

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

FOURTH SECTION

CASE OF GRABOWSKI v. POLAND

(Application no. 57722/12)

JUDGMENT

STRASBOURG

30 June 2015

FINAL

30/09/2015

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



In the case of Grabowski v. Poland,

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

Guido Raimondi, *President,*
Päivi Hirvelä,
George Nicolaou,
Nona Tsotsoria,
Krzysztof Wojtyczek,
Faris Vehabović,
Yonko Grozev, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 9 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 57722/12) 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 Maksymilian Grabowski ("the applicant"), on 31 August 2012.

2. The applicant was represented by Mr M. Burda, a lawyer practising in Cracow. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

3. The applicant complained under Article 5 § 1 of the Convention that his continued detention in a shelter for juveniles had been unlawful and that he had not had a remedy to challenge the lawfulness of his detention.

4. On 30 January 2013 the application was communicated to the Government.

5. Written submissions were received from the Helsinki Foundation for Human Rights in Warsaw, which had been granted leave by the President to intervene as a third party (Article 36 § 2 of the Convention and Rule 44 § 2).

6. By letter of 18 September 2013, the Government requested the Court to strike the application out of its list in accordance with Article 37 of the Convention and enclosed the text of a unilateral declaration with a view to resolving the issues raised by the applicant. The applicant objected to the Government's proposal in his observations of 27 November 2013. On 1 April 2014 the Chamber decided to reject the Government's request to strike the application out of the list on the basis of the unilateral declaration made by the Government and to pursue its examination of the merits of the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1995 and lives in Cracow.

8. On 7 May 2012 the applicant was arrested on suspicion of having committed three armed robberies and one attempted armed robbery with the use of a machete on 4 May 2012. He was initially detained in a police establishment for children (*policyjna izba dziecka*) in Cracow.

9. On 7 May 2012 the Cracow-Krowodrze District Court (Family and Juvenile Section) instituted inquiry (*postępowanie wyjaśniające*) with a view to determining whether the applicant had committed the offences at issue.

10. On the same day the Cracow-Krowodrze District Court decided to place the applicant in a shelter for juveniles (*schronisko dla nieletnich*) for a period of three months. It found that, in view of the available evidence, there existed a reasonable suspicion that the applicant had committed three armed robberies and one attempted armed robbery and some other offences. The court also noted that the applicant was lacking in moral character and that the nature of the offences with which he had been charged militated in favour of placing him in a correctional facility (*zakład poprawczy*). It also noted that there was a risk that he might go into hiding or put pressure on witnesses.

11. The applicant appealed. He argued, *inter alia*, that there had been no risk of fleeing or interfering with witnesses. He also objected to his placement in the shelter on the grounds that he had a history of mental difficulties and had been schooled in a specialised institution.

12. On 10 July 2012 the Cracow Regional Court upheld the decision of the lower court. It had regard to the gravity of the offences which the applicant had allegedly committed and the fact that they could not be treated as an isolated incident. The court also noted that in the past a family court had handed down a warning and that on 29 May 2012 he had been put under the supervision of a court guardian. In view of those circumstances, it was considered likely that the applicant would be placed in a correctional facility. His placement in the shelter was further justified by the fact that he had threatened one of the victims of the robbery. Responding to the arguments related to the applicant's mental health, the court noted that the placement in the shelter, in addition to the applicant's isolation, placed him under educational supervision which could not be seen as incompatible with his well-being.

13. On 27 July 2012 the Cracow-Krowodrze District Court ordered that the applicant's case should be examined in correctional proceedings (*postępowanie poprawcze*).

14. On 9 August 2012 the applicant's counsel requested the Cracow-Krowodrze District Court to order the applicant's immediate release. He submitted that the three-month period for which the measure was applied had expired on 7 August 2012 and that no decision on prolongation of the measure had been given. He argued that in accordance with section 27 §§ 4 and 5 of the Juvenile Act the decision on prolongation of the placement in a shelter for juveniles could be taken only by a court after summonses had been sent to the parties and counsel. The applicant's counsel obtained information from the court's registry that in practice such decisions were not given, and that it sufficed for the court to issue an order for the case to be examined in correctional proceedings. The applicant's counsel objected to such a practice and considered it to be unlawful.

