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

CASE OF ERKALO v. THE NETHERLANDS

(89/1997/873/1085)

JUDGMENT

STRASBOURG

2 September 1998

In the case of Erkalo v. the Netherlands[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Mr A.N. LOIZOU,
Mr M.A. LOPES ROCHA,
Mr B. REPIK,
Mr P. JAMBREK,
Mr E. LEVITS,
Mr P. VAN DIJK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 19 May and 27 July 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 22 September 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 23807/94) against the Kingdom of the Netherlands lodged with the Commission under Article 25 by an Ethiopian national, Mr Dawit Shugute Erkalo, on 12 October 1993.

The object of the Commission's request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 5 §§ 1 and 4, and 13 of the Convention.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant designated the lawyer, Mr F. Swart of the Netherlands Bar, who would represent him (Rule 31). Having originally been designated by the initials D.S.E., the applicant subsequently agreed to the disclosure of his name.

Notes by the Registrar

1. The case is numbered 89/1997/873/1085. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

3. The Chamber to be constituted included *ex officio* Mr P. van Dijk, the elected judge of Netherlands nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 25 September 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr I. Foighel, Mr R. Pekkanen, Mr A.N. Loizou, Mr M.A. Lopes Rocha, Mr B. Repik, Mr P. Jambrek and Mr E. Levits (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr R. Bernhardt replaced, as President of the Chamber, Mr Ryssdal, who was unable to take part in the further consideration of the case (Rules 21 § 4 (b) and 6).

4. As President of the Chamber at that time (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had consulted Mr A. von Hebel, the Agent of the Netherlands Government ("the Government"), the applicant's lawyer and Mr H. Danelius, the Delegate of the Commission, on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicant's and Government's memorials on 5 March 1998.

5. On 16 February 1998, having regard to the views expressed by the applicant, the Government and the Delegate of the Commission, the Chamber had decided to dispense with a hearing in the case, having satisfied itself that the condition for this derogation from its usual procedure had been met (Rules 27 and 40). By letter of 19 February 1998 the applicant's representative and the Agent of the Government were informed that they could make observations in response to their respective memorials. The Registrar received the supplementary observations of the Government on 17 March 1998.

6. On 15 April 1998, in accordance with the request of the President of the Court, the Government submitted further information regarding the facts set out in their memorial.

7. On 24 April 1998 the Secretary to the Commission informed the Registrar that the Delegate had no observations to make on the memorials and observations filed.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is an Ethiopian national born in 1970.

9. The applicant was convicted on two counts of manslaughter by the Groningen Regional Court (*arrondissementsrechtbank*) on 21 June 1990.

He had broken into the homes of two elderly ladies whom he had strangled to death, both these incidents taking place within the space of three days.

10. The applicant was sentenced to five years' imprisonment (with deduction of the period spent in detention on remand) and placement at the disposal of the government (*terbeschikkingstelling*) with committal to a psychiatric institution. Although the period of placement at such an institution does not usually begin until the date on which the person concerned is eligible for early release – which in the present case would have been 16 February 1993 – due to his disturbed mental state the authorities decided to commence the applicant's treatment prior to this date (Article 13 of the Criminal Code – *Wetboek van Strafrecht* – and Article 120 of the Prisons Ordinance – *Gevangenismaatregel* – see paragraph 20 below). Accordingly, the applicant was placed at the disposal of the government in a psychiatric institution for a two-year period commencing 3 July 1991 (see paragraph 21 below).

11. According to Article 509o § 1 of the Code of Criminal Procedure (*Wetboek van Strafvordering*, hereinafter referred to as "CCP"), a request for the extension of a placement order must be made by the public prosecutor not later than one month before the expiry of the previous period of placement (see paragraph 23 below). The last day for making such a request in the present case was therefore 3 June 1993. A letter to this effect was sent by the State Secretary of Justice to the public prosecutor on 11 May 1993, the latter having received on 4 May 1993 the recommendations of the psychiatric institution where the applicant was being treated regarding the prolongation of his period of placement (see paragraph 23 below).

12. On 17 May 1993 the public prosecutor prepared a request for a one-year extension of the applicant's placement. The applicant was informed of this fact by letter of the same day (see paragraph 23 below), which he received in person on 19 May 1993. The applicant was also informed that during the judicial examination of the request he could be represented by counsel. The request prepared by the public prosecutor, however, did not arrive at that time at the registry of the Regional Court of Groningen but was, apparently by mistake, placed in the archives of the court.

