



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

FOURTH SECTION

CASE OF WIKTORKO v. POLAND

(Application no. 14612/02)

JUDGMENT

STRASBOURG

31 March 2009

FINAL

30/06/2009

This judgment may be subject to editorial revision.

In the case of Wiktorko v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 14612/02) 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, Ms Anna Wiktorko (“the applicant”), on 23 April 2001.

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, that during her detention in a sobering-up centre she had been treated by the centre’s staff in a manner which amounted to inhuman and degrading treatment in breach of Article 3 of the Convention, and that her detention had been unlawful and in breach of Article 5 § 1 of the Convention.

4. On 5 December 2006 the Court decided to communicate the complaint under Article 3 of the Convention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Olsztyn.

6. On the evening of 27 December 1999 the applicant met with her friend.

7. Subsequently the applicant took a taxi to go home and refused to pay the allegedly exorbitant fare without obtaining a proper bill. As a result, the driver did not let the applicant out of the taxi in front of her house but took her to a sobering-up centre in Olsztyn. The applicant called the police from the taxi as she felt threatened by the driver's behaviour. So did the driver as regards the applicant's behaviour.

8. Subsequently, the applicant was detained in the sobering-up centre. She refused to undergo a breathalyser test. The applicant submitted that she had had two beers. The Government maintained that she had been in a state of "average intoxication".

9. The applicant submitted that the staff of the centre had insulted her and that she had been brutally manhandled and beaten. She had also been forcibly stripped naked by two men and a woman. Afterwards, she had been forcibly put into a disposable gown.

10. The Government submitted that it was the applicant who had been aggressive towards the staff and had verbally insulted them. They had therefore had no choice but to undress her by force as she had refused to undress herself and had subsequently resisted their legitimate efforts to dress her in a disposable gown.

11. They further argued that she had had to be placed in restraining belts because after being put to bed she had been kicking the doors of the room and screaming abuse, waking other patients.

12. The parties' submissions are concordant as to the fact that the applicant was subsequently restrained by belts, tied to a bed and locked in a cell until the morning of 28 December 1999, when she was released.

The applicant submitted that she had remained in the cell, restrained by the belts, for approximately ten hours. The Government did not challenge this submission.

13. On 29 December 1999 the applicant obtained a medical certificate concerning her condition.

The relevant part of the certificate read:

A bloody bruise on the left hip, at the front, of approximately 3 cm in diameter, abrasion at the wrist at the elbow side; mobility and rotation of the shoulder limited (unclear whether passive or active movements concerned); the [applicant] complained of pain in her jaw at the left side; the jaw at that side swollen.

14. Shortly afterwards the applicant filed a complaint against the staff of the centre with the head of the district police in Olsztyn. She submitted that she had not been intoxicated, that nothing in her conduct had justified the decision to deprive her of her liberty and that she had been brutally manhandled and undressed by the staff of the centre.

15. On 21 January 2000 the head of the district police refused to institute an investigation in her case. The grounds of the decision read:

On 29.12.1999 Ms A. Wiktorko complained to the Town Police Station that on 27/28 December a taxi driver and the staff of the sobering-up centre had used physical

force against her and insulted her. In her formal complaint that a criminal offence had been committed, which she submitted on 4 January 2000, she [explained] that on 27 December 1999 at 11 p.m. approximately a driver of a taxi No. [...] had first insulted her verbally and afterwards had taken her to the sobering-up centre where she had been detained against her will and physical force, resulting in bruises and scratches, had been used against her by the staff. A number of persons were requested to provide information, but no one confirmed the applicant's allegations. The taxi driver stated that Ms Wiktorko had been taken to the sobering-up centre because she had not wanted to pay the fare or to leave the taxi and that she had herself agreed to be taken there; while she could have left the taxi at any time; she was detained at the centre by the police, not by the taxi driver himself as she says; furthermore she did not want to have a breathalyser test but when she was already in the centre she did not want to undress herself and when she was put in the room for the patients she was hitting the door with her hands and other parts of her body inflicting injuries on herself so that restraining belts had to be used for fear that her life and health might be endangered."