15. On 9 August 2012 the Cracow-Krowodrze District Court dismissed the applicant's request for release. It provided the following reasons:

> "The juvenile Maksymilian Grabowski is accused of having committed criminal acts with the use of a dangerous object.
>
> These circumstances exclude the possibility of altering the security measure in respect of the juvenile.
>
> At present the state of health of the juvenile is normal.
>
> In the absence of reasons justifying the quashing of the security measure in respect of the juvenile, it has been decided as above in accordance with sections 20 and 27 of the Juvenile Act".

16. On 9 August 2012 the applicant's counsel wrote to the director of the Gacki Shelter for Juveniles urging him to release the applicant.

17. By a letter of 16 August 2012 the Cracow-Krowodrze District Court informed the applicant's counsel that after the court had ordered the examination of the case in the correctional proceedings on 27 July 2012, it did not prolong the applicant's placement in the shelter for juveniles pursuant to section 27 § 3 of the Juvenile Act.

18. The Cracow-Krowodrze District Court held hearings in the applicant's case on 21 November 2012 and 9 January 2013. On the latter date the court delivered a judgment and held that the applicant had committed the offences which had been imputed to him. The court ordered the applicant's placement in correctional facility but suspended the application of this measure for a two-year probationary period. It further ruled to place the applicant under the supervision of a court guardian during the probationary period.

19. Having regard to the judgment, on 9 January 2013 the Cracow-Krowodrze District Court quashed the applicant's placement in a shelter for juveniles. The applicant was released on the same day.

20. The judgment of 9 January 2013 was not appealed against and became final on 14 February 2013.

II. RELEVANT DOMESTIC AND INTERNTIONAL LAW

A. Relevant domestic law and practice

1. The constitutional provisions

21. Article 41 §§ 1 and 2 of the Constitution provide in its relevant part:

> "1. Personal inviolability and security shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute.
>
> 2. Anyone deprived of liberty, except by sentence of a court, shall have the right to appeal to a court for immediate decision upon the lawfulness of such deprivation. (...)."

2. The Juvenile Act

22. The Act on the Procedure in Juvenile Cases of 26 October 1982 (*ustawa o postępowaniu w sprawach nieletnich*; "the Juvenile Act") regulates, *inter alia*, the procedure applicable to juveniles who committed criminal offences aged between thirteen and seventeen. The proceedings are normally conducted by a family court.

23. The principal features of the Juvenile Act were set out in the Court's judgment in the case of *Adamkiewicz v. Poland* (no. 54729/00, §§ 51-62, 2 March 2010).

24. Section 27 of the Juvenile Act regulates the placement of a juvenile in a shelter for juveniles. It provides, in so far as relevant:

> "§ 1. A juvenile may be placed in a shelter for juveniles (*schronisko dla nieletnich*) when the circumstances militating in favour of his placement in a correctional facility (*zakład poprawczy*) are shown, and if there is a reasonable risk that a juvenile will go into hiding or that he will destroy evidence of an offence, or if his identity cannot be established.
>
> ...
>
> § 3. The period of the stay of a juvenile in a shelter for juveniles prior to the case being referred for a hearing may not exceed three months; the length of the stay shall be specified in a decision on the placement of a juvenile in a shelter for juveniles.
>
> § 4. If due to the particular circumstances of the case it is necessary to prolong the stay of a juvenile in a shelter for juveniles his stay may be prolonged for a period not exceeding a further three months.
>
> § 5. A family court shall rule on prolongation of the stay of a juvenile in a shelter for juveniles at a hearing. The parties and the counsel of a juvenile shall be notified about the date of the hearing.
>
> § 6. Until the delivery of a judgment by the first-instance court the total length of the stay of a juvenile in a shelter for juveniles may not exceed one year. The period of an unauthorised absence of a juvenile in a shelter for juveniles exceeding three days and the period of psychiatric observation do not count towards the above period.

§ 7. In particularly justified cases, on an application from the court before which the case is pending, a regional court, in whose jurisdiction the proceedings are conducted, may prolong the period of the stay of a juvenile in a shelter for juveniles, referred to in § 6, for a further specified period."

25. The procedure under the Juvenile Act consisted of two stages: inquiry (*postępowanie wyjaśniające*) and court proceedings (*postępowanie rozpoznawcze*). The court proceedings can be conducted either as educational proceedings (*postępowanie opiekuńczo-wychowawcze*) in which the family court may apply educational or medical measures or as correctional proceedings (*postępowanie poprawcze*) in which the family court may order the placement in a correctional facility.

