CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF NOWICKA v. POLAND

(Application no. 30218/96)

JUDGMENT

STRASBOURG

3 December 2002

FINAL

03/03/2003

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 Nowicka v. Poland,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr L. GARLICKI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 16 October 2001 and 12 November 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 30218/96) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Dobrochna Nowicka ("the applicant"), on 15 November 1994.

2. The applicant was represented by Mr W. Hermeliński, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki.

3. The applicant alleged, in particular, that the facts of her case disclosed a violation of Articles 5 § 1 and 8 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 16 October 2001 the Court declared the application partly admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1940 and lives in Łódź, Poland.

A. The property dispute

10. On an unspecified date the applicant inherited from her mother a 25% share in a property situated in Łódź at 6 Piotrowska Street. The property consisted of an apartment building and a plot of land. On 18 October 1990 the Łódź District Court (*Sąd Rejonowy*) appointed the applicant as the administrator of the property.

11. Subsequently, the applicant requested the previous administrator of the property, the association Z.W.Z.D., to cease all of its activities relating to the administration of the property. However, the association ignored her request and continued to collect rent from tenants living in the apartment building. In addition, the applicant challenged the right of Mr H.D. to collect rent from tenants leasing business premises located in the building, claiming that his title to a part of the property had been obtained under false pretences. These challenges resulted in an on-going dispute between the applicant on the one side and the association and Mr H.D. on the other.

B. The private prosecution of the applicant

12. On 8 March 1994, Mr H.D., acting through his counsel Mr L.B., brought a private prosecution against the applicant. A private bill of indictment filed by Mr H.D. alleged that the applicant was guilty of criminal libel since, on 19 January 1994, she had sent to a bank, which had made a loan to Mr H.D., a letter stating that he had obtained the loan under false pretences and had been repaying it from income obtained from her property.

13. During the hearing before the Łódź District Court held on 12 April 1994, counsel for Mr H.D. and the applicant refused to settle the case. The applicant confirmed that on 19 January 1994 she had sent the impugned letter, which had led Mr H.D. to bring the private prosecution against her. Counsel for Mr H.D. asked the court to request the Łódź Psychiatric Clinic (*Poradnia Zdrowia Psychicznego*) for information on

whether the applicant was a patient of that clinic and, if so, to instruct it to provide the court with her medical file. Counsel based his request on the fact that, according to his knowledge, the applicant was indeed a patient at that clinic. The applicant denied that she had ever undergone psychiatric treatment and stated that counsel's submission was slanderous. The court decided that it would consider counsel's request *in camera* at a later date, and that it would request information about the applicant's criminal record and background (*wywiad środowiskowy*).

14. On 14 April 1994 the District Court granted the request made on 12 April 1994 and asked the Łódź Psychiatric Clinic to provide information about any medical treatment which the applicant had received there.

15. On 19 April 1994 the Łódź Psychiatric Clinic informed the District Court, in a letter signed by Dr B.K., that on 23 October 1973 the applicant had visited the clinic and that her medical file included a reference to "suspected paranoid schizophrenia" (*podejrzenie schizofrenii urojeniowej*).

16. On 6 May 1994 police constable Z.A. issued a statement concerning the outcome of the background check, which had been conducted at 4 Sienkiewicza Street where the applicant resided at that time. He concluded, *inter alia*, that the applicant's neighbours had a good opinion of her, that she did not drink heavily and that she was not involved in any quarrels with her neighbours.

17. On 11 May 1994 counsel for Mr H.D. requested the Łódź District Court to order an expert opinion on the state of the applicant's mental health. He also submitted several letters written by the applicant and pointed out that they showed that the applicant had claimed rent from certain tenants occupying retail and office space located on the property, despite the fact that the association Z.W.Z.D. had been letting out those premises.

18. On 19 May 1994 the court appointed two psychiatrists and a psychologist and instructed them to prepare a report on the applicant's condition at the time of the commission of the alleged crime. On 30 May 1994 the experts scheduled an appointment with the applicant for 10 June 1994.

19. On 1 June 1994 the applicant asked the Łódź District Chamber of Doctors (*Okręgowa Izba Lekarska*) to initiate disciplinary proceedings against Dr B.K. for making a false representation in her letter of 19 April 1994. The applicant contested the contents of that letter, claiming that it had been based on fabricated medical records since she had never visited the Łódź Psychiatric Clinic. The applicant's requests for an investigation into the circumstances in which the letter had been issued were rejected by the Łódź District and Regional Prosecutors.

