



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

FOURTH SECTION

CASE OF BIZIUK v. POLAND (No. 2)

(Application no. 24580/06)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

17/04/2012

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

In the case of Biziuk v. Poland (no. 2),

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

David Thór Björgvinsson, *President*,

Lech Garlicki,

Päivi Hirvelä,

George Nicolaou,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 24580/06) 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, Mr Janusz Biziuk (“the applicant”), on 9 June 2006.

2. The applicant, who had been granted legal aid, was represented by Ms Z. Daniszewska-Dek, a lawyer practising in Białystok. 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 his detention in a psychiatric hospital had been unlawful and in breach of Article 5 § 1 of the Convention.

4. On 21 September 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 (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Sokółka.

6. Since 2000 the applicant has been involved in an administrative dispute with the Sokółka Municipality relating to the planned construction of a public road.

7. The applicant submits that on many occasions he was denied the right to see the relevant planning and building permissions and that the municipality clerks prevented him from accessing the files.

8. On 3 November 2004 and 4 January 2005 the applicant was charged with several offences, in particular insulting the Białystok Regional Prosecutor and uttering threats. The Białystok District Court subsequently ordered the applicant to undergo a psychiatric examination in order to determine whether he could be held criminally responsible in respect of the above-mentioned offences.

9. On 8 December 2004 the applicant was arrested and placed in a psychiatric hospital in order to undergo an observation.

10. On 21 December 2004 the applicant attacked a judge who was visiting another patient in the hospital. He was immobilised and given sedative medication. On 23 December 2004 the hospital asked the court for a *post factum* permission to treat the applicant without his consent.

11. On 5 January 2005 the applicant underwent a psychiatric examination.

12. On 6 January 2005 the Suwałki District Court gave a decision and declared the extension of the applicant's detention in the hospital to be lawful. The applicant was released from the hospital on the same day.

13. On 5 May 2005 the Białystok District Court gave a decision and discontinued the criminal proceedings against the applicant. The court found it established that the applicant had committed the offences in question. However, he should not have been held criminally responsible as he was suffering from paranoia with elements of psychosis. It further referred to an expert's opinion and ordered that the applicant be placed in a psychiatric hospital in Choroszcza.

14. On 29 July 2005 the Białystok Regional Court dismissed an appeal by the applicant.

15. Subsequently, the applicant asked the court to discontinue the enforcement proceedings relating to his placement in a psychiatric hospital. He claimed that his state of health had significantly improved. On 5 October 2005 the Białystok District Court dismissed his request. On 2 February 2006 the Białystok Regional Court dismissed the applicant's appeal.

16. Meanwhile, the applicant was charged with assaulting a Sokółka municipality employee. On 7 April 2005 expert psychiatrists considered that the applicant suffered from paranoia with elements of psychosis. On 14 September 2005 the Sokółka District Court discontinued the criminal proceedings against the applicant and ordered his placement in a psychiatric hospital.

17. On 23 February 2006 the applicant was arrested by the police on the basis of the decision of 5 May 2005. He was then transferred to the

Choroszcza Psychiatric Hospital. He was seen by a doctor upon his arrival. However he refused to answer any questions.

18. On 23 February 2006 the applicant lodged an interlocutory appeal against the decision to place him in a psychiatric hospital. He stressed that his condition had meanwhile improved and that he had not been summoned to go to the hospital voluntarily. He also complained that he could not prepare himself for the confinement. On 21 March 2006 the Białystok Regional Court dismissed the applicant's interlocutory appeal.

19. On 24 March 2006 the Sokółka District Court ordered the applicant's internment in the same institution (the Choroszcza Psychiatric Hospital) on the basis of its final decision of 14 September 2005.

20. The applicant subsequently lodged several motions, in particular another application for release on 26 March 2006 which was dismissed on 14 June 2006.

21. On 10 June 2006 an expert psychologist submitted her opinion to the court. She observed an improvement in the applicant's emotional behaviour. On 13 June 2006 two expert psychiatrists submitted their joint opinion to the court. They concluded that the applicant's condition had significantly improved. However, he should continue treatment in a hospital.