13. About three and a half months after receiving the letter of the public prosecutor, the applicant alerted the staff in the psychiatric institution to the fact that he had not received any further information regarding the extension of his placement. The request of the public prosecutor was found in the archives of the court on 7 September 1993, and was received at the court's registry on 8 September 1993. On 10 September 1993 the psychiatric institution submitted additional observations concerning its recommendation to extend the hospital order.

14. In the proceedings regarding the extension of his placement, the applicant asked the Regional Court to declare the public prosecutor's request inadmissible on the ground that both Article 509o § 1 of the CCP and

Article 5 of the European Convention on Human Rights had been violated. The public prosecutor submitted an explanation in writing as to the reasons why the request had not been lodged in time arguing that the request should not be declared inadmissible.

15. The Regional Court examined the application on 15 September 1993. In its decision of 23 September 1993, the court rejected the applicant's objections and extended his placement at the government's disposal for another year. Pursuant to Article 509v of the CCP (see paragraph 27 below) no appeal lay against this decision, as it concerned a first extension not exceeding one year.

16. In its decision the Regional Court stated as follows:

> "3. It appears from the contents of the relevant documents that the request for an extension of the placement at the disposal of the government should have been submitted not later than 3 June 1993. According to the stamp indicating the receipt, the request was not received and registered at the registry of this Court until 8 September 1993.
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> 4. The Code of Criminal Procedure does not indicate any consequences of a failure to observe the time-limit contained in Article 509o § 1. However, in view of the wording of the provision and its legal history, the Court is of the opinion that failure to observe the said time-limit should in principle result in the inadmissibility of the public prosecutor's application. This conclusion can be drawn from the fact that failure to respect this procedural provision is not in conformity with the proper administration of justice.
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> 5. However, in some cases special circumstances might exist which would justify a departure from that principle. The Court considers that such special circumstances are present in this case.
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> 6. The provision referred to has a specific procedural significance and aims at letting the judge examine periodically whether an extension of the judicial measure is necessary. Indirectly the provision also protects the interests of the person placed at the government's disposal since it ensures that this person will know in good time whether or not there will be a request for an extension. In the present case the interests of that person were not prejudiced since the request was notified to him in person on 19 May 1993. He has therefore been able to obtain legal assistance in time and he has not been left in any doubt as to the intentions of the public prosecutor for an unnecessarily protracted period.
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> 7. It remains to be examined whether the failure to comply with the time-limit has been prejudicial to the fairness of the proceedings. In considering this question, the Court must have regard, *inter alia*, to the fact that the placement at the disposal of the government remains in force as long as there is no final decision on the request. Although there has been a failure to comply with the time-limit for requesting the extension, it does not follow that the deprivation of liberty is unlawful.
>
> 8. In substance, there has not been a failure to respect the time-limit within which the request must be made. The public prosecutor prepared a request for an extension in time and he communicated it two days later to the person placed at the government's disposal.

Because of circumstances, which have been further explained in the written memorial of the public prosecutor, it was not possible, however, for the Court to decide earlier on this request, which had been prepared in time. It is not possible to consider this a flagrant violation of the procedural provisions. The public prosecutor may only be reproached for the fact that the request did not arrive at the registry of this Court in time, which means that the request was only formally submitted too late.

9. Moreover an evaluation must be made of the various interests involved in the sense that the interest of the person placed at the government's disposal in having the violated legal provision respected must be weighed against the general interest which might be harmed by a decision which would lead to the termination of the placement at the disposal of the government.

10. The Court considers that, in view of the circumstances set out below, the latter interest must prevail.

The measure was originally imposed because of two acts of manslaughter. The above-mentioned opinions of the institution quite clearly refer to the necessity of prolonging this coercive measure. The risk of further criminal behaviour is considered still to be present to the same degree, since the person concerned can still not appreciate the vulnerability of his personality. The supplementary opinion regarding the extension repeats this conclusion and also mentions an incident in which violence took place between the person concerned and another person held in the institution. On this occasion he lost his senses for a short while and it was necessary to isolate him for some time in his room."

