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Contact: Clare Ovey
Tel: 03 88 41 36 45

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Meeting: 1273 meeting (6-8 December 2016) (DH)

Item reference: Updated action plan (18/10/2016)

Communication from Poland concerning the case of Grabowski against Poland (Application No. 57722/12)

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Réunion : 1273 réunion (6-8 décembre 2016) (DH)

Référence du point : Plan d'action mis à jour

Communication de la Pologne concernant l'affaire Grabowski contre Pologne (Requête n° 57722/12)
(anglais uniquement)



REVISED ACTION PLAN¹

Information about the measures to comply with the judgment in the case of *Grabowski against Poland*

Case description

Grabowski, application no. 57722/12, judgment of 30/06/2015, final on 30/09/2015.

The case concerns deprivation of liberty of a juvenile for a period of 5 months, between 2012 and 2013, in the framework of correctional proceedings against him, without a specific court order which caused violation of Article 5 § 1 of the Convention. In addition, the judicial review of his application for release was not adequate, as it did not explain the legal basis for his continued detention in the shelter for juveniles which caused violation of Article 5 § 4 of the Convention.

Under Article 46 of the Convention the European Court indicated that Poland should undertake legislative or other appropriate measures with a view to eliminating the practice which developed under The Act on the Procedure in Juvenile Cases of 26 October 1982 (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 authorized by a specific judicial decision (§68 of the judgment).

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. On 7 May 2012 the Cracow-Krowodrza District Court (Family and Juvenile Section) instituted inquiry (postępowanie wyjaśniające) with a view to determining whether the applicant had committed the offences at issue and 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. The applicant appealed. On 10 July 2012 the Cracow Regional Court upheld the decision of the lower court. On 27 July 2012 the Cracow-Krowodrza District Court ordered that the applicant's case should be examined in correctional proceedings (postępowanie poprawcze).

On 9 August 2012 the applicant's counsel requested the Cracow-Krowodrza 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

¹ Information submitted by the Polish authorities on 18 October 2016

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. On 9 August 2012 the Cracow-Krowodrza District Court dismissed the applicant's request for release. On 9 August 2012 the applicant's counsel wrote to the director of the Gacki Shelter for Juveniles urging him to release the applicant. By a letter of 16 August 2012 the Cracow-Krowodrza 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.

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

The Court noted that Mr Grabowski, a minor at the time, continued to be detained in a shelter for juveniles between 7 August 2012 and 9 January 2013 solely on the basis that a judge had referred his case for examination in correctional proceedings under the Juvenile Act. The Court considered that the practice of not issuing a separate decision to extend placement in a shelter for juveniles once the juvenile's case had been referred for correctional proceedings, had resulted from the lack of precision in the provisions of the Juvenile Act. As a result, a practice had developed whereby it was possible to prolong the placement in a shelter for juveniles without a specific judicial decision. Thus, even after the expiry of the initial decision ordering Mr Grabowski's placement in a shelter for juveniles, he continued to be detained without any specific court order for a period of five months and two days. The Court therefore found that Mr Grabowski's detention had not been lawful, in violation of Article 5 § 1.

Furthermore, the decision of 9 August 2012 dismissing Mr Grabowski's application for release had not explained the legal basis for his continued detention in the shelter for juveniles, but simply referred to the fact that he had been accused of serious criminal acts. The impugned decision did not address the issue of "lawfulness" of the applicant's detention within the meaning of Article 5 § 1 the Convention. Therefore the Court concluded 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.

I. Payment of just satisfaction and individual measures

1. Just satisfaction

| Pecuniary damage | Non-pecuniary damage | Costs and expenses | Total |
|--|----------------------|--------------------|-----------|
| - | 5,000 EUR | | 5,000 EUR |
| Due on 30/12/2015 | | Paid on 08/01/2016 | |
| On 29/12/2015 the money were sent to the applicant's bank account, on the same day | | | |

the money returned due to the incorrect bank account number. Subsequently the applicant sent the correct bank account number and on 08/01/2015 the money were paid to the applicant.

2. Individual measures

The applicant was released on 9 January 2013.

In these circumstances, no other individual measure appears necessary.

II. General measures

A. Violation of Article 5 § 1 of the Convention

1. Legislative changes

The authorities have initiated a legislative process in order to amend article 27 of the Juvenile Act, so as to clarify its wording and eliminate a deficient practice of the domestic courts as to the placement in a shelter for juveniles without a specific judicial decision.

In meantime, in order to align the domestic courts` practice with the relevant standards of the Convention, before the necessary legislative amendment is adopted, the authorities implemented various awareness-rising measures (see below).

In addition, the authorities indirectly influenced the manner in which article 27 of the Juvenile Act is interpreted, by introducing the new Rules governing the internal functioning of common courts on 1 January 2016.

Those rules, *inter alia*, require a family court to send a copy of a decision extending a stay of a juvenile in the shelter for juveniles at least 3 working days before the deadline specified in the decision regarding application of measure or its prolongation. This rule indirectly confirms that before the expiration of the deadline indicated in the decision (on the placement of a juvenile in the shelter or extending this stay) a new decision on the extension of the stay has to be given.

According to queries conducted by the Ministry of Justice after the implementation of the awareness-rising measures, almost all the domestic courts currently apply article 27 of the Juvenile Act in the Convention-compliant manner, namely by providing a separate judicial decision for each extension of the placement in a juvenile shelter, even though article 27 has not been amended yet.

2. Awareness-rising measures

The *Grabowski v. Poland* judgment was translated and published on the website of the Ministry of Justice (www.ms.gov.pl). Additionally the Ministry of Justice sent a letter to all

the Courts of Appeal along with the translated judgment requesting for interpretation of the article 27 of the Act on the Procedure in Juvenile Cases in accordance with Convention standards and the Court case -law.

In the context of the execution of the Court's judgments the Ministry of Justice also conducts workshops training for judges of the regional courts and courts of appeal during which the case of *Grabowski v. Poland* is presented.

3. Monitoring

Apart from already mentioned queries conducted by the Ministry of Justice as to the current practice of domestic courts, following the implementation of awareness-rising measures, the Ministry is awaiting for conclusions of the additional research on the practice with the application of interim measures (including placement in juvenile shelters) in the juvenile proceedings, conducted by the Justice Institute. The results should be submitted to the Ministry in November 2016.

B. Violation of Article 5 § 4 of the Convention

The Government recalls 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. The European Court noted that the domestic courts dismissed this application on grounds 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. The European Court found that these reasons were perfunctory and, most 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.

The Government underlines that this is a one-off case and that the measures to address the violation of Article 5 § 1 of the Convention should eliminate a problem of unlawful detention in juvenile shelters without a judicial decision. Accordingly there will no longer be a need for filing of an application for release on grounds that no decision to prolong the placement was taken in a particular case. In addition, even if such request is submitted, a lack of the basis for detention will become an integral part of the domestic courts' assessment. Therefore, the Government concludes that there is no need for separate general measures in response to the violation of Article 5 § 4 found by the Court in the present case.

III. Conclusions of the respondent state

The Government considers that other individual measures are not necessary in the present case and undertakes to inform the Committee on implementation of the general measures planned in order to comply with Poland's obligations under Article 46, paragraph 1 of the Convention.