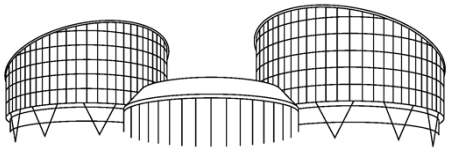

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HASSELBAINK v. THE NETHERLANDS

(Application no. 73329/16)

JUDGMENT

Art 5 § 3 • Reasonableness of pre-trial detention • Relevant but insufficient reasons provided by domestic courts in justifying continued pre-trial detention of applicant • Depth of courtroom discussions, reflected in official records of hearings, and Government's posterior submissions as to domestic court reasoning, not compensating for lack of detail in written decisions
Art 5 § 4 • Speediness of review • Excessive lapse of twenty-two days before examination by domestic court of application to be released from pre-trail detention

STRASBOURG

9 February 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hasselbaink v. the Netherlands,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Yonko Grozev, *President,*
Tim Eicke,
Armen Harutyunyan,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 73329/16) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Dutch national, Mr Fredrik Egbert Hasselbaink ("the applicant"), on 29 November 2016;

the decision to give notice to the Dutch Government ("the Government") of the complaints concerning the applicant's pre-trial detention and the lack of a prompt examination of its lawfulness, and to declare inadmissible the remainder of the application;

the parties' observations;

the submissions of the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*), which was invited to intervene by the President of the Section, in accordance with Article 36 § 2 of the Rules of Court;

the decision to uphold the Government's objection to examination of the application by a Committee;

Having deliberated in private on 19 January 2021,

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

INTRODUCTION

1. The applicant complained under Article 5 §§ 1 and 3 of the Convention that his pre-trial detention between 13 July and 15 September 2016 had lacked adequate justification or, in the alternative, that the decisions taken by the Regional Court on 4 August 2016 and by the Court of Appeal on 1 September 2016 had lacked sufficient reasons. He further complained of those domestic courts' lack of promptness in deciding his application to lift his pre-trial detention.

THE FACTS

2. The applicant was born in 1984 and lives in Vlaardingen. The applicant was represented by Mr J.C. Reisinger, a lawyer practising in Utrecht.

3. The Government were represented by their Agent, Ms B. Koopman, of the Dutch Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANT'S ARREST AND PRE-TRIAL DETENTION

5. On 31 March 2016 the applicant was arrested and placed in police custody (*inverzekeringsstelling*) on suspicion of hostage-taking (*gijzeling*), illegal restraint (*wederrechtelijke vrijheidsberoving*) and extortion (*afpersing*) (see paragraph 30 below).

6. On 5 April 2016 the applicant, assisted by counsel, was heard before an investigating judge (*rechter-commissaris*) of the Rotterdam Regional Court (*rechtbank*) following an application by the public prosecution service (*openbaar ministerie*) to order the applicant's initial detention on remand (*bewaring*). The applicant denied the charge of illegal restraint and, in consultation with his lawyer, invoked his right to remain silent.

7. On the same day the investigating judge ordered the applicant's placement in initial detention on remand for fourteen days. The order reads in its relevant part as follows:

> "Initial detention on remand; cases in which
>
> The suspicion has arisen that the suspect has committed the acts described in the request for placement in initial detention on remand for which a pre-trial-detention order can be issued.
>
> It appears from the [criminal-investigation] case file that there are serious suspicions [*ernstige bezwaren*] against the suspect in respect of the facts set out in the request for placement in initial detention on remand.
>
> Initial detention on remand; grounds
>
> It appears that there is a serious public-safety reason requiring the immediate deprivation of liberty of the suspect (Article 67a § 1(b) and § 2 of the Code of Criminal Procedure (*Wetboek van Strafvordering* – hereinafter "the CCP")), namely:
>
> There is a suspicion of a [criminal] act which, under the law, carries a maximum sentence of imprisonment of twelve years or more and that act has caused serious upset to the legal order [*een feit waarop naar de wettelijke omschrijving een gevangenisstraf van 12 jaren of meer is gesteld en waardoor de rechtsorde ernstig is geschokt*];
>
> There is a serious likelihood [*er moet ernstig rekening mee worden gehouden*] that the suspect will commit a crime [*misdrijf*] which, according to the law, carries a maximum sentence of imprisonment of six years or more;
>
> There is a serious likelihood that the suspect will commit a crime [*misdrijf*] by which the health and/or safety of individuals will be endangered;

> Detention on remand is in all reasonability necessary in order to discover the truth [*is in redelijkheid noodzakelijk voor het aan de dag brengen van de waarheid*] by means other than through the suspect's statements (Article 67a § 2(4) of the CCP). The suspect denies all or in part and/or (a) witness(es) still need(s) to be interviewed and/or (a) co-accused still must be apprehended and/or heard and/or further investigative measures by the police must be carried out. It should reasonably be taken into account that the suspect, if at large, could frustrate matters.
>
> - The suspect has previously (recently) been finally convicted of (a) similar [criminal] act(s) [*onherroepelijk veroordeeld voor (een) soortgelijk(e) feit(en)*].
>
> - The suspect reacts disproportionally to minor provocations [*reageert disproportioneel op een geringe aanleiding*] and/or has behaved in an excessively violent manner towards the victim(s) [*heeft zich op excessief gewelddadige wijze gedragen jegens het/de slachtoffer(s)*]."

8. On 14 April 2016, having heard the applicant, his counsel and the public prosecutor, the Rotterdam Regional Court in chambers (*raadkamer*) issued an order for the applicant's extended detention on remand (*gevangenhouding*) for thirty days. Although possible, the applicant did not appeal against that decision.

9. On 12 May 2016, having heard the applicant, his counsel and the public prosecutor, the Rotterdam Regional Court in chambers prolonged the order for the applicant's extended detention on remand by thirty days. The Regional Court further dismissed the applicant's application for suspension (*schorsing*) of his pre-trial detention. Although possible, the applicant did not appeal against that decision.

10. On 16 June 2016 the Rotterdam Regional Court in chambers prolonged the order for the applicant's extended detention on remand by another thirty days. It held, in so far as relevant as follows:

> "considering that, after examination, it appears that the suspicions, serious concerns and grounds which have led to the order for the applicant's initial detention on remand also currently still exist;
>
> considering that the existence of these grounds appears from the circumstances stated in that order;"

Although possible, the applicant did not appeal against that decision.

