

July 1998

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## **Aerts v. Belgium - 25357/94**

Judgment 30.7.1998

### **Article 5**

#### **Article 5-1**

##### **Lawful arrest or detention**

#### **Article 5-1-e**

##### **Persons of unsound mind**

Applicant held, for seven months of his total detention, in the psychiatric wing of an ordinary prison, rather than in a social protection centre designated by the relevant mental health board: *violation*

[This summary is extracted from the Court's official reports (Series A or *Reports of Judgments and Decisions*). Its formatting and structure may therefore differ from the Case-law Information Note summaries.]

### **I. GOVERNMENT'S PRELIMINARY OBJECTIONS**

#### **A. Applicant's lack of "victim" status**

Applicant could claim to be a "victim" because fact that he had been detained for too long in psychiatric wing of Lantin Prison had affected him directly.

*Conclusion*: objection dismissed (unanimously).

#### **B. Late submission of the application**

Court of Cassation Legal Aid Board's decision, which had put an end to action brought by applicant and made it impossible for any subsequent compensation claim to succeed, was final decision from which six-month limit began to run – objection could not be upheld.

*Conclusion*: objection dismissed (unanimously).

### **II. ARTICLE 5 § 1 OF THE CONVENTION**

Length of provisional detention pending transfer not specified by any statutory or other provision – nevertheless, necessary to determine whether, in view of detention order's purpose, continuation of provisional detention for seven months could be regarded as lawful – documents produced before Court showed sufficiently clearly that psychiatric wing in question could not be regarded as an institution appropriate for the detention of persons of unsound mind – proper relationship between aim of detention and conditions in which it took place therefore deficient.

*Conclusion*: violation (unanimously).

### **III. ARTICLE 5 § 4 OF THE CONVENTION**

In circumstances of case, application for injunction lodged by applicant satisfied the requirements of Article 5 § 4.

*Conclusion:* no violation (unanimously).

### **IV. ARTICLE 6 § 1 OF THE CONVENTION**

Present case did not involve “determination of a criminal charge” – on other hand, outcome of proceedings was decisive for civil rights – dispute concerned lawfulness of a deprivation of liberty – the right to liberty, which was at stake, was a civil right.

Applicant could legitimately apply to Legal Aid Board with a view to an appeal on points of law since in civil cases Belgian law required representation by counsel before Court of Cassation – by refusing application, Board impaired the very essence of the applicant’s right to a tribunal.

*Conclusion:* violation (unanimously).

### **V. ARTICLE 3 OF THE CONVENTION**

Living conditions on psychiatric wing at Lantin did not seem to have had such serious effects on applicant’s mental health as would bring them within scope of Article 3 – not conclusively established that applicant suffered treatment that could be classified as inhuman or degrading.

*Conclusion:* no violation (seven votes to two).

### **VI. ARTICLE 50 OF THE CONVENTION**

A. Non-pecuniary damage: Applicant must have suffered a certain amount of non-pecuniary damage which the finding of the breaches concerned was not in itself sufficient to make good – compensation awarded on an equitable basis.

B. Costs and expenses: Reimbursed on an equitable basis.