On 31 January 2000 the Olsztyn district prosecutor upheld this decision.

16. On 8 February 2000 the applicant appealed. In particular, she reiterated that her detention had been completely unjustified as she had not been intoxicated. She had had two beers on the evening of 27 December 1999 which by no standards could be described as intoxication, still less as intoxication justifying deprivation of liberty in a sobering-up centre. She had been ill-treated by the staff of the centre after her arrest, but the decision of 21 January 2000 had obviously failed to elucidate the facts of the case. She submitted that during her detention she had been stripped naked. She stressed that the police had failed to grant her access to the file concerning her detention and that the investigation had been superficial.

17. On 21 February 2000 the head of the district police in Olsztyn decided to investigate the applicant's allegations.

18. On 17 March 2000 an expert prepared an opinion as to the applicant's health upon her release on the basis of the file of the investigation. The opinion reiterated the findings of the certificate of 29 December 1999 and stated that the injuries could have been sustained both as a result of the use of force against the applicant or of her behaviour after she had been undressed and put into the cell.

19. The investigation was subsequently discontinued by the police and on 19 April 2000 the district prosecutor confirmed this decision. The written grounds of the decision read:

"During the investigation factual findings were made, witnesses were questioned, the [applicant's] medical records were examined and a medical expert was appointed with a view to establishing the injuries and circumstances in which they might have been sustained. It was established on the basis of this material that on 27 December 1999 Anna Wiktorko, having drunk alcohol and having refused to pay for the taxi, had been taken by the taxi-driver to [the sobering-up centre]. Afterwards she was taken, in the presence of a police patrol, to the building of the centre. Once she was inside, a decision was taken to detain her in the centre, regard being had to her behaviour which was vulgar and offensive towards those who were present there. As she did not

want to comply with the regulations in force by taking a breathalyser test and by voluntarily undressing and changing into a gown, the staff used force against her in order to make her change her clothes and put her in a room for detainees. As she continued to be aggressive and to destroy property and could have harmed herself, she was put in restraining belts so that she could calm down.

The applicant's complaints were not confirmed by the witnesses. Her behaviour was reprehensible and it was necessary to put her in the sobering-up centre. It has not been established that physical force was used against her over and above what was necessary to calm her down. Hence, as there was no indication that a criminal offence had been committed the investigation has to be discontinued."

20. The applicant, represented by a lawyer, appealed to the regional prosecutor. She submitted that she had not been intoxicated and that the actions of the employees of the centre had infringed her personal rights, her dignity and her bodily integrity. She also submitted that her procedural rights had been breached in that the police had failed to inform her representative about any of the investigative measures that had been taken during the proceedings. It was also submitted that during the investigation the applicant should have had an opportunity to confront the employees of the centre.

21. On 7 June 2000 the Olsztyn regional prosecutor, having regard to the applicant's procedural arguments, quashed the contested decision of 19 April 2000. He noted that there had been significant discrepancies between the applicant's testimony and that given by other persons, which had to be elucidated.

22. On 2 August 2000 the Olsztyn-North district prosecutor discontinued the proceedings, finding that no criminal offence had been committed. The written grounds of the decision read:

"In the evening of 27 December 1999 [the applicant] called a taxi [...] After the trip a disagreement as to the amount of the fare to be paid arose between her and the driver. As the parties disagreed, [the driver] decided to solve the problem with the assistance of the police. After he had called the dispatch centre [of the taxi company], he drove to the vicinity of the sobering-up centre and waited for the police to come. They then waited for the patrol to come; at that time the driver entered the building of the centre, while the applicant stood by the taxi and also called the police from her mobile phone.

It is noted that the driver did not commit the offence of unlawful deprivation of property against the applicant, given that at that time both parties wanted to solve the problem with the assistance of the police; it is also noted that at that time the applicant could simply have walked away or used her phone.

