



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF MROZOWSKI v. POLAND

(Application no. 9258/04)

JUDGMENT

STRASBOURG

12 May 2009

FINAL

12/08/2009

This judgment may be subject to editorial revision.

In the case of Mrozowski 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 16 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 9258/04) 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 Artur Mrozowski (“the applicant”), on 26 January 2004.

2. The applicant was represented by Ms M. Gąsiorowska, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry for Foreign Affairs.

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

4. On 17 January 2008 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 1973 and lives in Piastów, Poland.

A. The events of 28 April 2002

6. On 28 April 2002 the applicant and a friend were travelling by train from work to his home in Piastów. Supporters of the Legia football team, who were celebrating their victory in the Polish league, were travelling on the same train. Among the football fans there were some hooligans, who started smashing windows and vandalising the carriages. The train attendants called the police.

7. Around midnight the train stopped at Warsaw-Włochy station and the police entered the carriage. The applicant was hit in the face with a truncheon by police officer K. and dragged out of the train onto the platform. He was bleeding heavily but was ordered to lie on the ground. The police officer insulted him. Subsequently, the police officers called an ambulance and the applicant was taken to Wolski Hospital in Warsaw.

One of the supporters, an acquaintance of the applicant, who had protested against the use of force against the applicant, was immobilised by the police officers on the platform and handcuffed.

8. The certificate from the ambulance team stated that the applicant received assistance on 29 April 2002 at 00.40 a.m. at Warsaw-Włochy station. It contained the following description of the applicant's injuries: wound to the right side of jaw 2 cm long, teeth knocked out (no. 5 upper and nos. 5,6,7,8 lower).

9. On 29 April 2002 the medical certificate from Wolski Hospital stated as follows:

“Condition after being beaten, wound to the jaw. Head injury. Condition after being beaten yesterday. He states that he was hit several times with a rubber truncheon on the head. He did not lose consciousness. Yesterday vertigo and nausea. Today no complaints. X-ray of the head and face with no changes. Difficulties in opening mouth, individual teeth knocked out. A consultation with a face surgeon is recommended. Further care in the district [hospital]. The wound stitched, examination by a surgeon in two days. Under observation for eight hours.”

10. A certificate by a dentist, Dr. E. K., dated 29 April 2002, stated:

“The patient came in the day after he had been beaten. Left cheek swollen. Fractured teeth nos. 4, 6 and 5. Tooth pulp exposed. Teeth loose, second degree.”

11. A certificate by a doctor, E. T., a court expert, dated 2 May 2005, provides as follows:

“[The applicant] was examined on 30 April 2002 and 2 May 2002.

Established:

- 1) Swollen and painful left cheek.
- 2) Wound to the chin on the right side, about 2 cm long, stitched.
- 3) Tooth cavities as described in the dentist's certificate of 29 April 2002.

[Medical certificates of 29 April 2002 listed and quoted.]

On the basis of the examination and the above-mentioned medical certificates it is established that the [period of] incapacity exceeds seven days.”

B. The criminal proceedings against the police officers

12. On 7 May 2002 the applicant requested the Warsaw District Prosecutor (*Prokurator Rejonowy*) to initiate criminal proceedings against the police and in particular police officer K. The applicant asserted that on 28 April 2002 he had been beaten by the police and had sustained serious injuries.

13. On 10 March 2003 a doctor, L. S., submitted a forensic report in which he answered questions put by the prosecutor. The report states as follows:

1. What injuries did the applicant sustain on 28 April 2002?

I establish on the basis of the medical certificates previously referred to that on 28 April 2002 the applicant sustained fractures of teeth 4 and 6 on the upper left side and tooth 5 on the lower left side, a chin wound and a swollen left cheek.

2. Could those injuries have been sustained in the circumstances described by the witnesses?

Yes, the injuries described above could have been sustained in the conditions and circumstances described by the witnesses, that is, as a consequence of a blow by a blunt and solid object that could have been a truncheon of the “tonfa” type.

