



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

FOURTH SECTION

CASE OF KARBOWNICZEK v. POLAND

(Application no. 22339/08)

JUDGMENT

STRASBOURG

27 September 2011

FINAL

27/12/2011

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

In the case of Karbowniczek v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

George Nicolaou,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 6 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 22339/08) 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 Jarosław Karbowniczek (“the applicant”), on 28 April 2008.

2. 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, a violation of Article 3 of the Convention on account of ill-treatment by the police.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Wałbrzych.

A. The applicant’s detention and criminal proceedings against him

6. On 27 July 2005 the applicant was arrested by the police on suspicion of having committed battery, uttered threats and intimidated a witness.

7. On 28 July 2005 the Wałbrzych District Court (*Sąd Rejonowy*) decided to remand the applicant in custody. The court relied on a reasonable suspicion that the applicant had committed the offences in question and the high probability that a heavy sentence would be imposed on him. The court further considered that there was a risk that the applicant might interfere with the course of the proceedings and bring pressure to bear on witnesses, particularly in the light of the fact that he had previous convictions.

8. On 27 October 2005 the applicant's detention was extended. The court relied on the grounds given previously. The applicant's appeal against this decision was dismissed on 3 November 2005.

9. On 23 December 2005 the District Court further extended the pre-trial detention in respect of the applicant and his two co-accused, considering it necessary in order to ensure the proper course of the proceedings. An appeal by the applicant was dismissed on 5 January 2006.

10. On 9 March 2006 the applicant and the two co-accused were indicted before the Wałbrzych District Court.

11. On 21 March 19 June, 12 September and 7 December 2006 the trial court further extended the applicant's detention, finding that the original grounds for it remained valid. The court also considered that there was a risk that the accused would interfere with the proper course of the proceedings.

12. At a hearing held on 2 March 2007 the Wałbrzych District Court extended the applicant's detention, reiterating the grounds invoked previously.

13. The applicant appealed against this decision.

14. On 21 March 2007 the Świdnica Regional Court (*Sąd Okręgowy*) dismissed the appeal. The court noted that the applicant had already "tried to influence the course of the proceedings", had tried to abscond while being transported to the court and that he had already been convicted of offences similar to those with which he was charged in the present set of proceedings. The court also considered that the applicant might try to influence the testimony of his sister, who was accused in the same proceedings but who was not detained. The court concluded that detention on remand was the only preventive measure capable of ensuring the proper course of the proceedings.

15. Subsequently, on 30 May 2007, the applicant's detention was extended on the grounds given previously.

16. Between 22 June 2006 and 3 July 2007 the applicant was serving a prison sentence imposed on him in a different set of proceedings.

17. On 3 July 2007 the Wałbrzych District Court convicted the applicant and sentenced him to eight years' imprisonment. Together with two accomplices, the applicant was found guilty of, *inter alia*, forgery, battery, robbery and uttering threats. However he was not charged or convicted of membership of an organised criminal group.

18. The applicant lodged an appeal against the judgment.

19. On 21 December 2007 the Świdnica Regional Court quashed the first-instance judgment and remitted the case. On the same day the court extended the applicant's detention, finding that the grounds previously given remained valid.

20. On 25 June 2008 the applicant's detention was further extended. An appeal by the applicant against that decision was dismissed on 10 July 2008.

21. On 25 July 2008 the Wałbrzych District Court extended the applicant's pre-trial detention; however, the court decided that the applicant could be released, under police supervision, on bail in the amount of 10,000 Polish zlotys (PLN) (approximately EUR 3,000 at that time). The court observed that the majority of the witnesses had been heard, so the risk that the applicant would try to bring pressure to bear on them was no longer justified.

22. The applicant submitted that he had no means to pay the bail.

23. On 14 August 2008 the applicant was released from detention although he had failed to pay the full sum specified in the bail decision.

