



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF RACHWALSKI AND FERENC v. POLAND

(Application no. 47709/99)

JUDGMENT

STRASBOURG

28 July 2009

FINAL

28/10/2009

This judgment may be subject to editorial revision.

In the case of Rachwalski and Ferenc 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,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 47709/99) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Polish nationals, Mr Piotr Rachwalski and Ms Agata Ferenc (“the applicants”), on 18 October 1998.

2. The applicants were represented by Mr Adam Bodnar, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that they had been deprived of their liberty during an unlawful search of their apartment and that the police had used excessive and unjustified force towards them. They complained of a breach of Articles 3, 5 and 8 of the Convention.

4. By a decision of 21 October 2008 the Court declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1973 and 1976 respectively and live in Wągrowiec.

7. The parties do not fully agree about the facts of the case, which may be summarised as follows.

1. As presented by the applicants

8. The second applicant lived with a group of friends, including the first applicant, mostly students, in an old and decrepit house they had rented in Wrocław. They occasionally invited their friends to spend a night or a couple of days in their house.

9. On the night of 14 June 1997 there was a group of students sleeping in the house. At 3 a.m. they were awakened by two police officers patrolling the area. The police enquired whether the inhabitants knew the owner of an unlocked car parked in front of the house.

10. The applicants and one of their friends, D. S., started a polite discussion with the police officers about the car. It was confirmed that one of the residents of their apartment was the owner of the car. However, the police announced their intention of towing the car away to the police car park. The applicants argued that it was not forbidden or illegal to keep the car unlocked. At the police's request, they produced their identity cards and the registration card of the car, whose owner was asleep in the house.

11. The police were not satisfied with their explanation and the dispute became more intense. In reaction to the opinions expressed about the intervention, in particular by D. S., the policemen used truncheons. They hit D. S. several times and handcuffed him. The applicants tried to argue with the policemen, to no avail. The police called other police officers and shortly afterwards approximately ten other policemen arrived. They hit the first applicant with their truncheons several times and the second applicant once. Thereupon D. S. was taken to the police car where he was beaten. The applicants were ordered to stand against a fence. They were pushed and jostled and the policemen insulted them referring to them as "scum", "slobs", "queers" (*holota, brudasy, pedaty*).

12. Subsequently, a group of policemen, armed with truncheons and guarded by police dogs, entered the house, woke up the other occupants and ordered them to stand against the wall. Then the police searched the house. No information was provided about the grounds, purpose or legal basis for the search. During this time the police showered abuse on the students. They pushed and shoved them. This lasted for about half an hour. Afterwards, the police left the house and warned the students that some of

them were in an illegal situation as they were not registered as inhabitants of the house, and threatened that they would be in trouble if they submitted a complaint about the events.

13. The police left, taking D. S. with them.

14. On 16 June 1997 the applicants requested to be examined by a forensic medicine specialist. It was established that the first applicant had two long bruises on his left arm, and other bruises on the palm of his hand. The second applicant had a blue mark on her bottom (13 by 9 cm). It was stated that these bruises could have been caused by the use of police truncheons.

2. As presented by the Government

15. The second applicant and her friend D. S. lived in the house with the owner's permission. They often received young visitors from all over the country. On the night in question the unlocked car parked in front of the house had seemed very suspicious to the policemen A. C. and R. S., who thought it was stolen and considered that it should be towed away. They had knocked at the window and the second applicant informed them that the owner was in the house. She first objected to the police action at night, and then went to look for the owner of the car among the fourteen young people who were sleeping in the house. The applicants behaved aggressively, loudly expressing opinions about the purpose and nature of the intervention. D. S. raised his voice to the police and pushed A. C.

16. The police action was a result of the fact that the applicants did not comply with the police requests to provide necessary information. The applicants talked to the police with raised voices and took a very active part in the struggle with the policemen.

