



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF STASZEWSKA v. POLAND

(Application no. 10049/04)

JUDGMENT

STRASBOURG

3 November 2009

FINAL

03/02/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Staszewska 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 13 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 10049/04) 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, Ms Izabela Staszewska (“the applicant”), on 5 March 2004.

2. The applicant was represented by Mr Zbigniew Cichoń, a lawyer practising in Cracow. 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, a violation of Article 3 of the Convention on account of ill-treatment during her arrest by the police.

4. On 24 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 1969 and lives in Szczecin.

A. The alleged ill-treatment of the applicant during her arrest

1. Facts as presented by the applicant

6. In the early hours on 2 June 2001 the applicant and her friend J.D. were coming back from a party in Cracow. At a certain point they stopped because the applicant wanted to collect some leaves from an oak tree; she is a painter and she needed them to produce dye for her work. As they approached the tree, a police car stopped near them. Two uniformed policemen got out of the car and asked the applicant and her friend what they were doing there. The applicant asked what she was suspected of and what the policemen wanted from her. She asked them to show their badges. The policemen refused.

7. Then the applicant and her friend were asked to show their identity cards. J.D. did not have his identity card on him; however, he gave the policemen his personal details. The applicant refused, saying that she did not have her card on her and that she did not trust the Polish police. Then she said that she would not speak to them any longer and tried to walk away. Subsequently, she was informed that the process of establishing her personal details had not been finished and was warned that coercive measures would be used and that she would be taken to a police station if she persisted in her refusal. Then the policemen took her by both arms and brought her to the police car, parked nearby. The applicant resisted arrest by trying to get away, kicking and shouting. After she was brought to the car, she refused to get in. The two policemen called another police car and two other policemen arrived. Then the applicant was pushed into the car, laid on the floor and held down by the weight of the policemen's bodies. While she was being pushed into the car, kicking and shouting, one of the policemen was accidentally hurt by a walking-length umbrella that the applicant was holding.

8. Subsequently, the applicant was handcuffed behind her back and taken to the police station. She refused to give a sample of her breath, saying that she suffered from asthma and bronchitis. She was taken to an accident and emergency service, where she refused to undress for a medical examination. Then she was taken to a sobering-up centre where she underwent a breath test, which showed a blood-alcohol level of 0.04 ‰. The doctor refused to keep the applicant in the sobering-up centre. She was taken back to the police station, where she apparently underwent another breath test. Subsequently she was taken to the police detention centre (*izba zatrzymań*). As emerges from the record of arrest (*protokół zatrzymania osoby*) the applicant did not appeal against the decision on her arrest and did not ask for a lawyer. She refused to sign the record of arrest.

9. In the police detention centre a policewoman told the applicant that she had to undress to undergo a body search in order to check whether she

had any dangerous objects on her. The applicant refused, but as the policewoman allegedly warned her that she would be undressed by force, she eventually agreed. The applicant was then placed in a cell without a mattress. She had to spend the night on a concrete floor without her jacket, which had been taken away from her because it had a cord which might serve as a dangerous object. Only after some time was she given a blanket. She was refused permission to go to the toilet.

10. On 2 June 2001, at an unspecified time during the day, the applicant was released.

11. On the same day, at 21.55, the applicant went to an accident and emergency service in Cracow, where she was examined by a doctor.

12. According to a medical certificate from that examination the applicant had bruises on her chest and both arms, a haematoma on the left arm, bruises on the left hip and a haematoma on her left foot.

2. Facts as established in the investigation against the policemen for abuse of authority

13. There are no discrepancies in the facts until the moment the applicant was asked to show her identity card. She refused, saying that she did not have her card on her, and tried to walk away. Subsequently, she was warned that coercive measures would be used and that she would be taken to a police station if she persisted in her refusal. Then the policemen took her by both arms and brought her to the police car, parked nearby. The applicant resisted arrest by trying to get away, kicking and shouting. After she was brought to the car, she refused to get in. The two policemen called another police car and two other policemen arrived. They “helped carry out the intervention”. When the applicant was in the car, she suddenly hit one of the policemen in his mouth with the ferrule of her umbrella.