After police officers A.R. and W.K. arrived at the scene, they tried to obtain a friendly resolution of the situation, but to no avail. Having regard to the vulgar and aggressive behaviour of the applicant, who smelled of alcohol, the officers decided that she should be detained in the sobering-up centre, where she refused to take a breathalyser test. Hence, the doctor on duty decided, on the basis of a general

examination, that the applicant was in a state of intoxication justifying her detention for up to twelve hours.

Staff member M.P [a woman] subsequently tried to make the applicant change into a disposable garment.

As the applicant offered stubborn resistance, M.P. requested other members of staff, L. Z. and T.P. [men] to help her; the applicant was dressed in a gown with their assistance and put into the room for intoxicated persons.

The applicant continued to be aggressive; therefore physical force against her was used and she was put in restraining belts.

It transpires from the provisions governing the organisation of the sobering-up centres and job descriptions of the members of staff, the staff acted in compliance with law on the basis of the applicable legal provisions and there is therefore no basis for a well-founded suspicion that a criminal offence of unlawful deprivation of liberty or coercion had been committed.

On the basis of section 41 of the Law on Education ... in Sobriety and the Fight against Alcoholism and sections 19 and 20 of the ... ordinance a bill for PLN 250 was drawn for the applicant to pay for the costs of her detention.

It should be unequivocally stated that the conduct of the staff toward the applicant was lawful.

During the investigations all persons involved in the applicant's arrest and detention were questioned. The ample evidence gathered in the case did not give rise to a suspicion that a criminal offence had been committed.

Subsequently, the decision reiterated the findings of the medical report (see paragraph 3 above). The decision further read:

In her submissions the applicant complained that the staff of the centre had breached her dignity and ... Having in mind that the injuries which the applicant suffered and the insults can be examined in proceedings instituted by a private bill of indictment, it is open to the applicant to bring such a bill within 14 days from the service of the present decision.

23. The applicant appealed, reiterating the arguments she had submitted in her previous appeal. She also submitted that she had been humiliated by the staff of the centre as she had been forcibly undressed and tied to a bed with restraining belts until the morning of 28 December 1999. This had made it impossible for her to go to the toilet.

24. On 25 October 2000 the Olsztyn Regional Court upheld the decision to discontinue the proceedings. In its decision, which consisted of twenty lines, the court observed that the evidence gathered in the case had led it to the logical conclusion that the applicant had been intoxicated and that therefore her detention in the sobering-up centre and the use of force against her had been justified.

II. RELEVANT DOMESTIC LAW

25. The Law on Education in Sobriety and the Fight against Alcoholism (*Ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi*) provides for measures which may be applied in respect of intoxicated persons. Sections 39-40 set out measures which may be applied to such persons.

26. Pursuant to section 39 of the Law, sobering-up centres are to be set up and managed by the authorities of municipalities with more than 50,000 inhabitants. Section 40 of the Law, as applicable at the relevant time, provided, in so far as relevant:

“1. Intoxicated persons who behave offensively in a public place or a place of employment, are in a condition endangering their life or health, or are themselves endangering other persons’ life or health, may be taken to a sobering-up centre or a public health care facility, or to their place of residence.

2. In the absence of a sobering-up centre, such persons may be taken to a [police station].

3. [Intoxicated] persons who have been taken to a sobering-up centre or a [police station] shall remain there until they are sober but for no longer than twenty-four hours. ...”

27. The Ordinance of the Minister of Health and Social Welfare of 23 October 1996 on the procedure for dealing with intoxicated persons, the organisation of sobering-up centres and the scope of health care and rules on assessing the fees connected with admittance to and stays in sobering-up centres (*Rozporządzenie Ministra Zdrowia i Opieki Społecznej w sprawie trybu doprowadzania osób w stanie nietrzeźwości organizacji izb wytrzeźwień i zakresu opieki zdrowotnej oraz zasad ustalania opłat związanych z doprowadzeniem i pobytem w izbie wytrzeźwień*) set out detailed rules relating to detention in a sobering-up centre.

