CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 55264/00
by Grzegorz OLSZEWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 13 November 2003 as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 20 February 1999,

Having regard to the partial decision of 14 December 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Grzegorz Olszewski, is a Polish national, who was born in 1958 and lives in Lucień, Poland. He was represented before the Court by Mr Piotr Sendecki, a lawyer practising in Lublin, Poland. The respondent Government were represented by their Agent, Mr Krzysztof Drzewicki.

A. The circumstances of the case

1. Events of 29 and 30 September 1998

(a) The applicant's account

The following account of facts is based on the applicant's submissions made to the Court and the Polish prosecution service.

(i) The police intervention in the applicant's house

On 29 September 1998 the applicant got involved in a domestic dispute between his wife and stepdaughter. No violence was used during the dispute. Subsequently, the applicant's stepdaughter called the police. When the police officers arrived they woke up the applicant and informed him that he would be taken to a sobering-up centre (*izba wytrzeźwień*). Although the applicant had drunk wine before the dispute started, he was sober when the police officers arrived. He therefore told the officers that he was not drunk and refused to follow them to the sobering-up centre. The police officers pushed the applicant on the floor and handcuffed him. The applicant and the police officers started to swear at each other.

(ii) The detention in the sobering-up centre

The applicant was placed in a police car. He quarrelled with the officers and they continued to swear at each other. The police car stopped. The police officers kicked the applicant three or four times in his abdomen. Subsequently, the police car was driven to Gostynin where it was parked for a while near the District Police Station (*Komenda Rejonowa Policji*). The applicant stayed inside the car.

He was then being taken to the sobering-up centre in Płock. The applicant and the police officers continued to exchange insults. The applicant asked the police officers to take his handcuffs off because they were too tight and his hands were swollen but his request was ignored. His request to be let out to relieve himself was also ignored. When the car arrived at the sobering-up centre the police officers left it. The applicant

urinated in his underwear. When the police officers came back and saw that he had wetted himself, they said "they will see pissed scum."

Subsequently, the applicant was dragged by the police officers inside the building. While being pulled, he lost his shoes and trousers, which he had lowered before he had urinated. The police officers laughed at the applicant.

Once inside the premises of the Płock sobering-up centre, the applicant asked for a doctor but his request was ignored. The applicant was given a breathalyser test. During the test an employee of the centre started to insult him and the applicant replied in offensive language. One of the police officers hit the applicant with a fist in the right part of the face. The blow made the applicant's teeth loose.

The applicant was then knocked down. He tried to stand up but was hit with an opened hand. The applicant fell down again. While he was lying on his back, an employee of the centre said "we do not like roughnecks here" and stepped on his testicles with a heavy boot.

Subsequently, the applicant was taken to a cell where the employees of the centre started to put a straightjacket on him. At this point, the police officers were not present on the scene. While a straightjacket was being put on the applicant, a struggle evolved. The applicant heard somebody saying: "beat so that marks do not show". He was hit with a knee in his abdomen. He was also hit in his nose and started to bleed. The applicant was kicked in testicles and fainted.

When he regained consciousness he was in a straightjacket and was tied up with elastic bandages. The applicant's face was covered with a dirty cloth. The employees of the centre twisted and squashed his testicles. The applicant fainted for the second time during the night. The employees then burned his scrotum.

During the night the applicant was shouting "give me a doctor" but his requests were ignored. From time to time, somebody would shout in reply "go to sleep you whore".

(iii) The release from the sobering-up centre

On 30 September 1998 the applicant was released from the sobering-up centre. He visited a doctor in Płock but was refused admission because he did not have documents. The applicant was then seen by Dr Łudczak at the Gostynin health centre (*ośrodek zdrowia*). He described the applicant's injuries in his medical file. He also pointed to the applicant that he had burns on his scrotum and referred him to Dr Gierżyński, the Chief Surgeon of the Gostynin Hospital. When Dr Gierżyński saw the applicant, he initially considered that the applicant should stay in the hospital because of the discharge of yellow fluid from his nose and the symptoms of brain concussion. However, he later changed his mind, examined the applicant and issued a forensic medical certificate. According to the applicant, the

certificate does not indicate the following injuries: a bruise on his thigh and swollen testicles.

