



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

FOURTH SECTION

CASE OF WITEK v. POLAND

(Application no. 13453/07)

JUDGMENT

STRASBOURG

21 December 2010

FINAL

11/04/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Witek v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić,

Vincent A. de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 30 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 13453/07) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Ms Magdalena Witek (“the applicant”), on 16 March 2007.

2. The applicant, who had been granted legal aid, was represented by Mr J. Gałkowski, a lawyer practising in Bielsko Biała. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that her detention in a psychiatric hospital had been unlawful and in breach of Article 5 § 1 of the Convention.

4. On 14 April 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3 of the Convention, now Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Katowice.

6. On 19 October 1999 the applicant, a doctor, was charged with domestic violence (assault on her mother).

7. Between 26 June 2000 and 3 August 2000 she was examined in a psychiatric hospital in Morawica. The expert psychiatrists gave an opinion and concluded that she suffered from paranoid schizophrenia.

8. On 18 October 2001, on the prosecutor's motion, the Kielce District Court discontinued the proceedings against the applicant. It found that she could not be held criminally responsible as she was of unsound mind. It ordered her confinement in a psychiatric hospital and her suspension from medical practice.

9. Following the court's decision, the applicant failed to report to a psychiatric hospital.

10. On 14 January 2002 the applicant lodged an appeal against the first instance decision; however it was rejected as lodged outside the prescribed time-limit.

11. For five years the applicant remained in hiding and her whereabouts were unknown to the authorities. In 2006 the police eventually established her address in Poland.

12. On 19 June 2006 the applicant was arrested by the police at her home in Katowice. She was transferred to the Rybnik Psychiatric Hospital. She submits that she was not examined by a doctor until several days after her arrival there.

13. On 19 June 2006 the Kielce Regional Court resumed the enforcement proceedings as regards the judgment of October 2001, observing that the applicant has been ordered to stay in a psychiatric hospital, but had been evading justice for five years.

14. On 7 September 2006 the Kielce District Court ordered that the applicant be examined by expert psychiatrists, in order to establish whether her continued confinement in the mental institution was necessary.

15. On 11 September 2006 the Psychiatric Commission on Preventive Measures submitted its opinion dated 17 August 2006 to the Kielce District Court. The commission examined the documents relating to the applicant's mental health and considered that her confinement in a psychiatric hospital was necessary. It referred to the experts' opinion of 2000, which stressed that the applicant had behaved aggressively during her period under psychiatric observation in Morawica Hospital (in 2000). The commission considered that the applicant should be transferred to Lublin Hospital. The applicant was subsequently admitted to the Lublin Hospital on 23 September 2006.

16. On 7 November 2006 three expert psychiatrists submitted their opinion on the applicant's mental health. They stressed that it was necessary to continue the applicant's detention in a psychiatric hospital.

17. On 11 January 2007 the Kielce District Court held that it was necessary to continue the applicant's detention in the psychiatric hospital. The court referred to the experts' opinion of 7 November 2006 supplemented on 11 January 2007. According to the experts the applicant suffered from a mental disorder which justified placing her in a psychiatric hospital. It was further highly unlikely that the applicant would continue the treatment after release from the hospital. On 15 January 2007 the applicant filed an appeal against that decision. She stressed that over the previous five years her health had significantly improved and that her relations with her mother were very good. On 23 February 2007 the Kielce Regional Court upheld the first-instance decision referring to the reasons given by the District Court.

18. On 8 May 2007 expert psychiatrists submitted another opinion concerning the applicant's mental health. They maintained that the applicant's condition had not changed and it was necessary to keep her in hospital. The applicant on numerous occasions challenged these opinions and lodged requests for fresh ones.

19. On 20 June 2007 the court obtained an opinion from expert psychiatrists from a different hospital. They confirmed that the applicant had a schizophrenic disorder which resulted in changes of mood and irritability.

20. On 16 August 2007 the court received yet another expert opinion. The expert psychiatrists concluded that there was still a high possibility that the applicant might commit another offence. However, her health had improved and she could be placed in a psychiatric institution with basic security.

21. On 25 September 2007 the Kielce District Court ordered the applicant's release from hospital. The court did not agree with the expert psychiatrists opinions of 20 July 2007, 16 August 2007 and 25 September 2007 maintaining that the applicant should be kept in a psychiatric hospital. The court considered that the applicant's condition had significantly improved during the time she spent in the hospital. It referred to the applicant's mother's testimonies confirming that since 2002 the applicant had never behaved aggressively towards her and their relations were very good. The court concluded that the probability of the applicant committing another similar offence was very low.