20. On an unspecified date, the Łódź District Court ordered the applicant to report on 10 June 1994 for an examination in a psychiatric ward of the Babiński Hospital headed by Dr B.K. The applicant's appeals and complaints concerning that decision were rejected by the Łódź District and

Regional Courts. The applicant submitted that she had asked the District Court to change the venue of her examination as she had considered that no objective opinion on her mental health could be issued after an examination in a ward headed by Dr B.K.

21. On 10 June 1994 the applicant failed to attend the psychiatric examination.

22. On 14 June 1994 the applicant filed an application challenging all judges of the Criminal Section of the Łódź District Court, but it was dismissed on 23 June 1994.

23. On 13 July 1994 the Łódź District Court issued an arrest warrant in order to secure the applicant's compliance with its order concerning her psychiatric examination.

24. The Government submitted that on 27 July 1994 the police informed the court that the applicant had refused to open the door to her flat and the police officers had therefore been unable to enforce the arrest warrant. The applicant denied that, and pointed to the fact that on 25 October 1994 she had voluntarily gone to the police station (see below).

25. On 1 August 1994 the District Court issued an order fixing 12 August 1994 as the new date for the applicant's compulsory psychiatric examination. However, the applicant did not keep the appointment.

26. On 1 September 1994 the District Court issued a new arrest warrant and scheduled the applicant's examination for 23 September 1994. The applicant again failed to attend the examination.

27. On 4 October 1994 the Łódź District Court decided that the applicant should be arrested and detained on remand in order to secure her compliance with its order.

C. The first detention

28. On 25 October 1994 the applicant visited the Łódź-Śródmieście District Police Station (*Komenda Rejonowa Policji*) in order to file a complaint about a breaking and entry into one of her apartments. However, her complaint was not accepted by the police and she was arrested under the District Court's warrant. On 26 October 1994 the applicant was transferred to the Łódź Prison No. 1.

29. On 26 October 1994 the applicant's daughter filed an appeal against the District Court's decision of 4 October 1994 ordering the applicant's arrest and detention. However, the appeal was rejected on 27 October 1994 because the court considered that the applicant's daughter was not authorised to file an appeal on behalf of her mother.

30. On 28 October 1994 the applicant's counsel appealed the decision of 4 October 1994, but the appeal was dismissed on an unknown date.

31. On 2 November 1994 the applicant underwent a psychiatric examination. The psychiatrists who examined the applicant concluded that

they could not make a diagnosis based on a single examination, and recommended that the applicant undergo a psychiatric examination in a public hospital. They also stated that only if the applicant failed to present herself for an examination at the public hospital should she be subjected to an examination in a prison hospital. On 3 November 1994 she was released from detention.

32. Between 25 October and 3 November 1994 the applicant's daughter applied twice to the Łódź District Court for leave to visit the applicant. Both applications were allowed.

33. On 8 November 1994 the Łódź District Court decided that the applicant should undergo a psychiatric examination in a medical establishment (*zakład leczniczy*). On 23 November 1994 the Łódź Regional Court (*Sąd Wojewódzki*) dismissed the applicant's appeal against that decision.

34. On 12 December 1994 the experts appointed by the court to examine the applicant informed it that the examination could take place between 2 and 7 January 1995.

35. On 6 January 1995 the applicant again failed to report for an examination.

36. On 9 January 1995 the Łódź District Court issued an arrest warrant because of the applicant's failure to attend a psychiatric examination at a public hospital. The court decided that she would be detained on remand under Article 217 § 1(2) of the Code of Criminal Procedure. It considered that the applicant had obstructed the criminal proceedings against her since she had not attended the hospital, despite being served with a summons, and because the police were unable to bring her to the hospital.

37. On 22 February 1995 the Łódź District Court issued a search warrant, considering that the applicant was in hiding since she was not staying at her residence.

D. The second detention

38. On 23 March 1995 the applicant was arrested. On 24 March 1995 she was transferred to prison.

39. On 24 March 1995 the District Court allowed an application for leave to visit the applicant filed by the applicant's daughter.

40. On 29 March 1995 the Łódź Regional Court dismissed the applicant's appeal against the District Court's decision to arrest her. On the same day the experts advised the court that the applicant's examination could start on 19 April 1995.

E. The restriction of visiting rights

41. On 31 March 1995 the applicant's daughter, Astrid Nowicka, filed with the Łódź District Court an application for leave to visit the applicant. She asked for two separate authorisations, for herself and her sister Inez Nowicka, to visit their mother on "multiple occasions" (*wielokrotne widzenia*). On 4 April 1995 the judge noted the following instruction to the registry:

> "Inform A. Nowicka that the court gives 1 authorisation per month as far as meetings with a detainee are concerned, and other [authorisations] only in exceptional cases."

