



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

THIRD SECTION

CASE OF S.T.S. v. THE NETHERLANDS

(Application no. 277/05)

JUDGMENT

STRASBOURG

7 June 2011

FINAL

07/09/2011

This judgment has become final under Article 44 § 2 of the Convention.

In the case of S.T.S. v. the Netherlands,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 24 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 277/05) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Netherlands national, Mr S.T.S. (“the applicant”), on 21 December 2004. The President of the Chamber decided to grant the applicant anonymity (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr K.B. Spoelstra, a lawyer practising in Groningen. The Netherlands Government (“the Government”) were represented by their Agent, Mr R.A.A. Böcker, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been the victim of a violation of Article 5 § 4 of the Convention in that judicial proceedings for reviewing the legality of his detention had been so protracted that they were rendered devoid of purpose.

4. On 28 September 2007 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (former Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

5. The applicant was born in 1988 and lives in Groningen.

6. The applicant's parents' relationship ended in 1990. The applicant's mother was granted parental authority.

7. In 2001 the Child Care and Protection Board (*Raad voor de Kinderbescherming*) investigated the applicant's situation because he had been displaying severe behavioural difficulties, had dropped out of school, had committed a number of offences and appeared disinclined to respect authority in any shape or form.

8. By a decision of 9 October 2002, the Juvenile Judge of the Groningen Regional Court (*kinderrechter bij de rechtbank*) placed the applicant under the supervision (*ondertoezichtstelling*) of the Groningen Juvenile Care Foundation (*Stichting Jeugdzorg* – “the Foundation”) for a period of one year and also issued an authorisation to the Foundation for the applicant's custodial placement in a confined institution for treatment (*gesloten uithuisplaatsing*) for a period of three months. On 14 November 2002 the applicant was admitted to “Het Poortje” Juvenile Institution, a confined institution for treatment, in order to be observed and psychologically examined.

9. On 8 January, 6 March and 3 April 2003 the Juvenile Judge extended the authorisation for the applicant's custodial placement in a confined institution. The last such extension was set to expire on 9 October 2003 – one full year after the first decision.

B. The prolongation of the authorisation for the applicant's custodial placement in a confined setting

10. On 1 August 2003 the Juvenile Judge of the Groningen Regional Court received the Foundation's request (dated 29 July) for a prolongation of the authorisation for the applicant's custodial placement for the duration of the supervision order. Reference was made to a report containing the results of an examination of the applicant's personality by a remedial educationalist/psychologist that had been issued on 1 February 2003.

11. On 10 September 2003 a hearing was held before the Juvenile Judge. The applicant stated that he did not want to be placed in a confined institution for treatment and that his behaviour had improved. On behalf of

the Foundation it was submitted that the applicant had recently been placed at Rentray, a confined orthopsychiatric institution for persons with severe behavioural difficulties, that the intended treatment would take one to one and a half years, and that it was out of the question that the applicant would be able to live with his father or his grandmother as he had indicated he wished to do. The Juvenile Judge stated that the report on the applicant's personality was clear and that a relapse, which was considered to be a real possibility, had to be prevented at all costs. Treatment was necessary, also in view of his age, and he had already been admitted to Rentray.

12. On 17 September 2003 the Juvenile Judge decided to extend the period of supervision for a further year, with effect from 9 October 2003, and to prolong the authorisation issued to the Foundation for the applicant's custodial placement in a confined institution for treatment for the duration of the supervision order.

13. On 17 October 2003 the applicant lodged an appeal with the Leeuwarden Court of Appeal against the decision of 17 September 2003, in so far as it concerned the custodial placement.

14. A hearing was held on 11 December 2003. At the hearing the applicant's counsel, emphasising that the case was not a particularly complicated one, requested the applicant's immediate release as the case at issue had not been dealt with speedily within the meaning of Article 5 § 4 of the Convention. After having deliberated on this matter, the Court of Appeal considered that there appeared to be insufficient grounds to release the applicant immediately; nevertheless, a decision would be rendered as soon as possible and at the latest on 19 December 2003.

