



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

FOURTH SECTION

**CASE OF MOCARSKA v. POLAND**

*(Application no. 26917/05)*

JUDGMENT

STRASBOURG

6 November 2007

**FINAL**

*06/02/2008*

*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 Mocarska v. Poland,**

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

Mr J. CASADEVALL, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 9 October 2007,

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

**PROCEDURE**

1. The case originated in an application (no. 26917/05) 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 Bożena Mocarska (“the applicant”), on 2 June 2005.

2. The applicant, who had been granted legal aid, was represented by Mr M. Woliński, a lawyer practising in Warsaw. 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 she had been unlawfully detained in a regular detention centre pending her transfer to a psychiatric hospital.

4. On 11 October 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. It also gave priority to the application, pursuant to Rule 41 of the Rules of Court.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Pruszków, Poland.

6. The applicant was involved in a conflict with her sister and her sister's common-law husband, with whom she had shared a flat. On 28 December 2004 the applicant was questioned by the police on suspicion of stealing her sister's microwave and harassing her. The applicant informed the police that she was undergoing psychiatric treatment.

7. On 31 December 2004 the Warsaw Prosecutor asked the court to assign a legal-aid lawyer to the applicant in view of her mental condition.

8. On 4 April 2005 the Warsaw District Court ordered the applicant to undergo a six-week psychiatric examination in order to determine whether she could be held criminally responsible in respect of the above mentioned offences of theft and harassment. On 15 April 2005 the applicant's legal-aid lawyer lodged an interlocutory appeal against this decision. He submitted that the applicant herself had already stated that she had been undergoing psychiatric treatment for eight years. There was no reason for the applicant to be placed in a psychiatric hospital. If the court had doubts as to the applicant's condition it could obtain additional evidence from the applicant's existing medical records. On 29 April 2005 the Warsaw Regional Court dismissed this appeal.

9. On 5 May 2005, following a knife attack on her sister, the applicant was arrested on suspicion of theft and domestic violence.

10. On 7 May 2005 the Warsaw District Court heard evidence from the applicant and ordered her pre-trial detention until 4 August 2005. The court noted that there was a reasonable suspicion that the applicant had committed the offence in question. In addition, the court relied on the risk that she would induce witnesses to give false testimony or commit another offence. On 9 May 2005 the applicant was admitted to the Warsaw Detention Centre.

11. On 12 May 2005 the applicant was charged with domestic violence.

12. On 20 May 2005 the Regional Psychiatric Hospital (*Wojewódzki Szpital Psychiatryczny*) informed the District Prosecutor that the applicant could report there on 12 or 13 September 2005 for an examination. On 22 June 2005 the court asked the hospital to schedule an earlier date for the applicant's admission, as the applicant was in pre-trial detention. In reply, the hospital informed the court that the applicant could be admitted on 18 or 19 July 2005.

13. On 4 July 2005 the prosecutor asked the Warsaw District Court to prolong the applicant's detention in view of the fact that she was to undergo a psychiatric examination.

14. On 15 July 2005 the Warsaw District Court prolonged the applicant's detention until 3 November 2005. The court referred to the fact that there was a reasonable suspicion that the applicant had committed the offence with which she had been charged. In addition, it appeared that the applicant might induce witnesses to give false testimony.

15. On 16 August 2005 the applicant's lawyer made an application for release. He stressed that there had been no reasonable suspicion that the applicant had committed the offence. Furthermore, the court had already obtained evidence from witnesses. Finally, from a medical point of view the applicant should not have been kept in detention. On 24 August 2005 the court dismissed the application. On 29 August 2005 the applicant's lawyer lodged an interlocutory appeal against this decision. He stated that applying pre-trial detention in the applicant's case had been an extremely serious measure. The applicant's condition was serious, which fact had been confirmed by a medical expert, and her prolonged detention had seriously affected her health. The District Court refused to examine the appeal. On 3 October 2005 the Warsaw Regional Court allowed the complaint and restored the deadline for appealing against the decision of 15 July 2005.

16. Meanwhile, the applicant was admitted to the hospital on 18 July 2005 and discharged on 30 August 2005.

17. On 22 September 2005 two psychiatrists and a psychologist issued a joint medical opinion. They concluded that the applicant suffered from a delusional disorder. In view of the fact that there was a reasonable suspicion that the applicant might commit another crime, they recommended her detention in a psychiatric hospital.

18. On 13 October 2005 the prosecutor terminated the investigation in the applicant's case.

19. On 25 October 2005 the Warsaw District Court gave a decision and discontinued the proceedings against the applicant. The court established that the applicant had committed the offence that she had been charged with. However, she could not have been held criminally responsible as she had been suffering from a delusional disorder. It further referred to the expert's opinion and ordered that the applicant be placed in a psychiatric hospital. The court also prolonged the applicant's detention until 3 February 2006. The court considered that this measure was necessary to prevent the applicant from committing another offence and to ensure the proper conduct of the appeal procedure. The applicant's lawyer appealed against this decision. On 15 December 2005 the Warsaw Court of Appeal dismissed the appeal.