14. Alternatively, according to the criminal court which conducted proceedings against the applicant (see below), the applicant had calmed down before being “put in the car”. After that she hit one of the policemen with her umbrella.

15. There are no discrepancies as regards facts which occurred in the accident and emergency service and the sobering-up centre.

16. Subsequently, in the police detention centre, two policewomen told the applicant that she had to remove her clothing to undergo a body search. The policewomen, who were questioned later in the course of investigation, said that the strip search had been carried out in accordance with the relevant procedures and denied that it could be humiliating for the applicant.

3. *The investigation concerning the applicant's arrest*

17. On an unspecified date the applicant's lawyer applied to the Cracow District Prosecutor for the prosecution (*wniosek o ściganie*) of the police officers who had arrested the applicant.

18. On 30 May 2003 the Cracow District Prosecutor discontinued the investigation, finding that the policemen's acts did not constitute the offence of abuse of authority. The prosecutor relied on statements given by a number of witnesses, including the applicant's friend J.D. who had presented the circumstances of the case “in a way similar to the applicant's version”. J.D. however did not see what happened after the applicant had been placed in the police car. He said that only at the police station had he noticed that one of the police officers was hurt on his face and that he had found the wound “superficial”. The Prosecutor relied also on an expert opinion produced in the course of the investigation, according to which, as a result of the police intervention on the night in question, the applicant had bruises on both her arms and a haematoma on her left arm, bruises and a haematoma on her left foot, bruises on her left hip and a sprained right wrist. The above symptoms and physical state caused her health to be impaired for a period shorter than seven days within the meaning of Article 157 § 2 of the Criminal Code. As regards the body search of the applicant, the prosecutor invoked the provisions of the 1990 Police Act and Order no. 7/94 of the Chief Police Commandant (*Komendant Główny Policji*) of 10 November 1994, which provided for the detailed examination of the clothes, shoes and underwear of arrested persons for any objects which could be dangerous to their own or another's health or life.

19. On 16 June 2003 the applicant's lawyer appealed, asking that the evidence in the file of the criminal proceedings against the applicant, which were pending at that time (see: “Criminal proceedings against the applicant”, below), be examined. In the applicant's lawyer's view, it was relevant for the present proceedings that the case against the applicant had been remitted by the second-instance court for re-examination. He also wanted the court to compare the evidence given by the police officers in both sets of proceedings. In his appeal the applicant's lawyer did not refer to the fact that at the police detention centre the applicant had allegedly been refused permission to go to the toilet and that she had had to spend the night on a concrete floor without any cover.

20. On 14 October 2003 the Cracow District Court (*Sąd Rejonowy*) held a hearing and rejected the applicant's lawyer's application. The court found that it was not bound by a judgment given in the criminal proceedings against the applicant and that the question whether or not the applicant had committed the offence of forcibly resisting arrest was irrelevant for the assessment of whether the police officers had abused their authority.

21. On the same day the Cracow District Court upheld the prosecutor's decision.

B. Criminal proceedings against the applicant

22. On an unspecified date the applicant was charged with resisting lawful arrest.

23. On 25 June 2002 the Cracow District Court convicted the applicant as charged and ordered her to pay a fine.

24. On an unspecified date the applicant's lawyer appealed.

25. On 1 July 2003 the Cracow Regional Court (*Sąd Okręgowy*) quashed the first-instance judgment and remitted the case for further examination. The court found that the circumstances of the case had not been properly established and the applicant's injuries could not have been caused by her being placed in the police car in the way described by the police officers.

26. On 24 March 2004 the Cracow District Court, having re-examined the case, again convicted the applicant and ordered her to pay a fine. The District Court did not directly refer to the shortcomings of the proceedings found on appeal by the Regional Court. However the judgment, in its extensive reasoning, contains a detailed description of the circumstances of the case. The applicant was found guilty of resisting lawful arrest by, *inter alia*, hitting one of the policemen with an umbrella and hurting his lip and kicking the police officers.

