EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 10448/83

Sylvain DHOEST against BELGIUM

REPORT OF THE COMMISSION

(adopted on 14 May 1987)

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights and of the procedure before the Commission.

A. The application

2. The applicant, a Belgian citizen, was born in 1938. In the proceedings before the Commission he is represented by Mr. P.R.W. Schaink, a lawyer practising in Amsterdam. The Government is represented by its Agent, Mr. J. Niset, of the Ministry of Justice.

3. On 28 March 1961 the Indictment Chamber of the Ghent Court of Appeal directed that the applicant be confined for a period of 15 years to a special institution on the basis of the Act of Social Protection in respect of Mental Defectives and Habitual Offenders 1930 ("Loi de défense sociale à l'égard des anormaux et des délinquants d'habitude"), it having been established that the applicant had committed double homicide, murder and attempted murder and a series of qualified thefts.

4. He was initially detained in the custodial mental institution ("Etablissement de défense sociale") at Tournai where he spent most of his detention until 19 May 1982 when he was transferred to Ghent. On a number of occasions he was moved to other institutions following decisions by the competent Mental Health Review Board ("Commission de défense sociale") or by the Minister of Justice by virtue of the above Act, as amended in 1964.

5. At no stage did the Mental Health Review Board consider that the applicant fulfilled all conditions for his release.

The applicant finally escaped on 7 July 1982 and fled to the Netherlands, where he went into hiding in July 1983 after the failure of his efforts to have the decision allowing his extradition revoked by the Dutch authorities (1).

6. The case concerns the legal and material conditions under

which the applicant was detained and presumably will be detained if he is returned to Belgium.

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(1) The events which have occurred in the Netherlands following his flight from Belgium are the object of a separate application directed against the Netherlands (No. 10447/83).

B. The proceedings

7. The application was introduced on 24 June 1983 and registered on 27 June 1983.

On 28 June 1983 the applicant was informed by the Secretary to the Commission that the President of the Commission had decided that the application was not of such a nature as to warrant the application of Rule 36 of the Commission's Rules of Procedure.

8. On 9 July 1983 the Commission decided, in accordance with Rule 42 para. 2 (b) of its Rules of Procedure to give notice of the application to the respondent Government and to invite them to present before 17 September 1983 their observations in writing on the admissibility and merits of the application.

9. At the request of the Government the time-limit for the submission of the observations was extended until 1 December 1983 and, following a further request, until 1 January 1984. On 27 December 1983 the Government presented their observations on the admissibility and merits of the application. The applicant, having been granted an extension for the submission of his observations in reply, submitted these on 13 April 1984.

10. The Commission re-examined the application in the light of the above observations on 12 July 1984 and declared the application admissible, considering that the applicant's allegations raised substantial issues of fact and law, in particular as regards Articles 3 and 5 of the Convention.

11. The Commission further examined the application on 11 October 1984 and decided to invite the Parties to present further observations as regards the conditions of the applicant's detention in Tournai. On the same day it decided not to take any further action in relation to a new request made on behalf of the applicant under Rule 36 of the Rules of Procedure.

12. At the request of the Government the time-limit for the submission of the supplementary observations was extended until 7 January 1985 and, following a further request, until 8 February 1985. On 4 February 1985 the Government presented their supplementary observations. The applicant replied on 18 March 1985.

13. The Commission resumed consideration of the application on 11 May 1985. It decided that a delegation of the Commission, designated in conformity with Article 28 para. 2 of its Rules of Procedure, should visit the Institution at Tournai where the applicant had been detained.

14. The delegates' visit took place on 21 June 1985. The Commission's delegation was composed of Mr. H.G. Schermers, Mr. H. Danelius and Mr. H. Vandenberghe. The applicant was represented by his lawyer, Mr. P.R.W. Schaink; the Government were represented by Mr. J. Niset, Agent of the Government, Mrs. Lauwers, Direction Générale de l'Administration Pénitentiaire, Ministry of Justice, and Mr. Lefebvre, Inspector General of Prisoners, Ministry of Justice.

15. The Commission resumed consideration of the application on 6 July 1985 in the light of the report by the Delegates on their visit and decided to invite the Parties to submit additional supplementary observations on the merits in particular on Articles 3 and 5 of the Convention.

The applicant submitted these observations on 19 September 1985; the Government submitted their observatons on 12 December 1985.

16. On 14 March 1986 the Commission granted the applicant legal aid.

17. After declaring the case admissible, the Commission, acting in accordance with Article 28 (b) of the Convention, also placed itself at the disposal of the Parties with a view to securing a friendly settlement.

18. Active consultations with the Parties took place between July 1984 and July 1986. On 2 July 1986 the applicant's counsel informed the Commission that his client had been arrested on 23 June 1986 in the Netherlands on several charges and requested the Commission to suspend examination of the case pending further developments.

19. In the light of the communication received from the applicant on 3 October 1986, from which it appeared that the applicant had been convicted and sentenced to 9 years' imprisonment for robberies in the Netherlands, the Commission now finds that there is no basis upon which such a settlement can be effected.

C. The present Report

20. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
E. BUSUTTIL
G. JÖRUNDSSON
S. TRECHSEL
B. KIERNAN
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G. THUNE
Sir Basil HALL
Mr. F. MARTINEZ

21. The text of this Report was adopted on 14 May 1987 and is now transmitted to the Committee of Ministers of the Council of Europe in accordance with Article 31 para. 2 of the Convention.

22. The purpose of the Report, pursuant to Article 31 of the Convention, is:

i. to establish the facts; and

ii. to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

23. A schedule setting out the history of the proceedings before

the Commission is attached hereto as Appendix I and the Commission's decisions on the admissibility of the application forms Appendix II.

24. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

25. This section of the Report contains a description of the undisputed facts found by the Commission on the basis of the information submitted by the Parties and the visit carried out by the Commission's Delegation.

A. Relevant domestic law

26. The conditions for the confinement and detention of persons of unsound mind involved in criminal proceedings in Belgium were originally laid down in the Act of Social Protection in respect of Mental Defectives and Habitual Offenders ("Loi de défense sociale à l'égard des anormaux et des délinquants d'habitude") of 9 April 1930 ("the 1930 Act").

27. Confinement on the basis of that Act could be ordered by the trial court if it was satisfied that the person concerned had committed an act defined as a criminal offence or crime and that he was mentally insane or seriously suffering from mental disorder which rendered him incapable of controlling his acts (Article 7). Depending on the nature of the offence, the confinement could last for 5, 10 or 15 years (Article 19).

28. A discharge could be ordered if the mental condition of the patient had improved to such a degree that he no longer constituted a danger to the public (Article 20). The decision as regards the patient's discharge lay with a board, composed of a magistrate, a barrister and a doctor attached to the psychiatric ward of the penitentiary (Article 13).

If discharge had not been ordered by the competent board, the trial court could, at the request of the public prosecutor, renew the confinement order for another 5, 10 or 15 years (Article 22).

29. The provisions of this Act were replaced by new legislation enacted on 1 July 1964 (the "1964 Act"). The major relevant features of the 1964 Act can be described as follows:

30. Confinement on the basis of the Act may be ordered by the trial court in respect of persons who have committed a crime or a criminal offence and who, at the time of the trial, are mentally insane or in a serious state of mental disorder rendering them incapable of controlling their acts (Article 7). This decision is subject to appeal (Article 8).

31. Detention is ordered for an indefinite period. The execution of the detention order falls within the competence of a Mental Health Review Board ("Commission de défense sociale"), set up under Article 12 of the Act, consisting of three members: an actual or honorary magistrate, who presides, a barrister and a doctor, each of them having several substitutes (Article 12).

