



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

FOURTH SECTION

CASE OF PIENIAK v. POLAND

(Application no. 19616/04)

JUDGMENT

STRASBOURG

24 February 2009

FINAL

24/05/2009

This judgment may be subject to editorial revision.

In the case of Pieniak 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,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 3 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 19616/04) 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 Jerzy Pieniak (“the applicant”), on 3 October 2003.

2. The applicant, who had been granted legal aid, was represented by Ms M. Wentlandt-Walkiewicz, a lawyer practising in Łódź. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz of the Ministry for Foreign Affairs.

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

4. On 11 January 2007 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 1966 and lives in Sieradz.

A. The alleged ill-treatment of the applicant

6. On 18 September 2001 the applicant was arrested on charges of rape. He was transported to the Łuków Police Station and detained for 48 hours. His detention was subsequently prolonged for a further 24 hours. Upon his arrival the applicant was examined by a doctor, Z.M., who found only slight superficial scratches, at least some of which could have been caused by a struggle with another person. In addition, these scratches must have occurred several hours earlier.

7. According to the applicant the police officers abused him verbally when interrogating him and punched him in the stomach, chest, shoulders, face and arms. The Government did not respond to these allegations.

8. On 19 September 2001 the applicant was brought to the prosecutor's office by two policemen, M.M and T.K. He was then questioned by the prosecutor. According to the applicant, he reported the alleged ill-treatment. The Government submitted that during the interview the prosecutor and the applicant were alone in the room. There was no note of the applicant's complaint in the minutes of the interrogation.

9. On the evening of the same day the applicant felt weak and complained of stomach pain. At the applicant's request, the police officer on duty called an ambulance. On arrival, the doctor, M.A., administered a painkiller to the applicant. She noted that the applicant had a small (2-3 cm) bruise on his chest. He also complained about pain in his chest, ribs and stomach.

10. On 21 September 2001 the applicant was brought before the Łuków District Court. The court ordered that the applicant be remanded in custody. According to the applicant, he again complained about the alleged ill-treatment. However, there is no note of the complaint in the minutes of the hearing.

11. On the same date M.M., a police officer from the Łuków Police Station, drew up an official report. The report reads as follows:

"On 18 September 2001 J.P. [the applicant] was arrested in Celiny Szlacheckie, Stanin commune, on charges of raping E.C. On his arrest he was examined by a surgeon, Z.M., who did not observe any marks on his body apart from scratches on his neck and the upper part of his chest.

On 19 September 2001 J.P was interrogated by the Łuków District Prosecutor. On the evening of that day he informed the police officer on duty in the Łuków Police Station, that he had been beaten by police officers. At his request the officer on duty called an ambulance and [he] was examined by a doctor.

Today, during the Łuków District Court's hearing regarding his detention, J.P. complained that he had been beaten by police officers while being questioned".

12. Later that day the applicant was admitted to the Siedlce Detention Centre. On arrival the applicant had visible injuries, and was asked

to explain their origin. He made a written note and stated that he had been subjected to ill-treatment at the police station. He noted that the police officers had ordered him to keep his arms above his head and when his arms began to shake they had hit him and told him that they “would treat his neurosis”. Lastly, he stressed that he would be able to recognise the officers in question.

13. On 24 September 2001 he was examined by a doctor, P.S. In so far as relevant, the doctor’s report read:

“Haematomas and bruises on both arms. Movement preserved. Haematomas and bruises on the left ribs. Bruises without oedema on the right eyelid. No changes to the eyeball.”

B. The investigation into the applicant’s allegations

14. On 4 October 2001, as a result of the applicant’s complaint in the Siedlce Detention Centre, the Police commandant of the Łuków District initiated an internal investigation.

15. On 19 October 2001 T.Z., head of the criminal section of the Łuków police, was heard. He confirmed that he had been informed of the applicant’s allegations and had seen the applicant’s bruises.