15. On 19 December 2003 the Court of Appeal quashed the decision of 17 September 2003 and extended until 1 May 2004, that is to say for six months rather than one year, the authorisation issued to the Foundation for the applicant's custodial placement in a confined institution for treatment. In this connection the court ruled as follows:

“37. Having regard to the far-reaching character of [the] measure – involving as it does a deprivation of liberty –, it should not last longer than strictly necessary. On 14 November 2002 [the applicant] was placed in a confined institution for observation and diagnosis and on 26 August 2003 he was placed there for treatment. Having regard, *inter alia*, to the ... positive development in [the applicant's] behaviour and to the individual treatment meeting which will take place in April 2004, the court perceives cause to extend the authorisation for [the applicant's] custodial placement in a confined setting for treatment until 1 May 2004.”

As regards Article 5 § 4 of the Convention the Court of Appeal held as follows:

“7. In answering the question whether the case was decided sufficiently speedily, the court is of the opinion that the nature of the custodial measure at issue, the duration of that measure and the relationship between the duration of the measure and the (total) time that has elapsed between the moment the appeal was lodged and the date on which the appeal was decided upon should also be taken into consideration.

8. In the present case a measure involving deprivation of liberty was imposed in the framework of a child protection measure.

9. The imposed ... measure consists of extending the authorisation for [the applicant's] custodial placement in a confined setting for a duration of one year, with effect from 9 October 2003.

10. [The applicant] lodged an appeal against that decision on 17 October 2003.

11. In a letter of 20 October 2003, the court invited the Foundation and [the applicant's] father and mother to file their submissions by 10 November 2003 at the latest. It is to be noted, also in view of the custodial character of the measure, that these interested parties have been granted a shorter period of time within which to lodge observations than is customary in family-law cases. After all, pursuant to section 7 of the Uniform Regulations for petition-based proceedings in family-law cases (*Uniform Reglement voor rekestprocedures in familiezaken*) the usual period within which observations are to be lodged is six weeks.

12. Subsequently, by letters of 11 November 2003, the parties were summoned to appear at the court's hearing of 11 December 2003 and the decision has been scheduled for today.

13. In view of the above-mentioned elements and the way they are related to each other, the court concludes that in the present case the decision can still be said to have been taken speedily within the meaning of Article 5 § 4 of the Convention, and that this provision has therefore not been breached."

16. On 13 January 2004 the applicant lodged an appeal on points of law (*beroep in cassatie*) with the Supreme Court (*Hoge Raad*). He complained explicitly of a breach of Article 5 § 4 of the Convention in that the Court of Appeal had been wrong to have had regard only to the period between 17 October 2003, the date on which the appeal had been lodged, and 19 December 2003, the date of the decision. He argued that the court should have included the period from 14 November 2002 to 17 October 2003 during which time he had also been deprived of his liberty, as well as the fact that (at that time) he had been a minor below the age of 16. He further claimed that the considerations of the Court of Appeal relating to the shorter time than usual for the submission of observations could not warrant the conclusion that the decision had been taken speedily, nor were they relevant in that context. The statement of points of appeal was lodged by a member of the Supreme Court bar, a lawyer practising in The Hague.

17. On 10 September 2004 an Advocate-General (*advocaat-generaal*) to the Supreme Court, acting as deputy to the Procurator General (*procureur-generaal*), submitted an advisory opinion. She considered that as the period for which the authorisation had been granted had in the meantime lapsed, the applicant no longer had an interest in the appeal and it therefore ought to be declared inadmissible in accordance with the established case-law of the Supreme Court. Nevertheless, with a view to developing the law, the Advocate-General addressed the merits of the

appeal. Reference was made to the Court's judgments and decision in the following cases: *Sanchez-Reisse v. Switzerland* (21 October 1986, Series A no. 107); *E. v. Norway* (29 August 1990, Series A no. 181-A); *Van der Velden v. the Netherlands* ((dec.), no. 29514/05, ECHR 2006-XV); *Navarra v. France* (23 November 1993, Series A no. 273-B); and *Bouamar v. Belgium* (29 February 1988, Series A no. 129). The Advocate-General noted that the period between 17 October 2003, the date on which the appeal to the Court of Appeal had been lodged, and the hearing before that court on 11 December 2003 had already lasted 54 days, and that a further 8 days had elapsed until the decision of 19 December 2003. However, the entire procedure – from the first request for extension of the authorisation until the decision taken on appeal – had lasted from 1 August 2003 to 19 December 2003, that is a period of 141 days. As to other circumstances that had to be taken into consideration, such as the complexity of the case and the applicant's behaviour, the Advocate-General pointed out that the extension at issue was based on reports that had been issued before the start of the proceedings in question and that the only delay that could be attributed to the applicant concerned the time that had elapsed between the decision of the Juvenile Judge of 17 September 2003 and the lodging of the appeal on 17 October 2003. The Advocate-General concluded that, in her opinion, the decision of the Court of Appeal had not been taken speedily within the meaning of Article 5 § 4 of the Convention.

