VERHAEGEN
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The Registrar
European Court of Human Rights
Council of Europe
F – 67075 Strasbourg CEDEX
FRANCE

Per aangetekend schrijven

Herentals, 2 januari 2020

Geachte heer, mevrouw,

Betreft : **Verzoekschrift**
M. ref. : 2016/231/H – Denis Jimmy WBM
Uw ref. :

In bijlage een verzoekschrift in toepassing van art. 43 EVRM voor de heer Jimmy Denis en Irvine Derek.

Met mijn oprechte hoogachting,

Peter VERPOORTEN

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Request in application of article 43 ECHR concerning a referral to the Grand Chamber

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FOR: Mr. **DENIS Jimmy**, Belgian national, born 18.06.1984, currently interned in the prison of Merksplas, Steenweg op Wortel 1, 2330 Merksplas, Belgium.

Mr. **Derek IRVINE**, British national, born 18.01.1964, currently interned in the Forensic Psychiatric Centre of Antwerp, Beatrijslaan 96, 2050 Antwerp, Belgium.

Assisted by Mr. Peter Verpoorten, lawyer with offices 2200 Herentals, Lierseweg 102-104, Belgium. (Ref.: 2016/231/H – Denis Jimmy WBM & 2016/232/H – Derek Irvine WBM)

AGAINST: **The state of Belgium**, represented by its agent, Ms. Isabelle Niedlispacher, General Counsellor, the Federal Government Department of Justice, General Direction of legislation and fundamental liberties and rights, 1060 Brussel, Waterloolaan 115, Belgium.

The European Court of Human Rights

62819/17 Denis Jimmy c. Belgique
63921/17 Irvine Derek c. Belgique

Seen the ECHR judgement dated 08.10.2019.

1.

Art. 43 of the European Convention of Human Rights stipulates:

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

2.

Mr. Denis and Mr. Irvine hold that the criteria of art. 43, 2. ECHR are met and that the judgment of 08.10.2019 raises a very serious question affecting the interpretation or application of the Convention or the Protocols thereto, or – at a minimum - a serious issue of general importance.

The question is the following:

Can the Belgian government under art. 5.1.e ECHR detain people of unsound mind under the criminal law - regime of internment,

in direct contradiction with the definition of 'grave danger to society' as formulated by the domestic criminal internment - law applicable,

with the consequence that the 'necessity of the detention' - criterion of the ECHR principle judgment 'Winterwerp c/ Netherlands' of 24.10.1979 has to be determined by ignoring the relevant domestic criminal internment – law applicable,

all the while the 'general danger to himself or society' - criterium of the civil law regime of 'forced admission' is met?

3.

At the outset, applicants state that the 08.10.2019 judgment of the 4th section of the ECHR concerning the case of Mr. Denis and Mr. Irvine is <u>in direct contradiction with earlier decisions of the ECHR concerning the interpretation of art. 5.1.e ECHR</u>.

In ECHR, Oukili c/ Belgique, 09.01.2014, the Court found:

54. Aucun élément du dossier du requérant ni de l'argumentation du Gouvernement ne permet à la Cour de parvenir à une conclusion différente en l'espèce. <u>Elle s'impose d'autant plus en l'espèce que</u>, ainsi que le souligne le rapport établi le 18 janvier 2011 par le psychiatre de la prison (paragraphe 22 ci-dessus), <u>les faits reprochés au requérant sont d'importance mineure et qu'il ne semble pas présenter de véritable danger pour la société</u>.

55. En conclusion, la Cour considère que l'internement du requérant dans un lieu inadapté à son état de santé depuis 1989 avec des périodes d'interruption jusqu'en 2007 a rompu le lien requis par l'article 5 § 1 e) entre le but de la détention et les conditions dans lesquelles elle a lieu.

56. Partant, il y a eu violation de l'article 5 § 1 de la Convention.

There, as here, the applicant had only committed minor infractions:

Mr. Denis was interned by the Correctional Tribunal of Turnhout on 18.06.2007 for the theft of the car of an acquaintance between 13.05.2005 and 16.05.2005. The car itself was retrieved on 26.05.2005 near the home of Mr. Denis. Since the theft of the car, he never committed any other infractions punishable by law.