26. Pursuant to section 42 § 2 of the Juvenile Act a family judge shall issue an order for the examination of a case in correctional proceedings when he is satisfied that the conditions for the placement of a juvenile in a correctional facility were met. In accordance with section 43 § 4 of the Juvenile Act an order for examination of the case in correctional proceedings replaces the bill of indictment.

3. 2014 Amendments to the Juvenile Act

27. The Juvenile Act was amended by the Law of 30 August 2013 amending the Juvenile Act and some other laws (Journal of Laws of 2013, item 1165). These amendments entered into force on 2 January 2014. The amendments introduced uniform procedure in juvenile cases to be conducted by the family court. As a consequence, the court is no longer required to issue an order for the examination of a case either in educational or correctional procedure. Section 42 of the Juvenile Act was repealed.

4. The Ombudsman raising the issue

28. In her letter of 24 June 2013 to the Minister of Justice, the Ombudsman raised the issue of divergent interpretations of section 27 of the Juvenile Act. On the basis of the complaints submitted to her, the Ombudsman informed the Minister that the family courts, relying on section 27 § 3 or section 27 § 6 in conjunction with section 27 § 3 of the Juvenile Act, accepted that a referral of the case for examination in the correctional proceedings constituted of itself a basis for extending the stay of a juvenile in a shelter for juveniles.

29. The Ombudsman requested presidents of the regional courts in Warsaw, Cracow and Gdansk to inform her about the judicial practice in this respect. The information received indicated that the prevailing interpretation of section 27 of the Juvenile Act was not to require an issuing of a separate decision on the extension of the stay in a detention facility. The Ombudsman considered that this practice entailed far-reaching consequences for the juveniles concerned. In particular, the lack of a decision prolonging the placement in a detention facility after the case had

been referred for a hearing in correctional proceedings implied that such extension could not be appealed against. Furthermore, the court order referring the case for a hearing did not specify the length of the placement in a shelter for juveniles.

30. The Ombudsman underlined that the placement of a juvenile in the shelter entailed a deprivation of liberty. She noted that the lack of precise provisions in the Juvenile Act which led to divergent interpretation by the courts could not deprive juveniles of the protection of their rights enshrined in the Constitution. The Ombudsman requested the Minister to consider the possibility of legislative amendment of section 27 of the Juvenile Act which could resolve the issue.

31. In his reply of 22 July 2013 the Minister of Justice shared the Ombudsman's view that section 27 of the Juvenile Act in its current version did not sufficiently protect the rights of a juvenile against an arbitrary action of the court in the case of his case being referred for examination in correctional proceedings. The placement in a shelter for juveniles constituted a deprivation of liberty. Each extension of the period of such stay beyond the period fixed in an original decision ordering the stay in a shelter should be subject to a relevant judicial decision of the family court. The Minister informed the Ombudsman that he would undertake legislative work with a view to resolving the issue raised[1].

B. The Convention on the Rights of the Child

32. Article 37 of the Convention on the Rights of the Child, in so far as relevant, reads as follows:

> "States Parties shall ensure that:
>
> (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
>
> ...
>
> (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

1. The Minister's reply was summarised in the Ombudsman's annual report for 2013 which is available on the website of the Ombudsman's Office (www.brpo.gov.pl).

THE LAW

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

33. The applicant complained that in the period after 7 August 2012 he had been deprived of his liberty without a court order. He relied on Article 5 § 1 (d) 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:
>
> ...
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;"

A. Admissibility

34. The Court notes that this complaint 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

35. The applicant maintained his complaint.

36. The Government, having examined the factual and legal circumstances of the application, wished to refrain from taking a position on the merits of the case, bearing in mind the Court's case-law regarding Article 5 of the Convention.

2. The third-party intervener's comments

37. The Helsinki Foundation for Human Rights first referred to the international standards. It noted that under Article 37 of the Convention on the Rights of the Child no child shall be deprived of his liberty unlawfully or arbitrarily. Furthermore, every child deprived of liberty shall have the right to challenge the legality of such measure before a court or other authority. According to the concluding observations in respect of Poland adopted by the Committee on the Rights of the Child in 2002, the Committee recommended, *inter alia*, that Poland ensure the full implementation of juvenile justice standards, in particular Articles 37, 40 and 39 of the Convention, as well as the United Nations Standard

Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

38. The intervener further referred to Recommendation Rec (2003) 20 of the Committee of Ministers of the Council of Europe concerning new ways of dealing with juvenile delinquency and the role of juvenile justice. The Recommendation provided that the period of detention on remand before the commencement of the trial for juvenile suspects should not be longer than six months and that it may be extended only in exceptional cases. Where possible, alternatives to remand in custody should be used for juvenile suspects.

