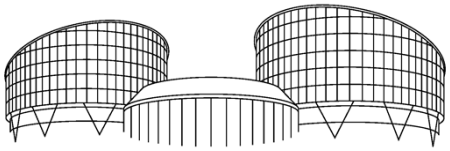

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ROOMAN v. BELGIUM

(Application no. 18052/11)

JUDGMENT

STRASBOURG

18 July 2017

THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
31/01/2019

This judgment may be subject to editorial revision.

In the case of Rooman v. Belgium,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Robert Spano, *President,*
Ledi Bianku,
Işıl Karakaş,
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 20 June 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 18052/11) against the Kingdom of Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Belgian and German national, Mr René Rooman ("the applicant") on 1 March 2011.

2. The applicant was represented by Mr V. Hissel and Mr B. Versie, lawyers practising in Liège. The Belgian Government ("the Government") were represented by their Agent, Mr M. Tysebaert, Senior Adviser, Federal Justice Department.

3. The applicant alleged, in particular, that in the absence of psychiatric care in the institution in which he was held, his preventive detention was in breach of Articles 3 and 5 § 1 of the Convention.

4. On 7 January 2014 the complaints under Articles 3 and 5 § 1 of the Convention were communicated to the Government, and the remainder of the application was declared inadmissible, in accordance with Rule 54 § 3 of the Rules of Court.

5. By letter of 10 January 2014, the German Government were informed of the possibility of submitting written observations under Article 36 § 1 of the Convention and Rule 44 if they so wished. The German Government chose not to avail themselves of their right to intervene.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1957. He is detained in the Paifve social-protection institution ("the Paifve EDS").

A. The applicant's initial detention

7. In 1997 the applicant was convicted of theft and of sexual assault, by the Liège Court of Appeal and the Eupen Criminal Court respectively. The prison sentences were due to end on 20 February 2004.

8. While imprisoned, the applicant committed offences in respect of which fresh proceedings were brought. On 16 June 2003 the Committals Division (chambre du conseil) of the Liège Court of First Instance decided, pursuant to section 7 of the Law of 9 April 1930 on Social Protection in respect of Mental Defectives, Habitual Offenders and Persons Convicted of certain Sexual Offences (the "Social Protection Act"), and on the basis, inter alia, of a neuropsychiatric report by Dr L., dated 15 December 2001, and a report by psychologist H., dated 20 August 2002, to order the applicant's preventive detention.

9. On 1 August 2003 the Indictment Division of the Liège Court of Appeal upheld that decision. The applicant did not appeal on points of law.

10. On 15 January 2004, based among other elements on a psychiatric report by Dr V. dated 23 September 2003, the Minister of Justice also decided that the applicant was to be detained in a psychiatric institution, pursuant to section 21 of the Social Protection Act, as a continuation of the sentences imposed in 1997.

11. On 21 January 2004 the applicant entered the Paifve EDS, located in the French-speaking region, further to a decision of 16 October 2003 by the Social Protection Board for the Lantin Prison psychiatric wing (the "CDS").

B. The first application to the CDS for release on a trial basis and the request for day release

12. On an unspecified date the applicant made an initial application for release on a trial basis.

13. On 27 January 2006 the CDS postponed its examination of the request for release on a trial basis until March 2006, and recommended finding an institution that could admit the applicant and provide him with therapy in German, the only language he could understand and speak.

14. The application was examined by the CDS on 9 June 2006. At the hearing, the head of the Paifve EDS acknowledged that the institution was unable to provide the therapeutic care recommended by the experts who had

already been consulted, given that no German-speaking doctor, therapist, psychologist, social worker or warden was employed in the institution.

15. In consequence, the CDS held:

> "It is undisputed that the detainee speaks only German, and that the medical, welfare and prison staff in the institution in which he is detained are unable to provide him with any therapeutic or welfare assistance; he has been abandoned to his fate without any treatment since his arrival in Paifve (on 21 January 2004), even if some individuals have, on a voluntary basis, made considerable efforts to explain to him his situation, which he experiences as an injustice;
>
> In the present case, the two-fold legal aim of the preventive detention, namely protection of society and of the patient's health, can only be achieved if the deprivation of liberty is accompanied by the treatment necessitated by the detainee's mental health; since this double condition is not fulfilled, [Mr] Rooman's detention is unlawful; ..."

16. The CDS postponed its examination of the application for release on a trial basis until a hearing in September 2006, pending the appointment of German-speaking employees to the Paifve EDS.

17. In accordance with an order by the chairperson of the CDS of 24 September 2006, the applicant was transferred to Verviers Prison so that its German-language psychosocial team could assess his mental health and ascertain whether he posed a danger to the public. On 30 October 2006 the CDS confirmed this order and postponed the case to a later date.

18. On 26 January 2007 the CDS dismissed the application for release on parole. It had been indicated in a report of 24 January 2007, drawn up by the German-language psychosocial team in Verviers Prison, that the applicant had a psychotic personality and paranoid character traits (high self-opinion, feeling of omnipotence, lack of self-criticism and threatening remarks) and that he was refusing any treatment. Furthermore, the CDS noted that there was no institution in Belgium which could meet the security and language requirements in the applicant's specific case; the only German-language hospital which could be considered was an open hospital, and it had thus to be ruled out in view of the applicant's mental health.

19. On 14 April 2008 the applicant applied for day release. On 5 June 2008 the CDS noted that it had proved impossible to provide any treatment and that the search for a German-language institution had proved unsuccessful. Accordingly, it ordered the Eupen remand prison to prepare a plan for release on a trial basis, and ordered a new expert report in order to assess the level of danger posed by the applicant. It adjourned examination of the request sine die.

C. The contested proceedings, concerning the second application to the CDS for release on a trial basis

20. Having received a new application from the applicant for release on a trial basis, the CDS held, in a decision of 5 May 2009:

"There has been no progress in Mr Rooman's situation; progress cannot occur until he is in a setting where he can be understood in his own language, like any citizen of this country. A single member of the prison staff, a nurse [A.W.], is temporarily providing him with social contact, whereas a psychiatrist and/or a psychologist should be available to him.

The prison authorities have not put forward any kind of solution to this problem, of which its various services are fully aware. Worse, as those authorities are unable to provide him with the necessary treatment, they seem to have resigned themselves to a role that extends no further than an unfair repressive detention.

The medical reports and [Dr Ro.'s] expert report indicate that Rooman, who continues to present a danger to society, cannot be released without support and preparation in an institutional setting, something that cannot currently be provided in Belgium, but is available abroad."

21. In consequence, the CDS invited the Eupen remand prison to prepare, together with applicant, a plan for release on a trial basis, and encouraged the authorities to take, rapidly, the measures necessary to improve the applicant's situation. It adjourned the case to a later date.