Mr. Irvine was interned by the Chamber of Counsel of the Tribunal of Antwerp on 14.11.2002 for 'the attempt of theft by means of breaking and entering an uninhabited residence or other enclosed property' on 30.09.2002.

Still, in 2019, they are treated as mentally ill persons posing a grave danger to society that warrants their confinement under the Internment law of 05.05.2014.

4.

The question of 'danger for society' is, in the Belgian interment law of 05.05.2014 defined by art. 9, §1, 1°:

> *Art. 9.§ 1. De onderzoeksgerechten, tenzij het gaat om misdaden of wanbedrijven die worden beschouwd als politieke misdrijven of drukpersmisdrijven, behoudens voor drukpersmisdrijven die door racisme of xenofobie ingegeven zijn, en de vonnisgerechten kunnen de internering bevelen van een persoon :*
>
> *1° die een misdaad of wanbedrijf heeft gepleegd die de fysieke of psychische integriteit van derden aantast of bedreigt en*
>
> *(...)*
>
> *3° bij wie het gevaar bestaat dat hij als gevolg van zijn geestesstoornis, eventueel in samenhang met andere risicofactoren, opnieuw feiten zoals bedoeld in 1° zal plegen.*

In translation:

> *Art. 9, §1 1.*
>
> *1° Who has committed a crime or felony **that violated or threatened the fysical or psychological integrity of others**,*
>
> *(...)*
>
> *3° **Of whom there is danger that he**, in consequence of his being of unsound mind, and possibly in correlation with other risk factors, **will AGAIN commit offenses as meant in 1°**.*

5.

The 08.10.2019 ECHR chamber judgment concerning Mr. Denis and Mr. Irvine holds that the Belgian Courts can lawfully decide to detain people under the Internment law of 05.05.2014, even though they have **NEVER** committed a crime or felony as required by the Internment law, and in direct contradiction with this Internment law that holds that the danger to society has to be that they will **AGAIN** commit these type of serious offenses.

Mr. Denis and Mr. Irvine disagree with the conclusion of the chamber judgement.

6.

The Judgment is apparently unaware that Belgian law has two laws to deal with persons of unsound mind: The (civil) law of 26.06.1990 for the protection of mentally ill persons and the (criminal) law of 05.05.2014 concerning the internment.

The civil law of 1990 is much more flexible and grants the mentally ill person a far greater freedom if his condition allows this, where the law of 2014 is of a far greater strictness and imposes a great number of conditions on the interned person, and furthermore makes it possible to incarcerate sufferers of mental illness in ordinary prisons.

The necessity of the 'forced admission' has to meet one of the following criteria formulated in art. 2 of the law of 26.06.1990:

> *Art. 2. De beschermingsmaatregelen mogen, bij gebreke van enige andere geschikte behandeling, alleen getroffen worden ten aanzien van een geesteszieke indien zijn toestand zulks vereist, hetzij omdat hij zijn gezondheid en zijn veiligheid ernstig in gevaar brengt, hetzij omdat hij een ernstige bedreiging vormt voor andermans leven of integriteit.*

In translation:

> *Art 2. The protective measures can only, in absence of any other appropriate treatment, be applied towards a mentally ill person if his condition warrants them, either because he puts his health and safety in grave danger, or either because he forms a serious threat towards other people's life or integrity.*

7.

The new Internment law has a threshold that was specifically introduced to get rid of the widespread Belgian practice to 'improperly' intern people <u>who did not pose a grave danger to society because they already have committed offenses that violate or threaten the integrity of others</u>. In the words of the Minister of Justice in the presentation of his project of law which resulted in the text of art. 9 of the internment law as it is today:

> *Le premier paragraphe de l'article 9 est réécrit en vue d'affiner la possibilité d'imposer un internement. L'objectif est de se focaliser sur ces personnes pour lesquelles cette mesure de*

sûreté est véritablement nécessaire dès le début pour une durée indéterminée et desquelles la société et les victimes doivent être protégées. Cela permet de contrer un usage impropre de la mesure d 'internement.

The Justice Minister himself acknowledged this practice as an 'improper use' of the internment measure.