39. The intervener also commented on the Polish constitutional standards relating to deprivation of liberty, in particular Article 41, which contained guarantees of *habeas corpus*.

40. The intervener described the main features of the Juvenile Act of 1982. It noted the opinion of some legal experts who argued that the Juvenile Act no longer fulfilled its intended goals and should be completely redrafted. With regard to the issues arising in the present case, the intervener noted that in March 2013 the Commissioner for Children Rights requested the Ombudsman to consider challenging the constitutionality of section 27 § 3 of the Juvenile Act. In June 2013 the Ombudsman, having carried out a survey of judicial practice, requested the Minister of Justice to consider the problem concerning differing interpretation of section 27.

41. The intervener emphasised that the placement of a juvenile in a shelter for juveniles was equivalent to pre-trial detention. However, the Juvenile Act did not provide the same guarantees to the juvenile concerned as the Code of Criminal Procedure provided to the accused. The specific deficiencies relating to application of section 27 § 3 was automatic extension of the detention in the shelter for juveniles in the absence of a separate judicial decision on this matter as well as no specific time-limit for deprivation of liberty. The intervener maintained that the applicant's case was not unique. According to the Ministry of Justice's data, 340 juveniles who were placed in shelters for juveniles (as of 27 December 2012) may have been affected in a similar way to the applicant. 830 correctional proceedings were initiated in Polish courts per year. The intervener emphasised that the average duration of correctional proceedings in 2012 was 3,89 months, but in some district courts these proceedings lasted even 8 or 10 months.

3. The Court's assessment

42. The Court reiterates that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a "democratic society" within the meaning of the Convention (see, among others, *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33). Its key purpose is to prevent arbitrary or unjustified deprivations of

liberty (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 006-X).

43. All persons are entitled to the protection of that right, that is to say, not to be deprived, or to continue to be deprived, of their liberty (see *Weeks v. the United Kingdom*, 2 March 1987, § 40, Series A no. 114), save in accordance with the conditions specified in paragraph 1 of Article 5. The list of exceptions set out in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see *Amuur v. France*, 25 June 1996, § 42, *Reports* 1996-III; *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV; and *Assanidze v. Georgia* [GC], no. 71503/01, § 170, ECHR 2004-II).

44. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (see, *inter alia*, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III; *Baranowski v. Poland*, no. 28358/95, § 50, ECHR 2000-III; *Jėčius v. Lithuania*, no. 34578/97, § 68, ECHR 2000-IX; *Ladent v. Poland*, no. 11036/03, § 47, 18 March 2008; and *Creangă v. Romania* [GC], no. 29226/03, § 101, 23 February 2012).

45. 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, *inter alia*, *Bouamar v. Belgium*, 29 February 1988, § 47, Series A no. 129; *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports* 1998-VII; *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III; and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008). The Court must further ascertain in this connection whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein, notably the principle of legal certainty (compare *Baranowski*, §§ 51-52; *Ječius*, § 56, both cited above).

46. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied (see *Baranowski*, §§ 51-52; and *Ječius*, § 56, both cited above). The standard of "lawfulness" in Article 5 § 1 also relates to the "quality of the law", requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. "Quality of the law"

in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see *Amuur*, cited above, § 50). Where deprivation of liberty is concerned, it is essential that the domestic law define clearly the conditions for detention (see *Creangă*, cited above, § 120; and *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013).

47. In the instant case, the Court notes that between the date of expiry of the order of 7 May 2012 placing the applicant in a juvenile shelter – namely 7 August 2012 – and the Cracow-Krowodrze District Court's decision of 9 January 2013 ordering the applicant's release, there had been no judicial decision authorising the applicant's continued detention. During this time the applicant continued to be detained in a shelter for juveniles solely on the basis of the fact that a judge had issued an order referring the applicant's case for examination in the correctional proceedings under section 42 § 2 of the Juvenile Act. This is confirmed by the Cracow-Krowodrze District Court's letter to the applicant's counsel informing him that after a judge had issued an order referring the applicant's case for examination in the correctional proceedings on 27 July 2012 the court did not prolong the placement of the applicant in the shelter pursuant to section 27 § 3 of the Juvenile Act.