22. On the prosecutor's appeal, on 16 November 2007 the Kielce Regional Court upheld the first-instance decision. The applicant was released from hospital on the same day.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. Conditions for the detention of persons of unsound mind who are not criminally responsible on medical grounds are laid down in the Polish Criminal Code of 1997:

Article 93

“The court may impose a preventive measure provided for in this Chapter which involves confinement in a closed medical institution only if necessary to prevent the repeated commission of a prohibited act by a perpetrator suffering from mental disease, mental impairment or addiction to alcohol or other narcotic drugs. Before imposing such a measure the court shall hear evidence from psychiatrists and a psychologist.”

Article 94

§ 1. If the perpetrator has committed a prohibited act of significant harm to the community in a condition excluding his criminal responsibility as specified in Article 31 1 and there is a high probability that he will commit such an act again, a court shall commit him to a suitable psychiatric institution.

§ 2. The duration of the stay in the institution shall not be fixed in advance; the court shall order the perpetrator's release from the institution if his or her stay is no longer deemed necessary.

§ 3 The court may order the recommitment of a perpetrator specified in § 1 in a suitable psychiatric institution if this is advisable in the light of the circumstances specified in § 1 or in Article 93; the order may not be issued later than five years after the date of release from the institution. “

THE LAW

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

24. The applicant complained, invoking numerous provisions of the Convention, that her detention in the psychiatric hospital had been unlawful. The Court considers that the complaint falls to be examined under Article 5 § 1 (e) of the Convention, which reads 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:

...

(e) the lawful detention ... of persons of unsound mind.... ”

25. The Government contested the applicant's argument.

A. Admissibility

26. The Government submitted preliminary objections on the ground of incompatibility with the six-month rule and non-exhaustion of domestic remedies. They stressed that the final decision confining the applicant to a psychiatric hospital was given on 18 October 2001. In addition, she was placed in the hospital on 19 June 2006, whereas the application had been lodged with the Court on 16 March 2007 and thus is outside the relevant time-limit. They further maintained that the applicant had failed to exhaust the available domestic remedies, since she had not appealed against the judgment of 18 October 2001 confining her to a psychiatric internment. She further failed to apply for leave to appeal out of time.

27. The applicant contested these submissions.

28. Under Article 35 § 1 of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted and within six months from the date on which the last domestic decision was taken. The Court further reiterates that, according to its established case-law, where no domestic remedy is available the six-month period runs from the act alleged to constitute a violation of the Convention; however, where it concerns a continuing situation, it runs from the end of the situation concerned (see, for example, *Antonenkov and Others v. Ukraine*, no. 14183/02, § 32, 22 November 2005).

29. In the present case the Court firstly notes that the applicant did not specifically complain about her arrest on 19 June 2006 but generally alleged that her detention in the psychiatric hospital between 19 June 2006 and 16 November 2007 had been unlawful.

30. The Court secondly observes that the applicant lodged an appeal against the decision of 11 January 2007 confirming the necessity of her confinement in a psychiatric hospital. She further submitted numerous motions for supplementary expert opinions (see paragraphs 17 and 18 above). The Court considers that the purpose of the remedies used by the applicant was to obtain a review of her detention in a psychiatric hospital. In the circumstances of the case, these remedies constituted adequate and effective remedies within the meaning of Article 35 of the Convention. It follows that the Government's objections must be dismissed.

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

32. The applicant submitted firstly that the psychiatrists' opinions were not accurate. In addition, the domestic courts failed to analyse them properly. She further stressed that she underwent a psychiatric observation between 14 April 2008 and 6 May 2008 in the Katowice clinic. Upon her release the hospital had not recommended that she followed any therapy nor was she prescribed any medication.

33. She further argued that following her arrest on 19 June 2006 the Kielce District had ordered her examination by expert psychiatrists only on 5 September 2006 - three months later. Their respective opinions had been submitted only in November 2006.

34. Lastly, she maintained that for 15 months she had been deprived of her liberty in breach of Article 5 § 1. Her detention had not been necessary as she had been leading a normal life.

2 The Government's submissions

35. The Government submitted that the applicant was reliably shown by medical expertise to suffer from a "true mental disorder". They referred to the judgment of 18 October 2001 which ordered the applicant's psychiatric confinement and which was based on an opinion of 29 November 1999 and also a detailed and convincing opinion of 3 August 2000 prepared after the applicant's psychiatric observation in a hospital. In addition, between 19 June 2006 and 16 November 2007 fifteen experts in psychiatry and psychology gave their opinions on the applicant's health and they all confirmed that the applicant suffered from a mental disorder.