24. On 18 October 2010 the Wałbrzych District Court convicted the applicant and sentenced him to six years' imprisonment.

25. On 22 March 2011 the Świdnica Regional Court partly amended and partly quashed the judgment and remitted the case. The applicant was sentenced to seven years' imprisonment.

26. On 19 April 2011 the applicant's legal-aid counsel refused to lodge a cassation appeal against the judgment.

B. The events of 21 November 2006 as presented by the applicant

27. On 21 November 2006 the applicant was transferred from the Detention Centre to the Wałbrzych District Court to attend a hearing. He was escorted by police officers, who left the door of the police van open thereby enabling him to escape. After several minutes he was stopped and brutally beaten up by the police officers. The applicant was brought back to the court building where he was handcuffed to a radiator, stripped naked, and again hit, kicked, strangled and hit with a gun by the police officers.

28. The applicant was then brought back to the courtroom, where he complained to the presiding judge about what had happened to him. An ambulance was called and the applicant was taken to a hospital where he was examined by a doctor. A medical certificate (which is hardly legible) issued by a doctor from the emergency room of the Wałbrzych Hospital, confirm abrasions to the applicant's head.

29. Upon his return to the court building the applicant was again beaten up by police officers. Afterwards, he was transferred back to the Detention Centre, where he requested an examination by a doctor.

The following is an extract from a note in the “Health book of a detainee” (*Książka Zdrowia Osadzonego*):

“21.11. 2006

[The applicant] submits that he was arrested by force by police officers. On his body can be seen: skin abrasion on the left side of his forehead measuring 5 cm by 3 cm, an abrasion on the lower part of his chin 3 cm long, two scratches on the right shoulder blade 10 cm long, a scratch on the right arm 6 cm long, an abrasion on the left side of his chest 15 cm long, abrasions on the knee, above the ankle, a blue mark under the right eye, a red mark on the neck and right knee.”

30. A note in the book dated 22 November 2006 confirmed that a forensic medical examination had been carried out confirming the injuries as previously described.

C. The investigation concerning the applicant’s alleged ill-treatment and facts as established by the domestic authorities

31. On 12 February 2007 the Wałbrzych District Prosecutor opened an investigation into the applicant’s allegations.

32. On 12 June 2007 an expert medical opinion was prepared.

33. On 15 June 2007 the Wałbrzych District Prosecutor decided to discontinue the investigation, finding that there was insufficient evidence that an offence had been committed. In the course of the investigation an expert was appointed. The testimony of T.G., who had been transported with the applicant to the court and was later present in the court building, was also heard. T.G. testified that he could not see what happened when the applicant had run out of the van, but he saw him later in the court, when waiting for his hearing. T.G. testified that he heard the applicant screaming in pain, as if he had been beaten.

The prosecutor gave the following reasons for her decision:

“In the course of the investigation the following course of events was established.

On 21 November 2006 [the police officers P.G., D.P. and R.G.] escorted [the applicant] from the Wałbrzych Police Station to the Wałbrzych District Court...

Next to the building of the Wałbrzych District Court [the applicant], having removed his hand from the handcuffs, pushed open the van door and ran off in the direction of [other] buildings. The action undertaken [by the police officers] led to the arrest of the applicant, who took fright at a warning shot fired by P.G. and lay down on the ground. He was handcuffed and led to the van and brought to the detainees’ room of the Wałbrzych District Court. P.G. and R.G. took part in the pursuit of [the applicant]. [The third police officer] stayed in the van to watch over the other detainee. For their own safety, the police officers searched the applicant and confiscated money and other small items from him. The applicant was alone in the detainees’ room.

