



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

THIRD SECTION

CASE OF MATHEW v. THE NETHERLANDS

(Application no. 24919/03)

JUDGMENT

STRASBOURG

29 September 2005

FINAL

15/02/2006

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

In the case of Mathew v. the Netherlands,

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

Mr B. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr C. BÎRSAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mr E. MYJER,

Mr DÁVÍD THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 8 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 24919/03) 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 Eduardo Alexander Antonio Mathew (“the applicant”), on 5 August 2003.

2. The applicant was represented by Ms J. Serrarens, a lawyer practising in Maastricht. The Netherlands Government (“the Government”) were represented by their Agents, Mr R.A.A. Böcker and Ms J. Schukking, of the Netherlands Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the conditions in which he had been detained amounted to treatment violating Article 3 of the Convention.

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

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

7. On 17 March 2005 the Court decided to examine the admissibility and merits at the same time, in accordance with Article 29 § 3 of the Convention (Rule 54A § 3).

8. The applicant submitted claims for just satisfaction under Article 41 of the Convention and some factual information requested by the Court. The Government filed a reply to these.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

9. The applicant, Mr Eduardo A.A. Mathew, is a Netherlands national who was born in 1973. As far as the Court is aware, he is currently living in Providence, Rhode Island, United States.

A. The circumstances of the case

10. The applicant, a kickboxing instructor by trade who also had business interests, was arrested on Aruba on 9 October 2001 on a charge of inflicting grievous bodily harm. He was placed in detention on remand in the Aruba Correctional Institution (*Korrektie Instituut Aruba* – “the KIA”).

Aruba is a “country” (*land*) of the Kingdom of the Netherlands (see paragraph 125 below). It is one of a group of Caribbean islands known as the Dutch Leewards. Its climate is tropical.

11. The applicant and the Government disagreed on many of the events that occurred after the applicant had been placed in detention.

1. The applicant's version of events

(a) The applicant's detention and medical treatment

12. It appears that on 16 November 2001 a dispute took place between the applicant and a prison guard, after which the applicant was placed in solitary confinement in the punishment cell (*cachot*).

13. The applicant alleged that on 17 November 2001 he had been surreptitiously drugged, after which some guards had come in and ill-treated him. He stated that a bag had been placed over his head and that when he came to he was lying on the floor in his own blood, covered in urine. He also stated that he had not been let out of the punishment cell for fresh air until 29 November and that he had never received any medical attention despite asking for it.

14. On 29 November 2001 a violent incident took place in which the then acting governor of the KIA, Mr B.F.C. Vocking, was seriously injured. The applicant was subsequently charged with inflicting grievous bodily harm on him (see below). For his part, the applicant denied having harmed

Mr Vocking; according to his version of events, when entering his cell Mr Vocking had bumped into a prison guard, Mr Janga, and had fallen to the floor.

15. On 4 January 2002 the interim prison governor, Mr F.A. Maduro, who had by that time replaced Mr Vocking, ordered that the applicant be subjected to a special detention regime: he was to spend the remainder of his detention in the committal cell (*gijzelaarscel*), a solitary confinement cell located next to the punishment cell. In addition, the special regime applicable to the applicant was to comprise the following ten points:

“1. Under no circumstances may [the applicant] leave his cell without handcuffs and fetters;

2. Prisoner Mathew shall be taken out of his cell and locked back in again by no fewer than two members of staff;

3. Outdoor exercise [*luchten*] shall take place in the space located behind the multi-purpose area for one hour a day, to be decided by the head of department of the internal service or, in his absence, the CMK team leader;

4. Telephone calls shall be made from telephone no. 120, which shall be brought to Prisoner Mathew's cell;

5. Visits by, among others, counsel, probation officers [*reclassering*], social workers, the medical service and spiritual counsellors, shall take place in his cell where possible;

6. However, a suitable area shall be made available to the above persons;

7. The KIA reserves the right to revoke point 6 should problems arise [*mocht het spaak lopen*];

8. Visits by relatives [*relatiebezoek*] and church services shall take place as normal, in the multi-purpose area;

9. Items from the canteen shall be brought to Prisoner Mathew in his cell;

10. The prisoner shall also be allowed mail, books and, for example, magazine subscriptions [*leesmappen*] which are being circulated, once they have been censored.”

16. On 20 February 2002 the applicant's lawyers, Mr Loth and Mr Römer, wrote to the public prosecutor responsible, Ms Hemmes-Boender, complaining about the applicant's treatment leading up to the events of 29 November 2001. It was stated that the acting prison governor, Mr Vocking, had entered the punishment cell with two prison guards, Mr Janga and Mr Van der Biesen, to interrogate the applicant about some threats he had allegedly made to a prison guard. When the applicant refused to cooperate, they had placed a bag over his head and beaten him, apparently with truncheons. As he lay on the floor, the applicant was kicked

with booted feet. At that point the applicant had begun to request medical treatment, which, however, had been withheld. In the course of the scuffle, the acting governor, Mr Vocking, had collided with Mr Janga and fallen to the ground, sustaining severe injuries to his face. The applicant had then been locked in the committal cell, where he had later been visited by Mr Loth and Mr Römer. Conditions in the applicant's cell had been revolting: the cell offered insufficient protection from the elements and the floor was covered in filth, including rotting food scraps several days old. Even assuming that the applicant had been abnormally aggressive, the conditions were tantamount to ill-treatment. A request was made on behalf of the applicant for appropriate action to be taken to ensure his detention in humane conditions. The letter was copied to the Governor of Aruba, the Aruban Minister of Justice, the Procurator General of Aruba, the President of the Joint Court of Justice (*Gemeenschappelijk Hof van Justitie*) of the Netherlands Antilles and Aruba, the Aruban parliament (*Staten van Aruba*), Mr Fabrice Kellens (member of the Secretariat of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)) and the KIA prison authorities.

17. The public prosecutor, Ms Hemmes-Boender, replied to the letter on 27 February 2002, stating that matters were not as serious as had been alleged. The prison was being refurbished and the applicant himself had refused to keep his cell clean. She promised that the glass fibre-reinforced resin sheet covering the hole in the ceiling would be raised in order to improve ventilation.

18. On 26 June 2002 an MRI (magnetic resonance imaging) scan of the applicant was taken by Dr C.E. Loo, a radiologist at Dr Horacio E. Oduber Hospital in Aruba's capital, Oranjestad. The medical report drawn up noted degeneration of the fifth lumbar disc (*discusdegeneratie L5/S1*) and no nerve root compression (*geen wortelcompressie*).

19. On 8 August 2002 a radiological examination by Dr I.F.M. Lambertina, a radiologist at Dr Horacio E. Oduber Hospital, showed some lumbar lordosis (excessive backward curvature of the spine, causing concavity of the back) and possible limited sclerosis (hardening) of the two lumbosacral joints, but no degenerative abnormalities.

20. On 10 September 2002 Dr Carlos A. Vallejo Lopez, the neurosurgeon at Dr Horacio E. Oduber Hospital, wrote a note finding the applicant to be suffering from lumbago and prescribing "more mobilisation" and "active physical therapy" for his lower back.

21. It appears that on 13 February 2003 an altercation took place in the prison courtyard, in the course of which the applicant sustained injuries. A medical report of the same date by one Dr Perez of the Dr Rudy A.M. Engelbrecht Medical Centre – completed on a pre-printed form in Dutch – described the applicant as having suffered "ill-treatment" (*mishandeling*).

The report stated that the applicant had been found lying on the ground with a head wound and complaining of pain.

22. On 19 February 2003 the applicant's wife, Ms Arianna Iannuccilli, lodged an official complaint with the Aruba police alleging grievous bodily harm inflicted on the applicant by three prison staff.

23. On an unknown date, probably in April or May 2003, the applicant was referred by the prison doctor to the island's neurosurgeon, Dr Carlos A. Vallejo Lopez.

24. On 21 May 2003 Dr Vallejo Lopez examined the applicant. On 22 May and again on several occasions over the following few days he prescribed, in particular, outpatient physiotherapy and painkillers. On 22 May 2003 Dr Vallejo Lopez signed an application for physiotherapy for the applicant's lower back problems. A physiotherapist described the treatment as "mobilisation with walker [a walking frame]".

25. On 23 May 2003 the applicant was taken to hospital.

26. On the same day the applicant was examined by a radiologist, Dr Stojanov, using magnetic resonance imaging. The report noted increased rupturing of the annulus fibrosus L5/S1 on the left side.

27. Another document of the same date, in an unidentifiable hand, contained the query "Got beaten?!", noted pain in the applicant's lower back area and legs – with a query as to whether it had been simulated – and suggested mobilisation with a walking frame.

28. On 5 June 2003 Dr Vallejo Lopez wrote to the KIA asking permission for the applicant to complete the physiotherapy treatment programme as an outpatient.

29. On 6 June 2003 Dr Vallejo Lopez wrote to the social worker A. de Veer, asking whether it was possible to transport the applicant to hospital twice a week for physiotherapy, surgery not being an option at the prison. On 13 June one Major F. Tromp replied, writing on the same note, that it had been agreed that the KIA would make the appropriate arrangements.

30. On 13 June 2003 the applicant was released from hospital with the following diagnosis, in the form of a handwritten note by Dr Vallejo Lopez:

"I. Lumbar ... compression L5-S1

II. Lumbar discal hernia L5-S1

III. Lumbar disc. extrusion L5-S1

Plan: A. Physical therapy. B. Surgery."

31. On the same date the interim prison governor, Mr Maduro, wrote to the hospital saying that a prison nurse would ensure that the applicant was taken to hospital for treatment twice a week.

32. It appears that it had been agreed at a meeting the day before that arrangements would be made for the applicant to be taken to the rehabilitation department of Dr Horacio E. Oduber Hospital twice a week.

33. On 23 June 2003 Dr Rodriguez Robelt and Dr Perez Dopazo of the Aruba Public Health Department wrote to the interim governor of the KIA asking that the applicant be given a wheelchair in order to prevent, in particular, falls like the one that had taken place the week before.

34. Also on 23 June 2003 Prison Guard First Class Grovell, on behalf of the interim governor, imposed a punishment regime on the applicant for twenty-eight days: the applicant was not to receive any visits or use the telephone. The applicant was said to have attacked prison staff with his walking frame and incited fellow inmates in the remand unit to violence. His actions, moreover, were made more serious by the fact that they had been premeditated.

35. On the same day another inmate by the name of Ignacio complained to the Queen, the Minister of Justice of Aruba, the Public Prosecution Service and the CPT about an incident that had taken place the day before. The incident had been caused by the alleged refusal of the prison authorities to show Ignacio papers justifying the prolongation of his detention. When he had asked to see them, instead of showing him the papers, prison guards had ill-treated him. This had been witnessed by the applicant, who had told the prison guards to stop. The applicant had not attacked anybody: he had merely tried to block one of the prison guards with his walking frame to prevent further violence. The complaint was co-signed by ten inmates, including the applicant.

