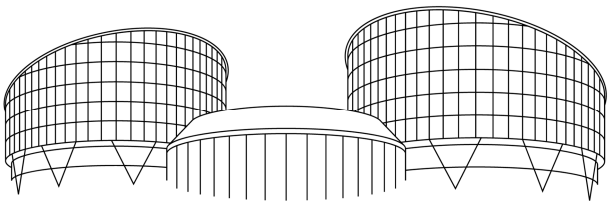

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 13837/07
S.R.
against the Netherlands

The European Court of Human Rights (Third Section), sitting 18 September 2012 as a Chamber composed of:

Josep Casadevall, *President*,
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 22 March 2007,

Having regard to the decision to grant anonymity to the applicant under Rule 47 § 3 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Ms S.R., is a Netherlands national who was born in 1952 and lives in Rotterdam. She was represented before the Court by Mr J. van Broekhuijze, a lawyer practising in Ridderkerk. The respondent Government were represented by their Deputy Agent, Ms L. Egmond, of the Ministry for Foreign Affairs.

## A. Particular circumstances

### *1. Proceedings in the Regional Court up to the applicant's committal*

2. On 31 July 2006 the public prosecutor (*officier van justitie*) submitted a request to the Regional Court (*rechtbank*) of Rotterdam for a provisional court authorisation (*voorlopige machtiging*: hereafter "provisional order") to have the applicant committed to a psychiatric hospital pursuant to the Psychiatric Hospitals (Compulsory Admissions) Act (*Wet bijzondere opnemingen in psychiatrische ziekenhuizen*; "the Act"). The prosecutor's request was based on a medical report issued by a psychiatrist who was not involved in the treatment of the applicant.

3. On 17 August 2006 the Regional Court held a hearing in the presence of the applicant, her counsel, two social-psychiatric nurses, a priest and a sister of the applicant. The Regional Court heard the applicant's general practitioner and the applicant's own psychiatrist.

4. It adjourned the proceedings in order to enable the prosecutor to request authorisation for the applicant to be committed to a psychiatric hospital for observation (*observatiemachtiging*; hereafter "observation order") instead (section 14h of the Act, see below).

5. On 25 August 2006 the public prosecutor lodged a request for an observation order with the Regional Court. The request was accompanied by a new medical report dated 24 August 2006.

6. On 28 August 2006 the Regional Court rejected the request for the provisional order and instead issued an observation order valid until 18 September 2006. In respect of the latter, it held as follows:

> "From the medical report and the clarification provided during the hearing by the physician treating the person concerned it appears that the situation is as follows:
>
> The person concerned is suffering from a paranoid delusional disorder within the framework of schizophrenia.
>
> There are serious reasons for believing that a disturbance of the mental faculties of the person concerned will lead her to pose the following danger to herself:
>
> The person concerned is, probably as a result of her paranoid delusion, very suspicious of her neighbours. The person concerned is said to cause noise disturbance at night. There is a danger that, through her bothersome behaviour, the person concerned will provoke aggression of others against herself.
>
> The committal to and stay in a psychiatric hospital of the person concerned is intended for examination whether she is suffering from a disturbance of the mental faculties and whether that disturbance will lead her to pose a danger to herself.
>
> The danger cannot be averted through the intervention of persons or institutions outside a psychiatric hospital. The person concerned has not shown the necessary willingness to stay in a psychiatric hospital voluntarily."

*2. The applicant's committal and further proceedings*

7. On 30 August 2006 the applicant was admitted to a psychiatric hospital.

8. On the same day she lodged an appeal on points of law (*cassatie*) with the Supreme Court against the issuing of the observation order. She submitted grounds of appeal including, as relevant to the case before the Court, that in breach of section 8(1) of the Act she had not been heard by the Regional Court before the observation order was issued and that, by providing that persons could be committed in order to determine whether they were of unsound mind, section 14 sub h of the Act violated Article 5 § 1 (e) of the Convention, which allowed the detention of persons of unsound mind only after they had been determined actually to be of unsound mind.

