AS TO THE ADMISSIBILITY OF

Application No. 13876/88
by Antoine Felix de JONG
against the Netherlands

The European Commission of Human Rights sitting in private on 12 April 1991, the following members being present:

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

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 7 April 1988 by Antoine Felix de JONG against the Netherlands and registered on 20 May 1988 under file No. 13876/88;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts as submitted by the parties may be summarised as follows.

The applicant is a Dutch citizen born in 1961 and resident in Amsterdam, the Netherlands. He has no profession. Before the Commission he is represented by Mr. G.P. Hamer, a lawyer practising in Amsterdam.

I. Particular circumstances of the case

On 14 September 1987, the applicant was examined by a psychiatrist, Mr. A. In a report drawn up in accordance with Section 35 (c) para. 2 of the Mentally Ill Persons Act (Krankzinnigenwet; hereafter referred to as the "Act"), the psychiatrist recommended that the applicant be taken into provisional detention (inbewaringstelling) in a psychiatric hospital. That same day, a detention order was issued by the Mayor of Amsterdam on the basis of Section 35 (b) of the Act (see below Relevant domestic law and practice), stating that it was

seriously suspected that, as a consequence of mental illness, the applicant presented an immediate danger either to himself, to others or to public order. The applicant was placed in the Provincial Hospital of Santpoort.

The detention order was sent, via the Public Prosecutor of Haarlem, to the Acting President of the Regional Court (Arrondissementsrechtbank) of Haarlem in order to obtain judicial confirmation, as required by Section 35 (i) of the Act.

On 15 September 1987, the psychiatrist, Mr. A., sent a report to the Public Prosecutor, under Section 16 of the Act, recommending that the applicant be committed to a psychiatric hospital by judicial authorisation (rechterlijke machtiging). On 18 September 1987, the Public Prosecutor submitted a request to this effect to the Acting President of the Regional Court of Haarlem.

On 21 September 1987, the Acting President, having heard the applicant, his lawyer and his doctor, refused to confirm the detention order and rejected the request for a judicial authorisation for committal. Thereupon the applicant was released from detention, and left the hospital.

In accordance with Section 17 para. 7 of the Act, the request for a judicial authorisation was automatically referred to the full Regional Court.

On 10 October 1987, the Mayor of Amsterdam again issued a provisional detention order in respect of the applicant, on the basis of a report drawn up by a physician, Mr. M. The applicant was again placed in the Provincial Hospital of Santpoort, and the detention order was sent to the Acting President of the Regional Court of Haarlem for judicial confirmation.

On 22 October 1987, the Acting President (not the same person as on the previous occasion), having heard the applicant, his lawyer and his consulting physician, confirmed the provisional detention order for the legal maximum period of three weeks. This was due to expire on 12 November.

On 11 November 1987, the full Regional Court was to hear the case for the applicant's committal, but, at his lawyer's request, this hearing was adjourned until 25 November 1987.

On 12 November 1987, the Acting President of the Regional Court prolonged the applicant's provisional detention for a further period of three weeks. On the basis of Section 35 (j) of the Act, this decision was taken ex officio without further consultation, for the reason that a request for a judicial authorisation for committal was pending.

On 13 November 1987, when he attempted to leave the hospital, the applicant was told he could not leave because his provisional detention had been prolonged. Thereupon he introduced summary proceedings (kort geding) with the President of the Regional Court of Haarlem against the hospital, demanding the immediate termination of the provisional detention. He based his claim on the fact that he had also introduced an appeal in cassation with the Supreme Court (Hoge Raad) against the prolongation decision of 12 November in which he alleged that this decision was unlawful, inter alia, because he had not been heard, no new medical evidence had been procured, and he had not been informed of the procedure nor of the decision.

On 23 November 1987 the Acting President in summary judgment ordered the applicant's release, on the basis of the consideration that the Supreme Court would probably decide that the order for the prolongation of the applicant's provisional detention of 12 November had been unlawful.

On 25 November 1987, the full Regional Court heard the applicant, his lawyer and his consulting physician and, on 2 December 1987, it granted a judicial authorisation for the applicant's committal to a psychiatric hospital for a period of six months. The full Regional Court thereby overruled the decision of the Acting President of 21 September 1987, for the reason that the applicant's history suggested that he was a borderline psychotic who would frequently need to be taken into custody to avert danger. Therefore, a longer, sustained period of hospitalisation was considered necessary.

On 22 January 1988, the Supreme Court declared the applicant's appeal inadmissible for lack of interest, because he had already been released from detention. However, in the interest of the law, the Supreme Court did state ex officio that the procedure leading to the prolongation decision had been in accordance with Section 35 (j) of the Act.

