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HUMAN RIGHTS COMMITTEE
Sixty-ninth session
10 - 28 July 2000

DECISIONS

Communication No. 785/1997

Submitted by:	Mr. Alexandre Wuyts (represented by E. Th. Hummels, legal counsel)
Alleged victim:	The author
State party:	The Netherlands
Date of communication:	24 June 1996
Prior decisions:	Special Rapporteur's rule 91 decision, transmitted to the State party on 20 January 1998 (not issued in document form).
Date of present decision:	17 July 2000

[ANNEX]

*Made public by decision of the Human Rights Committee.

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
- Sixty-ninth session -
concerning

Communication No. 785/1997*

Submitted by:	Mr. Alexandre Wuyts (represented by Mr. E. Th. Hummels, legal counsel)
Alleged victim:	The author
State party:	The Netherlands
Date of the communication:	24 June 1996

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 17 July 2000

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Alexandre Wuyts, a Belgian citizen born on 22 February 1974. He claims to be a victim of a violation of article 10 of the Covenant by the Netherlands. He is represented by Mr. E.Th. Hummels.

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* The following members of the Committee participated in the examination of the present communication.: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. P.N. Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, and Mr. Abdallah Zakhia.

The facts as submitted

2.1 On 11 February 1994, the author was convicted on several counts of theft with use of violence or threat of violence against persons, as well as attempts and threats of serious physical abuse. He was sentenced to eight months of imprisonment and ordered to be detained at her Majesty's pleasure for compulsory treatment in a psychiatric hospital. The initial detention was set at two years, renewable. According to the judgement, the author's treatment was to begin on 3 March 1994, but according to counsel it did not actually begin until 17 March 1995, more than one year later. During that period, the author was detained without any treatment.

2.2 On 6 February 1996, the District Court in Middelburg ordered the renewal of the author's treatment for two years. It considered that the psychiatric reports showed that the author's condition had not improved and that he refused anti-psychotic medication. On appeal, on 19 June 1996, the Court of Appeal in Arnhem confirmed the District Court's decision.

The complaint

3. Counsel argues that the author is a victim of a violation of article 10 of the Covenant, since he was kept in detention without treatment for over a year, although the treatment had been ordered by the Court. He also argues that if the treatment would have started on time, it would not have been necessary to renew his confinement. According to counsel, in the circumstances any further treatment should be on a voluntary basis only, and the confinement of the author therefore violates the inherent dignity of the human person and thus article 10 of the Covenant.

State party's observations on the admissibility of the communication and counsel's comments thereon

4.1 In its submission of 10 April 1998, the State party explains that on 3 March 1994, the date on which the author's treatment should have started, there was no place available in any of the hospitals. He was therefore kept at the intensive supervision unit of the detention centre. On 20 December 1994 he was placed in the clinic of the Meijersinstituut in Utrecht, as a provisionary measure, and on 17 March 1995 he was transferred to the Van der Hoevenkliniek in Utrecht. The State party contests therefore the author's allegation that he had to wait for over a year before being placed in a hospital, since in fact the waiting period was nine and a half months. The State party also informs the Committee that the compulsory treatment was again renewed for two years by decision of the court of 24 February 1998.

4.2 The State party submits that on 20 March 1997, the Hague Appeal Court has decided in a case similar to the author's that the State has to pay Fl. 150 for each day exceeding three months that a person whose compulsory psychiatric treatment has been ordered by the courts, remains in detention without receiving such treatment. The State has appealed this

judgement in cassation, and the appeal is pending.[1] Following the judgement, the author's counsel requested compensation from the State on 21 March 1997, and on 20 June 1997, the State has offered him Fl. 3,000. The State party explains that, awaiting the judgement in cassation, it does not accept accountability, and it is only willing to pay the Fl. 3,000 if the complainant promises not to initiate any other procedures against the State.

4.3 According to the State party, the communication is inadmissible under article 5(2)(b) of the Optional Protocol, since the negotiations concerning compensation for the time spent in detention awaiting placement in a psychiatric hospital are ongoing. If no agreement is reached, the author can go to court and request compensation. According to the State party, the courts have granted payment of compensation in numerous similar cases.

5. In his comments, counsel notes that the Meijersinstituut is not a psychiatric hospital but a selection institute. He further argues that all domestic remedies have been exhausted, since the author has appealed the judgement by the Middelburg District Court to extend his compulsory treatment with two years, invoking article 10 of the Covenant. His appeal was rejected by the Court of Appeal, because it considered the period of detention awaiting placement as undesirable but not a violation of article 10 of the Covenant. Counsel adds that the author cannot be expected to initiate all sorts of civil procedures in this respect.

The State party's observations on the merits of the communication and counsel's comments

6.1 By submission of 20 July 1998, the State party addresses the merits of the communication. It distinguishes two different questions, one: was the treatment the author underwent during his detention while waiting to be placed in the psychiatric hospital incompatible with the requirements of article 10(1) of the Covenant? and two: Is it incompatible with treatment "with humanity and with respect for the inherent dignity of the human person" that the compulsory treatment order could not take immediate effect?