11. The trial proceedings against the applicant started on 7 July 2016 before the Rotterdam Regional Court. They were conducted simultaneously with the trial proceedings brought against two co-accused. At the public hearing held on that day, counsel for the applicant applied for either the lifting (*opheffing*) of the applicant's pre-trial detention or, in the alternative, its suspension. The prosecutor opposed the applications.

12. According to the official record of the public hearing (*proces-verbaal van de openbare terechtzitting*), the Regional Court, after having deliberated, dismissed the applicant's applications to lift or suspend his pre-trial detention. It held as follows:

> "The request to lift the pre-trial detention is dismissed. The serious suspicions and grounds on which the pre-trial detention is based still exist. The statement of [witness] Mr X finds support in the statement of [witness] Mr Y, irrespective of how limited that statement may be. Mr Y has stated that he was afraid and has given evidence about hitting and kicking having taken place. In addition, a weapon has been found. On the other hand, there is the footage from the Esso petrol station. The suspect's pre-trial detention is based on the needs of the criminal investigation [*onderzoeksgrond*], this may be different after next week [when Mr X and Mr Y will give evidence before the investigating judge]. The twelve-year grounds [*twaalfjaarsgrond*] are still pertinent. The risk of re-offending is partly based on the suspect's criminal record and partly on the fact that the collection of the debt [*incasso*], the cause [of the offences held against the applicant], has apparently not yet been solved.
>
> The application to suspend the pre-trial detention is dismissed. The personal interest of the suspect, as adduced [that is to say the applicant's wish to stay with his family and to support his partner], is outweighed by the interest of criminal justice [*belang van strafvordering*] in the continuation of the pre-trial detention."

13. The Regional Court further adjourned the trial proceedings for an indefinite period not exceeding three months and referred the case to the investigating judge for hearing witnesses and further investigative steps considered necessary. Although possible, the applicant did not file an appeal against the decision to reject his request to lift or suspend his pre-trial detention.

14. On 11 and 12 July 2016 the applicant, the two co-accused, the alleged victim Mr X and the witness Mr Y were heard by an investigating judge of the Rotterdam Regional Court.

15. On 13 July 2016 the applicant lodged, through counsel, a fresh application with the Regional Court to lift or, in the alternative, to suspend his pre-detention. He argued, referring to the statements made before the investigating judge that everyone, apart from Mr X, had stated that there had been no coercion or threats from the side of the applicant and there had been talk on a voluntary basis about a debt. The evidence against the applicant was solely based on the statement given by Mr X, whose evidence was not supported by the other statements given. In the applicant's opinion, the serious suspicions and reasons which had led to the order for his pre-trial detention no longer existed. He requested that the Regional Court fix as soon as possible a date for the examination in chambers of his application.

16. On 26 July 2016 counsel for the applicant contacted the registry of the Rotterdam Regional Court to enquire when the application of 13 July 2016 would be examined. He was referred to the public prosecution service, who informed him that it would probably be examined in chambers on 4 August 2016. It had not been possible to schedule it on an earlier date. On 28 July 2016, the applicant's counsel lodged a complaint with the President of the Rotterdam Regional Court that the applicant would have to wait three weeks before his application for release from pre-trial detention would be examined and further expressed his concern that the scheduling of the examination of

such requests by the Regional Court in chambers was being carried out by the public prosecution service.

17. The Rotterdam Regional Court examined the applicant's requests on 4 August 2016 in a hearing in chambers. According to information submitted by the Government, which has not been disputed by the applicant, counsel for the applicant argued during this hearing that, as Mr Y had retracted an earlier statement, there was no longer any serious ground for suspicion (see paragraph 15 above). In reply, the public prosecution service explained why it held that various grounds existed for continuing the applicant's pre-trial detention, emphasising that Mr Y had stated previously that he had feared the applicant and that, although denied in his subsequent statement, violence had been used against him.

18. On the same date the Rotterdam Regional Court dismissed the applicant's requests, holding as follows:

> "Having noted the order dated 16 June 2016 prolonging the applicant's extended detention on remand;
>
> Having heard the public prosecutor and the suspect and counsel;
>
> Noting the official record (*proces-verbaal*) of the suspect's oral evidence of 11 July 2016;
>
> Considering that, after examination, the Regional Court finds that the grounds which have led to the issuance of the pre-trial-detention order also currently still exist, so that the request to lift [the pre-trial detention] will be dismissed;"

19. On 5 August 2016 the applicant appealed to the Court of Appeal (*gerechtshof*), arguing that the decision of 4 August 2016 had lacked any reasoning, in particular as regards the existence of serious suspicions.

20. On 1 September 2016, after a hearing held in chambers, the Court of Appeal of The Hague dismissed the appeal. Its decision read in its relevant part as follows:

> "Having seen the impugned decision.
>
> Having heard the advocate-general and counsel for the accused,
>
> Having seen the written statement of the accused that he does not wish to be heard,
>
> Considering that the Court of Appeal concurs with the impugned decision and the grounds on which it is based.
>
> Decides:
>
> Upholds the impugned decision."

No further appeal lay against this decision.

II. THE APPLICANT'S TRIAL

21. On 1 September 2016 the trial proceedings before the Rotterdam Regional Court were resumed. In the course of this hearing the Regional

Court decided to lift the applicant's pre-trial detention as from 2 September 2016 because there was a serious prospect that the applicant would not be given a custodial sentence or that any custodial sentence imposed would be shorter than the pre-trial detention (Article 67a § 3 of the Code of Criminal Procedure – hereinafter "the CCP" – see paragraph 28 below). However, it was not until 15 September 2016 that the applicant was actually released.

22. In its judgment of 15 September 2016, the Rotterdam Regional Court acquitted the applicant of all charges brought against him. This judgment obtained the force of *res iudicata* on 30 September 2016.

III. SUBSEQUENT EVENTS AND COMPENSATION FOR PRE-TRIAL DETENTION

23. On 20 September 2016 the President of the Rotterdam Regional Court informed the applicant's counsel that the examination of the applicant's request of 13 July 2016 (see paragraph 15 above) had not been scheduled with the habitual diligence (*gebruikelijke voortvarendheid*). The complaint was thus well-founded and the President offered her apologies. As to the organisation of the scheduling for the examination of such requests, the President explained that this was in fact determined by the Regional Court upon a proposal made by the public prosecution service and that thus the Regional Court remained responsible for the schedule.