II. Relevant domestic law and practice

The detention of persons of unsound mind in the Netherlands is governed by the Mentally Ill Persons Act (Krankzinnigenwet, hereafter referred to as the "Act").

The relevant provisions, in respect of the present application, dealing with the detention of a mentally ill person in a psychiatric hospital are Sections 35 (b) to (j).

If it is a matter of urgency, the Mayor is empowered to order the provisional detention of a mentally ill person in a psychiatric hospital. Under Section 35 (c) of the Act, he must first seek the opinion of a psychiatrist, or, where this proves impossible, another medical practitioner. Once the Mayor has ordered a committal, he must, under Section 35 (e), inform the public prosecutor and transmit to him the medical declaration on which he has relied. Under Section 35 (i), the public prosecutor has then to communicate it, not later than the following day, to the President of the Regional Court, requesting, where appropriate, the continuation of the provisional detention. The President must give his decision within three days. If he refuses to order the continuation of the custody, it must cease forthwith. Before he decides, the President is obliged to hear the person whose confinement is sought, unless he concludes from the medical declaration that this would be devoid of purpose or medically inadvisable. Under Section 35 (j) the maximum period of the provisional detention is three weeks. If, before the expiration of this period, a request for a judicial authorisation for committal to a psychiatric hospital has been submitted to either the District Court Judge under Section 12 or the President of the Regional Court under Section 13 of the Act, the provisional detention may, under Section 35 (j), be prolonged ex officio by a maximum period of three weeks by the President.

The Dutch Supreme Court ruled in its decision of 18 January 1985 (H.R. 18.1.1985, N.J. 1985, 405) that neither the Act nor the Convention requires that the President of the Regional Court, when prolonging the provisional detention for another three weeks, again hears the person concerned and that the President need only give summary reasons for his decision, as he had already heard the person concerned and examined medical evidence when reaching his reasoned decision on the provisional detention only three weeks earlier, and he would have to do so again when deciding on the request for a judicial authorisation. The Supreme Court pointed out that the purpose of the prolongation was to allow time for a thorough examination by the President of the Regional Court of the necessity of the request for a judicial authorisation for committal.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 7 April 1988 and registered on 20 May 1988.

On 5 March 1990 the Commission decided to bring the application to the notice of the respondent Government and to invite them pursuant to Rule 42 para. 2 (b) of the Rules of Procedure (former version) to submit observations on its admissibility and merits, in respect of the complaints under Article 5 paras 1 (e) and 2 of the Convention relating to the proceedings concerning the applicant's provisional detention in a psychiatric hospital.

The respondent Government's observations were submitted on 29 May 1990 and the reply thereto by the applicant on 16 July 1990.

COMPLAINTS

1. The applicant complains that the decision of 12 November 1987 of the Acting President of the Regional Court to prolong his provisional detention by three weeks was taken without hearing him and without examining recent medical evidence on his psychological state or his potential dangerousness, and was therefore unlawful. Furthermore, he submits that the provision in Section 35 (j) of the Act on the prolongation of provisional detention did not apply in his case because the Acting President had already rejected the request for an authorisation of committal on 21 September 1987, and no new request for committal had been made during his current period in custody. He argues that the wording of Section 35 (j) excludes the use of the pending procedure before the full Regional Court as a basis for prolonging the provisional custody.

The applicant alleges that his detention after 12 November 1987 was not lawful and not ordered in accordance with a procedure prescribed by law. He invokes Article 5 para. 1 (e) of the Convention.

2. The applicant also complains that he was not informed of the decision of 12 November 1987, in particular of the reasons for the prolongation. He invokes Article 5 para. 2 of the Convention.

3. Furthermore, he complains that he did not have a fair hearing regarding the prolongation of his detention because he was not heard and the procedure was not public. He submits that a prolongation of detention concerns a determination of civil rights and/or obligations. He invokes Article 6 para. 1 of the Convention.

THE LAW

1. The applicant complains that the decision of 12 November 1987 by the President of the Regional Court to prolong his provisional detention by three weeks has not been taken in accordance with Article 5 para. 1 (e) (Art. 5-1-e) of the Convention.

Article 5 para. 1 (e) (Art. 5-1-e) provides as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

.....

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;..."