After having been searched, the applicant was handcuffed. At that moment he started hitting his head against the floor and walls and shouting that the police officers had beaten him up and that it was their fault. Since P.G. had left for Wałbrzych Police Station, in order to transmit the information about [the applicant's] attempt to flee, the remaining [police officers], seeing [the applicant's] behaviour, laid him on the floor and held his hands and legs to prevent him from injuring himself further. During that time the applicant tried to free himself, rubbed his head against the floor and shouted at the police officers that he would inform the prosecuting authorities of the fact that they had beaten him up. He also threatened to kill them. After about 30 minutes an ambulance came to give him something to calm him down, but the doctor decided to take [the applicant] to the hospital.

[Three police officers] went with [the applicant] to the hospital. In the hospital the applicant underwent the necessary examinations; then, since he was allowed to participate in the trial, the police officers took him to the Wałbrzych District Court. The applicant was then transported to the prison because the hearing had been adjourned.

The injuries sustained by [the applicant] on 21 November 2006 qualified as injuries that could happen in the circumstances described by both the victim and the police officers. However, the court expert established categorically that they could not have happened as a consequence of repeated kicking or beating with substantial force, as described by the victim.

On the basis of all the material collected in the case it can be unambiguously established that there is not enough evidence substantiating the allegations that the police officers escorting [the applicant] on 21 November 2006 committed an offence. It should be said that the possibility that the applicant was beaten up by the police officers cannot be totally ruled out. However, the evidence collected lends credence to the version of events given by the police, which differs completely from the one given by [the applicant] because there were no other witnesses to the event who could confirm [the applicant's] version, and it is impossible to identify any such witnesses.

T.G., who was transported with the applicant, does not have any information concerning the incident, as from the moment the applicant escaped, he lost all contact with him.

As a side note it is to be pointed out that, judging from life experience, it is rather unlikely that the police officers, after having informed their superiors about the applicant's running off, beat him up and subsequently, having brought the applicant from the hospital back to the court building and knowing that D.G., their supervisor, was already present in the court building, ill-treated the applicant yet again.

Since the version of the events given by the applicant was not confirmed by the evidence collected, his statements in this respect should be considered as untrue. It is therefore justified to discontinue the proceedings under Article 17 § 1 of the Code of Criminal Procedure on the grounds that there is no evidence sufficiently justifying the suspicion that an offence was committed."

34. The applicant lodged an appeal against that decision.

35. On 15 June 2007 the prosecutor requested an expert to enlarge on [his] opinion by answering the question whether the injuries described

below could have occurred in the circumstances as described by the police officers. The prosecutor stated as follows:

“On 12 June 2007 an expert opinion in forensic medicine was prepared which established that some of the injuries [sustained by the applicant], in particular an abrasion on the forehead, a bruise on the mandible, bruises on the shoulder blade, on the chest, and on the right thigh could be the result of hitting or kicking with minor force. When preparing the opinion, the expert was unaware of the testimonies given by the witnesses D.P. and R.G., the police officers...”

36. On 31 January 2008 the Wałbrzych District Court dismissed the appeal. The court entirely agreed with the prosecutor’s findings after having allowed the new evidence requested by the applicant in his appeal, namely the testimony of K.K., a witness who was present at the Wałbrzych District Court on 21 November 2006 and who allegedly saw the applicant being beaten by the police officers, and the additional testimony of T.G., who was transported with the applicant to a court hearing and was likewise present in the court building at the time the applicant was ill-treated.

K.K. submitted that he saw the applicant when he had been waiting for a hearing in the holding room at the court building. The holding room led to two cells. K.K. further submitted that there had been another woman in the room, who had also been transported to the court building for a hearing. According to K.K., the applicant had been placed in one of the cells; the door to the cell was left open. He could see the applicant, partly undressed (without a shirt and trousers) and handcuffed to a radiator. He saw the police officers entering the cell and insulting the applicant. He further submitted that, when leaning out, he had seen one of the police officers kicking the applicant. Subsequently, K.K. stated that he had seen some two to four police officers kicking the applicant.

In his additional testimony, T.G. submitted that at the court building, through a peep-hole in the door of his cell, he could see the applicant being pulled about by the police officers. He could not see whether the applicant had been beaten, but he heard him calling out in pain, which he associated with the applicant having been hit.