22. On 13 October 2009 the CDS found:

"In the years since this file was opened (October 2003), the persons involved in this case have been thwarted by the fact that the detainee speaks and understands only one language, and that the authorities have no German-speaking staff available for him, with the exception of one nurse [A.W.] (who is apparently due to retire in the near future);

In September 2005 Doctor [Ri.], expert, wrote that relaxation of the detainee's regime 'is possible only in parallel with successful treatment, assessed by predefined steps. The treatment must begin in a secure establishment, then in a closed institution...' Given that treatment in Germany is impossible, it was to begin in Paifve with German-speaking psychiatrists and therapists;

Since that time the detainee's situation has not changed: he converses with and leaves the building only in the company of the sole German-speaking member of staff, and a treatment programme has not even been put in place. No satisfactory follow-up has been given to the requests by the [Social Protection] Board for an end to be put to this unlawful situation for Mr Rooman, who is deprived of his freedom in order, on the one hand, to protect society from possible dangerous conduct by him, and on the other, to provide him with the treatment necessary for his reinsertion;...

In the light of the authorities' failure, the question now before the Board is whether there exists, outside the social-protection facility, a unit or persons who could provide home-based therapy for Mr Rooman; ..."

23. On those grounds, and pointing out that German was one of the national languages and that the applicant was thus entitled to speak, be understood and receive treatment in that language, the CDS asked the Eupen remand prison to search in and around Verviers and Eupen for either a mental health unit, or a doctor or clinic, which could provide home-based therapy for the applicant in his mother tongue. It reserved its decision on the application for release on parole.

24. On 12 January 2010 the applicant submitted pleadings in support of his application for release. He criticised the failure to provide him with therapeutic care and the effect on his health of any prospect of seeing his

situation improve. As his main submission, he requested his immediate release on the grounds of the illegality of his detention. Alternatively, he asked that the CDS impose an obligation on the relevant authorities to take all necessary measures so that he would receive the treatment required by his mental-health condition in his mother tongue.

25. By an interlocutory decision of 13 January 2010, the CDS noted that the applicant's situation had not changed and that the reply from the Eupen judicial assistance unit left no hope of ensuring that the applicant would receive appropriate treatment, in a secure establishment or elsewhere. The CDS considered that it was necessary to attempt one last plea to the Minister of Justice, whose intervention had previously led to some changes, even if they were insufficient to resolve the problem. The CDS accordingly ordered that an "official denunciation" of the applicant's situation be sent to the Minister of Justice.

26. On 29 April 2010 the CDS noted that the Minister of Justice had not replied to its submission and that the applicant's situation had worsened, in that he could no longer count on help from the German-speaking nurse A.W., who had left the Paifve EDS. The CDS continued:

> "It follows from the report [from the psychosocial department] of 30 March 2010 that, except for occasional meetings with a social worker "who speaks German", the detainee has no social contact in his language and that he has had no opportunity for several months to converse and to gain a fresh perspective in the outside world; the doctor and psychologist who signed this report do not seem particularly convinced by the completion of the 'ongoing measures (taken) by the department to enable a German-language psychologist to intervene occasionally to provide care for the German-speaking patients in the EDS';
>
> Mr Rooman's situation is frozen: an ill individual, he is detained in a prison medical institution where no one is able to provide the treatment to which he is entitled; the Minister and his departments are turning a deaf ear, with no concern for the despair to which this manifestly unjust attitude may give rise;
>
> In spite of the unlawfulness of Mr Rooman's detention, his health condition means that release cannot be envisaged unless it is accompanied by therapy and practical support;
>
> The [Social Protection] Board has no powers, firstly, to restore the detainee's basic rights, namely, the rights to liberty, to health care and to respect for his humanity, and secondly, to compel the Minister to put an end to this situation, which his administration has been fully aware of for more than six years."

27. The CDS decided, while "remaining open to any proposals", to leave the applicant's situation unchanged; in other words, it rejected his application for release.

28. The applicant appealed against that decision to the Higher Social Protection Board ("the CSDS").

29. In parallel, the applicant made an urgent application to the President of the Liège Court of First Instance, in order to have his detention declared unlawful and obtain his immediate release, or, alternatively, to obtain a decision ordering the Belgian State to provide him with the medical care required by his situation.

30. By an order of 12 May 2010, the president of the court held that he did not have jurisdiction, on the grounds that the CDS was the lawful body with power to release the applicant or decide on his continued detention.

31. On 27 May 2010 the CSDS upheld the CDS's decision of 29 April 2010 to maintain the applicant in detention. Unlike the CDS, the CSDS held that the applicant's detention was perfectly legal, given that he had been lawfully detained and that he did not fulfil the conditions for definitive or conditional release. Under section 18 of the Social Protection Act, release could only be ordered if the detainee's mental condition had improved sufficiently and if the conditions for his social reinsertion had been satisfied. However, this was not the situation here. The CSDS also considered that the mere fact that the applicant spoke only German did not mean that the authorities had not taken all the necessary steps to provide him with the treatment required by his condition.

32. The applicant appealed on points of law, alleging a violation of Articles 3 and 5 of the Convention.

33. On 8 September 2010 the Court of Cassation dismissed the appeal on points of law. In response to the argument alleging a violation of Article 5 § 1 of the Convention, it held that legal reasons had been given for the CSDS's decision and that it had been justified in law. It found:

> "As preventive detention is primarily a security measure, the therapeutic action necessitated by such detention is not legally required in order for the detention to be lawful, even if its aim, secondary to that of protecting society, is to provide the detained person with the necessary treatment.
>
> The social protection boards derive from section 14 (2) of the Act the power, rather than the obligation, to order, in a decision giving specific reasons, placement in an institution that is appropriate in terms of the security measures and the treatment to be given. It follows that execution of the preventive detention measure does not become unlawful solely because it is implemented in one of the institutions created by the government for that purpose, rather than in another institution specifically designated for the possible treatment it might provide."

34. The argument alleging a violation of Article 3 of the Convention was declared inadmissible, since its examination would require a factual verification of the conditions in which the preventive detention was being conducted and such an examination fell outside the scope of the Court of Cassation's jurisdiction. For the remainder, the Court of Cassation considered that the CSDS had replied to the applicant's complaint in finding that the fact that he spoke only German did not mean that the relevant authorities had not taken all the necessary steps to provide him with the care he required.

D. The third application to the CDS for release

35. On 13 November 2013 the applicant again applied for release.

36. A report by the psychosocial department of the Paifve EDS, dated 13 January 2014, reiterated that the applicant had a poor command of the

French language, and spoke only a few words of French, which did not enable him to conduct a conversation; in consequence, he had very little contact with the other patients and members of staff. The report also referred to a single meeting between the applicant and a German-speaking psychologist in June 2010. The report noted an improvement in the applicant's behaviour; he was apparently less aggressive and intolerant than before. Further, the applicant had never expressed a wish to meet members of the psychosocial team on a regular basis. The report concluded that he should remain in detention in the Paifve EDS, citing among other reasons his "untreated mental health problems".

