



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

FIRST SECTION

CASE OF ERYK KAWKA v. POLAND

(Application no. 33885/96)

JUDGMENT

STRASBOURG

27 June 2002

FINAL

27/09/2002

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 Eryk Kawka v. Poland,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr J. MAKARCZYK,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr A. KOVLER,

Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 6 June 2002,

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

PROCEDURE

1. The case originated in an application (no. 33885/96) 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 an Polish national, Eryk Kawka (“the applicant”), on 5 February 1996.

2. The applicant, who had been granted legal aid, was represented by Mr W. Hermeliński, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant complained, *inter alia*, under Article 5 § 3 of the Convention that after having been arrested he had not been brought before “a judge or other officer authorised by law to exercise judicial power”.

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 Fourth 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 23 October 2001 the Court declared the applicant's complaint under Article 5 § 3 admissible. It rejected the remainder of the application.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 13 January 1996 the applicant was arrested by the police and brought before the Gliwice District Prosecutor (*Prokurator Rejonowy*). On the same day, the prosecutor charged the applicant with robbery and detained him on remand because there existed a reasonable suspicion that he had committed the offence and because of the serious nature of that offence.

9. On 5 February 1996 the applicant sent a letter to the Gliwice District prosecutor, asking to be informed of the reasons for his detention. That letter was deemed to be an application for release. It was examined as such and rejected on 12 February 1996.

10. On 11 March 1996 the applicant was indicted on the charge of robbery.

11. On 17 June 1996 the Gliwice District Court convicted the applicant as charged and sentenced him to four years and six months' imprisonment and three years' deprivation of his civic rights.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law is described in the judgment *Niedbala v. Poland*, no. 27915/95, §§ 18-20 and 24-31, 4 July 2000, unreported.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

13. The applicant complained that after having been arrested he had not been brought before a “judge” or “officer authorised by law to exercise judicial power”. He alleged a breach of Article 5 § 3 of the Convention which, in its relevant part, provides:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power ...”

14. The applicant cited a number of Court judgments (notably, the *Huber v. Switzerland* judgment of 23 October 1990, Series A no. 188, p. 18, § 43; and *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3298, § 146) and

maintained that there could be no doubt that in the light of the relevant case law the prosecutor who had detained him on remand had not offered guarantees of independence from the executive and the parties, as required under Article 5 § 3.

15. The Government, for their part, submitted that under Polish law as applicable at the material time the prosecutors exercised two principal roles. The first was a prosecutorial role and the second was that of a guardian of public interest. The prosecutors were also bound by an obligation to remain impartial in criminal proceedings and had to observe the principle of equality before the law. In view of the foregoing, the Government considered that the complaint was unmeritorious.

16. The Court recalls that in its judgment in the case of *Niedbala v. Poland* (cited above, §§ 48-57) it has already dealt with the question of whether under the Polish legislation at the time of the events a prosecutor could be regarded as a “judicial officer” endowed with the attributes of “independence” and “impartiality” required under Article 5 § 3. The Court found a violation of Article 5 § 3 in that case considering that a prosecutor did not offer these necessary guarantees.

17. The Court finds that the present case is similar to the *Niedbala* case. There are no reasons to come to a different conclusion in this case. Consequently, the Court concludes that the applicant's right to be brought “before a judge or other officer authorised by law to exercise judicial power” has not been respected.

18. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. Under the head of non-pecuniary damage the applicant sought award of 50,000 Polish zlotys.

21. The Government asked the Court to rule that a finding of a violation constituted sufficient and just satisfaction. In the alternative, they asked the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases, taking into account all relevant circumstances of the

applicant's case, and having regard to national economic circumstances, in particular the purchasing power of national currency.

22. The Court recalls that in cases which concerned similar violations of Article 5 § 3 it has declined to make any award under Article 41 considering that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage suffered (see, among many other authorities, *Niedbala* cited above, § 88 with further references).

23. In the present case, the Court does not find any reason to depart from that principle. Consequently, the Court concludes that the non-pecuniary damage claimed by the applicant is adequately compensated by the finding of a violation of Article 5 § 3.

B. Costs and expenses

24. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case in the proceedings before the Court, sought reimbursement of costs and expenses in a sum equivalent to USD 2,250.

25. The Government invited the Court to make an award, if any, only in so far as the costs and expenses claimed had been actually and necessarily incurred and reasonable as to quantum. In that context, they relied on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 35, § 36).

26. Applying the criteria laid down in its case-law (see, for instance, *Niedbala* cited above, § 93), the Court considers that the applicant's claim is reasonable and awards him its equivalent in Polish currency, namely PLN 8,900 for costs and expenses together with any value-added tax that may be chargeable, less EUR 579.31 already paid by way of legal aid by the Council of Europe.

C. Default interest

27. According to the information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 20% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
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 8,900 (eight thousand nine hundred) Polish zlotys, in respect of costs and expenses, plus any tax that may be chargeable, less EUR 579.31 received by way of legal aid from the Council of Europe, to be converted into Polish zlotys at the rate applicable at the date of delivery of this judgment;
 - (b) that simple interest at an annual rate of 20% shall be payable from the expiry of the above-mentioned three months until settlement;

Done in English, and notified in writing on 27 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President