6.2 With regard to the first question, the State party notes that the author was kept in a secure hospital unit in the remand centre, an "Individual Supervision Unit", which housed detainees with psychological problems. This unit provides special, problem-oriented care with due regard for the individual problems of the detainees. Each detainee has his own cell, with a bed, toilet and wash basin, and generally also a television. Moreover, the unit has a common room with recreational facilities. Daily schedules are tailored to the detainees' needs. Staffing levels are higher than customary in the other wings of the remand centre in order to allow for a great deal of social contact with the detainees and the staff has received special training. Each detainee's condition is monitored carefully and as soon as there is any sign of undesirable developments, a psychologist is alerted, who when necessary may call a psychiatrist. In case of a crisis, placement is secured in a Forensic Observation and Supervision Unit, which however did not prove necessary in the author's case. The State party concludes that the conditions of the author's detention were compatible with the requirements of article 10(1) of the Covenant.

[1]For the Supreme Court's judgement in cassation, see para. 6.5 below.

6.3 With regard to the second question, the State party argues that the time the author spent waiting before being placed in a psychiatric hospital cannot be classified as a condition of detention, to which article 10(1) would be applicable. According to the State party, this part of the communication should be declared inadmissible as being outside the scope of article 10 of the Covenant.

6.4 In addition, the State party notes that the author is disputing the lawfulness of his detention. However, according to the State party the question whether or not the detention was lawful is irrelevant for the determination of a violation of article 10 of the Covenant, which deals with humane treatment during (lawful or unlawful) detention. On the lawfulness, the State party refers to the judgement of the Supreme Court of 5 June 1998, in a case similar to the author's, in which the Court held that the Minister of Justice was under no obligation, under the terms of the Hospital Orders (Enforcement) Regulations to ensure that all necessary capacity for persons subject to a hospital order was available at all times. The Regulations state that the Minister must take a decision on the placement in a psychiatric hospital unit "as soon as possible". The Supreme Court considered that "a certain friction between available and necessary capacity" was acceptable from the point of view of an efficient deployment of financial resources. The Court ruled that a six months' waiting period may be regarded as acceptable to society. If a person's stay in a remand centre is prolonged beyond six months, the Supreme Court considers this to be unlawful unless special circumstances apply.

6.5 The State party points out that the unlawfulness does not relate, according to the Supreme Court, to the continued deprivation of the person's liberty, but to the failure to begin treatment in an appropriate institution within due time. In such cases, compensation is in order.

6.6 The State party therefore contests the author's claim that his compulsory treatment has become unlawful because of the delay in beginning the treatment. If the author feels that he has been harmed by the prolonged delay in the treatment, he can still file a claim with the court for compensation against the State.

7. In his comments, counsel argues that article 10 encompasses the positive duty of the State party to provide psychiatric treatment to a person who has been ordered to such treatment by the court. No such treatment was provided in the remand centre. With respect to the remedy, counsel argues that compensation is not equal to adequate protection, and that the State party's reasoning is an implicit confession of a violation of article 10.

8.1 In a further submission, the State party contests counsel's statement that the Meijersinstitute is a selection institute rather than a treatment centre. It has been designated by the Minister of Justice as a centre for care of persons subject to a hospital order. In practice, the institute has a double function. It acts as a selection centre in the sense that it observes persons on whom a hospital order has been imposed for a period of seven weeks in order to be able to advise the Minister of Justice as to the most suitable institution for the person in question. Where desirable, it also provides treatment. In the present case, the

author received immediate treatment when he was admitted to the institute pending his placement in the Van der Hoeven clinic.

8.2 The State party joins a judgement of 7 April 1993 by the President of the Groningen District Court in a case similar to the author's. In that case, the applicant had requested the court to order the State to place him in a psychiatric hospital within two weeks in order to begin the compulsory treatment. The Court granted his request. According to the State party, this shows that effective remedies would have been available to the author.

9. In his comments, counsel reiterates that the Meijersinstitute is a selection institute, and not suitable for real treatment, even if short term treatment is provided. He further argues that the judgement of the President of the Groningen District Court is irrelevant to the author's case.

Issues and proceedings before the Committee

10.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

10.2 Two issues are before the Committee: one, whether the State party's failure to place the author without delay in a psychiatric hospital for treatment constitutes a violation of article 10 for the duration of the delay, and two, whether the author's continued compulsory treatment and confinement constitutes a violation of article 10 because of the delay in beginning the treatment.

10.3 With respect to the first issue, the Committee notes that the State party has argued that the author has failed to exhaust domestic remedies, since he could have gone to court to request placement in a psychiatric hospital, and failing that, compensation. Counsel's argument that the author has exhausted domestic remedies because he challenged the renewal of his compulsory treatment order on the basis that it constituted a violation of article 10, only relates to the second issue before the Committee. The Committee has taken note of the fact that the courts in the Netherlands in cases similar to the author's have granted requests for immediate placement in a psychiatric hospital, and subsidiarily compensation, and considers that this recourse provided an effective remedy available to the author. His failure to avail himself of this remedy, renders this part of the communication inadmissible under article 5(2)(b) of the Optional Protocol.

10.4 The Committee considers that the author has exhausted domestic remedies with regard to the second issue. However, the Committee considers that neither counsel's arguments nor the material before it substantiate, for purposes of admissibility, that the author's prolonged compulsory confinement in a psychiatric hospital amounts to a violation of article 10 of the Covenant. Under the circumstances, this part of the communication is inadmissible under article 2 of the Optional Protocol.

10.5 The Committee notes that the facts of the present case could have raised issues under article 9 of the Covenant. However, since this matter has not been raised by the parties, the Committee is not in a position to pronounce itself on this question.

11. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under articles 2 and 5(2)(b) of the Optional Protocol;

(b) that this decision shall be communicated to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]