The president and his substitutes are designated by the first president of the Court of Appeal. The barrister and his substitutes are chosen by the Minister of Justice from two lists of three names, one submitted by the public prosecutor's office, the other by the president of the bar. The doctor and his substitutes are designated by the Minister of Justice.

32. The Mental Health Review Board determines the place of confinement (Article 14). It may also order the transfer of the patient to another institution, either ex officio or at the request of the public prosecutor or the detainee or his counsel, or order a limited release scheme, subject to conditions fixed by the Minister of Justice (Article 15).

In case of emergency, transfer to another institution may be ordered provisionally by the President of the Mental Health Review Board, subject to approval by the Board at its next meeting (Article 17 para. 1). The Minister of Justice may also order the transfer of the detainee to another institution for reasons of security (Article 17 para. 2).

33. Before determining the place of confinement the Mental Health Review Board may seek the advice from an independent doctor. The detainee may submit a medical counter-expertise by a doctor of his own choice. The detainee or his counsel must be heard by the Mental Health Review Board. The file is made available to the detainee's counsel for four days. Hearings by the Mental Health Review Board are held in camera. If the presence of the detainee is not possible for medical reasons, the detainee is represented by counsel. The deliberations of the Mental Health Review Board are held in private (Article 16).

34. The competent Mental Health Review Board keeps itself regularly informed of the state of mental health of the detainee. It examines the question of discharge ex officio, or at the request of the public prosecutor, or upon application by the detainee himself or his counsel. Discharge may be ordered unconditionally or conditionally if the patient's state of mental health has improved sufficiently and if conditions for social rehabilitation are met (Article 18 para. 1).

If the discharge which is decided is conditional, the patient is subject to medico-social supervision, details of which are specified in the discharge order (Article 20 para. 1).

Unsuccessful applications for discharge by the detainee may only be renewed six months after the decision concerned (Article 18 para. 2).

35. The decision to discharge a detainee, which may not be executed until after two days, is notified to the public prosecutor, who may appeal. Appeals are examined by the Mental Health Review Appeals Board ("Commission Supérieure de défense sociale"). The Mental Health Review Appeals Board consists of an actual or honorary judge at the Court of Cassation or at a Court of Appeal, a barrister and a medical doctor with special qualifications (Article 13). The detainee and his counsel are heard and Article 16 applies accordingly. The Mental Health Review Appeals Board must decide within one month (Article 19).

36. A person who is confined on the basis of this Act does not automatically lose the capacity to administer his property. However, in the interest of the detainee, a provisional administrator may be appointed (Article 29 para. 1) either by judicial decision or by decision of the competent Mental Health Review Board.

B. Particulars of the present application

37. On 28 March 1961 the Indictment Chamber of the Ghent Court of Appeal directed that the applicant be confined for a period of 15 years to a special institution on the basis of the 1930 Act, it having been established that the applicant had committed double homicide, murder and attempted murder and a series of qualified thefts.

38. On the same day the Mental Health Review Board of Ghent ordered that the applicant be placed in the custodial mental institution ("Etablissement de défense sociale") at Tournai.

Since then he has been kept most of the time at that institution and most of his complaints concern his treatment there. It should, however, be mentioned that he stayed elsewhere for certain periods.

39. In the course of December 1961 it was decided that the applicant should be transferred to Turnhout. In June 1962 the applicant was returned to Tournai.

40. In July 1963, following a decision by the Mental Health Review Board, the applicant was again returned to Turnhout. He escaped from that institution on 6 January 1964 and was re-arrested on 11 January 1964.

Following his escape, the Mental Health Review Board on 3 February 1964 ordered that he should be returned to Tournai as it considered that this institution was the only one which was sufficiently secure for dangerously insane persons such as the applicant.

41. In the course of December 1966 the Mental Health Review Board acceded to the applicant's request for transfer to the psychiatric ward of the Ghent prison in order to be examined by the psychiatrist of his own choice, Dr. Geirnaert.

42. On 1 March 1967 the applicant was again returned to Tournai. On 10 March 1967 the applicant made an unsuccessful attempt to escape from the courtyard. As from September 1967 the applicant was placed under special surveillance.

43. In December 1967 he was transferred back to the psychiatric ward of Ghent prison, from where he attempted to escape on 21 February 1968.

Following this incident the Minister of Justice ordered in conformity with Article 17 para. 2 of the Act that, for reasons of security, he should be transferred to Tournai.

44. In December 1969 the Mental Health Review Board ordered the applicant's transfer to the psychiatric unit of Ghent prison.

On 23 February 1970, the applicant was again transferred to Turnhout. For security reasons he was placed for a long period under close surveillance.

The applicant was returned to Tournai on 16 August 1971.

On 27 April 1972 the applicant was transferred at his request to Ghent for a period of 15 days in order to facilitate visits by his mother. The Mental Health Review Board authorised his stay in Ghent until October 1973. It instructed a team of three medical experts to report on the applicant's state of mental health.

45. On 9 October 1973 the Mental Health Review Board rejected a request for release introduced by the applicant considering that no substantial improvement in the mental condition of the applicant had occurred and decided to return the applicant to Turnhout.

The director of the prison of Turnhout informed the Minister of Justice by letter of 16 October 1973 of his doubts as regards the propriety of the applicant's return to that institution, in view of the difficulties he had caused in the past for his fellow detainees

and the prison staff. The Minister then decided on 20 October 1973, in accordance with Article 17 para. 2 of the 1964 Act, to return the applicant to Tournai for security reasons.

46. On 4 July 1975 it was decided, after consultations between the President of the Mental Health Review Board and the prison administration, to transfer the applicant to the prison of St. Gilles for a thorough personality examination. This prison comprises a Penitentiary Orientation Centre (Centre d'Orientation Pénitentiaire ("C.O.P.")), run by a multidisciplinary team, directed by a psychiatrist, Prof. De Waele, assisted by other psychiatrists, psychologists, sociologists and criminologists as well as social workers.

On the advice of the above team laid down in a report of 1 October 1976, the Board ordered on 5 February 1977 the applicant's release on probation for a period of 10 years. This decision was to become effective as soon as the Board found that a number of conditions regarding lodging, employment and monitoring of the applicant were fulfilled.

47. The Public Prosecutor of Ghent appealed against this decision in accordance with Article 19 of the Act. The appeal was examined by the Mental Health Review Appeals Board which, on 3 March 1977, allowed the appeal and decided that the applicant's confinement should be maintained. The Mental Health Review Appeals Board considered that it was insufficient for the Mental Health Review Board to find an improvement in the mental state of the prisoner. It required conditions for social rehabilitation to be fulfilled simultaneously and cumulatively.

48. On 9 May 1977 the applicant again tried to escape.

Having re-examined the applicant's case on 20 September 1977 the Mental Health Review Board decided on 5 October 1977 to maintain the applicant's confinement but to place him under semi-custodial care in the specialised institution at Merksplas, designed for male criminals not suffering from mental illness.

The Minister of Justice, in conformity with Article 17 para. 2 of the Act, decided to suspend provisionally the execution of this decision and to request the C.O.P. to fix, together with the prison authorities concerned, details of the applicant's detention scheme.

49. In a report drawn up on 18 November 1977, the C.O.P. informed the Mental Health Review Board and the administration of Ghent prison that the transfer of the applicant to Merksplas was not an appropriate way of treating the applicant. It was suggested that he be released on probation with a view to his gradual reintegration into society. Pending the decision of the Board the applicant remained in Ghent.

