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

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Detention of offender with mental disorders in a prison environment unsuited to his therapeutic needs represents a structural problem in Belgium, breaching the Convention

In today's **Chamber** judgment[1] in the case of W.D. v. Belgium (application no. 73548/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights;

a violation of Article 5 § 1 (right to liberty and security); and

a violation of Article 5 § 4 (right to speedy review of the lawfulness of detention) and Article 13 (right to an effective remedy), in conjunction with Article 3

The case concerned a sex offender suffering from mental disorders who was detained indefinitely in a prison psychiatric wing.

The Court found in particular that W.D. had been subjected to degrading treatment by having been detained in a prison environment for more than nine years, without appropriate treatment for his mental condition and with no prospect of reintegrating into society; this had caused him particularly acute hardship and distress of an intensity exceeding the unavoidable level of suffering inherent in detention.

The Court also found that W.D.'s detention since 2006 in a facility ill-suited to his condition had broken the link required by Article 5 § 1 (e) of the Convention between the purpose and the practical conditions of detention, noting that the reason for W.D.'s detention in a prison psychiatric wing was the structural lack of alternatives.

Furthermore, the Court held that the Belgian system, as in operation at the time of the events, had not provided W.D. with an effective remedy in practice in respect of his Convention complaints – in other words, a remedy capable of affording redress for the situation of which he was the victim and preventing the continuation of the alleged violations.

The Court found, lastly, that W.D.'s situation had originated in a structural deficiency specific to the Belgian psychiatric detention system. In accordance with Article 46 (binding force and execution of judgments) of the Convention, the Court held that the State was required to organise its system for the psychiatric detention of offenders in such a way that the detainees' dignity was respected. In particular, it encouraged the Belgian State to take action to reduce the number of offenders with mental disorders who were detained in prison psychiatric wings without receiving appropriate treatment.

The Court decided to apply the pilot-judgment procedure in the present case, giving the Government two years to remedy the general situation and adjourning proceedings in all similar cases for two years.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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Principal facts

The applicant, W.D., is a Belgian national who was born in 1987 and is detained in Merksplas (Belgium).

In November 2006, when he was 19 years old, W.D. was arrested for indecently assaulting a person under the age of sixteen. Under the Social Protection Act of 9 April 1930, the Committals Division of the Mechelen Court of First Instance decided to detain W.D., noting that he lacked criminal responsibility and suffered from a mental disorder. In July 2007 he was detained in a social protection unit at Merksplas Prison, where he has remained ever since. On a number of occasions between 2010 and 2015 he was granted escorted leave under the supervision of a team or a family member, with a ban on entering into contact with minors or using a telephone or the Internet. Various psychiatric reports noted that he had a predisposition to perversion and paedophilia, that he presented a very high risk of reoffending, that he suffered from autistic spectrum disorders and that he needed to be housed in an institution of the Flemish Agency for People with Disabilities (VAHP). In October 2015 the psychosocial department advised that W.D. should no longer be entitled to leave, finding that he had relapsed and engaged in correspondence with minors.

Throughout his detention the Antwerp Social Protection Board (CDS) decided that W.D. should remain in Merksplas Prison. From 2009 onwards his continued detention was ordered pending his admission to a VAHP institution. On 6 December 2012 the Higher Social Protection Board (CSDS) dismissed an appeal by W.D. against a decision by the CDS to keep him in detention, finding that his detention was justified on mental-health grounds. He then lodged an appeal on points of law, which was dismissed by the Court of Cassation on 30 April 2013. Other appeals by W.D. to the ordinary courts were likewise dismissed. In the meantime, efforts by the authorities and by W.D. himself to secure admission to a VAHP-approved "outside accommodation centre" were unsuccessful, either because there were no places available or because of the applicant's psychiatric profile.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), W.D. complained that he had been detained in a prison environment for more than nine years without any appropriate treatment for his mental condition or any realistic prospect of reintegrating into society. Relying on Article 5 § 1 (right to security), he complained that his deprivation of liberty and continued detention were unlawful. Relying on Article 5 § 4 (right to security), Article 13 (right to an effective remedy) and Article 3 (prohibition of inhuman or degrading treatment), he submitted that he had had no effective remedies by which to complain of the conditions of his detention.

The application was lodged with the European Court of Human Rights on 28 October 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Işıl **Karakaş** (Turkey), *President*,
Julia **Laffranque** (Estonia),
Nebojša **Vučinić** (Montenegro),
Paul **Lemmens** (Belgium),
Ksenija **Turković** (Croatia),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),

