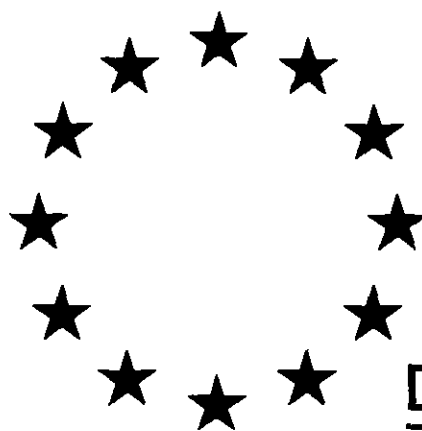


COUNCIL
OF EUROPE



CONSEIL
DE L'EUROPE

Or. English

**EUROPEAN COMMISSION
OF HUMAN RIGHTS**

Application No. 13662/88

**H.
against
the Netherlands**

Report of the Commission

(Adopted on 4 July 1991)

INTRODUCTION

1. This Report relates to the application introduced by H. against the Netherlands on 26 January 1988 under Article 25 of the European Convention on Human Rights and registered on 11 March 1988 under file No. 13662/88.

Before the Commission the applicant was represented by Mr. G.P. Hamer, a lawyer practising in Amsterdam. The Dutch Government were represented by their Agents Mrs. D.S. van Heukelom and Mr. K. de Vey Mestdagh, Assistant Legal Advisers of the Ministry for Foreign Affairs.

2. The European Commission of Human Rights declared the application admissible on 7 May 1990*. The Commission then proceeded to carry out its tasks under Article 28 para. 1 of the Convention, which provides that:

"In the event of the Commission accepting a petition referred to it:

a. it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;

b. it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention."

3. The Commission found that the parties had reached a friendly settlement of the case and, on 4 July 1991, adopted this Report, which, in accordance with Article 28 of the Convention, is confined to a brief statement of the facts and of the solution reached.

* This decision is public and can be obtained from the Secretary to the Commission.

The following members of the Commission were present when the Report was adopted:

Present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

PART I

STATEMENT OF THE FACTS

4. The applicant, a Dutch citizen, lives at Ede, the Netherlands. On 7 August 1987 the District Court Judge of Wageningen, upon request of the applicant's mother and after having heard the applicant's mother, a social worker and a clergyman, and having considered a report by a psychiatrist who had not seen the applicant, ordered the applicant's detention in a psychiatric hospital for six months. The District Court judge did not hear the applicant nor did he give reasons for not hearing the applicant. On the same day the local police, who informed the applicant of the District Court judge's decision, took him to a psychiatric hospital. The applicant received a copy of the committal order, through his lawyer, several weeks after he had been taken into detention.

5. On 3 September 1987 the applicant absconded from the psychiatric hospital and obtained a second opinion from another psychiatrist, who declared that the applicant was not suicidal and was no danger to others.

6. In summary proceedings, instituted by the applicant, the President of the Regional Court of Arnhem, in his decision of 7 September 1987, ordered the psychiatric hospital not to execute the detention order, provided that the applicant would not enter the municipality of Veenendaal and that within ten days he would request the Board of the psychiatric hospital, the Protestant Association for the Treatment of Mental Illness and Nervous Disorders, to discharge him.

7. The applicant requested the Board on 14 September 1987 to discharge him. On 25 September 1987 the Board advised the Public Prosecutor not to support the request, thereby indicating that they themselves had rejected the request. After having heard the parties, the Regional Court of Arnhem on 4 January 1988 ordered the applicant's discharge.

8. The applicant complained before the Commission that there had been a violation of Article 5 paras. 1, 2 and 4, Article 6 para. 1, Article 8 and Article 13 of the Convention.

9. The application was brought to the respondent Government's notice by letter of 10 March 1989. The Government's observations were submitted, after an extension of the time-limit, on 22 June 1989. The applicant submitted his observations in reply on 22 August 1989.

10. On 7 May 1990 the Commission declared the application admissible. The parties were notified of the decision on 9 May 1990.

PART II**SOLUTION REACHED**

11. Following its decision on the admissibility of the application, the Commission placed itself at the disposal of the parties with a view to securing a friendly settlement of the matter in accordance with Article 28 para. 1 (b) of the Convention, and invited the parties to submit any proposals they wished to make.

12. In accordance with usual practice, the Secretary, acting on the Commission's instructions, contacted the parties to discuss with them the possibilities of reaching a friendly settlement.

13. Between 13 November 1990 and 10 June 1991, the parties exchanged various letters relating to the effort to reach a friendly settlement of the case and, with a view to such a settlement, considered a proposal put forward by the Commission.

14. By letter of 31 January 1991, the Netherlands Government informed the Commission of their willingness to write to the Protestant Association for the Treatment of Mental Illness and Nervous Disorders a letter in which they would first refer to the applicant's admission to the psychiatric hospital under the authorisation of the District Court Judge and then state as follows:

"As a result of certain circumstances, Mr. H. received no medical examination nor did he appear before a court prior to his admission. There was therefore no evidence that he was suffering from a dangerous mental disorder, a fact which must normally be established before compulsory admission can take place."

15. Moreover, in a letter of 5 April 1991, the Netherlands Government informed the Commission that they were willing to pay 12.000 guilders to the applicant in order to attain a friendly settlement. The Government further stated that, when making this offer, they considered in particular

"the fact that remarks of the applicant himself led to the measure in question and to not previously hearing him and that the case was rightly considered to be an emergency."

16. By letter of 10 June 1991, the applicant's lawyer informed the Commission that the applicant accepted the Government's proposals.

17. At its session of 4 July 1991, the Commission noted that the parties had reached agreement regarding the terms of a settlement. The Commission found that, in accordance with Article 28 para. 1 (b) of the Convention, a friendly settlement of the matter had been secured on the basis of respect for human rights as defined in the Convention.

For these reasons, the Commission adopted this Report

Secretary to the Commission


(H.C. KRÜGER)

President of the Commission


(C.A. NØRGAARD)