On 1 October 1998 the applicant worked on a construction site. He was in pain but decided to report to work since it was the first day on a new job, which he had got with great difficulty.

(b) The Government's account

(i) The police intervention in the applicant's house

On 29 September 1998 the applicant got involved in a domestic dispute. He was drunk, behaved aggressively and threatened to kill his stepdaughter and mother-in-law. The stepdaughter called the police. Subsequently, both women left the house and waited for the police outdoors.

When the police arrived the applicant woke up. The attending officers informed him about the reasons for their intervention. The applicant began to behave aggressively. He used abusive language towards the police officers and threatened to kill his stepdaughter and mother-in-law in their presence. Both women asked the officers to take the applicant to a sobering-up centre.

The police officers ordered the applicant to follow them to the centre but he refused and started a fight. The officers pushed the applicant on the floor and handcuffed him. At that moment, the applicant suffered a skin abrasion on his forehead.

The applicant was resisting the officers while they were taking him to the police car. Once placed inside the car, the applicant kicked it.

(ii) The detention in the sobering-up centre

Subsequently, the applicant was brought to the Gostynin District Police Station where the police officers collected H.S. in order to escort him to the Płock sobering-up centre.

The police officers testified that they had not stopped the car on the way to the sobering-up centre and had not assaulted the applicant. Their testimony was confirmed by the documentation of the Płock sobering-up centre.

On the way to the centre the applicant behaved aggressively and kicked the car. When it arrived to the centre, the applicant refused to leave it. Therefore, the police officers had to drag the applicant inside the building.

The applicant continued his aggressive behaviour inside the building. He used abusive language and tried to fight with the employees of the centre. The medical staff of the centre tried to carry out a breathalyser test but the applicant was too intoxicated to provide a specimen of breath. As a result of the applicant's aggressive behaviour, he was forced to wear a straightjacket between 11.15 p.m. and 5 a.m. The applicant was shouting for almost the whole night. He asked to unbind the straightjacket.

(iii) The release from the sobering-up centre

The applicant was released from the sobering-up centre on 30 September 1998 at 7.00 a.m.

On 1 October 1998 the applicant worked on a construction site.

On 1 October 1998 the applicant was examined by a doctor, who made an entry in his medical file kept by the Gostynin health centre and referred him to Dr Gierżyński. On the same day Dr Gierżyński issued a medical certificate.

2. *The record of the applicant's presence in the sobering-up centre*

The Detention Card (*karta pobytu*) no. 001959, which contains the record of the applicant's presence in the Płock sobering-up centre, provides the following description of his medical condition:

"INITIAL MEDICAL OPINION

As a result of the initial medical examination I confirm that the client:

1. is intoxicated and qualifies for a detention in the sobering-up centre,

2. requires a referral to a public medical facility /hospital, emergency service, other/,

3. does not require to be present in the sobering-up centre.

The examination with a device detecting intoxication (breathalyser, alcohol test, blood test) showed: Unable to blow a breathalyser. Lack of stability. Alcohol breath.

Signature of a doctor-paramedic on duty in the sobering-up centre (*illegible signature*)"

None of the points 1 to 3 was marked on the card.

"PRESENCE IN THE SOBERING-UP CENTRE

I. MEDICAL EXAMINATION

The client was subjected to medical examination at 23:10 hours.

1. Medical (circumstantial) background:

a) circumstances, the amount of consumed alcohol, behaviour during medical examination: Does not reveal the circumstances of drinking and the amount of consumed alcohol, psychomotor agitation during examination. Stands up to beat the employees of the sobering-up centre.

2. Subject examination:

a) behaviour: conscious, quarrelling, aggressive

b) mood: agitated

c) walk: unstable

d) speech: slurring

e) traces of vomit: not visible

f) pulse: regular, little tense 74/minute

g) heart: regular beat, clear sound

h) pupil: normal, weakly reacting

i) skin: proper perfusion

j) condition of abdominal cavity: without changes

k) injuries: slight skin abrasion on the right temple

l) disease symptoms: does not disclose

m) description of the condition of the examined person: high degree of intoxication.