22. On 11 September 2006 the Białystok District Court ordered the applicant's release. The court referred to an opinion prepared by two psychiatrists and a psychologist. They concluded that the applicant's condition had significantly improved and that he could be treated outside the hospital.

23. The applicant escaped from the hospital on 17 September 2006.

24. On 19 September 2006 the hospital informed the Białystok District Court about the applicant's escape. The hospital stressed that it refused to release the applicant because confinement in respect of another set of criminal proceedings against him had been ordered. The hospital referred to the decision of 14 September 2005 given by the Sokółka District Court.

25. Subsequently, the applicant sued the Choroszcza Psychiatric Hospital for compensation. He complained about the treatment he received and in particular about the fact that his head had been shaved without his consent and also that he had been placed in a closed ward of the hospital. On 28 May 2010 the Białystok District Court granted the applicant 5,000 Polish zlotys in compensation. On 30 September 2010 the Białystok Regional court gave judgment and increased the amount of compensation to PLN 8,000.

26. The applicant's subsequent confinement was examined by the Court in application no. 22170/07.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. 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 illness, 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. THE GOVERNMENT’S PRELIMINARY OBJECTION

28. In their letter of 16 May 2011 the Government submitted a preliminary objection. According to the Government, the applicant ceased to be a victim of the alleged breach of the Convention as a result of the payment of the compensation awarded by the Białystok Regional Court on 16 May 2011. The Government submitted that since the domestic authorities had acknowledged that there had been shortcomings regarding his hospitalisation in the Choroszcza Psychiatric Hospital the entirety of the applicant’s claims had been satisfied.

29. The applicant replied that he had indeed obtained compensation in the civil proceedings. However, these proceedings concerned merely his

allegations of degrading treatment in the Choroszcza Psychiatric Hospital, in particular the fact that he had had his head shaved and was placed in a closed ward of the hospital. He submitted that he had not obtained any compensation at the domestic level for his Article 5 complaints.

30. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his 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 example, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

31. Turning to the facts of the present case, the Court notes that the applicant was paid compensation for the degrading treatment to which he was subjected in the Choroszcza Psychiatric Hospital (see paragraph 23 above). However, there is nothing in the reasoning of the Białystok Regional Court’s judgment that would indicate that the compensation amounted to redress for the applicant’s complaints under Article 5 of the Convention.

32. Taking into account the above considerations, the Court considers that the applicant may still claim to be a victim of violations of Article 5 § 1 and 5 § 4 of the Convention.

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

33. The applicant complained that his detention in a psychiatric hospital had been unlawful. The complaint falls to be examined under Article 5 § 1 of the Convention, which 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:

(...)

(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;

(...)

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

”

A. Admissibility

34. In so far as the applicant complained about his detention between 8 December 2004 and 6 January 2005 the Court points out that it is not open to it to set aside the application of the six-month rule solely because a respondent Government have not made a preliminary objection based on that rule (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

35. The Court further observes that the present application was introduced on 9 June 2006, that is more than six months after the date on which the relevant period to be considered under Article 5 § 1 (e) came to an end.

36. It follows that this part of the application is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention. Therefore, it must be rejected pursuant to Article 35 § 4 of the Convention.

37. The Court further notes that the remainder of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 parties' submissions

(a) The applicant

38. The applicant generally disagreed with the experts' opinion regarding his mental condition. He further submitted that his detention in the hospital between 11 and 17 September 2006 was unlawful. He should have been released from the hospital on 11 September 2007.

(b) The Government

39. The Government submitted that the measure applied with respect to the applicant was based on the court's decision of 5 May 2005. The court's judgment which declared the applicant to be of unsound mind was based on a reliable, fair, detailed, logical and convincing opinion of 31 January 2005 prepared by two expert psychiatrists and one expert psychologist. Even though the observation was ordered in a different case (by the Białystok District Court) it was possible for the doctors to use the results for the purposes of the other investigation.