Nevertheless these 'improperly' interned people, who do not pose a grave danger to society as defined by the internment law, are still held in the criminal law internment system today instead of being transferred to the civil law system, a practice the Chamber judgment of 08.10.2019 inexplicably affirms.

In consequence, Mr. Denis is at the time of writing again imprisoned in the prison of Merksplas since 04.01.2019, without any perspective whatsoever, which is a direct violation of the art. 3, 5.1.e, 5.4 and 13 ECHR, and a furtherance of the systemic violation of human rights as found by your Court in the pilot – judgement of W.D. c/ Belgium of 06.09.2016.

Under the civil law 'forced admission' system, any detention would be in a psychiatric hospital, and it would be impossible for the authorities to incarcerate him in a prison, as the criminal internment law still allows.

8.

In consequence, this erroneously puts excessive limits on the freedom of Mr. Denis and Mr. Irvine that cannot be satisfactorily be explained by domestic law, as they simply do not meet the threshold of 'posing a grave danger to society' required to apply this internment law to them.

This 'improper' application of this Internment law on people who have only committed minor offenses not within the scope of the Internment law, is wholly arbitrary, and therefore a violation of art. 5.1.e, as there has been a breach between the goal of the detention (protection of society against mentally ill people as such) and the circumstances of their exceptional regime of deprivation of liberty (protection of society against mentally ill people who have committed certain acts that pose a direct threat to the integrity of others).

9.

Mr. Denis and Mr. Irvine do not state that they don't form any risk to society. As such, they recognize that their detention can be warranted.

Nevertheless, they feel that their mental condition, and the acts they have committed, meet the threshold of the civil law concerning the forced admission in a psychiatric hospital, but not the threshold of the criminal law concerning the internment, with the possibility of being incarcerated in an ordinary prison.

The Judgement of 08.10.2019 blurs this distinction completely, by accepting that ANY danger to society, however defined, fulfills the condition to apply the much harsher internment law.

10.

This judgment therefore raises an important question of general importance, as it reopens the door the ECHR had been willing to close with the Oukili – judgment of 09.01.2014, by the imposition of a threshold of 'serious circumstances' before an internment measure is warranted.

By accepting that ANY danger to society, however defined, even in direct contradiction with the text of the domestic internment law, fulfills the conditions to apply the criminal internment law under art. 5.1.e ECHR, the Chamber Judgment in fact nullifies the seriousness - threshold imposed by the earlier Oukili c/ Belgium – Judgement of your Court, and will result in further systematic human rights abuses as your Court has found in the pilot judgment W.D. c/ Belgium (as is already happening with Mr. Denis, who is, at the time of this request, again 363 days incarcerated in prison, in circumstances that are not appropriate for a mentally ill person).

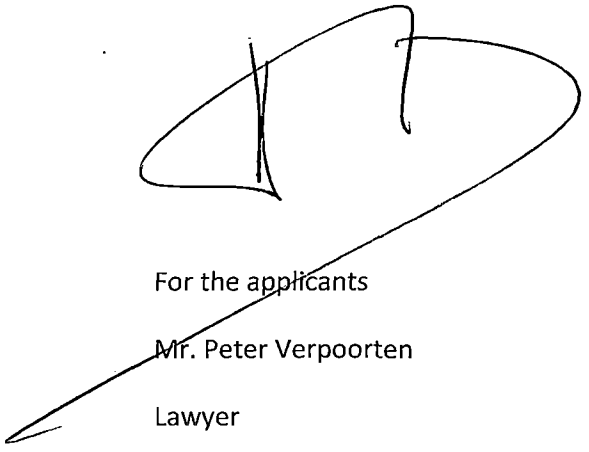
This can, in our humble opinion, not have been the intention of the Court.

THEREFORE

MAY IT PLEASE THE COURT

To refer the cases nr. 62819/17 (Denis Jimmy c. Belgique) and nr. 63921/17 (Irvine Derek c. Belgique) to the Grand Chamber in application of art. 43 of the European Convention of Human Rights.

Herentals, 02.01.2020



For the applicants

Mr. Peter Verpoorten

Lawyer

Inventory

1. Attestation of imprisonment, Mr. Jimmy Denis