50. On 25 May 1978 the Mental Health Review Board decided to grant a leave permit of one day for the months of June, July and August and to allow the applicant to work as a gardener in a convent under the surveillance of a staff member of the C.O.P. The first leave took place on 15 June 1978.

The C.O.P. then recommended the transfer of the applicant to the psychiatric ward of the Louvain prison in order to continue from there in close contact with the prison authorities the rehabilitation scheme.

51. In a report drawn up on 13 July 1978 Prof. De Waele concluded that the applicant's conduct augured a very unfavourable future for him in the long run. The fact that at this advanced stage of the rehabilitation scheme he was not willing to comply with any of the conditions imposed made it almost certain, in his view, that if he

were free, he would try to avoid any form of control and supervision and would behave as a "lone wolf".

52. On 14 July 1978 the Minister of Justice, in accordance with Article 17 para. 2 of the 1964 Act, decided to transfer the applicant provisionally to Tournai.

On 18 August 1978, the applicant escaped after having attacked a staff member of the institution. He was rearrested on 20 August 1978.

53. In the course of October 1978 he was transferred for a period of 15 days to the psychiatric ward of Ghent prison in order to facilitate visits by his mother.

He was returned to Tournai on 25 October 1978.

54. On 16 April 1980 the Mental Health Review Board ordered the applicant's transfer to the prison of Turnhout for a psychiatric examination to be carried out by Dr. Landuyt, head of the psychiatric ward of the Stuyveberg hospital in Antwerp. The applicant was admitted there on 8 May 1980.

On 9 December 1980 the Mental Health Review Board re-examined his case on the basis of the medical report established by Dr. Landuyt on 20 October 1980. The latter had concluded that the applicant did not suffer from insanity or serious mental disorder and that he disposed of the mental faculties to assert himself in society "provided he could benefit from a sufficiently guided and lengthy transitory phase in an adequate environment" ("mits een voldoende begeleide en langdurige overgangsfase in een geschikt milieu").

55. The Mental Health Review Board decided however to continue the applicant's detention. The applicant introduced a plea of nullity against this decision which was rejected by the Court of Cassation on 10 February 1981. The Court of Cassation considered that insofar as the plea of nullity was directed against the decision not to release the applicant, the plea was unfounded since the decision had been taken in accordance with the law. Insofar as it was directed against the modalities of the execution of the detention order the Court of Cassation declared itself incompetent.

56. On 12 March 1981 the applicant made a new attempt to escape from Turnhout, after which he was returned to Tournai on 25 March 1981 by decision of the Minister of Justice in accordance with Article 17 para. 2 of the 1964 Act.

On 16 August 1981 the applicant escaped and was rearrested on 18 August 1981.

57. In September 1981 and March 1982 the applicant was provisionally transferred to the psychiatric ward of Ghent prison for a period of three weeks, each time in order to allow him to be visited by his mother.

58. A medical report of 12 February 1982 drawn up by the doctors of Tournai for the attention of the Mental Health Review Board qualified the applicant as a "cold psychopath, particularly dangerous, although not in an overt manner, whose continued detention was necessary but whose transfer to a prison in a Flemish establishment was highly desirable for obvious cultural reasons".

59. On 13 May 1982 the Mental Health Review Board decided to transfer the applicant provisionally to Ghent prison for a period of 3 months and to grant him a gradual leave scheme under the supervision of the Ghent social rehabilitation office.

Leave was first granted on 27 May 1982. The applicant devoted most of his time to gardening in a home. Leave was again granted on 9 June 1982.

60. On 29 June 1982 the Mental Health Review Board re-examined the applicant's case and decided to continue the one-day leave permits.

During the third leave, which took place on 7 July 1982, the applicant escaped and left Belgian territory. Two days later he was arrested in the Netherlands. In December 1982, in the framework of extradition proceedings which followed, the applicant underwent a psychiatric examination. The psychiatrist, Dr. Leloup, concluded that the applicant was not mentally ill.

C. Visit by the Delegation of the Commission to the Institution at Tournai

61. The Delegation of the Commission, designated in conformity with Article 28 para. 2 of the Convention (cf. para. 14), visited the custodial mental institution ("Etablissement de défense sociale") at Tournai in order to enquire about the conditions under which the applicant had been detained in this institution, in particular having regard to the applicant's complaints under Article 3 of the Convention. The Delegation established the following:

62. The institution was built at the end of the 19th century (1883) and has partly been renewed since. The building was composed of two wings, separated by an administrative unit in the centre. The west wing was designed for the treatment of psychiatric (civil) patients on a voluntary basis or compulsorily (following a "mesure de collocation") and the east wing for the treatment of mentally abnormal offenders confined on the basis of the Act of Social Protection. The two wings were strictly separated. The "offenders" unit had accommodation for 240 patients. At the time of the visit it housed 219 patients. It comprised 280 warders and nurses and 8 doctors while at the time of the applicant's confinement there had been only 6 doctors. The unit was composed of a number of pavilions, three of which (Nos. 8, 9 and 10) had been closed down for lack of means. Three other pavilions (Nos. 14, 15 and 16) were operative.

The applicant spent most of his confinement in pavilion 15, the special security unit, and only short periods in pavilion 16.

63. Pavilion 15 is composed of two stories, the ground floor for patients representing a special security risk and the first floor for the more chronic patients. The pavilion is surrounded by a courtyard and a wall.

The admittance/observation ward, which has a capacity of 30 patients, is located on the ground floor. It consists of a large dormitory (approx. 80m2) which contains 8 beds. The dormitory gives direct access to a toilet, separated from it by a door with a small window. Wash basins are inside the dormitory. Water supply is regulated externally. The dormitory has large barred windows looking onto a courtyard and pavilion 16.

Adjacent to this dormitory is a dining room and lounge of approximately the same size, furnished with two bare tables and four long benches.

On the other side of the corridor there is a bathroom with 5 showers and 1 bathtub. Each patient is entitled to two showers a week. The bathtub is used only for special cases such as for patients who cannot stand up. The ground floor further comprises the psychologist's and the psychiatrist's offices, a chaplain's office and a visitors' room. Visits are allowed every second Sunday and

non-alcoholic beverages may be served (against payment).

64. The ground floor also comprises single rooms, one of which the applicant had occupied a number of times. All single rooms are identical. They are approximately 10-12m2 and are furnished with a bed, cemented to the floor, an inbuilt flush lavatory, a table and a wash-basin. The external windows, although fairly large (1-1.5m2), are situated above eye level and cannot be looked through unless by climbing on the bed or table which is prohibited. The rooms can be inspected from the corridor through observation windows which are screened by small curtains. No television or radio is allowed in these rooms.

The first floor comprises a large dormitory, a kitchen, a recreation/TV room and a dining room. There are further single rooms of the same size and containing the same furniture as those on the ground floor. The applicant had occupied a room on the first floor in the ward referred to as "the small corridor" ("le petit couloir") which accommodates 5 to 7 inmates. He had been allowed to use a separate room adjacent to his to stock the material for his work (folding cardboard boxes). The applicant performed his work in his room and not in a common workshop.

The detention conditions in pavilion 16 were quite different: Patients in these wards had the possibility to give a personal character to their rooms by decorating them. A number of the patients had a transistor and/or TV in their room. The time spent by the applicant in this ward was, however, short.

65. The Delegation also interviewed various members of the staff of the institution.

The principal doctor of the institution pointed out that no linguistic problem had ever arisen for the applicant during his stays at the institution. His knowledge of French was adequate and he even spoke French when he was under emotional stress. On the other hand he could always address the doctors and staff in Flemish, and had had access to the Flemish library. The allegation that he had been subject to sneers by the staff on linguistic grounds was totally unfounded. Even if some misunderstandings might have occurred for linguistic reasons, it had not affected the therapeutic relationship.