II. OTHER APPLIED TREATMENTS AND MEDICATIONS

1. dressings

2. drugs (injections)

3. water bath

4. solitary confinement

5. strapping down

6. straightjacket from 23.15 hours to 5.00 hours because of psychomotor agitation

7. medical condition and behaviour

a) psychiatric condition – psychomotor agitation

b) physical condition – good physical condition

Signature of a doctor-paramedic (*Illegible signature*)

RELEASE FROM THE SOBERING-UP CENTRE

I. MEDICAL EXAMINATION

After applying the aforesaid treatments and medications, as a result of medical examination (give a degree of sobering-up, psychiatric and medical condition): satisfactory sobering-up. Good health condition.

I. conclude that the person mentioned hereinafter:

1. can be released from the centre

2. requires a referral to a public medical facility: no

Signature of a doctor-paramedic (*Illegible signature*)"

According to the card the applicant was released from the sobering-up centre on 30 September 1998 at 7.00 a.m.

3. The medical examination

On 1 October 1998 Dr Przemysław Ludczak, a surgeon, made the following entry in the applicant's medical file kept by the Gostynin health centre:

"The patient submits that he has been beaten 2 days ago by police officers.

Referred to Dr Gierżyński.

- face abrasion

- (*two illegible words*)

- burn of scrotum (?)"

On 1 October 1998 Dr Andrzej Gierżyński, general practitioner and specialist surgeon, issued a forensic medical certificate, which is worded as follows:

"Medical examination of Olszewski Grzegorz, 40 years old, identity card no. WL 5281575 residing in Zaborów Stary.

On 30.09.98 suffered the following injuries: a skin abrasion on the right temple measuring 4 x 2 centimetres, loose front teeth upper 1 and lower 1, skin abrasions on the right side of groin, a first/second-degree burn on the scrotum measuring 6-8 mm. The aforesaid injuries qualify for Article 157 paragraph 2."

4. The investigation of the allegations made by the applicant

(a) The beginning of the investigation

On 9 October 1998 the applicant requested the prosecution service to initiate criminal proceedings against the police officers and the employees of the sobering-up centre who had ill-treated him on 29 and 30 September 1998.

On 19 October 1998 the applicant appeared before the Gostynin District Prosecutor K. As the applicant smelled with alcohol and declared that he had welded a tank, which used to be filled with alcohol, the prosecutor postponed the interview until the next day.

On 20 October 1998 prosecutor K. interviewed the applicant. He advised the applicant about his rights and took from him a statement requesting the prosecution of the police officers and the employees of the sobering-up centre. The applicant also made a statement in which he described the events of 29 and 30 September 1998.

On 20 October 1998 prosecutor K. decided to initiate an investigation of the allegations made by the applicant.

(b) The taking of evidence

(i) The statements of the members of the applicant's family

On 26 October 1998 prosecutor K. took statements from the applicant's wife, mother-in-law and stepdaughter. Their testimony concerned the police intervention in the applicant's house. The witnesses confirmed that the responding police officers were calm and did not assault the applicant. They handcuffed him because he was aggressive and used abusive language.

(ii) The statements of the police officers

On 27 October 1998 the Director of the Płock sobering-up centre informed the prosecutor that the following staff had been on duty in the centre at the time of the applicant's detention: (i) Mr B., depositary, (ii) Mr M., carer and (iii) Mrs L., paramedic. The Director also submitted a detention card containing the record of the applicant's presence in the centre.

On 28 October 1998 the Deputy Police Chief of the Gostynin District Police Station informed the prosecutor that Sergeant G. and Constable W. had responded to the applicant's house on 29 September 1998 and had taken him to the sobering-up centre.

On 17 November 1998 prosecutor K. interviewed Constable W. The witness made a two-page statement in which he gave his account of the intervention in the applicant's house and his transfer to the sobering-up centre. In particular, he stated that the applicant had been aggressive and

had used abusive language. Therefore, he had been handcuffed and had suffered skin abrasion on his cheek or forehead. The applicant had remained aggressive in the police car where he had continued to use abusive language and had kicked the car. The applicant had not been assaulted by any of the responding police officers. After he had been turned over to the employees of the sobering-up centre, he had been bound in a straightjacket because of his aggressive behaviour.

On 17 November 1998 prosecutor K. also interviewed the second responding police officer, Sergeant G. He made a page-long statement in which he confirmed the account of events given by Constable W. In addition, he confirmed that the applicant had urinated in the police car.