36. On 30 June 2003 another of the applicant's fellow prisoners, one Van der Biezen, signed a statement describing a fire that had broken out in the remand unit, after which prison guards had allegedly come in and ill-treated the applicant.

37. On 1 July 2003 Dr Rodriguez Robelt examined the applicant. He noted a slight inflammation of the skin where the handcuffs had been and pain in the lumbar region from L5 to S1, which increased when the applicant moved his lower limbs, and made a diagnosis. He prescribed treatment as indicated by the specialist (Dr Vallejo Lopez), urgent palliative care, rest and continued physiotherapy.

38. On 3 July 2003 the interim prison governor, Mr Maduro, imposed a disciplinary punishment on the applicant. The punishment involved fourteen days' solitary confinement, commuted in view of the applicant's state of health to twenty-eight days without visits or telephone. The applicant was said to have orchestrated premeditated attacks on prison staff, to have incited fellow prisoners to violence, threatened prison staff, failed to follow orders immediately and to have been an accomplice to arson and the destruction of public property. The punishment was to begin on 21 July 2003, in view of the earlier disciplinary measures imposed on 23 June.

39. On 4 July 2003 fellow prisoner Van der Biezen signed a statement to the effect that the prison management had fabricated a case against the applicant.

40. On the same date the neurosurgeon Dr Vallejo Lopez wrote the following statement (original in English):

“Mr Alexander Matthew [*sic*], with Lumbalgia and Radicular pain at the level of L5-S1 (Lumbar Discal Hernia S5-S1) is under medical treatment with Physical Therapy, but his condition is not so good, specially the aspect of the pain. Considering the situation of the patient like prisoner (K.I.A. Aruba) it is very difficult to give guarantee that the medical treatment and Physical Therapy treatment are going in the normal direction.

Mr Matthew has indication for surgical procedure, but this indication at the present is not so clear, because of the abnormal situation of the patient. I suggest to have a second opinion with another Neurosurgeon and then it will be possible to define this difficult case.

Considering that Aruba has only one Neurosurgeon, we have to explore the needs to get a second opinion with the Neurosurgeon that periodically is visiting the Island or one Neurosurgeon from abroad.

The need for a second opinion to evaluate the case of Mr Matthew is Medically necessary.

[signed] Dr Carlos A. Vallejo Lopez”

41. On 5 July 2003 a fellow prisoner named Paesch signed a statement to the effect that a fire had broken out in the remand unit, near the applicant's bed. Paesch blamed an unnamed fellow inmate. He stated that guards had come in and beaten the applicant. The applicant had been handcuffed, fettered, beaten and given electric shocks. A statement dated 6 July described ill-treatment inflicted on the applicant in the form of beating, fetters and handcuffs. According to a further statement by the same prisoner, dated 7 July, a guard called Moure had threatened to kill the applicant when he asked for his pills; Paesch did not remember the date on which that had happened.

42. On 7 July 2003 the lawyer Mr David G. Kock wrote to the interim governor of the KIA noting that the applicant was once again being detained in the committal cell. Pointing out that the Joint Court of Justice had held, in its judgment of 14 April 2003, that the conditions of the applicant's detention there bordered on the unacceptable, he demanded his transfer to another cell and improved conditions of detention.

43. On 18 October 2003 Ms Iannuccilli wrote to the interim governor of the KIA asking for the applicant to be examined by a doctor of his choice and offering to take responsibility for all costs incurred.

44. On 20 October 2003 she received a fax, on Aruba Prison Service stationery, which read as follows (original in English):

“Dear Doctor Iannucelli [*sic*],

Your husband can be referred to any specialist of his choice in Aruba, as long as the specialist in question is registered in Aruba according to the current law.

According to several medical reports Eduardo needs no surgery, he's supposed to have some medical treatments, but he won't cooperate.

Let's get that clear, if Eduardo won't cooperate in his healing, he cannot be forced to do so.

Sincerely,

A.F. Maduro

Director DGWA [Aruba Prison Service]/KIA

[signed *per procuracionem*] Janga”

45. On 23 October 2003 Ms Iannuccilli wrote to the Governor of Aruba, Mr O. Koolman, informing him of the reply she had received and asking him to order that the applicant be removed from the committal cell without further delay and be seen by a specialist medical practitioner from abroad.

46. On 25 November 2003 Dr Rodriguez Robelt and Dr Perez Dopazo wrote to the KIA prison authorities noting that the applicant had had difficulty attending physiotherapy sessions in recent months. The letter contained the following passages:

“And without wishing to violate any established rules of the KIA of which we are not aware, we propose and prescribe the following:

1. *Resumption* of physiotherapy as soon as possible.
2. *Cooperation* of prison staff in helping the patient to attend physiotherapy, as he is currently being kept in a place where he has to walk down stairs and is therefore in danger of falling, which would aggravate his condition.
3. If for any reason the above prescription cannot be followed, it will be necessary to *transfer* the patient to another place where he does not have to go down stairs and to offer him a *wheelchair*, as already suggested in our previous request, so that he can find his own way to the point from where he can be taken for physiotherapy.
4. That he *continue to be given assistance* in cleaning his cell, as has been done hitherto.

Note: The patient suffers from a discal hernia (L5-S1) which, even if it does not result in paralysis of his lower limbs, is very painful. That is why the patient declines to walk or to adopt certain positions that cause him pain.”

47. On 5 January 2004 the applicant again wrote to the interim prison governor, Mr Maduro, complaining that he was still being denied a wheelchair and physiotherapy and being made to walk down two flights of

stairs to meet his visitors despite his condition. He stated that his pain was so severe that he had difficulty sitting upright through a fifty-minute visit.

48. Apparently on 27 January 2004 the applicant was informed orally that he would not be granted early release. It was claimed that he had not been issued with a formal written decision. He submitted a copy of an unsigned document dated 16 January 2004 sent by the registry of the Aruba Court of First Instance to the Aruba Minister of Justice, phrased in the following terms:

“Please find attached the documents sent to the Central Rehabilitation Board [*Centraal College voor de Reclassering*] relating to the release of Eduardo Alexander Antonio Mathew. The Board has the honour of informing you as follows.

It appears from the appended reports that the above-mentioned Mathew has acted contrary to the conditions for granting provisional release, in particular, by causing grievous bodily harm to a member of staff, fleeing from hospital, failing to follow orders given by KIA staff, issuing threats and insults, disturbing the order, peace and safety of the institution, causing unrest, destroying property, etc.

The Central Rehabilitation Board therefore suggests that you consider *not* granting provisional release to Eduardo Alexander Antonio Mathew, born on Aruba on 9 February 1973.”

(b) Complaint proceedings

49. On 19 November 2001 the applicant wrote to the supervisory board (*Commissie van Toezicht*) of the KIA. He complained that Mr Vocking had ordered that he be placed in solitary confinement on the basis of a misunderstanding and without interviewing him first. He had been forced to see his lawyer in the punishment cell while naked. He also complained that he had been ill-treated on 17 November.

50. On 5 September 2002 the applicant, through his lawyer, complained to the KIA's supervisory board about the regime imposed on 4 January 2002 and the condition of the committal cell. Promises to improve these had not been kept. Appended was a handwritten statement addressed to the interim governor of the KIA, Mr Maduro, describing the treatment of the applicant as “illegal”, “corrupt” and “tourcher” (torture); it was signed by a large number of other KIA inmates.

51. On 7 October 2002 the applicant, through his lawyer, wrote to the KIA supervisory board noting that the roof of the committal cell had finally been repaired, but that the other complaints set out in the letter of 5 September 2002 remained valid. The applicant had not been allowed outdoor exercise for four months and was still being denied the physiotherapy prescribed for him.

52. On 30 October 2002 the applicant himself wrote to Ms E.M.D. Angela, the chairperson of the KIA supervisory board, complaining that despite the promises made by the public prosecutor, Ms Hemmes-Boender,

in her letter of 27 February 2002, his situation had not improved. Since 14 June 2002 he had not been allowed access to fresh air, as prison staff refused to carry his wheelchair downstairs. Physiotherapy was being denied him by the KIA prison authorities, who refused to take the trouble to transport him to hospital. In addition, the lack of ventilation was causing him headaches.

2. The Government's version of events

(a) The arrest and detention of the applicant

53. On 19 August 2001 the applicant was arrested by order of the public prosecutor on charges of violence against a former employee. He was placed in police custody and subsequently in detention on remand. He was placed in the remand unit of the KIA, where he remained until he was released on 4 October 2001.

54. On 9 October 2001 the applicant was rearrested, this time for inflicting grievous bodily harm using weapons, and again placed in the remand unit of the KIA.

55. On 15 October 2001 the applicant was taken to hospital by KIA personnel for the treatment of stomach complaints. The applicant absconded from hospital the following day. Later that day, accompanied by his lawyer, he returned to the KIA and gave himself up; he was given fourteen days' solitary confinement for absconding.

56. The Government submitted a report by a prison guard stating that on 25 October 2001 the applicant had refused to return to solitary confinement after outdoor exercise – “for the umpteenth time” (*voor de zoveelste keer*), in the words of the report – and had been accompanied back to his cell by several guards.

57. Another report by a prison guard, dated 12 November 2001, described the applicant refusing to return to his cell and threatening violent retribution.

58. On 16 November 2001 the applicant and some fellow inmates refused to return to their cells for locking in. The prisoners broke down a partition to use parts of it as weapons. This led the acting prison governor, Mr Vocking, to place the applicant in solitary confinement for seven days. The applicant was also denied telephone calls and outdoor exercise until further notice.

59. On 26 November 2001, upon being refused outdoor exercise, the applicant threatened the prison guards.

60. The incident in which Mr Vocking was badly injured took place on 29 November 2001. The Government stated that the applicant had deliberately broken Mr Vocking's eye socket, cheekbone and skull and caused him severe concussion by punching him and kicking him in the head. The Government pointed to the applicant's conviction by the Aruba

Court of First Instance and the Joint Court of Justice and the rejection of the applicant's appeal on points of law by the Supreme Court on 1 June 2004 (see below).

61. As a result of this violent altercation the applicant was given thirty-five days' solitary confinement. On 4 January 2002, after the end of this term, a special regime was ordered by the interim prison governor, Mr Maduro, which was intended to last for the remainder of the applicant's detention in the KIA. The ten-point order, which was submitted by both parties, is quoted *in extenso* above (see paragraph 15).