Although the transfer of the applicant to a unilingual Flemish institution might have been desirable, it had not been indispensable for the effectiveness of his treatment. Since 1948 the institution in Tournai hosted the most difficult patients and dangerous offenders, being the most secure institution that existed within the country.

66. At the time of the visit 30 patients were housed on the ground floor and 40 on the first floor of pavilion 15. At the time of the applicant's confinement, the pavilion housed a total of 80 inmates.

Night accommodation in pavilion 15 was of two types: dormitory and single room (chambrette).

Day accommodation on the first floor consisted of a dining room and a recreation/TV room.

Upon admission each patient was first kept in the observation ward on the ground floor, where he was accommodated in a dormitory and an adjacent lounge/dining room.

Subsequently patients were placed by the psychiatrist in charge of their case in other wards, either on the ground floor or on the first floor, according to their degree of dangerousness.

The ordinary daily time schedule in pavilion 15 was the following:

6.30	-	7.30	- rise
7.30	-	8.30	- breakfast
8.30	-	11.30	- courtyard (préaux)
12.00	-	13.00	- lunch
13.00	-	14.00	- rest
14.00	-	17.00	- therapy work
17.00	-	20.00	- dinner followed by recreation
20.00	-	20.30	- preparation for the night

With the exception of the special admittance ward, meals on the ground floor were served in the rooms. On the first floor meals were served either in the rooms or in the joint dining room. During daytime the doors of the rooms in the "small corridor section" were normally open and inmates were free to move around. At the time of the applicant's confinement, therapy work consisted in the folding of cardboard boxes.

A doctor passed by every day in each ward and could be called upon by each patient. The medical visit upon admittance served to diagnose the nature of the abnormality and subsequently to cure the patient.

67. The doctor who had treated the applicant in 1962 and between November 1970 and 1974, described the applicant as a psychopath with a psychotic propensity and as dangerous, the danger being mainly caused by his determination to escape. Prognostics for his future were not favourable. The main treatment had consisted in efforts to dialogue with the applicant. Discussions with the applicant were however difficult, the applicant being mainly obsessed with the idea of leaving the institution. As far as this doctor could remember tranquillisers had sometimes been administered to the applicant.

68. The doctor who had been the director between 1967 and 1972 and had also treated the applicant described him as follows: the applicant had been confined as a serious case of mental illness. He was a psychopath with deeply rooted character disorder. He was a simple-minded person of limited intelligence, sly and cunning. He had a very closed character, was touchy, had a tendency towards persecution mania and was distrustful. His dangerous character could be inferred from his total lack of self-criticism or remorse. He had a tendency to minimise his crimes and lacked any degree of human warmth or emotions.

The treatment by psychotherapy had been much hampered by the applicant's uncooperative attitude. He was always very tense and sometimes recourse had to be taken to neuroleptics in order to ease the tension and facilitate the dialogue. The institutional therapy (prison work) was hampered by the necessity to be constantly on one's guard, since the applicant had a permanent desire to evade. Although one could not state categorically that the applicant was incurable the applicant's chances of recovery seemed small. Frequent incidents had occurred in which the applicant had not hesitated to make use of violence. The staff feared to expose itself to this risk of violence.

III. SUBMISSIONS OF THE PARTIES

A. The applicant

(i) Article 3

69. The applicant complains that the conditions of his detention,

taken as a whole, including the extreme isolation to which he was subjected during some 14 years, constitutes inhuman and degrading treatment contrary to Article 3 of the Convention.

The applicant's grievances in this respect focus on the conditions of detention at the custodial mental institution at Tournai.

70. If, as the authorities seemed to believe, the applicant was mentally ill, some form of medical treatment would have been appropriate. The only "medical" treatment he received was the administration of tranquillisers. On some occasions these drugs were administered to him against his will and the applicant was tied down with a leather belt. The same leather belt was used to tie him to his bed overnight to prevent him from escaping via the window. Even if physical force was not used, tranquillisers were often mixed into his coffee or soup. The purpose of the administration of these drugs was to reduce the applicant's will-power and hence his attempts to escape.

71. The applicant had not received any proper psycho-therapeutic treatment while in detention. In any event, patients were only medically examined upon request and not systematically. Moreover, the only psychiatrist in Tournai was French-speaking, which reduced the interest of the already scarce interviews he had had.

72. The conditions of his detention were also inhuman on account of the fact that he had been segregated from other detainees almost throughout his confinement in Tournai. The cell in which he was detained contained only a bed and a flush toilet and no table or chair. It had only one small window which was situated above eye-level. He had his daily exercise in a courtyard separate from other inmates. His meals were served in his cell and work, if provided at all, had to be carried out in his cell. The only "distraction" offered was a weekly interview with the prison priest. There were no facilities in the form of a common workshop or any recreation in the form of listening to the radio or watching television.

73. Whereas it is true that, as the Commission had held in the past, the segregation of a prisoner does not in itself constitute inhuman or degrading treatment, specific circumstances might render detention conditions contrary to Article 3 of the Convention.

Decisive in this respect was the severity of the measure concerned, its length, its purpose and its effect on the detainee concerned and the availability of a minimum of social contacts.

74. Isolating him for such a long period of time was a disproportionate sanction to his escapes or attempts to escape. Medical expert opinion had confirmed that he did not constitute a danger to other prisoners.

75. Finally the applicant's continued detention was also inhuman because he had no prospects of being released, which was against generally recognised principles regarding treatment of long-term prisoners.

He had always regarded the 15-year period as definite and never even expected any extension. Moreover, medical expert opinions tended to confirm that he was not insane.

76. In the absence of any firm criteria for the Mental Health Review Board, hopes of ever being released became vain. In his opinion, with the passage of time his individual interest ought to prevail over that of the general interest of society, the chances of a relapse having decreased after 15 years of detention. His attempts to escape were the result of the absence of any prospect of

being released and he found himself in a vicious circle.

(ii) Article 5 para. 1

77. The applicant maintains that his continued detention does not meet any of the requirements of Article 5 para. 1 (a) and (e), these provisions being concurrently applicable.

78. Following the decision by the Indictment Chamber of the Court of Appeal of Ghent of 28 March 1961, the applicant's detention constituted a "lawful detention after conviction by a competent court" within the meaning of Article 5 para. 1 (a) of the Convention. The detention ceased however to be lawful within the meaning of Article 5 para. 1 (a) in 1976, when the 15-years' term expired.

79. For the detention to continue to be lawful beyond that date a new decision by a court would have been necessary; Article 22 of the 1930 Act provided for a decision of that kind at the request of the public prosecutor's office.

80. However no such decision could have been taken in 1976, that judicial competence having been removed by law and replaced by an automatic conversion of running detentions into detention without limit of time, discharge being within the discretionary power of the Mental Health Review Boards.

81. It would appear that the 1964 Act places an excessive emphasis on the aspect of protection of the public to the detriment of the fundamental rights of "old" detainees to a judicial decision as a basis for their detention. He criticises the absence of transitory provisions in the 1964 Act.

82. Under the 1930 Act, release before the expiry of the judicially imposed term was possible if the conditions of the detainee's mental health had improved to a degree that it could be assumed that he no longer constituted a danger for the public (Article 20). The 1964 Act added a further condition for release: it also had to be ascertained that the conditions for rehabilitation had been complied with. As a result of this further condition his detention had in fact become indefinite without the intervention of a judge.

