



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

FOURTH SECTION

CASE OF H.D. v. POLAND

(Application no. 33310/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

20 June 2002

This judgment is final but it may be subject to editorial revision.

In the case of H.D. v. Poland,

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

Mr G. RESS, *President*,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs N. VAJIĆ,

Mr M. PELLONPÄÄ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 May 2002,

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

PROCEDURE

1. The case originated in an application (no. 33310/96) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mrs H.D. (“the applicant”), on 4 October 1995.

2. The applicant, who had been granted legal aid, was represented by Mr Hermeliński, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr K. Drzewicki of the Ministry of Foreign Affairs, assisted by Ms M. Wąsek-Wiaderek and Ms U. Wieczorek, advisers.

3. The applicant complained, *inter alia*, that the treatment to which she had been subjected during her arrest by the police and her subsequent detention in the Warsaw Sobering-up Centre had been inhuman and degrading. In that context, she alleged a breach of Article 3 of the Convention. She also alleged a violation of Article 5 § 1 in that her detention had been unlawful.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 7 June 2001, following a hearing on the admissibility and merits (Rule 54 § 4), the Chamber declared the applicant's complaint

under Article 3 admissible. The complaint under Article 5 § 1 was declared inadmissible on the same date.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within former Section IV.

8. On 10 April 2002, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 25 April and 30 May 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

9. Since 1971 the applicant has been suffering from diabetes. She is on insulin.

10. On 19 August 1994 the applicant was arrested by policemen from Warsaw-East Railway Police Station (*Komisariat Kolejowy Policji*) and then taken to the Warsaw Sobering-up Centre (*Izba Wyrzeźwień*).

The facts surrounding the applicant's arrest and her stay in the sobering-up centre were in dispute.

A. Facts as supplied by the applicant

11. The applicant submitted that, on 19 August 1994, she had taken the 3.36 p.m. train from Łowicz to Warsaw-East. She fell asleep and then fell into a hypoglycaemic coma because she had taken her last injection of insulin at 6 a.m. She further claimed that despite her state she could recall that during and after her arrest she had been beaten by policemen, kicked on her legs and slapped on the face. She remembered persons in police uniforms but was unable to specify who of them had beaten her up or to depict those persons.

12. The applicant confirmed that the policemen had later brought her to the Warsaw Sobering-up centre.

Upon her arrival at the sobering-up centre, she immediately reported to W.Z., a doctor who admitted her to that centre, that she had been brutally assaulted by the policemen, that she suffered from diabetes and that she needed medical care. She maintained that the doctor, when she showed him her bodily injuries, commented: "They should have beaten you up even more badly." He disregarded her. When she mentioned that she suffered from diabetes, he did not listen to her and refused to talk to her. The staff of the centre then tied her to a bed.

13. The applicant submitted that she had asked that a breath test be carried out and that that test had been done; however, the staff of the centre refused to inform her of the result, saying: "This is none of your business." After the test she was again tied to the bed. It was as late as 19 May 1995 when she eventually learnt from the investigating prosecutor that the breath test had shown 1.70 promille of alcohol in her blood.

14. In the applicant's submission, she had twice requested the doctor to give her an insulin injection: on 19 August 1994 at about 11.00 p.m. and again on 20 August 1994 at about 6 a.m. He promised to give her medicines before her release, but he did not do so. She was released on 20 August 1994 at 9.00 a.m.

B. Facts as supplied by the Government

15. The Government, in their version of the relevant facts, relied on evidence heard during the investigation from the policemen involved in the applicant's arrest, namely, D.R. and M.F. (who arrested her on the train) and E.M. (who did a body search of the applicant at the police station).

16. D.R. and M.F. asserted that, in response to the applicant's resistance, they had disabled her.

When she started to behave more aggressively and tried to make it impossible for them to escort her, D.R. hit the applicant on her legs two or three times with a truncheon. The applicant was aggressive and used vulgar expressions. That confirmed their suspicion that she was drunk.

17. At the police station, when E.M. entered the cell in which the applicant was kept, she saw the applicant straining and struggling with the policemen who held her. She also kicked them. In E.M.'s words, "she looked as a person being in a state of madness". Given the applicant's behaviour, the policemen used physical force against her by seizing her hands and legs, and holding her on the floor in order to enable E.M. to do a body search of the applicant. Since all the policemen who dealt with the applicant were convinced that she was in a state of alcoholic intoxication, she was brought to the Warsaw Sobering-up Centre. The policemen learnt that the applicant was a diabetic only as late as during the investigation.

18. According to the Government, the applicant was admitted to the centre on 19 August 1994 at about 6 p.m. A doctor who examined her ascertained that she was intoxicated and that she had bruises on her thighs and buttocks inflicted by a truncheon. The doctor described the applicant as aggressive and vulgar.