62. On 5 March 2002 the applicant's special regime was changed: the applicant would no longer be required to wear fetters as well as handcuffs when leaving his cell unless he endangered prison staff by using his feet. On 1 August 2002 an order was given granting him two hours of outdoor exercise every day.

63. The applicant's conduct did not, however, change for the better. He continued to threaten prison staff and transgress the rules. The Government submitted reports which described the applicant removing his handcuffs during outdoor exercise, hiding a mobile telephone in his cell and damaging the padlock on the door of his cell beyond repair.

64. On 2 August 2002 the applicant was asked to leave his cell so that the roof could be repaired. When he stated that he could not walk, prison guards offered to carry him out on a stretcher. The applicant, however, refused, saying that he was suffering from headaches and pain in his back and wanted to see a doctor. He had been seen three days earlier, on 30 July 2002, by the prison doctor, Dr Ernesto Rodriguez; Dr Rodriguez had given him an injection and prescribed medicine. He had also been seen on 1 August 2002 by the prison nurse, Ms Bowina H. Vos. Given the applicant's refusal to be moved, work on the roof of the cell was halted.

65. A report by a prison guard dated 12 March 2003 stated that on 6 January 2003 at 1.30 a.m. the applicant had been seen doing push-ups, apparently untroubled by his physical condition.

66. Violent behaviour was reported in the first half of 2003. One official report, by Prison Guard First Class Anthony Williams, related the following events, alleged to have taken place on 13 February 2003:

“On taking over from Prison Guard Semerel, the reporting officer was told that Prisoner Mathew, who was in a wheelchair, unhandcuffed, near the inner guard post, had been brought back and had to be locked up again. Around 3.10 p.m. the reporting officer ordered Mathew to go to his cell with the help of two outdoor workers (fellow inmates). Mathew refused and informed the reporting officer that he needed to speak with the governor or a supervisor, otherwise he would not return to his cell. The reporting officer telephoned Prison Guard First Class J.M.A. Grovell and notified him of the situation. Grovell then informed the reporting officer that he would send reinforcements to get Mathew back into his cell. The reporting officer was joined by prison officers G. Weller and W. Beyde and again ordered Mathew to go to his cell otherwise he would be carried there. Mathew replied that he would not go to his cell and did not want the two designated, bona fide outdoor workers (fellow inmates) to

touch the wheelchair. Knowing Mathew, the reporting officer took out his handcuffs in order to put them on Mathew so as to be prepared for the worst. Unfortunately the reporting officer only succeeded in handcuffing Mathew's right hand since Mathew began to put up fierce resistance and even ripped off a piece of the metal armrest on the wheelchair, which he brandished in the air, with the clear intention of using it as a weapon. At one point Mathew bit the reporting officer's right hand very hard, and the reporting officer responded by elbowing Mathew in the back of his head, but Mathew continued his fierce resistance, waving his hands and feet in the direction of the reporting officer and his colleagues G. Weller and W. Beyde. Beyde finally managed to pull the piece of metal out of Mathew's right hand. With the help of Weller and Beyde, Mathew was held firmly and carried in the direction of the committal cell. Mathew continued to offer fierce resistance by waving his hands and feet, and tried to throw the reporting officer and his two colleagues down the stairs. The reporting officer received a hard blow from the back of Mathew's head, resulting in a cut to the reporting officer's lower lip. While going down the stairs leading to the observation section, Mathew seized the opportunity to fasten the still open handcuff to the rail to prevent his being carried any further. By constantly moving his whole body, Mathew sustained injuries to the back of his head on the metal rail. W. Beyde pulled out his handcuffs in order to secure both of Mathew's hands, and the prisoner was then carried to his cell and locked up. As a result of Mathew's fierce resistance, the reporting officer sustained a broken finger among other injuries. Thus drawn up by the reporting officer under oath of office for forwarding to whomsoever it is deemed necessary."

67. Apparently on 1 July 2003 an incident took place, recorded in the following terms in an official report by Prison Guard First Class S.E. Vos:

"Prisoner Mathew was told three times by Prison Guard First Class L. Pemberton that he had to be transferred to the committal cell. Mathew got out of bed, remained standing (without a walking frame), persistently refused to go to the committal cell, became insolent and began to attack the officers by kicking and punching them. The undersigned tried to grab the prisoner's hands, but Mathew punched the undersigned in the face. The reporting officer, with the help of Prison Guard Pemberton, resorted to force in order to handcuff Mathew so that he could be moved; this was not easy since Mathew offered fierce resistance. With great difficulty, the reporting officer and Prison Guard Pemberton managed to handcuff Mathew. He was then put on a stretcher so that he could be taken to the committal cell. On the way, Mathew became aggressive and insolent again and deliberately fell off the stretcher several times, with the clear intention of hindering his transfer. Once on the ground, Mathew began to threaten the reporting officer and officers present with death or murder. Mathew was put back on the stretcher. While being carried, Mathew shouted at the reporting officer and those present in English: 'All of you get fucked when I come out, I have six more months to do, don't worry!' Upon reaching the committal cell, the handcuffs were removed and the prisoner was locked in the cell. As a result of the blows the reporting officer received from Mathew, the reporting officer had to go to the St. Nicolaas outpatient department to receive medical attention. Knowing Mathew, and in view of his past deeds, the reporting officer feels threatened and fears that Mathew will put his words into action. The reporting officer has therefore notified the criminal investigation authorities."

The Government suggested that this might in fact have been the incident referred to in the statement by one of the applicant's fellow prisoners dated 30 June 2003 (see paragraph 36 above).

68. By way of disciplinary punishment, the applicant was for each of these incidents denied private visits and use of the telephone for twenty-eight days, in lieu of the fourteen days' solitary confinement he would otherwise have received. These disciplinary measures were enforced consecutively between 23 June and 18 August 2003.

69. The Government denied all knowledge of any incident on 5 July 2003 (see paragraph 41 above).

70. In the course of 2003 a further attempt was made to detain the applicant in a normal (multi-person) cell, but the problems were such that he had to be returned to the committal cell.

71. The Government stated that since the applicant had refused to keep his cell clean, a job normally left to the occupants themselves, the prison authorities had paid another inmate to do it for him.

72. On 27 April 2004 the Government informed the Court that the Governor of Aruba had decided to grant the applicant early release on the occasion of the Queen's official birthday on 30 April 2004. The applicant was released on that date.

(b) Medical treatment

73. The Government stated that the applicant had reported stomach complaints from the beginning of his detention, but had refused to take prescribed medicines or give a blood sample.

74. In January 2002 it became apparent that the applicant was injuring his ankles deliberately by rubbing the fetters against them. A nurse treated the wounds with bethadine (a disinfectant) and sterile gauze. The applicant was seen twice by the prison doctor in connection with these complaints, on 24 January and 15 February 2002. On 5 March 2002 it was decided that the fetters would no longer be applied.

75. On 6 March 2002 the applicant saw the nurse, complaining of headaches and eye problems; on 15 March he was duly taken to the outpatient department. On 26 March he was given a check-up by the KIA medical staff.

76. On 31 March 2002 the applicant complained that he was suffering from a stomach ache and passing blood. However, he refused to give a urine sample.

77. On 4 April 2002 the prison doctor again saw the applicant.

78. On 16 April 2002 the applicant put his back out while doing strenuous physical exercise. He was seen by the doctor and given painkillers. He was seen again on 19 April.

79. On 26 April 2002 the applicant refused treatment by a psychiatrist from Curaçao.

80. On 30 July 2002 the applicant was apparently examined by a doctor from Cuba, who found nothing wrong with him.

81. On 14 August 2002 the applicant was provided with a wheelchair.

82. On 10 September 2002 the applicant was taken to hospital so that he could consult Dr Vallejo Lopez and Dr Molina. They examined him using X-ray and magnetic imaging scans. They found that the applicant was suffering from lumbago and prescribed physiotherapy.

83. A report by KIA nursing staff dated 21 January 2003 stated, among other things, that physiotherapy had to be financed by the prisoners themselves and that the applicant had refused to meet the expense involved out of his own pocket; for that reason he was not being given such treatment. It also stated that the applicant had not seen a psychiatrist because of preconditions which he had set before he would agree to do so; finally, despite his allegedly poor physical condition, the applicant did not present the complications that might be expected in the case of a bedridden patient (including constipation, bedsores, poor hygiene – the applicant was able to take showers by himself – loss of appetite and depression).

84. On 13 February 2003 the applicant had some stitches to the back of his head, which were removed on 20 February.

85. In February and March 2003 the applicant again complained of back pains, claiming that the painkillers were not effective.

On 5 April 2003 the applicant was again seen by Dr Vallejo Lopez, who again prescribed physiotherapy.

86. On 21 May 2003 the applicant was admitted to hospital for intensive physiotherapy. He remained in hospital until 13 June 2003, the intention being that treatment should continue in the KIA.

87. On 19 June 2003 the applicant refused to attend physiotherapy.

88. On 21 June 2003 the applicant stated that he had fallen on his back. He was taken to the outpatient department for treatment.

89. The applicant missed his appointments with the physiotherapist on 24 and 26 June and 1, 3 and 7 July 2003. He attended physiotherapy on 10 and 15 July.

90. Physiotherapy was resumed on 6 March 2004, after the applicant had again reported back pains, but discontinued shortly afterwards because the physiotherapist could not identify the problem clearly.

91. Following an intervention by the supervisory board (see below), physiotherapy was again resumed on 6 April 2004.

(c) Complaints proceedings

92. The Government stated that the applicant had first written to the supervisory board of the KIA on 20 January 2002. The board had considered the applicant's complaints at its meetings of 30 January and 27 February 2002. It had sent him a reply on 26 March 2002, phrased as follows:

“...

Nearly all your complaints relate to the special regime in the KIA which has applied to you since the incident with Mr Vocking on 29 November 2001. You are – presumably – aware of what the regime involves.

In view of all the circumstances of the case, the Board takes the view that the present regime is still necessary at this time for your safety and the safety of others. It has, however, been agreed with the interim governor of the KIA that it will need to be seen in future to what extent (depending on your behaviour and your attitude, in particular *vis-à-vis* KIA staff) that regime can be relaxed. Everything depends on your behaviour and your attitude.

...”

93. On 5 September 2002 the applicant again wrote to the board, through his lawyer, complaining about the regime and the state of his cell.

94. By letter of 7 October 2002, again through his lawyer, the applicant acknowledged that the roof had been repaired but complained that he had not been allowed outdoor exercise for four months and that he had still not been given the prescribed physiotherapy.

95. On 30 October 2002 the applicant himself wrote to the supervisory board restating his complaints. On the same day the board inspected the applicant's cell and interviewed him in person about his complaints. This led the board to suggest to the interim governor of the KIA that the applicant be moved back to an ordinary cell subject to certain conditions. The interim governor promised to organise this.