9. In parallel, the applicant started summary injunction proceedings (*kort geding*) before the Provisional Measures Judge (*voorzieningenrechter*) of the Regional Court of Rotterdam, seeking the immediate suspension of her committal. On 12 September 2006 the Provisional Measures Judge gave judgment dismissing the applicant's claims. The reasoning included the finding that the hearing of 17 August 2006 had been focused on the deprivation of liberty and that the applicant had been informed of the likelihood that an observation order would be given; a statement made by the applicant's representative to the effect that the judge had informed him by telephone that another hearing would take place was dismissed as unproven.

10. The applicant remained in hospital until 21 September 2006.

*3. The Supreme Court's decision*

11. On 15 December 2006 the Supreme Court declared the applicant's appeal inadmissible for lack of interest as the order in issue had already lapsed in the meantime. However, in view of the relevance of the legal questions raised by the grounds for the appeal, the Supreme Court nonetheless addressed the merits of a number of her grounds of appeal.

12. Its reasoning, *obiter dictum*, was as follows:

> "4.1. The Supreme Court nonetheless considers it useful, in view of the importance of the legal questions arising from the points of appeal, to consider the following.
>
> 4.2. The observation order given by the Regional Court in pursuance of section 14 of the Psychiatric Hospitals (Compulsory Admission) Act is grounded on the Regional Court's assessment of the state of the person concerned, which is in the following terms:
>
> [etc., see paragraph 6 above]
>
> 4.3. Point of appeal no. 9 argues that section 14h(1) of the Psychiatric Hospitals (Compulsory Admission) Act is incompatible with Article 5 § 1 (e) of the Convention, because that provision only allows the detention of persons actually of unsound mind,

whereas section 14(1) of the Psychiatric Hospitals (Compulsory Admission) Act provides for compulsory admission to determine whether there is an impairment of the mental faculties.

4.4. On this point, the Supreme Court takes the following view. It follows from the case-law of the European Court of Human Rights cited in ... the advisory opinion of the Advocate General that it is, in principle, permissible to deprive persons of unsound mind of their liberty if it has been reliably shown (*op deugdelijke wijze is aangetoond*) that the person concerned is of unsound mind. Nevertheless, the Court has considered it acceptable that a person may briefly be detained in a psychiatric hospital involuntarily so that it can be determined whether he or she is suffering from a mental illness, but only in urgent cases or when the person concerned is detained in connection with his or her violent behaviour, the examination then having to take place immediately after the deprivation of liberty. In all other cases, an examination into the mental state must precede any deprivation of liberty. If however such an examination proves impossible because the person concerned refuses to submit to examination, review by a medical expert on the basis of the file may suffice, in the absence of which it cannot be assumed that the person concerned is mentally ill.

4.5. An observation order within the meaning of section 14h of the Psychiatric Hospitals (Compulsory Admission) Act is intended, according to the second paragraph of that provision, to determine whether there is a disturbance of the mental factulties and whether the disturbance causes the person concerned to pose a danger to him or herself. The order can be given if, as section 14h(1) provides, there is serious reason to believe (*het ernstig vermoeden bestaat*) that he or she is suffering from a disturbance of his or her mental faculties (*stoornis van de geestvermogens*) which could lead him or her to pose a danger to him- or herself. Section 14h(4) provides that the application for an observation order must be accompanied by a medical report as referred to in that provision, from which it appears that there is a case as referred to in section 14h(1). Taking this into account, the Supreme Court considers it acceptable under Article 5 of the Convention to give an observation order only if on the basis of the medical report submitted it can be assumed, with sufficient certainty, that the person concerned is suffering from a disturbance of the mental faculties requiring further examination within the framework of the observation and there is serious reason to believe that that disturbance causes him or her to pose a danger to him or herself. To that extent, it is correctly argued that section 14h, in setting the condition that there is serious reason to believe that the mental disturbance should lead the person concerned to pose a danger to him- or herself, gives a wider description of the cases in which an observation order can be granted than is compatible with Article 5 of the Convention.