83. The Mental Health Review Board cannot be assimilated to a "competent court" for the purposes of Article 5 para. 1 (a). The Mental Health Review Boards envisaged by the 1964 Act were as regards task and composition analogous to those instituted by the 1930 Act. Whereas the 1930 Act assigned distinct tasks to the Boards and the judiciary, the 1964 Act conferred increased powers to the Mental Health Review Boards and reduced the role of the judiciary.

84. The applicant also maintains that his deprivation of liberty does not meet the requirements of Article 5 para. 1 (e). Referring to the judgment of the Court in the case of Winterwerp (Eur. Court H.R., Winterwerp judgment of 24 October 1979, Series A, no. 33, para. 39), he submits that it has not reliably been shown that he is of "unsound mind".

85. Whereas at the time of his confinement he could, according to the medical expertise available at the time, be regarded as suffering from a mental disorder, for the continued detention to be valid it was necessary that such disorder persisted. The medical evidence indicated the contrary. The Government have admitted that the Belgian authorities in 1976 had found an improvement in his condition. The applicant further refers in this respect to the medical opinion establised on 20 October 1980 by a psychiatrist, Dr. Landuyt, who concluded in his report that no signs of insanity or mental disorder could be detected. The same doctor considered that the initial diagnosis according to which the applicant showed signs of

schizophrenia was mistaken, since no progressive deterioration of his personality had occurred in the course of his detention.

86. This medical opinion had subsequently been confirmed by two medical experts in the Netherlands who examined the applicant in December 1982 at the request of the Netherlands' Minister of Justice in the framework of the extradition proceedings.

(iii) Article 5 para. 4

87. The applicant is of the opinion that the Mental Health Review Board does not satisfy the requirements of Article 5 para. 4 both from the point of view of its composition and of the proceedings before it. In fact the Mental Health Review Board systematically rejected the applicant's request for release, without examining afresh the merits of his requests. As regards its composition, the applicant submits that the judicial members of the Board are of advanced age and have outdated views. The medical member has often an administrative link with the institution where the detainee is confined and lacks objectivity.

88. As regards the proceedings, the applicant criticises the excessive importance which is being attached to the initial diagnosis. In reality no fresh assessment of the detainee's mental health is carried out and the periodic medical reports are very superficial. The proceedings before the Mental Health Review Board do not offer the guarantees of an independent and impartial tribunal. The detainee did not have the possibility of having witnesses or experts heard, the proceedings lacked the required publicity, and decisions were not properly reasoned.

In any event the applicant is convinced that the system set up by the 1964 Act was detrimental to his chances of being released.

(iv) Article 7

89. The applicant also maintains that as a result of the new legislation he is in a less favourable position than when he was under the previous Act, which was applicable at the time the criminal offences were committed, and that this constitutes a breach of Article 7 of the Convention.

According to the 1930 Act, and in particular its provisions 20 and 21, release was subject to the fulfilment of one requirement only, relating to the state of mental health of the detainee. The 1964 Act added a further requirement thereto relating to social rehabilitation. As a result of this additional requirement the applicant had been kept in detention, whereas he would have been released in 1976 if the provisions of the 1930 Act had still been applicable.

B. The Government

(i) Article 3

90. The Government stress that the custodial mental institution at Tournai offers the best guarantees of security in Belgium for persons like the applicant. It had been medically established that the applicant constituted a real danger for others.

91. Different forms of treatment had been applied to the applicant in order to facilitate his integration into society: instituting a dialogue between the applicant and the medical staff, medicinal treatment to facilitate the dialogue and work therapy. All these methods were to no avail. This failure was certainly not due to linguistic obstacles. His knowledge of French was adequate and the medical and para-medical staff were sufficiently versed in the Dutch language to understand the applicant or to make themselves understood

by him.

92. Although his detention lasted from 1961 until May 1982, the medical and occupational treatment had been constantly adapted to the requirements of the applicant's state of mental health. As far as medical treatment is concerned, the Government confirm that the applicant had regular interviews with the psychiatrist responsible for the pavilion to which he was confined. Every six months a medical report was drawn up relating to his conduct and the development in his state of mental health for the attention of the competent Mental Health Review Board.

93. In view of his propensity to act on impulse the psychiatrist had recommended sedative drugs, designed to produce a tranquillising effect on the applicant and facilitate contact with his environment. He initially accepted the medicaments but refused them when it became clear to him that he would not be released. The applicant considered that his muscular exercises, which he performed in his cell, were hindered by the use of drugs.

94. As far as prison work is concerned, the Government explain that the applicant was provided with work which he carried out in a work-shop. However as soon as the authorities noticed his firm intention to escape from prison, the material to work (folding cardboard boxes) was provided in his cell and he was allowed to stock the material in an adjacent cell. Work facilities had been suspended when he was caught using the material to prepare an escape. It was finally the applicant himself who decided not to work any longer as he preferred to do muscular exercises in his room. In fact it was his muscular strength which allowed him to succeed in some of his escapes.

95. As far as the segregation of the applicant is concerned, the Government stress that he was regarded as a dangerous person and that this measure was both justified to protect others and for the maintenance of discipline, order and security in the institution. The confinement of the applicant to the special security wing was proportionate to the applicant's conduct and justified on objective grounds: his frequent attempts to escape (7 in all), his failure to submit to a less strict prison regime and disregard of the prison rules.

96. Apart from periods when he was subject to disciplinary sanctions following his attempts to escape, the isolation of the applicant was not complete. He had regular exercise and the door of his cell was opened to allow him to smoke or drink and when the meals were served. When he was under disciplinary sanctions the rights to exercise and smoking were suspended. Following particularly violent incidents in connection with his attempts to escape, the applicant had indeed been tied to his bed by a leather strap around his ankles. His room was furnished and he had a wash-basin and a private lavatory in his room. In general his detention conditions did not differ from those of other prisoners who required special surveillance.

(ii) Article 5 para. 1

97. The Government regard the detention of the applicant to be in conformity with the requirements of sub-paras. 1 (a) and 1 (e) of Article 5. The applicant's detention had been ordered in accordance with the provisions of the 1930 Act by the Indictment Chamber of the Ghent Court of Appeal on 28 March 1961 for a period of 15 years.

98. Detention ordered on the basis of the Act had a dual aim: on the one hand the protection of society and on the other hand the treatment of the offender, in his own interest, in accordance with a scientifically planned curative scheme.

99. The applicant's confinement had therefore to be envisaged as

lawful detention after conviction by a competent court within the meaning of Article 5 para. 1 (a) (cf. Eur. Court of H.R., case of X v. the United Kingdom of 5 November 1981, Series A no. 46, para. 39). However, in view of the specific nature of detention ordered under the Mental Defectives and Habitual Offenders' Act, control of the lawfulness under Article 5 para. 1 (a) at the same time corresponded to control in the light of Article 5 para. 1 (e).

100. The 1964 law reform did not fundamentally modify the philosophy or structure of the 1930 Act. Under the 1930 Act the court which had ordered the detention could, at the request of the public prosecutor, renew the detention order for a period equal to that initially imposed (Article 22). It was for the Mental Health Review Boards to assess, at any time in the course of these terms, whether the detainee qualified for release, namely whether his mental conditions had improved to an extent that it could be assumed that he no longer constituted a public danger (Article 20).

101. In the 1964 Act the decision as to whether the detainee's detention should continue was solely with the Mental Health Review Board. No fixed terms were set by law and the decision whether a detainee could be released depended only on the improvement of the mental conditions of the patient and on the possibilities of his social rehabilitation.

