



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

THIRD SECTION

CASE OF WORWA v. POLAND

(Application no. 26624/95)

JUDGMENT

STRASBOURG

27 November 2003

In the case of Worwa v. Poland,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mr K. TRAJA,
Mr L. GARLICKI, *judges*,

and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 6 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 26624/95) 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, Mrs Władysława Worwa (“the applicant”), on 15 July 1994.

2. The applicant, who had been granted legal aid, was represented by Mr P. Sołhaj and Mr K. Tor, of the Cracow Bar. The Polish Government (“the Government”) were represented by their acting Agent, Mrs S. Jaczewska.

3. In her application Mrs Worwa alleged in particular the violation of Articles 5 § 1 and 8 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), and was allocated to the Court's Third Section (Rule 52 § 1 of the Rules of Court).

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 16 May 2002, the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits of the case (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1947 and lives in Rdzawka.

9. In a dispute with her neighbours about a right of way, she was a party to various sets of legal proceedings, as detailed below.

A. The incident on 27 August 1993

10. The applicant's neighbours accused her of preventing them on 27 August 1993 from taking the track leading to the housing estate. On 29 December 1993 the Nowy Targ District Court (*Sąd Rejonowy*) made a summary order (*nakaz karny*) requiring the applicant and her husband to pay a fine. On 10 February 1994 the same court, taking into account the low level of the disturbance to public order caused by the offence, made a discontinuation order (*postanowienie o umorzeniu postępowania*), coupled with a probationary period of one year.

On 24 May 1996 it found the accused not guilty (*wyrok uniewinniający*). Having compared the evidence given by the victims and the witnesses they had asked to be called, it noted differences which undermined the credibility of their version of the facts. On 14 October 1996 the Nowy Sącz Regional Court (*Sąd Wojewódzki*) dismissed an appeal by the prosecution.

B. The applicant's arrest

11. In 1994 the applicant was prosecuted under Article 167 § 1 of the Criminal Code (see “Relevant domestic law” below) for an offence committed on 27 August 1993. On 6 July 1994 the Nowy Targ District Court asked for the applicant to be examined by two psychiatrists in order to determine whether, at the material time, she had been in full possession of her mental faculties. The court grounded this request on the fact that the applicant was under treatment as an outpatient of the neurology centre and the fact that she had also been required to undergo a psychiatric examination in connection with another case. The examination was arranged for 3 August 1994. The applicant was duly informed of the appointment but did not attend.

12. On 12 August 1994 the consultation was put back to 31 August 1994, but did not take place on that date because the applicant announced that she was seriously ill.

13. On 26 September 1994 the District Court informed the applicant in an ordinary letter that the consultation had been put back to 12 October

1994 and made it clear that her attendance was compulsory and that if she did not comply with the order it would be obliged to have her arrested.

14. On the same day the District Court issued a warrant for the applicant's arrest, if required, in order to enforce her attendance at the psychiatric examination on 12 October 1994.

15. The applicant was arrested at her home on 12 October 1994 at 8.50 a.m. At 9.10 she signed the arrest report and wrote on it that she had heart problems, that she intended to complain about the arrest and that she did not want anyone in her family to be informed.

16. Initially (in her observations of 6 October 2000), the applicant submitted that she had sent a medical certificate to explain why she could not attend the appointment with the psychiatrist.

17. The Government asserted that no certificate had been received by the court, which had ordered the applicant to be escorted to her medical examination, and that a certificate could not have been mislaid by the District Court's registry.

18. In reply the applicant submitted that, not having received a summons, she did not find out about the court's decision until the police arrived. It was then that she had informed them that she had been unable to attend the appointment and had given them a medical certificate dated 9 October 1994 showing that she had been admitted to hospital with a heart condition.

19. The Government then asserted that no medical certificate dated 9 October 1994 mentioning that the applicant had to be treated in hospital had been received by the District Court.

20. The applicant insisted that she had handed over such a certificate to the police, pointing out that she could not be held responsible if the police officers had omitted to send it on to the court.

21. According to the applicant, her daughter, then aged 10, had been present when she was arrested. One of the police officers had snatched the child out of her arms, as a result of which the girl had been traumatised. She alleged that the police made her get into the van, leaving the child at home unsupervised. She produced a certificate drawn up on 9 August 1995 by a psychologist, stating that her two daughters were receiving treatment for sleep disorders, namely nightmares and sudden panic attacks.