4.6. Nonetheless, and even assuming that the appeal on points of law were admissible, the point of appeal would not have led the Supreme Court to quash the Regional Court's judgment. The Regional Court has in fact found, on the basis of the medical report submitted, that the person concerned is suffering from a paranoid delusional disorder within the framework of schizophrenia and that there is serious reason to believe that the person concerned, as a result of this disturbance of her mental faculties, displays noisome behaviour and thereby provokes the aggression of others against herself. In so finding, the Regional Court has not applied section 14h of the Psychiatric Hospitals (Compulsory Admission) Act in a way that is incompatible with Article 5 of the Convention.

4.7. Points of appeal 8 and 12 ... complain that the Regional Court acted contrary to section 8(1) of the Psychiatric Hospitals (Compulsory Admission) Act by deciding without hearing the person concerned and on the basis, additionally, of a new medical

report which the person concerned has not been able to challenge. The Regional Court has heard the person concerned on 17 August 2006, it is true, but that concerned the public prosecutor's application ... of 31 July 2006 for a povisional order within the meaning of section 2 of the Psychiatric Hospitals (Compulsory Admission) Act. It appears that the Regional Court then applied section 8a of the Psychiatric Hospitals (Compulsory Admission) Act, after which the public prosecutor lodged the application for an observation order which the Regional Court accepted in its decision of 28 August 2006, which later application, according to the documents contained in the case file, was accompanied by a new medical report dated 24 August 2006. The Psychiatric Hospitals (Compulsory Admission) Act does not allow a person concerned to be heard in advance, nor that a person concerned should waive in advance his or her right to be heard on an application for an order based on the Psychiatric Hospitals (Compulsory Admission) Act that has yet to be submitted."

### *4. The medical director's letter of 31 August 2006 and ensuing proceedings*

13. The applicant has submitted a letter from the medical director for compulsory admissions (*geneesheer-directeur BOPZ*), dated 31 August 2006, which is in the following terms:

"Further to your letter ... received on 31 August 2006, we herewith confirm in writing our telephone conversation of this afternoon concerning the observation order for Ms S.R.

We do not subscribe to the ground you rely on to argue that the effect of the decision to give an observation order is suspended. We will therefore not comply with your request to release Ms S.R. from our hospital.

...

We have a valid judicial decision for an observation order for Ms S.R. Section 14h(4) taken together with section 10(1) of the Psychiatric Hospitals (Compulsory Admissions) Act provides that the court's decision is immediately enforceable (*bij voorraad uitvoerbaar*). Section 14h(4) taken together with section 9(5) of the Psychiatric Hospitals (Compulsory Admissions) Act provides that no appeal on the merits (*hoger beroep*) lies against the decision. It is however possible to lodge an appeal on points of law with the Supreme Court. ..."

14. The applicant states that she requested the public prosecutor to seek a decision of the court in the matter, but that the public prosecutor refused.

### *5. The psychiatrist's letter of 23 March 2007*

15. The applicant has submitted a letter from a psychiatrist, dated 23 March 2007, on the letterhead stationery of the psychiatric hospital. It reads as follows:

"The patient was in our care from 30 August 2006 until 21 September 2006.

**Psychiatric history:**

2004-05: The Regional Institute for Out-Patient Mental Health Treatment (*Regionaal Instituut voor Ambulante Geestelijke Gezondheidszorg*; "RIAGG") tried to develop a therapeutic relationship with the patient because of persistent complaints from several neighbours about noise.

2006: EMC Out-Patient Clinic. Conclusion: A 54-year-old woman who has serious problems with her neighbours, two conflicting stories exist. It is not possible to reach a diagnosis on the information available.