36. They further maintained that the requirement that the disorder must be of a kind or degree warranting compulsory confinement was also entirely fulfilled. In their opinion, the applicant had committed a prohibited act of significant harm to the community (assault on her mother). They also noted that in 2000 the experts observed that the applicant's mental health condition was dangerous to the legal order and on 11 September 2006 the Psychiatric Commission on Secure Measures considered that the applicant's confinement in a psychiatric hospital was necessary.

37. Lastly, they submitted that the applicant had been confined to a psychiatric institution for as long as her condition required such a measure and the danger of her committing another offence persisted. The applicant had been finally released upon a request by her mother who promised to provide assistance to her daughter.

38. The Government referred to the “clean hands” doctrine in international law, according to which the responsibility of a State was not engaged when the complainant himself had acted in breach of the law, international or domestic. They pointed to the fact that the applicant had been in hiding for 5 years after the court's judgment of 18 October 2001. They concluded that in the present case all the criteria as regards the detention of persons of “unsound mind” had been met.

3. *The Court's assessment*

39. In determining whether the applicant was of unsound mind within the meaning of Article 5 § 1 (e) the Court reiterates that an individual cannot be deprived of his liberty on the basis of unsoundness of mind unless three minimum conditions are satisfied: he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement must depend upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; *Johnson v. the United Kingdom*, 24 October 1997, § 60, *Reports of Judgments and Decisions* 1997-VII). The national authorities have a certain margin of appreciation regarding the merits of clinical diagnoses since it is in the first place for them to evaluate the evidence in a particular case: the Court's task is to review under the Convention the decisions of those authorities (see *Winterwerp*, cited above, § 40, and *Luberti v. Italy*, 23 February 1984, § 27, Series A no. 75).

40. Turning to the circumstances of the present case, the Court shall firstly examine whether the applicant has reliably been shown to be of unsound mind of a kind or degree warranting compulsory confinement. In this respect the Court notes that in 1999 the applicant was charged with domestic violence. She subsequently underwent a psychiatric observation in 2000 at the end of which expert psychiatrists concluded that she suffered from paranoid schizophrenia. On the basis of this opinion, the Kielce District Court discontinued the proceedings against the applicant and ordered her confinement in a psychiatric hospital. It considered that the applicant's mental condition was such that she was likely to commit further serious unlawful acts and that she was therefore dangerous to the general public (see paragraph 8 above).

41. While the Court accepts that the applicant suffered from a mental disorder which may have warranted her compulsory confinement in 2001,

this factor is not sufficient in itself to conclude that the applicant's detention during the period after 19 June 2006 complied with Article 5 § 1 (e) of the Convention. In this respect it reiterates that the medical assessment must be based on the actual state of mental health of the person concerned and not solely on past events. A medical opinion cannot be seen as sufficient to justify deprivation of liberty if a significant period of time has elapsed (see, *Varbanov v. Bulgaria*, no. 31365/96, § 47, ECHR 2000-X.).

42. In the present case following the decision of 18 October 2001 the applicant remained in hiding for nearly 5 years. Her arrest and her initial detention in a psychiatric hospital in June 2006 were based on expert evidence obtained in 1999 and 2000. It was only on 7 September 2006 that the Kielce District Court ordered that the applicant be examined by expert psychiatrists (see paragraph 14 above). The expert evidence confirming the need to continue the applicant's internment was then submitted on 7 November 2006 to the court (see paragraph 16 above). Subsequently, at a hearing held on 11 January 2007, the Kielce District Court examined the experts' opinion and obtained additional evidence from the experts. On that date the court confirmed that the applicant suffered from a mental disorder which justified placing her in a psychiatric hospital (see paragraph 17 above).

43. While the Court accepts that a certain delay before fresh expert evidence confirming the need to continue internment is obtained is inevitable, it considers that in the circumstances of the present case the District Court had not ordered an expert opinion promptly enough (only three months after the applicant's placement in the hospital). In view of the above, the Court concludes that it has not been "reliably shown" that the applicant's mental condition necessitated her confinement between 19 June 2006 and 11 January 2007 in a psychiatric hospital.

44. Consequently, the Court concludes that the applicant's hospitalisation between 19 June 2006 and 11 January 2007 was not "lawful" within the meaning of Article 5 § 1 (e) of the Convention. Thus, there has been a violation of this provision in respect of the period between 19 June 2006 and 11 January 2007.