37. On 24 January 2014 the CDS noted, firstly, the content of the reports by Dr Ri., of 5 September 2005, and Dr Ro., of 21 January 2009, which stressed the need for psychopharmacological and psychotherapeutic treatment in a secure establishment, then in a closed institution, before an open facility could be envisaged. The CDS noted that, in the interim, the various attempts to find a solution to the language problem had not succeeded in bringing about a significant improvement in the applicant's health: the rare outings accompanied by a German-speaking member of the prison staff had been abandoned when this employee, who was not replaced, became unavailable; attempts to find a German-language institution, doctor or therapist had met with failure; no follow-up seemed to have been given to the announcement that a minimum number of German-speaking staff were to be recruited, and the applicant had, of his own accord, declined the assistance of the German-speaking social worker with whom he had occasionally met. The CDS rejected the application for release on parole, finding that the conditions for release (an improvement in the applicant's mental state and guarantees for his social rehabilitation) were not met. With regard to the alleged absence of treatment in German, the CDS specified:

> "The detainee claims that he is not receiving the appropriate treatment for his mental health condition in German, his mother tongue, without however describing or even mentioning the treatment that he has allegedly been denied and that he would agree to accept or in which he would take part. The mere fact that he only speaks German does not mean that the Paifve social-protection facility has not taken all the necessary steps to provide him with the care his condition requires.
>
> While, as the applicant points out in his submissions, it is for the relevant authorities to take all the necessary measures for his health, it is not, however, within the [Social Protection] Board's powers to release a detainee who claims to be the victim of shortcomings on the part of the authorities...
>
> Nor does the Board have jurisdiction to issue orders to the authorities or to third parties, [or] to penalise their actions or shortcomings ..."

38. On 3 April 2014 the CSDS upheld the decision by the CDS, finding, among other points:

> "Contrary to what he alleges in his pleadings, the detainee receives all the treatment required by his condition, from competent and qualified staff in the Paifve EDS, and his specific medical needs are fully taken into account. In spite of the treatment given, the detainee's mental condition has not yet improved sufficiently, on account of his

paranoid and psychopathic character traits, his lack of self-criticism and his constant demand. The detainee is thus clearly wrong in attributing the lack of improvement in his mental condition to the language issue alone.

The continued preventive detention in a EDS that is adapted to his medical condition of an individual who would represent a danger to the public in the event of release, where his mental condition has not sufficiently improved and the conditions for his social rehabilitation are not met, is not unlawful and does not amount to a violation of the provisions of the [Convention]."

39. On 25 June 2014 the Court of Cassation quashed the decision by the CSDS on the grounds that it had not addressed the applicant's argument that he was not receiving care appropriate to his situation, in view of the fact that he spoke and understood only German and that no German-speaking staff members were available in the facility where he was being held. The case was sent back to the CSDS with a differently constituted membership.

40. On 22 July 2014 the CSDS issued an interlocutory finding, requesting the CDS to appoint a group of German-speaking experts to update the psychiatric report of 21 January 2009. It instructed the head of the Paifve EDS institution to take all the necessary measures to ensure that the requisite care was made available, by at least providing the services of a German-speaking psychiatrist and psychologist. It ordered that the case be reopened and scheduled a hearing for 17 October 2014.

41. The Court has not been informed of the progress of those proceedings.

E. The proceedings before the Brussels urgent-applications judge

42. In the meantime, on 28 March 2014 the applicant brought proceedings against the Belgian State before the President of the French-language Brussels Court of First Instance, as the judge responsible for hearing urgent applications in application of Article 584 of the Judicial Code. He asked for his release or, as a subsidiary measure, the imposition of the measures required by his state of health.

43. By an interlocutory order of 4 July 2014, the president of the court asked the head of the Paifve EDS and Dr B. from the psychosocial unit in that EDS to submit statements concerning the treatment available in the Paifve EDS and the treatment that had in fact been provided to the applicant.

44. Statements submitted by the head of the Paifve EDS and by Dr B. on 28 August 2014 indicated that the applicant now had access to consultations with a German-speaking psychologist and that the authorities had made contact with a German-speaking psychiatrist who had agreed to meet the applicant.

45. In an order of 10 October 2014, the president of the court noted that, until September 2014, the applicant had never had access to a psychiatrist who could communicate with him in German. He had had access to a German-speaking psychologist, outside the EDS, between May and

November 2010. He noted that the consultations with the psychologist had come to an end not, as alleged by the State in its pleadings, because the applicant no longer wished to attend them, but because of late payment by the Belgian State of the psychologist's fees and expenses. The consultations with the psychologist had, however, resumed in July 2014. The president then noted that, until April 2010, the applicant had benefitted from the presence of and care provided by a German-speaking nurse, that that nurse had in the meantime left the Paifve EDS, but that since August 2014 he had been authorised to accompany the applicant on outings. Lastly, the order noted that the applicant had had contacts with a German-speaking social worker, but that he had declined the latter's services in February 2014.

46. With regard to the main request, the president held that he did not have jurisdiction to order the applicant's release, as only the social protection bodies had power to do so. With regard to the subsidiary request, the president noted that the applicant had not had access to the mental health treatment required by his condition, and that there was *prima facie* a violation of his right of access to health care. His situation amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention. In consequence, the president ordered the Belgian State to appoint a German-speaking psychiatrist and medical auxiliary for the applicant, subject to a penalty in the event of non-compliance, and to put in place the care routinely provided to French-speaking detainees suffering from a mental illness similar to that of the applicant.

47. On the basis of the information produced, no appeal has been lodged against this order. According to the applicant's representative, the Belgian State appointed a German-speaking psychiatrist and psychologist, who visited the applicant several times. However, these visits stopped at the end of 2015.

F. Claim for damages

48. In the meantime, on 2 May 2014 the applicant had filed a negligence claim against the Belgian State, on the basis of Article 1382 of the Civil Code.

49. By a judgment of 9 September 2016, the French-language Brussels Court of First Instance held the fact of having failed to provide the applicant with psychological treatment in his mother tongue between 2010 and 2014 to be negligent. It held, in particular:

> "It is undeniable that the psychiatric and psychological treatment which [the applicant] must enjoy must be provided to him in German, the only language in which he is fluent and, moreover, one of the three national languages in Belgium.
>
> However, between 2010 and 2014 [the applicant] received no medico-psychiatric treatment in his own language.

> Whatever the quality – which is, indeed, undisputed – of the care provided to detainees in the Paifve [EDS], it is totally inappropriate for [the applicant's] mental-health condition merely on account of the fact that it is not available in German.
>
> In spite of the official and repeated denunciations of this situation by the Social Protection Board to the Belgian State since 2010, the latter has taken no steps to correct it. In addition, it has produced no evidence of the least action taken by it to that end.
>
> This failure to act amounts to negligence within the meaning of Article 1382 of the Civil Code.
>
> ...
>
> Moreover, and as [the applicant] also submits, Articles 3 and 5 [of the Convention] require the Belgian State to take the necessary measures to provide him with access to the basic care necessitated by his mental health.
>
> ...
>
> In the present case, the applicant's vulnerability on account of the very nature of his psychological disorder and the absence of any genuine possibility of contact in his language have necessarily exacerbated his feelings of distress and anxiety.
>
> It is immaterial that, in any event, the [applicant's] state of mental health does not allow for his release. The mere fact of having been detained for an indefinite period without appropriate care amounts in the present case to a violation of Articles 3 and 5 [of the Convention].
>
> Contrary to the submissions of the Belgian State, the fact that [the applicant] is not always receptive to psychological, medical and social therapy does not allow for minimisation of the Belgian State's negligent attitude towards a person who suffers from a mental disorder, whose discernment is, by assumption, uncertain.
>
> By the same token, at the risk of setting aside the lived experience of the person suffering from a mental disorder, [the applicant's] stable conduct within the institution does not suffice to establish that he received appropriate care for his condition."