17. The police officer had misinterpreted the first applicant's intentions when he handed him his documents and had hit him to prevent his being attacked. The applicant was most probably hit once.

18. The atmosphere was tense. The owner of the car gave the police the keys and documents to the car. As D. S. was unruly and continued to express objections, the policemen decided to arrest him. While he was being taken into custody by the police, he hit one of them in the face. Thereupon truncheons were used against him. Given the attitude of D. S. and of other persons present, the police called for assistance. Two other police patrols and an emergency team arrived. As the applicants were interfering with the arrest of D. S., they were hit with truncheons.

19. Police officers D. R. and J. G. then entered the house to check the identity of the persons present. After that, the intervention was terminated.

3. *The prosecutor's investigation and conclusion*

20. On 16 June 1997 the applicants requested the Wrocław District Prosecutor to institute criminal proceedings against the police for abuse of authority. On 23 December 1997 the prosecutor refused to do so. He found that no criminal offence had been committed.

21. The prosecutor considered that the police action had been justified. The police could have reasonably suspected that the unlocked car had been stolen, even though it had not been reported as such. The further developments had certainly come as a surprise to both the police and other persons involved in the incident. The second applicant had objected in a pretentious tone (*"pretensjonalny ton głosu"*) to having been woken up and to the check on the car taking place at night. She had been informed that the car would be towed away if the owner was not found. She could not locate the owner of the car, as there were many people in the house who did not know each other. The second applicant had woken all of them up in an attempt to find the owner.

22. D. S. had objected in a loud voice to the police intervention. He had insisted that the intention of the police was to harass the persons in the house. As he had not obeyed the police requests to calm down and the verbal exchange between him and the police officer A. C. had become increasingly heated, it had been decided that he should be taken to the police car. The prosecutor considered that this had been justified in the light of D. S.'s aggressive behaviour. Given that D. S. had been behaving aggressively, direct force had been used against him, including the use of truncheons and handcuffs. It was true that the applicants' versions of the facts diverged, and these divergences could not be clarified on the basis of evidence from other witnesses, but it was clear that, in the face of his resistance, it had been necessary to use such force in order to take D. S. to the car.

23. Given the applicants' behaviour, the police had had to call assistance. They had also felt threatened by the presence of other persons at the scene of the incident. The applicants had been hit as they had ignored the order to let D. S. go so that he could be taken to the car. In the darkness, the police had not noticed that the first applicant had in fact had his documents in his hand in order to show them to the police, and they had thought that he intended to hit them.

24. It was finally noted that the accounts of the facts given by the persons present at the scene, other than the police, were highly divergent, making it impossible to establish the facts of the case. However, the testimony given by the policemen was coherent. Therefore, the submissions of the other persons could not be considered credible and had to be assessed critically.

25. The prosecutor concluded that the measures taken by the police had been proportionate to the situation.

4. The appeal against the prosecutor's decision

26. The first applicant appealed. He argued that the police brutality and aggression had been totally unjustified. Nothing in the behaviour of the persons present had justified the use of force. The police had entered private property and effected a search of the house without any sound reasons, hitting and insulting the persons sleeping in the house. He argued that he was a law-abiding citizen, a student of two university faculties and a member of the Municipal Council of his town. He had not given any reason to be beaten, verbally insulted and humiliated just at the whim of the police. The police should not intervene in private property at night and hit, insult and humiliate people just because they looked, or lived, differently. The facts as established by the prosecutor did not correspond to what had happened. All the facts had been established on the basis of the arguments of the police, who had apparently been instructed by police lawyers as to what they should say. During the questioning the prosecutor had made unpleasant remarks about the hairstyles, clothes and views of the young inhabitants of the house, which had influenced her decision to discontinue the proceedings. He submitted that the police had humiliated both himself and the others.

27. The second applicant submitted that the assessment of the evidence had been biased and that the police had clearly abused their authority, insulting and humiliating her and other participants in the incident.

