



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

FOURTH SECTION

CASE OF SAMBOR v. POLAND

(Application no. 15579/05)

JUDGMENT

STRASBOURG

1 February 2011

FINAL

01/05/2011

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

In the case of Sambor v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić,

Vincent A. de Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 11 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 15579/05) 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 Dominik Sambor (“the applicant”), on 19 April 2005.

2. The applicant was represented by Mr P. Pelczarski, a lawyer practising in Wrocław. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that during the incident on 15 August 2003 he had been ill-treated by the police and that the investigation in his case had not been “thorough” and “effective”.

4. On 17 November 2008 the President of the Fourth Section decided to communicate the application under Article 3 of the Convention. An additional question concerning the alleged violation of Article 2 of the Convention was asked to the parties. However, the Court considers that the application falls to be examined under Article 3.

5. Under Article 29 § 3 of the Convention it was decided to examine the merits of the application at the same time as its admissibility.

6. The applicant and the Government each submitted written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1974 and lives with his father and grandmother in a semi-detached house in Wrocław. He suffers from paranoid schizophrenia.

A. The police intervention

8. On 16 August 2003, after an argument with his father, the applicant barricaded himself in his room and threatened his father with a knife and an axe. At about 8 p.m. the father called the police. He informed the police that his son had thrown him out of the house and had locked himself inside with a number of different sorts of weapons including an air rifle, axe and knives. When the police arrived the applicant had an axe in his hand. He told the police officers to leave the property while threatening them with an air rifle. The police officers decided not to continue the intervention. When the applicant's father informed them that the applicant was under psychiatric care and recently refused to take the prescribed medications, they called a psychologist, negotiators and a doctor. Following two-hour negotiations, which failed – the applicant fired several shots at the negotiators who were approaching the house with shields - the police called the anti-terrorist brigade. Considering that the situation posed a threat to the applicant's family members and those who arrived on the spot, at about midnight a brigade of eight policemen commenced their intervention, which consisted in forcing the entrance door to the apartment, deafening the applicant with a grenade and immobilising him. The applicant was aggressive; he was armed with an axe, knives and an air rifle and he fired at the policemen. According to the applicant, the policemen were also aggressive: they shouted, swore and kicked him and one of them shot him in the left leg. The applicant, even when hurt on his leg, still threw the earlier prepared bayonets at the police officers. According to the police, the shot at the applicant's leg was preceded by one warning shot. However, the applicant submitted that over twenty bullets still remain lodged in the walls of the house.

9. Subsequently, the applicant was immobilised and handcuffed. There was an ambulance in front of the house during the whole intervention, so the applicant's wound was dressed immediately and the applicant was taken to a hospital. On the way he was resuscitated three times.

10. The doctor who admitted the applicant to the hospital found that he had been in a state of post-traumatic haemorrhagic shock (*pourazowy wstrząs krwotoczny*) which constituted a real danger to his life. On 16 August 2003 the applicant underwent an operation on his leg. The wound

from the bullet resulted in necrosis and on 29 August 2003 the applicant's left leg had to be amputated. On 9 September 2003 the applicant left the hospital.

B. The investigation concerning the police intervention

11. On 12 December 2003 the applicant's grandmother applied to the Wrocław District Prosecutor requesting the prosecution (*wniosek o ściganie*) of the police officers who had participated in the intervention and wounded the applicant.

12. On 15 April 2004 the Wrocław District Prosecutor discontinued the investigation, finding that the policemen's actions had not constituted an offence of abuse of power. In the course of the proceedings before the Prosecutor, twenty two witnesses were heard and documentation containing a hundred and eighty five pages gathered. The Prosecutor obtained an expert report of a doctor of forensic medicine, who had examined the injuries sustained by the applicant. She further heard the applicant's grandmother, who said she knew from her grandson that he had been kicked by the policemen when he was lying hurt on the floor. All the members of the anti-terrorist brigade denied having kicked the applicant. The prosecutor also heard the applicant and his father as well as outside witnesses. She further examined the medical report issued by the doctor who had admitted the applicant to the hospital and referred to the medical expert report according to which:

“...the applicant had been admitted to the hospital on 16 August 2003. He had been shot in the left leg with the bullet's entry probably above the kneecap and exit in the calf. His artery and under-knee vein were damaged, with an open comminuted fracture of his left thigh bone. As a result of the above wounds the complication developed into necrosis and the applicant's left leg had to be amputated.”

13. As regards the course of the events, the Prosecutor established that:

“After the unsuccessful intervention of the two policemen who had initially arrived at the scene, negotiators and a psychologist were sent to the applicant in order to urge him to leave the house. The negotiations lasted about two hours but they did not lead to the expected result. The applicant did not react and his only reaction was to fire an air rifle in the direction of the negotiators, who had to protect themselves with shields while approaching the applicant's windows”.