28. Section 9 of the Ordinance provided, in so far as relevant:

“1. A person taken to a sobering-up centre shall promptly be given a medical examination.

2. Following the medical examination, a doctor shall ascertain whether such person should be placed in a sobering-up centre ..., or should be placed in a hospital or other medical establishment ..., or whether there are no signs of intoxication justifying placement in a sobering-up centre.”

Its paragraph 13 (1) provided:

“A replacement garment shall be issued to all detained persons.”

29. Section 16 of the Ordinance states that direct coercion may be applied in accordance with the rules laid down in section 18 of the 1994 Protection of Mental Health Act, which provides in particular that direct coercion can consist of immobilisation, among other methods. Section 16 of

that Act further refers to the Ordinance of the Minister for Health and Social Welfare of 23 August 1995 on the form of application of direct coercion (*w sprawie sposobu stosowania przymusu bezpośredniego*), which determines the manner in which direct coercion may be applied. The latter ordinance provides, in so far as relevant:

“9 (2). A doctor shall recommend application of direct coercion in the form of immobilisation or isolation for a period of no longer than four hours. If necessary, the doctor, after personal examination of the patient, may extend the use of immobilisation for subsequent periods of six hours.

13. A nurse on duty shall check the state of the immobilised or isolated person no less frequently than every 15 minutes, including when the person is asleep. The state of the person shall be recorded on the [patient’s] card without delay.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained of degrading treatment during the incident of 27 December 1999 and the failure to investigate her allegation properly, in breach of Article 3 of the Convention. This provision reads:

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

A. Admissibility

31. The Government submitted that the applicant had failed to exhaust all relevant domestic remedies. After her efforts to institute criminal proceedings in respect of the alleged offence of coercion had failed, she should have filed a private bill of indictment with a criminal court, alleging that an offence of causing slight bodily injury had been committed. She had been duly informed of her right to do so by the prosecutor.

32. The applicant argued that after the failure of her first attempt to have the persons involved in the incident prosecuted, she should not be required to embark on another attempt to vindicate her rights which, in any event, would probably be destined to fail.

33. Article 35 § 1 of the Convention provides, as relevant:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law...”

34. The aim of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 is to afford Contracting States an opportunity to put matters right through their own legal system before having to answer before an international body for their acts (see, among many other authorities, *Egmez v. Cyprus*, no. 30873/96, § 64, ECHR 2000-XII). The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances. To be effective, a remedy must be capable of remedying directly the impugned state of affairs (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

35. In cases where an individual has an arguable claim under Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-V, and *Egmez v. Cyprus*, cited above, § 65).

36. Where there is a choice of remedies, the exhaustion requirement must be applied to reflect the practical realities of the applicant's position, so as to ensure the effective protection of the rights and freedoms guaranteed by the Convention (see *Allgemeine Gold-und Silberscheideanstalt A.G. v. the United Kingdom*, no. 9118/80, Commission decision of 9 March 1983, Decisions and Reports (DR) 32, p. 165, and, more recently, *Krumpel and Krumpelová v. Slovakia*, no. 56195/00, § 43, 5 July 2005). Moreover, an applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried others that were also available but probably no more likely to be successful (see *Wójcik v. Poland*, no. 26757/95, Commission decision of 7 July 1997, DR 90-A, p. 28; *Assenov and Others v. Bulgaria*, 28 October 1998, § 86, *Reports of Judgments and Decisions* 1998-VIII; *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III; and *Günaydin v. Turkey* (dec.), no. 27526/95, 25 April 2002).

37. The Court notes that the applicant complained about the incident to the prosecution authorities, which opened a criminal investigation into the offence alleged. The Court does not find the applicant's choice of procedure unreasonable. The applicant tried thereby to have the persons she believed guilty of criminal conduct towards her identified and punished. Given that the authorities found that the persons concerned had no case to answer, the applicant should not be required to embark on another set of proceedings which served an identical purpose and did not offer good prospects of the applicant's being any more successful.