37. The court did not explain why K.K.’s testimony and the additional testimony of T.G. had been disregarded. The court did not refer either to the alleged stripping of the applicant. However, the court mentioned that the evidence obtained by the prosecutor was sufficient to establish the circumstances of the case. The court also took into account the supplementary expert opinion and concluded:

“[From the supplementary expert opinion upholding the conclusions of the original opinion, and after having examined other evidence requested by the applicant] it is clear that although the applicant sustained injuries, they do not indicate that he was repeatedly hit and kicked, and could have occurred when the applicant forcibly pushed the police van door open, fell, or lay down after fleeing, or when he struggled with the police officers while in a lying position and was held down by force; the

abrasion on the forehead could have happened when he was rubbing his head against the ground, and [all these injuries] were slight and minor in nature.

In the light of the above and after all possible investigative actions have been carried out, it is impossible in the circumstances to establish the existence of evidence to prove that the offence was committed. Having analysed the material collected in the case, the court agreed with the prosecutor's findings in full and decided as in the operative part."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Use of force by the police

38. The regulations on the 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 a police order is not obeyed, such measures can be resorted to only in so far as they correspond to the requirements of the particular situation and in so far as they are necessary to obtain compliance with that order.

39. 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 and 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.

B. As regards detention on remand

40. The relevant domestic law and practice concerning the imposition of detention on remand (*tymczasowe aresztowanie*), the grounds for its extension, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) are set out in the Court's judgments in the cases of *Gólek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006 and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

41. For the latest amendments of the provisions concerning detention on remand, see the Court's judgment in the case of *Kauczor v. Poland*, no. 45219/06, § 25-33, 3 February 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained under Article 3 of the Convention that he had been kicked and beaten up by police officers while being transported to the Wałbrzych District Court to attend a hearing and, afterwards, in the court building itself.

43. Article 3 of the Convention provides as follows:

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

A. Admissibility

44. The Court notes that this complaint 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. Alleged ill-treatment by the police

(a) The applicant's submissions

45. The applicant submitted in general terms that Article 3 had been violated by the police officers who had treated him brutally on the day when he was transported to attend the hearing in the District Court.

(b) The Government's submissions

46. The Government submitted that it was undisputed that, on 21 November 2006, the applicant had attempted to escape from a police vehicle. They considered that the use of force had been made necessary by the applicant's own conduct; the applicant must have been aware that his attempt to escape would have led the police to react. According to the Government, the injuries sustained by the applicant might have occurred when the applicant forcibly opened the door of the police van and when the applicant fell to the ground after one of the police officers had fired a warning shot. They considered that the measures undertaken by the police officers following the applicant's attempt to escape had been lawful,

proportionate and had not exceeded the minimum level of severity required to fall within the ambit of Article 3 of the Convention.

47. As regards the course of events in the detainees' room in the building of the Wałbrzych District Court, the Government submitted that the applicant's injuries had been largely self-inflicted. The applicant had behaved aggressively and the police officers had had to react by using physical force to stop him from hurting himself. The Government described as completely unreliable the applicant's submissions that he had been beaten up by the police officers in the detainees' room. According to the Government, this was impossible especially since the police officers' supervisor, D.G., had been present.

48. The Government produced a copy of the minutes of the hearing of 21 November 2006 from which it emerges that the applicant, having been brought back from hospital to the court building, declared that he felt well enough to participate in the hearing. However, the court decided to adjourn the hearing "due to the applicant's emotional state".

49. Finally, the Government submitted that the medical experts who had examined the applicant's injuries ruled out the possibility that the injuries had been caused by kicking and beating.