50. Finding that this absence of treatment had caused mental suffering to the applicant, the court ordered the State to pay him 75,000 euros ("EUR"), an amount assessed *ex aequo et bono*, in compensation for the period for the January 2010 to October 2014.

51. According to information provided on 19 June 2017 by his representative, the applicant was due to lodge an appeal against this judgment. He challenges the period accepted by the court and argues that the lack of treatment pre-dated 2010; he also complains about a lack of treatment in 2016 and the decision to award compensation *ex aequo et bono* rather than on a daily basis.

II. RELEVANT DOMESTIC LAW [AND PRACTICE]

52. The relevant domestic law and practice and the provision of care to offenders placed in preventive detention are set out in detail in the *W.D. v. Belgium* judgment (no. 73548/13, §§ 35-70, 6 September 2016).

53. In the present case, the applicant was placed in preventive detention pursuant to sections 7 and 21 of the Social Protection Act. At the relevant time, these provisions were worded as follows:

Section 7

"Except in cases of serious crimes committed for political motives or through the medium of the press, the investigating judicial authorities and the trial courts may order the detention of an accused who has committed a serious crime and is suffering from one of the conditions set out in section 1."

..."

Article 21

"Persons convicted of crimes who, in the course of their imprisonment, are found to be suffering from a mental disorder or a severe mental disturbance or defect making them incapable of controlling their actions, may be placed in preventive detention by virtue of a decision by the Minister of Justice, issued following an opinion to that effect by the Social Protection Board.

Preventive detention shall take place in the institution designated by the Social Protection Board, in accordance with section 14; sections 15 to 17 shall also be applicable.

If, before expiry of the sentence, the convicted person's mental state has improved sufficiently that preventive detention is no longer required, the Board shall take formal note of this situation and the Minister of Justice shall order the convicted person's return to the prison in which he or she was previously held.

For the application of the law on conditional release, time spent in preventive detention shall be equated with imprisonment."

54. In the present case the applications to the CDS for release were based on section 18 of the Social Protection Act. This provided:

"The Board shall monitor the detainee's condition and may for that purpose visit his place of detention or delegate one of its members to do so. It may, of its own motion or at the request of the public prosecutor, the detainee or the latter's lawyer, order the detainee's release, without conditions or on a trial basis, where his mental condition has improved sufficiently and the appropriate conditions for his social rehabilitation have been established. If an application from the detainee or his lawyer is rejected, it may not be resubmitted within six months of the date of the rejection becoming final.

..."

55. From 1 October 2016 the Social Protection Act was replaced by the Law of 5 May 2014 on preventive detention (see *W.D. v. Belgium*, cited above, §§ 79-86).

THE LAW

[I. ADMISSIBILITY

A. Submissions of the parties

56. The Government raised a preliminary objection based on the non-exhaustion of domestic remedies by the applicant. In order to complain about the conditions of his preventive detention, the applicant ought firstly to have requested, in application of Article 584 of the Judicial Code, an urgent measure from the president of the court of first instance, sitting as the urgent applications judge, who had jurisdiction to ensure that each person's subjective rights were respected. Although the order of 12 May 2010 by the President of the Liège Court of First Instance had dismissed the applicant's claims, this was explained by the fact that that court did not have jurisdiction in the area of applications for release. The order of 10 October 2014 by the president of the French-language Brussels Court of First Instance demonstrated the effectiveness of the urgent applications procedure. Secondly, the applicant could have brought an action for damages on the basis of Article 1382 of the Civil Code. The Government submitted examples from the case-law showing that the Belgian State had already been ordered, through this procedure, to pay compensation to persons detained in psychiatric units or to provide specialist treatment.

57. The applicant considered that it was not necessary to exhaust the remedies referred to by the Government before applying to the Court. He pointed out, firstly, that in 2010 he had applied to the President of the Liège Court of First Instance but that the latter had found that he did not have jurisdiction (see paragraph 30 above). He had then brought proceedings against the Belgian State before the president of the French-language Brussels Court of First Instance in 2014; in those proceedings the Belgian State had argued that his case was inadmissible and that his claim had no merits. The applicant argued that the latter position contradicted the Government's position before the Court. In any event, he pointed out that the Court had already examined a similar plea of inadmissibility and dismissed it in, among other judgments, *Van Meroye v. Belgium* (no. 330/09, §§ 106-108, 9 January 2014). Furthermore, the applicant explained that he had filed a claim for compensation on the basis of Article 1382 of the Civil Code, which was currently pending before the domestic courts.

B. The Court's assessment

58. As regards the first limb of the Government's preliminary objection, the Court observes that the applicant had instituted and brought to a conclusion the procedure before the bodies that had jurisdiction under the

Social Protection Act to review the lawfulness of his preventive detention and to order, as necessary, his release or his transfer to an appropriate establishment. Following the negative decision by the CDS, he brought his complaints before the CSDS, then before the Court of Cassation, which dismissed his appeal on points of law in a judgment of 8 September 2010 (see paragraphs 24 and 31-34 above). In addition, before applying to the Court the applicant had also applied to the President of the Liège Court of First Instance, who held in an order of 12 May 2010 that he did not have jurisdiction (see paragraphs 29-30 above). The applicant did not appeal against that order.

59. The Court reiterates that in the case of *Claes v. Belgium* (no. 43418/09, § 79, 10 January 2013) it had noted that persons in preventive detention, whether applying to the social [protection] bodies or the courts, were pursuing the same aim, which was to complain of the inappropriate nature of the detention in a psychiatric wing and to have the State ordered to find an adequate solution. It had also noted that both the social protection bodies and the courts could, in principle, put an end to the situation complained of by those detainees.

60. Thus, for the same reasons as those set out in the above-mentioned judgment (*Claes*, cited above, §§ 79-83; see also *Oukili v. Belgium*, no. 43663/09, §§ 29-33, 9 January 2014; *Moreels v. Belgium,* no. 43717/09, §§ 29-33, 9 January 2014; *Gelaude v. Belgium*, no. 43733/09, §§ 26-30, 9 January 2014; and *Saadouni v. Belgium*, no. 50658/09, §§ 37-41, 9 January 2014), the Court considers that the applicant has done everything that could reasonably be expected of him to raise his complaints before the domestic courts prior to applying to the Court.