27. On an unspecified date the applicant's lawyer appealed again.

28. On 12 April 2005 the Cracow Regional Court upheld the first-instance judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Use of force by the police

29. The regulations on permissible use of direct coercive measures by the police are laid down in section 16 of the Police Act, which provides that in situations in which a police order is not obeyed, such measures can be resorted to only in so far as they correspond to the requirements of a particular situation and in so far as they are necessary to obtain compliance with that order.

30. Article 5 § 1 of the Ordinance of 17 September 1990 on the use of coercive measures by the police provides that direct physical force can be used to overpower a person, to counter an attack and to ensure compliance with an order. When such force is being used, it is forbidden to strike the person against whom the action is being carried out, except in self-defence or to counter an attack against another person's life, health or property.

B. The order of the Chief Police Commandant

31. Order no. 7/94 of the Chief Police Commandant of 10 November 1994 is neither an act nor a regulation which is published in the Journal of Laws (*Dziennik Ustaw*). Thus it is an internal police document and not accessible to the public.

C. Article 157 of the Criminal Code

32. Article 157 of the Criminal Code sets the threshold between minor and more serious bodily injury or impairment to health. According to that provision, if the bodily injury or impairment to health lasts less than seven days, the perpetrator is subject to a fine, the penalty of restriction of liberty or deprivation of liberty for up to two years. In such case the prosecution occurs upon a private charge. If the bodily injury or impairment to health lasts longer than seven days, the perpetrator is liable to a heavier penalty.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained under Article 3 of the Convention that she had been ill-treated in the course of her arrest. She alleged that the arresting police officers had caused her injuries by using disproportionate force and had violated her dignity.

34. Furthermore, the applicant complained that the authorities had not convincingly explained the reasons for her injuries.

35. Article 3 of the Convention provides as follows:

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

A. Admissibility

1. Exhaustion of domestic remedies

36. The Government argued that the applicant had not exhausted all the available remedies since she could have appealed against her arrest on the grounds contained in Article 246 of the Code of Criminal Procedure.

37. The applicant's lawyer did not comment.

38. The Court notes that the applicant did not make use of the appeal against her arrest under Article 246 of the Code of Criminal Procedure. However, the purpose of the remedy relied on by the Government is to examine the lawfulness and legitimacy of the arrest. Therefore, in the Court's view, it would not pursue the aim sought by the applicant that is identifying and punishing the police officers responsible for her alleged degrading treatment at the time of her arrest.

39. The Government further submitted that the applicant could have brought a civil action for the protection of her personal rights under Article 23 and 24 of the Civil Code or could have claimed damages against the State Treasury under Article 417 of the Civil Code. In the civil proceedings the court would have had to establish whether the allegations of ill-treatment were well-founded and thus to determine whether there had been a breach of Article 3 of the Convention. The Government stressed that the civil courts were not bound by the findings reached in the criminal investigation.

40. In that regard, the Government relied on the Supreme Court judgment of 26 March 2003 (no. II CKN 1370/00). In that case a plaintiff had successfully sued the police for the damage to his health sustained as a result of the unlawful use of a firearm. The Supreme Court ruled that the discontinuation of the criminal proceedings for abuse of authority against one of the police officers concerned did not constitute a bar to a finding by a civil court that the police officer had committed a tort.

41. The applicant's lawyer did not comment.

42. The Court notes that a similar objection raised by the Government in an Article 3 case against Poland was previously examined and rejected by the Court (see *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001). The Court considers that the Government have not submitted any new arguments which would lead it to depart from its previous findings.

43. In any event, the Court reiterates that 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 *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, RJD 1998-VIII, and *Selmouni v. France* [GC], no. 25803/94, ECHR 1999-XII, § 79).