24. On 12 October 2016 the applicant lodged an application with the Rotterdam Regional Court under Article 89 of the CCP (see paragraph 29 below) for compensation in the amount of 14,870 euros (EUR) for non-pecuniary damage caused by his having been held in pre-trial detention and under Article 591a of the CCP (see paragraph 29 below) and for reimbursement of EUR 550 in costs and expenses incurred in the course of the criminal proceedings against him. As regards the claim under Article 89 of the CCP, the public prosecution service submitted that a 50% mitigation would be appropriate given the applicant's "procedural attitude" (*proceshouding*) in that he had driven a car which would be involved in a hostage-taking and that subsequently he had repeatedly invoked his right to remain silent and had only at a very late stage disclosed what had happened. As regard his unjust detention from 2 September 2016, the public prosecution service considered that compensation at 200% of the standard amount would be appropriate.

25. In its decision of 13 April 2017, the Rotterdam Regional Court awarded the applicant the amount of EUR 550 in respect of his claim under Article 591a of the CCP and the amount of EUR 8,502.50 in respect of his claim under Article 89 of the CCP. As regards the latter claim, it held that, under the applicable domestic guidelines for pre-trial detention after 1 September 2008, the applicant was in principle entitled to compensation in a standard amount of EUR 105 per day for the five days spent in police

custody and EUR 80 per day for the 150 days spent in pre-trial detention, that is to say a total sum of EUR 12,525. However, as on the advice of counsel he had chosen to remain silent and had disclosed before the investigating judge what had happened only on 11 July 2016, the long(er) duration of his pre-trial detention was partly due to his deliberately chosen procedural attitude. Accordingly, there were reasons in equity to reduce this amount by 50% to EUR 6,262.50. As regards the fourteen days' detention from 2 to 15 September 2016, the Regional Court noted that the applicant's pre-trial detention had been lifted on 2 September 2016 but that the applicant had only been effectively released on 15 September 2016 (see paragraph 21 above) when it had handed down its judgment in the criminal proceedings. It found it likely that this part of the applicant's detention had been particularly impactful and had had relatively above-average consequences. It therefore found, as it concerned unlawful detention, that reasons in equity entailed that the standard amount of EUR 80 per day be doubled in respect of this period, thus amounting in total to EUR 2,240.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

26. Article 24 § 1 of the CCP provides that a decision (*beschikking*) given in chambers (*raadkamer*) must be reasoned.

27. Article 133 of the CCP defines pre-trial detention (*voorlopige hechtenis*) as deprivation of liberty pursuant to an order for detention on remand (*inbewaringstelling*), a warrant for the taking into pre-trial detention (*gevangenneming*) or an order for extended detention on remand (*gevangenhouding*). The statutory rules governing pre-trial detention are set out in Articles 63 to 88 of the CCP.

28. The provisions of the CCP as relevant for the present case are the following:

Article 63

"1. The investigating judge can, following an application by the public prosecutor, issue an order to remand a suspect in custody. The public prosecutor notifies the defence counsel, orally or in writing, of the application without delay.

2. If the investigating judge immediately finds that there are no grounds to issue such an order, she or he shall reject the application.

3. Otherwise, before taking a decision, the investigating judge shall hear the suspect's arguments on the public prosecutor's application, unless the prior examination of the suspect cannot be awaited, and she or he may summon her or him for this purpose and if necessary issue a subpoena in her or his name.

4. The suspect has the right to be represented by counsel during examination. The defence counsel is given the opportunity to make observations during examination. ..."

Article 67

"1. An order for detention on remand can be issued in cases of suspicion of:

a. an offence which, according to its legal definition, carries a sentence of imprisonment of four years or more; ...

3. The previous paragraphs are only applied when it appears from the facts or circumstances that there are serious suspicions against the suspect. ..."

Article 67a

"1. An order based on Article 67 can only be issued:

a. if it is apparent from particular behaviour displayed by the suspect, or from particular circumstances concerning him personally, that there is a serious danger of absconding;

b. if it is apparent from particular circumstances that there is a serious public-safety reason requiring the immediate deprivation of liberty.

2. For the application of the preceding paragraph, only the following can be considered as a serious public-safety reason:

1º. if it concerns suspicion of commission of an act which, according to its legal definition, carries a sentence of imprisonment of twelve years or more and that act has caused serious upset to the legal order;

2º. if there is a serious risk the suspect will commit an offence which, under the law, carries a prison sentence of six years or more or whereby the security of the State or the health or safety of persons may be endangered, or give rise to a general danger to goods; ...

5º. if detention on remand is necessary in order to discover the truth otherwise than through statements of the suspect.

3. An order for detention on remand shall not be issued if there are serious prospects that, in the event of a conviction, no irrevocable custodial sentence or a measure entailing deprivation of liberty will be imposed on the suspect, or that she or he, by the enforcement of the order, would be deprived of her or his liberty for a longer period than the duration of the custodial sentence or measure."

Article 78

"1. The pre-trial-detention order or the order for extension of its term of validity shall be dated and signed.

2. It shall specify as precisely as possible the criminal offence in regard of which the suspicion has arisen and the facts or circumstances on which the serious suspicions against the suspect are based, as well as the conduct, facts or circumstances which show that the conditions set down in article 67a have been met. ..."

Article 87

" ...

2. A suspect who has applied to the Regional Court to suspend or lift his detention on remand can appeal against a refusal of that application to the Court of Appeal once only, no later than three days after notification. The suspect who has appealed against the refusal of a suspension request cannot afterwards appeal against the refusal of a request to lift his detention on remand. The suspect who has appealed against the refusal to lift his detention on remand cannot afterwards appeal against the refusal of a suspension request.

3. The appeal shall be decided as speedily as possible.".

29. Articles 89, 90, 591 and 591a of the CCP provide a former suspect with the possibility to obtain compensation of damage caused by lawful acts undertaken by the authorities in the context of criminal proceedings against him or her after a judicial decision to acquit or to discontinue the criminal proceedings. In so far as relevant, these Articles read as follows:

Article 89

"1. If a case ends without the imposition of a punishment or measure, or when such punishment or measure is imposed but on the basis of a fact for which detention on remand is not allowed, the court may, at the request of the former suspect, grant her or him compensation at the expense of the State for the damage which she or he has suffered as a result of police custody, clinical observation or pre-trial detention [*voorlopige hechtenis*]. Such damage may include non-pecuniary damage. ..."