22. As regards the presence of the applicant's daughter when she was being arrested, the Government asserted that they were unable to say whether or not the child had been left alone. The arrest report contained no information of that kind and the applicant had not at any time asked to be allowed to contact a member of her family. The Government submitted a letter dated 11 June 2002 in which the commander of the local police stated that, when he interviewed the officer responsible for the arrest, the latter had informed him that he no longer remembered the exact circumstances but that if the child had been present he would have taken the normal steps to

ensure that there was someone to look after her. The Government also pointed out that the medical examination had taken only a few hours and that the applicant had soon been able to go home.

23. The applicant, on the other hand, said that the police had forbidden her to contact a member of her family or her doctor. She also presented an affidavit signed by a third party who had been in the same police van, certifying that when the vehicle broke down they had been obliged to wait in it on the road without any concern being shown by the police as to whether they were correctly dressed to protect themselves from the cold.

24. On 12 October 1994 the applicant complained about being arrested. On 13 October 1994 the President of the District Court refused to entertain her application, since there was no provision for such a remedy. On 10 December 1994 that decision was upheld on appeal by the Nowy Sącz Regional Court.

25. According to the information noted by the Nowy Sącz Regional Court in its decision of 15 December 1995 concerning another case in which the applicant was involved (see Section C of this statement of the facts), the report on the examination on 12 October 1994 said that the applicant had not been in full possession of her mental faculties at the material time. The doctors also pointed out that since 1992 she had been receiving treatment for epilepsy.

C. Criminal proceedings against the applicant and her children

1. Proceedings against the applicant's children

26. On 23 September 1995 the family affairs judge (*sędzia rodzinny*) brought proceedings against the applicant's two minor daughters to establish whether or not on 13 June 1995, as alleged, they had thrown stones at their neighbour and insulted her, in the presence of and encouraged by their mother.

27. On 29 September 1995 the applicant protested against that measure.

28. On 26 April 1996 the Nowy Targ District Court issued a warning (*upomnienie*) to the girls and noted that one of them had partly lost her moral bearings. It found that the incident had formed part of the ongoing dispute between the victim and the children's parents. It further noted that the two girls were model pupils and had never been convicted of similar offences.

29. On 25 June 1996 the Nowy Sącz Regional Court dismissed an appeal by the applicant. It found that a warning was not only the least severe correctional measure but also the most appropriate one in the circumstances. On 10 January 1997 the Minister of Justice refused leave to appeal on points of law to the Supreme Court.

2. Proceedings against the applicant

30. On 30 September 1995 the Nowy Targ district prosecutor's office (*Prokuratura Rejonowa*) preferred an indictment against the applicant. She was prosecuted for inciting her daughters on 13 June 1995 to attack their neighbour physically and verbally, as a result of which the victim had sustained numerous lesions.

31. On 17 November 1995 the applicant was also charged under Article 167 § 1 of the Criminal Code for having, on 9 August 1995, threatened her neighbour with a shovel handle and prevented her using the track to the housing estate.

3. The offence on 13 June 1995

32. On 20 December 1995 the Nowy Targ District Court decided to require the applicant to undergo a psychiatric examination. On 10 January 1996 the Krakow-Kobierzyn neuropsychiatric hospital asked the applicant to go for an examination on 8 February 1996. On 4 March 1996 the same court decided to place the applicant in the Krakow-Kobierzyn psychiatric hospital for observation. It noted that the report produced after the medical examination of 8 February 1996 revealed a risk that the applicant might be suffering from delusions (*psychoza urojeniowa*). As it found the consultation inconclusive, the court accepted the doctors' opinion that a longer period of observation was necessary. It concluded that, if the applicant's state of health could be known with certainty, it would be possible to decide what provisional measures should be taken.

33. On 21 March 1996 the applicant appealed against the decision of 4 March 1996. She said that on 6 March 1996 she had already been required to undergo a psychiatric examination in Nowy Targ in connection with another case. She also complained that she had not been informed of the doctors' findings.

34. On 15 July 1996 the Nowy Targ District Court again ordered the applicant to undergo a psychiatric examination. It noted that psychiatric reports had been ordered twice in quick succession. As views on the applicant's state of health were divided, it considered that a fresh consultation was required. That took place on 28 August 1996.

4. The offence on 9 August 1995

35. On 28 November 1995 the District Court decided to send the file back to the prosecutor for further investigation. It pointed out that the applicant had been required to undergo a psychiatric examination in a similar case before the same court (see Section B above) and that the prosecutor was therefore under an obligation to provide all the useful information about her in his possession. The court also pointed out that on 1 January 1996 a criminal-law reform was due to come into force in Poland

and that that might have a bearing on how the further proceedings would be organised.