42. On 4 April 1995 the Łódź District Court dismissed the applicant's request that she be released from prison.

43. On 10 April 1995 the District Court allowed the application for leave to visit the applicant filed by the applicant's daughter.

44. On 19 April 1995 the Regional Court dismissed the applicant's appeal against the District Court's decision of 4 April 1995.

45. Between 19 April and 26 May 1995 the applicant underwent a psychiatric examination in the prison hospital at the Łódź Prison No. 2. A medical opinion issued after that examination concluded that the applicant's intellectual ability was substantially above average and that she showed no signs of being either mentally ill or retarded. The opinion also stated that she had a paranoid personality and that she had understood what she was doing at the time of the commission of the alleged offence.

46. In the meantime, on 5 May 1995 the District Court allowed the application for leave to visit the applicant filed by the applicant's daughter.

47. In a letter of 22 May 1995 the Vice-President of the Łódź Regional Court advised the applicant that her examination in a medical establishment had been ordered by a court in response to the request by psychiatrists, who had concluded that they had been unable to draw up an expert opinion on the applicant's mental health after a single examination.

48. On 30 May 1995 the applicant was transferred to the Łódź Prison No. 1. On 2 June 1995 the District Court allowed the application for leave to visit the applicant filed by her daughter.

49. On 3 June 1995 the applicant was released from prison.

50. Subsequently, the Łódź District Court discontinued the criminal proceedings against the applicant.

II. RELEVANT DOMESTIC LAW

A. Criminal responsibility

51. Article 25 § 1 of the Code of Criminal Procedure 1969 ("the Code"), in so far as relevant, provides:

> "A person who, because of being mentally retarded or ill ..., could not understand his acts or who could not control his behaviour [at the time of the commission of the offence] shall not be criminally responsible."

B. Detention on remand

52. Article 217 § 1(2) of the Code, in so far as relevant, provides:

> "Detention on remand may be imposed if: ...
>
> 2. there is a reasonable risk that [the accused] will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means ..."

C. Psychiatric examination

53. Article 65 § 1(1) of the Code, in so far as relevant, reads as follows:

> "If it proves necessary for the purposes of taking evidence, the accused shall submit to:
>
> (1) the external examination of the body and other examinations not involving interference with the body ..."

D. Visiting rights

54. Paragraph 34(1) of the Resolution of the Minister of Justice 1989 concerning the rules governing detention on remand provides as follows:

> "A person detained on remand may have visits after obtaining permission from the organ at whose disposal he remains, unless that organ decides otherwise."

THE LAW

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

55. The applicant complained that her arrests on 25 October 1994 and 23 March 1995, and subsequent detention, were in breach of Article 5 § 1 of the Convention. Article 5 § 1 provides, in so far as relevant:

> "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: ...
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; ..."

A. Arguments before the Court

1. The applicant

56. The applicant submitted that both periods of her detention were unlawful. With reference to her detention between 25 October and 3 November 1994, she pointed out that such a lengthy period of detention could not be justified by the need to perform a basic examination which usually took an hour. Moreover, the applicant considered that the Government had failed to provide any explanation for her detention before and after the second examination.

2. The Government

57. The Government submitted that the applicant's detention did not breach Article 5 § 1. They asserted that on both occasions it was justified by the applicant's failure to comply with a court order to undergo a psychiatric examination. Furthermore, with reference to the period of the applicant's detention preceding her first examination on 2 November 1994, the Government submitted that "for purely technical reasons" the examination had not been carried out on an earlier date.

B. The Court's assessment

1. General principles

58. Article 5 § 1 requires in the first place that the detention be "lawful", which includes the condition of compliance with a procedure prescribed by

law. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. A period of detention will in principle be lawful if it is carried out pursuant to a court order (see the *Benham v. the United Kingdom* judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, pp. 752-753, §§ 40 and 42).

59. Furthermore, the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see, *inter alia*, the *Giulia Manzoni v. Italy* judgment of 1 July 1997, *Reports* 1997-IV, p. 1191, § 25).

60. Moreover, detention is authorised under sub-paragraph (b) of Article 5 § 1 only to "secure the fulfilment" of the obligation prescribed by law. It follows that, at the very least, there must be an unfulfilled obligation incumbent on the person concerned and the arrest and detention must be for the purpose of securing its fulfilment and not punitive in character. As soon as the relevant obligation has been fulfilled, the basis for detention under Article 5 § 1 (b) ceases to exist.