17. The Regional Court has since extended the applicant's placement twice.

II. RELEVANT DOMESTIC LAW

A. The Criminal Code and the Prisons Ordinance

18. Article 287 of the Criminal Code makes manslaughter a crime punishable by a term of imprisonment not exceeding fifteen years or a fine not exceeding one hundred thousand Netherlands guilders (NLG).

19. A person who has been found guilty of certain serious crimes and who, at the time of committing an offence, suffered from a mental deficiency or derangement may be placed at the government's disposal if required in the interests of the safety of others or more generally in the interests of the safety of persons or goods. Such a measure, which is not considered a punishment, may be imposed instead of or together with a prison sentence (Article 37a §§ 1 and 2 of the Criminal Code). The sentencing court may further decide that the person concerned shall receive psychiatric treatment at the government's expense (Article 37b).

20. A person sentenced to a term of imprisonment may, by order of the Minister of Justice, be made to serve his sentence in an institution for the

treatment of persons placed at the disposal of the government if such a course is indicated by his or her impaired mental development or a mental disturbance (Article 13 § 1 of the Criminal Code and Article 120 of the Prisons Ordinance).

21. According to Article 38d of the Criminal Code a person shall be placed at the disposal of the government for an initial period of two years which may be extended, at the request of the public prosecutor, for a further period of one or two years. The period of placement cannot be extended beyond a total of four years unless the crime committed by the person concerned was a crime of violence committed against, or causing danger to, one or more persons or such further extension is necessary for the protection of other persons (Article 38e).

B. The Code of Criminal Procedure

22. The provisions relating to the extension of the placement at the disposal of the government are laid down in Articles 509o to 509x of the CCP.

23. Article 509o § 1 provides:

> "The public prosecutor's office (*openbaar ministerie*) may submit a request (*vordering*) for the prolongation of the placement at the government's disposal no sooner than two months and no later than one month before the time at which the placement order is due to expire."

The request must be accompanied by a recent recommendation prepared by the institution in which the patient is being treated (Article 509o § 2). In accordance with the provisions of Article 509o § 6, the person concerned must be given a copy of the request as soon as possible.

24. The court competent to decide on such a request is the Regional Court that tried the person concerned at first instance for the crime that gave rise to the placement (Article 509p).

25. Pursuant to Article 509q, if a request for the extension of the placement is submitted to the Regional Court, the initial placement order shall remain in force until the decision of the court is rendered. If the request is granted after the date on which the placement would have expired had no request for prolongation been submitted, the new period of placement is nonetheless considered to have commenced as from that date.

26. The Regional Court must immediately set a date for the examination of the case, and the person concerned must be informed promptly of this date (Article 509s § 1). The decision of the Regional Court must be rendered as soon as possible, but no later than two months from the date on which the request was lodged (Article 509t § 1). The court may, however, exceed this time-limit if it wishes to consider refusing the request – thus terminating the measure – and if it needs more information as to the way in which the person concerned might be released back into society. In such a

case, the court has an additional three months to render its decision (Article 509t § 2). The Regional Court's decision shall be reasoned. If it decides to prolong the placement order, the decision must be pronounced publicly (Article 509t § 3).

27. Both the public prosecutor and the person concerned may lodge an appeal with the Court of Appeal (*Gerechtshof*) of Arnhem within two weeks of the service of the judgment given by the Regional Court. However, this provision rules out an appeal in regard to the first decision to extend the placement for a period of one year (Article 509v).

28. There is no express provision requiring the release of the person concerned if the time-limits laid down by Articles 509o § 1 and 509t §§ 1 and 2 are not complied with, nor does the CCP impose any sanctions on exceeding these time-limits.

C. Relevant domestic case-law

1. Summary civil proceedings

29. According to Netherlands case-law summary civil proceedings *(kort geding)* may be instituted in cases where a person placed at the disposal of the government wishes to obtain a court judgment on the lawfulness of his detention. However, in a case which was brought before the President of the Regional Court of the Hague, a request for the termination of the applicant's placement was rejected, *inter alia*, in view of the fact that the court competent to decide on the extension of the placement would be dealing with the matter one week later (decision of 30 March 1990, published in *Sancties* 1990, pp. 352–53).