44. By force of that special obligation created by the Convention for domestic authorities in respect of arguable Article 3 claims, in the present case the applicant, by asking the Polish authorities to institute criminal proceedings into her allegations of ill-treatment, discharged her duty under Article 35 § 1 of the Convention to afford the Polish State an opportunity to put matters right through its own legal system before having to answer before an international body for the acts complained of (see, *mutatis mutandis*, *Egmez v. Cyprus*, no. 30873/96, § 72, ECHR 2000-XII).

45. Accordingly, the Court holds that the applicant need not in addition have sought to pursue any civil remedy relied on by the respondent Government (see, *H.D. v. Poland*, cited above) or appeal against her arrest (see paragraph 38 above). Moreover, a tort action would have at most resulted in an award of damages, whereas in cases of serious ill-treatment by State agents an alleged breach of Article 3 cannot be remedied exclusively through the payment of compensation (see, among many other authorities, *İlhan v. Turkey* [GC], no. 22277/93, § 61, ECHR 2000-VII). For these reasons, the Government's pleas of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

2. Other grounds for declaring this complaint inadmissible

46. 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. Alleged ill-treatment by the police

(a) The applicant's submissions

47. The applicant's lawyer submitted in general terms that Article 3 had been violated by the police officers who, without any reason, had brutally treated the applicant – a sensitive and vulnerable young woman. He further submitted that the arresting police officers had refused to show their badges and had caused the applicant injuries by using disproportionate force and had violated her dignity. He also alleged that the order to strip naked to undergo a body search had been humiliating to the applicant.

Furthermore, the applicant's lawyer complained that the authorities had not convincingly explained the reasons for her injuries.

(b) The Government's submissions

48. The Government submitted that the applicant had been requested to show her identity card at night in the course of a street patrol in a district where many car thefts had occurred previously. She had refused to show her document and tried to walk away. She was subsequently warned that coercive measures would be used against her if she persisted in refusing to follow the police officers' orders and only then was she apprehended. However, as shown by the evidence obtained in the investigation against the police officers, the force used had not been disproportionate and the police officers had not abused their powers. The use of force had been made

necessary by the applicant's own aggressive conduct. The applicant kicked and shouted and hit one of the police officers with her umbrella. In that connection, the Government submitted that no coercive measures had had to be used against the applicant's friend, who gave his personal data as requested.

49. As regards the complaint that the police officers refused to show their badges, the Government submitted that they had been wearing uniforms and that the applicant could have had no doubts that they were entitled to request her identity card. In this respect the Government relied on the provisions of the Ordinance of the Council of Ministers of 17 September 1990 in force at the relevant time, according to which at the time of the intervention, a police officer was obliged to give his name, family name and police rank. Only a police officer not wearing a uniform was obliged to show his badge.

50. The Government further submitted that, as regards the body search complaint, the applicant had been requested to undress in order to check whether she had any dangerous objects on her. The body search had been conducted in accordance with the law in force at the material time and in circumstances calculated to reduce the level of inevitable humiliation – that is, in a separate room, in the presence of one policewoman and taking only as much time as necessary.

51. Turning to the complaint about the conditions in the cell in which the applicant was detained at night the Government submitted that the conditions had met the requirements laid down in the relevant provisions of law. It further stressed that on 30 May 2003 the relevant police detention centre was inspected by the penitentiary judge of the Cracow Regional Court and that no reservations were reported.

(c) The Court's assessment

52. The Court reiterates that where an individual is taken into police custody in good health and is found to be injured on 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, among other authorities, *Selmouni v. France* [GC], cited above, § 87). The same principle applies to alleged ill-treatment resulting in injury which takes place in the course of an applicant's arrest (see *Klaas v. Germany*, 22 September 1993, §§ 23-24, Series A no. 269, and *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII).

53. According to the Court's case-law, Article 3 does not prohibit the use of force for the purposes of effecting an arrest. However, such force may be used only if indispensable and must not be excessive (see, among others, *Rehbock*, cited above; *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001; and *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). 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).