61. Finally, a balance must be drawn between the importance in a democratic society of securing the immediate fulfilment of the obligation in question, and the importance of the right to liberty. The duration of detention is also a relevant factor in drawing such a balance (see *McVeigh and Others v. the United Kingdom*, applications nos. 8022/77, 8025/77, 8027/77, Commission decision of 18 March 1981, Decisions and Reports (DR) Volume 25, pp. 37-38 and 42; *Johansen v. Norway*, application no. 10600/83, Commission decision of 14 October 1985, DR Volume 44, p. 162).

2. Application of the above principles to the instant case

62. The Court firstly notes that it appeared to be common ground that the applicant's detention fell under Article 5 § 1 (b) of the Convention and that it was "lawful". Having regard to the fact that the applicant's detention was carried out pursuant to a court order to secure the fulfilment of her obligation to submit to a psychiatric examination, the Court sees no reason to hold otherwise.

63. With respect to the applicant's pre-examination detention, the Court notes that on the first occasion she had been detained for eight days before she was given an appointment with psychiatrists on 2 November 1994 (see paragraphs 28-31 above). Her examination was completed on the same day. The applicant's second examination, between 19 April and 26 May 1995, was preceded by twenty-seven days of detention (see paragraphs 38-45 above). The Court considers that both periods of pre-examination detention

cannot be reconciled with the authorities' desire to secure the immediate fulfilment of the applicant's obligation. Moreover, the "purely technical reasons" relied on by the Government in the context of the length of detention preceding the first examination cannot justify holding the applicant in custody for eight days before submitting her to a brief examination. Taking into account the duration of detention, the Court is of the view that the authorities failed to draw a balance between the importance of securing the immediate fulfilment of the obligation in question, and the importance of the right to liberty (see the *McVeigh and Others* decision cited above).

64. As regards the applicant's detention after her examinations, the Court observes that although her first examination ended on 2 November 1994, she was held in custody overnight and was released only on 3 November 1994 (see paragraph 31 above). The second examination of the applicant ended on 26 May 1995, but she remained in detention for eight days until 3 June 1995 (see paragraphs 45 and 48-49 above). The Government have failed to provide an explanation for the applicant's post-examination detention. The Court observes that on both occasions the applicant discharged her obligation on the day on which her examination ended. It follows that the applicant's detention after 2 November 1994 and 26 May 1995 had no basis under Article 5 § 1 (b) (see the *McVeigh and Others* and *Johansen* decisions cited above).

65. The Court concludes that the applicant's detention, which lasted for a total period of eighty-three days and was imposed in the context of a private prosecution arising out of a neighbours' dispute, was in breach of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

66. The applicant also complained that (i) the decisions to order her to undergo a psychiatric examination and to arrest her, (ii) her detention for a total period of eighty-three days, and (iii) the restriction on her right to see members of her family to one visit every month while in detention, were in breach of Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, for the protection of health ..., or for the protection of the rights and freedoms of others."

A. Arguments before the Court

1. The applicant

67. The applicant asserted that her detention resulted in a violation of Article 8. She pointed out that the judge's decision of 4 April 1995 to restrict her visiting rights to one meeting per month was also in breach of that provision as she could not be considered a threat to any of the interests listed in paragraph 2 of Article 8.

2. The Government

68. The Government acknowledged that the decisions to order the applicant to undergo a psychiatric examination and to arrest her constituted an interference with her right to respect for private and family life. However, they considered that the interference was in accordance with the law, namely Article 65 of the Code of Criminal Procedure 1969, and was justified and proportionate to the legitimate aim of enforcing lawful court orders, in compliance with the Convention. Furthermore, the Government submitted that all applications for leave to visit the applicant lodged by the members of her family were allowed.

B. The Court's assessment

1. General principles

69. The Court recalls that any interference with an individual's right to respect for his private and family life will constitute a breach of Article 8, unless it was "in accordance with the law", pursued a legitimate aim or aims under paragraph 2, and was "necessary in a democratic society" in the sense that it was proportionate to the aims sought to be achieved (see *D.G. v. Ireland*, no. 39474/98, § 104, 16 May 2002, unreported).

70. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aims pursued. In determining whether an interference was "necessary in a democratic society" the Court will take into account that a margin of appreciation is left to the Contracting States. Furthermore, the Court cannot confine itself to considering the impugned facts in isolation, but must apply an objective standard and look at them in the light of the case as a whole (see *Matter v. Slovakia*, no. 31534/96, § 66, 5 July 1999, unreported).

