



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

FOURTH SECTION

CASE OF POLANOWSKI v. POLAND

(Application no. 16381/05)

JUDGMENT

STRASBOURG

27 April 2010

FINAL

27/07/2010

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

In the case of Polanowski v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 30 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 16381/05) 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, Mr Stanisław Polanowski (“the applicant”), on 13 April 2005.

2. The applicant, who had been granted legal aid, was represented by Mr P. Sendeki, a lawyer practising in Lublin. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołaszewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been ill-treated by the police and that no adequate and effective investigation into his allegations had been carried out by the authorities.

4. On 12 January 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1962 and lives in Rzeszów.

A. The applicant's arrest

1. The facts as presented by the applicant

6. During the evening of 23 December 2002 the applicant had an argument with his wife. The applicant's wife called the police and four policemen arrived. Both the applicant and his wife had been drinking. The applicant's wife wanted him to be taken by the police to a sobering-up centre.

7. The applicant wanted to get dressed to go out and when he tried to get out of his armchair he was attacked by one of the policemen, who started strangling him. Three other police officers joined their colleague. They pulled the applicant's arms backwards and tried to push him to the ground. The applicant resisted. The police officers called another police car and three or four other policemen arrived. The police officers pushed the applicant to the floor and then they punched him on the head. Subsequently the applicant was handcuffed with his arms behind his back and taken downstairs. The police officers did not let him get dressed to go out or put on his shoes. He was taken outside barefoot. It was minus twenty degrees. While being taken downstairs he was also pushed and kicked. The events in the street were observed from a window on the fourth floor by the applicant's neighbour.

8. He was put in the back of the police vehicle together with two police officers. In the police van he was beaten on the head. On the way to the sobering-up centre the police van stopped at Ciepłownicza Street and the applicant was "kicked out" of the car. He was then pushed to the ground with his face in the snow and kicked and beaten by four policemen for about twenty minutes. One of them tightened the applicant's handcuffs. The applicant was then put back in the van and taken to the sobering-up centre. The applicant informed the doctor in the sobering-up centre that he had been beaten up by the police officers. The doctor decided that the applicant should be taken first to the hospital.

9. The police officers took the applicant to the hospital, where his wounds were dressed. While he was leaving the hospital he was again hit by one of the police officers on the back of the head. He was taken back to the sobering-up centre where he was qualified as "dangerous" and attached to a bed with safety belts. For about four hours he was not allowed to go to the toilet.

10. Subsequently, the applicant was taken from the sobering-up centre to a police station where he was charged with insulting police officers and questioned.

2. The facts as emerging from the domestic proceedings

11. During the evening of 23 December 2002 the applicant had an argument with his wife. The applicant was aggressive and hit his wife several times on the head. Both the applicant and his wife had been drinking. The applicant's wife called the police and ran out of their building; she waited

outside for the police. Two police officers arrived and they went with the applicant's wife to the applicant's flat. The police officers asked the applicant for his identity card. This request made the applicant aggressive; he started punching them. Therefore the police officers decided to use force; they pushed him to the ground. The applicant resisted and the police officers called another police patrol. Shortly afterwards two other police officers arrived and helped put handcuffs on the applicant's wrists with his hands behind his back.

12. During the police intervention the applicant's mother-in-law was in the flat, but she stayed in her room and did not witness the whole incident.

13. The police officers tried to take the applicant downstairs. In the meantime they called another police car. After a few minutes another six police officers arrived. While the applicant was being taken downstairs he kicked and spat at the police officers. At the bottom of the stairs the applicant fell on to his knees and his face hit the ice on the pavement.

14. He was then put in the back of the police vehicle together with two police officers, who had to use physical force because the applicant was trying to get out. The applicant was transported to the sobering-up centre. The other police vehicle followed. They took the shortest route and did not stop. The applicant continued to behave in an aggressive way.

15. When they arrived at the sobering-up centre, the applicant was escorted by four police officers, because he was still very aggressive.

16. In the sobering-up centre the doctor decided that the applicant should be taken first to the hospital because of the wounds on his face.

17. The applicant was taken to the hospital in an ambulance and two police officers followed in a police van. The applicant's wounds were dressed in the hospital. The applicant was not handcuffed.

18. He was taken back to the sobering-up centre in a police van. He was still aggressive and had to be attached to a bed with safety belts.