5. The outcome of the appeal

28. On 20 May 1998 the Wrocław Regional Prosecutor upheld the contested decision. He considered that the intervention of the police had been justified in so far as they wanted to verify the identity of the owner of the car. D. S. had behaved aggressively, both verbally and physically. Regardless of whether he had intended to hit A. C. in the face or not, his behaviour could have been perceived as an intentional assault. It was for that reason that a decision to arrest him had been taken. The identity check of the persons present in the house had been necessary as they had insulted the policemen.

29. The social status of the young people, namely the fact that they were students, imposed certain obligations on them, in particular an obligation to cooperate with the police in the interest of law and order.

30. The findings of the inquiry had not established that the students had been insulted verbally by the police, as the policemen consistently denied this. Nothing had been found to support the first applicant's submission that the testimony of the policemen had been suggested to them by the police lawyers.

31. The prosecutor concluded that the contested decision had to be upheld.

II. RELEVANT DOMESTIC LAW

32. The Code of Criminal Procedure contains the following provisions on the search of premises by the police:

Article 221

§ 1 Searches of inhabited premises can be made during the night only in cases when it is indispensable to carry out such searches without delay. Night-time lasts from 10 p.m. until 6 a.m.

§ 2 A search which has commenced during the day can be continued during the night.

§ 3 Only premises which are accessible at this time to a particular person or persons, or premises designed for storage, can be searched at night.

33. The police's powers regarding the use of coercive measures is regulated by the Police Act of 6 April 1990 and by the Ordinance of the Council of Ministers of 17 September 1990 setting out the conditions and method of application of coercive measures.

34. Pursuant to section 14 of the Police Corps Act, within the limits of their competence, the police are required – in order to examine, prevent and detect offences and petty offences – to carry out operational and reconnaissance activity, take part in an investigation or inquiry, or carry out administrative activity and safeguard public order. In the exercise of their powers the police must respect human dignity and human rights (section 3).

35. Section 16 of the Police Corps Act provides that if a person does not comply with the lawful request of police officers they may apply such coercive measures as, for instance, using truncheons.

36. The police are bound by the principle of minimal use of coercive measures. In accordance with this principle the police must only use such measures when they are absolutely necessary in the given circumstances in order to enforce execution of orders issued by the police (section 16 § 2).

37. The ordinance setting out the conditions, circumstances and method of application of coercive measures by the police, issued on the basis of section 16 § 4 of the Police Corps Act (*Ordinance of the Council of Ministers of 17 September 1990 on the Use of Coercive Measures by the Police*), indicates – among other coercive measures – the use of truncheons.

Section 5 of the (“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.”

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...”

38. Pursuant to section 142 § 1 of the Police Corps Act a police officer who in the performance of official duties oversteps his powers and violates the personal interests and dignity of a citizen, is liable to imprisonment for up to five years.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicants complained under Article 3 of the Convention that the police conduct towards them had amounted to degrading treatment.

Article 3 of the Convention reads:

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

A. The parties’ submissions

1. *The applicants*

40. The applicants argued that the police action had constituted a penalty for their unconventional lifestyle. In their opinion the policemen had intended to humiliate and harass them and had acted with a sense of impunity.

41. The applicants further submitted that they and their friends had on several occasions been harassed by police officers who apparently did not like their appearance. In view of the fact that it had never been established that they had done anything against the law, the applicants argued that the insults directed at them during the incident had manifestly indicated prejudice on the part of the police officers against them.

42. The applicants argued that the use of truncheons against them had been unjustified and excessive. Hitting one of the applicants, a young woman, had been humiliating and punitive. They disputed the Government’s argument that their behaviour had been aggressive and that one of the applicants had been hit only once by the policemen.

43. The applicants submitted that they had been insulted, assaulted and humiliated by having been expelled from the house by the policemen using truncheons and police dogs and placed against the wall in their pyjamas. They argued that the investigation had been opened only after they had made repeated requests and following press releases concerning the incident. The applicants also questioned the impartiality and objectivity of the prosecuting authorities in the conduct of the investigation.