**Anamnesis and progress:**

The patient is very loquacious and towards the end of discussions gets bogged down in a story line that cannot any longer be followed. The content of the discussions concerns all the injustice that has been done to her over the last few years by her RIAGG carer and the neighbours. She also alleges that injustice is done to her by an institutional landlord from whom she rents her second home. None of this can be verified. In other words, it is difficult to assess whether her allegations or 'innocent remarks' are within the bounds of what is normal or paranoid delusions (*paranoïde wanen*).

**Psychiatric examination:**

Well-groomed, is busy at the table in the lounge making some loose notes. She is lucid, her recognition of persons and orientation in time and place are intact. Her perceptive faculties appear unimpaired but the patient will not discuss perception at any length. Her thinking is very diffuse and for a short period incoherent. Her mood is normal with a somewhat pronounced, not always quite adequate, modulating effect.

**Provisional conclusion:**

As far as can be established on the basis of the observation [emendation by the Court], neither the observation of the patient's behaviour nor repeated psychiatric examination have provided clear indications of psychosis. Mild psychotic symptoms can however be dissembled.

**Classification according to DSM-IV:**

Axis I: Diagnosis deferred

Axis II: Diagnosis deferred."

## B. Relevant domestic law

16. At the time of the events complained of, the Psychiatric Hospitals (Compulsory Admissions) Act, in its relevant parts, provided as follows:

**Section 2**

"1. The court may, on the application of the public prosecutor, issue provisional authorisation for committal of a person whose mental faculties are disturbed to be admitted and kept in a psychiatric hospital. ..."

**Section 8**

"1. Before taking a decision on the application for provisional authorisation the court shall hear the person in respect of whom the authorisation is sought, unless it finds that the person concerned is not willing to be heard. ..."

**Section 8a**

"If on the basis of its examination the Regional Court has doubts as to whether in the given circumstances a measure other than that requested might not be more suitable, it may communicate these doubts to the public prosecutor; if necessary the Regional Court shall indicate at the same time that its consideration of the case will be continued at a later time."

**Section 9**

"...

5. No appeal on the merits shall lie against the decision to grant provisional authorisation. ..."

**Section 10**

"1. The decision of the court shall be immediately enforceable. ..."

**Section 14h**

"1. The court may, on the application of the public prosecutor, issue an authorisation for committal for observation to have the person concerned admitted and kept in a psychiatric hospital if there is serious reason to believe (*het ernstig vermoeden bestaat*) that he or she is suffering from a disturbance of his or her mental faculties (*stoornis van de geestvermogens*) which could lead him or her to pose a danger to him- or herself.

2. An authorisation for committal for observation shall serve to examine whether:

a. a disturbance of the mental faculties exists; and

b. such disturbance leads the person concerned to pose a danger to him- or herself.

3. The authorisation for committal for observation shall be valid for no more than three weeks after the day on which the person concerned is admitted to a psychiatric hospital, without prejudice to [section ... 49].

4. Sections ... 9(1), first sentence, 9(2)-(5), [and] 10(1)-(3) ... shall apply by analogy, it being understood that it must appear from the medical report ... that the situation is one as referred to in the first paragraph."

**Section 35**

"1. If the person in relation to whom the public prosecutor had submitted a request for an order as referred to in this chapter [including, at the time, section 14h], or for a decision ordering release ..., has suffered damage as a result of the failure of the court or the public prosecutor to observe one of the provisions in this chapter [which includes the above provisions] ..., the court shall, at the request of the person concerned, award him or her damages to be determined in equity at the State's expense."

**Section 49**

"1. A patient held in a psychiatric hospital in the application of chapter II, §§ 1 through 4 [i.e. including sections 8, 9, 10 and 14h of this Act] ... can ask the medical director of the psychiatric hospital for the conditional release or release of the patient from the hospital.

...

3. In case of a refusal, the person who has received the decision ... may request the public prosecutor to seek the decision of the court. The request shall be in writing; a copy of the original request and the decision of the medical director shall be appended. ..."