96. Later, however, the interim governor withdrew his promise following the theft of X-rays from the hospital instigated by the applicant and the latter's refusal to accept the letter setting out the conditions subject to which he would be returned to detention under the ordinary regime.

97. The supervisory board discussed this problem with the Aruban Minister of Justice, who instructed the interim governor to place the applicant in an ordinary cell. The instruction was obeyed.

98. However, after the applicant had been placed in a ground-floor cell with other prisoners, an incident took place which led to his being returned to solitary confinement in the committal cell.

99. After receiving medical information from the applicant's wife, the supervisory board requested the KIA governing body to ensure that the applicant received physiotherapy. They received the reply that no physiotherapist was prepared to treat the applicant: the problem was that the applicant was not willing to meet the expense, and it had not been demonstrated that either he or his family was indigent.

100. The supervisory board engaged the services of a physiotherapist, Mr Carti, who stipulated that the Aruban Ministry of Justice should guarantee payment for his services. This condition was met and treatment began on 6 March 2004. The Government submitted his handwritten report, which reads as follows (original in English):

“Mar 6, 04

9 A.M.

Alex Matthew [*sic*]

c/o – severe lumbago (L) > (R)

Diff – gait, stairs prolonged w.b.

Onset: $\pm$ 1.5 yr ago, gradually worse

Medi – Tramal [an analgesic]

Prev PT – hospital last year & no effects.

Obs: gait & walker. Partial w.b.

Able to t. steps & use of railing. $\pm$ 20 steps.

Walked $\pm$ 90 metres to nurses' station.

Climbed onto treatment table & min ass.

c/o PI during massage – trembling. (Aloe heat lotion)

After massage – turned prone to side ... RC and sat up before standing.

– used a comode [*sic*] on wheels to return to cell.

Pt complained of too much pain to carry out traditional physical testing however able to stand/turn unassisted.

S+S do not make sense, or correlate with his physical activities.

P – D/C physio. due to my inability to determine exactly what the problem is. PT carries out complex physical activities such as twisting lumbar spine and stairs & no or little complaints while trembles and complains of severe pain while massaging his back. He also states that he does not feel the heat from the Aloe heat lotion which was used to massage. My final impression is that physiotherapy at this time (by myself) is unable to help this patient.

[signed]

Rudolph P. Carti

P.T. B.Sc.

Aruba Chiropractic & Physical Therapy

Tel. 582-0122”

3. Criminal proceedings

101. On 14 June 2002 the Aruba Court of First Instance (*Gerecht in Eerste Aanleg van Aruba*) delivered its judgment in the criminal case against the applicant. It convicted the applicant on two charges of inflicting grievous bodily harm and sentenced him to six years' imprisonment. The applicant appealed.

102. On 14 April 2003 the Joint Court of Justice gave judgment on the applicant's appeal against his conviction and sentence. It quashed the first-instance judgment of 14 June 2002. In a fresh decision, it held that the applicant's conditions of detention on remand did not constitute grounds for declaring the prosecution inadmissible. It went on to find the applicant guilty of, firstly, having on 19 August 2001, together with another person, inflicted grievous bodily harm on one M. (kicking and beating resulting in fracture of the nose and the zygoma) and, secondly, having on 29 November 2001, acting alone, inflicted grievous bodily harm on Mr Vocking (punching and kicking resulting in the fracture of an eye socket, the sinus, the cheekbones and the cranium, as well as severe concussion). The Joint Court of Justice's reasoning included the following:

“In determining the sentence the Joint Court of Justice will further consider the circumstances in which the suspect has been, and is still being, detained.

The following is apparent in relation to the suspect's conditions of detention. On 16 November 2001 the suspect was placed in a punishment cell. He had already been placed in a punishment cell at an earlier stage for various reasons, including an escape. His stay in the punishment cell was twice extended for seven days, until 30 November 2001, first for failing to follow an order given by a staff member and subsequently for disturbing the order, peace and security of the institution. The second extension related to the action of a number of detainees who refused to return to their cells after outdoor exercise. On 29 November 2001, the date [of the attack on Mr Vocking], the prisoner's solitary confinement was extended for another seven days for threatening and spitting on a prison guard. Afterwards, his solitary confinement was extended until 4 January 2002 for [the attack on Mr Vocking], with the result that the suspect has spent a total of forty-nine days in the punishment cell. By letter of 4 January 2002 the KIA authorities let it be known that the suspect was to spend the remainder of his detention in the committal cell, subject to restrictive measures including not being allowed to leave the cell without handcuffs and fetters. This measure was amended on 5 March 2002 by being limited to the use of handcuffs.

As regards the committal cell, it appears that the roof is made of corrugated plastic sheeting and was defective during at least part of the detention period. During [the suspect's] stay in the committal cell he has had no television, activities, work or sport. Moreover, outdoor exercise no longer takes place on a regular basis since the suspect has indicated that he is unable to walk.

The Joint Court of Justice considers that the applicant has established that during his period of detention on remand – which has lasted until today – he has been kept under an exceptionally severe regime. The [suspect's] continuous placement in a punishment cell, which began shortly after [his] detention, suggests that the interaction between

the suspect and the staff of the KIA has resulted in a downward spiral, in the sense that an incident was followed by punishment, which in turn was followed by a reaction from the suspect, and so on. All this culminated in the attack on Mr Vocking. It is understandable in itself that after such an act the KIA should not have wished, after having imposed an extended stay in the punishment cell, to place the suspect under the normal detention regime again. However, this does not alter the fact that prolonged detention in the punishment cell and the committal cell in restrictive conditions approaches the limits of what is acceptable, assuming that these have not already been exceeded. The Joint Court of Justice also considers it plausible that the conditions of detention have negatively influenced the suspect's health.

The above leads the Joint Court of Justice to impose a considerably lighter sentence than would be justified by the crimes.

The suspect has also argued that he has been ill-treated in detention. However, an investigation of [that allegation] falls outside the scope of the present proceedings.

As a result of the conditions which the suspect has set for his cooperation in drawing up psychiatric reports and a probation report [*reclasseringsrapport*], no such reports are available. The Joint Court of Justice can therefore consider the suspect's person and personal circumstances only to the extent that these are known from the case file and the hearing.”

103. The Joint Court of Justice indicated that it would normally have been minded, in view of the crimes committed, to sentence the applicant to five years' imprisonment, but that the sentence would be reduced to three years and six months in view of the conditions of his detention.

104. The applicant appealed on points of law (*cassatie*) to the Supreme Court (*Hoge Raad*) against this judgment. The appeal was dismissed with summary reasoning on 1 June 2004.

4. Court proceedings relating to the applicant's conditions of detention

(a) The first set of proceedings

105. On 19 February 2003 the applicant brought summary civil proceedings in the Aruba Court of First Instance to secure his release from solitary confinement and restrictive conditions of detention.

106. The Aruba Court of First Instance gave judgment on 12 March 2003 finding that it had no jurisdiction to consider the applicant's action in civil proceedings: the remedy open to the applicant was the “criminal-law summary suit” (*strafrechtelijk kort geding*) (Article 43 of the Code of Criminal Procedure), which – since the applicant's appeal against his conviction and sentence was pending before the Joint Court of Justice – should be heard by that court also.

107. Accordingly, on 21 March 2003, the applicant lodged a request with the Joint Court of Justice under Article 43 of the Code of Criminal Procedure to be restored to ordinary prisoner status and to have the restrictions lifted.

108. The Joint Court of Justice held a hearing on 16 April 2003. The applicant challenged all the judges on the ground that they had participated in decisions at first instance affecting him.

109. On 25 April 2003 the Joint Court of Justice rejected the challenge. The hearing on the merits of the applicant's request was resumed on 13 May 2003.

110. On 27 May 2003 the Joint Court of Justice gave an interlocutory decision on the applicant's request for the lifting of the restrictive conditions of detention. It adjourned the case, summoned the interim governor of the KIA as a party and set him a deadline (17 June 2003) for a written statement of defence.

111. On 15 July 2003 the Joint Court of Justice gave a decision in the proceedings adjourned on 27 May. It ordered the interim governor to have regard to the following guidelines in relation to the restrictions to which the applicant was subject:

“(a) The need for detention in the committal cell should be assessed at regular intervals, at least once a month. In the absence of incidents, transfer to the normal regime should be considered, it being reasonable to expect [the applicant] to abide by the conditions set down in writing by the governor.

(b) Any use of irons outside the cell should also be assessed at regular intervals, at least once a week. In the absence of incidents, this restriction should be lifted.

(c) [The applicant] should be given the opportunity to go to the outdoor exercise and visiting areas. The Court does not consider it appropriate to oblige the KIA to carry [the applicant] to these areas or to enable him to receive visitors in his cell. [The applicant] has not denied that he can walk with a walking frame. Nor is it apparent from the medical statements that [the applicant] is not able to go to the outdoor exercise and visiting areas himself or that independent walking is itself harmful.

(d) It does not appear that [the applicant] has been subjected to special restrictions as regards censoring of his mail.

(e) Clearly [the applicant] should be given the medical care considered necessary by the physicians treating him. However, it is not apparent that this has been withheld from him.

(f) The Joint Court of Justice would add the following. The said downward spiral has resulted in the applicant's being detained in difficult conditions. Even though he is not blameless in this regard, he should nonetheless be treated as humanely as possible. If, for whatever reason, outdoor exercise, visits or other activities do not take place, then in order that the applicant's detention should remain 'within the limits of what is acceptable' the KIA must consider and decide on each occasion whether measures to compensate the loss may be offered, such as the use of a television or personal computer.

(g) In so far as this is not already being done, a written record shall be kept of any future incidents which cause the restrictions to be maintained, as well as of the

(reasoned) decisions referred to under (f), in order to determine in any future proceedings whether this decision has been complied with.”

112. On 17 July 2003 Dr Rodriguez Robelt of the Aruba Public Health Department wrote to Dr Vallejo Lopez inviting him as a specialist to give an expert opinion and advise on appropriate treatment.

(b) The second set of proceedings

113. On 8 August 2003 the applicant requested the Joint Court of Justice to release him from detention on remand.

114. On 2 September 2003 the Joint Court of Justice declared the request inadmissible, there being another procedure for that purpose. The Joint Court of Justice's reasoning included the following:

“3.2 Mathew has asked, in the alternative, that the public prosecution service and/or the prison governor be ordered to transfer him to the formal detention regime applicable to the other prisoners. The public prosecution service has no competence in this matter. The actual execution of orders for detention on remand is the responsibility of the Country of Aruba, represented by the governor of the KIA. The request directed against the public prosecution service will be dismissed for this reason.