18. The applicant, through counsel, submitted a written response to the Advocate-General's advisory opinion on 23 September 2004. He argued that the lawfulness of the detention orders following on from the original order depended on the lawfulness of the original order. Furthermore, domestic law provided for an appeal to the Supreme Court in cases such as the present; such an appeal could only be effective if the Supreme Court declared the applicant's appeal admissible and ruled on its merits.

19. By a final decision of 5 November 2004, the Supreme Court declared the applicant's appeal inadmissible for lack of interest, since the authorisation at issue had already lapsed in the meantime.

C. Parallel proceedings after 19 December 2003 (second set of proceedings)

20. On 29 April 2004, shortly before the day on which the Court of Appeal's order of 19 December 2003 was due to expire (1 May 2004), the Juvenile Judge of the Groningen Regional Court extended its validity for four more weeks. It was extended for a further two months on 19 May 2004. The intention was to transfer the applicant to an open setting during this time.

21. On 14 June 2004 the applicant was transferred to an open (non-custodial) unit within the Rentray institution. It appears that the applicant absconded from this unit three times between July and September 2004.

D. Further parallel and subsequent proceedings (third set of proceedings)

22. On 6 October 2004 the Juvenile Judge of the Groningen Regional Court made a new supervision order and authorised the applicant to be placed in a custodial institution for a period of six months, backdated to 30 September 2004. The applicant and his mother appealed on 17 October and 4 November respectively.

23. On 8 December 2004 the Leeuwarden Court of Appeal, ruling on both appeals, shortened the placement order to three months instead of six on formal grounds. It dismissed an argument based on Article 5 § 4 of the Convention, holding that the proceedings had been sufficiently speedy, and that in any event a finding of a violation of the requirement of “speediness” would not *ipso jure* have entitled the applicant to immediate release since that might well have gone against his own best interests.

24. It appears that the applicant remained in a secure institution until the time he reached his majority, which was in mid-2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legislation

25. Under Article 1:254 of the Civil Code (*Burgerlijk Wetboek*), the Juvenile Judge may, on the application of, *inter alia*, the Child Care and Protection Board, order a minor child’s placement under the supervision of a family supervision agency (*gezinsvoogdij-instelling*) within the meaning of section 60 of the Juvenile Care Services Act (*Wet op de Jeugdhulpverlening*), if the child is growing up under such conditions that he or she is threatened with moral or physical ruin (*zedelijke of lichamelijke ondergang*). Such an order may be given for a maximum period of one year, but can be extended by a maximum of one year at a time (Article 1:256 of the Civil Code).

26. If it is deemed necessary in the interest of the child’s care and upbringing or for the purposes of an examination of the child’s mental or physical health, the Juvenile Judge may further authorise a custodial placement of the child (Article 1:261 § 1 of the Civil Code). Authorisation for custodial placement in a confined institution can be extended only if this is required on account of severe behavioural difficulties of the minor concerned (Article 1:261 § 3). Such authorisation may only be given for a

maximum period of one year, with the possibility of subsequent extension for a maximum of one year at a time (Article 1:262 § 1).

27. An appeal against decisions taken in petition-based proceedings, including those of the Juvenile Judge, lies to the Court of Appeal (Article 358 § 1 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*)). The time-limit for bringing such an appeal is three months from the date of the decision (Article 358 § 2).

28. Pursuant to Article 426 § 1 of the Code of Civil Procedure, those who have participated in the proceedings at first instance or at the appellate stage may lodge an appeal on points of law with the Supreme Court within three months from the date of the decision. Such an appeal is introduced by way of a petition signed by a member of the Supreme Court bar (Article 426a). The Supreme Court takes its decision after the Procurator General has submitted a written advisory opinion, within a time-limit set by the Supreme Court itself (Article 429 § 1).