50. The Government concluded that the facts of the case did not disclose a violation of Article 3 of the Convention.

(c) The Court's assessment

51. The Court reiterates that where an individual is taken into police custody in good health and is found to be injured on 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, among other authorities, *Selmouni v. France* [GC], cited above, § 87). The same principle applies to alleged ill-treatment resulting in injury which takes place in the course of an applicant's arrest (see *Klaas v. Germany*, 22 September 1993, §§ 23-24, Series A no. 269, and *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII).

52. According to the Court's case-law, Article 3 does not prohibit the use of force for the purposes of effecting an arrest. However, such force may be used only if indispensable and must not be excessive (see, among others, *Rehbock*, cited above; *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001; and *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). 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).

53. The Court further recalls that Article 3 of the Convention prohibits, in absolute terms, torture and inhuman or degrading treatment. However, 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 ill-treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Treatment has been held by the Court to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and to be “degrading” because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a legitimate form of given treatment or punishment. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Labita v. Italy* [GC], no. 26772/95, 6.4.2000, §§ 119-120, ECHR 2000-IV). Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (*loc. cit.*, § 121).

54. The Court observes that the parties have not disputed that, on 21 November 2006, the applicant absconded from the police van while being transported to the Wałbrzych District Court. Two of the three police officers who escorted the applicant started chasing him. One of them fired a warning shot in the air and the applicant fell to the ground. He was then apprehended by the police officers and handcuffed. The applicant submitted that he had been beaten up and kicked by the police officers immediately afterwards. The Government submitted in turn that the applicant had been transferred to the detainees’ room of the Wałbrzych District Court. The parties likewise disagree as regards the course of events in the detention room. The applicant submitted that he had again been beaten up and kicked. According to the Government, the applicant had behaved aggressively and tried to injure himself and the intervention of the police officers had been indispensable. The Government’s version was confirmed by the domestic authorities in their investigation and by the subsequent judicial proceedings.

55. While the Court is not bound by the findings of the domestic authorities as to facts alleged to be in breach of the Convention, on the basis of the parties’ observations and the material in its possession, it finds it impossible to establish whether any ill-treatment occurred in the street immediately after the applicant’s apprehension and, subsequently, in the court building.

56. The Court observes that the applicant was apprehended in the course of an operation giving rise to unexpected developments to which the police

were called upon to react. The Court considers that the applicant's apprehension must have resulted in the applicant having sustained some minor injuries. The Court further considers that the applicant must have been aware that the police would chase him and try to apprehend him and that physical force might have to be used against him if he resisted arrest.

57. The Court notes in addition that the applicant's injuries were not very serious. It further observes that although the first expert's report suggested that they could not have been caused by repeated kicking and beating with substantial force the second report stated that they could have resulted from kicking and beating with minor force (see paragraphs 33 and 35 above). Furthermore, the applicant's wounds were dressed in the hospital and he was transported back to the court. As reported by the prosecutor in her decision of 15 June 2007 (see paragraph 33 above) and confirmed in the minutes of the hearing of 21 November 2006 (see paragraph 48 above) after the events on that day the applicant was able to participate in the hearing, which was adjourned because the court considered that the applicant should not be heard in a state of emotional distress.

58. Taking into consideration the findings made in the course of the 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.

2. Adequacy of the investigation

(a) The applicant's submissions

59. The applicant did not refer to this matter.

(b) The Government's submissions

60. The Government contended that the investigation and judicial proceedings in the present case had complied with Article 3 requirements. They argued that the proceedings had been prompt and thorough. There was no other evidence that the prosecuting authorities should have taken into account in order to establish the facts of the alleged ill-treatment. The circumstances of the case had been examined by the Wałbrzych District Prosecutor and, subsequently, in the course of independent judicial proceedings conducted by the Wałbrzych District Court. All the relevant

witnesses had been heard and a forensic report and a supplementary report had been commissioned.

(c) The Court's assessment

61. 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).

62. 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).