38. The Government's plea of non-exhaustion of domestic remedies must therefore be rejected.

39. The Court notes that the complaint under both the substantive and procedural limbs of Article 3 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 of the applicant

(a) The parties' submissions

40. The applicant complained that she had been ill-treated by the employees of the sobering-up centre. She had, in particular, been forcibly undressed by two men and a woman, placed in restraining belts and locked in a cell overnight. She had felt deeply humiliated. This amounted to inhuman and degrading treatment which was completely unjustified. Before her arrest she had had two beers, which by no stretch of the imagination could qualify as intoxication justifying her arrest and subsequent lengthy detention, let alone the manner in which she had been treated by the centre's staff.

41. The Government referred to the applicant's submission that during the incident on the night of 27 December 1999 the staff of the centre had used violence against her and had humiliated her without any justification. They were of the view that the facts established in the investigation had shown that the applicant's view of the material events had been inaccurate. It had clearly transpired from the evidence gathered during the investigation that the applicant, being in a state of "average intoxication", had refused to pay her taxi fare, insulted police officers verbally, used vulgar insults, been aggressive towards the centre's staff and insulted the doctor who had tried to examine her. She had also resisted all the legitimate actions taken by the staff in conformity with the applicable laws, by refusing to take her clothes off. She had also resisted the staff when they had tried to bring her to the patients' room. After having been placed in that room, she had kicked the door, shouted and woken up other patients. In response to that behaviour, the staff, having consulted the doctor, had restrained the applicant by means of restraining belts.

42. The Government further referred to the medical certificate which the applicant had submitted to the Court. The doctor had found one bruise, one scratch, a painful shoulder and a swollen jaw. They submitted that these injuries could have been caused by the applicant's own behaviour when she had kicked the doors and walls after having been locked in the patients' room.

43. The Government concluded that the injuries sustained by the applicant had been slight and that therefore the treatment complained of did not fall within the ambit of Article 3 of the Convention. Alternatively, even assuming that the treatment complained of could be regarded as falling within the scope of that provision, they argued that the use of physical force against the applicant by the staff of the centre had been made strictly necessary by her own conduct and had also been lawful. The Government were of the view that the suffering experienced by the applicant had not gone beyond the inevitable element of suffering or humiliation connected with a given form of otherwise legitimate treatment.

(b) The Court's assessment

44. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). To fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the gender, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100-01, ECHR 2001-VIII).

45. The Court has considered treatment 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. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Iwańczuk v. Poland*, no. 25196/94, § 51, 15 November 2001).

46. The Court first notes that the events complained of occurred during the applicant's detention in a sobering-up centre. In this connection it recalls that confinement in a sobering-up centre in Poland, as provided for by domestic law, amounts to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention (see *Witold Litwa v. Poland*, no. 26629/95, § 46, ECHR 2000-III).

47. In this connection it reiterates that Article 3 does not prohibit the use of force in order to effect an arrest. However, such force may be used only if indispensable and must not be excessive (see, among others, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269; *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII; and *Krastanov v. Bulgaria*, no. 50222/99, §§ 52 and 53, 30 September 2004). 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, and *Krastanov*, cited above, § 53).

48. The Court is sensitive to the subsidiary nature of its task and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention, as in the present case, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, § 32).

49. The Court notes in this connection that the authorities in their decisions reiterated that the treatment to which the applicant had been subjected had not been in breach of the applicable laws governing the use of force by the staff of sobering-up centres. However, the Court reiterates that the mere fact that the domestic courts found that the use of force did not amount to a criminal offence does not by itself absolve the Contracting State from its responsibility under the Convention (see *Ribitsch*, cited above, § 34).