17. A sunset clause was linked to section 14h, providing for an evaluation of the measure as of 1 January 2008, after which it would lapse automatically on 31 December 2008 unless extended by order in council (*algemene maatregel van bestuur*). The Government having elected not to extend it, it lapsed automatically on 31 December 2008.

## C. Relevant international law

18. Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder, in its relevant part, reads as follows:

**Article 17 – Criteria for involuntary placement**

"1. A person may be subject to involuntary placement only if all the following conditions are met:

i. the person has a mental disorder;

ii. the person's condition represents a significant risk of serious harm to his or her health or to other persons;

iii. the placement includes a therapeutic purpose;

iv. no less restrictive means of providing appropriate care are available;

v. the opinion of the person concerned has been taken into consideration.

2. The law may provide that exceptionally a person may be subject to involuntary placement, in accordance with the provisions of this chapter, for the minimum period necessary in order to determine whether he or she has a mental disorder that represents a significant risk of serious harm to his or her health or to others if:

i. his or her behaviour is strongly suggestive of such a disorder;

ii. his or her condition appears to represent such a risk;

iii. there is no appropriate, less restrictive means of making this determination; and

iv. the opinion of the person concerned has been taken into consideration."

# COMPLAINTS

19. The applicant complained under Article 5 § 1 of the Convention that she had been deprived of her liberty on the ground of a mere suspicion, without any proper determination that she was in fact of unsound mind.

20. She complained that her appeal on points of law had been declared inadmissible by the Supreme Court for lack of interest. In so doing the Supreme Court had deprived her of a review of the original decision, contrary to Article 2 of Protocol No. 7 to the Convention.

21. She complained under Article 6 that she had not been informed that the hearing before the Regional Court would concern an application for an observation order in addition to the application for a provisional order, which had deprived her of a proper chance to defend herself, and that she had not been given the opportunity to ask for a preliminary ruling to be sought from the Court.

# THE LAW

## A. Alleged violation of article 5 § 1 of the Convention

22. The applicant complained that she had been detained on the ground of a suspicion that she was of unsound mind, as distinct from an established disorder. She alleged a violation of Article 5 § 1 of the Convention, which reads 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 of unsound mind ..."

23. The Government argued that absent the possibility of alternative, less restrictive measures, the existence of strong grounds for suspecting that a person was a danger to him or herself owing to a mental disorder was sufficient to order the temporary involuntary committal of a person for diagnostic purposes.

24. They referred to, in particular, Article 17 § 2 of Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder (see paragraph 18 above).

25. The observation order had been given for a limited time, no more than three weeks, and had been intended to enable the court to determine whether an interim or provisional order was necessary. The proceedings

leading to the giving of the order had been presided over by an independent judge.

26. The applicant argued that she had been detained for observation purposes on a mere suspicion that she was of unsound mind. No impairment of her mental faculties had actually been established when the order was given.

27. There had been no urgency requiring her to be detained without delay; it would have been possible to subject her to an examination before the order was given. Nor had her behaviour been violent.

28. In actual fact, there had been no diagnosis of any mental impairment justifying her detention. This was reflected by the psychiatrist's letter of 23 March 2007. She had been set up by her neighbours, who had told untruths to the police.

29. The Court reiterates its established case-law according to which an individual cannot be considered to be of "unsound mind" and deprived of his liberty unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (the so-called *Winterwerp* criteria, see the *Winterwerp v. the Netherlands* judgment of 24 October 1979, Series A no. 33, pp. 17-18, § 39; as more recent authorities, see, *inter alia*, *Varbanov v. Bulgaria*, no. 31365/96, § 45, ECHR 2000-X; *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 48, ECHR 2003-IV; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 145, ECHR 2012).

30. The Court further reiterates that a necessary element of the "lawfulness" of the detention within the meaning of Article 5 § 1 (e) is the absence of arbitrariness. The detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. The deprivation of liberty must be shown to have been necessary in the circumstances (see, *inter alia*, *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III; *Varbanov*, cited above, § 46; *Hilda Hafsteinsdóttir v. Iceland*, no. 40905/98, § 51, 8 June 2004; *Enhorn v. Sweden*, no. 56529/00, § 36, ECHR 2005-I; and *Stanev*, cited above, § 145).