19. On 23 December 2002 the applicant was released from the sobering-up centre.

B. The applicant's medical examinations

20. Early on 23 December 2002, at 3.41 a.m., the applicant was examined in the Rzeszów hospital. The relevant medical certificate says:

“beaten up, contused wound on the right eyebrow, haematoma of the right upper eyelid, chafing on the chin and forehead on the left side. Condition indicates consumption of alcohol”

21. At 12.35 p.m. on 23 December 2002, after leaving the sobering-up centre, the applicant was again examined by a doctor in the Rzeszów hospital. The relevant medical certificate says:

“beaten up, contused wound on the right eyebrow sutured, haematoma of the left eyelid, contusion and chafing on the head, lower lip, chafing on both wrists and fingers of the left hand, contusion with subcutaneous haematoma in the lumbar region”.

22. On 24 December 2002 the applicant underwent another medical examination. The relevant medical certificate says:

“on 23 December 2002 beaten up by police officers (home intervention), treated in the Rzeszów emergency service at 3.41.

(...)

On 24 December 2002 he complains of pain in the lumbar region, arms, headache and vertigo. Similar physical symptoms to those displayed in the emergency service - swelling of both hands, pain in the hands and cranium on palpation, pain on movement of the head. The above symptoms and physical state will cause a health problem for a period exceeding seven days”.

C. Criminal proceedings against the police officers

23. On 24 December 2002 the applicant requested the Rzeszów District Prosecutor to institute proceedings against the police officers who had arrested him. The applicant alleged that the police officers had committed an offence of abuse of power.

24. On 31 March 2003 the Rzeszów District Prosecutor discontinued the proceedings, finding that the policemen's actions did not constitute an offence of abuse of power. In the course of the investigation a forensic expert was appointed. He came to the conclusion that the applicant's injuries could have been sustained in the circumstances described by the applicant but that they could also have been sustained as a result of the applicant's falling and hitting a hard surface. The prosecutor also heard witnesses, including the applicant's neighbour N.U., who testified that he had seen the applicant in front of the house being pulled by two policemen and then kicked once by each of them. He could not see what happened when the applicant was being placed in the police van. The applicant's mother-in-law, S.S., also testified that she had seen the applicant being hit on the head by police officers, strangled and kicked. The prosecutor also heard employees of the sobering-up centre, who confirmed that the applicant had been behaving aggressively. The police officers who took part in the intervention denied kicking the applicant and submitted that the physical force used against the applicant had been necessary, taking into account his aggressive behaviour.

25. On 16 April 2003 the applicant appealed against the district prosecutor's decision.

26. On 23 September 2003 the Rzeszów District Court quashed the decision and remitted the case. The court found that the investigation had not been conducted thoroughly and that the prosecutor had drawn erroneous conclusions from the evidence. It further found that the prosecutor had failed to give reasons as to why he had based his decision on the statements given by the policemen and why he had rejected those of the applicant and the statements given by his family and neighbour.

27. On 24 October 2003 the Rzeszów District Prosecutor again discontinued the proceedings, finding no indication of an offence of abuse of power committed by the police officers.

28. On 10 November 2003 the applicant appealed.

29. On 18 December 2003 the Rzeszów Regional Prosecutor quashed the decision, finding that the case, especially the course of events at the time the applicant was transported from his home to the sobering-up centre, had not been thoroughly examined, and sent the case back to the district prosecutor for re-examination.

30. On 27 February 2004 the Rzeszów District Prosecutor again discontinued the proceedings. As regards the course of events during the applicant's transport from his home to the sobering-up centre, the prosecutor checked the time needed to cover the journey and the precise time from the beginning of the intervention to the applicant's arrival at the sobering-up centre, and found the applicant's version not credible. The prosecutor decided not to hear the testimony of the applicant's mother-in-law "due to her speech impediment which made her statements incomprehensible" and relied on her statements given during the previous stage of the proceedings. The prosecutor further found that the testimonies given by the applicant's family and neighbour were not consistent; the applicant's wife said she had not seen her husband being kicked or beaten by the police officers, whereas his mother-in-law saw him being kicked and the neighbour confirmed that the policemen had kicked the applicant "at least once".

31. On 16 March 2004 the applicant appealed.

32. On 21 April 2004 the Rzeszów Regional Prosecutor upheld the challenged decision.

33. On 27 July 2004 the applicant's lawyer lodged a private bill of indictment with the Rzeszów District Court against four of the policemen who had arrested him.

34. On 14 October 2004 the Rzeszów District Court gave a decision and discontinued the proceedings for "manifest lack of basis for the prosecution" (*z oczywistego braku podstaw oskarżenia*).