50. The Court observes that the applicant submitted a medical certificate drawn up the day after her release. It transpires from this that the applicant had had certain minor injuries which, in the doctor's view, could have originated from the use of physical force against her. The Court notes that, unlike in many cases concerning complaints under Article 3 of the Convention, in the present case it is not the exact degree of physical coercion used against the applicant which is critical for the examination of the case. The essential aspect of the present case is the applicant's complaint that during her detention she was forcibly undressed by a woman and two men and subsequently placed in restraining belts.

51. The Court notes that in her complaints to the prosecuting authorities the applicant submitted that she had been undressed and brutally manhandled by the staff. She also submitted that their conduct had humiliated and debased her. However, both the domestic authorities and the Government referred to the resistance offered by the applicant to the staff of the centre while they were forcibly undressing her as sufficient justification for the treatment complained of. They were of the view that her refusal to undress and her resistance justified the use of force against her, but they failed to address her complaint that the use of force had infringed her personal rights and dignity.

52. As regards the applicant's refusal to undress, the Court notes the provisions of the ordinance governing the organisation of sobering-up centres as applicable at the material time (see paragraph 28 above), which unequivocally provided that all detained persons should be issued with a replacement garment, a sort of disposable gown, while in detention. For the

reasons given below, the Court does not consider it necessary to decide whether in the particular circumstances of the applicant's case she should have been required to undress or whether the use of force to make her do so was justified.

53. Although this is not a case where a strip search was carried out, the Court nevertheless considers that its case-law in that area is of relevance as it also relates to situations in which the applicants were ordered to undress. In this respect the Court reiterates that it has held that whilst strip searches may be necessary on occasion to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner and must be justified. They should be carried out in an appropriate manner with due respect for human dignity and for a legitimate purpose (*Yankov v. Bulgaria*, no. 39084/97, § 166-176, ECHR 2003-XII (extracts); *Wainwright v. the United Kingdom*, no. 12350/04, § 42, ECHR 2006-...). Even single instances of strip-searching have been found to amount to degrading treatment in view of the manner in which the strip search was carried out, the possibility that its aim was to humiliate and debase and the lack of justification (see *Valašinas v. Lithuania*, no. 44558/98, § 117, ECHR 2001-VIII). The Court has also held that where an order to undress with a view to a search had no established connection with the preservation of security and prevention of crime or disorder, Article 3 may be engaged (*Wainwright*, cited above, § 42; *Wieser v. Austria*, no. 2293/03, § 40, 22 February 2007 where the applicant was undressed by police officers).

54. The Court cannot overlook the fact that the applicant was stripped naked by three employees of the centre, one woman and two men. It has already had occasion to observe, in a case where a male applicant was ordered to strip naked in the presence of a female prison officer, that her presence at the scene showed a clear lack of respect for the applicant and in effect diminished his human dignity. The Court found that it must have left him with feelings of anguish and inferiority capable of humiliating and debasing him (see *Valašinas*, cited above, § 117).

The Court is of the view that the same considerations apply to the situation of the applicant in the present case, and with all the more force given that the two male members of the staff undressed her forcibly.

55. However, of greater concern to the Court is the fact that, in response to her behaviour after she had been put into the patients' room, the applicant was placed in restraining belts. The applicant submitted that she subsequently remained in those belts until her release the next morning, ten hours later. The Government have not contradicted her assertion in that respect. It has not been argued that the relevant domestic regulations governing the use of restraining belts were not complied with (see paragraphs 27 – 29 above). Nevertheless, the Government have not offered any justification for the length of time during which the applicant remained immobilised on the instructions of the staff of the centre. Even assuming, as

the Government contend, that the applicant was in “an average state of intoxication” when brought to the centre, the duration of her restraint is a matter of serious concern for the Court. It can accept that the aggressive behaviour of an intoxicated individual may require recourse to the use of restraining belts, provided of course that checks are periodically carried out on the welfare of the individual so immobilised. However, in the instant case no explanation has been given for the necessity of placing the applicant in restraining belts for such an excessive period of time. The prolonged immobilisation of the applicant must have caused her great distress and physical discomfort. The level of suffering endured cannot be considered compatible with Article 3 standards.