40. The Government further submitted that the applicant had been examined by a doctor on his admission to the Choroszcza Psychiatric Hospital. However, he refused to answer the doctor's questions. They also stated that the present application was introduced on 9 June 2006. At that time, according to an expert's opinion of 13 June 2006, the applicant was still suffering from a condition that justified the continuation of his confinement. Consequently, they were of the opinion that the applicant's claims and complaints should be interpreted as symptoms of psychosis.

41. As regards the period after 11 September 2006 the Government submitted that it had not been possible to synchronise the adoption of identical decisions on the same date by both courts (Sokółka and Białystok). They maintained that a measure of confinement was always applied in relation to the type of offence with which the applicant was charged. They further stressed that the applicant would have been immediately released from the hospital after the measure had been quashed by the Białystok District Court had it had not been for the another measure of confinement in force ordered by the Sokółka District Court.

2. *The Court's assessment*

(a) **General principles**

42. 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, *Sabeva v. Bulgaria*, no. 44290/07, § 56, 10 June 2010). 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).

43. The Court further recalls that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and enshrine the obligation to conform to the substantive and procedural rules thereof. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a

breach of the Convention and the Court can and should review whether this law has been complied with (see, among many other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III.).

44. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp* cited above § 37 and *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of “arbitrariness” in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008-...).

(b) The period before 11 September 2006

45. Turning to the circumstances of the present case, the Court will 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 2004 the applicant was charged with several offences, in particular uttering threats. He subsequently underwent a psychiatric observation at the end of which, in January 2005, expert psychiatrists concluded that he suffered from paranoia with elements of psychosis. On the basis of this opinion, the Białystok District Court discontinued the proceedings against the applicant and ordered his confinement in a psychiatric hospital (see paragraphs 8-13 above).

46. It is true that the applicant’s arrest and his initial detention in a psychiatric hospital in February 2006 were based on expert evidence obtained in January 2005. However, already at the beginning of June 2006 expert evidence confirming the need to continue the applicant’s internment was submitted to the court (see paragraph 21 above). Subsequently, at a hearing held on 11 September 2006, the Białystok District Court obtained additional evidence from the experts.

47. While the applicant has criticised the expert reports the Court sees no reason to doubt that the experts were fully qualified and had based 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*, cited above, § 58). The Court is further satisfied that the applicant’s disorder was of a degree and kind warranting confinement.

48. The Court concludes that it has been “reliably shown” that the applicant was of unsound mind within the meaning of Article 5 § 1 (e).

49. The Court further notes that the applicant's placement in a psychiatric hospital was ordered on 5 May 2005 by the Białystok District Court under Article 94 of the Criminal Code. The District Court subsequently reviewed the conditions for the applicant's further detention and on 11 September 2006 it confirmed that the applicant's condition had improved significantly, and he could be treated outside the hospital. For these reasons the court ordered the applicant's release. Lastly, the Court does not find that the domestic courts were arbitrary in their decisions regarding the applicant's confinement.

50. Consequently, the Court concludes that the applicant's hospitalisation between 23 February 2006 and 11 September 2006 was "lawful" within the meaning of Article 5 § 1 (e) of the Convention.

51. There has therefore been no violation of Article 5 § 1 (e).

(c) The period after 11 September 2006

52. As regards the period between 11 September and 17 September 2006, the Court considers that the first question is whether the applicant was reliably shown to be suffering from a mental disorder.

53. In this respect the Court notes that in April 2005 expert psychiatrists considered that the applicant suffered from paranoia with elements of psychosis. Subsequently, on 14 September 2005 the Sokółka District Court discontinued the criminal proceedings against the applicant and ordered his placement in a psychiatric hospital. Subsequently, on 11 September 2006 in another set of criminal proceedings against him, the Białystok District Court considered that the applicant's condition had significantly improved and ordered his release (see paragraphs 16 and 22 above). However, the hospital refused to release the applicant referring to the decision of 14 September 2005.

54. The Court firstly observes that the decision of the Białystok District Court of 11 September 2006, which stated that the applicant's condition had significantly improved, was disregarded by the domestic authorities. The hospital's conclusion not to release the applicant on 11 September 2006 was not based on any fresh medical evidence but on an earlier decision of 14 September 2005 ordering his confinement. It should be noted that this decision referred to an expert opinion of 7 April 2005. Furthermore, more recent expert evidence of June 2006 was not taken into consideration (see paragraph 21 above). In this respect the Court 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, *Witek v. Poland*, no. 13453/07, § 41, 21 December 2010). Consequently, the Court considers that a domestic court's decision on a person's mental health should in principle override all earlier decisions.

