



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

FOURTH SECTION

CASE OF DACEWICZ v. POLAND

(Application no. 34611/97)

JUDGMENT

STRASBOURG

2 July 2002

FINAL

02/10/2002

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 Dacewicz v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr A. PASTOR RIDRUEJO,

Mr J. MAKARCZYK,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 June 2002,

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

PROCEDURE

1. The case originated in an application (no. 34611/97) 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, Zbigniew Dacewicz ("the applicant"), on 25 March 1996.

2. The applicant, who had been granted legal aid, was represented by Mr 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 alleged, in particular, that after having been arrested he had not been brought before a "judge" or "officer authorised by law to exercise judicial power", as required under Article 5 § 3 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 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 21 June 2001 the Court declared the application 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 Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1955 and lives in Biała Podlaska, Poland.

9. On 2 January 1996 the applicant was arrested by the police on suspicion of having committed burglary. On 4 January 1996 he was brought before U. Ś.-O., a district prosecutor from the Biała Podlaska District Prosecutor's Office (*Prokuratura Rejonowa*), charged with two counts of burglary and detained on remand in view of the reasonable risk that he might obstruct the proper conduct of the proceedings.

10. On 5 January 1996 the applicant lodged a complaint with the Biała Podlaska District Court (*Sąd Rejonowy*), maintaining that his detention was unlawful because the detention order had been made by the prosecutor, who did not have the attributes of a "judge" required under Article 5 § 3 of the Convention.

The court deemed the complaint to be an appeal against the detention order of 4 January 1996. It examined it as such and dismissed it on 18 January 1996. The court considered that the applicant should be detained because there was a reasonable risk that he might obstruct the proper conduct of the proceedings.

11. Subsequently, in January and February 1996, the applicant complained to the Biała Podlaska District Prosecutor and the Ombudsman (*Rzecznik Praw Obywatelskich*) that, after having been arrested, he had not been brought before a judge but before the prosecutor, who had not been authorised by law to exercise judicial power.

12. On 21 February 1996 the Biała Podlaska District Prosecutor replied to that complaint, stating that, under the provisions of the Code of Criminal Procedure, as they stood at the material time, the prosecutor had a power to detain him on remand; however, under the amendments to Polish criminal legislation, which were to enter into force on 4 August 1996, only the courts of law could impose detention on remand.

13. On 27 March 1996 the Biała Podlaska District Prosecutor lodged a bill of indictment with the Biała Podlaska District Court.

14. On 23 June 1996 the court gave judgment and convicted the applicant of dealing with stolen goods.

15. On 17 July 1996 the applicant complained to the Supreme Court (*Sąd Najwyższy*) that, after having been arrested, he had not been brought before a judge but before the Biała Podlaska District Prosecutor.

16. On 30 July 1996 the Case-law Department of the Supreme Court replied to the applicant's complaint in the following way:

“ ... Under Article 210 § 1 of the Code of Criminal Procedure, a court imposes preventive measures after a bill of indictment has been lodged with that court; beforehand - a prosecutor [imposes such measures]. It thus follows that your doubts as to the imposition of detention [in your case] are unreasonable.

Article 5 § 5 of the Convention clearly states that everyone detained shall be brought promptly before a judge – or other officer authorised by law to exercise judicial power. Under [the relevant] legislation, a prosecutor is such an officer. ...”

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

18. 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 ...”

19. In that context, 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; the *Pauwels v. Belgium* judgment of 26 May 1988, Series A no. 135, p. 18, § 38; and the *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 jurisprudence 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.

20. 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.

21. 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 in force at the material time a prosecutor could be regarded as a “judicial officer” endowed with attributes of “independence” and “impartiality” required under Article 5 § 3. It has found that a prosecutor did not offer these necessary guarantees because the prosecution authorities not only belonged to the executive branch of the State but also concurrently performed investigative and prosecution functions in criminal proceedings and were a party to such proceedings. Furthermore, the Court has considered that the fact that the prosecutors in addition acted as guardian of the public interest could not by itself confer on them the status of “officer[s] authorised by law to exercise judicial power”.

22. The Court finds that the present case is similar to that of *Niedbala*. It sees 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant sought an award of 1,000,000 USD for pecuniary and non-pecuniary damage he suffered on account of a breach of Article 5 § 3 of the Convention.

26. The Government asked the Court to rule that a finding of a violation constituted sufficient 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 the relevant circumstances of the applicant's case, and having regard to national economic circumstances, in particular the purchasing power of the national currency.

27. 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)

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

B. Costs and expenses

29. 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 3,000.

30. 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 were 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).

31. Applying the criteria laid down in its case-law (see, for instance, *Niedbala* cited above, § 93) and making its assessment on an equitable basis, the Court awards the applicant PLN 8,900 for costs and expenses together with any value-added tax that may be chargeable, less EUR 630 already paid by way of legal aid by the Council of Europe.

C. Default interest

32. 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 pecuniary and 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, PLN 8,900 (eight thousand nine

hundred Polish zlotys) in respect of costs and expenses, plus any tax that may be chargeable, less EUR 630 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;

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

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

Michael O'BOYLE
Registrar

Nicolas BRATZA
President