56. Having regard to the circumstances of the applicant’s case, the Court is of the view that the conduct of the authorities can reasonably be said to have amounted to degrading treatment contrary to Article 3.

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

2. Alleged inadequacy of the investigation

58. According to the Court’s established case-law, when an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of agents of the State, it is the duty of the national authorities to carry out “an effective official investigation” capable of establishing the facts and identifying and punishing those responsible (see *Slimani v. France*, no. 57671/00, §§ 30 and 31, ECHR 2004-IX (extracts), and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports*, § 102). What is more, the procedural requirements of Article 3 go beyond the preliminary investigation stage; the proceedings as a whole, including the trial stage, must meet the requirements of the prohibition enshrined in Article 3. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow grave attacks on physical and moral integrity to go unpunished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 95 – 96, ECHR 2004-XII), *Salman v. Turkey* [GC], no. 21986/93, § 104-109, ECHR 2000-VII; and *Okkali v. Turkey*, no. 52067/99, § 65, ECHR 2006-... (extracts)). This is essential for maintaining the public’s confidence in, and support for, the rule of law and for preventing any appearance of the authorities’ tolerance of or collusion in unlawful acts (see, *mutatis mutandis*, *Öneryıldız*, cited above, § 96).

59. The Court first notes that the investigation of the applicant’s complaint lasted seven months, from January to August 2000. The prosecutor on two occasions quashed decisions to discontinue the investigation, considering that the conduct of the investigation had been flawed by significant procedural shortcomings. In her appeals the applicant

complained about certain procedural shortcomings, such as the lack of access to the case file and the lack of an opportunity of confronting the witnesses, namely the staff of the centre. It is true that these were remedied after the decisions of 1 January 2000 and 19 April 2000 had been quashed and the investigation resumed.

60. Nonetheless, the fact remains that the decision to discontinue the proceedings was ultimately upheld by the court which found, as a matter of domestic law, that there were no grounds on which to hold that a criminal offence had been committed. In this connection, the Court cannot but note that the focus of the investigation was on the justification for depriving the applicant of her liberty and the use of force against her in the centre. Although the applicant challenged the assertion that she had been intoxicated and maintained that nothing in her conduct had justified the decision to deprive her of her liberty, she also complained that she had been brutally manhandled and stripped naked by the staff of the centre in a manner which had humiliated her and infringed her right to respect for her human dignity. For the Court, the procedural obligation under Article 3 must be capable of assessing whether the facts of which complaint is made cross the threshold of treatment prohibited by Article 3. In the Court's view, the authorities investigated her allegations in too narrow a framework, and thus deprived themselves of the possibility of assessing the proportionality of the force applied to the applicant from the standpoint of Article 3 standards, namely the justification for the forced removal of her clothing by two male employees and the use of restraining belts to immobilise her until the morning of 28 December 1999.

61. The Court therefore considers that the manner in which the case was examined cannot be said to be compatible with the procedural obligations of the State under Article 3 of the Convention.

62. Accordingly, there has been a violation of that provision under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

63. The applicant complained, relying on Article 5 of the Convention, that her detention in the sobering-up centre had been unlawful. At the time of her arrest she had not been intoxicated and had not caused any disturbance of the public order, which under the applicable law had been an essential prerequisite for such detention.

64. The Court notes that the applicant was deprived of her liberty "in accordance with a procedure prescribed by law", namely section 40 of the Law on Education in Sobriety and the Fight against Alcoholism (see paragraphs 25-26 above). The domestic authorities clearly confirmed that there was a basis in national law for the applicant's detention, and the reasons given cannot be considered in any way arbitrary.

65. The Court accordingly finds that the complaint does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

66. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 50,000 Polish zlotys (PLN) in respect of the non-pecuniary damage which she had suffered as a result of the humiliation and shock caused by the brutal treatment to which she had been subjected during her detention.