29. At the relevant time, the Supreme Court bar was composed of all legal practitioners who were members of the bar of The Hague, excluding any others (section 1(2) of the Legal Profession Act (*Advocatenwet*)).

B. Case-law

30. It is constant case-law of the Netherlands Supreme Court to declare appeals on points of law contesting the lawfulness of detention inadmissible if the detention has ended, for whatever reason, by the time the court comes to consider the question. This is what it decided, for example, in its judgment of 7 October 1997 (see *Nederlandse Jurisprudentie* (Netherlands Law Reports, “*NJ*”) 1998, no. 227).

31. The Supreme Court confirmed this position in a judgment of 31 May 2005 (*NJ* 2005, no. 531), in which it declared inadmissible an appeal on points of law lodged by a person committed to detention for twelve days for failing to give evidence as a witness in court but who had been released nearly eleven months earlier. Even so, the Supreme Court saw fit to address the merits of the case *obiter*, considering that had the appeal been admissible, it would have failed nonetheless.

THE LAW

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

32. The applicant claimed to be a victim of a violation of Article 5 § 4 of the Convention, which reads as follows:

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

The Government denied this claim.

A. Speediness

1. Admissibility

(a) The Government’s preliminary objection

33. The Government submitted a preliminary objection to the effect that the applicant had failed to complain about the lack of speediness of the proceedings before the Supreme Court. In their submission, the applicant ought to have done so when responding to the Advocate-General’s advisory opinion; as it was, the letter of 23 September 2004 had been limited to the question of the “effectiveness” of an appeal on points of law in the event that the Supreme Court should decline to rule on the ground that such an appeal had become devoid of purpose.

34. The applicant pointed out that the order appealed against had already expired on 1 May 2004, which in his submission meant that by September 2004 the admissibility of his appeal on points of law was in any event irretrievably compromised.

35. Although a complaint to the Supreme Court would in theory have been possible, the Government failed to show that it could have made any difference to the Supreme Court’s decision. Consequently, the Court is unconvinced that the “remedy” relied on by the Government was “effective” for the purposes of Article 35 § 1 of the Convention (compare *Salah Sheekh v. the Netherlands*, no. 1948/04, § 123, 11 January 2007). Indeed, the Court is aware of at least one previous decision of the Supreme Court to similar effect, which sufficiently justifies serious doubts on this point (see *Venema v. the Netherlands*, no. 35731/97, §§ 47-49, ECHR 2002-X). It follows that the preliminary objection must be dismissed.

(b) Conclusion as to admissibility

36. 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.

2. Merits

37. The applicant complained under Article 5 § 4 of the Convention that his appeal to the Leeuwarden Court of Appeal against the decision to extend

the authorisation for his custodial placement and his further appeal on points of law to the Supreme Court had not been determined “speedily” as required by this provision.

(a) The parties’ submissions

38. The applicant stated that he had lodged his release request with the Leeuwarden Court of Appeal on 17 October 2003. There had been a considerable lapse of time before the Court of Appeal held its hearing, which it did on 11 December 2003, fifty-four days later. Sixty-three days had passed before the Court of Appeal gave its decision on 19 December 2003.

39. He had lodged his appeal on points of law with the Supreme Court on 13 January 2004. The Supreme Court had given its decision only on 5 November 2004, that is 296 days later. Relying on the Court’s earlier case-law, in particular *Bouamar v. Belgium* (29 February 1988, Series A no. 129), which like his own case concerned an adolescent detained in connection with personality problems, he argued that such lapses of time could not be justified in the light of Article 5 § 4 of the Convention.

40. The Government took the view, differing in this respect from the Advocate-General (see paragraph 17 above), that the period to be considered had begun only on 17 October 2003; it thus totalled only 63 days not 141. This they considered to have been reasonable. That much time had been necessary for both parties to have the opportunity to present their views and for the Court of Appeal to hold a hearing and reach a carefully considered decision.

41. A further lapse of time between the delivery of the Court of Appeal’s decision and the introduction of the applicant’s appeal on points of law was imputable to the applicant himself, not to the respondent Government.

42. Finally, the Government asked the Court to bear in mind that during the period when the case was pending before the Supreme Court the question of the applicant’s continued detention had been examined by the Juvenile Judge three times, namely on 29 April, 19 May and 6 October 2004 (see paragraphs 20 and 22 above); praying in aid *Letellier v. France* (26 June 1991, Series A no. 207), the Government argued that the domestic courts could not therefore be considered to have remained inactive.