61. With regard to the Government's objection of non-exhaustion of the compensatory remedy, the Court notes that the applicant filed a negligence claim against the Belgian State after his application had been lodged with the Court. That claim led to the judgment of 9 September 2016, delivered by the French-language Brussels Court of First Instance, which held that the lack of treatment provided to the applicant between 2010 and 2014 had been negligent and had caused him mental suffering; it ordered the State to pay him EUR 75,000 in compensation (see paragraph 49 above). The applicant has apparently appealed against that judgment (see paragraph 51 above).

62. The Court reiterates that a remedy that is solely compensatory cannot be regarded as sufficient when dealing with assertions of conditions of preventive or other forms of detention that are allegedly contrary to Article 3, in that such a remedy does not have "preventive" effect, since it is incapable of preventing the continuation of the alleged violation or enabling detainees to secure an improvement in their conditions of detention (see *Torreggiani and Others v. Italy*, nos. 43517/09 and 6 others, § 50, 8 January 2013, and the cases referred to therein).

63. Similarly, the Court reiterates that, in principle, with regard to complaints under Article 5 § 1 of the Convention, only remedies aimed at securing an end to the deprivation of liberty in respect of which a violation

is alleged under this provision are to be used for that purpose. Equally, an action whose aim is to secure compensation for the damage resulting from the impugned deprivation of liberty or punishment of the individual(s) responsible for it does not constitute a domestic remedy to be exhausted in respect of such a complaint (see *De Donder and De Clippel v. Belgium*, no. 8595/06, § 100, 6 December 2011).

64. Having regard to the above considerations, the plea of inadmissibility must be rejected.

65. Nevertheless, the Court considers, having regard to the favourable outcome obtained by the applicant at first instance (see paragraph 49 above), that the question arises whether the applicant may still claim to be the victim of a possible violation of the Convention.

66. The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention and that the question whether an applicant continues to have victim status falls to be determined at the time of the Court's examination of the case, taking into account not only the position at the time when the application was lodged with the Court but of all the circumstances of the case, including any developments prior to the date of the examination of the case by the Court (see *Tănase v. Moldova* [GC], no. 7/08, § 105, ECHR 2010).

67. In this connection, it also notes that in addition to the award of financial compensation referred to above, the president of the French-language Brussels Court of First Instance had previously, by an order of 10 October 2014, ordered the Belgian State to appoint a German-speaking psychiatrist and medical auxiliary, subject to a penalty in the event of non-compliance, and to put in place the care routinely provided to French-speaking detainees suffering from a mental illness similar to that of the applicant (see paragraph 46 above). In addition, the court noted that the applicant's situation amounted to a violation of Articles 3 and 5 § 1 of the Convention (see paragraph 49 above).

68. The Court reiterates that a favourable decision or measure is not in principle sufficient to deprive applicants of their victim status for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-180, ECHR 2006-V, and *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010). Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application.

69. The Court notes that in the present case the domestic courts explicitly recognised that there had been a violation of the Convention. As to whether there has been redress which is "appropriate" and "sufficient", it notes that the national authorities, following the communication of the application, admittedly took decisions in the applicant's favour, by ordering that German-speaking professionals be made available and awarding him financial compensation for the prejudice sustained. However, the Court

cannot overlook the fact that this availability lasted for only a few months, or that the situation giving rise to the application dates back to the beginning of the applicant's preventive detention and had been formally noted by the CDS since 2006 (see, *mutatis mutandis Y.Y. v. Turkey*, no. 14793/08, §§ 52-55, ECHR 2015 (extracts)). Furthermore, the financial compensation awarded at first instance covers only the period from January 2010 to October 2014. This cannot therefore be regarded as full reparation, especially as the judgment of 9 September 2016 was delivered at first instance and is not final (see paragraph 51 above).

70. It is accordingly appropriate to consider that the applicant has not lost his victim status.

71. The Court further notes that the complaints under Articles 3 and 5 § 1 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further finds that they are not inadmissible on any other grounds. They must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

72. The applicant complained that his detention without psychological and psychiatric treatment in the social protection facility where he had been placed in preventive detention, and the total lack of any prospects of improvement in his situation on account of this absence of treatment, amounted to inhuman and degrading treatment prohibited by Article 3 of the Convention, which reads:

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

73. The Government contested that argument.

A. Submissions of the parties

1. The applicant

74. The applicant argued that his mental health had deteriorated on account of the total absence of treatment, as confirmed by several psychiatrists, who had indeed alerted the authorities to the lack of prospects for positive developments in his situation. However, only therapy could legitimise the applicant's deprivation of freedom. Without it, his detention amounted to inhuman and degrading treatment, contrary to human dignity. In short, the applicant was in limbo: he was detained on account of his dangerousness and his mental-health condition; in order to stop being dangerous, he needed to receive treatment; however, the applicant had not been provided with any treatment since being placed in preventive detention; as the social protection bodies had found that they did not have

power to oblige the executive to offer him therapy, the applicant would therefore be detained for life.

75. According to the applicant, the Belgian State had been at fault from the outset of his preventive detention in 2003, in that he had been left without the treatment required by his mental-health condition. Indeed, the Government could not deny that the Paifve EDS employed no care staff who could speak German; in consequence, it was impossible to put in place any form of therapy for the applicant. With regard to the German-speaking social worker, the applicant had met her on only two or three occasions – and not thirteen times as claimed by the Government – and she had stopped seeing the applicant because she had not been paid for doing so, and because the applicant had no longer requested her services. The Dutch-language nurse who spoke German had left the Paifve EDS in 2012. In any event, what the applicant needed was to meet a German-speaking psychologist and psychiatrist, as the CSDS had acknowledged in its decision of 22 July 2014.

76. Furthermore, it was incorrect to state that the applicant had refused care, given that he had never been offered treatment or therapy sessions. This reality had been confirmed by the CSDS in its decision of 22 July 2014. The persons he had met in Verviers Prison in 2007 had been entrusted only with a fact-finding task, and there had therefore been no therapeutic aspect to those meetings. In addition, it was for the State to put in place the necessary treatment, and not for the applicant himself to indicate what treatment he required. The authorities had been aware of the applicant's situation since the beginning of his preventive detention, and they had taken no action since that time.

77. Lastly, the applicant considered that there was nothing in the case file to support the assertion that, in practice, his dangerous behaviour had persisted and that his continued detention was justified. On the contrary, his good behaviour had been confirmed in various reports by the psychosocial service in the Paifve EDS; he had never had any problems with the staff or the other detainees and had never been the subject of a report or a disciplinary proceedings. He worked peacefully in the Paifve EDS and had made progress in terms of social life and conviviality. Thus, the applicant had confirmed to his lawyer on 25 July 2014 that he was willing to meet people who were able to examine and help him.

2. The Government

78. The Government submitted that the Paifve EDS was the establishment designated by the CDS for the applicant's detention. He received treatment there, in particular medical treatment for diabetes-related problems. According to the Government, and as noted by the CSDS and the Court of Cassation, the fact that there existed a language problem in no way implied that the necessary treatment could not be provided. Indeed, the CDS had accepted that position in its decision of 24 January 2014.