35. On 5 November 2004 the applicant's lawyer appealed against that decision.

36. On 5 December 2005 the Rzeszów District Court gave judgment and acquitted the accused policemen. The court based its findings mainly on the statements given by the police officers who had taken part in the intervention on 23 December 2002 and the doctors who had treated the applicant in the hospital. The court found the various statements to be consistent and complementary.

37. The court did not find credible the statements given by the applicant's mother-in-law in favour of the applicant, finding that she lived in the same flat as the applicant and had been under constant pressure because of arguments between the applicant and his wife. It appears that the mother-in-

law was not heard before the court which referred to her statements given in the criminal proceedings against the applicant. In those proceedings she testified that she had seen the intervention in the apartment. However, the court relied on the statements of the four accused police officers according to which the applicant's mother-in-law had remained in her room during the whole of the intervention. The court did not refer to S.S.'s alleged speech impediment.

38. Likewise, the statement given by the applicant's neighbour was found not to be credible because he had witnessed the incident from a considerable distance, namely from his window on the fourth floor and, moreover, in the middle of the night. The court also found that the applicant's neighbour had been heard on two occasions and that his statements had varied considerably.

39. The court did not hear the applicant's wife, observing that she had been sentenced for making false statements in the criminal proceedings against the applicant concerning the incident in question.

40. As regards the applicant's submissions the court found them "subjective and untrue, given in order to take revenge on the police officers who had participated in the intervention".

41. On 6 January 2006 the applicant appealed against this judgment.

42. On 28 April 2006 the Rzeszów Regional Court upheld the District Court's judgment.

D. Criminal proceedings against the applicant

43. On 30 April 2003 a bill of indictment against the applicant was lodged with the Rzeszów District Court. He was charged with insulting and assaulting police officers and uttering threats against them during his arrest.

44. On 12 March 2004 the Rzeszów District Court gave judgment and convicted the applicant as charged.

45. The applicant appealed.

46. On 5 July 2004 the Rzeszów Regional Court partly amended the first-instance judgment, acquitted the applicant of one count of assault and sentenced him to a fine.

II. RELEVANT DOMESTIC LAW AND PRACTICE

47. The relevant domestic law and practice concerning the use of force by the police and other issues raised by the present application are set out in the Court's judgment in *Jasiński v. Poland*, no. 72971/01, §§ 21-23, 6 December 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained that he had been ill-treated by the police officers, and that the authorities had failed to carry out an effective investigation into his complaint, in breach of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

49. The Court notes that the application 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 parties' submissions*

50. The applicant's lawyer submitted that as result of the police officers' actions the applicant had sustained a number of injuries which were sufficiently serious to amount to ill-treatment within the scope of Article 3 of the Convention. The police had used excessive force against him.

51. The applicant's lawyer further submitted that the investigation into his client's allegations had not been sufficiently thorough and effective to meet the requirements of Article 3.

52. The Government decided not to comment on the merits of the application.

2. *The Court's assessment*

(a) **Alleged ill-treatment by the police**

53. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

54. The Court reiterates that where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a

strong presumption that the person was subjected to ill-treatment (see *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). The Court also points out that where an individual, when taken into police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

55. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336).

56. Turning to the circumstances of the present case, the Court observes that the applicant sustained injuries to his face including a wound to the eyebrow, haematoma of the right upper eyelid and chafing on the chin and forehead. Those injuries were sufficiently serious to amount to inhuman and degrading treatment within the scope of Article 3 (see, for example, *Afanasiev v. Ukraine*, no. 38722/02, § 61, 5 April 2005). It remains to be considered whether the State should be held responsible under Article 3 for the injuries.

57. The burden rests on the Government to demonstrate with convincing arguments that the use of force which resulted in the applicant's injuries was not excessive (see, *mutatis mutandis*, *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Matko v. Slovenia*, no. 43393/98, § 104, 2 November 2006).

58. However, the Government have preferred not to express an opinion on the merits of the case. They did not submit observations and have not therefore advanced any argument that would allow the Court to establish whether the applicant's conduct was such as to justify recourse to the considerable physical force that, judging by the seriousness of the injuries, must have been employed by the police (see *Dzwonkowski v. Poland*, no. 46702/99, § 55, 12 April 2007).