(b) The Court’s assessment

(i) Applicable principles

43. The following principles relevant to the case have been established in the Court’s case-law:

(a) Article 5 § 4, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such

proceedings, to a speedy judicial decision concerning the lawfulness of the detention and ordering its termination if it proves unlawful (see, among many other authorities, *Van der Leer v. the Netherlands*, 21 February 1990, § 35, Series A no. 170-A; *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II; *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III; *Jablonski v. Poland*, no. 33492/96, § 91, 21 December 2000; *Kadem v. Malta*, no. 55263/00, § 44, 9 January 2003; *Sarban v. Moldova*, no. 3456/05, § 118, 4 October 2005; and, more recently, *Toma v. Romania*, no. 42716/02, § 74, 24 February 2009; and *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009).

(b) Article 5 § 4 does not compel the Contracting Parties to set up more than one level of jurisdiction for the examination of the lawfulness of detention and for hearing applications for release; in principle, the intervention of one organ satisfies Article 5 § 4, on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question (see *Jėčius v. Lithuania*, no. 34578/97, § 100, ECHR 2000-IX).

(c) Nevertheless, a State which offers a second level of jurisdiction must in principle accord to the detainees the same guarantees on appeal as at first instance (see *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224; *Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B; and *Khudobin v. Russia*, no. 59696/00, § 124, ECHR 2006-XII).

(d) In order to determine whether the requirement that a decision be given “speedily” has been complied with, it is necessary to effect an overall assessment where the proceedings were conducted at more than one level of jurisdiction (compare *Navarra*, cited above, § 28, and *Mooren*, cited above, § 106). It should concern, in particular, the speediness of the review by the appellate body of a lower court’s decision imposing a detention order (see *Khudobin*, cited above, § 115).

(e) The question whether the right to a speedy decision has been respected must – as is the case for the “reasonable time” requirement set out in Articles 5 § 3 and 6 § 1 of the Convention – be determined in the light of the circumstances of each case (see, among other examples, *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII; *G.B. v. Switzerland*, no. 27426/95, § 33, 30 November 2000; *M.B. v. Switzerland*, no. 28256/95, § 37, 30 November 2000; *Kadem*, cited above, § 44; and *Mooren*, cited above, § 106).

(f) In making such an assessment, the circumstances to be taken into account may include the complexity of the proceedings, the conduct by the domestic authorities and by the applicant and what was at stake for the latter (compare *G.B. v. Switzerland*, cited above, §§ 34-39, and *M.B. v. Switzerland*, cited above, §§ 38-43).

(ii) *Application of the above principles to the present case*

44. The applicant, in his application, complained of a lack of speediness in the proceedings only from the date on which he lodged his appeal with the Court of Appeal, 17 October 2003. The Court will take that as the starting date for its examination of the case.

(α) Court of Appeal

45. It took the Court of Appeal three days to set the parties a time-limit for the filing of their written submissions, which was 10 November 2003 or three weeks later. The Court of Appeal held a hearing in the case only one full month after that, on 11 December 2003, by which time 55 days had elapsed since the appeal had been lodged. After the hearing, it needed a further 8 days to deliver its decision.

46. Given the need for the Court of Appeal to gather information from a variety of sources and allow various parties to participate effectively in the proceedings – including, in addition to the applicant himself, his parents (see paragraph 15 above) – the Court considers that this lapse of time, taken in isolation, does not raise an issue of speediness for the purposes of Article 5 § 4 in the circumstances of the case.

(β) Supreme Court

47. The Supreme Court gave its decision on 5 November 2004, 294 days after the applicant lodged his appeal on points of law. Such a lapse of time appears in itself inordinate. The Government made no attempt to explain it.

48. Whatever the reasons for this delay, the Court reiterates that the Convention requires the Contracting States to organise their legal systems so as to enable the courts to comply with its various requirements. The Court has often stated this rule in the context of Article 6 of the Convention (see, as a recent example, *Sürmeli v. Germany* [GC], no. 75529/01, § 129, ECHR 2006-VII) but it is no less pertinent in the context of Article 5. It is incumbent on the judicial authorities to make the necessary administrative arrangements to ensure that urgent matters are dealt with speedily and this is particularly necessary when the individual's personal liberty is at stake (see *E. v. Norway*, 29 August 1990, § 66, Series A no. 181-A; see also, as more recent authorities, *G.B. v. Switzerland*, § 38, and *M.B. v. Switzerland*, § 42, both cited above).