Article 90

"1. Compensation shall be awarded in each case if and to the extent that the court, taking all circumstances into account, is of the opinion that there are reasons in equity [*gronden van billijkheid*] to do so.

2. In the determination of the amount, the personal circumstances [*levensomstandigheden*] of the former suspect shall also be taken into account. ..."

Article 591

"1. Compensation shall be paid to the former suspect or her or his heirs out of State funds for costs borne by the former suspect under or pursuant to the provisions of the Act on Fees in Criminal Cases (*Wet tarieven in strafzaken*), in so far as the appropriation of these costs has served the investigation or has become devoid of purpose by the withdrawal of summonses or legal remedies by the public prosecution service.

2. The amount of compensation shall be determined at the request of the former suspect or his heirs. This request must be submitted within three months following the termination of the case. The determination shall be made in the court with jurisdiction as to both facts and law before which, at the time of its termination, the case was or would have been prosecuted or else was last prosecuted, by the District Court judge or by the presiding judge as the case may be. ..."

Article 591a

"1. If the case ends without imposition of a punishment or measure ..., the former suspect or his heirs shall be granted compensation out of State funds for his travel and subsistence expenses incurred for the investigation and the examination of his case, calculated on the basis of the Act on Fees in Criminal Cases (*Wet tarieven in strafzaken*).

2. If the case ends without imposition of a punishment or measure ..., the former suspect or his heirs may be granted compensation out of State funds for the damage which he has actually suffered through loss of time as a result of the preliminary investigation and the examination of his case at the trial, as well as the costs of counsel. This will include compensation for the costs of counsel during police custody and detention on remand. Compensation for such costs may furthermore be granted when a case ends with the imposition of a punishment or measure on the basis of a fact for which detention on remand is not allowed. ...

4. Articles 90 and 591, paragraphs 2 to 5, shall apply by analogy. ..."

30. Illegal restraint, defined as unlawfully depriving a person of their freedom, is a crime punishable by a prison sentence of up to eight years, or more in case of aggravating circumstances (grievous bodily harm or death; Article 282 of the Criminal Code (*Wetboek van Strafrecht*)). Hostage-taking, defined as unlawfully depriving a person of their freedom in order to compel someone else to do or not to do something, is a crime punishable by a prison sentence of up to fifteen years, or thirty years if it leads to loss of life (Article 282a). Extortion, defined as the use or threat of violence to compel someone to surrender their own or a third party's property, or to enter into a debt not owed or cancel a debt owed, or to surrender information, with a view to unlawful enrichment, is a crime punishable by a prison sentence of up to nine years (Article 317).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

31. The applicant complained under Article 5 §§ 1 and 3 of the Convention that his pre-trial detention from 13 July to 15 September 2016 lacked adequate justification, or in the alternative, that the decisions taken by Regional Court on 4 August 2016 and by the Court of Appeal on 1 September 2016 lacked sufficient reasons.

32. Relying on Article 5 § 3 of the Convention the applicant further complained that the Rotterdam Regional Court and the Court of Appeal of The Hague had failed to entertain his application lodged on 13 July 2016 for his pre-trial detention to be lifted (see paragraph 15 above) with the necessary promptness and diligence as it took them twenty-two and twenty-six days respectively to take a decision.

33. Article 5 of the Convention reads in so far as relevant as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

..."

34. The Court takes the view that the first complaint (see paragraph 31 above) should be examined under Article 5 § 3 alone (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 61, 5 July 2016) and the second complaint (see paragraph 32 above) under Article 5 § 4 of the Convention (see *Kavala v. Turkey*, no. 28749/18, § 176, 10 December 2019).

A. Admissibility

35. As regards the complaint under Article 5 § 4 of the Convention (see paragraph 32 above), the Government argued, pointing out that the President of the Rotterdam Regional Court had accepted as well-founded the applicant's complaint about the time taken by the Regional Court to determine the applicant's application of 13 July 2016 (see paragraph 23 above), that as a result and on this point the applicant could no longer be regarded as a victim within the meaning of Article 34 of the Convention.

36. The applicant disagreed.

37. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for instance, *Nada v. Switzerland* [GC], no. 10593/08, § 128, ECHR 2012; see also, concerning Article 5 of the Convention, *Moskovets v. Russia*, no. 14370/03, § 50, 23 April 2009). Only when these two conditions are satisfied does the subsidiary nature of the protective mechanism set up by the Convention preclude examination of an application by the Court (see *Rooman v. Belgium* [GC], no. 18052/11, § 129, 31 January 2019).

38. The Court observes that in the case in hand the President of the Regional Court acknowledged that the planning for the examination of the applicant's application of 13 July 2016 had not been organised with habitual diligence and offered her apologies for that failure (see paragraph 23 above).

39. The Court has previously adjudicated cases in which it found a violation of Article 5 § 4 of the Convention due to a failure of the domestic courts to comply with the requirement of speedy review of the lawfulness of detention (see, for instance, *Pichugin v. Russia*, no. 38623/03, §§ 154-56, 23 October 2012; *Butusov v. Russia*, no. 7923/04, §§ 32-35, 22 December 2009; and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006). In those cases, it did not deem the finding of a violation to constitute in itself sufficient just satisfaction, but made awards in respect of non-pecuniary damage. The Court sees no reason to hold otherwise in the present case.

40. Accordingly, even assuming that the statement of 20 September 2016 by the President of the Regional Court can be regarded as an acknowledgement, at least in substance, that the "speedily" requirement under Article 5 § 4 of the Convention was disrespected, the Court finds that this acknowledgement and the apologies offered do not deprive the applicant of his status as a "victim" for the purposes of Article 34 of the Convention. Compensation in respect of non-pecuniary damage in an adequate amount would be required to that end (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 202, ECHR 2006‑V; *Moskovets*, cited above, § 50; and *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003). The Government's objection of loss of victim status in respect of this delay must accordingly be dismissed.

41. As regards the applicant's detention from 2 to 15 September 2016, the Court observes *ex officio* that, in its decision of 13 April 2017, the Rotterdam Regional Court noted that, although the applicant's pre-trial detention had been lifted on 2 September 2016, he had only been effectively released on 15 September 2016 and that his stay in pre-trial detention had thus been unlawful. For this reason, it decided to double the standard amount of compensation to be awarded to the applicant in accordance with Article 89 of the Criminal Code (see paragraph 25 above).