54. The Court further recalls that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. However, 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 mental effects and, in some cases, the sex, age and state of health of the victim. 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. Treatment has been held by the Court 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, and also “degrading” because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *Labita v. Italy* [GC], no. 26772/95, 6.4.2000, §§ 119-120, ECHR 2000-IV). Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*loc. cit.*, § 121).

55. The Court observes that the parties have not disputed that the impugned injuries were caused by the police officers, using physical force. It is also uncontested that the police officers used force at night on 2 June 2001 while taking the applicant to the police van in order to effect the arrest which the applicant was attempting to resist. The parties disagree however on whether the applicant was pushed into the car and held down by the weight of the policemen's bodies. It must be noted that the applicant's allegations to that effect were not confirmed during the domestic investigation of her complaints at two levels (see paragraphs 20-21 and 25-28, above). While the Court is not bound by the findings of the domestic authorities as to facts alleged to be in breach of the Convention, on the basis of the parties' observations and the material in its possession, it finds it impossible to establish whether any ill-treatment occurred in the police van as alleged by the applicant.

56. The Court observes that the applicant was apprehended in the course of an operation giving rise to unexpected developments to which the police were called upon to react. Furthermore, account must be taken of the fact that the applicant effectively resisted the legitimate actions of the police officers - by refusing to comply with their request to show her identity card and trying to walk away and, subsequently, by resisting the attempts of the policemen to apprehend her, kicking the officers and hitting one of them with an umbrella. Some injuries of one of the police officers were noted by the domestic courts (see paragraph 26 above and, by contrast, *Lewandowski and Lewandowska v. Poland*, no. 15562/02, § 64, 13 January 2009). It is undisputed between the parties that the police officers failed to present their badges. However, the Court would accept the Government's argument that they were properly uniformed and that the applicant could have had no doubts that she was being apprehended by the police.

57. The Court notes in addition that the applicant's injuries were not very serious and, as reported by the domestic authorities, the impairment of the applicant's health lasted for a period shorter than seven days within the meaning of the Polish Criminal Code (see paragraph 18, above). The applicant did not need hospitalisation.

58. As regards the body search, the Court accepts the Government's explanation that it was conducted in a separate room, in the presence of one person of the same sex and lasted only as long as was necessary to establish that the applicant had had no dangerous objects about her person. The body search served a legitimate purpose, namely to secure the safety of the applicant's detention. There is no indication that the body search was conducted in a manner which could debase or humiliate the applicant (see, by contrast, *Valašinas v. Lithuania*, no. 44558/98, § 117, ECHR 2001-VIII, and *Iwańczuk v. Poland*, no. 25196/94, §§ 58-59, 15 November 2001).

59. With regard to the standard of the cell in which the applicant was placed following her arrest in the police station and the fact that the applicant's jacket was taken away from her, the Court notes that in his appeal against the decision to discontinue the proceedings against the policemen, the applicant's lawyer did not refer to the fact that at the police detention centre the applicant had allegedly been refused permission to go to the toilet and that she had had to spend the night on a concrete floor without any cover (see paragraph 19 above). In any event, in the Court's view the removal of the jacket was justified by security reasons. Moreover, the incident took place in summer and the applicant spent only a few hours in the police detention centre. It follows that the conditions in which she was held did not attain the minimum level of severity required to give rise to a violation of Article 3 of the Convention.

60. Taking into consideration the facts as established by the domestic courts, especially the extent of the applicant's injuries and her conduct during her apprehension, the Court concludes that the recourse to physical

force in this case was made necessary by the applicant's own conduct. Therefore, while she admittedly suffered as a result of the incident of 2 June 2001, the use of force against her cannot be held to have been excessive.

There has accordingly been no violation of Article 3 of the Convention in regard to the alleged ill-treatment by the police on 2 June 2001.