3. Could they have been sustained during the arrest by police officers K. and C.?

Yes, those injuries could have been sustained during the arrest by those police officers.

4. Did those injuries cause incapacity for a period exceeding seven days?

The above injuries amounted to bodily harm resulting in incapacity for a period exceeding seven days within the meaning of Article 157§1 of the Criminal Code.”

14. On 12 April 2003 the Warsaw District Prosecutor discontinued the investigation into the actions of the police. The prosecutor had questioned several witnesses, including other passengers and police officers C. and K. Police officer K. stated that the applicant had not obeyed an order to show his identification card and had started to struggle with officer C. He had then warned the applicant that he would use a truncheon and had hit him once on the arm. The prosecutor established beyond any doubt that police officer K. had used the truncheon against the applicant. It could not be established where exactly on the train the events had taken place. The applicant maintained that he had been hit next to the door of the train, but

other witnesses submitted that he had been inside the carriage or outside on the platform. The prosecutor concluded as follows:

“It appears from the statements of police officers C. and K. that the passengers on the train, the majority of them football supporters, did not comply with their orders. This gave them a ground to apply coercive measures and to use truncheons or handcuffs. Given the aggressive behaviour of the passengers those coercive measures corresponded to the exigencies of the situation and were necessary to ensure that their orders were obeyed.

[It should be concluded] that there is not sufficient evidence that the police officers overstepped their powers in breach of the interest of [the applicant]. Since [the applicant] sustained the injuries as a consequence of the police actions he could seek damages in civil proceedings, as the limitation period has not yet elapsed.”

15. On 26 May 2003 the applicant lodged an appeal against the decision. He submitted that the prosecutor had failed to analyse the facts of the case and to clarify the circumstances in which he had sustained the injuries. In particular it was not explained how the applicant could have sustained head and facial injuries, since the police officer had admitted only to having hit him once on one arm. Moreover, he argued that the police officer had overstepped his powers and that there was no justification for use of the truncheon against him, as he had not provoked it. The applicant also complained that the authorities had failed to take into consideration the fact that he was not a football supporter and had nothing to do with the hooligans who were travelling on the same train.

16. On 22 August 2003 the Warsaw District Court dismissed his appeal. The court considered that the prosecutor had correctly established the facts and assessed the circumstances of the case. The decision further stated:

“While it appears from the opinion of the forensic expert that the applicant’s injuries could have been sustained as a consequence of the intervention of the police officers on 28 April 2002, nevertheless, in the light of the evidence collected, it cannot be established that police officers C. and K. overstepped their powers. They acted within their competence and the use of the coercive measures of truncheons and handcuffs corresponded to the exigencies of the situation; that is, to the aggressive behaviour of the passengers. The court considers that, contrary to the allegations made in the appeals, all the necessary steps were taken during the investigation in order to establish the objective truth.

The finding of whether or not [the applicant] had anything to do with the hooligans’ actions, that is, the vandalism of the train, cannot have any bearing on the decision on the merits, in a situation where the police officers were intervening in connection with those events. They were carrying out their duties given the aggressive behaviour of the passengers on the train.

In the light of the above the court found that the impugned decision was correct and decided as in the operative part.”

C. The criminal proceedings against the applicant

17. On 30 January 2003 the applicant was indicted before the Warsaw District Court. He was charged with damaging the train carriage and using violence against the police officers.

18. On 14 May 2007 the Warsaw District Court acquitted the applicant of both charges. The court established that the applicant had been calm and “in contrast to other defendants had been sober and had been coming back from work and not from the football match”. As regards the course of the events the court established that during the intervention of the police, police officer K had ordered the applicant, who was standing by the door, to return to the carriage. The court then stated:

“In reply [the applicant] had asked the police officer: “would you hit me, sir?” As [the applicant] had not complied with the order, police officer [K] used a coercive measure, i.e. the “tonfa” truncheon. A blow to the stomach caused [the applicant] to bend forward, and the blows which followed struck his face. Afterwards the applicant was laid out on the platform.”