42. In these circumstances the Court finds that, in respect of this period of pre-trial detention, the Rotterdam Regional Court has acknowledged in substance and then afforded sufficient and adequate redress for the breach of the applicant's rights under Article 5 of the Convention. Consequently, the applicant can therefore not claim to be a victim within the meaning of Article 34 of the Convention in respect of his detention from 2 to 15 September 2016. This part of his application must be rejected as incompatible *ratione personae* with the provisions of the Convention in accordance with Article 35 §§ 3 (a) and 4.

43. The Court notes that the remainder of the complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Article 5 § 3 of the Convention

(a) Submissions by the parties

(i) The applicant

44. The applicant argued that his pre-trial detention as from 13 July 2016 had had no valid grounds or, alternatively, that the decisions taken following his application of that date to lift his pre-trial detention had been insufficiently reasoned.

45. The applicant submitted, as regards the suspicions against him, that in general the suspicions have to become more serious as time passes. However, in his case, the suspicions against him had gradually become less serious. When he had lodged his application on 13 July 2016 to lift his pre-trial detention, he had already been held for 104 days. The suspicions against him had been mainly based on the statements given by Mr X. However, that account had found no support and had actually been contradicted in the statement given subsequently by Mr Y before the investigating judge.

46. As to the risk of reoffending, the applicant submitted that, if serious concerns had existed for the suspicion of illegal restraint of Mr X and Mr Y by him, his pre-trial detention could not be justified by purely relying on the allegedly underlying dispute – an unpaid debt of EUR 50,000 – and the seriousness of the alleged offence, as explained by the Government. The actual reasoning given by the Regional Court in its decision of 4 August 2016 in respect of this ground as well as the other grounds had contained no more than a meaningless phrase (see paragraph 18 above). In the applicant's opinion that had obviously not been enough to justify the continuation of his pre-trial detention on those grounds.

47. Referring to the Court's considerations in the cases of *Clooth v. Belgium* (12 December 1991, § 44, Series A no. 225), *Estrikh v. Latvia* (no. 73819/01, § 122, 18 January 2007), *Dubinskiy v. Russia* (no. 48929/08, § 65, 3 July 2014), and *Urtāns v. Latvia* (no. 16858/11, § 35, 28 October 2014), the applicant argued that the national courts were required, in their decisions concerning pre-trial detention, to indicate with sufficient clarity the grounds on which they were basing their decisions. Those decisions had to contain specific facts and individual circumstances that were relevant and sufficient justification for pre-trial detention.

48. According to the applicant it was clear that the national courts had not indicated with sufficient clarity the concerns on which they based their decisions. It had not sufficed to refer to a previous decision, especially when

the previous decisions had not taken into account new information on which a fresh application to lift his pre-trial detention had been based. It also had not sufficed to use "general terms" like those used in the applicant's case, whereas, as observed by the third-party intervener, very limited reasoning, which was of a strongly generic character, was standard practice in *habeas corpus* proceedings in the Netherlands.

49. The applicant further disagreed with the Government's argument that it could be deduced from the decision and the accompanying official record that the Regional Court had not given the same exculpatory weight to the changed statement as the defence had done (see paragraph 58 below). This could not, in the applicant's opinion, be regarded as constituting sufficient reasoning in line with the requirements in the Court's case-law under Article 5 of the Convention. If this were the case, a decision in favour of the public prosecution service would be sufficient by definition. The reasons given by the public prosecution service could not in any way take the place of a court decision.

50. As to the Government's argument that he had spent only a relatively short period in pre-trial detention, the applicant emphasised, relying on *Shishkov v. Bulgaria* (no. 38822/97, § 66, ECHR 2003-I (extracts)), that justification for any period of detention, no matter how short, had to be convincingly demonstrated by the authorities.

(ii) The Government

51. The Government submitted that the grounds for the applicant's pre-trial detention had been justified, that the reasons cited by the domestic courts had been adequate and sufficient, and that his detention had in general been lawful.

52. In compliance with the Court's case-law, the general principle in the Netherlands pertaining to pre-trial detention was that the suspect could remain at liberty while awaiting trial. An exhaustive list of exceptions to this general rule was set out in Article 67a of the CCP (see paragraph 28 above) and Dutch legislation specified the grounds for pre-trial detention recognised by the Court, namely the risk that the accused would fail to appear for trial (see *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9); that the accused, if released, would take action to prejudice the administration of justice (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7); commit further offences (see *Matznetter v. Austria*, 10 November 1969, § 9, Series A no. 10); or cause public disorder (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207).

53. The Government pointed out that Article 67a § 1 referred to "a serious public-safety reason" which, in accordance with its second paragraph, could only be assumed in cases concerning a suspicion of commission of an act which, according to its legal definition, carried a sentence of imprisonment of twelve years or more and an act which had caused "serious upset to the

legal order" (*geschokte rechtsorde*). In determining whether the offence for which pre-trial detention was being sought constituted a serious upset to the legal order, the penalty applicable to that offence was not the sole decisive factor. As held by the Netherlands Supreme Court (*Hoge Raad*) in a ruling given on 21 March 2006 (ECLI:NL:HR:2006:AU8131), an equally important factor was whether the seriousness of the offence was such that allowing the suspect to remain at liberty while awaiting trial would be met with widespread incredulity and be considered unacceptable by society.

54. According to the Government, throughout the entire period the applicant's pre-trial detention had been based on the risk of his reoffending, the fact that the offence committed had constituted an affront to the legal order, and the risk that the applicant, if released, would take action to prejudice the administration of justice.

55. As to the risk of reoffending, the Government emphasised that it could be deduced from the case file, in particular the decision given on 7 July 2016 (see paragraph 12 above), that the Regional Court had considered that pre-trial detention had been essential as the alleged cause for the criminal acts of which the applicant had been accused had been a substantial debt which had still been outstanding. In this context, the applicant's character had been significant since, as considered in the decision of 5 April 2016 (see paragraph 7 above), the applicant had responded disproportionally to a minor event and/or had behaved excessively violently towards the victims. In addition, the risk of reoffending had lain in the applicant's criminal record. At the time of the decisions on his pre-trial detention, it had been known to the Regional Court that the applicant had been previously convicted of violent crimes.