3.3. It is clear from the decision of today's date given by the Joint Court of Justice on Mathew's other request, for the lifting of his detention on remand, that this request has not been granted. Accordingly, Mathew has a legitimate interest based on his alternative claim against the governor of the KIA (transfer to the 'normal detention regime').

3.4 The Country of Aruba has the responsibility to ensure that the execution of judicial detention orders takes place in accordance with the regulations in force. Mathew's complaints about the way [his detention order is being executed] may be summarised as follows:

- (a) he is currently being kept in the committal cell for an indeterminate period;
- (b) he is not being allowed outdoor exercise;
- (c) he cannot receive visits;
- (d) he has not been offered compensation as referred to in paragraph 2.6 (f) of the decision of this Court of 15 July 2003;
- (e) he was not interviewed prior to the imposition of disciplinary measures;
- (f) the operation he needs is being withheld from him.

As to (a):

3.5 In its decision of 15 July 2003 the Joint Court of Justice ruled that detention in the committal cell should be assessed every month. This was based on the consideration that Mathew had been returned to the committal cell in response to an

incident. It has become clear in the meantime – since the prison governor has admitted as much at the hearing – that [the applicant's] placement in the committal cell should not (any longer) be seen as a response to an incident, but as – in the prison governor's perception – the only possible regime for Mathew. It has been argued in support of this proposition that Mathew is quite unsuited to detention on remand in a communal setting. This prompts the question whether this is in fact the case, and, if so, what consequences should ensue for the complaints raised in these proceedings by Mathew.

3.6. Ever since Mathew was first detained in the Aruba Correctional Institution there have been problems, in particular Mathew's unpredictable behaviour. Reports by prison staff of recalcitrant behaviour, followed by the (sudden) use of violence by Mathew, are legion. The number of reported incidents is such that it may be concluded that it is no longer feasible to let Mathew undergo his detention on remand in a communal setting. It is now sufficiently plausible that there is no alternative within the Aruba Correctional Institution, given the aforementioned conclusion, than to keep Mathew detained in the committal cell. It cannot be ruled out that at some point Mathew's attitude and behaviour may show such a change that it may be possible to return him to a communal regime, but the Joint Court of Justice sees no indications that such is the case now or will be in the near future. It is therefore pointless to set the prison governor a time-limit for reconsidering the matter.

As to (b) and (c):

3.7. As regards outdoor exercise and receiving visits, it does not appear that the present circumstances are any different from those noted at the time of the Joint Court of Justice's decision of 15 July 2003. That means that it can once again be considered established that Mathew is given the opportunity to take outdoor exercise and to receive visits in the visitors' area. It is up to Mathew whether or not he makes use of that opportunity. In the absence of medical information to the contrary the Court assumes that Mathew is still able to reach the outdoor exercise and visitors' areas unaided [*op eigen kracht*].

...

As to (f):

3.10. As it did at the time of its decision of 15 July 2003, the Joint Court of Justice again finds nothing to indicate that Mathew is being denied the medical assistance he requires. According to the neurosurgeon Carlos A. Vallejo Lopez, in his letter of 4 July 2003, 'surgery is indicated'. The conditions of Mathew's detention, according to that letter, are one reason why the 'prospects' are 'uncertain' at present. Although it is not quite clear to the Joint Court of Justice what is meant by this, one thing is clear: the letter does not state that an operation is necessary now, without further delay. On that basis alone there is no need to order any measures. In addition, the public prosecution service and the prison governor have promised that Mathew will receive the necessary medical care. There is no indication that the public prosecution service and the prison governor will fail to honour that promise. For that reason also there is no need to order any measure."

115. The KIA governor was ordered to make provision for the applicant to have his own television in his cell; the applicant's other requests –

including a request to be transferred to the Netherlands (the Realm in Europe) – were refused.

5. The KIA

116. The KIA is reported by the Government to be capable of holding 250 prisoners. It comprises a dormitory for prisoners serving short terms of detention in lieu of unpaid fines and separate sections for female prisoners and juveniles. Adult male remand prisoners and convicted prisoners are typically kept in three-person cells. There are four single-prisoner cells intended for convicted prisoners serving very long sentences. There are four observation cells intended for mentally unstable prisoners; these tend to be occupied most of the time.

117. The committal cell in which the applicant was detained is described as being 7.4 metres long and 3 metres wide and equipped with a bed, a table, a chair, a lavatory and a shower. It is located on the second floor, directly under the roof.

118. A new high-security wing is being added to the KIA; it is expected to be suitable for detaining aggressive prisoners.

6. Medical information obtained after the applicant's release from detention

119. The applicant was seen by Mr Michele Lancellotti, a chiropractor in Providence, Rhode Island, on 19 May 2004. He complained to Mr Lancellotti of severe lower back pain with numbness in his left leg and occasionally in his right leg. The pain prevented him from walking up and down stairs. He had difficulty getting up from a seated position and walking for any length of time. He further complained of neck pain, headaches, blurred vision and pain and cracking in both knees. He used a walking frame. Mr Lancellotti's report described the applicant as, at that time, "totally disabled" and contained a plan for treatment.

120. Mr Lancellotti saw the applicant on subsequent occasions. The applicant submitted records of visits dated 21, 24, 26 and 28 May; 2, 4, 7, 9, 11, 14, 17, 22, 24 and 29 June; 1, 6, 13, 19, 21, 23, 26 and 30 July; and 2, 4, 11, 13, 16, 19, 23, 27 and 30 August 2004. A record of a re-evaluation undertaken by Mr Lancellotti on 3 September 2004, based on magnetic resonance images and the applicant's subjective complaints of pain, expressed the opinion that the applicant "has a permanent physical impairment of the body as a whole caused by ill-treatment and neglect; progress is slow".

7. Photographs

121. The applicant submitted copies of colour photographs, the first showing a man of very muscular build, stated to be the applicant, lying

prostrate on a floor, clad only in underpants, with another person's foot on his head, and the second the same man lying prostrate on a floor, with large spatters of a red substance around his head.

The red spatters are not visible in the first photograph. No laceration or other injury is discernible in either photograph, although the first shows dark patches on the man's left shoulder and left thigh that might be bruising.

122. The Government did not deny that the man shown in the photographs was the applicant but they stated that the photographs were bogus. They submitted that the boot and the trousers worn by the person holding his foot on the applicant's head (who was clearly also the person taking the photograph) in the first photograph were identifiable as part of the uniform worn by prison staff: it was obvious, therefore, that the applicant had bribed a member of the KIA staff to take the pictures and smuggle them out of the prison.

123. The photographs were published, together with others also stated to be an accurate reflection of the treatment meted out to the applicant and of conditions in the KIA generally, in the Aruban press and on an Internet site. The other published photographs included one of a man's ankle that appeared to be bleeding from a small laceration and one of a hole in a roof which was only partially covered by grating and by a sheet of corrugated translucent material.

124. The publication of the photographs prompted the interim governor of the KIA, Mr Maduro, to lodge a criminal complaint of libel with the Aruban police on 23 July 2002. The police investigation was eventually discontinued, with the permission of the public prosecutor, on 6 December 2002. Ms Iannuccilli was suspected of involvement in the matter but no prosecution was brought.

B. Relevant domestic law and practice

1. The Charter for the Kingdom of the Netherlands

125. The provisions of the Charter for the Kingdom of the Netherlands (*Statuut voor het Koninkrijk der Nederlanden*) relevant to the present case provide:

Preamble

“The Netherlands, the Netherlands Antilles and Aruba,

noting that in 1954 the Netherlands, Suriname and the Netherlands Antilles expressed freely their will to establish a new constitutional order in the Kingdom of the Netherlands, in which they will conduct their internal interests autonomously and their common interests on a basis of equality and will accord each other assistance, and resolved in consultation to adopt the Charter for the Kingdom;

noting that the ties with Suriname under the Charter were terminated as of 25 November 1975

...;

considering that Aruba has expressed freely its will to accept the aforesaid constitutional order as a Country;

have resolved in consultation to adopt the Charter for the Kingdom as follows.”

Article 36

“The Netherlands, the Netherlands Antilles and Aruba shall accord one another aid and assistance.”

Article 40

“Judgments given and warrants issued by courts in the Netherlands, the Netherlands Antilles and Aruba, and engrossments of authentic acts issued by them, may be enforced throughout the Kingdom, with due observance of statutory provisions in the Country of enforcement.”

Article 41

“1. The Netherlands, the Netherlands Antilles and Aruba shall conduct their internal affairs autonomously.

2. The interests of the Kingdom shall be a matter of common concern to the Countries.”

2. The common Code of Criminal Procedure of the Netherlands Antilles and Aruba

126. Article 43 of the common Code of Criminal Procedure of the Netherlands Antilles and Aruba provides in its relevant parts:

“1. In all cases in which a measure [*voorziening*] not provided for by the Code is necessary in the interests of the proper administration of criminal justice [*een goede strafrechtsbedeling*], a request for such a measure can be made by the suspect or by the person directly concerned.

...

5. The measure may include an order or a prohibition as regards future behaviour.

6. The decision shall be given as speedily as the interest of the case requires.

...

8. The court shall be competent to order the provisional execution of its decision, notwithstanding any appeal.

...”

C. Council of Europe documents

1. The European Prison Rules (appendix to Committee of Ministers Recommendation No. R (87) 3)

127. The following extracts are taken from the European Prison Rules:

“Medical services

26. 1. At every institution there shall be available the services of at least one qualified general practitioner. The medical services should be organised in close relation with the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

2. Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be suitable for the medical care and treatment of sick prisoners, and there shall be a staff of suitably trained officers.

...

Instruments of restraint

39. The use of chains and irons shall be prohibited. Handcuffs, restraint-jackets and other body restraints shall never be applied as a punishment. They shall not be used except in the following circumstances:

(a) if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise;

(b) on medical grounds, by direction and under the supervision of the medical officer;

(c) by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.”

2. *The 2nd General Report of the CPT*

128. The following extracts are taken from the 2nd General Report of the CPT (CPT/Inf (92) 3):

“53. Prison staff will on occasion have to use force to control violent prisoners and, exceptionally, may even need to resort to instruments of physical restraint. These are clearly high risk situations insofar as the possible ill-treatment of prisoners is concerned, and as such call for specific safeguards.

A prisoner against whom any means of force have been used should have the right to be immediately examined and, if necessary, treated by a medical doctor. This examination should be conducted out of the hearing and preferably out of the sight of non-medical staff, and the results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner. In those rare cases when resort to instruments of physical restraint is required, the prisoner concerned should be kept under constant and adequate supervision. Further, instruments of restraint should be removed at the earliest possible opportunity; they should never be applied, or their application prolonged, as a punishment. Finally, a record should be kept of every instance of the use of force against prisoners.