2. The Government

44. The Government argued that the applicants had not been subjected to degrading treatment and that the police had made a legitimate intervention in the applicants' case, showing due diligence when performing their official duties.

45. The Government submitted that the applicants had disturbed the legitimate police action aimed at arresting one of the students, who had assaulted a policeman and had actively resisted the attempt to arrest him. The Government further stressed that the police officer had misinterpreted the first applicant's intentions when he held out his documents and had hit him to prevent a perceived attack. In the Government's opinion, the applicant was most probably hit once.

46. According to the Government's further submissions, the applicants did not comply with the police requests. The situation was very tense and the applicants had talked to the police with raised voices and taken a very active part in the struggle with the policemen. However, the policemen had never intended to arrest the applicants.

47. The Government emphasised that the police intervention had been necessary. The applicants had behaved aggressively and had refused to obey police orders. The use of direct force against them had therefore been indispensable and proportionate.

48. In the Government's view, the level of suffering and humiliation in the applicants' case did not reach the threshold that would justify the applicability of Article 3 of the Convention.

49. With respect to the procedural aspect of the case, the Government argued that the investigation had complied with the requirements of Article 3 of the Convention. In order to collect more evidence the prosecutor had twice decided to extend the investigation. Twenty-eight witnesses to the incident were interviewed and some of them confronted. In the Government's view the investigation conducted by the public prosecutor had been effective.

50. The Government also submitted that the applicants could have brought private prosecutions against the police officers once the investigation automatically conducted under section 142 of the Police Corps Act had been discontinued.

B. The Court's assessment

1. General principles deriving from the Court's case-law

51. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v Italy* [GC], no. 26772/95, 6.4.2000, § 119, ECHR 2000-IV).

52. The Court further recalls that, according to the Convention organs' case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). The same holds true in so far as degrading treatment is concerned (see *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, p. 59, § 30). As for the criteria concerning the notion of "degrading treatment", the Court notes that the treatment itself will not be degrading unless the person concerned has undergone humiliation or debasement attaining a minimum level of severity. The assessment of this minimum level of severity is relative; it has to be assessed with regard to the circumstances of any given case (cf., among many authorities, *Ireland v. the United Kingdom*, cited above, and *Dougoz v. Greece*, no. 40907/98, § 44).

53. It is also recalled that treatment may be considered degrading if it is such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Ireland v. the United Kingdom*, cited above, pp. 66-67, § 167). Moreover, it is sufficient if the victim is humiliated in his or her own eyes (see *Tyrer v. the United Kingdom*, judgment of 25 April 1978, Series A no. 26, p. 16, § 32, and *Smith and Grady v. the United Kingdom*, nos. 33985/96 ; 33986/96, § 120).

54. Furthermore, in considering whether a treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 67-68, ECHR 2001-III; *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII; and *Iwańczuk v. Poland*, no. 25196/94, § 52, 15 November 2001).

2. Application of the above principles to the present case

55. The Court notes that in the present case police officers woke up the applicants in the middle of the night to inquire about the ownership of an unlocked car parked outside the house. It observes that the young people

who were sleeping in the house had not behaved in any manner that could have disturbed the public order. The authorities did not refer to any complaints by third parties about the conduct of the occupants which might have triggered such a visible police presence.

56. The Court further notes that two distinct phases can be distinguished in the subsequent police intervention.

57. The first phase consisted in the exchange between two police officers, the applicants and their friend D.S. The applicants and D.S. engaged in a heated discussion with the police officers. The Court notes the District Prosecutor's finding that at this stage the two officers felt threatened (see paragraph 23 above) and used truncheons. This sense of threat also prompted the officers to use force against D.S. and to call for reinforcements.