(iii) The testimony of the employees of the sobering-up centre

On 19 November 1998 prosecutor K. interviewed B. The witness stated that he was an employee of the Płock sobering-up centre. He also said that he remembered the surname of Grzegorz Olszewski but did not remember his presence in the centre. The prosecutor asked the witness the following question:

> "Do you remember that he was aggressive and had a straightjacket put on?"

The witness replied that there were many situations of that nature and that straightjackets and strapping down would be used in respect of aggressive individuals. However, he did not remember the applicant's presence and behaviour in the sobering-up centre.

Subsequently, the applicant's detention card was shown to the witness but he repeated that he did not remember the applicant's presence in the centre.

On 19 November 1998 prosecutor K. also interviewed L., a paramedic who was on duty in the Płock sobering-up centre at the time of the applicant's detention. She made the following statement:

> "I am on duty in the Płock sobering-up centre 24 hours a week. During the night of 29/30 September 1998 I received in the centre a patient from Gostynin. The patient was aggressive and made threats against the employees of the centre. He was heavily intoxicated. There were three attempts to use breathalyser. He was unable to blow. In view of his aggressive behaviour and for the sake of his safety a straightjacket was put on him."

At this point, the witness was shown a copy of the applicant's detention card. After consulting it, she continued:

> "According to the card Grzegorz Olszewski wanted to beat the centre staff and on his body there were skin abrasions on the right temple – they had existed at the time of admission. I do not remember anything else. I would like to add that the patient had spent a long time in a straightjacket, which shows that for a very long time he had shown psychomotor agitation. A patient, who is in a straightjacket, is under strict control of a doctor on duty. After two hours straps were eased. They were repeatedly eased during the whole period of his presence. While the patient was in a

straightjacket he was aggressive and insulted and cursed everybody. I do not remember his release from the centre."

On 30 November 1998 prosecutor K. interviewed M. The witness made the following statement:

"I was on duty in the sobering-up centre between 29 and 30 September 1998. From what I remember Grzegorz Olszewski was brought by the police officers from Gostynin, he was taken from a domestic dispute. While he was being taken out of a police car, he quarrelled, i.e. resisted the police officers, did not want to get in. They had to make him get in by using force. We had to use force while we were undressing him. He was aggressive and therefore we had to bind him in a straightjacket. He was insulting us, pulling us, wanted to fight with us, waved his hands, was saying that he was sober. In the room, while he was lying in a straightjacket, he was shouting, insulting, threatening us that he would finish us and those who had brought him. Other patients were asking to calm him because he was yelling all the time. He was shouting without any break during two hours. I do not know for how long he was lying in a straightjacket but it was a long period. That is all I remember."

(iv) The statements of witnesses who were detained in the Płock sobering-up centre

On 24 November and 11 December 1998 prosecutor K. and assistant prosecutor S. took statements from two witnesses, who had been detained in the Płock sobering-up centre on 29 and 30 September 1998. The first witnesses confirmed that he had heard somebody shouting during the night. That person shouted "hitlerites", "murderers" "people, help me" and was asking to unbind his straightjacket. Other individuals present in the centre shouted back to let them sleep and asked the staff to unbind the yelling individual's straightjacket.

The second witness testified that at the end of September 1998 he was drunk and was taken to a police station. At the station, he saw a man who was calm. They were taken together to a sobering-up centre. However, he did not remember the man's behaviour on the way to the sobering-up centre and in the centre. The witness also stated that he did not know whether anybody had used violence against the man while he had been detained in the sobering-up centre.

(c) The end of the investigation

(i) The decision of the prosecution service

On 21 December 1998 prosecutor K. discontinued the investigation of the allegations made by the applicant and refused to prosecute the police officers and the employees of the Płock sobering-up centre involved in the applicant's arrest and detention on 29 and 30 September 1998. In addition to the evidence taken from witnesses, he relied on the applicant's detention card and the medical certificate issued by Dr Gierżyński. The prosecutor also took into account the applicant's medical file kept by the Gostynin

health centre, which contained the following entry: "15 VIII 98. Dental caries. Swollen face. Referred to a dentist."