45. As regards the period after 11 January 2007 until the applicant's release, the Court observes that the applicant was examined by expert psychiatrists on several occasions. They submitted their opinions to the Kielce District Court on 8 May, 20 June, 16 August and 25 September 2007. All those experts confirmed the necessity of the applicant's confinement in a psychiatric hospital (see paragraphs 18-21 above).

46. While the applicant criticised all those reports the Court sees no reason to doubt that the experts were fully qualified and had grounded their conclusions on their best professional judgment. In view of these considerations, and noting that the national court was in a far better position to assess the value of the expert reports and, more generally, to determine the factual issue as to whether or not the applicant was suffering from a mental disorder, the Court finds no grounds to interfere with its assessment (see *Sabeva v. Bulgaria*, no. 44290/07, § 58, 10 June 2010). The Court is further satisfied that the applicant's disorder was of a degree and kind warranting confinement.

47. In view of the above the Court is satisfied that the applicant's deprivation of liberty between 11 January 2007 and 16 November 2007 was lawful within the meaning of Article 5 § 1 (e) of the Convention.

48. There has therefore been no violation of Article 5 § 1 in respect of the period between 11 January 2007 and 16 November 2007.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

49. The applicant further complained about the delay in the proceedings by which she sought to challenge the lawfulness of her detention in the psychiatric hospital. The complaint falls to be examined under Article 5 § 4 of the Convention which provides as follows:

“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.”

50. The Government contested that argument.

A. Admissibility

51. The Court notes this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The applicant's submissions*

52. The applicant submitted that during her detention in the psychiatric hospital she had not had a speedy access to court to challenge the lawfulness of her detention.

2. *The Government's submissions*

53. The Government argued that the necessity of the applicant's confinement in the hospital had been systematically monitored by the court. Several expert opinions confirmed that it had been necessary to keep the applicant in a mental institution.

54. They were further of the opinion that the applicant's appeal against the decision of 11 January 2007 had been examined by the Kielce Regional Court without undue delay. The applicant's representative had lodged his appeal on 15 January 2007, the applicant on 24 January 2007 and the case file had been transferred to the Kielce Regional Court on 24 January 2007. The appeals had been examined on 23 February 2007, that is one month later. In the Government's opinion, the length at issue had no significance to the applicant's detention since the applicant's mental state had not allowed her release.

3. *The Court's assessment*

55. The Court reiterates that by virtue of Article 5 § 4 a person of unsound mind compulsorily confined in a psychiatric institution for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings at reasonable intervals before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention (see *Winterwerp*, cited above, § 55).

56. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained a right to have the lawfulness of their detention reviewed, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and to an order terminating it if proved unlawful (see, for instance, *Baranowski v. Poland* no. 28358/95, § 68, ECHR 2000-III).

57. The finding whether or not the relevant decisions were taken "speedily" within the meaning of that provision depends on the particular features of the case. In certain instances the complexity of medical, or other, issues involved in a determination of whether a person should be detained or released can be a factor which may be taken into account when assessing compliance with the Article 5 § 4 requirements (see, *mutatis mutandis*, *Baranowski v. Poland*, cited above, and *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

58. In the present case the Court observes that both the applicant's and her lawyer's appeals against the decision of 11 January 2007, lodged on 15 January and 24 January 2007 respectively, were examined together on 23 February 2007. The Regional Court did not need to supplement the evidence. Furthermore it had not obtained any fresh medical evidence (see paragraph 17 above).

59. It is true that the period of thirty days may *prima facie* appear not to be excessively long. However, the Government did not plead that complex issues had been involved in the determination of the lawfulness of the applicant's detention or that the courts needed to obtain expert evidence. Having regard to the above, the Court concludes that the delay of thirty days cannot be considered compatible with the requirement of "speediness" laid down in Article 5 § 4 (see for example *Butusov v. Russia*, no. 7923/04, § 35, 22 December 2009, *Rehbock v. Slovenia*, no. 29462/95, §§ 86, 87, ECHR 2000-XII).

60. The Court consequently holds that there has been a violation of Article 5 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 70,000 euros (EUR) in respect of non-pecuniary damage and EUR 21,460 in respect of pecuniary damage.

63. The Government contested these claims.

64. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicant, who received legal aid from the Council of Europe in connection with the presentation of her case, did not make any claim for reimbursement of costs and expenses.

C. Default interest

66. The Court considers it appropriate that the default interest 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 application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the period between 19 June 2006 and 11 January 2007;
3. *Holds* that there has been no violation of Article 5 § 1 of the Convention in respect of the period between 11 January 2007 and 16 November 2007;
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, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President