56. In respect of the ground "suspicion of a crime which has seriously upset the legal order", the Government submitted that application of Article 67a § 2(1) of the CCP (see paragraph 28 above) required not only that the offence of which the person concerned is suspected attracts a prison sentence of twelve years or more but also that it constitutes a serious affront to the legal order. According to the Government, it could be deduced from the Court's considerations in the case of *Geisterfer v. the Netherlands* (no. 15911/08, § 39, 9 December 2014) that "public order" in the Court's case-law could be regarded as being synonymous with "legal order" in domestic law. In the case in hand, the applicant had been suspected of hostage-taking, unlawful deprivation of liberty and extortion of two people. Given the nature of these offences and in particular the aggressive way in which the applicant allegedly had taken the law on his own hands to obtain payment of a debt, his release would have been met with widespread incredulity and would undoubtedly have offended the public's sense of justice.

57. As regards the risk that the applicant, if released, would take action to prejudice the administration of justice, the Government submitted that in

particular the nature of the offence in question had led to the conclusion that there had been a risk that evidence would be tampered with (via collusion). After all, the applicant had been suspected of having deprived Mr X and Mr Y of their liberty, allegedly in association with others, under the threat of violence and with violence. He had tried to instil fear in the victims in order to force them to do something. This was not altered by the fact that Mr Y, when making his case before the investigating judge on 11 July 2016 (see paragraph 14 above), had retracted parts of his initial statement in which he had incriminated the applicant. This had made it actually necessary to continue the applicant's pre-trial detention to uncover the truth by means of statements taken from the remaining witnesses or otherwise.

58. According to the Government, the reasons given by the judicial authorities for the applicant's pre-trial detention in its decisions on 4 August and 1 September 2016 (see paragraphs 18 and 20 above) had been adequate and sufficient. On that point, the Government argued that not only had the decisions themselves to be considered but also the preceding courtroom discussions, reflected in the official hearing records. At the hearing in chambers on 4 August 2016, counsel for the applicant had argued that, as Mr Y had retracted an earlier statement, there had no longer been any serious grounds for suspicion (see paragraph 15 above). The public prosecution service had explained why it had held that various grounds had existed for continuing the applicant's pre-trial detention, emphasising that Mr Y had stated previously that he had been afraid of the applicant and that, although denied in his subsequent statement, violence had been used against him (see paragraph 17 above). It could be deduced from the decisions and the accompanying official records that the Regional Court had not given the same exculpatory weight to the changed statement as the defence had done. The Government further emphasised that the suspicion warranting pre-trial detention had been construed on the basis of more elements than the statements of Mr X and Mr Y.

59. The Government further emphasised that the applicant's pre-trial detention had lasted five months, which – in view of the gravity of the offences concerned, the seriousness of the suspicions and the other reasons that existed – could not be regarded as incompatible with the Convention (they refer, in this respect, to *W.B. v. Poland*, no. 34090/96, § 66, 10 January 2006). By reviewing the applicant's detention seven times within that period, the authorities had displayed a sufficient degree of diligence.

(iii) Submissions by the third-party intervener

60. The Netherlands Institute for Human Rights presented an overview of the domestic rules on pre-trial detention and of the Court's case-law on the subject.

61. The Institute made reference to a research study published in 2012 that had shown that most of the 28 domestic judges that were interviewed

often derived the element of "serious disturbance to the legal order" from the seriousness of the offence. The assessment of the risk of offending while on bail was also based on the seriousness of the crime being tried.

62. The Institute further noted that when extending pre-trial detention, the domestic courts usually gave few reasons for their decisions and resorted to standard phrasing with little reference to the circumstances of individual cases. Often the courts would just echo earlier decisions or quote the corresponding statutory provisions. This practice could be partly explained by the courts' high caseload, with one court having to examine up to twenty-five cases in one session.

63. That limited reasoning was a symptom of a larger issue: a near-automatic withholding of bail. A study published in 2010 into the length of pre-trial detention and the subsequent sanction imposed on the defendant showed that in 27% of all cases in which pre-trial detention had been ordered, no penalty restricting the liberty of the defendant was imposed, and that in 24% of all cases the defendants were sentenced to terms equal to or shorter than the time spent in pre-trial detention. As confirmed by judges, the duration of pre-trial detention was a compelling factor for determining the duration of a prison sentence.

64. The third-party intervener further stated that the lack of reasoning appeared to be a symptom of another larger issue concerning pre-trial detention in the Netherlands, namely its application in a near-automatic fashion. Whilst the Dutch domestic legislation set out guarantees in line with Article 5 of the Convention, its application in practice had led to a tendency of "extension of pre-trial detention, unless", rather than as an *ultimum remedium*.

65. The Institute had further conducted a research in 2016 into the manner in which the Regional Court and Courts of Appeal reasoned their decisions on pre-trial detention. Over 300 randomly selected case files from four out of eleven Regional Courts and two out of four Courts of Appeal had been analysed. It appeared from this research that each court had its own working methods and practices where it concerned reasoning of pre-trial detention orders, varying from using pre-printed forms on which boxes could be ticked with no room for individual reasoning to decisions containing substantiated reasoning on all relevant elements. It further appeared that most Regional Courts only provided reasoning in the first decision on initial detention on remand and, when deciding on extended detention on remand, simply referred back to the initial decision without any further information or reasoning. It further happened frequently that arguments raised by the defence were not addressed at all in the written decision.

66. The Netherlands Institute for Human Rights stressed that the reasoning in pre-trial-detention orders formed the topic of much discussion, not only amongst academics and criminal defence lawyers but also within the judiciary. Recently, a number of courts had initiated pilots aiming at

improving the reasoning of pre-trial detention orders, which the Institute highlighted as a positive development.

(b) The Court's assessment

(i) General principles

67. The applicable general principles concerning the length and the justification of pre-trial detention are set out in *Buzadji* (cited above, §§ 84-91).

68. The Court reiterates in particular that, while paragraph 1 (c) of Article 5 sets out the grounds on which pre-trial detention may be permissible in the first place (see *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 44, Series A no. 77), paragraph 3, which forms a whole with the former provision, lays down certain procedural guarantees, including the rule that detention pending trial must not exceed a reasonable time, thus regulating its length (see *Buzadji*, cited above, § 86).

