AS TO THE ADMISSIBILITY OF

Application No. 15519/89
by F.W.
against the Netherlands

The European Commission of Human Rights sitting in private on 6 December 1991, the following members being present:

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

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 22 August 1989 by F.W. against the Netherlands and registered on 19 September 1989 under file No. 15519/89 ;

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 1967 and at present detained in a mental hospital. In the proceedings before the Commission he is represented by Mr. G.P. Hamer, a lawyer practising in Amsterdam. The facts, as submitted by the parties, can be summarised as follows.

On 23 June 1988, the District Court judge (Kantonrechter) of Zaandam ordered, at the request of the applicant's father, the provisional detention of the applicant in a mental hospital.

In October 1988, the applicant requested his present lawyer to represent him in proceedings concerning a possible prolongation of his detention in December 1988. His lawyer informed the competent Court authorities and the mental hospital in October 1988 that he was representing the applicant.

As the judicial order would expire on 23 December 1988, the

Public Prosecutor (Officier van Justitie) in Alkmaar on Friday, 16 December 1988, requested the Regional Court (Arrondissements-rechtbank) of Alkmaar to extend the applicant's detention for the period of one year. On the same day, the Regional Court informed the applicant's lawyer that a judge at the Court would conduct a hearing concerning the request on Monday, 19 December 1988, at the hospital. The lawyer, unsuccessfully, submitted a request to postpone the hearing as he had another hearing on that date.

On 19 December 1988, the judge heard the applicant, his father and a psychologist at the hospital. Before the hearing started, the applicant agreed to proceed with the hearing even though his lawyer was absent, on the condition that his lawyer would be given an opportunity to comment on the statements given and produced at the hearing. On the same day, the District Court sent the record of the hearing to the lawyer, requesting him to submit his comments thereon before 23 December 1988.

As in the meantime the applicant had absconded from the mental hospital, the lawyer could not communicate with the applicant concerning any comments to be made. By letter of 21 December 1988, the lawyer therefore requested the Court to hold a new hearing or alternatively to extend the time-limit fixed for the submission of his comments.

Both requests were rejected by the Regional Court in its decision of 23 December 1988 in which the applicant's detention was prolonged for a period of one year.

In the decision it was held, inter alia, that the applicant himself had let it be known beforehand that he would have no objection to the procedure that followed and that the interest of the applicant in obtaining a decision at short notice, preventing the applicant's remaining in uncertainty, which uncertainty in practice is quite burdensome on psychiatric patients, outweighs the arguments in favour of an extension of the time-limit for the submission of the lawyer's comments on the hearing. The Regional Court furthermore mentioned in a separate paragraph of its decision that, according to information obtained from the mental hospital by the Court's Registrar, the applicant had threatened his mother, kicked her car and committed a burglary after having absconded from the hospital.

On 23 February 1989, the applicant appealed to the Supreme Court (Hoge Raad) on points of law. The appeal was rejected on 28 April 1989. The Supreme Court held, inter alia, that both the wording and structure of the Regional Court's decision clearly indicate that the additional information obtained from the mental hospital by the Regional Court's Registrar did not influence the Regional Court's decision.

COMPLAINTS

The applicant complains that the decision to prolong his detention in a mental hospital was not taken in conformity with the requirements as set out in Article 5 paras. 1 and 4 and Article 6 para. 1 of the Convention. He submits in particular that the Regional Court did not respect his wish to be represented by his lawyer as a result of which his case was not conducted satisfactorily and he did not receive a fair hearing. The applicant furthermore states that, when he agreed to a hearing on 19 December 1988 without the presence of his lawyer, he was unaware of its importance, and that the Regional Court made use of information obtained after the hearing took place, which was not communicated to his lawyer.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 22 August 1989 and registered on 19 September 1989.