2. Date of submission of a request for extension of the placement

30. The date on which the registry of the Regional Court concerned receives the request for extension is considered as the date of submission (Court of Appeal of Arnhem, decision of 26 June 1989, published in *Sancties* 1990, pp. 294–96).

3. Lawfulness of requests filed outside the prescribed time-limits

31. According to a judgment of the Supreme Court (Civil Division) of 14 June 1974 (*Nederlandse Jurisprudentie* (*NJ*) 1974, no. 436) a placement order remains lawful even if the decision to extend it exceeds the time-limit now laid down by Article 509t § 1 of the CCP.

32. In a judgment of 29 September 1989 (*NJ* 1990, no. 2), the Supreme Court (Civil Division) held that only in certain circumstances would the State be obliged to terminate a placement order after its statutory period had expired and no decision as to its extension had been taken. In order to

determine whether such an obligation existed, the court should have regard to the extent to which the statutory time-limit had been exceeded, the reasons for which the time-limit had not been complied with and the personal and societal interests involved.

33. In a more recent case, it was also held that the time-limit referred to in Article 509o § 1 of the CCP was not of an absolute nature. On 19 February 1993, in a case where this time-limit had been exceeded, the Supreme Court (Civil Division) found that in light of Article 509q the placement order had remained lawful even though the public prosecutor had lodged the request for extension three days after the date on which it should have been submitted to the registry of the Regional Court (*NJ* 1993, no. 302).

PROCEEDINGS BEFORE THE COMMISSION

34. The applicant applied to the Commission on 12 October 1993 complaining that upon expiry of the statutory period of his placement at the disposal of the government his detention became unlawful; that the decision to extend his placement was not made in accordance with a procedure prescribed by law; that he did not receive a speedy review of the lawfulness of his detention; and that he was unable to appeal against the decision to extend his detention. He relied on Articles 5 §§ 1 and 4, and 13 of the Convention.

35. The Commission (Second Chamber) declared the application (no. 23807/94) admissible on 15 May 1996. In its report of 2 July 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 5 § 1 of the Convention; that there had been no violation of Article 5 § 4 of the Convention; and that there had been no violation of the latter provision taken together with Article 13 of the Convention. The full text of the Commission's opinion is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

36. The applicant in his memorial requested the Court to find that the facts of the case disclosed a breach by the respondent State of Article 5 §§ 1

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

and 4 of the Convention, and to award him just satisfaction under Article 50.

37. The Government for their part asked the Court in their memorial to conclude that the facts disclosed no breach of the Convention.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

38. The Government contended that the applicant could have instituted summary civil proceedings to petition the President of the Regional Court to terminate his placement at the disposal of the government (see paragraph 29 above). It followed therefore that the applicant had not done all that could be expected of him to exhaust domestic remedies as required by Article 26 of the Convention, and for that reason his complaint should have been declared inadmissible.

39. The applicant maintained that in the circumstances of his case the institution of summary civil proceedings would not have constituted an effective remedy. He argued that a request for the termination of a placement order is only entertained by the President of the Regional Court concerned if no other procedure is available to an applicant that could result in a decision within a very short time. Accordingly, had he instituted summary civil proceedings, the President of the Regional Court would have realised that proceedings before the Groningen Regional Court were imminent and would have rejected his request on that account.

40. The Commission held that in light of domestic case-law the submission of such a request would have been of little practical use to the applicant in the instant case (see paragraph 29 above). Consequently, the application could not be rejected for non-exhaustion of domestic remedies.

41. The Court reiterates that the rule of exhaustion of domestic remedies in Article 26 of the Convention requires an applicant to have normal recourse to remedies within the national legal system which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. There is no obligation to have recourse to remedies which are inadequate or ineffective (see, for example, the Andronicou and Constantinou v. Cyprus judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2095, § 159).

42. The Court notes that persons placed at the disposal of the government may institute summary civil proceedings to test the lawfulness

of their detention, and such proceedings may constitute an effective remedy for the purposes of Article 26 of the Convention (see the Keus v. the Netherlands judgment of 25 October 1990, Series A no. 185-C, p. 67, § 28).

43. However, the Court notes that in the instant case the applicant was informed on 19 May 1993 that the public prosecutor would submit a request for a one-year extension of his placement. Since the applicant was under the assumption that the request of the public prosecutor had been lodged and was being processed in accordance with the relevant domestic procedure, he could not be faulted for failing to institute summary civil proceedings.