...

56. The CPT pays particular attention to prisoners held, for whatever reason (for disciplinary purposes; as a result of their 'dangerousness' or their 'troublesome' behaviour; in the interests of a criminal investigation; at their own request), under conditions akin to solitary confinement.

The principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary confinement-type regime, which is a step that can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.

...”

THE LAW

I. SCOPE OF THE CASE BEFORE THE COURT

129. The applicant – who did not initially have the assistance of a lawyer – originally alleged violations of Articles 3, 5, 8, 9, 10, 11, 12, 19 and 25 of the Universal Declaration of Human Rights. In his observations in reply to those of the Government, he withdrew all complaints other than those relating to Article 3 of the Convention.

130. The Court will consider the case within the limits defined by the applicant. It sees no reason to rule on any further complaints of its own motion.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

Article 3 of the Convention provides as follows:

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

131. The applicant alleged a violation of Article 3, arguing that he had been physically abused, placed in solitary confinement in abject conditions and denied urgently needed medical treatment. The Government denied the allegations.

A. Arguments before the Court

1. *The Government*

(a) Preliminary objection

132. The Government submitted that the application was inadmissible. They drew the Court's attention to the fact that in determining the applicant's sentence the Joint Court of Justice had taken the conditions of the applicant's detention into account and reduced the time which he would have to spend in prison by a very substantial proportion. That, in their view, constituted sufficient redress for any damage resulting from his conditions of detention. Consequently the applicant could no longer claim to be the “victim” of any violation of the Convention.

(b) Merits

133. The Government, in their observations, presented a very different version of the facts from that presented by the applicant. The differences have been referred to above where relevant.

134. The Government argued that the application was unfounded on the merits. They submitted that the “minimum threshold of severity” beyond which there was a violation of Article 3 of the Convention had not been reached. They compared the present case to that of *Messina v. Italy (no. 2)* ((dec.), no. 25498/94, ECHR 1999-V), in which a regime keeping a particular prisoner separate from his fellow inmates, which had been instituted for security reasons and had lasted longer than the detention complained of by the applicant in the instant case, had been held by the Court to be within acceptable limits. The present applicant was of a very dangerous and violent disposition, which made the special regime applied to

him necessary. As the island of Aruba possessed no facilities suitable for long-term detention other than the KIA, his detention in the conditions he now complained about had been unavoidable.

135. The applicant had not been denied necessary medical treatment. His health had been monitored at all times by the KIA medical service and he had been seen regularly by the prison doctor and nursing staff. The applicant's medical problems, in so far as he had not been simulating, had either already existed when he was first detained, been self-inflicted, or been caused by his refusal to accept appropriate treatment.

136. The applicant's claims of ill-treatment were exaggerated. Where violence had been used against the applicant, it had been made necessary by the applicant's own unruly behaviour and had not been disproportionate in the circumstances.

2. The applicant

(a) Preliminary objection

137. The applicant took the view that he could still claim to be the "victim" of a violation of Article 3 of the Convention. While it was true that the Joint Court of Justice had reduced his sentence in view of the extreme conditions of his detention, the reduction had been intended to compensate only for the isolation in which he was then being kept. It could not and did not compensate for the physical and mental harm resulting from ill-treatment and neglect of his physical complaints.

(b) Merits

138. The applicant denied the accuracy of many of the Government's statements.

139. For instance, the applicant denied that his physical condition had allowed him to take showers unaided and do push-ups. He had been unable to do either. The official report in which the applicant was recorded as having done push-ups was dated two months after the facts it alleged; the prison staff member whose name appeared on it as signatory was stated to have later told the applicant that he had never drawn up any such report.

140. Nor had the applicant been able to keep his cell clean; he admitted that another prisoner had done it for him, once a week. However, the inmate in question had learning difficulties and had been incapable of cleaning properly.

141. The applicant denied having been interviewed by the KIA governor (or interim governor) at any time after 16 November 2001; in his submission, the reports alleging misbehaviour after that date were largely untrue. Thus, the applicant denied having removed his handcuffs, hidden a mobile telephone and damaged the padlock on the door of his cell, or having

attacked prison staff. He also denied having refused to allow the roof of his cell to be repaired; he had merely asked to be transferred to another cell while it was being done.

142. The applicant had been briefly transferred to a dormitory with other prisoners in 2003. A fire – caused by some other inmates – had broken out there, for which the applicant had been blamed, wrongly and without a proper investigation, after which he had been clapped in irons, beaten and taken back to the committal cell.

143. The applicant alleged that he had at no time refused medical examination or treatment, but had protested against the conditions in which they were to take place. He maintained that he had been left without medical treatment. He admitted having been examined by a Cuban doctor but denied that any doctor had ever said there was nothing wrong with him.

144. The applicant denied having refused to pay for physiotherapy. Prisoners requiring such treatment were usually taken to a physiotherapy practice outside the prison where they received treatment free of charge; the applicant, however, had not been fit to walk to the vehicle that would take him there, or to sit in it. Physiotherapy in prison would have cost him 750 Aruban florins per session, and he would have required two sessions a week, therefore it was unaffordable. By the time the physiotherapist, Mr Carti, had been brought in from outside, the applicant's condition had deteriorated too far. In any case, the causes had been unclear to Mr Carti.

145. The applicant denied having deliberately injured himself with his fetters. The injuries had been caused by the sharp edges of the irons and had left scars on his ankles which were still visible.

146. The applicant denied having refused to see a psychiatrist in April 2002. In 2003 he had agreed to see a psychiatrist on condition that the conversations were recorded on tape or witnessed by his lawyer, in order to ensure that his statements were not distorted as had happened before.

147. While it was true that the detention under an especially restrictive regime of the applicant in *Messina* had lasted longer than that of the present applicant, the impact on the health of the present applicant had been more serious. Moreover, the applicant in *Messina* had had more opportunity to enjoy the company of other prisoners and family and to take outdoor exercise, and he had not been ill-treated or denied necessary medical treatment.

B. Admissibility

148. The Court must first consider the Government's preliminary objection that the applicant can no longer be considered the “victim” of a violation of Article 3 of the Convention, if such there has been, given that the Joint Court of Justice sentenced him to three years and six months' imprisonment instead of the five years his crime would normally have

warranted, the reason for the reduction having been specifically his conditions of detention.

149. According to the Court's well-established case-law, an applicant's status as a victim may depend on compensation being awarded at domestic level on the basis of the facts about which he or she complains before the Court, and on whether the domestic authorities have acknowledged, either expressly or in substance, the breach of the Convention. Only when those two conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, as a recent authority, *Riepl v. Austria*, no. 37040/02, § 32, 3 February 2005). The Court accepts that a reduction of a prison sentence commensurate with the harm complained of may constitute "compensation" in this sense (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 31, § 67).

150. As the Government correctly pointed out, the judgment delivered by the Joint Court of Justice on 14 April 2003 contained the following passage:

"The Joint Court of Justice considers that the applicant has established that during his period of detention on remand – which has lasted until today – he has been kept under an exceptionally severe regime. The [suspect's] continuous placement in a punishment cell, which began shortly after [his] detention, suggests that the interaction between the suspect and the staff of the KIA has resulted in a downward spiral, in the sense that an incident was followed by punishment, which in turn was followed by a reaction from the suspect, and so on. All this culminated in the attack on Mr Vocking. It is understandable in itself that after such an act the KIA should not have wished, after having imposed an extended stay in the punishment cell, to place the suspect under the normal detention regime again. However, this does not alter the fact that prolonged detention in the punishment cell and the committal cell in restrictive conditions approaches the limits of what is acceptable, assuming that these have not already been exceeded. The Joint Court of Justice also considers it plausible that the conditions of detention have negatively influenced the suspect's health.

The above leads the Joint Court of Justice to impose a considerably lighter sentence than would be justified by the crimes."

The Court accepts that the reduction, from five years to three years and six months, is indeed considerable.

151. Nevertheless, the judgment stops short of finding the applicant's conditions of detention unacceptable in terms equivalent to those employed by Article 3 of the Convention. It cannot therefore be said that the Joint Court of Justice acknowledged either expressly or in substance that the applicant was the victim of a violation of Article 3 of the Convention.

152. It follows that the preliminary objection must be dismissed.

153. The Court further considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which should depend on an examination of its merits. The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the

Convention. No other grounds for declaring it inadmissible have been established.

C. Establishment of the facts

1. *The Court's general approach*

154. Allegations of ill-treatment must be supported by appropriate evidence (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 70, ECHR 2005-I).

155. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see *Aktaş v. Turkey*, no. 24351/94, § 271, 24 April 2003).

156. In assessing evidence, the Court has adopted the standard of proof “beyond reasonable doubt”. However, it has never been its purpose to borrow the approach of the national legal systems that use that standard: as applied by the Court, it has an autonomous meaning. The Court's role, it should be remembered, is to rule not on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see, as a recent authority, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII).

157. The Court would add at this point that it sees no need to establish the accuracy or otherwise of the applicant's explanation of the incident of 29

November 2001 in which the KIA's then acting governor, Mr Vocking, was seriously injured (see paragraph 14 above). The applicant was convicted and sentenced in connection with that incident, and has lodged a separate application (no. 43805/04) to complain about the criminal proceedings. The Court's decision in the present case does not depend on this parallel question and does not prejudice the other application.

2. Disputed documents

(a) The photographs

158. The Government denounced the photographs submitted by the applicant (see paragraph 121 above) as fabrications created with the unlawful cooperation of an unidentified member of the KIA prison staff and smuggled out of prison.

159. The Court will not concern itself with the way in which the applicant (or his wife as the case may be) obtained the photographs. Its only concern is to determine whether they reflect the truth, and if so, to draw the appropriate conclusions from them.

160. The Court notes the appearance of red spatters covering and surrounding the applicant's head, superficially suggestive of severe bleeding, on only one photograph and not on the other.

161. In neither photograph has the Court found any traces of wounds capable of explaining bleeding as profuse as that which the second photograph suggests. The only apparent marks on the applicant's body are a number of dark patches on his skin which may be bruising.

162. The Court notes in addition that the presence of any great quantity of spilt blood surrounding the applicant's head is not consistent with the harm which the applicant is reported to have suffered before 13 February 2003. On that day the applicant, resisting attempts to take him back to his cell, reportedly struck a prison guard in the face with the back of his head and sustained an injury requiring no fewer than eleven stitches (see paragraphs 66 and 84 above). The back of the applicant's head is clearly visible on the second photograph, but no injury can be seen.

163. It is therefore open to serious doubt whether the spatters shown are in fact the applicant's blood, or indeed whether they are blood at all.

