



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

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FOURTH SECTION

Application no. 34092/24
S.S. against the Netherlands
and 2 other applications
(see list appended)
communicated on 7 September 2026

SUBJECT MATTER OF THE CASE

The applications concern the applicants' pre-placement detention in ordinary prisons pending their transfer to a suitable institution under an order for placement at the disposal of the Government with confinement in a custodial clinic (*terbeschikkingstelling met bevel tot verpleging van overheidswege* - "TBS"). Time-expired convict prisoners awaiting transfer to a suitable institution under a TBS order are colloquially referred to in Dutch as "TBS-passanten".

Application no. 34092/24: On 31 August 2023, the Regional Court convicted the applicant of assault and making threats. Having found that he suffered from schizophrenia and related disorders and was therefore not criminally responsible, it imposed a TBS order. Pending transfer to a custodial clinic, he remained in an ordinary detention facility. The TBS order became final and enforceable on 14 March 2024, and he was transferred to a custodial clinic on 29 November 2024.

Application no. 9044/25: On 17 July 2018, the Regional Court convicted the applicant of rape and making threats against life. It sentenced him to three years' imprisonment and imposed a TBS order on account of a personality disorder. On 17 March 2021, the Court of Appeal increased the prison sentence to 45 months and upheld the TBS order. The TBS order became final and enforceable on 21 June 2022. Pending transfer to a custodial clinic, the applicant remained in an ordinary detention facility until 4 April 2024.

On 24 June 2024, the applicant's TBS order was extended by two years, which was upheld on 28 November 2024. The Court of Appeal acknowledged the excessive duration of pre-placement detention and found a violation of Article 5 § 4, without attaching any further consequences.

Application no. 10887/25: On 20 October 2020, the applicant was convicted of attempted aggravated assault and violent robbery and sentenced to nine months' imprisonment together with a conditional TBS order. Following non-compliance with the conditions, the Public Prosecutor sought conversion to compulsory confinement. On 21 September 2023, the Regional Court ordered temporary confinement in a custodial clinic; pending admission, the applicant was placed in a remand centre. On 5 July 2024, a compulsory TBS order was imposed. This decision became final and enforceable on 5 December 2024, and the applicant was transferred to a custodial clinic on 28 July 2025.

All applicants complain under Article 5 § 1 of the Convention that their pre-placement detention in ordinary prisons pending transfer to a custodial clinic did not provide appropriate conditions for persons with mental disorders. They further argued that the delays in admission to a custodial clinic were excessive, contrary to the Court's established case-law.

Furthermore, the applicants in applications nos. 9044/25 and 10887/25 complain under Article 5 § 4 that they did not have access to an effective procedure by which they could challenge the lawfulness of their detention.

Lastly, the applicant in application no. 10887/25 complains under Article 14 in conjunction with Article 5, as well as under Article 1 of Protocol No. 12 that women in the TBS system face less favourable treatment, in particular longer waiting times for admission and a greater likelihood of conversion of conditional TBS orders into compulsory confinement due to limited capacity.

COMMON QUESTIONS TO THE PARTIES

1. Were the applicants deprived of their liberty in breach of Article 5 § 1 of the Convention? In particular, was their pre-placement detention in an ordinary prison facility pending their admission to a custodial clinic covered by, and in conformity with, Article 5 §§ 1 (a) and/or (e) of the Convention (see *Brand v. the Netherlands*, no. 49902/99, §§ 58, 60–65, 11 May 2004; *Morsink v. the Netherlands*, no. 48865/99, §§ 61, 63–68, 11 May 2004; and *Nelissen v. the Netherlands*, no. 6051/07, §§ 59–60, 5 April 2011)?

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2. What was the exact duration of each applicant's detention pending placement in a custodial clinic?

The parties are requested to provide supporting documentation clarifying the relevant dates.

CASE SPECIFIC QUESTIONS TO THE PARTIES

Application no. 34092/24: Having regard to the fact that the applicant was subject only to a TBS order and not to a custodial sentence, was his detention in an ordinary prison facility compatible with Article 5 § 1 of the Convention? In particular, on what legal basis under domestic law was such detention justified (see *Pankiewicz v. Poland*, no. 34151/04, §§ 38–42, 12 February 2008; *Rooman v. Belgium* [GC], no. 18052/11, §§ 190, 193, 196, 198–201 and 208–210, 31 January 2019; and *M.A. v. Latvia*, no. 55234/21, §§ 78–85, 6 November 2025)?

Application nos. 9044/25 and 10887/25: Did the applicants have at their disposal an effective procedure by which they could challenge the lawfulness of their detention, as required by Article 5 § 4 of the Convention (see *Nelissen v. the Netherlands*, no. 6051/07, §§ 42–49, 5 April 2011; and *D.B. v. the Netherlands*, no. 53764/07, §§ 39–40, 5 March 2013)?

Application no. 10877/25: Has there been a violation of Article 14, taken in conjunction with Article 5, and/or Article 1 of Protocol No. 12? In particular, was the applicant treated differently, on the basis of her sex, from other persons in a relevantly similar situation, and if so, was such difference in treatment objectively and reasonably justified (see *Konstantin Markin v. Russia* [GC], no. 30078/06, §§ 124–127, 22 March 2012; and *Beeler v. Switzerland* [GC], no. 78630/12, §§ 93–95, 11 October 2022)?

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APPENDIX (anonymity has been granted)

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	34092/24	S.S. v. the Netherlands	20/11/2024	S.S. 1973 Zwolle Italian	Carlo SOTGIU
2.	9044/25	Van der Veekens v. the Netherlands	13/03/2025	Hendrik Jan VAN DER VEEKENS 1983 Almere Dutch	Sjoerd Tom VAN BERGE HENEGOUWEN
3.	10887/25	M.D.M. v. the Netherlands	31/03/2025	M.D.M. 2000 Leonen a/d Vecht Dutch	Th.O.M. DIEBEN