On the basis of the testimonies of the applicant and other witnesses, which had been considered consistent and truthful, the court established that during the police intervention the applicant had displayed passive resistance and had not used force against the police officers. The court also dismissed the testimonies of the police officers regarding the circumstances in which they had used the truncheon against the applicant as lacking credibility and unconfirmed by other evidence.

It appears that no appeal was lodged against the judgment and that it is final.

II. RELEVANT DOMESTIC LAW

19. Section 5 of the Ordinance of the Council of Ministers of 17 September 1990 on the Use of Coercive Measures by the Police (“the 1990 Ordinance”) 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 life, health or property of others.”

20. Section 13 of the Ordinance, in so far as relevant, provided at the material time:

“2. It is forbidden to use police truncheons against persons displaying passive resistance unless the use of force turns out to be ineffective.

3 (1) It is forbidden to hit or push with a truncheon against a [person's] head, neck, stomach and non-muscle and particularly delicate parts of the body..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

21. The applicant complained that he had been ill-treated by the police officers, and that the authorities had failed to carry out an effective investigation, in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

22. The Court notes that the application 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. The parties' submissions

23. The applicant submitted that as result of the police officers' actions he had sustained a number of injuries which were sufficiently serious to amount to ill-treatment within the scope of Article 3 of the Convention. The police had used excessive force against him and their use of the truncheon had been contrary to the domestic law in that he had been hit on the head with it.

The applicant further submitted that the investigation into his allegations had not been effective as the prosecutor had discontinued the investigation against the police.

24. The Government decided not to comment on the merits of the application. They confirmed that regard being had to the 1990 Ordinance, which lays down the rules on the use of force and, in particular, truncheons, the actions of the police officers had been in breach of the relevant domestic law. However, the Government submitted that the applicant had been arrested in the course of an unplanned operation which could have given

rise to unexpected developments to which the police had had to react without prior preparation. According to the Government, the police had had recourse to a degree of force which had been made necessary by the applicant's conduct.

2. *The Court's assessment*

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

25. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

26. 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). The Court also points out that where an individual, when taken into police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

27. 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).

28. Turning to the circumstances of the present case, the Court observes that the applicant sustained an injury to his face, which required stitches, and that three of his teeth were knocked out (see paragraphs 8 - 11 and 13 above). Those injuries were sufficiently serious to amount to inhuman and degrading treatment within the scope of Article 3 (see, for example, *Afanashev 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 the injuries.

29. The burden rests on the Government to demonstrate with convincing arguments that the use of force which resulted in the applicant's injuries was not excessive (see, *mutatis mutandis*, *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Matko v. Slovenia*, no. 43393/98, § 104, 2 November 2006).

30. However, the Government avoided expressing their opinion on the merits of the case. They did not contest the applicant's account of the events, particularly his allegations of having been hit in the face several times with a police truncheon (see paragraphs 7 and 9 above).

The Government acknowledged that the domestic law prohibited hitting a person in the face with a truncheon. However, they considered that the use of force by the police had been made necessary by the applicant's conduct.

31. The Court considers nevertheless that the Government did not advance any argument that would allow the Court to establish that the applicant's conduct was of such character as to justify recourse to the considerable physical force that, judging by the seriousness of the injuries, must have been employed by the police (see *Dzwonkowski v. Poland*, no. 46702/99, § 55, 12 April 2007).

32. The Court further observes that the prosecutor in the investigation against the police officers found that they had hit the applicant with the "tonfa" type truncheon, but only on his arm. No consideration had been given as to how the serious injuries to the applicant's face could have occurred (see paragraph 37 below). It was only in the criminal proceedings against the applicant that the domestic court established on the facts that the applicant had been on his way home and that he had been calm and had not struggled with the police officers. The domestic court found that the applicant had been hit by police officers several times with a truncheon in the face (see paragraph 18 above). These facts and conclusions were not contested as they were not taken on appeal by the prosecutor.