20. On 2 February 2006 the Warsaw District Court, of its own motion, decided to prolong the applicant's detention until 3 April 2006. The court stressed that on 28 December 2006 it had asked the Psychiatric Commission on Preventive Measures (*Komisja Psychiatryczna ds. środków zabezpieczających*) ("the Commission") to indicate a hospital where the

applicant could be placed. However, on 26 January 2006, the Commission replied that it had not yet indicated a hospital for the applicant and asked the court to send the relevant documents. The court further considered that in view of the medical reports in the applicant's case there was a high risk that, once released, the applicant might commit a similar offence.

21. On 8 March 2006 the Commission recommended that the applicant be placed in the Pruszków Psychiatric Hospital. On 31 March 2006 the court decided to order the applicant's admission to that hospital. It also prolonged the applicant's detention until that time.

22. The applicant submitted that between 18 April 2006 and 30 June 2006 she had been on hunger strike.

23. On 4 April 2006 the court asked the Pruszków Psychiatric Hospital when it would be ready to receive the applicant. The hospital replied that due to a strain on resources and a temporary lack of available beds it would not be possible to admit the applicant immediately.

24. On 30 June 2006 the applicant was transferred from the detention centre to the Pruszków Psychiatric Hospital.

25. According to the information available to the Court the applicant is still in that hospital.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

26. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines pre-trial detention as one of the so-called “preventive measures” (*środki zapobiegawcze*).

27. A more detailed rendition of the relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other preventive measures can be found in the Court's judgments in the cases of *Golek v. Poland* (no. 31330/02, §§ 27-33, 25 April 2006) and *Celejewski v. Poland* (no. 17584/04, §§ 22-23, 4 August 2006).

28. Article 264 § 3 of the Code of Criminal Procedure provides:

“If the proceedings were discontinued by reason of insanity of the accused, preliminary detention may be maintained pending the application of a preventive measure.”

## THE LAW

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

29. The applicant complained that she had been unlawfully detained. The Court considers that this complaint should be examined under Article 5 § 1 of the Convention, the relevant part of 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:

(...)

(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 of unsound mind ...”

30. The Government contested that argument.

#### A. Admissibility

##### *1. The period between 5 May 2005 and 25 October 2005.*

31. As regards the alleged unlawful detention between 5 May 2005 and 25 October 2005, the Court considers that this complaint falls to be examined under Article 5 § 1 (c) of the Convention.

32. The Court further observes that in the present case the applicant was detained on reasonable suspicion of having committed theft and domestic violence (see paragraphs 9 and 10 above). In the light of the material in its possession, the Court does not find any indication that the applicant's detention was unlawful or ordered other than “in accordance with a procedure prescribed by law” within the meaning of Article 5 § 1. It considers that it was ordered in accordance with domestic law and fell within the ambit of Article 5 § 1 (c) of the Convention, as having been effected for the purpose of bringing her before the competent legal authority on suspicion of having committed an offence. The Court also observes that the lawfulness of her detention was examined and upheld on a number of occasions by the competent courts (see paragraphs 10, 14 and 15 above).

33. Thus, the Court finds no indication that in the present case the applicant's detention during that period was unlawful or effected in an arbitrary way.

34. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

*2. The period between 25 October 2005 and 30 June 2006.*

35. In so far as the applicant's complaint relates to the period between 25 October 2005 and 30 June 2006, the Court notes that she was detained in a regular detention centre pending her transfer to a psychiatric hospital.

36. The Court observes 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*

37. The applicant stressed that although medical experts had confirmed that the prolonged detention had seriously affected her health, she had not been released or transferred to a psychiatric hospital.

38. She was further of the opinion that her detention after the discontinuation of the criminal proceedings had not been necessary, in particular due to her poor health and the fact that she had been on hunger strike. In addition, she claimed that she had been arbitrarily deprived of her liberty. Lastly, she claimed there had been a violation of Article 5 § 1 (e) of the Convention.

*2. The Government's submissions*

39. The Government replied that the applicant's detention had been justified and compatible with the provisions of Article 258 of the Code of Criminal Procedure. They stressed that even after the discontinuation of the criminal proceedings against the applicant she had had to remain in detention as she had seriously endangered the life and safety of her family and other persons. The delay in placing the applicant in a psychiatric hospital had been caused by the fact that the medical authorities had had to examine the applicant's case file and her medical history. In their view the court had shown due diligence in handling the applicant's case as it had urged the medical authorities to issue a quick decision concerning the applicant's placement in a hospital.