When the negotiations failed, the anti-terrorist brigade was called. Before their intervention “another attempt to establish contact with the applicant was made, and when this failed the brigade began their intervention”.

14. In conclusion, the Prosecutor found that the anti-terrorist brigade had used means proportionate to the danger posed by the applicant not only to the policemen and the applicant's family, but also to third persons. It was also established in the course of the investigation that the policeman who

fired at the applicant had first appealed to the applicant to calm down and to put the axe down, and had then fired a warning shot.

15. On 24 May 2004 the applicant's grandmother and father lodged an appeal against the decision of 15 April 2004. They complained that the prosecutor had not thoroughly examined the circumstances of the case and that the policemen had abused their powers. In particular, they alleged that the applicant had been shot in such a way that the gun was first pointed at the applicant's leg and a shot was then fired. They submitted further that not just one warning shot had been fired and that eighteen bullets of live ammunition, seventeen plastic bullets and six deafening grenades remained lodged in the walls of their house. They also demanded that an expert be appointed to examine the way the wounds had been inflicted; in particular the gunshot wound, but also a broken tooth, wounds to the applicant's head and a partly torn-off ear.

16. On 26 May 2004 the Wrocław District Prosecutor refused to examine the appeal, finding that it had been lodged by persons who were not parties to the proceedings. This decision was challenged by the applicant himself as well as by his father and grandmother.

17. On 6 July 2004 the Wrocław Regional Prosecutor granted the applicant's appeal and quashed the challenged decision of 26 May 2004, so allowing the applicant's appeal against the decision to discontinue the investigation to be examined by a court.

18. On 30 September 2004 the applicant requested the Wrocław District Court (*Sąd Rejonowy*) to appoint an expert witness to examine the clothes he had been wearing at the time of the intervention in order to find possible traces of gunpowder.

19. On 28 October 2004 the Wrocław District Court dismissed the appeal against the prosecutor's decision of 15 April 2004. The court found that in the course of the investigation which had been carried out properly, all relevant factors had been established and all necessary evidence had been taken in order to give a decision on the merits. It further found, essentially summarising the reasoning of the Wrocław District Prosecutor's decision of 15 April 2004, that the police's reaction had been proportionate. As regards the allegations concerning the shot fired at the applicant's leg, the court found that "the applicant, when heard, did not confirm those circumstances". The court did not refer to the applicant's further reservations regarding the alleged shortcomings of the investigation, especially as regards the number of bullets allegedly remaining in the walls of the applicant's house. Neither did it refer to the applicant's request to appoint an expert who would examine his clothes.

20. On an unspecified date the applicant's father complained to the Ombudsman.

21. The Ombudsman requested the Supervisory Division of the Wrocław Prosecutor of Appeal (*Wydział Nadzoru*) for information on the respective

proceedings. Having obtained the information requested, on 17 May 2005, the Ombudsman did not find grounds for intervention. He had examined the case-file, reconstructed again the course of events which was consistent with the version as established by the prosecutor and court. The Ombudsman confirmed, *inter alia*, that when the anti-terrorist brigade forced the door, the applicant behaved aggressively, fired with an air rifle towards the policemen, threw an axe in their direction and, subsequently began to throw knives towards them. Then one of the police officers, B.N. fired “warning shots” and, seeing no reaction on the part of the applicant, fired a shot towards his leg from a distance of 1.5 metres. The Ombudsman also found that the applicant had already thrown his father out of their house about two months earlier, and that then he had threatened him with a bayonet. Finally, the Ombudsman pointed to the fact that the request for institution of investigation into the alleged abuse of power by the police officers had been lodged about six months after the events in question.

C. Proceedings against the applicant

22. On 18 August 2003 the Wrocław District Prosecutor opened an investigation against the applicant, who had been charged with an active assault on the police officers (*czynna napaść na policję*) and with causing a bodily injury or an impairment of health for a period exceeding seven days. In the course of the inquiry the Prosecutor ordered expert reports from a psychologist and two psychiatrists, obtained evidence including photographic material and heard fourteen witnesses including the applicant and members of his family, as well as all policemen who had participated in the intervention.

23. On 30 June 2004 the Wrocław District Prosecutor gave a decision and found that during the intervention two policemen had been hurt; one had a wound on his cheek and the other had been shot in the right arm. It was also found however that, at the time of the intervention, because of his mental illness the applicant had been incapable of understanding the significance of his behaviour. For that reason the Prosecutor discontinued the investigation.