79. In addition, the Government pointed out that the applicant refused to collaborate with the members of the care team and that he had not indicated what specific treatment had not been proposed or provided to him. The applicant had submitted no request for psychological counselling, and he had not complained or asked for psychotropic drugs. The problem lay instead in the applicant's pathology, in a refusal to accept his situation and the fact that he did not always accept treatment.

80. Admittedly, the Government acknowledged that the circumstance of the applicant being German-speaking made the provision of care in a French-language environment difficult. However, the authorities had made every possible effort to address the applicant's problems and were continuing to seek solutions. In this connection, the Government noted that the applicant had been regularly seen (once a month on average) by a social worker who was fluent in German. Thus, the applicant had met a psychologist in the presence of this social worker, who had provided interpretation. Furthermore, between May and November 2010 the applicant had been able to meet a German-speaking psychologist thirteen times. The authorities had taken steps to find a solution to the situation, especially by looking for German-language institutions in a position to take in the applicant. A German-speaking employee had also been made available to the applicant, so that he could go on accompanied outings once every three months.

81. Lastly, the Government observed that, according to a report by the Paifve EDS's psychosocial service of 13 January 2014, the applicant's condition had improved: in particular, he was communicating more with members of staff. This improvement resulted, according to the Government, from the beneficial effect of the institution's reassuring setting. In conclusion, the Government considered that the authorities had done their utmost, bearing in mind the applicant's high-risk profile and the language problem. In their view, the level of severity for Article 3 of the Convention to apply had thus not been attained.

B. The Court's assessment

1. General applicable principles

82. The Court refers to the general principles concerning the responsibility of States *vis-à-vis* the provision of health care to detainees in general and to detainees suffering from mental disorders in particular, as set forth in its judgments in the cases of *Bamouhammad v. Belgium* (no. 47687/13, §§ 115-123, 17 November 2015) and *Murray v. the Netherlands* ([GC], no. 10511/10, §§ 105-106, ECHR 2016) respectively.

2. Application to the present case

83. The Court notes that the existence of the mental-health problems at the origin of the applicant's preventive detention is not disputed. He was

placed in preventive detention on the basis of several medical reports finding that he had a narcissistic and paranoid personality and suffered from a severe mental disturbance rendering him incapable of controlling his actions. In consequence, the applicant has been detained continuously in the Paifve EDS since 21 January 2004.

84. The applicant explained that, throughout his detention, he had not received any therapeutic care for his mental-health problems. The Court noted that, in contrast to other cases raising similar complaints that it has already had to decide (see, for example, *Claes*, cited above, and *Lankester v. Belgium*, no. 22283/10, 9 January 2014), the applicant in the present case did not complain that the Paifve facility as such was inappropriate for his mental-health condition and his profile. He complained that he alone has not received treatment because the institution in which he was detained, situated in the French-language region of Belgium, has no members of staff who speak German, one of Belgium's official languages and the only language in which he is fluent. As a result, and in the absence of any prospect of progress in the situation, the applicant alleged that his mental health has deteriorated.

85. The Government did not dispute the absence of German-speaking medical staff within the Paifve facility, nor the difficulty in providing therapeutic treatment for the applicant's mental-health problems. However, they submitted that there was no causal link between these two aspects. In their view, the reasons for the latter problem lay in the type of illness from which the applicant suffered, his lack of collaboration with the medical team and his failure to take a proactive approach with the institution's psychosocial service. They also emphasised that the language problems had not prevented the necessary treatment being provided for the applicant's physical health. In addition, the applicant had not been deprived of any form of communication nor left without any consultations, since he met regularly with a German-speaking nurse and social worker.

86. The Court cannot accept the Government's argument. All the evidence before it tends to show that the main, if not the only, reason for the failure to provide therapeutic care for the applicant's mental-health problems was that communication between the medical staff and the applicant was impossible. On several occasions the applicant's applications for release were postponed by the CDS on account of the difficulty in beginning therapy as a result of the language problem (see paragraphs 13 and 16 above). Furthermore, attempts have been made since 2006 to find therapeutic support, to be provided in German outside the Paifve facility (see paragraphs 13, 18-19 and 23 above). In several reports the Social Protection Board and the professionals who met the applicant confirmed that the provision of therapy was impeded by the language barrier and that the applicant's failure to make progress resulted from the absence of such care. The president of the French-language Brussels Court of First Instance and the court itself also found that it was the lack of therapy in German that

restricted practical access to the care that was normally available (see paragraphs 45 and 49 above).

87. The applicant was certainly able to meet qualified German-speaking staff. However, as emphasised by the CDS itself, these contacts, whether with the experts from Verviers Prison or with the German-speaking nurse and social worker in Paifve, were in a non-therapeutic context (see paragraphs 17-18 and 26 above). Only the visits by an external German-speaking psychologist between May and November 2010 (see paragraph 45 above) corresponded to the Government's line of argument; however, apart from the fact that, set against the overall duration of the detention, these visits cannot be considered as a genuine course of treatment, the Court notes that they came to an end as a result of the State's failure to pay the attendant costs and expenses.

88. The Government then claimed that the applicant failed to produce any real evidence to substantiate his allegations and did not indicate what treatment had not been provided or offered to him.

89. The Court does not agree with this analysis of the situation. It notes that the applicant referred before the social-protection bodies to the failure to prove treatment and to the impact on his health of the lack of any prospect of a change in his situation (see paragraph 24 above). It further reiterates that it has already repeatedly rejected such a formalistic approach and emphasised that the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment (see *Claes*, cited above, § 93; *Murray*, cited above, § 106; and *W.D. v. Belgium*, no. 73548/13, § 105, 6 September 2016).

90. The Court does not underestimate the efforts made by the social protection bodies to find a solution in the applicant's particular case (see paragraphs 21 and 23 above). However, those efforts were thwarted by the authorities' failure to take appropriate measures to bring about a change in his situation. It was not until the CSDS decision and the order by the president of the French-language Brussels Court of First Instance in 2014 (see paragraphs 40 and 45 above) that practical measures, which had been recommended for years, were taken through the provision of a German-speaking psychologist. However, it appears that this arrangement ceased towards the end of 2015 (see paragraph 47 above).

91. In those circumstances, and taking into account the fact that German is one of the three official languages in Belgium, the Court finds that the national authorities did not provide adequate treatment for the applicant's health condition. The fact that he was continuously detained in the Paifve EDS for thirteen years without appropriate medical support or any realistic prospect of change thus subjected him to particularly acute hardship, causing him distress of an intensity exceeding the unavoidable level of suffering inherent in detention.

92. Whatever obstacles the applicant may have created by his own conduct – as pointed out by the Government – the Court considers that this did not dispense the State from fulfilling its obligations towards him.