44. Moreover, the Court observes that had the applicant instituted summary civil proceedings the President of the Regional Court would in all probability have refused the application on the basis that the decision of the Groningen Regional Court on the request of the public prosecutor was imminent (see paragraph 29 above). Although the institution of summary civil proceedings would have put the Regional Court on notice that the request had been mistakenly placed in its archives and a date for the hearing of the request had not been set, the same result was achieved when the applicant alerted the staff in the psychiatric institution to the fact that he had not received any further information regarding the extension of his placement.

45. Accordingly, the Court concludes that the Government's preliminary objection must be dismissed.

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

46. The applicant complained of a violation of Article 5 § 1 of the Convention, which provides in so far as relevant for the present case:

> "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:
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> (a) the lawful detention of a person after conviction by a competent court;
>
> …
>
> (e) the lawful detention of … persons of unsound mind…;
>
> …"

47. The applicant submitted that the Groningen Regional Court should have declared the public prosecutor's request to extend his placement inadmissible since the request had been lodged out of time without there being any special circumstances that could have justified the delay. In this regard, the applicant argued that it was incumbent on the public prosecutor to ensure that requests for the extension of a placement were submitted and examined in accordance with the procedure laid down in Article 509 of the

Code of Criminal Procedure (CCP). The applicant further maintained that had the request of the public prosecutor been declared inadmissible, the Regional Court should have terminated his placement immediately since the initial placement order had expired.

48. The Government contended that the decision of the Groningen Regional Court was taken in accordance with the case-law of the national courts (see paragraphs 31 to 33 above). According to that case-law, although a failure to observe the time-limit laid down in Article 509o § 1 of the CCP (see paragraph 23 above) should in principle result in the inadmissibility of the request of the public prosecutor, special circumstances may justify a departure from this principle. Noting that the said provision protects the interests of persons placed at the government's disposal by ensuring that they know in advance whether or not there will be a request for extension – thus enabling them to seek the assistance of counsel – the Regional Court concluded that in the instant case the interests of the applicant were not violated since he was notified on 19 May 1993 that the public prosecutor would lodge a request. In addition, the Regional Court concluded that in substance there had not been a failure to respect the statutory time-limit as the public prosecutor had prepared the request in time. In its view the request was only "formally" submitted too late. Finally, the Regional Court held that in the instant case the interests of the applicant had to be weighed against the harm to the general interest if his placement were to be terminated given that he still represented a risk to the public.

49. The Commission considered that, although a request for the extension of a placement order that is filed outside the prescribed time-limit is not automatically declared inadmissible, the situation where a request for an extension has been lodged outside the time-limit prescribed by Article 509o § 1 of the CCP but before the date on which the statutory period of the placement has expired must be distinguished from the situation where no request had been submitted by the time the statutory period expired. In this regard, the Commission held that Article 509q presupposes that a request for an extension must be submitted prior to the expiry of the statutory period. Since the request of the public prosecutor was lodged more than two months after the expiry of the statutory period, the Commission concluded that in the circumstances of the instant case the applicant's detention between 3 July and 8 September 1993 was not lawful for the purposes of Article 5 § 1 of the Convention. Furthermore, the decision of the Groningen Regional Court to extend the applicant's placement was not taken in accordance with a procedure prescribed by law.

50. The Court recalls that Article 5 § 1 of the Convention contains a list of permissible grounds of deprivation of liberty that is exhaustive. However, the applicability of one ground does not necessarily preclude that of another; a detention may, depending on the circumstances, be justified

under more than one sub-paragraph (see the Eriksen v. Norway judgment of 27 May 1997, *Reports* 1997-III, pp. 861–62, § 76).

51. The Court notes that in the instant case the applicant was convicted of manslaughter by the Groningen Regional Court on 21 June 1990. Although the applicant was eligible for early release prior to the beginning of the period under consideration, namely 3 July to 23 September 1993, the period of detention to which he was sentenced had not elapsed (see paragraph 10 above). Accordingly, the detention of the applicant during the period under consideration falls within Article 5 § 1 (a) of the Convention as it resulted from a "conviction" by a "competent court". Since the applicant – who was suffering from a mental derangement – was placed at the disposal of the government in a psychiatric institution on 3 July 1991, the applicant's detention also falls within the ambit of Article 5 § 1 (e) of the Convention.