69. The Government submitted that the applicant’s claim was exorbitant given that she had not been a victim of any violation of her rights guaranteed by the Convention. In any event, they argued that in the circumstances of the case a finding of a violation of the Convention would in itself provide sufficient just satisfaction to the applicant.

70. The Court is of the view that as a result of the circumstances of the case the applicant must have experienced considerable anguish and distress which cannot be made good by a mere finding of a violation of the Convention. Having regard to the circumstances of the case seen as a whole and deciding on an equitable basis, the Court awards the applicant EUR 7,000 for non-pecuniary damage.

B. Costs and expenses

71. The applicant did not submit any claim for costs incurred in connection with the case.

C. Default interest

72. 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

1. *Declares* unanimously the applicant's complaint regarding the alleged ill-treatment and the failure to investigate her allegation admissible, and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 3 of the Convention under its substantive limb;
3. *Holds* by five votes to two that there has been a violation of Article 3 of the Convention under its procedural limb;
4. *Holds* by six votes to one
 - (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 7,000 (seven 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Garlicki and David Thór Björgvinsson is annexed to this judgment.

N.B.
T.L.E.

JOINT DISSENTING OPINION OF JUDGES GARLICKI AND DAVID THÓR BJÖRGVINSSON

To our regret we cannot share the position of the Chamber as to the inadequacy of the investigation.

As it transpires from paragraph 60 of the Chamber judgment, the finding of a procedural violation was linked to the fact that “the authorities investigated [the applicant’s] allegations in too narrow a framework, and they deprived themselves of the possibility of assessing the proportionality of the force applied to the applicant from the standpoint of Article 3 standards”.

Thus, there is no reason to blame the authorities for not establishing the basic facts of the case. In consequence, it would be difficult to apply the usual finding that “the investigation was superficial, lacked objectivity and ended in decisions which contained conclusions unsupported by a careful analysis of the facts” (see, for example, *Lewandowski and Lewandowska v. Poland*, no. 15562/02, § 74, 13 January 2009; see also *Dzwonkowski v. Poland*, no. 46702/99, § 66, 12 April 2007). It seems that, in the opinion of the Chamber, the violation resulted firstly from the fact that the “human dignity” aspect of the applicant’s claim had not been separately assessed and addressed by the authorities and, secondly, from the fact that the investigation did not lead to any criminal charges against the personnel of the sobering-up centre.

We are not convinced that the investigation did not take into account the applicant’s claims concerning infringements of her dignity. This aspect of the case was addressed initially in the decision of the regional prosecutor (7 June 2000) quashing the original decision to discontinue the investigation. The prosecutor observed that “any final decision in the case must formally address all the acts reported by the applicant, [hence also] the infringement of her dignity (inter alia, by stripping her naked)”. The district prosecutor, in the decision of 2 August 2000, followed that instruction but concluded, with reference to the applicant’s complaint that the officers of the sobering-up centre had behaved in a manner violating her honour and dignity, that account should be taken of the fact that the applicant herself had the right to lodge a private bill of indictment in respect of that claim. Thus, the “human dignity” aspect did not escape the attention of the authorities, even if their conclusion was that all the measures taken in the sobering-up centre had been lawful and that, therefore, there was no ground to proceed with criminal charges.

It is true that the Court’s assessment of the facts was different and that we found that the measures applied to the applicant had been disproportionately harsh. But this difference relates to the substantive aspect of the case and led to our finding of a substantive violation of Article 3. It cannot be carried over into the procedural assessment of the case. The

domestic authorities could hardly be blamed for applying domestic standards of lawfulness and for concluding that a lawful action cannot lead to a criminal charge. It should not be forgotten that the nature of States' responsibilities under international law differs from that of the criminal liability of individuals. Thus, a violation of the Convention must not necessarily translate in each and every case into criminal proceedings against the person responsible.