31. No deprivation of liberty of a person considered to be of unsound mind may be deemed in conformity with Article 5 § 1 (e) of the Convention if it has been ordered without seeking the opinion of a medical expert. Any other approach falls short of the required protection against arbitrariness, inherent in Article 5 of the Convention (see *Varbanov*, cited above, § 47).

32. The particular form and procedure in this respect may vary depending on the circumstances. It may be acceptable, in urgent cases or where a person is arrested because of his or her violent behaviour, that such

an opinion be obtained immediately after the person is first placed in detention. In all other cases a prior consultation is necessary. Where no other possibility exists, for instance due to a refusal of the person concerned to appear for an examination, at least an assessment by a medical expert on the basis of the file must be sought, failing which it cannot be maintained that the person has reliably been shown to be of unsound mind (see *Varbanov*, cited above, § 47; and *Shulepova v. Russia*, no. 34449/03, § 42, 11 December 2008).

33. The national authorities have a certain discretion regarding the merits of clinical diagnoses since it is in the first place for them to evaluate the evidence in a particular case: the Court's task is to review under the Convention the decisions of those authorities (see *Winterwerp*, cited above, § 40; *X v. the United Kingdom*, 5 November 1981, § 42, Series A no. 46; *Luberti v. Italy*, 23 February 1984, § 27, Series A no. 75; *H.L. v. the United Kingdom*, no. 45508/99, § 98, ECHR 2004-IX; *Frank v. Germany* (dec.), no. 32705/06, ECHR 28 September 2010; and *Biziuk v. Poland (no. 2)*, no. 24580/06, § 42, 17 January 2012).

34. Turning to the facts of the case, the Court observes that a medical report drawn up by a qualified practitioner not involved in her existing treatment was available even before the hearing took place (see paragraph 2 above). This document has not been submitted to the Court. However, in the light of the summary given by the Regional Court in its decision, the Court is not disposed to doubt that it reflected genuine concerns that the applicant's mental state was such as to justify at least her detention for a limited period so as to make sure.

35. The applicant denies that her behaviour was violent. It is clear, however, that two conflicting accounts exist; this is apparent from the decision of the Regional Court (see paragraph 6 above), which mentions complaints about the applicant's behaviour and describes the applicant as suspicious of her neighbours, and stated in so many words in the psychiatrist's letter of 23 March 2007 (see paragraph 15 above). For its part, and noting that neither of the two psychiatric reports presented in the proceedings in the Regional Court has been submitted, the Court points out that the applicant has not submitted a shred of proof that her neighbours set her up, nor even offered the slightest beginning of an explanation why they should go to the lengths of involving the police if their version of events be entirely untrue.

36. It cannot be decisive that the applicant was released after three weeks' observation and that the applicant's mental condition was never determined to be dangerous. The letter of 23 March 2007 certainly does not satisfy the Court that a problem did not exist; in this letter, the psychiatrist states his doubts on the matter and defers his diagnosis.

37. The Court has interpreted Article 5 § 1 (e) so as to allow the detention of persons who have abused alcohol and whose resulting

behaviour gives rise to genuine concern for public order and for their own safety (see *Witold Litwa*, cited above, § 62, and *Hilda Hafsteinsdóttir*, cited above, § 42). The same applies to persons in respect of whom there is sufficient indication that they may be of unsound mind.

38. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### B. Alleged violation of Article 5 § 4 of the Convention

39. The applicant complained, without invoking any particular provision of the Convention, of the Supreme Court's decision declaring her appeal on points of law inadmissible.

40. The Court construes this as a complaint under Article 5 § 4, which provides as follows:

> "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."