52. Against this background, it must be established whether the detention of the applicant during the period under consideration was "in accordance with a procedure prescribed by law" and "lawful" within the meaning of Article 5 § 1 of the Convention. The Court recalls that the Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof; but it requires in addition that any deprivation of liberty should be in conformity with the purpose of Article 5 which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see, among many other authorities, the Johnson v. the United Kingdom judgment of 24 October 1997, *Reports* 1997-VII, p. 2409, § 60).

53. Turning to the particular circumstances of the case, the Court notes that although the public prosecutor prepared the request for the extension of the applicant's placement in time, and informed the applicant accordingly, the request did not reach the Groningen Regional Court until two months after the expiry of the statutory period (see paragraph 12 above). Since the date on which the registry of the court concerned receives the request is considered the date of submission (see paragraph 30 above), the time-limit specified in Article 509o § 1 of the CCP was consequently not respected.

54. In its judgment the Groningen Regional Court acknowledged that technically Article 509o § 1 of the CCP had not been respected. Nevertheless, it considered that "in substance" the public prosecutor had not failed to observe the prescribed time-limit. In any case, special circumstances existed which justified a departure from the principle that the failure to lodge a request for the extension of a placement within the prescribed time-limit should result in the inadmissibility of the request. In particular, the Regional Court considered that the interests of the applicant had not been prejudiced as he had been notified of the request in due time and, accordingly, had ample opportunity to seek legal assistance (see paragraph 16 above).

55. The Court notes that domestic case-law has recognised that a placement order remains lawful even though the public prosecutor failed to comply with the time-limit prescribed by Article 509o § 1 of the CCP when requesting its extension (see paragraph 33 above). Similarly, if the decision to extend the placement order is taken after the time-limit referred to in Article 509t § 1 of the CCP the placement order remains valid. It is only in certain circumstances that the State would be obliged to terminate a placement order after the expiry of the statutory period and without a decision on its extension having been taken (see paragraphs 31 and 32 above). The Court recalls in this regard that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see the Bouamar v. Belgium judgment of 29 February 1988, Series A no. 129, p. 21, § 49). Therefore, while considering that the reasoning of the Groningen Regional Court would appear to introduce an element of uncertainty in the application of Article 509o § 1 of the CCP, the Court is prepared to assume that the applicant's placement remained lawful under domestic law after the statutory period had expired.

56. However, the Court stresses that the lawfulness of the extension of the applicant's placement under domestic law is not in itself decisive. As noted above (see paragraph 52), it must also be established that his detention during the period under consideration was in conformity with the purpose of Article 5 § 1 of the Convention which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see the above-mentioned Johnson judgment, p. 2409, § 60).

57. In its Winterwerp v. the Netherlands judgment (of 24 October 1979, Series A no. 33, p. 21, § 49), the Court held that a delay of two weeks in the renewal of a detention order could not be regarded as unreasonable or excessive, and, as a result, did not involve an arbitrary deprivation of liberty. However, in the instant case the request of the public prosecutor for the extension of the placement order was not received by the Groningen Regional Court until two months after the expiry of the statutory period, and, as a result, for eighty-two days the placement of the applicant was not based on any judicial decision.

It must also be stressed in this regard that the facts of the case show that there was a lack of adequate safeguards to ensure that the applicant's release from detention would not be unreasonably delayed (see, *mutatis mutandis*, the above-mentioned Johnson judgment, p. 2412, § 67) as demonstrated by the fact that it was the applicant's own initiative which set in motion the judicial proceedings.

58. The Court notes further that in its decision the Groningen Regional Court failed to take into account the interests of the applicant, which were not limited to the mere notification of the public prosecutor's request. Since he was eligible for early release, it was also in the applicant's interest that he obtain a timely review of the request. The outcome of the examination of

the request was not only important for whether the applicant would remain in the psychiatric institution or be returned to an ordinary prison, it was also decisive for whether he would be released.

