

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)