AS TO THE ADMISSIBILITY OF

Application No. 17106/90
by L.
against the Netherlands

The European Commission of Human Rights sitting in private on 25 February 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
E. BUSUTTIL
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
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 21 August 1990 by L. against the Netherlands and registered on 31 August 1990 under file No. 17106/90;

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 applicant is a Dutch citizen, born in 1953. She is at present detained in a prison at Amsterdam in the Netherlands. In the proceedings before the Commission, the applicant is represented by Mr. Th. de Roos, a lawyer practising in Amsterdam.

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 21 February 1988 the applicant was arrested and charged with murder. By judgment of 21 July 1988 the Regional Court (Arrondissementsrechtbank) of Zwolle convicted the applicant of being an accessory to murder and sentenced her to six years' imprisonment. The Court further decided that the applicant be "placed at the Government's disposal" and be afforded psychiatric treatment (terbeschikkingstelling, met bevel tot verpleging van overheidswege).

In reaching this decision, the Court considered a report of 13 June 1988 on the applicant's mental state which had been prepared by a psychiatric observation clinic for the prison system (psychiatrische observatiekliniek voor het gevangeniswezen).

The applicant's appeal against this decision was dismissed by the Court of Appeal (Gerechtshof) of Arnhem on 19 January 1989.

The applicant subsequently filed an appeal with the Supreme Court (Hoge Raad). She contends that, as the Court of Appeal had considered the psychiatric report of 13 June 1988 at its session of 5 January 1989, the report had been older than six months which was contrary to Section 37b of the Dutch Penal Code, which reads as follows:

(Translation)

"The judge may order that the person placed at the Government's disposal shall be subjected to treatment when the safety of others or the general safety of persons or goods so requires. He will only give such an order after a reasoned, dated and signed advice by at least two behavioural experts of different disciplines - among whom one psychiatrist -, who have examined the person concerned not more than six months before the beginning of the court session, has been submitted to him. Such an advice shall be given either by the behavioural experts jointly or by each of them separately."

In its judgment of 27 February 1990, the Supreme Court stated that, when a case is dealt with on appeal, a report which is older than six months can still be accepted if both the public prosecutor, the accused and defence counsel accept it. In the present case, it could be assumed that the public prosecutor, the applicant and her lawyer had accepted the use of the report which, when the Court of Appeal examined the case, was less than seven months old. The Supreme Court therefore rejected the applicant's appeal.

COMPLAINT

The applicant alleges a violation of Article 5 para. 1 of the Convention in that the Court of Appeal decided to subject her to treatment on the basis of a psychiatric report which - contrary to Dutch law - was more than six months old.

THE LAW

The applicant alleges a violation of Article 5 para. 1 (Art. 5-1) of the Convention on the ground that her detention was not ordered in accordance with a procedure prescribed by law.

Article 5 para. 1 (Art. 5-1) of the Convention provides, insofar as relevant, as follows:

"No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. the lawful detention of a person after conviction by a competent court;
...

e. the lawful detention ... of persons of unsound mind...;"

The Commission recalls that the words "in accordance with a procedure prescribed by law" in this provision 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. 10689/83, Dec. 14.5.84, D.R. 37 p. 225).

In the present case, the Commission notes that the expert report was dated 13 June 1988 and was therefore, slightly more than six months old when the hearing before the Court of Appeal was held on 5 January 1989. However, the Commission observes that the interpretation given by the Supreme Court to the time-limit in Section 37b of the Penal Code in the present case was that, when a case is dealt with on appeal, a report older than six months can still be accepted if both the public prosecutor, and the accused and defence counsel accept it. The Supreme Court considered that in the present case it could be assumed that the public prosecutor, the applicant and her lawyer had accepted the use of the report which, when the Court of Appeal examined the case, was less than seven months old.

The Commission considers that the Supreme Court's interpretation of Section 37b of the Penal Code, when applied to appeal prosedures, must be considered an authoritative interpretation of Dutch law on this point. The interpretation cannot be regarded as arbitrary or unreasonable. It follows that the applicant's forced treatment at a psychiatric institution is a lawful detention ordered by a court in accordance with a procedure prescribed by law.

Consequently, the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)