102. The Mental Health Review Board could take the decision ex officio, at the request of the public prosecutor or at the request of the detainee or his counsel every six months (Article 18). In the view of the Government the Mental Health Review Board operates as an independent judicial body whose decisions are moreover subject to control by the Court of Cassation.

103. The applicant had clearly shown that he did not fulfil the conditions for discharge set by the law. The Mental Health Review Board had closely monitored the development of the mental condition of the applicant. In fact a clear distinction could be made between the period preceding 1977 and the one following 1977. During the first 15 years the Mental Health Review Board observed the applicant in order to see whether an improvement in his mental condition had taken place. Having found that such improvement had indeed occurred, it initiated in 1977 a rehabilitation scheme. Notwithstanding this change in approach, the psychiatrist who examined the applicant in 1978, Dr. De Waele, forecast a very negative future for the applicant and emphasised the danger which the applicant would represent for others if released. The applicant's numerous attempts to escape (5 since August 1978 including his successful escape in July 1982) not only showed a lack of balance on the side of the applicant but also emphasised the danger which the applicant represented.

104. In the light of these findings, it could not be argued that the running of time had broken the link between the initial confinement order and the decision to keep the applicant in detention.

105. The above examination of the lawfulness of the applicant's detention in the light of Article 5 para. 1 (a) also corresponded to the requirements of Article 5 para. 1 (e).

106. If the applicant, after extradition from the Netherlands, were to be redetained, this detention would be based on the decision of the Indictment Chamber of the Ghent Court of Appeal of 1961, his detention constituting the lawful continuation thereof. Consequently, his fate was in the hands of the Mental Health Review Board. He would benefit from all medical and legal guarantees offered by the applicable law.

(iii) Article 5 para 4

107. The Government are of the opinion that the proceedings before

the Mental Health Review Board satisfy the requirements of Article 5 para. 4. The Government consider that the periodic control carried out by the Board constitutes "judicial control" within the meaning of that provision. They refer in this respect to a decision by the Commission (No. 6859/74, Dec. 2.10.75, D.R. 3 p. 139) concerning the Mental Health Review Board in which the Commission came to the same conclusion, having regard to the Board's composition, which contained proceedings before it, which provided adequate guarantees, regard being had to the particular nature of the circumstances in which the proceedings take place. The detainee is always heard and he must be represented by counsel who has access to the file. That right may be denied to the detainee in his own interest. Moreover the detainee has the right to submit medical counter-evidence from a doctor of his own choice.

108. The mere fact that the opinion of the medical expert consulted by the detainee is not followed by the Mental Health Review Board is not sufficient to cast doubts on the fairness of the proceedings.

109. The review carried out by the Mental Health Review Board is moreover of a continuous nature. In any event the detainee can renew his request for discharge every six months.

(iv) Article 7

110. In respect of Article 7 the Government recall that the 1964 Act did not place the applicant in a less favourable position than the 1930 Act. The 1930 Act did not guarantee the applicant an absolute right to release at the expiry of the term ordered by the judicial body, since it provided for a prolongation of the detention at the request of the public prosecutor. Such a request could moreover be repeated.

111. Like the 1964 Act, the 1930 Act also subjected the release of the detainee to the fulfilment of two conditions, namely on the one hand the improvement of the state of mental health and on the other hand the finding that the detainee no longer constituted a public danger (Article 20). The latter assessment necessarily had a bearing on his chances of rehabilitation.

Article 7 had therefore not been breached.

IV. OPINION OF THE COMMISSION

A. Points at issue

112. The principal points at issue in the present case are as follows:

1. whether the conditions of detention in which the applicant was held in Tournai amounted to inhuman or degrading treatment contrary to Article 3 (Art. 3) of the Convention;

2. whether the applicant was lawfully detained in accordance with Article 5 para. 1 (Art. 5-1) of the Convention;

3. whether the procedure available to the applicant for a periodic review of the lawfulness of his detention corresponded to the requirements of Article 5 para. 4 (Art. 5-4) of the Convention;

4. whether the continued detention after 15 years was in in violation of Article 7 para. 1 (Art. 7-1) of the Convention.

B. As regards Article 3 (Art. 3) of the Convention

113. The principal issue in the present case is whether the applicant's conditions of detention and treatment in the custodial mental health institution at Tournai amounted to a breach of Article 3 (Art. 3) of the Convention.

114. The applicant complains in this respect that he spent most of his detention in isolation. He also complains that adequate treatment and any prospects of being released were lacking.

115. Article 3 (Art. 3) of the Convention reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

116. The Commission has already been confronted with a number of cases of prison isolation of varying duration and severity (cf. inter alia No. 6038/73, Dec. 11.7.73, Collection 44, p. 115; No. 7854/77, Dec. 12.7.78, D.R. 12, p. 185; No. 8317/78, Dec. 15.5.80, D.R. 20, p. 44). It has stated on several occasions that prolonged solitary confinement is undesirable, especially where the person is detained on remand.

117. It has on other occasions stated that complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of treatment which cannot be justified by the requirements of security or for any other reason. It has moreover drawn a distinction between this and removal from association with other prisoners for security, disciplinary or protective reasons, and would not normally consider that this form of segregation from the prison community amounts to inhuman treatment or punishment (cf. No. 5310/71, Ireland v. the United Kingdom, Comm. Rep. 25.1.76, p. 379; Nos. 7572/76, 7586/76 and 7587/76, Dec. 8.7.78, D.R. 14, p. 64; No. 8317/78, Dec. 15.5.80, D.R. 20, p. 44 at p. 82).

The same reasoning applies mutatis mutandis to persons who have been committed to a mental hospital in the framework of criminal proceedings.

118. In making an assessment in a given case, regard must be had to the surrounding circumstances including the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (cf. also Kröcher/Möller v. Switzerland, 16.12.82, D.R. 26, p. 24, para. 62).

119. The applicant's complaints relate to the conditions of detention in the custodial mental institution at Tournai.

As regards the form of isolation to which the applicant was subjected, the Commission notes that most of the time he was detained in a room of approximately 10 square metres in a ward on the first floor of pavilion 15. Detainees detained in this ward normally have daily contact with the institution's staff and other detainees on the occasion of the handing out of food and exercise in the prison yard.

Admittedly during certain periods, the exact length of which is impossible to establish, the applicant was subject to disciplinary sanctions. This involved the loss of a certain number of privileges such as the right to joint exercise in the courtyard or the right to take meals in association with other detainees. It implied that the applicant was confined to his room and only left it for the purpose of taking exercise, alone in the courtyard, and that meals were served in his room.

Following his numerous attempts to escape from the institution (in 1967, 1978 and 1981) the applicant was moreover placed under strict surveillance and detained in a room on the ground floor which offered better guarantees for security.

120. The Commission notes that the situation complained of by the applicant was mainly the result of his uncooperative and disruptive behaviour. It was also clear that the applicant represented a special security risk given his constant obsession to escape from the institution. During one of his attempts to escape he had injured one of the staff members.

121. The Commission has stressed in the past that in such circumstances of revolt or fundamental non-cooperation, the State is not excused from its obligations under the Convention and Article 3 (Art. 3) in particular. It recalls its decision in the case of McFeeley v. the United Kingdom (No. 8317/78, Dec. 15.5.80, D.R. 20, p. 44 at p. 81, para. 46) where it concluded that prison authorities, when faced with what is regarded as an unlawful challenge to their authority, must nevertheless maintain a continuous review of the detention arrangements employed with a view to ensuring the health and well-being of all prisoners with due regard to the ordinary and reasonable requirements of imprisonment. The same reasoning applies mutatis mutandis to mental health patients detained under the Belgian Act of Social Protection such as the applicant.