93. In those circumstances, and as the president of the French-language Brussels Court of First Instance and that court itself also noted in the order of 10 October 2014 and the judgment of 9 September 2016 respectively (see paragraphs 45 and 49 above), the Court concludes that the applicant was subjected to degrading treatment on account of his continued detention in the conditions examined above, in the period from his admission to the Paifve EDS on 21 January 2004 until now, with the exception of two periods when he had access to a German-speaking psychologist, from May to November 2010 and from July 2014 to the end of 2015. There has accordingly been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

94. The applicant alleges that his detention is not lawful, given that he is not receiving the psychological and psychiatric treatment necessitated by his mental health. He relies on Article 5 § 1 of the Convention.

95. In view of the fact that the applicant has been detained since 20 February 2004 solely on the basis of the decision of 16 June 2003 of the Committals Division of the Liège Court of First Instance, upheld by the judgment of 1 August 2003 of the Indictments Division of the Liège Court of Appeal applying section 7 of the Social Protection Act, and of the ministerial decision of 15 January 2004 applying section 21 of the Social Protection Act, it is paragraph (e) of Article 5 § 1 of the Convention which is applicable (see, *inter alia*, *L.B. v. Belgium*, no. 22831/08, § 89, 2 October 2012). The relevant part of Article 5 § 1 provides:

> "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 for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> ..."

96. The Government contested that argument.

A. Submissions of the parties

97. The applicant argued that his detention was not "lawful" within the meaning of Article 5 § 1 (e) of the Convention given that, as a result of a language problem, he was not receiving the required treatment for his mental health. In his opinion, his detention ought to provide an opportunity

to ensure that he received the treatment necessitated by his condition, with a view to his re-integration into society. Thus, according to the applicant, preventive detention ought to be accompanied by appropriate treatment. In the present case, however, nobody was capable of providing care to the applicant in German, the only language that he understood and spoke and, furthermore, one of the three official languages in Belgium. Indeed, the unlawfulness of the applicant's detention had been noted on several occasions by the CDS itself, in particular in its decision of 29 April 2010. The CDS had also noted that the absence of treatment resulted from the authorities' inertia.

98. The Government referred to their arguments with regard to Article 3 of the Convention. They submitted that the present application resembled the case of *De Schepper v. Belgium*, in which the Court had found that the Belgian authorities had not failed in their obligation to seek to provide the applicant with treatment adapted to his condition that might help him recover his freedom, but that their lack of success could be explained mainly by the evolution in the applicant's condition and the fact that it was therapeutically impossible for the institutions approached to treat him (they referred to *De Schepper v. Belgium,* no. 27428/07, § 48, 13 October 2009). They asserted that there had been no violation of Article 5 § 1 of the Convention.

B. The Court's assessment

99. The Court refers to the four leading judgments adopted by it with regard to the situation in Belgium in respect of the preventive detention of offenders with mental disorders, in which it set out the general principles enshrined in its case-law on which to assess the lawfulness of the deprivation of liberty and the continued detention of an individual suffering from mental-health problems (see *L.B. v. Belgium*, cited above, §§ 91-94; *Claes*, cited above, §§ 112-115; *Dufoort v. Belgium*, no. 43653/09, §§ 76, 77 and 79, 10 January 2013; and *Swennen v. Belgium*, no. 53448/10, §§ 69-72, 10 January 2013; see also *Papillo v. Switzerland*, no. 43368/08, §§ 41-43, 27 January 2015).

100. In the present case, the Court notes that it is not in dispute that the preventive detention was decided "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1 of the Convention.

101. The Court reiterates that, for detention to be considered "lawful", there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 44, Series A no. 93; *Aerts v. Belgium*, 30 July 1998, § 46, *Reports of Judgments and Decisions* 1998-V; *Saadi v. the United Kingdom* [GC], no. 13229/03, § 69, ECHR 2008; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 147, ECHR 2012).

102. It further notes that, in contrast to the leading cases cited above (see paragraph 99), the applicant is detained in a social-protection institution that is in principle appropriate to his mental health condition and his degree of dangerousness (see paragraph 52 above).

103. The Court has also found, under Article 3 of the Convention, that he has not been provided with appropriate care in that institution and has been held in unsuitable conditions for thirteen years, in breach of Article 3 (see paragraph 93 above). That being stated, the Court also reiterates its established case-law to the effect that, as long as a person's detention as a mental health patient takes place in a hospital, clinic or other appropriate institution, the adequacy of the treatment or regime is not a matter for examination under Article 5 § 1 of the Convention (see *Winterwerp v. the Netherlands*, 24 October 1979, § 51, Series A no. 33; *Ashingdane*, cited above, § 44; and *Stanev*, cited above, § 147). In the present case, there has at all times been a link between the reason for the applicant's detention and his mental illness. The failure to provide appropriate care, for reasons unconnected with the actual nature of the institution in which the applicant was held, did not break that link and did not render his detention unlawful (see *Ashingdane*, cited above, § 49).

104. In conclusion, there has been no violation of Article 5 § 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

106. The applicant claimed 800,000 euros (EUR) in respect of the pecuniary and non-pecuniary damage he had allegedly sustained. He argued that, had he been at liberty, he could have been employed. This loss of earnings was to be assessed together with the non-pecuniary damage sustained as a result of the unjust and unwarranted detention. Thus, the applicant considered that the damages ought to be calculated on the basis of compensation for each day of detention since the decision issued by the Committals Division on 16 June 2003. On the basis of EUR 200 per day of detention, he calculated a total amount of EUR 800,000 at the date of submitting his observations, that is, on 29 July 2014. However, he left it to the discretion of the Court to determine the daily sum and the total amount. Lastly, the applicant asked that the Court explicitly state that the damage sustained would continue until his effective release.

107. The Government noted that, in calculating damages, the applicant had used the compensation system intended cases of unwarranted detention. However, this comparison was irrelevant in the present case, since the decision to place the applicant in preventive detention had been lawful. Referring to the Court's existing case-law in this area, the Government suggested that any sum awarded did not exceed EUR 15,000.

108. In the absence of any demonstrated causal link between the violation of Article 3 of the Convention and the pecuniary damage, the Court dismisses the applicant's claims under this head.

109. However, the Court finds that the applicant undoubtedly sustained damage of a non-pecuniary nature on account of his continued detention without appropriate treatment for his health condition. Ruling in equity, as required under Article 41, the Court awards him EUR 15,000 in respect of non-pecuniary damage (see, *mutatis mutandis*, *W.D v. Belgium*, cited above, § 177).

B. Costs and expenses

110. The applicant also claimed, without submitting any supporting documents, a single lump sum of EUR 100,000 in respect of the costs and expenses incurred before the domestic courts and before the Court.

111. The Government considered that this claim ought to be rejected. Firstly, the applicant had been granted legal aid for his defence in the domestic proceedings, which also covered legal fees. Secondly, the applicant had not provided evidence that the fees in question had been genuinely incurred; moreover, some of those fees concerned proceedings that were still pending, the outcome of which was still unknown.

112. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant has not submitted any invoice or any fee note or expenses claim which would confirm that the costs are real, or any breakdown of fees on the basis of the proceedings and the time spent on them. The applicant's claim is therefore dismissed.

C. Default interest

113. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention;

3. *Holds*, by six votes to one, that there has been no violation of Article 5 § 1 of the Convention;

4. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

5. *Dismisses*, by six votes to one, the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 18 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Robert Spano
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Karakaş is annexed to this judgment.

R.S.
S.H.N.

PARTLY DISSENTING OPINION OF JUDGE KARAKAŞ

I do not share the majority's opinion that there has been no violation of Article 5 § 1 of the Convention.

The majority notes that the applicant is being detained in a social protection facility that in principle is appropriate to his mental health condition and his degree of dangerousness.

In my opinion, the applicant's situation is wholly inconsistent with this finding. The applicant is not being detained in an institution that is appropriate to his health condition. Firstly, he has not received suitable treatment and has been held for more than thirteen years in inappropriate conditions, in breach of Article 3 (see paragraph 93 of the judgment). I consider that this situation has had the effect of breaking the link required by Article 5 § 1 (e) of the Convention between the purpose and the practical conditions of detention.

In the case of *Stanev v. Bulgaria* (no. 36760/06, ECHR 2012), the Court, reiterating the principles governing the deprivation of liberty of persons suffering from mental illnesses, stated the following:

> "145. As regards the deprivation of liberty of mentally disordered persons, an individual cannot be deprived of his liberty as being of "unsound mind" 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 (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; *Shtukaturov*, cited above, § 114; and *Varbanov*, cited above, § 45).
>
> 146. As to the second of the above conditions, the detention of a mentally disordered person may be necessary not only where the person needs therapy, medication or other clinical treatment to cure or alleviate his condition, but also where the person needs control and supervision to prevent him, for example, causing harm to himself or other persons (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 52, ECHR 2003-IV).
>
> 147. The Court further reiterates that there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. In principle, the "detention" of a person as a mental-health patient will be "lawful" for the purposes of Article 5 § 1 (e) only if effected in a hospital, clinic or other appropriate institution authorised for that purpose (see *Ashingdane*, cited above, § 44, and *Pankiewicz v. Poland*, no. 34151/04, §§ 42-45, 12 February 2008). However, subject to the foregoing, Article 5 § 1 (e) is not in principle concerned with suitable treatment or conditions (see *Ashingdane*, cited above, § 44, and *Hutchison Reid*, cited above, § 49)."

It is clear from our case-law that detention will be "lawful" for the purposes of Article 5 § 1 (e) only if it is effected in a hospital, clinic or other appropriate institution authorised for that purpose. The persons concerned are excluded from society not only because they are dangerous, but also in order to be able to receive appropriate treatment. Even if adequate treatment

or an adequate regime nonetheless do not, in principle, fall within Article 5 § 1 (e), in the absence of appropriate treatment indefinite detention ceases to be lawful detention within the meaning of Article 5 § 1 (e). The Court must, in each case, assess whether the applicant's detention has taken place in an appropriate institution.

The Court found a violation of Article 5 § 1 (e) in its pilot judgment *W.D v. Belgium* (no. 73548/13, 6 September 2016), concerning the detention of offenders with mental disorders in the psychiatric wings of ordinary prisons in which they were not provided with appropriate therapeutic support. The present case, the *Rooman* case, concerns a social-protection institution, Paifve, which belongs to the Federal Justice Department.

According to the most recent report by the Paifve Supervisory Board (a public authority), of November 2016, there are considerable shortcomings in this institution. In the context of "a lack of continuity in providing care", there is a "marked shortage of psychiatrists compared with an ordinary psychiatric hospital" and "the inadequacy of psychiatric and psychological treatment is all the more serious in the case of those patients who have been placed in preventive detention for sexual offences".

Thus, the report notes:

> "It is regrettable that the Paifve EDS does not contain a service specialising in sexual deviance, given that a significant proportion of patients have been detained for deviant conduct which, in some cases, is very serious".[1]

The question raised by this case is not only the lack of German-speaking health-care personnel, but also the absence, in the Paifve EDS, of treatment for persons having demonstrated sexual deviance (the applicant too was convicted of sexual violence – see paragraph 7 of the judgment). It may be inferred from this that the applicant's detention has not taken place in a social protection facility that is "in principle" appropriate to his mental health condition and his degree of dangerousness. This situation has lasted for more than thirteen years, throughout which time he has been deprived of the treatment required by his condition.

In its leading judgments (*L.B. v. Belgium,* no. 22831/08, 2 October 2012; *Claes v. Belgium*, no. 43418/09, 10 January 2013; *Dufoort v. Belgium,* no. 43653/09, 10 January 2013; and *Swennen v. Belgium,* no. 53448/10, 10 January 2013), the Court held that there had been a violation of Article 5 § 1 of the Convention on the grounds that the detention of the applicants, who had been found to lack criminal responsibility, for a significant period in a psychiatric wing of a prison that was ill-suited to their needs had effectively broken the link between the purpose and the practical conditions of detention. It followed the same reasoning in its pilot judgment *W.D v. Belgium* (cited above, § 133), recognising the structural problem of

1. http://www.ccsp-ctrg.be/fr/system/files/rapport_annuel_2016_paifve.pdf

continued detention in prison psychiatric wings without the provision of appropriate treatment (ibid., § 169).

The copious material on the social-protection milieu in Belgium reveals all the complexity of its legal regime, describing it as "a world somewhere between treatment and security"[2], the main features of which are identified as follows:

> "Overcrowded wings, detention of inmates in ordinary criminal wings, lack of therapeutic support, chronically overwhelmed social protection institutions and units, a waiting period of about 3 years before being transferred from psychiatric wings to a social protection institution or unit: social protection in Belgium remains a highly complex issue and presents a picture that is far from rosy". [3]

It is clear that the issue of the lack of appropriate treatment in Belgium, whether in a prison psychiatric wing (*Merksplas)* or a social protection institution (*Paifve)*, continues to be a pressing one. In the light of those considerations, I see no difference between the leading judgments and the *Rooman* case, and I fail to understand how the majority have reached a different conclusion.

In conclusion, the fact that the applicant has been detained for more than thirteen years in a facility which does not correspond to his mental-health condition has broken the link required by Article 5 § 1 (e) of the Convention between the purpose and the practical conditions of detention. There has therefore been a violation of Article 5 § 1 of the Convention.

This is the reason why I also voted against the amount awarded in respect of non-pecuniary damage, since it ought to take into account the violation of Article 5 § 1.

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2. Y. Cartuyvels, B. Champetier, A. Wyvekens, "La défense sociale en Belgique, entre soin et sécurité. Une approche empirique*"* – https://www.cairn.info/revue-deviance-et-societe-2010-4-page-615.htm

3. Ibid.; see also the report by the Federal Justice Department, prepared by the "ERCI" – http://www.psy107.be/images/Synth%C3%A8se_Rapport-ERCI%20docx.pdf