

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

FOURTH SECTION

DECISION

Application no. 32272/11
Włodzimierz MAJKOWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 20 November 2012 as a Committee composed of:

George Nicolaou, *President,*
Zdravka Kalaydjieva,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 May 2011,

Having regard to the declaration submitted by the respondent Government on 29 August 2012 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Włodzimierz Majkowski, is a Polish national, who was born in 1940 and lives in Krakow.

The Polish Government ("the Government") were represented by their Agent, Mr Jakub Wołąsiewicz, succeeded by Mrs J. Chrzanowska, of the Ministry of Foreign Affairs.

The facts of the case, as submitted by the parties, may be summarised as follows.

On 21 June 2010 the applicant's wife called the police, complaining that he was uttering threats against her. Two police officers came to their

apartment and took the applicant to the police station. He was released on the same day. On the same day the applicant went to a hospital. An X-ray was taken which showed that he had three ribs broken.

The applicant requested the prosecuting authorities to institute investigation against the police officers for abuse of powers and ill-treatment.

On 9 July 2010 the Kraków-Podgórze District Prosecutor refused to institute investigation of the applicant's allegations, having found that there were no indications that the police officer had abused his powers or used disproportionate force against the applicant. The applicant appealed.

By a decision of 5 October 2010 the Kraków-Podgórze District Court quashed the contested decision. It was of the view that it was premature as the prosecuting authorities had failed to take any measures to verify the statements made by the police officer concerned and by the applicant.

On 22 December 2010 the Kraków-Podgórze District Prosecutor discontinued the investigation again. It was established, with reference to testimony given by the police officers that after the arrival to the police station the applicant had become agitated. An altercation between him and one of the officers had arisen. The officer had overpowered him, the applicant had fallen on the floor and his nose had started bleeding. The prosecutor further referred to the testimony given by the applicant's wife and to certain documents drawn up by the police in connection with the applicant's arrest. The prosecutor concluded that there was no indication that a criminal offence of abuse of powers had been committed.

The applicant appealed, arguing that prosecutors had failed to examine the available evidence seriously and to establish the facts properly.

On 17 February 2010 the Kraków Podgórze District Court upheld the contested decision, finding that the police officers had no case to answer.

COMPLAINT

The applicant complains under Article 3 of the Convention that excessive and unlawful force was used against him. He did not give any reasons that would justify the use of force of such magnitude. The prosecutors uncritically accepted that the police officers' version of facts was true.

THE LAW

The applicant complains under Article 3 of the Convention that excessive and unlawful force was used against him.

Article 3 of the Convention reads:

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

By letter dated 29 August 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government hereby wish to express – by way of unilateral declaration – their acknowledgement of the violation of Article 3 of the Convention on account of failure to conduct and effective investigation in the present case. Simultaneously, the Government declare that they are ready to pay to the applicant the sum of EUR 5,000 which they consider to be reasonable in the light of the Court's case-law (see*, inter alia, Karbowniczek v. Poland*, no. 22339/08, 27 September 2011; *Polanowski v. Poland*, no. 16381/05, 27 April 2010). The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points.
>
> With respect to the first question of the Court – whether the applicant was subjected to inhuman or degrading treatment contrary to Article 3 of the Convention, the Government indicate that they are unable to assess whether there was a violation of this provision [under] its substantive limb due to the inadequacy of the investigation in the case [...]. For this reason they refrain from submitting any observations in this part. At the same time, they respectfully ask the Court to examine the present case only in the light of its procedural limb (see *Polanowski v. Poland*, cited above, § 59, *Karbowniczek v. Poland*, cited above, § 58). [...]
>
> The Government would respectfully suggest that the above declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention. "

In a letter of 1 October 2012 the applicant stated that he would like to settle the case but expressed the view that the sum mentioned in the Government's declaration was unacceptably low.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration

by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints about the violation of Article 3 of the Convention (see, for example, *Wiktorko v. Poland*, no. 14612/02, § 70, 31 March 2009; *Grzywaczewski v. Poland*, no. 18364/06, § 110, 31 May 2012; *Karbowniczek v. Poland*, cited above, § 93.)

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Accordingly, it should be struck out of the list.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Fatoş Aracı Deputy Registrar	George Nicolaou President