D. Internal investigatory report

24. The Government produced a detailed report of the intervention prepared by the police following the internal explanatory proceedings. The report confirms the applicant's aggressive behaviour and explains the circumstances in which the shot was given at the applicant. The report, in its relevant part, reads as follows:

“the police officers breached the entrance door. The officer B.N. entered the corridor through the hole in the door and saw a man with an axe in his hand. The man

swung his arm towards B.N. who jumped back and shouted: "Police! Drop it!" The man swung his arm again and B.N. fired a warning shot at the ground and then, at the next attack with the axe very close to B.N., B.N., facing a direct threat to his life, directed a shot at the applicant's leg. The man dropped the axe, cowered, and, limping, went further back into the house"

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. The regulations on permissible use of direct coercive measures by the police are laid down in section 16 of the Police Act, which provides that in situations in which the order of a police officer is not obeyed, such measures can be resorted to only in so far as they correspond to the requirements of a particular situation and in so far as they are necessary to obtain compliance with that order.

26. Article 5 § 1 of the Ordinance of 17 September 1990 on the use of coercive measures by the police provides that direct physical force can be used to overpower a person, to counter an attack or to ensure compliance with an order. When such force is being used it is forbidden to strike the person against whom the action is being carried out, except in self-defence, or to counter an attack against another person's life, health or property.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

27. The applicant complained that his life was endangered during the police intervention in breach of Article 2 of the Convention, which reads as follows:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

28. The applicant further complained that he had been ill-treated by the police officers, and that the authorities had failed to carry out an effective investigation, 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

29. The Court notes that the complaints under Articles 2 and 3 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

30. 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 acted in a manner not appropriate to a person suffering from mental illness and had used excessive force against him, especially as regards the shot directed at the applicant's leg. According to the lawyer, the police should have used a restraining net to immobilise the applicant.

31. The applicant's lawyer further submitted that the investigation into the applicant's allegations had not been effective; the prosecutor had only examined the use of weapons as provided for by the Police Act but failed to assess the overall situation and the alleged shortcomings of the police intervention.

32. The Government submitted that intervention had been initiated at the request of the applicant's family; the applicant had been behaving aggressively and posed a threat to himself and to other people. The police action lasted as long as was necessary to immobilise the applicant. The element of suffering had been inevitable in the circumstances of the present case. According to the Government, the police had had recourse to a degree of force which had been made necessary by the applicant's conduct.

33. The Government further submitted that the investigation in the present case had been “thorough and effective”. The circumstances of the case had been examined by the domestic authorities on three occasions: (1) internal police inquiry concerning the use of weapons, (2) two independent sets of investigations and (3) judicial proceedings. All these

sets of proceedings had been prompt and exhaustive; in the proceedings concerning the alleged abuse of power by the police officers the domestic authorities had heard twenty two witnesses, including the applicant. What is more, extensive documentation was gathered amounting to 185 pages of documents and three expert reports (two psychologists and one psychiatrist) were obtained.

2. *The Court's assessment*

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

34. 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).

35. 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).

36. Turning to the circumstances of the present case, the Court observes that it is undisputed that in the course of the police intervention the applicant sustained an injury to his left leg, which caused necrosis and subsequently that the leg had to be amputated (see paragraph 10 above). Those injuries were sufficiently serious to amount to inhuman and degrading treatment within the scope of Article 3 (see, for example, *Afanasyev v. Ukraine*, no. 38722/02, § 61, 5 April 2005). It remains to be considered whether the State should be held responsible for them under Article 3.

37. 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).

38. The Court observes that the parties have not disputed that the impugned injuries were caused by the police officers, who had fired at the applicant. It is also uncontested that the police officers used force on

15 August 2003. The parties disagree however on whether the applicant was kicked in the head after having been immobilised (see paragraph 8 above). It must be noted that the applicant's allegations that he had been kicked had not been confirmed following the domestic investigation of his complaints at two levels (see paragraph 12 above). While the Court is not bound by the findings of the domestic authorities as to facts alleged to be in breach of the Convention, the Court, on the basis of the parties' observations and the material in its possession, finds it impossible to establish whether any ill-treatment, apart from the shot directed at the applicant, occurred in the present case.

39. The Court observes further that it is undisputed between the parties that the applicant behaved aggressively, threatened his father and subsequently the negotiators and the police officers with various weapons and dangerous objects such as axes, knives and bayonets, shoot towards the negotiators and, subsequently, threw bayonets, knives and other dangerous weapons and objects at the police officers. The Court considers it uncontested that the applicant posed a threat to himself, his family and all persons taking part in the intervention. As was found by the expert psychologist later during the investigation, the applicant was incapable of understanding the significance of his behaviour. Thus, his behaviour could have given rise to unexpected developments. By calling the police negotiators the domestic authorities first took steps to calm down the applicant and only when these methods proved ineffective did they have recourse to physical force. As regards the shot fired at the applicant's leg, the Court is persuaded by the Government's arguments that it was unavoidable in the circumstances of the present case and that the police officer who wounded the applicant took the shot while facing a direct threat to his life. The Court finds it impossible to assess, as the applicant claims, that the use of the restraining net would have been sufficient in the circumstances of the present case.