16. On 30 October 2001 the prosecutor maintained that he had not seen any visible injuries on the applicant and the applicant had not complained about ill-treatment during the interview on 19 September 2001.

17. The internal investigation was discontinued on 5 November 2001 on the ground that the applicant was unable to identify the perpetrators.

18. On 8 October 2002, during the hearing held in the course of the criminal proceedings against the applicant, he testified that he had been beaten by police officers on 19 September 2001 following the interrogation at the prosecutor’s office.

19. On 12 November 2002 the Łuków District Court convicted the applicant of rape. The judgment was upheld on appeal on a later unknown date.

20. On 16 December 2002 the applicant filed a complaint with the Łuków District Prosecutor about the actions taken by the police.

21. On 17 February 2003 the prosecutor instituted an investigation into the applicant’s allegations.

22. On 12 March 2003 the prosecutor discontinued the criminal proceedings into the applicant’s allegations. The prosecutor held that, according to the information in the case file, the applicant had not been interrogated by police officers. In addition, the applicant himself agreed that the scratch marks on his arms, neck and chest had occurred when he had cut down bushes on his land. Furthermore, it did not appear from the doctors’ reports (including the report drawn up by the doctor in the Siedlce detention

centre) that the applicant had been beaten. The prosecutor heard evidence from four police officers. They testified that they had not noticed whether the applicant had any abrasions. They also could not have ill-treated the applicant because they had never interrogated him. The prosecutor heard evidence from M.A – the doctor who had examined the applicant on 19 September 2001. She testified that she did not remember whether the applicant had any abrasions or injuries. She had only prescribed tranquillizers, as the applicant was suffering from neuralgia. The prosecutor stressed that there was insufficient evidence to conclude that the applicant had been beaten up by the police.

23. The applicant appealed against this decision. On an unknown date the Regional Prosecutor upheld the first-instance decision. The applicant filed an appeal with the Łuków District Court.

24. On 13 May 2003 the court refused to institute criminal proceedings against the police officers allegedly involved in the incident. The court held that there was no evidence that the applicant had been beaten by the police. In addition, the applicant had reported the alleged ill-treatment for the first time only on 8 October 2002, when he testified before the Łuków District Court. Until that date he had never raised this issue, nor had he complained to the prosecution authorities. He had further filed an official notification of the commission of a crime on 16 December 2002.

25. On 21 August 2006 the applicant lodged a motion for the reopening of the proceedings concerning ill-treatment. He argued that additional documents should be considered in the proceedings, namely M.M.'s report of 21 September 2001 and his medical files from the Siedlce detention centre.

26. On 6 December 2006 the prosecutor reopened the proceedings.

27. On 7 March 2007 the prosecutor heard evidence from the doctor P.S., who had examined the applicant in the detention centre. The doctor considered that the applicant's bruises had been unexceptional and could have occurred 3 to 5 days before the examination. In addition they could have been caused by squeezing or pushing away. The doctor stressed that had the applicant complained of ill-treatment he would have noted it in his medical records.

28. On 23 March 2007 the prosecutor discontinued the proceedings. He considered that the applicant had constantly changed his version of facts and that there had been no witnesses who could have described the situation. In addition, there was no medical evidence that the applicant had been subjected to ill-treatment and, lastly, there was a high probability that the injuries had occurred in the course of the [rape] victim's self-defence. The prosecutor concluded that it was not possible to establish beyond doubt the factual circumstances in which the injuries had occurred.

29. It would appear that the applicant failed to appeal against this decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. In so far as relevant, Article 16 of the Police Act of 6 April 1990, as applicable at the material time, provides:

“1. If a lawful order given by a police authority or police officer has not been complied with, a police officer may apply the following coercive measures:

(1) physical, technical and chemical means of restraining or escorting persons or of stopping vehicles;

(2) truncheons;

(3) water cannons;

(4) police dogs;

(5) rubber bullets fired from fire-arms.