On 25 February 1991, the Commission decided to bring the application to the notice of the respondent Government and to invite them pursuant to Rule 48 para. 2 (b) of the Rules of Procedure to submit observations on its admissibility and merits, in respect of the complaints under Article 5 paras. 1 (e) and 4 of the Convention relating to the proceedings concerning the prolongation of the applicant's provisional detention in a psychiatric hospital.

The respondent Government's observations were submitted on 23 May 1991 and the reply thereto by the applicant on 10 June 1991.

THE LAW

The applicant complains that the decision to prolong his detention in a mental hospital was not taken in conformity with the requirements as set out in Article 5 paras. 1 and 4 (Art. 5-1, 5-4) of the Convention, which read, insofar as relevant:

"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 of unsound mind [...].

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

The Government first submit that it is primarily the task of national authorities, in this case the Supreme Court of the Netherlands, to interpret national law, that the Supreme Court dismissed the applicant's appeal on 28 April 1989 and that the proceedings complied fully with the provisions of the Mental Health Act [Krankzinnigenwet]. The Government conclude that the applicant's detention was a lawful detention ordered by a court in accordance with a procedure prescribed by law.

The applicant submits that it is irrelevant whether or not it is primarily the task of national authorities to interpret national law, as his rights under the Convention have been violated. The applicant states that it must have been clear from the medical statements that, suffering from serious mental disorders, he was not capable of understanding the consequences of the investigating judge's proposal and that the Regional Court nevertheless unjustly continued the proceedings in the absence of his lawyer. The applicant further submits that he never requested the Regional Court to take a prompt decision and that his lawyer was only allowed two days to submit comments on the hearing and that therefore he has been denied enough time and possibilities to defend himself adequately. The applicant finally submits that the Regional Court in its decision referred, although redundantly, to information obtained by telephone from the mental hospital without having communicated this information to his lawyer thereby depriving the lawyer of a possibility to submit comments thereon.

The Commission recalls that the words "lawful" and "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 particular, the Convention organs may verify that there is no arbitrariness in the domestic decisions.

In the present case, the Commission notes that the Regional Court's decision of 23 December 1988 to proceed with the hearing in the absence of the applicant's lawyer was taken after the applicant had agreed thereto. It can moreover be deduced from the wording and structure of the Regional Court's decision that the additional information, which the Regional Court mentioned, had not been the basis of that decision.

Having regard to the circumstances of the case, the Commission considers that the Supreme Court's finding about the lawfulness of the decision to prolong the applicant's detention cannot be regarded as arbitrary or unreasonable. It follows that the applicant's detention in a psychiatric hospital on the basis of the prolongation decision was a lawful detention ordered by a court in accordance with a procedure prescribed by law. The applicant's detention therefore fulfils the requirements of Article 5 para. 1 (Art. 5-1) of the Convention.

Insofar as Artice 5 para. 4 (Art. 5-4) of the Convention is concerned, the Government submit that the Supreme Court ruled on 24 February 1989 in a similar case, that Article 5 para. 4 (Art. 5-4) was not applicable as "the Court must examine at reasonable intervals whether the conditions governing that deprivation of liberty are being complied with, and since the person who has been forcibly detained may apply to be discharged under Section 29 of the Mental Health Act". The Government alternatively submit that the applicant had no objection to being examined in the absence of his legal counsel, if the official report of that examination were sent to his counsel, who would then be in a position to comment on the substance of both the medical notes and the official report and that in taking an early decision the Regional Court weighed the consideration that an early decision would be in the applicant's interests against the arguments speaking in favour of the lawyer's extension request. The Government also submit that the additional information on the applicant having absconded from the mental hospital was explicitly given as a redundant consideration and, as confirmed by the Supreme Court, did not influence the Regional Court's judgment, as the decision to prolong the applicant's detention was based exclusively on the medical and other statements included in the official report.