40. The Court also notes that, as found by the Ombudsman, a similar, although less drastic event, however, also involving threats and use of dangerous objects by the applicant, had taken place some two months earlier (see paragraph 21 above).

b) Adequacy of the investigation

41. 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 their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and

punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

42. An investigation into serious 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 v. Bulgaria*, 28 October 1998, §§ 103 et seq, *Reports of Judgments and Decisions* 1998-VIII). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, §§ 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

43. Turning to the circumstances of the instant case, the Court notes that, following the applicant's grandmother's complaint lodged some six months after the events in question, the public prosecutor carried out an investigation and established the course of events. During the proceedings a medical report was produced, documentation containing a hundred and eighty five pages was gathered and twenty two witnesses were heard, including the applicant, the members of his family and police officers (see paragraphs 12 and 33 above).

44. Subsequently, the prosecution decided not to charge the policemen and to discontinue the investigation because of the lack of unequivocal evidence of the officers' guilt. The investigation of the district prosecutor was completed on 15 April 2004 - i.e. nine months after the impugned events and only four months after the applicant's grandmother's request for criminal proceedings to be instituted against the police officers – a period which cannot be considered excessive, especially given the number of procedural acts carried out by the authorities (see paragraphs 11 and 12 above; also see, by contrast, *Labita v. Italy* [GC], no. 26772/95, § 33, ECHR 2000-IV where only photographs of the alleged perpetrators had been taken during the period of fourteen months).

45. Furthermore, the applicant's family had the subsequent opportunity to have the decision of the district prosecutor reviewed before the court. The applicant's father and grandmother complained that the circumstances of the case had not been thoroughly examined. They alleged a number of shortcomings of the relevant proceedings (see paragraph 15 above). The District Court found their appeal ill-founded and upheld the prosecutor's

decision. The fact that the appeal was unsuccessful cannot be considered pertinent. There is no evidence that the prosecution should have taken any other steps in order to establish the facts alleged by the applicant. The Court considers that the procedural shortcomings relied on by the applicant's family were not crucial for establishing the responsibility of the police officers. By way of example, as regards the applicant's allegations concerning the number of bullets still remaining in the walls of his house the Court notes that this circumstance has not been confirmed by the domestic authorities. What is more, the request for institution of investigation into the alleged abuse of power by the police officers had been lodged about six months after the events in question (see paragraph 21 above). As regards the distance from which the shot was fired, it was examined and established in the proceedings before the Ombudsman, who, in fact, had conducted additional examination of the circumstances of the present case (see paragraph 21 above).

46. The Court further notes that the circumstances of the present case were examined independently in another set of proceedings, namely in the investigation against the applicant. In that case too the District Prosecutor had to establish the circumstances of the case. She ordered three expert reports; from a psychologist and two psychiatrists, obtained evidence including photographic material and heard fourteen witnesses including the applicant and members of his family, as well as all policemen who had participated in the intervention. The investigation was discontinued due to the applicant's mental state (see paragraph 23 above).

47. The case was also examined by the police, which, in its internal investigatory report, confirmed the applicant's aggressive and dangerous behaviour and explained the circumstances in which the shot was fired at the applicant (see paragraph 24 above).

48. The Court concludes that the investigation of the applicant's allegations of ill-treatment was thorough and effective and that the domestic authorities managed to examine and clarify all relevant circumstances of the present case. There has thus been no breach of Article 3 of the Convention in this respect.

49. As regards the complaint under Article 2 of the Convention the Court considers that in the light of the conclusion which it reached in respect of the complaint under Article 3 it is not necessary to examine separately the complaint under Article 2.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The applicant further complained under Article 2 of the Convention that his life had been in danger during the police intervention. He also claimed a violation of Article 5 § 1 (e) of the Convention, stating that other means than firing with live ammunition could be used to immobilise a

mentally ill person. He further alleged a breach of Article 8 of the Convention, submitting that part of his house had been demolished as a result of the police intervention. Finally he complained under Article 13 of the Convention that his appeals had not been effective because the domestic authorities had failed to thoroughly examine the course of the police intervention and under Article 17, without further explanation.

51. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that there is nothing in the case file which would disclose a violation of Articles 5 § 1 (e), 13 or 8 of the Convention. It follows that this part of the application must be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 2 and 3 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention.
3. *Holds* that there is no need to examine the application separately under Article 2 of the Convention.

Done in English, and notified in writing on 1 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President