63. In the present case, a number of persons were questioned, including T.G., who, on 21 November 2006, was transported together with the applicant to the Wałbrzych District Court and was present in the court building at the time the applicant was allegedly beaten-up, the police officers involved and D.G. - the police officers' supervisor, who was likewise present in the court building at the time of the alleged ill-treatment. Furthermore, expert opinions as well as a supplementary expert opinion were produced in the context of the investigation into the applicant's allegations of ill-treatment on 21 November 2006 (see paragraph 35 above). Also, at the request of the applicant submitted in his appeal against the decision of 15 June 2008, K.K., a witness who allegedly saw the applicant being ill-treated in the court building, was heard. It was apparent though that this evidence did not reveal any new relevant circumstances, because the District Court considered on the basis of the investigation carried out by the prosecutor, that the facts and circumstances of the case had been properly established and examined (see paragraph 37 above).

64. The prosecution decided not to charge the policemen and to discontinue the investigation because of the lack of unequivocal evidence of the officers' guilt. It is true that the investigation of the district prosecutor

did not exceed a reasonable time: it was completed on 15 June 2007 - i.e. some seven months after the impugned events and four months after the opening of the criminal proceedings (see paragraphs 34-37 above; see also, by contrast, the above-mentioned *Labita* case, *loc. cit.*, § 133 where only photographs of the alleged perpetrators had been taken during a period of fourteen months). The Court is not, however, persuaded that this investigation was sufficiently thorough and effective to meet the requirements of Article 3.

65. The Court finds it particularly unsatisfactory that the domestic court failed to give reasons as to why it had not found the testimonies given by K.K. and T.G. to be credible. Furthermore, it failed to explain convincingly the reasons for accepting the version of the events submitted by the police officers involved. In particular, the Court does not find convincing the argument that the police officers would not have beaten the applicant up in the court building, knowing that their superiors had been informed about the applicant's escape and that their supervisor D. G. - was present in the building. The prosecution authorities and the court embraced the statements of the police officers without taking any note of the fact that they had obviously had an interest in the outcome of the case and in diminishing their responsibility. In that respect the Court would underline the importance of critical assessment of police officers' testimonies (see *Dzwonkowski v. Poland*, no. 46702/99, § 65, 12 April 2007).

66. The Court further notes that in the light of the expert opinions, in particular according to the first expert opinion, the injuries sustained by the applicant qualified as injuries that could have occurred in the circumstances described by both the victim and the police officers. The court expert had categorically ruled out any possibility that the injuries happened as a consequence of repeated kicking or beating with substantial force – that is in the manner the applicant had alleged to have been ill-treated by the police officers. However, the authorities did not to give any plausible explanation as to how the applicant could have sustained his injuries in the circumstances described by him, if they were not caused by some form of ill-treatment by the authorities.

67. The Court also notes that according to K.K., another woman, a potential witness, was present in the court building at the time of the alleged ill-treatment of the applicant. It appears that no effort was ever made to confirm K.K.'s submission, or to identify the woman.

68. Regard being had to the above findings, the Court concludes that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

69. The applicant complained that the length of his pre-trial detention had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

70. The Government contested that argument.

A. Period to be taken into consideration

71. The applicant's detention started on 27 July 2005, when he was arrested on suspicion of having committed battery, uttered threats and intimidated a witness. Between 22 June 2006 and 3 July 2007 the applicant was serving a prison sentence imposed on him in another set of proceedings (see paragraph 16 above). Subsequently, on 3 July 2007 the Wałbrzych District Court convicted the applicant and sentenced him to eight years' imprisonment. On 21 December 2007 the Świdnica Regional Court quashed the first-instance judgment and remitted the case. Thus, between 22 June 2006 and 21 December 2007 the applicant was “convicted by a competent court” within the meaning of Article 5 § 1 (a) of the Convention. The applicant was released from detention on 14 August 2008.

72. The term between 22 June 2006 and 21 December 2007, being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant's detention pending trial for the purposes of Article 5 § 3.