58. The Court further notes that the second phase of events, after the arrival of approximately ten other police officers with dogs, was marked by a serious escalation in tension. The police officers subsequently ordered all the applicants out of the house and stood them against a wall, dressed in their night clothes. The Court notes that it was at that moment that the police officers used truncheons against the applicants. In the Court's opinion, the manner of intervention of the police at that stage is particularly open to criticism. It has not been shown or argued that the applicants at that time had behaved in an aggressive manner which would have warranted the use of truncheons against them. Nor has the Court been presented with any evidence to show that at that juncture the applicants had offered any physical resistance. It must be noted that the young people, including the applicants, were at that time confronted by a group of police officers, specially trained and equipped to overcome physical resistance. Even assuming that when remonstrating with the police they questioned the need to show their identity documents or expressed objections as to the purpose of the intervention, the use of truncheons against the applicants can only be considered disproportionate to the situation. It cannot be ruled out that at that stage the use of force against the applicants was motivated rather by punitive intentions than by any genuine need to break or discourage any physical opposition.

59. The Court reiterates that recourse to physical force against a person which has not been made strictly necessary by his or her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3. Such a strict proportionality approach has been accepted by the Court also in respect of a situation where an individual is already under the full control of the police (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; *Milan c. France*, no. 7549/03, 24 January 2008, § 68).

60. Lastly, the Court observes that in their submissions the Government confined themselves to pointing to the lawfulness of the measures complained of. They emphasised that the applicants had not complied with the police requests and that the police officers has misinterpreted the first applicant's intentions and had acted in order to prevent a perceived attack. However, they did not explain what criteria had been used to assess the necessity of the use of a police team with guard dogs and truncheons to investigate a minor issue of an unlocked car and in the absence of any aggression or behaviour disturbing the public order on the part of the applicants. The mere fact that the car was left unlocked in front of the house cannot, in the Court's view, in itself constitute a good reason for a heavy-handed police intervention.

61. The Court, taking into account the circumstances of the incident as a whole, is of the opinion that the applicants must have experienced a profound sense of vulnerability, powerlessness and affront which can reasonably be described as humiliating and therefore degrading within the meaning of Article 3 of the Convention.

62. Having regard to this finding, the Court is further of the view that it is not necessary in the particular circumstances of this case to examine whether the procedural requirements under Article 3 have been complied with.

63. The Court concludes that there has been a breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

64. The applicants further complained that their right to respect for their private life and home had been breached as the police officers had broken into the house without any legal right to do so.

Article 8 of the Convention reads:

“1. Everyone has the right to respect for his private ... life, his home

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties' submissions

1. *The Government*

65. The Government submitted that the police had not searched the house but had only entered it and requested the persons inside to leave.

66. The Government argued that the applicants had voluntarily let the police officers enter the house. They submitted that there was no proof that a search of the house had taken place. They further argued that if the applicants and the car's owner had complied quickly with the police officers' request, there would have been no intervention.

2. The applicants

67. The applicants rejected the Government's submissions and maintained that the police officers had entered the flat at about 3 a.m. on 14 June 1997 by force without their consent and had police dogs and truncheons with them. They had searched the premises and escorted the occupants out.

B. The Court's assessment

1. General principles deriving from the Court's case-law

68. Article 8 of the Convention protects the individual's right to respect for his private and family life, his home and his correspondence. A home will usually be the place, the physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning that an unauthorised entry into a person's home would constitute a breach of that right (see, *mutatis mutandis*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII).

69. The Court has consistently held that Contracting States have a certain margin of appreciation in assessing the need for an interference with the right to respect for one's home, but it goes hand in hand with European supervision. The exceptions provided for in paragraph 2 of Article 8 of the Convention are to be interpreted narrowly (see *Klass and Others v. Germany*, 6 September 1978, § 42, Series A no. 28), and the need for them in a given case must be convincingly established.