69. According to the Court's established case-law under Article 5 § 3, the persistence of a reasonable suspicion is a condition *sine qua non* for the validity of the pre-trial detention but after a certain lapse of time – that is to say as from the first judicial decision ordering detention on remand (see *Buzadji*, cited above, § 102) – it no longer suffices. The Court must then establish (1) whether other grounds cited by the judicial authorities continue to justify the deprivation of liberty, and (2) where such grounds were "relevant" and "sufficient", whether the national authorities displayed "special diligence" in the conduct of the proceedings. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see, among many other authorities, § 35; *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012; and *Buzadji*, cited above, § 87). Justifications which have been deemed "relevant" and "sufficient" reasons – in addition to the existence of reasonable suspicion – in the Court's case-law, have included such grounds as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public disorder and the need to protect the detainee (see *Buzadji*, cited above, § 88, with further references). Until conviction, an accused must be presumed innocent and the purpose of the provision under consideration is essentially to require his or her provisional release once his or her continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006‑X, and *Buzadji*, cited above, § 89).

70. The question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of

public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, for instance, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000‑IV, and *Kudła v. Poland* [GC], no. 30210/96, §§ 110 *et seq*., ECHR 2000 XI; see also *Buzadji*, cited above, § 90).

71. It primarily falls to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. Accordingly, they must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release (see *Buzadji*, cited above, § 91). With particular regard to the risk that the suspect, if released, would reoffend, consideration must be given to, *inter alia*, the nature and seriousness of the charges against a defendant, his or her criminal record, and his or her character or behaviour that would indicate that he or she presented such a risk (see, for instance, *Merčep v. Croatia*, no. 12301/12, § 96, 26 April 2016; *Šoš v. Croatia*, no. 26211/13, § 95, 1 December 2015; and *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, § 221, 27 August 2019).

72. In exercising its function on this point, the Court has to ensure that the domestic courts' arguments for and against release must not be "general and abstract" (see, for example, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts)), but contain references to specific facts and the personal circumstances justifying an applicant's detention (see, *mutatis mutandis*, *Panchenko v. Russia*, no. 45100/98, § 107, 8 February 2005). For example, the Court found no violation of Article 5 § 3 in a case concerning a pre-trial detention period of more than four years (see *Lisovskij* v. *Lithuania*, no. 36249/14, § 77, 2 May 2017), in which it considered that the Lithuanian courts thoroughly evaluated all the relevant factors and based their decisions on the particular circumstances of the case), in a case concerning a pre-trial detention period of more than three years and eight months (see *Štvrtecký v. Slovakia*, no. 55844/12, § 65, 5 June 2018), in which the Court observed that the judicial authorities referred to specific facts of the case and did not use a pre-existing template or formalistic and abstract language and noted that, with the passing of time, the court's reasoning evolved to reflect the state of the investigations) and in a case concerning a pre-trial detention period of one year, three months and twenty-three days (see *Podeschi v. San Marino*, no. 66357/14, § 153, 13 April 2017), in which the Court observed that while the various jurisdictions referred to the previous decisions refusing bail, they gave details of the grounds for the decisions in view of the developing situation and whether the original grounds remained valid despite the passage of time), whereas the Court did find a violation of this provision in a case in which the pre-trial detention lasted three months (see *Sinkova v. Ukraine*, no. 39496/11, § 74, 27 February 2018, in which the Court observed that, in

extending the applicant's detention and rejection her applications for release, the domestic courts mainly referred to the reasoning for her initial placement in detention, without any updated details); in a case concerning a period of pre-trial detention of forty-three days (see *Krivolapov v. Ukraine*, no. 5406/07, §§ 105-108, 2 October 2018, for which the Court noted the absence from the relevant decision of any justification other than the fact that criminal proceedings were pending against the applicant); and in a case in which the pre-trial detention lasted slightly less than two months (see *Cîrstea v. Romania* [Committee], no. 10626/11, §§ 54-59, 23 July 2019, in which the Court found that the domestic courts failed to adduce a proper substantiation for the alleged risks in case of a discontinuation of the applicant's pre-trial detention).

73. Where circumstances that could have warranted a person's detention may have existed but were not mentioned in the domestic decisions it is not the Court's task to establish them and take the place of the national authorities which ruled on the applicant's detention (see *Bykov v. Russia* [GC], no. 4378/02, § 66, 10 March 2009, and *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, § 77, 13 January 2009).

(ii) Application of those principles in the present case

74. The Court notes at the outset that the applicant only seeks to complain of his pre-trial detention as from 13 July 2016 onwards (see paragraph 31 above) and, reiterating its finding that the applicant cannot claim to be a victim in respect of his detention from 2 to 15 September 2016 (see paragraph 42 above), will therefore limit its examination to the period from 13 July 2016 to 2 September 2016 when the Regional Court lifted the applicant's pre-trial detention (see paragraph 21 above).

75. The Government submitted that the continuation of the applicant's pre-trial detention as from 13 July 2016 had been found justified by the Regional Court because of the risk of his reoffending, the fact that the offence committed had constituted an affront to the legal order and the risk that the applicant, if released, would take action to prejudice the administration of justice. The Government further submitted the arguments on the basis of which the Regional Court would have found these grounds applicable to the applicant's case.

76. However, the Court cannot find support in the actual decisions of 4 August and 1 September 2016 (see paragraphs 18 and 20 above) for the arguments now put forward by the Government. The Court has already indicated that it is called on to assess whether the judicial orders contain references to specific facts and individual circumstances justifying continued detention, and not the Government's posterior submissions in this regard (see *Urtāns*, cited above, § 35, with further references). The wording of the decisions taken by the Regional Court and the Court of Appeal in the present case merely refer back to the grounds and reasons set out in the decision given

on 16 June 2016 (see paragraph 10 above), that is to say before additional evidence was taken by the investigating judge on 11 and 12 July 2016 (see paragraph 14 above). These decisions further do not address the essential question, raised by the applicant in his application of 13 July 2016 (see paragraph 15 above), whether in view of the evidence given before the investigating judge on 11 and 12 July 2016 the suspicion that the applicant had committed the offences in question remained reasonable.

77. In this context, it should be reiterated that it is essentially on the basis of the reasons given by the national judicial authorities in their decisions on applications for release and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Buzadji*, cited above, § 91). The Court cannot therefore accept the Government's contention that the depth of the courtroom discussions, reflected in the official records of the hearings concerned, compensated for the lack of detail in the written decisions (see paragraph 58 above). Indeed, the discussion at the hearing reflects the arguments put forward by the parties, but does not indicate what were the grounds justifying the pre-trial detention in the eyes of the judicial authority competent to order or extend a deprivation of liberty. Only a reasoned decision by those authorities can effectively demonstrate to the parties that they have been heard and make appeals and public scrutiny of the administration of justice possible (see *Ignatenco v. Moldova*, no. 36988/07, § 77, 8 February 2011). In this respect it is moreover noted that national law provisions – Articles 24(1) and 78(2) of the CCP (see paragraphs 23 and 25, above) – stipulate that decisions on pre-trial detention should be duly reasoned.