49. The Government argued that, as in *Letellier* (cited above), the applicant's detention had been reviewed anew on several occasions while the proceedings complained of were still pending. The Court confines itself to noting that in *Letellier* it declined to rule on the alleged lack of speediness (cited above, § 56); moreover, in that case there was no additional issue of effectiveness based on the same facts, an issue which

arises in the present case, as will be seen below. The two cases are therefore, in these respects as in others, dissimilar.

50. The foregoing considerations lead the Court to conclude that there has been a violation of Article 5 § 4 of the Convention in that the lawfulness of the applicant's detention was not decided "speedily".

B. Effectiveness

51. The applicant further complained that the lack of expedition had deprived the proceedings of their effectiveness, since it had led the Supreme Court to declare his appeal on points of law inadmissible for lack of interest.

1. Admissibility

(a) Whether the complaint is manifestly ill-founded

52. The Government stated that the proceedings available to the applicant had satisfied the requirement of effectiveness. The case had been heard on 10 September 2003 by the Juvenile Judge of the Groningen Regional Court, who had the power to order the applicant's immediate release upon finding his detention unlawful.

53. The applicant responded that the Juvenile Judge's ensuing decision (of 17 September 2003) had not covered the entire period of his custodial placement.

54. The Court observes that the case before it concerns the lack of effectiveness resulting from the protracted nature of the proceedings before the Court of Appeal and especially the Supreme Court. Any argument about the proceedings before the Juvenile Judge falls outside the scope of the Court's examination.

(b) Conclusion as to admissibility

55. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, whether for the reason given by the Government or any other. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

56. The applicant complained under Article 5 § 4 of the Convention that no final decision on the lawfulness of his custodial placement had ever been given. The lapse of time after he had lodged his appeal on points of law with the Supreme Court, which had lasted many months after the end of the

validity of the order appealed against, had been reason enough for the Supreme Court to declare his appeal on points of law as lacking any interest.

57. The Government argued that since the applicant's deprivation of liberty had been reviewed by a court several times in the interval the procedure had been sufficiently effective.

(b) The Court's assessment

58. The Court held in *McFarlane v. Ireland* ([GC], no. 31333/06, § 108, 10 September 2010), in the context of the "reasonable time" requirement posed by Article 6 § 1 (case-law references omitted), as follows:

"Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an 'arguable complaint' under the Convention and to grant appropriate relief ...

The scope of a Contracting Party's obligations under Article 13 varies depending on the nature of the complaint. However, the remedy required by Article 13 must be 'effective' in practice as well as in law ... The term 'effective' means that the remedy must be adequate and accessible ...

An effective remedy for delay in criminal proceedings must, *inter alia*, operate without excessive delay and provide an adequate level of compensation ... Article 13 also allows a State to choose between a remedy which can expedite pending proceedings or a remedy *post factum* in damages for delay that has already occurred. While the former is preferred as it is preventative of delay, a compensatory remedy may be regarded as effective when the proceedings have already been excessively long and a preventative remedy did not exist ..."

59. The Court has recognised Article 5 § 4 as a *lex specialis* in respect of Article 13. Thus, it held as follows in *A. and Others v. the United Kingdom* ([GC], no. 3455/05, § 202, ECHR 2009; case-law references omitted):

"Article 5 § 4 provides a *lex specialis* in relation to the more general requirements of Article 13 ... It entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the 'lawfulness' of his or her deprivation of liberty. The notion of 'lawfulness' under of Article 5 § 4 has the same meaning as in paragraph 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. Article 5 § 4 does not guarantee a right to judicial review of such a scope 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 ... The reviewing 'court' must not have merely advisory functions but must have the competence to 'decide' the 'lawfulness' of the detention and to order release if the detention is unlawful ..."