73. Accordingly, the period to be taken into consideration amounts to one year, six months and nineteen days.

B. The parties' submissions

1. The applicant

74. The applicant submitted that the length of his detention had clearly been unreasonable and that it could not be justified on the grounds relied on by the authorities.

2. The Government

75. The Government submitted that the length of the applicant's detention had been justified throughout its entire period. They relied on the gravity of the charges against the applicant, on the fact that the applicant already had a criminal record and on the risk that he might abscond.

C. The Court's assessment

76. The Court observes that the general principles regarding the right “to trial within a reasonable time or to release pending trial”, as guaranteed by Article 5 § 3 of the Convention, have been stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 et seq, ECHR 2000-XI).

77. In their decisions regarding the applicant's detention the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the severity of the penalty to which he was liable; (3) the need to secure the proper conduct of the proceedings; (4) the risk that the applicant, having previous convictions, might tamper with the evidence and the risk that he might abscond.

78. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention.

79. Furthermore, according to the authorities, the serious nature of the offences in question and the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant would obstruct the proceedings. However, the Court would reiterate that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the gravity of the charges cannot by itself justify long periods of detention on remand (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

80. The Court would reiterate that, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other ground adduced by the courts – namely, the risk of the applicant's going into hiding – was “relevant” and “sufficient” (see, *Kudła* cited above, § 111).

In this connection the Court notes that on 21 November 2006 the applicant made an attempt to abscond while being transported to the court hearing. The Court considers that, from that date on, this fact, taken together with the other grounds for the applicant's detention relied on by the domestic authorities, especially the risk of tampering with evidence resulting from the applicant's previous criminal convictions, constituted grounds for a reasonable fear that the applicant might try to abscond again.

81. The Court also notes that, on 25 July 2008, the domestic court, having examined the reasons for the applicant's continued detention, found some of them no longer valid and considered that the applicant could be released on bail (see paragraph 21 above). The applicant was released three weeks later although he had not paid the amount ordered by the court by way of bail.

82. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were "relevant" and "sufficient" to justify holding him in custody for the entire relevant period.

83. The Court has considered whether the authorities, when examining the case, showed the diligence required in cases in which the accused is detained. It is to be noted that the applicant was indicted on 9 March 2006 which is some seven months after his arrest. The first-instance judgment was given on 3 July 2007 – that is sixteen months after the indictment. The appellate proceedings lasted about five months (see paragraph 19 above). The Court notes that the proceedings involved three co-accused and a number of witnesses had to be heard. It should not be overlooked that, while an accused person in detention is entitled to have his case given priority and conducted with particular expedition, this must not stand in the way of the efforts of the judges to clarify fully the facts in issue, to provide both the defence and the prosecution with all necessary facilities for putting forward their evidence and stating their case and to give judgment only after careful reflection on whether the offences were in fact committed and on the sentence to be imposed.

84. The Court concludes that the Polish authorities showed the diligence required in cases concerning a detained person.

85. 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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

86. The applicant further complained under Article 6 § 1 of a violation of his right to have his case heard within a reasonable time and under Article 6 § 2 of a breach of the principle of presumption of innocence. Lastly, the applicant invoked Article 13 of the Convention, maintaining that his right to an effective remedy had been violated.

87. As regards the complaints concerning the excessive length of the criminal proceedings the Court notes that, by virtue of section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*), it is open to persons such as the applicant in the present case to lodge a complaint about the unreasonable length of the proceedings with the relevant domestic court. The applicant failed to make use of that domestic remedy.

88. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

89. The Court has examined the remaining complaints. However, having regard to all the material in its possession, it finds that the applicant has failed to substantiate them. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. The applicant claimed 10,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

92. The Government considered this sum unreasonable.

93. The Court considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head.

B. Costs and expenses

94. The applicant did not specify his claim for costs and expenses.

C. Default interest

95. 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 concerning 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* unanimously
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President