40. The Government further argued that the applicant's detention in a regular detention centre pending her transfer to a hospital had been compatible with the Polish legislation. They concluded that the reasons for

keeping the applicant in the hospital had been regularly reviewed by the relevant courts.

### 3. *The Court's assessment*

41. The Court reiterates that Article 5 § 1 of the Convention contains a list of permissible grounds of deprivation of liberty that is exhaustive. However, the applicability of one ground does not necessarily preclude that of another; a detention may, depending on the circumstances, be justified under more than one sub-paragraph (see *Eriksen v. Norway*, judgment of 27 May 1997, *Reports of Judgements and Decisions* 1997-III, p. 861, § 76).

42. The Court firstly observes that in the instant case the applicant's deprivation of liberty falls within the scope of Article 5 § 1 (e) (see *Aerts v. Belgium*, judgment of 30 July 1998, *Reports* 1998-V, p. 1961, § 45).

43. It must further be established whether the applicant's detention in an ordinary detention centre between 25 October 2005 and 30 June 2006 was “in accordance with a procedure prescribed by law” and “lawful” within the meaning of Article 5 § 1 of the Convention. The Convention here refers essentially to national law and states the obligation to conform to the substantive and procedural rules thereof. Reiterating that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Bouamar v. Belgium*, judgment of 29 February 1988, Series A no. 129, p. 21, § 49) the Court accepts the parties' arguments that the applicant's detention during the period under consideration was based on Article 264 § 3 of the Code of Criminal Procedure and was therefore lawful under domestic law.

44. However, for the purposes of Article 5 of the Convention, the lawfulness under domestic law of the applicant's detention is not in itself decisive. It must also be established that her detention during the relevant period was in conformity with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Witold Litwa v. Poland*, no. 26629/95, §§ 72-73, ECHR 2000-III).

45. The Court notes that the length of detention pending transfer to a psychiatric hospital is not specified by any statutory or other provision. Nevertheless, it must determine whether the continuation of provisional detention for eight months can be regarded as lawful.

46. The Court observes that in the present case the domestic court asked the Psychiatric Commission to indicate a hospital to which the applicant could be transferred two months after the proceedings had been discontinued. It took the Commission two more months to indicate a hospital for the applicant. Lastly, the applicant had to wait more than three months before her admission to that hospital. During that time she was detained in a regular detention centre (see paragraphs 19-24 above).

47. The Court accepts the Government's arguments that it would be unrealistic and too rigid an approach to expect the authorities to ensure that a place is immediately available in a selected psychiatric hospital. However, a reasonable balance must be struck between the competing interests involved. The Court is of the opinion that in striking this balance particular weight should be given to the applicant's right to liberty. A significant delay in admission to a psychiatric hospital and thus the beginning of the treatment was obviously harmful to the applicant (see paragraph 22 above).

48. The Court cannot find that, in the circumstances of the present case, a reasonable balance was struck. The Court is of the opinion that a delay of eight months in the admission of a person to a psychiatric hospital cannot be regarded as acceptable (see *Morsink v. the Netherlands*, no. 48865/99, §§ 61-70, 11 May 2004; *Brand v. the Netherlands*, no. 49902/99, §§ 58-67, 11 May 2004). To hold otherwise would entail a serious weakening of the fundamental right to liberty to the detriment of the person concerned and thus impair the very essence of the right protected by Article 5 of the Convention.

49. There has accordingly been a violation of Article 5 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLES 1, 2, 3, 5, 6, 7, 8, 9, 12, 13, 14, ARTICLE 1 OF PROTOCOL NO 1, ARTICLE 1 OF PROTOCOL NO 4, ARTICLE 2 OF PROTOCOL NO 7 AND ARTICLE 1 OF PROTOCOL NO 13

50. The applicant complained of a violation of nearly all the provisions of the Convention.

51. 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

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant did not claim anything under this head.

## **B. Costs and expenses**

54. The applicant, who received legal aid from the Council of Europe in connection with the presentation of her case, claimed 1,500 euros (EUR) for 15 hours of legal work by her lawyer before the Court at an hourly rate of EUR 100.

55. The Government contested that claim, stating that the amount of the lawyer's fee could not be considered reasonable and necessary. In any event they considered the rate of EUR 100 per hour to be excessive.

56. According to the Court's case-law, an applicant is entitled to reimbursement of his 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, the applicant's representative submitted only one set of pleadings during the proceedings before the Court and it does not appear that those pleadings involved much effort on his part or required much research. Noting the complexity of the case, the submissions of the applicant's lawyer and the fact that the applicant was already paid EUR 850 in legal aid by the Council of Europe, the Court dismisses the claim under this head.

## **B. Default interest**

57. 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 complaint concerning the alleged unlawful detention between 25 October 2005 and 30 June 2006 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Dismisses* the applicant's claim for costs and expenses.

Done in English, and notified in writing on 6 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI  
Deputy Registrar

Josep CASADEVALL  
President