The applicant states that on or about 11 November 1987 the President of the Regional Court only knew that about three weeks previously a serious presumption had existed that the applicant was mentally ill, but that there was no new report on the mental state of the applicant. The most recent report at his disposal was dated 1 October 1987 and was written by an ordinary doctor and not a psychiatrist, who had concluded that the applicant was possibly mentally disturbed. Despite this fact the President decided to prolong the detention without hearing or informing the applicant beforehand of his intention.

The Government submit in their observations that a decision to prolong provisional detention cannot be taken unless a request or application for a judicial authorisation has been submitted, which did occur in this case. The Government furthermore submit that the Dutch Supreme Court ruled in its judgment of 18 January 1985 in a case concerning prolongation of provisional detention in a mental hospital that "it should be assumed that neither the Mentally Ill Persons Act nor the Convention provisions referred to in the statement of grounds for appeal requires the patient to be heard in connection with the prolongation of his detention, and that the President need only to give summary reasons for his decision to prolong the detention".

The Commission recalls that the words "in accordance with a procedure prescribed by law" in Article 5 para. 1 (Art. 5-1) of the Convention essentially refer to domestic law. It is primarily the task of the national authorities to interpret domestic law, but insofar as reference is made to it in the Convention, the Convention organs have a certain limited jurisdiction to control the manner in which domestic law is applied on the national level (cf. No. 10680/83, Dec. 14.5.84, D.R. 37 p. 225).

In the present case, the Commission notes that the Supreme Court in its decision of 22 January 1988 found that the decision of 12 November 1987 by the President of the Regional Court to prolong the detention of the applicant by three weeks was taken in accordance with the law, as the request for a judicial authorisation for detention was still pending before the Regional Court.

The Commission considers that the Supreme Court's interpretation concerning the lawfulness of the decision to prolong the applicant's provisional detention must be considered as authoritative. The interpretation cannot be regarded as arbitrary or unreasonable. It follows that the applicant's detention in a psychiatric hospital in accordance with the prolongation decision was a lawful detention ordered by a court in accordance with a procedure prescribed by law. The applicant's complaint on this point is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also claims a violation of Article 5 para. 2 (Art. 5-2) of the Convention as neither he nor his lawyer were informed of the decision of 12 November 1987 prolonging his detention for three weeks.

Article 5 para. 2 (Art. 5-2) reads as follows:

"2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

The applicant states that a copy of the decision was sent on Friday 13 November 1987 to his lawyer, who received it on or about 16 November 1987. The lawyer then informed the applicant by telephone of this decision, i.e. several days after the expiry of the first period of detention.

The applicant rejects the Government's argument that, given the fact that the consideration of the request for a judicial authorisation which was to have taken place on 11 November 1987, was postponed at the lawyer's request, the applicant should have expected the order for prolongation of the period of detention to have been issued on 12 November 1987.

The applicant submits that the President of the Regional Court had rejected the request for a judicial authorisation on 21 September 1987, thereby releasing the applicant from the hospital. The request for a judicial authorisation was automatically referred to the full Regional Court and was still pending when the applicant was committed to the psychiatric hospital for a second time. The applicant considers that, as he had earlier been released pending this decision, a prolongation of his provisional detention was not to be expected.

The Commission notes that the applicant was informed about the decision of 12 November 1987 to prolong his detention on 13 November 1987 when he tried to leave the hospital, and that his lawyer received the decision, after the intervening weekend on 16 November 1987. Under the particular circumstances, he can be considered as having been informed "promptly" within the meaning of Article 5 para. 2 (Art. 5-2) of the Convention. This complaint is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains furthermore that Article 6 para. 1 (Art. 6-1) of the Convention has been violated stating that he did not receive a fair and public hearing concerning the prolongation of his provisional detention. In his opinion, this prolongation concerned the determination of civil rights and obligations.

Article 6 para. 1 (Art. 6-1) of the Convention states, insofar as relevant:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

The Commission considers that proceedings regarding a person's detention in a psychiatric hospital do not as such concern the determination of that person's "civil rights and obligations" within the meaning of Article 6 para. 1 (Art. 6-1) (Eur. Court H.R., Neumeister judgment of 27 June 1968, Series A no. 8, p. 43, para. 23; No. 9661/82, Dec. 14.7.83, D.R. 34 p. 127). This would only be the case if, as in the Winterwerp case (Eur. Court H.R., judgment of 24 October 1979, Series A no. 33, p. 28, para. 73), it was found that the detention had indirect effects on the detained person's right to administer his property or to carry out legal transacations. The Commission finds no indication of such an effect in the present case.

It follows that there has been no violation of the applicant's right to a fair and public hearing in the determination of his civil rights and obligations.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

H.C. KRÜGER C.A. NØRGAARD