2. Adequacy of the investigation

(a) The applicant's submissions

61. The applicant's lawyer submitted that the domestic proceedings had not been sufficiently thorough and effective to meet the requirements of Article 3. He maintained that the domestic authorities had failed to thoroughly examine the differences between the statements given by the police officers. He relied on the finding of the Cracow Regional Court of 1 July 2003 that there had been no basis to assume that the applicant's injuries had been caused when the applicant was placed in the police car in the way described by the police officers.

(b) The Government's submissions

62. The Government contended that the investigation and judicial proceedings in the present case had complied with Article 3 requirements. They argued that the proceedings had been prompt and thorough. There had been no other evidence that the prosecuting authorities should have taken in order to establish the facts of the alleged ill-treatment. The circumstances of the case had been examined by the Cracow District Prosecutor and in two sets of independent judicial proceedings. In the course of the judicial and non-judicial proceedings all relevant witnesses had been heard and a forensic report had been commissioned. Furthermore, the domestic court's finding in the criminal proceedings against the applicant had been examined by the court of second instance which had remitted the case and it had been re-examined by the court of first instance.

(c) The Court's assessment

63. 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 [its] jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see, among other authorities, *Labita v. Italy*, cited above, § 131). The investigation into arguable allegations of ill-treatment must be thorough. That means that the

authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others*, cited above, § 103 et seq).

64. In the *Labita* case cited above, the Court found a violation of Article 3 on the ground that the authorities had not investigated the alleged numerous acts of violence, humiliation, and other forms of torture inflicted on an applicant. It must be noted however that in that case the Court's conclusion was reached on account of the manifest inactivity of the authorities regarding the investigation of that applicant's complaints (*loc. cit.*, §§ 117-136).

65. By contrast, in the present case, a number of persons were questioned, including the applicant's friend, J.D., and an expert opinion was produced in the context of the investigation into the applicant's allegations of ill-treatment on 1 June 2001 (see paragraph 18 above).

66. Subsequently, the prosecution decided not to charge the policemen and to discontinue the investigation because of the lack of unequivocal evidence of the officers' guilt. The investigation of the district prosecutor was completed on 30 May 2002 - i.e. almost two years after the impugned events, but some seventeen months after the applicant's lawyer's request for criminal proceedings to be instituted against the police officers – a period which could be considered acceptable, given the number of procedural acts carried out by the authorities (see paragraphs 17-28 above; also see, by contrast, the above-mentioned *Labita* case, *loc. cit.*, § 133; where only photographs of the alleged perpetrators had been taken during a period of fourteen months).

67. Furthermore, the applicant had the subsequent opportunity to have the decision of the district prosecutor reviewed before the court. The fact that her appeal was unsuccessful cannot be considered pertinent. There is no evidence that the prosecution should have taken any other steps in order to establish the facts alleged by the applicants. Nor is there any indication that the prosecutors used their statutory discretion, allowing them to evaluate the material before them in order to decide whether or not to charge the alleged perpetrators with a criminal offence, in an arbitrary manner.

68. The Court further notes that the circumstances of the present case were examined independently in another set of proceedings, namely in the proceedings against the applicant. In that case too the judgment given by the first-instance court was subject to judicial review. It is true that on 1 July 2003 the Cracow Regional Court, finding some circumstances not to have been sufficiently examined, remitted the case. These shortcomings were however rectified firstly by the District Court which re-examined the case and, secondly, by the Regional Court, which, on 12 April 2005, examined and dismissed the applicant's appeal.

69. The Court concludes that the investigation of the applicant's allegations of ill-treatment was thorough and effective. There has thus been no breach of Article 3 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

70. The applicant complained of a violation of Article 6 § 1 of the Convention on account of the alleged unfairness of the criminal proceedings against her.

71. The Court has examined this complaint as submitted by the applicant. However, having regard to all the material in its possession it finds that the complaint concerns the outcome of the relevant proceedings and is clearly of a fourth-instance nature, and thus manifestly ill-founded. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 3 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention either under its substantial or procedural limb.

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

Lawrence Early
Registrar

Nicolas Bratza
President