and also Hasan **Bakırcı**, *Deputy Section Registrar.*

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

The Court observed that W.D. had not been given suitable treatment for his mental disorders during his detention. Furthermore, there was unanimous agreement at national and international level that the care provided for offenders with mental disorders was inadequate. Among the complaints raised were that psychiatric wings, including social protection units, were not suitable places of detention for people suffering from mental disorders, because of the general lack of staff, the poor quality and lack of continuity in the treatment provided, the overcrowding, and the structural lack of capacity in non-prison psychiatric facilities. The supervisory board of Merksplas Prison had recently confirmed that analysis. The CPT[2], the United Nations Committee against Torture and International Prison Watch had also recently expressed concern at this state of affairs. These findings were also corroborated by the fact that the reports issued by the doctors and the psychosocial department did not provide any explanation of the nature of the treatment said to have been provided to W.D. in the De Haven unit in accordance with his diagnosis. Similarly, the Government had not shown that W.D. had been given suitable treatment for his condition. The only specific information available to the Court concerned the fact that W.D. had attended pre-therapy, as well as the number and frequency of his appointments with a psychiatrist, most of which had involved prescribing him with antidepressant and antipsychotic medication. In the Court's view, it was not enough for a detainee to be examined and a diagnosis made; instead, it was essential that proper treatment for the problem diagnosed and suitable medical supervision should also be provided.

In 2008 W.D. had attended pre-therapy, and the outcome had been assessed as positive in terms of his awareness of his actions and his problems. From 2010 onwards he had been granted leave on a number of occasions, and this had likewise had a positive effect. In addition, although he had been able to participate in the activities of the 't Zwart Goor association from 2009 onwards, he had refused to become involved in a project whose purpose he did not appear to have understood. Two reports issued in 2013 and 2014 concerning W.D.'s sexual problems had noted that he still presented a high risk of reoffending, and a recent psychosocial report from 2015 advised that he should no longer be granted leave, after finding that he had relapsed and engaged in correspondence with minors. In the Court's view, all of those factors indicated that W.D.'s detention without any therapeutic support or any prospect of social reintegration had had a negative impact on his psychological well-being, since he had clearly made no progress in understanding his problems and appeared to need personal supervision even more strongly than at the start of his detention.

The Court observed that the steps taken by the authorities to find an outside facility to provide care for W.D. had proved fruitless because the institutions contacted had refused to admit him. This detrimental situation for W.D. was in reality the result of a structural problem: on the one hand, the medical care available to those detained in prison psychiatric wings was inadequate and, on the other, placement outside the prison system was often impossible, either because of the lack of places in psychiatric hospitals or because the legislative framework did not allow the social protection authorities to order the admission of such individuals to outside facilities that viewed them as undesirable. The Court pointed out that the obligation deriving from the Convention was not limited to protecting society against the potential dangers posed by offenders with mental disorders, but also required suitable treatment to be provided to such offenders to help them to reintegrate into society as successfully as possible. It therefore held that the national authorities had not taken sufficient care of W.D.'s health to ensure that he was not left in a situation breaching Article 3 of the Convention. The fact that he had been held in a prison psychiatric wing for a significant period, with no real hope of any change and without appropriate medical supervision, had subjected him to particularly acute hardship, causing him distress of an intensity exceeding the

[2] CPT: European Committee for the Prevention of Torture.

unavoidable level of suffering inherent in detention. Whatever obstacles W.D. might have created by his own behaviour, the Court considered that they did not release the State from its obligations towards him. It reiterated that the position of inferiority and powerlessness which was typical of patients confined in psychiatric hospitals called for increased vigilance in reviewing compliance with the Convention; that was even more the case where people suffering from personality disorders were detained in a prison environment.

The Court therefore concluded that there had been **degrading treatment** on account of W.D.'s continued detention for more than nine years in a prison environment without suitable treatment for his mental condition or any prospect of social reintegration. **It held that there had been a violation of Article 3 of the Convention.**

Article 5 § 1 (right to liberty and security)

The Court observed that the prospect of transferring W.D. to an appropriate outside facility had been envisaged since 2009. The social protection authorities had consistently justified his continued detention in Merksplas Prison pending his admission to a supervised residential centre managed by the Flemish Agency for People with Disabilities. The authorities had repeatedly contacted outside institutions, but their efforts had proved to no avail as the institutions in question had refused to admit W.D. In its decision of 16 March 2015 the CSDS had explicitly noted that the period within which W.D. was entitled to treatment and appropriate support had expired, and had ordered the Belgian authorities to transfer him to a suitable institution. The Court concluded that W.D.'s continued detention in a psychiatric wing was regarded by the authorities themselves as a "transitional" solution until an appropriate facility could be found to cater for his needs; that keeping W.D. in a prison environment was known to be unsuitable from a therapeutic perspective; and that the reason why he remained there was the structural lack of alternatives.

The Court further noted that in the context of urgent proceedings, W.D. had expressed his wishes with a view to bringing about an improvement in his condition. He had requested that the State be ordered to give him specialist treatment for deviant sexual conduct, but this was not among the treatment provided to W.D. at Merksplas Prison, which was a matter of concern for the Court.