19. The document recording the applicant's stay in the sobering-up centre indicated that at 10.30 p.m. the applicant claimed that she had not drunk any alcohol and that she suffered from diabetes. At that time she underwent a breath test which showed 1.70 promille of alcohol in her blood. She did not tell the doctors that she was on insulin. Nor did she have on her

the so-called “certificate of a person suffering from diabetes” (*książeczka chorego na cukrzycę*). None of the doctors said that the policemen should have beaten her up even more badly.

C. Criminal proceedings instituted at the applicant's request

20. On 23 August 1994 the applicant requested the Warsaw District Prosecutor (*Prokurator Rejonowy*) to institute criminal proceedings against the policemen who had beaten her up and then detained in the Warsaw Sobering-up Centre. It appears that on that day she presented a report made by a forensic expert on 21 August 1994 and a medical certificate issued by Skierniewice District Hospital.

21. The forensic report stated that the applicant had had six big blue bruises on her lower limbs.

22. The certificate of 21 August 1994 confirmed that the applicant had been given medical assistance on that day and that she had had injuries to both legs with blood extravasations on both thighs and that she had suffered from pains in the right part of the chest and paraspinal region.

23. On 16 September 1994 the applicant was summoned before B.S.F., a prosecutor from the Warsaw District Prosecutor's Office (*Prokuratura Rejonowa*), in order to make a formal notification of the commission of an offence (*zawiadomienie o popełnieniu przestępstwa*).

24. On 17 October 1994 the Warsaw Praga-Północ District Prosecutor instituted an investigation “concerning abuse of their powers by officers from Warsaw-East Railway Police Station while carrying out their duties, resulting in infringement of [the applicant's] personal rights on 19 August 1994” and on suspicion “that the offence defined in section 142 of the Police Act of 1990 had been committed against [the applicant]”.

25. On 22 December 1994 and on 5 January 1995 the investigating prosecutor heard evidence from D.R. and M.F.

26. On 6 January 1995 the prosecutor discontinued the investigation, finding that no offence had been committed. He considered that the actions taken by the policemen against the applicant had been entirely legitimate. They had good reasons to believe that she had been intoxicated and they had taken correct actions, without abusing their powers. Furthermore, referring to the evidence gathered in the course of the investigation, the prosecutor stressed that the injuries sustained by the applicant had resulted from her aggressive behaviour and the breaking of her resistance by the policemen.

27. The applicant appealed against that decision to the Warsaw Regional Prosecutor (*Prokurator Wojewódzki*). She maintained, among other things, that she had at the material time been in a hypoglycaemic coma, that her detention had been unlawful and that the policemen had severely assaulted her, in particular by beating her and kicking her in the legs. She referred, in particular, to the forensic report of 21 August 1994, listing her injuries.

28. On 28 April 1995 the Warsaw Regional Prosecutor quashed the contested decision and ordered further investigation, holding, *inter alia*, that:

“It is beyond any question that [the applicant] was brutally beaten up and kicked by the police officers and that, as a result, she sustained bodily injuries within the meaning of Article 156 § 2 of the Criminal Code. ...”

29. On 16 May 1995 the investigating prosecutor heard evidence from E.M. On 19 May 1995 he again heard evidence from the applicant. He also ordered that medical evidence be obtained from M.P., a forensic expert.

30. The expert submitted his report on 22 May 1995. He concluded, *inter alia*, that:

“... the bodily injuries suffered by [the applicant] resulted in a health disorder within the meaning of Article 156 § 2 of the Criminal Code. They doubtless arose in the manner described by the victim and witness. There was indeed a cause-and-effect relationship between those injuries and subsequent health disorders.”

31. On 23, 24 and 25 May 1995 the prosecutor heard evidence from W.Z. and W.B., doctors from the sobering-up centre and from A.S., one of the policemen from the Warsaw East Railway Police Station who was on duty on 19 August 1994. They stated that, given the passage of time, they did not remember whether any incident involving an intoxicated woman had taken place on 19 August 1994.

32. On 30 May 1995 the Warsaw-Praga Północ District Prosecutor again discontinued the investigation, finding that no offence had been committed.

33. On 13 November 1995, upon the applicant's appeal, the Warsaw Regional Prosecutor upheld the decision of the prosecutor at first instance and the reasons therefor, stressing that the injuries sustained by the applicant could well have resulted from kicks and blows by fists or from hits by a truncheon which, in the Regional Prosecutor's opinion, did not support her version of the incident in question.

THE LAW

34. On 25 April 2002 the Court received the following declaration from the applicant:

“I note that the Government of Poland are prepared to pay me the sum of 10,000 Polish zlotys covering pecuniary and non-pecuniary damage and costs with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

I accept the proposal and waive any further claims against Poland in respect of the facts of this application. I declare that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and I have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment."

35. On 30 May 2002 the Court received from the Polish Government the following declaration:

"I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Poland offer to pay 10,000 Polish zlotys to Ms H.[...] D.[...]. This sum is to cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable within three months from the date of delivery of the judgment by the Court pursuant to the Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention."

36. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

37. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 20 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President