59. Admittedly, the interests of a person who has been placed by a court at the government's disposal must be weighed against those of the general public. However, it is precisely because of the public interests involved that the Court is struck by the fact that in the instant case, although the relevant authorities – namely the Ministry of Justice, the public prosecutor and the staff of the psychiatric institution – were all aware that the applicant's placement was due to expire, none of them took any steps to verify whether the request of the public prosecutor had been received at the registry of the Groningen Regional Court and whether a date had been fixed for a hearing on the request. In these circumstances, and in the absence of any adequate safeguards (see paragraph 57 above), the public interest involved cannot be relied upon as a justification for keeping the applicant, who it must be noted was undergoing psychiatric treatment, in a state of uncertainty for over two and a half months. The Court considers in this respect that the onus for ensuring that a request for the extension of a placement order is made and examined in time must be placed on the competent authorities and not on the person concerned.

60. Having regard to the above considerations, the Court finds that the detention of the applicant between the date of the expiry of the initial placement order and the date on which the Groningen Regional Court rendered its decision, namely 3 July and 23 September 1993 respectively, was not compatible with the purpose of Article 5 of the Convention, and was for that reason unlawful. Consequently, there has been a breach of Article 5 § 1 of the Convention.

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

61. The applicant further submitted that his detention gave rise to a breach of Article 5 § 4 of the Convention, which provides:

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

62. The applicant submitted that since he had been notified on 19 May 1993 that the public prosecutor had applied two days earlier for the extension of his placement, the Groningen Regional Court should have given its decision on his request within the two-month period prescribed by Article 509t of the CCP.

63. The Government argued that when assessing whether there had been a speedy review for the purpose of Article 5 § 4 account could only be taken

of the period after the submission of the request for extension to the registry of the Regional Court concerned. Accordingly, since only sixteen days elapsed between the date the request was registered and the decision of the Groningen Regional Court (see paragraphs 13 and 15 above), the review of the applicant's detention took place speedily. The Commission agreed with the Government.

64. The Court recalls that the request of the public prosecutor to extend the placement of the applicant was not submitted to the registry of the Groningen Regional Court until 8 September 1993. It considers therefore that the main thrust of the applicant's arguments under Article 5 § 4 is that none of the authorities responsible for his detention took any steps to ensure that the request was examined within the time-limit prescribed by Article 509t of the CCP. Since this argument is akin to the applicant's allegation that there had been a breach of Article 5 § 1, in view of its finding of a violation of that provision on account, *inter alia*, of the lack of a timely decision (see paragraph 60 above), the Court does not consider it necessary to examine further this complaint.

IV. ALLEGED VIOLATION OF ARTICLES 5 § 4 AND 13 OF THE CONVENTION

65. Before the Commission the applicant alleged that the fact that no appeal was available against the decision taken by the Groningen Regional Court on 23 September 1993 to extend his placement by one year gave rise to a violation of Articles 5 § 4 and 13 of the Convention (see paragraph 27 above). However, he did not maintain this complaint in the present proceedings and the Court sees no reason to examine it of its own motion (see, as a recent authority, the Incal v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, p. 1574, § 75).

V. APPLICATION OF ARTICLE 50 OF THE CONVENTION

66. The applicant requested the Court to grant him just satisfaction under Article 50 of the Convention, which provides as follows:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary and non-pecuniary damage

67. The applicant claimed 250 Netherlands guilders (NLG) by way of compensation for each day he was unlawfully deprived of his liberty. Since his rights were violated for a period of eighty-two days, he requested the Court to award him a total amount of NLG 20,500.

68. The Government submitted that if the Court were to find that there had been a breach of the Convention, that decision would in itself constitute sufficient just satisfaction.

69. The Delegate of the Commission submitted no comments on the amount claimed by the applicant.

70. The Court observes that it is not clear from the applicant's submissions whether his claim for financial compensation falls under the head of pecuniary or non-pecuniary damage. Nevertheless, it considers that the applicant did not suffer any financial loss by virtue of the fact that the decision to extend his placement was not taken until 23 September 1993, since according to Article 509q of the CCP the one-year extension of the applicant's placement took effect from the date the initial placement order expired (see paragraph 25 above). Consequently, it sees no reason to make any award in respect of any alleged pecuniary damage.

As to compensation in respect of non-pecuniary damage, the Court considers that a finding of a violation of Article 5 § 1 of the Convention constitutes in itself sufficient just satisfaction in the circumstances.