2. Police officers may apply only such coercive measures as correspond to the exigencies of a given situation and are necessary to ensure that their orders are obeyed.”

31. Paragraph 5 of the Ordinance of the Council of Ministers of 17 September 1990 on the Use of Coercive Measures by the Police provides:

“1. Physical force shall be used in order to restrain a person, to counter an attack or to make [a person] obey an order.

2. When using physical force, no one shall hit a person, unless he has to do so in self-defence or in order to counter an unlawful attack against the life, health or property of others.”

In so far as relevant, paragraph 6 of the Ordinance provides:

“Handcuffs may be used ... in order to prevent an escape or to prevent an active assault or active resistance. ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that he had been ill-treated by the police following his arrest and that no adequate and effective investigation into his allegations had been carried out by the authorities. He relied on Article 3 of the Convention, which provides:

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

33. The Government contested that argument.

A. Admissibility

34. The Government raised a preliminary objection that the applicant had not exhausted all available domestic remedies in respect of his allegations of ill-treatment. They argued that after the investigation had been discontinued for the second time the applicant should have lodged a complaint against the prosecutor’s decision of 23 March 2007.

35. Secondly, they alleged that the applicant could have lodged a claim with a civil court for compensation under Article 417 of the Civil Code.

36. The applicant replied that he had exhausted all available domestic remedies. He had complained about the decision to discontinue the investigation of 13 March 2003. He had further filed a motion for the reopening of the proceedings after they had been discontinued.

37. The Court reiterates that the aim of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is to afford Contracting States an opportunity to put matters right through their own legal system before having to answer to an international body for their acts. However, although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that in cases where the national law provides for several parallel remedies in the sphere of both civil and criminal law, the person concerned, after a sustained but eventually unsuccessful attempt to obtain redress through one such remedy, must necessarily try all other means (see *H.D. v. Poland*, no. 33310/96, 7 June 2001, and *Olszewski v. Poland* (dec.), no. 55264/00, 13 November 2003).

38. The Court notes that the applicant appealed the decision to discontinue the investigation of 12 March 2003. In addition he filed a motion for reopening of the proceedings (see paragraphs 23 and 25 above). The Court does not therefore consider that, after the prosecuting authorities had discontinued, for the second time, the investigation instituted at the applicant’s request, he was still required to use further remedies in order to fulfil his obligation under Article 35 § 1 (see, *mutatis mutandis*, the decision in the *H.D.* case, cited above).

39. 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 parties' submissions

40. The applicant submitted that during the police interrogation on 18 and 19 September 2001 police officers had beaten him in order to obtain a confession. They had punched him in the stomach and also slapped his face. As a result he had suffered a swollen and bruised eye, his nasal septum was broken and he had injuries to the chest and stomach. He submitted that there had been a violation of Article 3.

41. The Government maintained that the applicant had not been subjected to treatment contrary to Article 3 of the Convention. They submitted that there was no evidence that the applicant's injuries were caused by misconduct on the part of the police officers. In addition, the evidence had led to the conclusion that the applicant's injuries had been inflicted by the rape victim, who had tried to defend herself during the assault.

42. In any event, the Government submitted that the injuries suffered by the applicant did not fall within the scope of Article 3. In their opinion the scratches and bruises complained of by the applicant could not be considered sufficiently serious to have amounted to ill-treatment contrary to Article 3.

43. In conclusion, the Government submitted that no substantive violation of Article 3 had occurred in the present case.

(b) The Court's assessment

44. 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). 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*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

45. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities,

as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

46. The Court further 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*, cited above, p. 65, § 162).

47. 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*, cited above, § 38). Thus, the burden rests on the Government to demonstrate with convincing arguments that the use of force which resulted in the applicant's serious and numerous 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).

48. Turning to the circumstances of the present case, the Court observes that the applicant sustained visible injuries such as haematomas and bruises, established by a medical examination (see paragraph 13 above). The degree of bodily harm indicates that the applicant's 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 under Article 3 for these injuries.