55. The Court is therefore not convinced that a “true mental disorder” for the purposes of Article 5 § 1 (e) of the Convention was “established” on 11 September 2006.

56. In view of the above, the Court concludes that it has not been “reliably shown” that the applicant’s mental condition necessitated his confinement between 11 and 17 September 2006. Consequently, the Court considers that the applicant’s hospitalisation between 11 and 17 September 2006 was not “lawful” within the meaning of Article 5 § 1 (e) of the Convention. Thus, there has been a violation of this provision.

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

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

“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.”

58. The Government contested that argument.

A. Admissibility

59. The Government raised a preliminary objection, arguing that the applicant had not exhausted the domestic remedies available to him. He had failed to lodge a complaint under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (“2004 Act”). He also had not lodged a civil action for damages under Article 417 of the Civil Code in respect of the length of the proceedings.

60. The applicant replied that these remedies were not applicable in his case. He further stressed that the Government had failed to submit any examples of domestic cases which would indicate that these remedies could have been successful.

61. The Court reiterates that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Orchowski v. Poland*, no. 17885/04, § 105, ECHR 2009-... (extracts); *Norbert Sikorski v. Poland*, no. 17599/05, § 108, 22 October 2009).

62. The Court observes that the Government have not established that the provisions of the Civil Code relied on would have afforded the relief sought. In addition, the Court observes that the Government have not alluded to any decisions of the domestic courts indicating that individuals in a situation similar to the applicant's have succeeded in obtaining a speedy decision. It follows that the Government's objection must be rejected.

63. 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 parties' observations

64. The applicant maintained that the proceedings relating to his interlocutory appeal against the lawfulness of his placement in a psychiatric hospital were extremely lengthy (see paragraph 18 above). He also referred to his application for release from the psychiatric hospital of 26 March 2006 and his further motions of 30 March 2006, 4 April 2006, 24 April 2006 and 26 April 2006 which were examined on 10 May 2006 and finally dismissed on 14 June 2006 (see paragraph 20 above).

65. The Government submitted that the relevant authorities were acting in accordance with the standards determined by the Court. The examination of the applicant's case was conducted promptly and immediately. Despite a huge number of various motions and claims, all of the applicant's motions were examined without undue delay.

2. The Court's assessment

66. 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).

67. 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 to be unlawful (see, for instance, *Baranowski v. Poland* no. 28358/95, § 68, ECHR 2000-III).

68. 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, *Witek* cited above § 57).

69. In the present case the Court observes that the applicant’s appeal against the decision of 23 February 2006 to place him in a psychiatric hospital was examined only on 21 March 2006 (see paragraphs 17 and 18 above). His subsequent motions for release were also examined with some delay (see paragraph 20 above).

70. It is true that these periods 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 these delays 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, *Witek* cited above § 59).

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

72. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair.

73. The Court finds that the facts of the case do not disclose any appearance of a violation of the above-mentioned provisions. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 3 and must be rejected pursuant to Article 35 § 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 5,580 euros (EUR) in respect of pecuniary damage and EUR 8,000 for non-pecuniary damage.

76. The Government contested the claim.

77. 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 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant's lawyer also claimed PLN 950 for the costs and expenses incurred before the domestic courts (travel costs and postage costs) and PLN 8,000 for those incurred before the Court.

79. The Government contested this claim.

80. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and allows the applicant's claim in full, less EUR 850 already received by the applicant by way of legal aid from the Council of Europe. It thus awards her the sum of EUR 1,150.

C. Default interest

81. 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* inadmissible the complaints about the applicant's detention between 8 December 2004 and 6 January 2005 and the remainder of the application admissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention in respect of the period between 23 February 2006 and 11 September 2006;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the period between 11 and 17 September 2006;

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, the following amounts, to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,150 (one thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant, 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 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President