36. On 11 December 1995 the applicant appealed against the decision to transfer the file. She argued that the doubts expressed by the judge about her mental health were unfounded, especially as the findings of the psychiatric examination referred to by the court had been favourable.

37. On a date which has not been specified the district prosecutor appealed against the same decision, arguing that the prosecution had not been aware either that another similar case was pending before the District Court or that the applicant had already been required to undergo a psychiatric examination.

38. On 15 December 1995 the Nowy Sącz Regional Court dismissed the appeals by the applicant and the district prosecutor. It noted that, since the psychiatric report of 12 October 1994 (see Section B above) had stated that the applicant was not in full possession of her mental faculties at the material time, a further expert report was necessary. The main aim of the new examination should be to establish whether the applicant was still in the same condition as she had been at the material time. The court also pointed out that the district prosecutor had taken part in the 1994 proceedings.

39. On 12 January 1996 the Nowy Targ district prosecutor decided to order the applicant to undergo a psychiatric examination at the Nowy Targ hospital with a view to establishing whether she was suffering from a mental illness, whether at the material time she had been in full possession of her mental faculties and whether the fact that she was still at liberty posed a threat to public order. On 17 January 1996 the applicant complained about the prosecutor's decision. She contended, among other arguments, that ordering a consultation on the ground that she had already been examined in a similar case was an abuse of the legal means placed at the judicial authorities' disposal.

40. On 17 January 1996 the Rabka police summoned the applicant to attend a consultation at the hospital in Nowy Targ on 12 February 1996. On 14 February 1996, for a reason not explained in the file, the Rabka police again summoned the applicant to attend a consultation arranged for 6 March 1996.

41. The report on the consultation of 6 March 1996 stated that the applicant's mental health was good.

42. On 14 March 1996 the Rabka police summoned the applicant for the third time, to a consultation on 4 April 1996. On the date specified the applicant went to the hospital. The doctor discovered that she had been examined on 6 March 1996 and explained that the local police must have made a mistake.

5. *Judgments common to the two offences*

43. On 31 January 1997 the Nowy Targ District Court found the applicant guilty of inciting her children on 13 June 1995 to insult and throw stones at their neighbour and of threatening the neighbour on 9 August 1995 with a shovel handle, thereby preventing her from taking the track leading to the housing estate. It sentenced the applicant to a fine, together with a term of imprisonment in default of payment within the time allowed.

44. On 3 June 1997 the Nowy Sącz Regional Court dismissed an appeal against the District Court's judgment. It held that, as regards the assault on 9 August 1995, the applicant had not been in full possession of her powers of discernment so that she was unable to understand the significance of what she had done. It noted that two medical reports of 30 September 1996 and 22 April 1997 had established that the applicant was not in full possession of the mental faculties she needed to be able to understand the consequences of her conduct.

D. Unauthorised renovation work

45. On 25 March 1998 the Nowy Targ district prosecutor preferred an indictment against the applicant and her husband, accusing them of carrying out unauthorised renovation work on a roof supported on wooden props previously built with planning permission.

46. On 12 February 1998 the district prosecutor had ordered the applicant to undergo a psychiatric examination. On 24 February 1998 the doctors reported that the applicant was not suffering from any mental disorder. At the interview she explained that the purpose of the roof was to protect her family from the smells given off by the neighbours' septic tank. She also said that she had not known such a structure required planning permission.

47. On 18 June 1998 the Nowy Targ District Court found the applicant and her husband guilty of the offence as charged and ordered them to pay a fine.

II. RELEVANT DOMESTIC LAW

A. The Criminal Code (as in force at the material time)

48. Article 167 § 1 of the Criminal Code formerly provided:

“It shall be an offence, punishable by up to two years' imprisonment, a restriction of liberty or a fine, to use violence or threats to compel another to behave in a particular way.”

Article 25 § 2 authorised a court, exceptionally, to reduce the sentence if the offender had not been in full possession of his or her mental faculties at the time of the offence.

B. The Code of Criminal Procedure (as in force at the material time)

49. Article 65 placed all defendants under the obligation to submit to any medical examination made necessary by the investigation of the case, surgery excepted.

50. Article 66 created an obligation to comply with a summons from a prosecutor or court. In the event of refusal without a valid reason, the person concerned could be brought by force.