122. The Commission finds that the Belgian authorities showed concern for improving the applicant's situation. On a number of occasions the applicant was transferred to other institutions and serious efforts were made to submit the applicant to less strict detention conditions. However all these efforts were of no avail because the applicant abused every attempt of clemency.

123. As regards medical treatment or supervision the Commission notes that the rules of the institution provide that each patient is examined every day by a medical doctor or psychiatrist. It was explained that in reality this meant that a doctor passed every day in the ward and could be contacted by a patient if he so wished.

As the applicant was not available to give evidence and in the absence of medical files recording each medical visit, it is not possible to determine the frequency with which the applicant tried to make use of the possibility to have an interview. According to the Government actual psychiatric treatment of the applicant was almost impossible due to his uncooperative attitude. The applicant maintains that the medical staff showed no interest in him whatsoever and was mainly francophone, which made treatment, if any, useless.

124. Although proper psychiatric treatment must indeed be difficult if it takes place in a foreign language, the Commission accepts that both the applicant's knowledge of French and the availability of Dutch speaking staff would have made treatment possible if the applicant had cooperated.

In the present case the total lack of cooperation by the applicant made any form of treatment extremely difficult. The Commission notes that the psychiatric treatment basically failed as a result of the applicant's hostile attitude towards the authorities, including the medical staff. The linguistic element therefore seems not to have been decisive for the availability of proper psychiatric treatment.

125. As far as the administration of tranquillisers is concerned, the Commission finds that there are no elements in the file to show that this treatment was not medically justifiable.

126. The applicant also complains of a lack of adequate employment and occupation. The Commission notes that the applicant was employed in folding carton boxes, not in a common workshop but in his room. Other forms of employment were not available in the institution for lack of funds. It was apparently the applicant himself

who finally decided to give up this activity.

127. On the whole, the Commission retains the impression that, whilst the applicant was often left idle, the situation was brought about by himself as he was not only uncooperative but also constituted a danger for his environment.

128. The applicant also argues that the absence of any prospects of being released made his continued detention inhuman.

Even assuming that this might raise an issue under Article 3 (Art. 3) (cf. mutatis mutandis Application No. 7994/77, Dec. 6.5.78, D.R. 14 p. 238), there is no evidence to suggest that these prospects were indeed lacking. The applicant's detention was subject to periodic review within the meaning of Article 5 para. 4 (Art. 5-4) (cf. below, paras. 148-156). Provided the applicant satisfied the conditions required by the law, he could be released.

129. Having regard to all the circumstances of the applicant's detention and in particular to his hostility towards any form of treatment as well as his persistent refusal to cooperate or to comply with the rules of the institution, the Commission concludes that the applicant's conditions of detention did not attain the seriousness of treatment envisaged by Article 3 (Art. 3) of the Convention.

Conclusion

130. The Commission unanimously concludes that in the present case there has been no breach of Article 3 (Art. 3) of the Convention.

C. As regards Article 5 para. 1 (Art. 5-1) of the Convention

131. The applicant complains that his prolonged detention is contrary to Article 5 para. 1 (Art. 5-1) of the Convention since it is justified neither under sub-paragraph (a) nor under sub-paragraph (e) of that provision. The Government reply that the applicant's detention was and, in the event of his reinternment, will be lawful and compatible with Article 5 paras. 1 (a) and (e) (Art. 5-1-a, 5-1-e) of the Convention.

132. Article 5 para. 1 (Art. 5-1) of the Convention, insofar as relevant for the present case, reads as follows:

> "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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ....
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."

133. Both the Commission and the Court have in the past been confronted with a number of applications from applicants involved in criminal proceedings who had been placed in a closed institution on account of their mental insanity. The question whether the lawfulness of such detention had to be assessed in the light of paragraph 1 (a) or paragraph 1 (e) of Article 5 (Art. 5-1-a, 5-1-e) or of both of these provisions concurrently must depend in the first place of the nature of the detention in the light of the national law.

134. Whereas according to the Court in the case of X v. the United

Kingdom detention ordered under the 1959 Mental Health Act fell to be considered both under paragraph 1 (a) and 1 (e) of Article 5 (Art. 5-1-a, 5-1-e) since there had been a conviction (X v the United Kingdom, judgment of 5 November 1981, Series A, no.46, p.17, para.39), the Commission and the Court considered in the case of Luberti that the custodial measure imposed pursuant to Article 222 of the Italian Criminal Code could not be considered under paragraph 1 (a), the applicant having been acquitted (Luberti judgment of 23 February 1984, Series A, no. 75, para. 25).

135. Since in the present case the Indictment Chamber of the Ghent Court of Appeal did not convict the applicant, being satisfied that he was suffering from a mental disorder warranting his confinement in a custodial mental institution, the question of the lawfulness of the applicant's detention must be examined in the light of Article 5 para. 1 (e) (Art. 5-1-e) of the Convention.

136. Since its entry into force the legal basis of the applicant's continued detention is to be found in the 1964 Act on Mental Defectives and Habitual Offenders.

Article 7 of that Act provides that a person who has committed a crime or a criminal offence and who at the time of the trial is in a state of mental insanity or suffering from serious mental disorder rendering him incapable of controlling his acts may be confined to a specialised institution.

Article 18 of the Act makes release subject to the satisfaction of two requirements: a sufficient improvement in a detainee's state of mental health and the fulfilment of the conditions for rehabilitation. The Mental Health Review Board takes a decision on the release of a detainee every six months, be it at the request of the public prosecutor, at the request of the detainee or his lawyer, or proprio motu.

137. It is not alleged in the present case that the above provisions of law have not been respected. What the applicant alleges is that the wording of Article 18 of the Act, and in particular the second requirement, gives the Mental Health Review Board a discretionary power which has been misused to his detriment.

138. The Commission recalls that in accordance with the case-law of the Commission and the Court of Human Rights the notion of lawfulness of the detention of a person of unsound mind covers procedural as well as substantive rules. The individual should not be deprived of his liberty unless it has been reliably shown that he is of unsound mind. Furthermore the mental disorder must be of a kind or degree warranting compulsory confinement. The validity of continued confinement depends on the persistence of such disorder (cf. Eur. Court H.R., Winterwerp judgment of 24 October 1979, Series A, no. 33, p. 16, para. 37).

139. The applicant does not contest the lawfulness of his detention in the light of the above requirements during the first phase of his detention. He accepts that on the basis of medical evidence available at the trial his committal to a specialised institution was justified.

140. He considers that his detention has since ceased to be justified since he is no longer a person of unsound mind. He submits that this view is corroborated by medical evidence. He relies in particular on the medical reports established in 1980 by Dr. Landuyt for the attention of the Mental Health Review Board and by Dr. Leloup in 1982 in the Netherlands in the framework of the extradition proceedings.

141. The Government, for their part, rely on the view of the Mental Health Review Board who, notwithstanding the finding that the applicant's mental health had improved, considered that he did not

fulfil the conditions set by the law for release and in particular not the condition regarding rehabilitation.

142. The Commission accepts that under the circumstances of the case and taking account of the danger the applicant could cause to the society as a whole, his continued detention was justified under Article 5 para. 1 (e) (Art. 5-1-e) of the Convention.

143. The applicant also argues that given the fact that he was detained as a person of unsound mind, he was entitled to appropriate treatment in order to ensure that he was not detained longer than absolutely necessary. He submits that he did not receive any form of therapy and that the only medical treatment he received consisted in drugs.