The Court referred to its conclusions in four leading cases[3] in which it had found a violation of Article 5 § 1 of the Convention on the ground that the detention of the applicants, who had lacked criminal responsibility, for a significant period in a psychiatric wing of a prison that was ill-suited to their needs had effectively broken the link between the purpose and the practical conditions of detention. It reached the same conclusion in the present case, finding that W.D.'s detention since 2006 in a facility ill-suited to his condition had broken the link required by Article 5 § 1 (e) of the Convention between the purpose and the practical conditions of his detention. **It held that there had been a violation of Article 5 § 1 of the Convention.**

Article 5 § 4 (right to a speedy review of the lawfulness of detention) and Article 13 (right to an effective remedy), in conjunction with Article 3

For more than eight years the CDS had been content to prolong W.D.'s detention until it became possible to transfer him to an outside facility, and to note that in the absence of formal confirmation that an appropriate institution was prepared to take him in, there was no point in ordering his transfer to such a facility. W.D.'s application to the urgent-applications judge had not been any more successful. For a long time, recourse to the ordinary courts had proved futile for W.D., who had been told that he had failed to show how the environment in which he was living was unsuitable for his condition, or to indicate what form of treatment would be appropriate. The Court took the view,

[3] *L.B. v. Belgium*, no. 22831/08; *Claes v. Belgium*, no. 43418/09; *Dufoort v. Belgium*, no. 43653/09; and *Swennen v. Belgium*, no. 53448/10.

however, that in the case of offenders with mental disorders, who often had not been given regular independent psychiatric counselling, it was impossible to expect them to be able to identify the "appropriate solution" themselves, since this also depended on their individual profile and the danger they posed to society.

With regard to the decision of 16 March 2015 in which the CSDS had finally ordered W.D.'s admission to an outside facility, the Court observed that it had still not been implemented and that W.D. had been compelled to bring proceedings in the ordinary courts in order to enforce it. In the Court's view, this situation was hard to reconcile with the alleged effectiveness of the existing remedies. Assuming that the remedies in question might in theory be complementary and might, in certain cases, enable the individuals concerned to secure a decision complying with the Convention requirements of effectiveness, it could not be argued that psychiatric detainees who had obtained a favourable decision should then have to make multiple applications to ensure that their fundamental rights were ultimately respected in practice.

The Court observed that in reality, the shortcomings of the remedies in question were largely due to the structural nature of the specific problem encountered in Belgium. It was the lack of suitable places in a non-prison environment and the lack of qualified staff in prison psychiatric wings, rather than the remedies themselves, that had resulted in the ineffectiveness of appeals to the social protection authorities and hindered the implementation of any favourable court decisions. Even if the social protection authorities or the urgent applications judge had made fairly extensive use of their powers of review and examined the conditions of W.D.'s detention in depth, this would not have remedied the situation complained of, since his transfer had in any event been dependent on admission to an outside facility and had been blocked because of the refusals to admit him.

As regards the possibility of bringing a compensation claim under Article 1382 of the Civil Code, the Court considered that that remedy could not have brought about an immediate and tangible improvement in the conditions of W.D.'s detention or his transfer to another facility. A favourable decision by the courts would simply have resulted in monetary compensation for W.D., and this would not have satisfied the requirements of an effective remedy in his particular case.

In the light of its analysis of the Belgian system as in operation at the time of the events of the present case, the Court concluded that W.D. had not had an effective remedy available in practice in respect of his Convention complaints – that is, a remedy capable of affording redress for the situation of which he was the victim and preventing the continuation of the alleged violations. **It found a violation of Article 5 § 4 and of Article 13, in conjunction with Article 3, of the Convention.**

Article 46 (binding force and execution of judgments)

The Court considered that W.D.'s situation had originated in a structural deficiency specific to the Belgian psychiatric detention system, which had affected and remained capable of affecting a large number of people. The structural nature of the problem was borne out by the fact that there were currently some forty cases against Belgium pending before the Court in which an issue of compliance with Article 3 and/or Article 5 §§ 1 and 4 of the Convention arose on account of the continued detention of offenders with mental disorders in various Belgian prisons without appropriate treatment and without any remedies capable of affording redress. The number of such applications was constantly increasing. The Court therefore decided to apply **the pilot-judgment procedure.**

The Court emphasised that in view of the intangible nature of the right protected by Article 3 of the Convention and the importance of the right to liberty enshrined in Article 5, **the State was required to organise its system for the psychiatric detention of offenders in such a way that the detainees' dignity was respected**. In particular, the Court encouraged the Belgian State to take action to reduce the number of offenders with mental disorders who were detained in prison psychiatric wings without receiving appropriate treatment, in particular by redefining the criteria for psychiatric detention along the lines envisaged by the legislative reform under way in Belgium. In the same vein,

the Court welcomed the objective, now enshrined in law, of providing appropriate therapeutic support to such detainees with a view to their reintegration into society.

The Court gave the respondent Government **a period of two years** to remedy both the general situation, in particular by taking steps to implement the legislative reform, and the situation of any applicants who had lodged similar applications with the Court before the delivery of this judgment and any who might apply to the Court subsequently. Pending the adoption of remedial measures, the Court decided **to adjourn proceedings in all similar cases for two years** with effect from the date on which this judgment became final.

Article 41 (just satisfaction)

The Court held that Belgium was to pay W.D. 16,000 euros in respect of non-pecuniary damage.

The judgment is available only in French.

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