164. Another photograph, published on the Internet as one of the set of pictures mentioned by the Government in their observations, shows the applicant's ankle bleeding from a flesh wound.

165. Even if it is accepted that the photograph in question shows a genuine injury, which the Government did not deny, no information capable of explaining the cause is provided.

(b) Official reports

166. The applicant denied the veracity of a considerable number of official reports drawn up by KIA officials. The reports described misconduct on the applicant's part, sometimes including violence. He also denied having been able to perform push-ups and take showers unaided.

167. The Court has difficulty accepting without proof the existence of what would, if the applicant's denials were to be accepted at face value, constitute a conspiracy encompassing all KIA prison staff with whom the applicant came into contact, including nursing staff, all acting under the responsibility of the interim governor and keeping up an elaborate pretence for more than two years.

168. As to the reports which described the applicant displaying unruly behaviour, only written statements by some of the applicant's fellow inmates would tend to support the applicant's version of events (see paragraphs 35-36, 39 and 41 above). In view of its misgivings with regard to other evidence submitted by the applicant, the Court cannot consider these sufficient to disprove the official reports in question beyond reasonable doubt.

169. The official reports describing the applicant as apparently capable of taking showers unaided and performing demanding physical exercises require an examination of the medical information. This information is considered in greater detail below.

3. Medical information

170. There is abundant medical information available to show that the applicant suffers from a distortion of his spine that requires, at the very least, physiotherapy. The oldest such information contained in the Court's file dates from June 2002 (see paragraph 18 above). Aruba's neurosurgeon actually suggested treatment involving surgery in July 2003 (see paragraph 40 above).

171. The applicant was released from the KIA on 30 April 2004; he has since been treated in the United States, where he now lives. It has not, however, been brought to the Court's attention that he has undergone surgery. Nor does surgery appear to have been prescribed for him at any time after his release.

172. The Court accepts that since June 2002, if not earlier, the applicant has suffered from a serious spinal condition which very likely made walking and other physical activity painful and difficult for him. Nonetheless, the Court cannot find it established that the applicant was incapacitated to the point of immobility. Nor is the information available sufficient for the Court to conclude that the applicant's condition was caused or worsened by external violence.

4. Information on the applicant's mental condition

173. As far as the Court is aware, no psychiatric or psychological examination of the applicant was undertaken. The Court nonetheless considers the applicant's mental state to be relevant to the merits of the case; it will draw its own inferences from the information at its disposal.

174. The applicant's behaviour in detention was characterised by his continued inability to adapt to the exigencies of prison life and his lack of response to normal prison discipline. It is apparent that he was, while detained, in a disturbed state, the precise nature of which the Court cannot determine but which resulted in an increased propensity to recalcitrant and even violent behaviour.

D. Merits

1. Applicable principles

175. The Court has stated the applicable principles as follows (see, for example, *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI, case-law references omitted):

“The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour ...

The Court further reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim ...

The Court has considered treatment to be 'inhuman' because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be 'degrading' because it was such as to arouse in the victims feeling of fear, anguish and inferiority capable of humiliating and debasing them ... In considering whether a particular form of treatment is 'degrading' within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 ... However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 ... The suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to

release a detainee on health grounds or to place him in a civil hospital to enable him to obtain specific medical treatment.

Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured ...”

2. Use of physical force and instruments of restraint against the applicant

(a) Physical force

176. The Court considers it established that external violence was used against the applicant on more than one occasion.

177. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 38, and *Keenan v. the United Kingdom*, no. 27229/95, § 113, ECHR 2001-III).

178. As noted above, the applicant has not been able to satisfy the Court that the large number of official documents recording his obstreperous and even violent behaviour during his detention misstate essential facts.

179. The Court cannot therefore find that the force used against the applicant in preventing or terminating violent episodes went beyond what was strictly necessary in the circumstances.

(b) Injuries allegedly caused by fetters

180. The use of handcuffs or other instruments of restraint does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with a lawful detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the danger of the person's absconding or causing injury or damage (see, among other authorities and *mutatis mutandis*, *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2822, § 56, and *Hénaf v. France*, no. 65436/01, § 48, ECHR 2003-XI).

181. The applicant did not direct a complaint against the use of instruments of restraint as such. Instead, his grievances related to the injuries caused, as he alleged, by his fetters.

182. For their part, the Government stated that the injuries to the applicant's ankles had been self-inflicted.

183. The applicant has not satisfied the Court that the wounding of his ankles was the inevitable consequence of the use of fetters. The Court further accepts that the use of fetters was eventually discontinued in view of those injuries. In the circumstances, the Court is not prepared to draw any inferences capable of leading to a finding of a violation of Article 3.

(c) Conclusion

184. No violation of Article 3 of the Convention has been established as regards the use of physical force against the applicant and the injuries allegedly resulting from the use of fetters.

3. Alleged withholding of necessary medical assistance

(a) Second opinion regarding the need for surgery

185. On 4 July 2003 Aruba's neurosurgeon, Dr Vallejo Lopez, suggested surgery but called for a second opinion by another surgeon before such an intervention was resorted to (see paragraph 40 above). The prison authorities made it clear that the applicant could consult "any specialist of his choice in Aruba, as long as the specialist in question [was] registered in Aruba according [to] the current law" (see paragraph 44 above). There was no other neurosurgeon resident on Aruba. The applicant was not seen by a second neurosurgeon while he remained in detention.

186. As noted above (see paragraph 175), the health and well-being of a prisoner must be adequately secured. However, Article 3 cannot be interpreted as requiring a prisoner's every wish and preference regarding medical treatment to be accommodated. In this as in other matters, the practical demands of legitimate detention may impose restrictions a prisoner will have to accept.

187. Examination by a medical expert who has no links to the detaining authority is an important safeguard against the physical or mental abuse of prisoners. The Court therefore considers that a prisoner's choice of physician should as a rule be respected, subject if need be to the condition that responsibility for any additional expense not justified by genuine medical reasons be assumed by the prisoner. Even so, there is no objection to requiring a medical practitioner to hold a valid licence to practise issued or recognised by the competent domestic authority as a condition for being granted access to a prisoner, provided that such a requirement does not result in the withholding from the prisoner of timely and adequate medical examination, treatment and advice.

188. The prescription issued by Dr Vallejo Lopez suggested that a second opinion be given by "the Neurosurgeon that periodically [visited] the

Island”. It would seem that this other neurosurgeon never examined the applicant. The reasons for this have not been made clear to the Court.

189. The Court observes, however, that the applicant's wife, acting to all appearances on the applicant's behalf, asked for the applicant to be examined by a medical practitioner of his choice from abroad (see paragraph 45 above). In the light of the information available, much of which suggests that the applicant was apt to set preconditions for accepting medical treatment, the Court is unable to impute the absence of a second opinion to the respondent party.

(b) Wheelchair

190. The applicant was provided with a wheelchair on 14 August 2002. According to an official report which must be accepted as genuine (see paragraph 168 above), he damaged it on 13 February 2003 in an incident in which he used part of it as a weapon against prison staff (see paragraph 66 above). It was taken from him, apparently, at some point after that incident. It appears that the applicant's wife offered a replacement but that the interim governor of the KIA refused to allow it to be supplied to the applicant.

191. The Court finds, on the evidence available, that in the hands of the applicant a wheelchair was perceived on reasonable grounds as a threat to the safety of others. In these circumstances the Court holds, without prejudice to the position taken in paragraphs 204 and 215 below, that the domestic authorities were entitled to consider it necessary, in the conditions existing at that time, to deny him the continued use of a wheelchair.

(c) Physiotherapy

192. The applicant received physiotherapy in hospital from 23 May until 13 June 2003, after which he was returned to the KIA. It was intended that he should continue to receive physiotherapy as an outpatient. The applicant stated that his physical condition had prevented him from walking from his cell to the vehicle which was to take him to hospital and from sitting up straight in the vehicle.

193. The treatment of prisoners in ordinary hospitals rather than in prison ensures that medical facilities and staff remain available to provide health care outside prison; it also offers prisoners access to medical assistance of the same standard as that provided to the general public. While, as noted (see paragraph 175 above), it is not a requirement under the Convention, the Court cannot find it objectionable. The question before the Court in the present case, therefore, is whether treatment in prison was made necessary by the applicant's state of health.

194. The Court accepts that transport to hospital caused the applicant discomfort of such a level that he might well have preferred to be visited by a physiotherapist in prison. It cannot, however, find it established that the applicant's condition dictated the latter course.

195. In so finding the Court has had regard to various official reports which indicate that the applicant could apparently display enormous physical strength, including the report of the incident of 13 February 2003 (see paragraph 66 above), which describes the applicant ripping a piece of metal off his wheelchair. It has also considered the written statement dated 6 March 2004 by Mr Carti, the physiotherapist engaged by the Aruban authorities to visit the applicant in prison (see paragraph 100 above). This describes the applicant as being able, despite going nine months without treatment, to walk a distance of at least 90 metres and carry out complex physical actions such as twisting his body and walking up and down stairs.

(d) Conclusion

196. No violation of Article 3 of the Convention can be established on the ground that the applicant was denied the medical care he needed.

4. Conditions of detention

(a) The detention regime

197. The detention regime ordered by the interim prison governor on 4 January 2002 (see paragraph 15 above) required the applicant to spend the remainder of his detention in a situation amounting to solitary confinement. This involved far greater hardship than ordinary detention on remand.

198. It is apparent that the applicant was stubbornly uncooperative and much inclined to acts of violence against property and individuals. On the information available, the Court accepts that the KIA authorities found him impossible to control except in conditions of strict confinement.

199. The Court reiterates that conditions of detention may sometimes amount to inhuman or degrading treatment (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). It agrees with the CPT that even for difficult and dangerous prisoners, periods of solitary confinement should be as short as possible (see paragraph 128 above). It has found in the past that complete sensory isolation coupled with total social isolation can destroy the personality and constitute a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. However, the prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see, among other authorities, *Öcalan v. Turkey* [GC], no. 46221/99, § 191, ECHR 2005-IV).

200. The Government compared the case with *Messina*, cited above. It is true that, like the applicant in *Messina*, the present applicant was not subjected to sensory or total social isolation but rather to relative social isolation, and that the period to be considered here was rather shorter.

201. The present case is, however, distinguishable from *Messina*. In that case the applicant was charged with, or had already been convicted of, very serious offences linked to organised crime, and the impugned measure was ordered to prevent the applicant from re-establishing contact with criminal organisations. The Court accepted that such a reason could justify the decision complained about; indeed, it is difficult to see what alternative course of action would have been practicable. The Court also took into consideration the state of health of the applicant in *Messina*, who did not claim to have suffered any physically or psychologically damaging effects, and the effective action taken by the authorities to lessen the impact of the regime.