144. The Government submit in essence that his treatment was conditioned by his unwillingness to cooperate and by security requirements which did not leave room for any other form of treatment.

145. The Commission reaffirms its view that, in principle, Article 5 para. 1 (e) (Art. 5-1-e) is concerned with the question of the actual deprivation of liberty of mental health patients and not their treatment (cf. No. 8225/78, Ashingdane v. United Kingdom, Comm. Report 12.5.1983, para. 78).

146. Accordingly the Commission is of the opinion that the applicant's detention constituted "lawful detention of a person of unsound mind" within the meaning of Article 5 para. 1 (e) (Art. 5-1-e) of the Convention.

Conclusion

147. The Commission unanimously concludes that in the present case there has been no violation of Article 5 para. 1 (Art. 5-1) of the Convention.

D. As regards Article 5 para. 4 (Art. 5-4) of the Convention

148. The applicant complains that the proceedings before the Mental Health Review Boards do not satisfy the requirements of Article 5 para. 4 (Art. 5-4). He maintains that the Mental Health Review Board was not impartial and independent and was prejudiced against him and that its members lacked the required competence in view of their advanced age.

149. He also complains about the non-public character of the proceedings before the Mental Health Review Board and that decisions of the Mental Health Review Board are not properly reasoned.

150. The Government disagree with the applicant and regard the proceedings before the Mental Health Review Boards as being in conformity with Article 5 para. 4 (Art. 5-4).

151. The Commission recalls that the Court, in the case of X v. the United Kingdom, held that "in Article 5 para. 4 (Art. 5-4) the word 'court' is not necessarily to be understood as signifying a court of law of the classic kind, integrated within the standard judicial machinery of the country" (Eur. Court H.R., judgment of 5 November 1981, Series A no. 46, p. 23, para. 53). In its judgment of 2 March 1987 in the Weeks Case (Series A, no. 114, para. 61) the Court confirmed this interpretation, holding that a specialised body such as the Parole Board could be considered as a "court" within the meaning of Article 5 para. 4 (Art. 5-4).

152. The Commission recalls that it has been called upon in the past to examine the nature of the proceedings before the Mental Health Review Boards on the basis of the 1964 Act and has come to the

conclusion that the proceedings in question comply with the requirements of Article 5 para. 4 (Art. 5-4) (No. 6959/74, dec. 2.10.1975, D.R. 3 p. 139).

153. The Commission sees no reason to depart from this conclusion in the present case, since the file does not contain any elements which would demonstrate the contrary. The applicant's complaints in this respect are of a general nature and do not refer concretely to specific decisions or to a particular set of facts. The applicant has not supplied the Commission with substantial details of these allegations and the Commission thus finds that it does not have any basis for considering these complaints.

154. The applicant also complains that he does not have any remedy against the decision of the Mental Health Review Board not to release him while the public prosecutor, when notified of the decision by the Mental Health Review Board to release a detainee, may appeal to the Mental Health Review Board of Appeal (Article 19).

155. The Commission recalls that it has rejected a similar complaint in the past considering that a right to appeal cannot be inferred from Article 5 para. 4 (Art. 5-4) where one of the Parties to the proceedings has such a remedy at its disposal (cf. No. 4625/70, Collection 40, Dec. 20.3.72, p. 21). The Commission observed in that case that the detainee concerned could, in any event, introduce a plea of nullity to the Court of Cassation. In the present case the applicant did not make use of that remedy when the public prosecutor successfully appealed to the Mental Health Review Appeals Board on 3 March 1977.

Conclusion

156. The Commission unanimously concludes that in the present case there has been no violation of Article 5 para. 4 (Art. 5-4) of the Convention.

E. As regards Article 7 (Art. 7) of the Convention

157. Article 7 para. 1 (Art. 7-1) of the Convention reads as follows:

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

158. The question arises whether the above provision is applicable by analogy to a situation where a person accused of having committed a criminal offence is not convicted but is confined to a custodial mental institution for a particular period of time. The Commission does not find it necessary to make a finding on this question since it is of the opinion that in any event this provision, assuming that it were applicable to the applicant's allegation, has not been breached for the following reason:

159. Under Article 19 of the Act of Social Protection in respect of Mental Defectives and Habitual Offenders 1930 confinement could be ordered for specific periods (5, 10 or 15 years). Release was possible if the mental conditions of the patient had improved to such an extent that he no longer constituted a danger to society. This implied that the terms fixed were in no way binding and that release could be ordered prior to the expiry of the term. At the same time the law provided for an extension of the term if the Mental Health Review Board considered that the patient could not be released.

160. Therefore, even under the operation of the 1930 Act the decision whether a detainee is fit for release fell within the power

of the Mental Health Review Board.

161. It is true that the formal decision to prolong a confinement order under the 1930 Act could be taken only by a judicial body and that the 1964 Act confers this competence on the Mental Health Review Board, but that does not affect the relative nature of the measure itself. The purpose of the 1964 Act was to reflect in its proceedings the need to let decisions on continued confinement not solely depend on legal considerations. It was for this reason that decisions regarding continued detention were no longer with the judiciary but with a body of mixed composition, including a medical member, since it was considered that such body would better safeguard the interests of the detainee and the society as a whole.

162. It cannot therefore be argued that the applicant as a result of the application of the provisions of the 1964 Act found himself in a less favourable position than in 1961.

163. Accordingly the Commission is of the opinion that the measure of detention which the applicant underwent after the expiry of the initial 15 years was a direct consequence of the decision taken in 1961 by the Indictment Chamber of the Ghent Court of Appeal.

Conclusion

164. The Commission unanimously concludes that in the present case there has been no violation of Article 7 (Art. 7) of the Convention.

F. Recapitulation of the Commission's conclusions:

1. The Commission unanimously concludes that in the present case there has been no breach of Article 3 (Art. 3) of the Convention (para. 130).

2. The Commission unanimously concludes that in the present case there has been no breach of Article 5 para. 1 (Art. 5-1) of the Convention (para. 147).

3. The Commission unanimously concludes that in the present case there has been no breach of Article 5 para. 4 (Art. 5-4) of the Convention (para. 156).

4. The Commission unanimously concludes that in the present case there has been no breach of Article 7 (Art. 7) of the Convention (para. 164).

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)

APPENDIX I

History of Proceedings before the Commission

Item — Date

Introduction	24 June 1983
Registration	27 June 1983
Examination of admissibility	
Decision to invite the Government in accordance with Rule 42 para. 2 (b) of the Rules of Procedure to submit observations on the admissibility and merits of the application	9 July 1983
Government's observations	27 December 1983
Applicant's observations in reply	13 April 1984
Decision to declare the application admissible	12 July 1984
Examination of the merits	
Consideration of state of proceedings and decision to invite parties, in accordance with Rule 46 para. 2 of the Rules of Procedure to submit further observations on the merits	11 October 1984
Government's observations	4 February 1985
Applicant's observations	18 March 1985
Decision in conformity with Rule 28 para. 2 of the Rules of Procedure to appoint a delegation with a view to visiting the custodial mental health institution at Tournai	11 May 1985
Visit by delegation of the custodial mental health institution at Tournai	21 June 1985
Consideration of state of proceedings and decision to invite parties to submit further observations	6 July 1985
Applicant's observations	19 September 1985
Government's observations	12 December 1985
Appendix I	
Grant of legal aid	14 March 1986
Consideration of state of proceedings	14 July 1986
Consideration of state of proceedings	11 October 1986
Consideration of state of proceedings	6 March 1987
Consideration of Report drawn up under Article 31 of the Convention, deliberations and final votes	5 May 1987
Adoption of the Report	14 May 1987