51. Article 176 § 1 empowered a court to require a person to undergo an examination by a scientific or research institute, a specific centre, or any other institution or person. It made it clear that the consultation should not be ordered for any purpose other than obtaining specific information about the person concerned.

52. Article 208 § 1 provided that the court or prosecutor was empowered to order the arrest of a suspect or compel his or her appearance before them.

THE LAW

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II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

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B. Right to respect for private life

72. The applicant submitted that the fact that the District Court had repeatedly, at very short intervals, ordered medical reports on her mental state in connection with a number of similar cases pending before it amounted to an abuse of law and a perversion of the purpose for which the law provided for such measures. She argued that this had infringed her right to respect for her private life.

1. The parties' submissions

(a) The Government

73. The Government said that, although the applicant had been required to undergo four psychiatric examinations, each of these measures had been based on Article 65 of the Code of Criminal Procedure in force at the material time.

74. They pointed out that after the first examination of the applicant ordered by the Nowy Targ District Court (the examination of 12 October 1994) the doctors had reported that she was not suffering from any psychiatric disorder but that she had not been fully able to realise the consequences of her actions at the time of the offence.

75. After the examination of 8 February 1996, ordered by the same court, sitting in a different composition and in another case, the doctors had made a provisional diagnosis of psychosis. They had informed the court that it was impossible for them to give a firm opinion without placing the applicant under observation for a longer period.

76. After the examination of 6 March 1996, ordered by the Nowy Targ district prosecutor in connection with another case, the doctors had reported that the applicant had not suffered any loss of her mental faculties.

77. On 28 August 1996 the applicant had been required to undergo a further psychiatric examination. The court dealing with the case had noted that within a very short period (between 8 February and 6 March 1996) she had been examined twice, each time with different conclusions. It had ruled that a further examination was therefore necessary. The doctors who carried out that examination had reported that the applicant found it difficult to realise the consequences of her actions and had recommended psychiatric treatment.

78. The Government argued that all these medical reports had been indispensable, particularly that of 28 August 1996, which was justified by the existence of divergent medical opinions.

(b) The applicant

79. The applicant emphasised in the first place that the medical examinations in issue had been ordered in different centres, all at some distance from her home. She also observed that on a number of occasions she had been summoned but sent away again without being examined. She submitted that the first two medical reports, which had found that she had not suffered any loss of her mental faculties, had been sufficient, so that those ordered later had been unjustified and pointless. She contended that the district prosecutor's decision of 12 February 1998 ordering a psychiatric examination in the case concerning the unauthorised renovation of a roof on wooden props previously erected with planning permission had been particularly unjustified in the light of the insignificant nature of the offence she had been charged with, the fact that she had no knowledge of the law

and the fact that the obligation to seek permission for that type of renovation work had not been introduced until after the roof had been built.

2. The Court's assessment

80. The Court notes at the outset that the fact that the District Court repeatedly, at very short intervals, ordered medical reports on the applicant's mental state in connection with a number of similar cases pending before it constituted interference by a public authority in her private life, within the meaning of Article 8 § 1 of the Convention, and that that interference was in accordance with the law.

81. In justification, the Government submitted that the contradiction between different opinions had made the examinations indispensable.

82. The Court emphasises that ordering a psychiatric report in order to determine the mental state of a person charged with an offence remains a necessary measure and one which protects individuals capable of committing offences without being in full possession of their mental faculties. However, the State authorities are required to make sure such a measure does not upset the fair balance that should be maintained between the rights of the individual, in particular the right to respect for private life, and the concern to ensure the proper administration of justice.

83. In the present case the Court finds that that balance was not preserved. The judicial authorities within the territorial jurisdiction of a single court repeatedly and at short intervals summoned the applicant to undergo psychiatric examinations, and in addition she was sent home on several occasions after travelling to the specified place having been told that no appointment had been made for the day indicated on the summons. The Nowy Targ District Court was itself obliged to remind its own district prosecutor that he had participated in proceedings in which two separate decisions requiring the applicant to undergo psychiatric examinations had been given.

84. Ruling on an equitable basis, the Court, notwithstanding the large number of disputes in which the applicant was involved, considers that the judicial authorities failed to act with due diligence. The interference with the applicant's exercise of her right to respect for her private life was therefore unjustified.

There has accordingly been a violation of Article 8 of the Convention.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

...

3. *Holds* that there has been a violation of Article 8 of the Convention as regards the right to respect for private life;

...

Done in French, and notified in writing on 27 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER
Deputy Registrar

Georg RESS
President