B. Costs and expenses

71. The applicant requested reimbursement of the legal costs and expenses incurred in the Strasbourg proceedings amounting to a total of NLG 6,475.

72. The Government left this matter to the Court's discretion.

73. The Court is satisfied that the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum. Accordingly, it awards the applicant the entirety of the sum claimed, together with any value-added tax that may be chargeable.

C. Default interest

74. According to the information available to the Court, the statutory rate of interest applicable in the Netherlands at the date of the adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objection concerning the non-exhaustion of domestic remedies;
2. *Holds* by eight votes to one that there has been a breach of Article 5 § 1 of the Convention;

3. *Holds* unanimously that it is not necessary to decide on the applicant's complaint under Article 5 § 4 of the Convention in respect of the alleged breach of his right to a speedy review of his detention;

4. *Holds* unanimously that it does not propose to examine whether there has been a violation of Article 5 § 4 and Article 13 of the Convention in respect of the alleged absence of a right of appeal;

5. *Holds* unanimously
   (a) that the finding of a violation of Article 5 § 1 constitutes in itself sufficient just satisfaction in respect of non-pecuniary damage;
   (b) that the respondent State is to pay the applicant, within three months, for costs and expenses, 6,475 (six thousand four hundred and seventy-five) Netherlands guilders, together with any value-added tax that may be chargeable;
   (c) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 2 September 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the dissenting opinion of Mr Levits is annexed to this judgment.

Initialled: R. B.
Initialled: H. P.

DISSENTING OPINION OF JUDGE LEVITS

To my regret, I cannot follow the majority in finding a violation of Article 5 § 1 of the Convention.

1. I am aware that the right of personal liberty and security, enshrined in Article 5 § 1 of the Convention, ranks very high in the Convention system of human rights. Therefore, it must be examined very carefully. The limits and exceptions to this right should be interpreted narrowly.

2. Nevertheless, in examining the limits and exceptions to the right of personal liberty and security under Article 5 § 1 in the concrete case, we should also take into account the general principle of proportionality. The interests of the applicant must be weighed against those of the general public (see paragraph 59 of the present judgment). However, in weighing the competing interests of the applicant on the one hand, and those of the general public on the other, I reached in the present case a different result to that of the majority.

3. The guiding principle in weighing these interests should be the purpose of Article 5 § 1 of the Convention, namely the protection of individuals from arbitrariness through the deprivation of their liberty (see paragraph 52 of the present judgment).

4. The serious mental illness of the applicant is without doubt the reason underpinning the important public interest to keep him in the psychiatric institution for further medical treatment. This conclusion is based on the medical recommendation of the psychiatric institution where the applicant was being treated.

5. The applicant was informed of the fact that the public prosecutor had sent a request for the prolongation of the period of his placement in the psychiatric institution. After the technical mistake of misplacing the request in the archives of the Regional Court of Groningen was discovered, that court examined the request from the standpoint of the material aspects of the case and came to the conclusion that the prolongation was necessary. However, this decision of the court was taken eighty-two days later than the domestic law requires.

6. In my view, in the special circumstances of the present case the decision of the court, based on a material examination of the facts and relevant rules, to prolong the applicant's placement in the psychiatric institution expressly for further medical treatment is of as great importance as the non-observance of a procedural rule setting a time-limit for the court's decision. In particular, it should be considered that if the request of the public prosecutor had been submitted on time, the court's material decision would have been the same. From the beginning, the applicant was fully informed about the prolongation procedure. His procedural rights to defend himself (in particular through counsel) have neither before, nor after

the court's material decision, been affected. The decision of the Regional Court of Groningen was in no way arbitrary. The material content of this decision is not disputed by the applicant.

7. On the other side there is the considerable interest of the general public in having the applicant's placement in the psychiatric institution prolonged for further medical treatment.

8. The purpose of Article 5 § 1 of the Convention is to protect the individual from an arbitrary deprivation of his liberty, not to secure the observance of national statutory rules. Therefore, the non-observance of the time-limit set by the national law cannot automatically be regarded as a violation of Article 5 § 1 of the Convention. Having examined the very specific circumstances of the present case, I consider that the non-observance of the said time-limit does not constitute a violation of Article 5 § 1 of the Convention.