59. In consequence, the Court can only rely on the information it has received from the applicant and the facts as established in the course of domestic proceedings. The Court for its part finds it impossible to establish on the basis of the evidence before it whether or not the applicant's injuries were caused as alleged. However, it would observe at the same time that the difficulty in determining whether there was a plausible explanation for the applicant's injuries or whether there was any substance to his allegations of ill-treatment must be assessed against the background of the adequacy of the investigation carried out in respect of the applicant's allegations (see *Veznedaroğlu v. Turkey*, no. 32357/96, § 31, 11 April 2000). The Court will now examine this matter further.

(b) Adequacy of the investigation

60. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see, among other authorities, *Labita v. Italy*, cited above, § 131). The investigation into arguable allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others*, cited above, § 103 et seq).

61. In the *Labita* case cited above, the Court found a violation of Article 3 on the ground that the authorities had not investigated the alleged numerous acts of violence, humiliation, and other forms of torture inflicted on an applicant. It must be noted however that in that case the Court's conclusion was reached on account of the manifest inactivity of the authorities regarding the investigation of that applicant's complaints (loc. cit., §§ 117-136).

62. In the present case a number of persons were questioned, including the applicant's wife, his mother-in-law and his neighbour, the police officers who took part in the intervention, employees of the sobering-up centre and doctors who examined the applicant on the night in question. What is more, an expert opinion was produced in the context of the investigation into the applicant's allegations of ill-treatment on 23 December 2002 (see paragraph 24 above). It is to be noted that the prosecutor failed to give reasons as to why he had not found the testimonies given by the applicant's family and neighbour to be credible and the case had to be returned twice for further examination (see paragraphs 26 and 29 above). In the decision of 27 February 2004, which was appealed against but eventually upheld by the Regional Prosecutor (see paragraph 30 above), the prosecutor likewise failed to explain convincingly the reasons for accepting the version of events given by the police officers. The prosecuting authorities accepted the statements of the police without taking any note of the fact that they had obviously had an interest in the outcome of the case and in exonerating themselves. The Court would underline the importance of assessing critically the testimonies of police officers in such circumstances (see *Dzwonkowski*, cited above, § 65).

63. Subsequently, the prosecutor decided not to charge the policemen and to discontinue the investigation because of the lack of unequivocal evidence of the officers' guilt. Following the applicant's private bill of indictment (see paragraph 33 above), the District Court also relied entirely on the testimonies given by the accused police officers. In the Court's view, the domestic court

did not give sufficient consideration to the statements given by the applicant's mother-in-law. In particular, the police officers' version according to which the applicant's mother-in-law had remained in her room and had not seen the intervention was not convincingly corroborated. The Court considers that this circumstance was crucial for establishing the course of events in the applicant's apartment. Nor does the Court find convincing the reason for not hearing the evidence of the applicant's mother-in-law, namely her speech impediment. Her testimony was of obvious relevance and measures could have been taken to allow her to provide her account of the incident. Furthermore, the Court notes that the doctors who examined the applicant found that his injuries were consistent with his having been "beaten up" (see paragraphs 20-22 above). It is not persuaded that the investigation conducted dispelled this hypothesis.

64. Regard being had to the above findings and to the fact that the Government have not submitted any observations as regards the course of events in the present case and the adequacy of the investigation into the applicant's allegations, the Court concludes that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF PROCEEDINGS AGAINST THE POLICE OFFICERS

65. The applicant complained of a violation of Article 6 § 1 of the Convention on account of the alleged excessive length of the proceedings against the police officers.

66. The Court has examined the course of the proceedings. It notes that they were instituted, upon the applicant's request, on 24 December 2002 and terminated on 21 April 2004. Thus, they lasted one year and almost four months, a period which cannot be considered excessive taking into consideration the number of activities that had to be undertaken. The same can be said about further proceedings commenced by the applicant's private bill of indictment.

67. It follows that this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed 100,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

70. The Government did not comment on the applicant's claims.

71. The Court considers that the applicant must have suffered non-pecuniary damage and therefore it awards him 5,000 euros (EUR) under this head for the breach of Article 3.

B. Costs and expenses

72. The applicant's lawyer also claimed EUR 3,000 for the costs and expenses incurred before the Court.

73. The Government did not comment on that claim.

74. The Court notes that the applicant has been granted legal aid to present his case before the Court (see paragraph 2 above). According to the Court's case-law, an applicant is entitled to the reimbursement of 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, regard being had to the fact that the applicant had been granted legal aid and to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,150 for the proceedings before the Court.

C. Default interest

75. 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 under Article 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,150 (two thousand one hundred and fifty euros) plus any tax that may be chargeable to the applicants, in respect of costs and expenses plus any tax that may be chargeable to the applicant;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President