71. Moreover, normal restrictions and limitations consequent on prison life and discipline during lawful detention are not matters which would constitute in principle a violation of Article 8 either because they are

considered not to constitute an interference with the detainee's private and family life or because any such interference would be justified (see the *D.G.* judgment cited above, § 105).

2. Application of the above principles to the instant case

(a) Decisions ordering the applicant's psychiatric examination, arrest and her detention

72. The applicant firstly complained that (i) the decisions to order her to undergo a psychiatric examination and to arrest her and (ii) her detention for a total period of eighty-three days were in breach of Article 8 of the Convention. However, the Court considers that these complaints do not raise any separate issue which is not covered by the finding of a violation of Article 5 § 1 of the Convention (see, *mutatis mutandis*, the *D.G.* judgment cited above, § 107).

(b) The restriction of visiting rights

73. The applicant further complained that the restriction on her right to see members of her family to one visit per month while in detention, was in breach of Article 8 of the Convention.

74. The Court observes that the parties appeared to agree that the decision restricting the applicant's visiting rights constituted an interference with her private and family life and was "in accordance with the law". The Court sees no reason to hold otherwise.

75. As to the question whether the interference pursued a legitimate aim and was "necessary in a democratic society", the Court firstly notes the Government's submission that the applicant's detention pursued the legitimate aim of enforcing lawful court orders. However, although the detention itself could be considered to pursue the legitimate aims of the prevention of crime and the protection of health and rights of others (see *Berliński v. Poland* (dec.), nos. 27715/95 and 30209/96, 18 January 2001, unreported), the judge's decision of 4 April 1995 restricting the applicant's visiting rights to one visit per month did not pursue, and was not proportionate to, any legitimate aim. The restriction was imposed on the applicant who was held in detention for eighty-three days in a case in which she did not contest the private prosecutor's submissions on the facts of the case against her (see paragraph 13 above). Moreover, the Government have failed to show that it was justified as a normal restriction consequent on prison life and discipline during detention.

76. Furthermore, the Court notes the Government's submission that all applications for leave to visit the applicant lodged by the members of her family were allowed. However, after the decision restricting visiting rights had been made with respect to the application filed on 31 March 1995, the applicant's family filed further applications once a month: the District

Court's decisions granting the applications were taken on 10 April, 5 May and 2 June 1995 (see paragraphs 41-48 above). It appears that the family's restraint in the number of applications lodged resulted from the judge's decision of 4 April 1995 concerning monthly visits only.

77. The Court concludes that the restriction on the applicant's right to see members of her family to one visit per month while in detention did not pursue, and was not proportionate to, any legitimate aim, and therefore was in breach of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. Mrs Nowicka sought 200,000 US dollars (USD) for pecuniary and non-pecuniary damage.

80. The Government submitted that in the event that the Court found a violation, this finding would in itself constitute sufficient just satisfaction as far as the applicant's claim for pecuniary damage was concerned. In the alternative, they requested the Court to assess the amount of just satisfaction to be awarded for pecuniary damage on the basis of its case-law in similar cases, having regard to national circumstances.

81. With respect to the applicant's claim for an award for non-pecuniary damage, the Government considered that it was exorbitant and that it should be assessed instead on the basis of its case-law in similar cases, again having regard to national circumstances.

82. The Court considers, on the evidence before it, that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by the violations of the Convention in her case. Consequently, there is no justification for making any award to her under that head (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

83. However, the Court considers that, in the circumstances of this particular case and deciding on an equitable basis, the applicant should be awarded the sum of 10,000 euros (EUR) for non-pecuniary damage.

B. Costs and expenses

84. The applicant also claimed USD 3,000 by way of legal costs and expenses incurred in the preparation and defence of her case before the Court. This included 20 hours' work at an hourly rate of USD 150.

85. The Government submitted that these claims were excessive, in particular as regards the hourly rate claimed. They asked the Court to base the award of costs and expenses on "the established minimum rates for free legal aid". Moreover, the Government pointed out that the applicant's counsel was appointed only after the applicant had filed her first set of written observations and that the case was not complicated.

86. Having regard to equitable considerations, the Court awards the applicant EUR 2,000 together with any value-added tax that may be chargeable, less EUR 510 already paid by way of legal aid.

C. Default interest

87. The Court considers that the default interest should be fixed at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 8 of the Convention as regards the restrictions on the applicant's visiting rights;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage to be converted into Polish zlotys at the rate applicable at the date of settlement;
   (b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) for costs and expenses, plus any value-added tax that may be chargeable, less EUR 510 (five hundred and ten euros) to be converted into Polish zlotys at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 3 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President