49. The Government submitted that the applicant's injuries could have been caused by the struggle with the victim and that the medical experts could not categorically establish the origin of the applicant's injuries. In contrast, the applicant claimed that he had been beaten by police officers in order to obtain a confession.

50. The Court notes that in the proceedings instituted following the applicant's allegations of ill-treatment, the public prosecutors maintained that there had been insufficient evidence to conclude that the applicant had been beaten up by the police. Furthermore, there was a probability that the injuries had occurred in the course of the rape victim's self-defence.

51. The Court notes that, although the medical reports established conclusively the presence of injuries on the applicant's body, they did not determine the exact time that they were sustained (see paragraphs 9 and 13 above).

52. In the instant case, it does not appear from the documents contained in the case file that the injuries found on the applicant's body had been sustained prior to his detention in police custody. In this connection, the Court observes that the applicant was examined on his arrest by a doctor, who observed only superficial scratches on the applicant's body (see paragraph 6 above). When he was admitted to the detention centre three days later, his injuries were so visible that he was asked to explain their origin (see paragraph 12 above).

53. In the light of the foregoing, the Court reiterates that a State is responsible for the welfare of all persons held in detention. Such persons are in a vulnerable situation and the authorities have a duty to protect them. Bearing in mind the authorities' obligation to account for injuries caused to persons within their control, the Court considers that the Government have failed to provide a plausible explanation of how the applicant's injuries were sustained. It therefore concludes that the injuries in question were the result of treatment for which the Government bore responsibility.

54. There has accordingly been a substantive violation of Article 3 of the Convention.

2. Adequacy of the investigation

(a) The parties' submissions

55. The applicant maintained that the investigation into his allegations had not been effective and thorough. He stressed that although he reported the incident for the first time in September 2001, an investigation had only been instituted when he filed an official complaint on 30 December 2002.

56. The Government did not agree. They considered that the investigation into the applicant's allegations had been thorough, effective and capable of leading to the identification and punishment of those responsible. The fact that the investigation had eventually been discontinued was not tantamount to a violation of the Convention. They stressed that the applicant's allegations had been investigated in three separate sets of proceedings. An internal police investigation had been conducted in October 2001. Subsequently, the prosecution authorities had examined the allegations on two occasions. One of these decisions had been reviewed by the Łuków District Court on 15 May 2003.

(b) The Court's assessment

57. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police in breach of Article 3, 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. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

58. The 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*, cited above, § 103 et seq.). 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, § 104 et seq., ECHR 1999-IV, 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.

59. Turning to the circumstances of the instant case, the Court notes that following the applicant's complaint the public prosecutor carried out an investigation. It is not, however, persuaded that this investigation was sufficiently thorough and effective to meet the above requirements of Article 3.

60. The Court observes that the applicant informed the authorities of the alleged ill-treatment for the first time on 21 September 2001. However, the investigation was instituted only in February 2003 (see paragraph 21 above). In addition, during the first stage the prosecution authorities did not consider all available evidence and, on the applicant's motion, the investigation was reopened (see paragraph 26 above). In this respect the Court notes that doctor P.S., who examined the applicant on his admission to the detention centre, had been heard only in March 2007, that is, five and a half years after the examination.

61. The Court further observes that there was a series of delays in the investigation, the total duration of which cannot be reasonably justified. These delays in the investigation significantly diminished the prospect of its success and completion.

62. Having regard to these numerous flaws and omissions, the Court finds that no effective investigation was carried out into the applicant's allegations of ill-treatment. Accordingly, there has been a violation of Article 3 of the Convention on that account.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

65. The Government contested this claim.

66. The Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, did not claim any sum for costs and expenses.

C. Default interest

68. 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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment of the applicant;
3. *Holds* that there has been a violation of Article 3 of the Convention as regards the absence of an effective investigation into the applicant's allegations of ill-treatment;
4. *Holds*
 - (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 10,000 (ten thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President