The applicant submits that according to the medical statements the applicant was suffering from serious mental disorders which opinion is reflected in the wording of the Regional Court's decision whereas the Regional Court did not examine whether and to what extent the applicant was capable of understanding the consequences of the investigating judge's proposition. The applicant further submits that the Regional Court interpreted an alleged interest of the applicant by promptly deciding on the matter, whereas the applicant had not requested a prompt decision. The applicant fails to see why the requested extension of the time-limit for the lawyer to make submissions was not granted, as to allow only two days for the submission of the applicant's comments concerning such a far-reaching measure in the applicant's life gave the applicant insufficient time and opportunity to prepare his defence satisfactorily.

The applicant also submits that the Regional Court in its decision of 23 December 1988 referred to information obtained by telephone from the mental hospital after the hearing had taken place and that this information was not communicated to the applicant's

lawyer for possible comments. The applicant therefore concludes that the procedure did not meet the inherent requirements within the meaning of Article 5 para. 4 (Art. 5-4) of the Convention.

The Commission recalls that in matters of deprivation of liberty Article 5 para. 4 (Art. 5-4) of the Convention requires a control procedure which has "a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question; in order to determine whether a proceeding provides adequate guarantees, regard must be had to the particular nature of the circumstances in which such proceedings take place" (cf. Eur. Court H.R., Winterwerp judgment of 24 October 1979, Series A no. 33, p. 23, para. 57 with reference to the De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 14. pp. 41, 42, paras. 76 in fine and 78; Wassink judgment of 27 September 1990, Series A no. 185A, para. 30 with further reference).

The question therefore arises as to whether the proceedings leading up to the Regional Court's decision of 23 December 1988 satisfied the requirements of Article 5 para. 4 (Art. 5-4), in which case he would have no right, at that time, to a further judicial review.

One element could create some doubt in this respect, namely the fact that the applicant was not assisted by a lawyer at the hearing on 19 December 1988. The Commission recalls that, according to its previous case-law, assistance by a lawyer may in some cases of detention in psychiatric hospitals be necessary in order to satisfy the requirements of Article 5 para. 4 (Art. 5-4) (No. 13770/88 M. v. the Federal Republic of Germany, Comm. Rep. of 26.2.91).

The Commission notes that in the present case the applicant explicitly agreed to be heard in the absence of his lawyer on the condition that his lawyer would be given the opportunity of submitting comments after the hearing, which condition was complied with. In its judgment of 28 April 1989 the Supreme Court held, inter alia, that the Regional Court must have found the applicant capable of understanding the implications of the investigating judge's proposal. The Commission finds no reason in the circumstances of the present case to reach a different conclusion. The Commission further notes that at the hearing not only the applicant himself but also his father and a psychologist were heard by the judge.

The Commission notes that the applicant's lawyer was given the opportunity of submitting comments after the hearing but that, due to the applicant having absconded from the mental hospital, the lawyer could not submit comments within the time-limit set by the Regional Court.

It thus appears that the difficulties which arose for the lawyer in the submission of comments were caused by the applicant's own action. The Commission further notes that in the Wassink case the European Court of Human Rights found the requirements of Article 5 para. 4 (Art. 5-4) satisfied although the judge had heard certain persons by telephone and only later had given the applicant's counsellor an opportunity to comment on their statements (Eur. Court H.R., judgment of 27 September 1990, Series A no. 185A, paras. 33 and 34).

Having regard to all these elements the Commission considers that the conditions of Article 5 para. 4 (Art. 5-4) were satisfied in the proceedings leading up to the Regional Court's decision of 23 December 1988 and that, therefore, the applicant had no right to a further court review at that time.

In regard to Article 6 para. 1 (Art. 6-1) of the Convention the

applicant submits that he did not receive a fair and public hearing concerning the prolongation of his provisional detention.

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

1. In the determination of his civil rights and obligations [...], everyone is entitled to a fair and public hearing [...]."

The Commission considers that proceedings regarding the lawfulness of 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 transactions. The Commission finds no indication of such an effect in the present case.

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

For these reasons, the Commission, by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)