48. The Court notes that the issue arising in the present case, namely that of keeping a juvenile in a shelter for juveniles under the order referring his case for correctional proceedings was examined by the Ombudsman. The Ombudsman established that the prevailing practice of the family courts under section 27 § 3 of the Juvenile Act was not to issue a separate decision extending the placement in a shelter for juveniles once an order referring the case for examination in correctional proceedings had been issued (see paragraphs 28-29 above). The family courts considered that such an order constituted of itself a basis for extending the placement of a juvenile in a shelter. In the view of the Ombudsman, the practice at issue resulted from the lack of precise provisions in the Juvenile Act. The Ombudsman addressed this issue to the Minister of Justice who agreed that the existing practice was unsatisfactory and required a remedy (see paragraph 31 above).

49. In view of the above, the Court considers, first, that the Juvenile Act, by reason of the absence of any precise provisions requiring the family court to order the prolongation of the placement of a juvenile in a shelter for juveniles once the case has been referred to correctional proceedings and when the earlier decision authorising the placement in the shelter for juveniles had expired, does not satisfy the test of the "quality of the law" for the purposes of Article 5 § 1 of the Convention (see *Baranowski*, cited above, § 55). The deficient provisions of the Juvenile Act at the relevant time permitted the development of a practice where it was possible to

prolong the placement in a shelter for juveniles without a specific judicial decision.

50. Secondly, the Court considers that the practice at issue in the present case, whereby a juvenile is placed in a shelter for juveniles without his placement being based on a concrete legal provision or on any judicial decision is in itself contrary to the principle of legal certainty, a principle which is implied in the Convention and which constitutes one of the basic elements of the rule of law (see *Baranowski*, cited above, § 56).

51. The Court notes that section 27 § 6 of the Juvenile Act provided that the total length of the placement of a juvenile in a shelter until the delivery of the first-instance judgment may not exceed one year. However, this guarantee, although important, did not in any way improve or alter the situation of the applicant. The Court notes that after the expiry of the initial decision ordering the applicant's placement in a shelter for juveniles, he continued to be detained in the shelter for juveniles without any specific court order for the period of 5 months and 2 days.

52. In conclusion, the Court finds that the applicant's detention was not "lawful" within the meaning of Article 5 § 1 of the Convention. There has accordingly been a violation of Article 5 § 1 of the Convention.

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

53. The applicant further complained that he had not had access to any procedure whereby he could contest the lawfulness of his detention after 7 August 2012. The Court considers that this complaint falls to be examined under Article 5 § 4 of the Convention. This provision reads 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."

A. Admissibility

54. The Court notes that this complaint 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

55. The applicant maintained his complaint.

56. The Government, having examined the factual and legal circumstances of the case, wished to refrain from taking a position on the

merits of the case, bearing in mind the Court's case-law regarding Article 5 of the Convention.

2. The Court's assessment

57. The Court recalls that by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 145-B; *Reinprecht v. Austria*, no. 67175/01, § 31 (a), ECHR 2005-XII; and *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012).

58. The notion of "lawfulness" under Article 5 § 4 of the Convention has the same meaning as in Article 5 § 1, so that the arrested or detained person is entitled to a review of the "lawfulness" of his detention in the light not only of the requirements of domestic law, but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1 (see *E. v. Norway,* 29 August 1990, § 49, Series A no. 181; *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 202, ECHR 2009; and *Rahmani and Dineva v. Bulgaria*, no. 20116/08, § 75, 10 May 2012). Article 5 § 4 does not guarantee a right to judicial review of such breadth as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the lawful detention of a person according to Article 5 § 1 (see *Chahal v. the United Kingdom*, 15 November 1996, § 127, *Reports of Judgments and Decisions* 1996-V; and *S.D. v. Greece*, no. 53541/07, § 72, 11 June 2009). Like every other provision of the Convention and the Protocols thereto, Article 5 § 4 is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see *Schöps v. Germany*, no. 25116/94, § 47, ECHR 2001-I; and *Svipsta v. Latvia*, no. 66820/01, § 129, ECHR 2006-III (extracts)).

59. Turning to the present case, the Court notes that after the expiry of the initial order placing the applicant in juvenile shelter the applicant's continued detention therein was exclusively based on the fact that a judge had issued an order referring the applicant's case for examination in the correctional proceedings. As the Court has established above, the applicant's continued detention in the shelter for juveniles was thus based on the practice which developed in the absence of precise provisions in the Juvenile Act and not on a concrete legal provision or on any judicial decision.