202. The present applicant, by contrast, was subjected to the impugned regime not because he might involve himself with organised crime outside the prison but because he could not adapt to an ordinary prison setting. Attempts by the authorities to remove its harmful effects were not effective.

203. Plainly the Aruban authorities were aware that the applicant was not a person fit to be detained in the KIA in normal conditions and that the special regime designed for him was causing him unusual distress. The letter of the supervisory board of 26 March 2002, the decisions of the Joint Court of Justice of 15 July and 2 September 2003 and the Joint Court's judgment of 14 April 2003 demonstrate that. While some attempts were made, most conspicuously by the Joint Court of Justice, to alleviate the applicant's situation to some extent, the Court considers that the respondent party could and should have done more.

204. The Court accepts that accommodation suitable for prisoners of the applicant's unfortunate disposition did not exist on Aruba at the relevant time; it is only now being built. However, it is not Aruba but the Kingdom of the Netherlands which is the Party responsible under the Convention for ensuring compliance with its standards. Judicial orders given in one of the three countries of the Kingdom – the Realm in Europe, the Netherlands Antilles and Aruba – can be executed throughout the Kingdom (Article 40 of the Charter for the Kingdom of the Netherlands – see paragraph 125 above). The Court is concerned to find that, despite a request to that effect from the applicant, no attempt appears to have been made to find a place of detention appropriate to the applicant in one of the other two countries of the Kingdom (see paragraph 115 above).

205. The Court accordingly finds that the applicant was subjected to distress and hardship of an intensity considerably exceeding the unavoidable level of suffering inherent in detention and amounting to “inhuman treatment”.

(b) The committal cell

(i) Cleanliness

206. The applicant submitted that, during the time he had been detained there, the committal cell had been allowed to become filthy and unsanitary; he had been unable to clean it himself and the measures taken by the Government in that regard had been insufficient.

207. The Government expressed doubts as to the applicant's inability to keep the cell clean himself and argued that in any case the prison authorities had provided him with assistance.

208. The Court has already considered the information available on the applicant's physical condition and cannot find it established that the applicant was unable throughout the nearly two and a half years of his detention to do any cleaning himself. It notes in addition that the applicant did not deny that another prisoner had in fact been appointed, at the prison's expense, to clean the committal cell periodically. In these circumstances the Court declines to impute responsibility for the uncleanliness of the committal cell to the respondent party.

(ii) Situation and state of repair of the committal cell

209. As the Government stated and the applicant did not deny, the committal cell was relatively spacious. Its furnishings were basic but adequate.

210. From the time when the applicant was first detained there until some time between August and October 2002, there was a large opening in the roof of the cell through which the rain penetrated.

211. The committal cell was located on the second and top floor of the KIA prison building. Its situation exposed its occupant to the heat of the sun. Iced water was provided; there was, however, no air conditioning or other cooling system.

212. There were no lifts; access and egress were via two flights of stairs.

213. The Court has had occasion to find Article 3 violated by the poor state of repair of a cell in which a prisoner was held for long periods and by the lack of opportunity for outdoor exercise (see *Poltoratskiy v. Ukraine*, no. 38812/97, § 146, ECHR 2003-V).

214. The Court finds it unacceptable that anyone should be detained in conditions involving a lack of adequate protection against precipitation and extreme temperatures.

215. On the evidence available, the Court finds it established that it was painful for the applicant to negotiate the two flights of stairs in order to go to the exercise area for outdoor exercise and fresh air. It is understandable in these circumstances that the applicant often preferred to forgo outdoor exercise rather than suffer the pain. Some arrangement should have been

made whereby this could have been avoided. It must be accepted that accommodation suitable for the applicant situated on the same level as the exercise area or accessible by a lift did not exist in the KIA at the relevant time. However, in the Court's opinion the competent authorities ought to have considered the possibility of detaining the applicant in a place more appropriate to his physical condition, in one of the other two countries of the Kingdom if necessary.

216. The Court cannot find it established that there was a positive intention of humiliating or debasing the applicant. However, as already noted (see paragraph 175 above), the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3. In the present case the Court considers that the conditions of detention the applicant had to endure must have caused him both mental and physical suffering, diminishing his human dignity and amounting to “inhuman treatment”.

(c) Conclusion

217. There has been a violation of Article 3 of the Convention in that the applicant was kept in solitary confinement for an excessive and unnecessarily protracted period, that he was kept for at least seven months in a cell that failed to offer adequate protection against the elements, and that he was kept in a location from which he could not gain access to outdoor exercise and fresh air without unnecessary and avoidable physical suffering. No violation of Article 3 has been established as regards the state of cleanliness of the cell in which the applicant was detained.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

218. 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.”

219. The applicant submitted claims in respect of pecuniary and non-pecuniary damage and costs and expenses.

A. Pecuniary damage

220. Under this head, the applicant claimed a total of 9,825 United States dollars (USD) for the medical treatment for his back problems he underwent after his release from detention.

221. The applicant also claimed reimbursement of business losses caused, as he submitted, by his inability to maintain contact with the outside world owing to his isolation. He had set up a company to provide mobile

telephone services, which had missed the opportunity to bid for a licence in June 2003; a restaurant and a security company he owned had been forced out of business. The damage thus caused him ran to millions of Aruban florins (AWG).

222. The Government argued that only medical expenses might justify an award under this head.

223. The Court's finding of a violation of Article 3 of the Convention relates only to certain aspects of the conditions in which the applicant was detained. It does not impute responsibility for the applicant's medical condition to the respondent party. It therefore follows that the costs incurred as a result cannot be recovered from the respondent party under Article 41 of the Convention. Nor do the Court's findings call into question the lawfulness of the applicant's detention. It follows that the Court cannot assume that the applicant would have been in a position to pursue his business interests unimpeded if the violation had not occurred.

224. It follows that no causal link has been established between the pecuniary damage claimed and the violations the Court has found. The applicant's claims under this head must therefore be rejected.

B. Non-pecuniary damage

225. The applicant claimed USD 500,000 in respect of non-pecuniary damage caused by the ill-treatment, the lack of medical care and the long period of isolation he imputed to the respondent party.

226. The Government asked the Court to take into consideration the reduction in sentence, from five years to three and a half years, decided by the Joint Court of Justice specifically in view of the harsh conditions in which the applicant had been detained.

227. The Court would again point out that it has found a violation of Article 3 only in respect of the long period spent by the applicant in solitary confinement and the situation and state of repair of the committal cell. It has not found the respondent party responsible for active ill-treatment or withholding medical care.

228. Although in this case the reduction in sentence does not deprive the applicant of the status of "victim" within the meaning of the Convention (see paragraphs 151 and 152 above), it is a fact to be taken into account in the context of non-pecuniary damage. It was undeniably intended by the Joint Court of Justice to alleviate and compensate for the applicant's suffering and to some extent it did so. The Court therefore considers it appropriate to award a reduced amount in respect of non-pecuniary damage.

229. Making an assessment on an equitable basis, the Court awards the applicant 10,000 euros (EUR) under this head.

C. Costs and expenses

230. The applicant submitted the following:

- (a) an invoice dated 4 October 2004 from his representative before the Court, Ms J. Serrarens, for EUR 1,500 plus value-added tax (VAT);
- (b) an invoice dated 5 April 2004 from Ms Serrarens, for EUR 910 plus VAT;
- (c) an invoice dated 21 January 2003 from Mr G. Spong, a lawyer practising in Amsterdam, for USD 875;
- (d) an order to a bank, dated 9 October 2001, for the transfer of USD 5,000 to the Curaçao law firm Sulvaran & Peterson;
- (e) an invoice for services rendered dated 13 March 2002 from the Curaçao law firm Römer and Partners, for 3,277.98 Netherlands Antilles guilders (ANG) plus turnover tax, and another invoice dated the same day for a retainer of ANG 5,250 plus turnover tax;
- (f) an invoice dated 10 July 2003 from Mr David G. Kock, a lawyer practising on Aruba, for AWG 4,200, broken down as follows:

“visits to KIA;

letter to Minister of Justice;

letter [*aanmaning* (final demand)] to director of KIA;

lodging of an application for a fresh trial;

making of plea bargain for trial;

representation during trial;

representation at sentencing hearing.”;

- (g) an invoice dated 30 January 2002 from Ms Carole A. Francis, a lawyer practising on Aruba, for AWG 11,550;

(h) a letter from Mr M. Moszkowicz Sr, a lawyer practising in Maastricht, requesting payment of a balance of USD 17,000. (This letter bears the handwritten addition: “This was for the lower court, we also paid approx 10,000 or more for the Supreme Court”);

- (i) an invoice dated 28 April 2003 from the Amsterdam law firm Plasman Advocaten, for a retainer of EUR 2,500 plus VAT.

231. The Government considered that only the costs relating to the proceedings in Strasbourg could be recovered. They also drew the Court's attention to the applicant's withdrawal of all complaints not relating to Article 3 of the Convention.

232. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the

matter found to constitute a violation of the Convention and are reasonable as to quantum (see, among many other authorities, *Ilașcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 493, ECHR 2004-VII).

233. Of the invoices supplied, only those of Ms Serrarens – whom the applicant instructed after Ms Iannuccilli had lodged an application on his behalf – and Mr Kock definitely relate to the matters considered by the Court. As no details are supplied in relation to the others, the Court cannot find that they do not relate to matters which are outside the scope of the present case, such as the criminal proceedings or the applicant's business dealings.

234. It is true, as the Government stated, that the applicant's complaints not relating to Article 3 of the Convention were withdrawn. This was done by Ms Serrarens when she first became involved in the case; the withdrawal did not therefore result in a reduction of the expenses incurred in the Strasbourg proceedings relating to the Article 3 complaints.

235. The Court will have regard once more to the fact that only part of the applicant's remaining complaints resulted in a finding that Article 3 was violated. Making its own estimate based on the information available, the Court considers it reasonable to award the applicant EUR 3,000 under this head, plus any tax that may be chargeable on that amount.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that the applicant may claim to be a “victim” for the purposes of Article 34 of the Convention;
3. *Declares* the application admissible;
4. *Holds* that there has been a violation of Article 3 of the Convention in that the applicant was kept in solitary confinement for an excessive and unnecessarily protracted period, that he was kept for at least seven months in a cell that failed to offer adequate protection against the elements, and that he was kept in a location from which he could not

gain access to outdoor exercise and fresh air without unnecessary physical suffering;

5. *Holds* that there has been no violation of Article 3 of the Convention as regards the remainder of the applicant's complaints;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 10,000 (ten thousand euros), to be converted into United States dollars at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan ZUPANČIČ
President