41. The Government argued that the applicant could have asked the medical director of the psychiatric hospital to discharge her. If met with a refusal, she could have sought an order for her release from the Regional Court. In the further alternative, she had available to her the option of summary injunction proceedings before the Provisional Measures Judge; she had in fact made use of this possibility.

42. Moreover, the Supreme Court had in fact expressed its views on the complaints which the applicant had placed before it, albeit by way of *obiter dictum*.

43. The applicant's position was that the Supreme Court had declared her appeal on points of law inadmissible on the ground that she had no longer any legal interest in the proceedings, the observation order having long since expired. In fact, she had a valid interest in that, having been the victim of a violation of Article 5 § 1, she was entitled to compensation.

44. The applicant dismissed as ineffective the possibility offered by section 49 of the Psychiatric Hospitals (Compulsory Admissions) Act (see paragraph 16 above) of asking the medical director of the psychiatric hospital to release her, since she had been met with a refusal both from the medical director and from the public prosecutor. She also argued that she was prevented from seeking damages under section 35 of the Psychiatric Hospitals (Compulsory Admissions) Act, or in tort under civil law, in the absence of a judgment of the Supreme Court recognising her claim.

45. The Court observes that, regardless of alternative procedural avenues open to the applicant, her complaint is confined to the decision of the Supreme Court declaring her appeal on points of law inadmissible on the

ground that, the validity of the observation order having long expired, she no longer had any legal interest.

46. This choice is binding on the Court. In availing herself of Article 34, the applicant was free to decide upon the measures of which she would claim to be the victim. What Article 35 § 1 in principle prevents is coming directly before the Court with a complaint which has not first been litigated within the national legal order; on the other hand, the person concerned is not obliged by Article 35 § 1 to repeat in his or her application to the Court the full case he or she argued before the relevant national authorities (see *Deweer v. Belgium*, 27 February 1980, § 29, Series A no. 35).

47. In *S.T.S. v. the Netherlands*, no. 277/05, § 61, ECHR 2011, the Court held as follows (case-law references omitted):

> "[I]n declaring the applicant's appeal on points of law inadmissible as having become devoid of interest the Supreme Court deprived it of whatever further effect it might have had (...). The Court would point out in this connection that a former detainee may well have a legal interest in the determination of the lawfulness of his or her detention even after having been released. The issue may arise, for example, in giving effect to the 'enforceable right to compensation' guaranteed by Article 5 § 5 of the Convention (...), where it may be necessary to secure a judicial decision which will override any presumption under domestic law that a detention order made by a competent authority is *per se* lawful."

48. It is true that the Supreme Court declared the applicant's claim inadmissible as the order appealed against could no longer be overturned. However, it was not thereby prevented from ruling on the lawfulness of the applicant's detention. Although it did not accept the applicant's complaints as regards the legality of her detention, it did actually express itself in her favour on the complaint that she had not had a proper opportunity to argue her case against the delivery of an observation order as distinct from a provisional order (see paragraph 4.7 of the Supreme Court's decision, quoted in paragraph 12 above). Had the applicant brought proceedings to obtain compensation for damage, be it under section 35 of the Psychiatric Hospitals (Compulsory Admissions) Act or under civil law, the court seized of the case would have found the Supreme Court's opinion impossible to ignore.

49. The Supreme Court's decision therefore did not have the effect of depriving the applicant of a decision on the merits of her appeal on points of law. Nor can the Court find it established that the applicant was prevented from enjoying the effects of that decision in so far as it was favourable to her position.

50. It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## C. Other alleged violations of the Convention

51. The applicant complained under Article 6 of the Convention, firstly, that she had not been heard in advance and that she had not been told that the judicial examination would involve an application for an observation order; and secondly, that she had been denied the chance to ask the courts to seek a preliminary ruling from the Court on the question of compliance with Article 5 of the Convention. She complained under Article 2 of Protocol No. 7 that she had been denied review of the observation order as a result of the Supreme Court's decision.

52. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that these complaints too are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President