33. Regard being had to the above findings, the Court can only conclude that the applicant was violently assaulted by the police officers without any justification, and contrary to the domestic law, causing him serious injury.

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

b) Adequacy of the investigation

34. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those

within their control with virtual impunity (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

35. An investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq, *Reports of Judgments and Decisions* 1998-VIII). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, §§ 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

36. 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.

37. The Court finds it particularly unsatisfactory that the prosecutor was prepared to conclude that the police officers had not overstepped their duties even though he established that the applicant had been hit by a police officer with a truncheon, apparently only on the arm, yet had sustained serious injuries to his face. The Court finds that the prosecutor did not make any attempt to give a logical explanation as to how the applicant could have sustained serious injuries to his face, in particular fractures of his teeth, other than as a consequence of being hit in the face and on the head with a truncheon. Nor was any consideration given to the fact that domestic law forbids the use of a police truncheon against a person who has been displaying passive resistance and, in any event, against anybody's head.

38. Secondly, the Court notes that the prosecutor did not find it necessary to establish how the applicant's behaviour had apparently prompted the police to use force. The Court recalls that in the subsequent trial against the applicant the domestic court established that he had not been violent and had not belonged to the group of hooligans damaging the carriages.

39. The prosecuting authorities unconditionally accepted the statements of the police officers without taking any note of the fact that they obviously had an interest in the outcome of the case and in minimising their responsibility (see *Dzwonkowski*, cited above, § 65).

40. The Court is struck by the fact that when the case was brought to a court in criminal proceedings instituted against the applicant, the findings were completely different. The court was able to establish that the

applicant had not been under the influence of the alcohol, had been coming home from work and, although he had been calm, had been assaulted by the police officer. Moreover, it found that the statements of the police officers, on which the prosecutor had based his assessment, had lacked credibility. The Court considers that the very fact that, once the domestic court had a chance to examine the evidence during the trial, it reached such clearly contrasting findings shows that the prosecutor's investigation into the applicant's allegations had been deficient.

It should also be noted that there is no indication that since the applicant's acquittal in May 2007 the prosecuting authorities have at least considered resuming or re-opening the investigation into the applicant's allegations that he had been beaten up by the police officers.

41. Finally, the Court is unable to endorse the prosecutor's opinion, expressed when winding up the investigation, that the applicant's appropriate recourse lay with the civil courts (see paragraph 14 above). 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 and this obligation cannot be fulfilled merely by awarding damages (see *Kaya v. Turkey*, 19 February 1998, § 105, *Reports* 1998-I and *Assenov and Others v. Bulgaria*, cited above, § 102). Accordingly, in examining the applicant's arguable claim that his injuries had been sustained at the hands of the police, the prosecutor should have displayed particular diligence and the availability of civil proceedings for damages did not absolve him from the obligation to conduct a thorough and effective investigation.

42. In the light of the above, the Court considers that the investigation was superficial, lacked objectivity and ended in decisions which contained conclusions unsupported by a careful analysis of the facts.

43. It is true that the domestic court in the criminal proceedings against the applicant had found that the police officers, without any justification, had severely beaten the applicant. However this finding cannot be considered to compensate for the woeful failure to investigate the applicant's own complaint in a manner compatible with Article 3 requirements.

44. In view of the lack of a thorough and effective investigation into the applicant's arguable claim that he had been beaten by police officers, the Court finds that there has been a procedural violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

47. The Government did not comment on this claim.

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

B. Costs and expenses

49. The applicant also claimed EUR 1,700 for the costs and expenses incurred before the domestic courts and the Court. According to the bills submitted by the applicant's representative, this sum included 890 Polish zlotys (PLN) for the representation of the applicant before the domestic court in 2003 and PLN 5,000 for the costs of the applicant's representation before the Court.

50. The Government did not comment on these claims.

51. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum claimed in full. It thus awards EUR 1,700 covering costs under all heads.

C. Default interest

52. 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 applicant's ill-treatment;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of 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, the following amounts to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,
 - (ii) EUR 1,700 (one thousand seven hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 12 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President