70. Undoubtedly, in the prevention of crime it is of key importance that the relevant authorities can act promptly and efficiently. The Court therefore recognises that Contracting States may consider it necessary to have recourse to measures such as forcible entry onto premises and house searches in order to obtain evidence and, where appropriate, to apprehend and prosecute offenders. Nonetheless, the relevant legislation and practice must afford adequate and effective safeguards against abuse (see, among other authorities, *Crémieux v. France*, 25 February 1995, no. 11471/85, § 39).

2. Application of the above principles to the present case

71. The Court notes that the facts concerning the entry into the applicants' house are disputed by the parties. According to the applicants, a group of police officers, armed with truncheons and guarded by police dogs, entered and searched their apartment at about 3 a.m. on 14 June 1997. The Government argued that only two police officers had entered the house.

72. The Court observes, however, that it is undisputed that, after the atmosphere had become tense and the officers called for assistance, two police patrols and an emergency team were involved in the intervention. In the Court's opinion, considering that the police officers had come to the applicants' house at night, it can reasonably be concluded that the applicants were left with little choice but to allow the police to enter the premises. It is difficult to accept the Government's argument that, in the circumstances, any consent given by the applicants was free. There has accordingly been an interference with their right to respect for their home. That interference will only be justified if it complies with the requirements set out in Article 8 § 2 of the Convention.

73. In that respect, the Court has regard to the fact that the applicants were confronted by a number of police officers carrying truncheons and accompanied by dogs at the front door of their house in the middle of the night. No compelling justification was given by the Government for the use of such visible force. It must be observed that a risk of abuse of authority and violation of human dignity is inherent in a situation such as the one which arose in the present case. As the Court stressed in a similar case, *Kučera v. Slovakia* (no. 48666/99, judgment of 17 July 2007), safeguards should be in place in order to avoid any possible abuse in such circumstances and to ensure the effective protection of a person's rights under Article 8 of the Convention. Such safeguards might include the adoption of regulatory measures which both confine the entering of premises and prescribe relevant procedural guarantees ensuring, for example, the presence of an impartial person during the operation or the obtaining of the owner's clear consent as a pre-condition to entering his or her premises.

74. The Court observes that certain guarantees to that effect are incorporated in Article 221 of the Code of Criminal Procedure and in the Police Corps Act. However, those guarantees failed to prevent the situation complained of in the instant case from occurring; the police did not seem to regard them as applicable or relevant.

75. The Court further notes that, as indicated above, the police had come to the applicants' door in order to ask them about an unlocked car parked outside the house. It has already highlighted under Article 3 the total lack of justification for the police's heavy-handed approach to the investigation into the ownership of the car. For the Court, the decision to enter the premises can only be described as disproportionate in the circumstances.

3. *Conclusion*

76. In view of the above considerations, the Court is not satisfied that the action in issue was proportionate and compatible with the applicants' right to respect for their home.

77. There has accordingly been a violation of Article 8 of the Convention as a result of the entry by the police into the applicants' house.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

78. The applicants also complained that the conduct of the police officers had infringed their right to liberty and security guaranteed by Article 5 of the Convention.

Article 5 § 1 of the Convention reads, in so far as relevant:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;"

79. Bearing in mind its finding of a violation of Articles 3 and 8 of the Convention, the Court does not consider it necessary to examine whether the facts alleged also constituted deprivation of liberty within the meaning of Article 5.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicants sought 4,000 euros (EUR) each in compensation for pecuniary and non-pecuniary damage they had suffered on account of the

alleged violation of Article 3 of the Convention and EUR 4,000 each on account of the alleged violation of Article 8.

82. The Court accepts that the applicants suffered non-pecuniary damage and, making its assessment on an equitable basis, awards each of the applicants EUR 2,000 under this head.

B. Default interest

83. 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. *Holds* that there has been a violation of Article 3 of the Convention;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that it is not necessary to examine separately the applicants' complaint under Article 5 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two 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 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President