60. The Court notes that the applicant filed an application for release, arguing that after the expiry of the initial order no further decision on prolongation of his placement in the shelter for juveniles was issued. It appears that this application was lodged under Article 254 of the Code of

Criminal Procedure which applies to the correctional proceedings under the Juvenile Act by virtue of section 20 of this Act. On 9 August 2012 the Cracow-Krowodrze District Court dismissed the applicant's application for release. The reasons for this decision stated that the applicant had been accused of having committed criminal acts with the use of a dangerous object and that accordingly the possibility of altering the security measure (placement) was excluded. These reasons were perfunctory and, more importantly, did not address the crucial argument of the applicant, namely that his continued placement in the shelter of juveniles had not been based on a judicial decision.

61. With regard to the above, the Court notes that an application for release is aimed at quashing or altering a preventive measure. However, the Court is not persuaded that an application for release would have secured a judicial review required by Article 5 § 4 of the Convention in the situation where the applicant's deprivation of liberty did not result from the application of a preventive measure provided by the Juvenile Act (placement in a shelter for juveniles) but was based on the fact that an order for examination of the case in the correctional proceedings had been issued under section 42 § 2 of the Juvenile Act. In any event, the Court is not required to determine this issue for the following reasons.

62. Even if the application for release could have theoretically met the requirements of the judicial review under Article 5 § 4, this has not been the case in the applicant's situation. While Article 5 § 4 of the Convention does not impose an obligation on a court examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the court, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee and capable of putting in doubt the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II). However, the Cracow-Krowodrze District Court's decision of 9 August 2012 did not explain the legal basis for the applicant's continued detention in the shelter for juveniles and simply referred to the fact that he had been accused of serious criminal acts. Furthermore, the impugned decision did not address the issue of "lawfulness" of the applicant's detention within the meaning of Article 5 § 1 the Convention which has been considered by the Court above.

63. The foregoing considerations are sufficient for the Court to conclude that the applicant did not have an adequate remedy by which to obtain a review of the lawfulness of his detention, in breach of Article 5 § 4 of the Convention.

64. There has therefore been a violation of that provision in the present case.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

65. The relevant parts of Article 46 of the Convention read as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

66. The Court reiterates that by Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see *Menteş and Others v. Turkey* (Article 50), 24 July 1998, § 24, *Reports* 1998-IV; *Scozzari and Giunta*, [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I). In principle it is not for the Court to determine what may be the appropriate measures of redress for a respondent State to perform in accordance with its obligations under Article 46 of the Convention (see *Scozzari and Giunta*, cited above; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; and *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV). With a view, however, to helping the respondent State fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 148, ECHR 2009; *Stanev v. Bulgaria* [GC], no. 36760/06, § 255, 17 January 2012; and *Suso Musa v. Malta*, no. 42337/12, § 120, 23 July 2013).

67. In the Court's view, the problems detected in the applicant's particular case may subsequently give rise to other well-founded applications. On this point, the Court notes that in the submission of the third-party intervener the Ministry of Justice's statistics as of 27 December 2012 indicated that the situation similar to that of the applicant may have affected 340 juveniles who were placed in shelters for juveniles. In that connection, and having regard to the situation which it has identified above (see paragraphs 49-50 above), the Court considers that general measures at national level are called for in execution of the present judgment.

68. The Court further notes that the issues identified in the applicant's case were already raised by the Ombudsman and brought to the attention of

the Minister of Justice who considered that they required remedying by means of legislative amendment (see paragraph 31 above). However, it appears that no specific action has been taken by the Government in this respect. Furthermore, the amendments to the Juvenile Act introduced by the Law of 30 August 2013 appear not to address the problems identified by the Court in the applicant's case. In view of the above, the respondent State should undertake legislative or other appropriate measures with a view to eliminating the practice which developed under section 27 of the Juvenile Act as applicable at the relevant time and ensuring that each and every period of the deprivation of liberty of a juvenile is authorised by a specific judicial decision. These measures should be capable of remedying both violations of the Convention established by the Court in the present case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant sought 5,000 euros (EUR) in respect of non-pecuniary damage on account of his unlawful detention.

71. The Government submitted that the amount claimed was consistent with the Court's case-law.

72. The Court considers that the applicant has suffered non-pecuniary and awards his claim in full.

B. Costs and expenses

73. The applicant did not submit a claim for costs and expenses.

C. Default interest

74. 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* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *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 5,000 (five thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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.

Done in English, and notified in writing on 30 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Guido Raimondi
President