60. The Court notes that the applicant's appeal on points of law was lodged with the Supreme Court just over three and a half months before the

expiry of the Court of Appeal's six-month authorisation for the applicant's custodial placement. No grounds have been stated to explain why the Supreme Court could not reasonably have been expected to give a decision within that time. Absent such grounds, the Court cannot but find that the lack of a final decision before the validity of the authorisation for the applicant's custodial placement expired was itself sufficient to deprive the applicant's appeal on points of law of its practical effectiveness as a preventive or even reparatory remedy (compare *Baranowski*, cited above, § 76, and *A. and Others v. the United Kingdom*, cited above).

61. Furthermore, in declaring the applicant's appeal on points of law inadmissible as having become devoid of interest the Supreme Court deprived it of whatever further effect it might have had (compare *Bouamar*, cited above, § 63). The Court would point out in this connection 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. The issue may arise, for example, in giving effect to the "enforceable right to compensation" guaranteed by Article 5 § 5 of the Convention (compare *McFarlane*, cited above), where it may be necessary to secure a judicial decision which will override any presumption under domestic law that a detention order made by a competent authority is *per se* lawful.

62. There has therefore also been a violation of Article 5 § 4 of the Convention in that the proceedings for deciding the lawfulness of the applicant's detention were not "effective".

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

63. Lastly, the applicant complained of a violation of Article 6 § 1 of the Convention in that the length of the proceedings before the Supreme Court, having resulted in the finding that his appeal on points of law had become devoid of purpose in the meantime, had deprived him of effective access to that body.

64. The Government were not invited to comment on this complaint and did not do so of their own motion.

65. The Court has considered this complaint under Article 5 § 4 of the Convention. Even assuming, for the sake of argument, that an issue may arise under Article 6 § 1 in this connection, the Court sees no need to consider it separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage. He argued that the Leeuwarden Court of Appeal ought to have found Article 5 § 4 to have been breached and, as a consequence, to have ordered his immediate release. He stated that this was what the Leeuwarden Court of Appeal had in fact decided in a different case.

68. The Government considered the applicant’s claim unjustified.

69. In a case like the present, the basis for the Court’s examination of the applicant’s claim can only be the situation that would have obtained had the violation not taken place, not the situation that would have obtained had the domestic courts afforded redress under domestic law. The violation found in the present judgment lies in the lack of speediness and effectiveness of the proceedings before the Supreme Court; the Court cannot find it established that the Supreme Court would have ordered the applicant’s release had its decision been given any more speedily (see *E. v. Norway*, 29 August 1990, § 70, Series A no. 181-A; compare also *Nikolova v. Bulgaria* [GC], no. 31195/96, § 76, ECHR 1999-II; *H.L. v. the United Kingdom*, no. 45508/99, §§ 148-49, ECHR 2004-IX; and *Fodale v. Italy*, no. 70148/01, § 50, ECHR 2006-VII).

70. Nevertheless, the Court considers that the applicant has suffered non-pecuniary damage that cannot be made good merely by the finding of a violation of the Convention (compare *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 87, ECHR 2003-IV; *Kolanis v. the United Kingdom*, no. 517/02, § 86, ECHR 2005-V; and *Mooren v. Germany* [GC], no. 11364/03, § 130, 9 July 2009). Deciding on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

71. The applicant also claimed as “reasonable” a sum of EUR 3,500 for “legal expenses”. He did not specify these or submit any corroborating documents.

72. The Government asked the Court to dismiss this claim as unsubstantiated.

73. According to the Court's consistent 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; furthermore, legal costs are recoverable only in so far as they relate to the violation found (see, as recent authorities among many others, *Kafkaris v. Cyprus* [GC], no. 21906/04, § 176, ECHR 2008; *Salduz v. Turkey* [GC], no. 36391/02, § 78, ECHR 2008; *Mooren*, cited above, § 134; *Micallef v. Malta* [GC], no. 17056/06, § 115, ECHR 2009; *Gäfgen v. Germany* [GC], no. 22978/05, § 196, ECHR 2010; *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 109, 14 September 2010; and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 418, ECHR 2011).

74. In the present case, all pertinent information is lacking. The Court therefore rejects the applicant's claim under this head in its entirety.

C. Default interest

75. 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 complaints concerning Article 5 § 4 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 4 of the Convention in that the lawfulness of the applicant's detention was not decided "speedily";
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention in that the proceedings for deciding the lawfulness of the applicant's detention were not "effective";
4. *Holds* that it is not necessary to examine the applicant's complaint under Article 6 § 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, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 7 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President