(iii) Conclusion

78. Having regard to the above, the Court concludes that the reasons provided in the present case by the domestic courts on, respectively, 4 August and 1 September 2016, although "relevant", cannot be regarded as "sufficient" to justify his continued deprivation of liberty during the period in issue (see paragraph 74 above). This conclusion dispenses the Court from ascertaining whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Qing v. Portugal*, no. 69861/11, §§ 67-69, 5 November 2015).

79. It follows that there has been a violation of Article 5 § 3 of the Convention.

2. Article 5 § 4 of the Convention

80. The applicant complained that his application to lift his pre-trial detention lodged with the Regional Court and his appeal to the Court of Appeal had not been determined "speedily".

(a) Submissions by the parties

81. The applicant argued that the Rotterdam Regional Court and the Court of Appeal of The Hague had failed to examine his application lodged on 13 July 2016 to lift his pre-trial detention with the necessary promptness as it took them twenty-two and twenty-six days respectively to take a decision.

82. The Government disagreed, submitting that the decision on the applicant's request of 13 July 2016 had been taken speedily as required by Article 5 § 4 of the Convention. They argued that, as held by the Court in *R.M.D. v. Switzerland* (26 September 1997, § 42, *Reports of Judgments and Decisions* 1997-VI), the term "speedily" in Article 5 § 4 cannot be defined in the abstract. Like the "reasonable time" provisions in Article 5 § 3 and Article 6 § 1 of the Convention, it must be determined in the light of the circumstances of the individual case.

83. The Government further argued that the Court's case-law also shows that the standard of "speediness" is less stringent when it comes to proceedings before an appellate court and that, where the original detention order was imposed by a court in a procedure offering appropriate guarantees of due process, longer periods of review before a second-instance court may be tolerated (they referred to *Abdulkhanov and Others v. Russia*, no. 22782/06, § 198, 3 October 2013, and *Shcherbina v. Russia*, no. 41970/11, § 65, 26 June 2014). The Government added that the period taken to reach a decision in the present case had not deviated significantly from standard practice in the Netherlands.

(b) The Court's assessment

84. The applicable general principles concerning the "speediness" requirement of the proceedings for the review of the lawfulness of detention are set out in *Kavala* (cited above, §§ 176‑81).

85. The Court notes that it took the Rotterdam Regional Court until 4 August 2016 (see paragraph 18 above), that is to say twenty-two days, to determine the applicant's request of 13 July 2016 for release from pre-trial detention (see paragraph 15 above), and that it took the Court of Appeal until 1 September 2016 (see paragraph 20 above), that is to say twenty-six days, to determine the applicant's appeal of 5 August 2016 against the dismissal of his application by the Regional Court (see paragraph 19 above).

86. The Court considers that the period of twenty-two days which elapsed before the Regional Court examined the applicant's application to be released from pre-trial detention fell short of the requirement of a speedy judicial decision within the meaning of Article 5 § 4 of the Convention (see *Sarban v. Moldova*, no. 3456/05, § 120, 4 October 2005, with further references, where the Court considered incompatible with the "speediness" requirement a period of twenty-one days). In reaching this finding, the Court has taken into account the fact that, in reply to the applicant's complaint of 28 July 2016

(see paragraph 16 above), the President of the Rotterdam Regional Court admitted that the examination of the applicant's application of 13 July 2016 had not been scheduled with the habitual diligence and offered her apologies (see paragraph 23 above). In these circumstances, the Court does not find it necessary to make a separate finding in respect of the time taken to determine the applicant's appeal of 4 August 2016.

87. There has accordingly been a violation of Article 5 § 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. The applicant claimed – on the basis of the fixed compensation amount under the domestic guidelines for compensation for unlawful detention (*Oriëntatiepunten voor straftoemeting en LOVS-afspraken*) of November 2013 – 80 euros (EUR) per day for sixty-four days of "unlawful" detention from 13 July to 15 September 2016. This amount covered both pecuniary and non-pecuniary damage.

90. The Government submitted that the Rotterdam Regional Court had awarded the applicant the amount of EUR 8,502.50 in compensation for damage incurred as a result of having been held in pre-trial detention. As regards the period until 1 September 2016, it had applied a reduction of EUR 6,262.50 as the applicant himself, by choosing to remain silent, had been partly to blame for the duration of his pre-trial detention and that, in respect of the period between 2 and 15 September 2016, the Regional Court had doubled the standard amount of EUR 80 (see paragraph 25 above).

91. The Court finds no evidence of any pecuniary damage and therefore rejects this claim. On the other hand, it accepts that the applicant suffered non-pecuniary damage – such as distress and frustration – which is not sufficiently compensated by the finding of a violation of Article 5 §§ 3 and 4 of the Convention. Having regard to the nature of the breaches and making its assessment on an equitable basis, the Court awards the applicant EUR 1,300 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

92. The applicant claimed EUR 14,650.70 for the costs and expenses incurred before the Court.

93. The Government considered these claims to be excessive. The Government also stated that it was not prepared to reimburse legal fees in the situation that the applicant had already received subsidised legal aid, with exception of any contribution that are actually paid by the applicant in addition to the provided legal aid.

94. 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 were actually and necessarily incurred and are reasonable as to quantum (see, as a recent authority, *Mugemangango v. Belgium* [GC], no. 310/15, § 149, 10 July 2020).

95. It has emerged that the costs and expenses claimed were covered by legal aid provided by the respondent Party, with the exception of a mandatory personal contribution (*eigen bijdrage*) in an amount of EUR 196 set by the competent authorities. That being the case, only the mandatory personal contribution was "actually incurred". The Court awards the applicant the corresponding sum. It notes, however, that the documents submitted give no indication that any tax is chargeable to the applicant on that amount, or for that matter included in it, and accordingly will not make any award in that respect (see *Cabral v. the Netherlands*, no. 37617/10, § 46, 28 August 2018).

C. Default interest

96. 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, UNANIMOUSLY,

1. *Declares* the complaint concerning the applicant's detention from 2 to 15 September 2016 inadmissible;

2. *Declares* the remainder of the application admissible;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds*

(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,

(i) EUR 1,300 (one thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and

(ii) EUR 196 (one hundred and ninety-six euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Yonko Grozev
Registrar	President