The reasoning of the prosecutor's decision gave firstly an overview of the evidence collected in the course of the investigation. It then stated the following conclusions:

> "The collected evidence leads to two versions of events – (1) a version of the complainant Grzegorz Olszewski [and] (2) a version described by the witnesses with respect to the behaviour of Grzegorz Olszewski – members of his family, the police officers, the staff of the sobering-up centre.
>
> The evidence taken from the members of the complainant's family shows that he was drunk and during the police domestic intervention (intervention took place after the police officers had been called by the complainant's stepdaughter) Grzegorz Olszewski was an aggressive and attacking party and cursed and insulted the members of [his] family and the police officers. The account of events given by the members of the family was confirmed by the police officers.
>
> The responding police officers used force against the complainant because of his aggressive behaviour. Using the so-called overpowering grips, they pushed him down and handcuffed him. As a result of the complainant's fall, he suffered face injuries on the right side in the form of skin abrasions.
>
> The aforesaid injuries suffered by the complainant were described in the statements made by the police officers, they were recorded in the detention card of the sobering-up centre, an entry in the health centre medical file and the forensic medical opinion.
>
> The police officers testified consistently that they had taken Grzegorz Olszewski from [his] home to a police car and transported him to Gostynin and then to Płock. In addition, they took from Gostynin one more person in order to transport it to the sobering-up centre. They denied that during transporting the complainant from his place of residence in Gostynin, they stopped or beat him, they did not hit him 3-4 times in the abdomen, he was held in the police car in a separate room. This denies entirety of the complainant's testimony.
>
> In the same way, the evidence taken from the employees of the sobering-up centre confirmed by a person present in the centre rebuts the complainant's version of events.
>
> The version submitted by the employees of the sobering-up centre is confirmed by the entries – notes in the sobering-up centre's detention card concerning the complainant.
>
> As for the injuries on the complainant's body described in the forensic medical certificate it should be stated that the skin abrasions on the right side of the face resulted from the use of force by the police officers when they were overpowering Grzegorz Olszewski in his home. Loose upper and lower teeth could result from caries and related swelling of the face already in August 1998 – note in the medical file of the health centre. However, it is not possible to establish in what circumstances the complainant's scrotum was burned. Twenty-four hours elapsed between the release of the complainant from the sobering-up centre and the diagnosis of [the burns] by the doctor who issued the forensic medical certificate.

> The use of physical force and handcuffs against Grzegorz Olszewski constituted an activity resulting from the rights of the police to use the measures of direct coercion against the complainant under Article 16 section 1 point 1 of the Police Act of 6.4.1990.
>
> In view of the above considerations, it should be stated that the police officers from the Gostynin District Police Station who intervened, did not exceed their powers and did not act against the private interest. Also the employees of the sobering-up centre did not exceed their powers and did not beat the complainant.
>
> For those reasons, it should be stated that the behaviour of the police officers and the employees of the sobering-up centre did not constitute an offence under Articles 231 § 1 and 158 § 1 of the Criminal Code.
>
> On the basis of the above considerations I have decided as in the operative part [of the decision]."

The applicant filed with the Płock Regional Prosecutor (*Prokurator Okręgowy*) an appeal against the decision of the District Prosecutor. On 12 March 1999 the Regional Prosecutor advised the applicant that he had not seen any grounds for allowing his appeal and had therefore transmitted it together with the case file to the Gostynin District Court (*Sąd Rejonowy*).

(ii) The District Court's decision

On 8 April 1999 judge S. of the Gostynin District Court dismissed the applicant's appeal. The reasoning of the decision was worded as follows:

> "The appeal is unsubstantiated. In the course of the investigation no breach of law by the intervening police officers was found. The evidence taken from the witnesses shows that G. Olszewski, while intoxicated, behaved aggressively, whereas the police used measures provided by law. The court shares the arguments contained in the reasoning of the prosecutor's decision and having regard to the above decides as in the operative part [of the decision]."

On 22 April 1999 the President of the Gostynin District Court rejected the applicant's appeal against that decision because no appeal lay against it.

5. The applicant's pre-trial detention

Between 28 December 1998 and 14 July 1999 the applicant was held in pre-trial detention on a charge of robbery.

B. Relevant domestic law

1. The Criminal Code 1997

Article 157, in so far as relevant, provides:

> "§ 2 A person who causes bodily harm or ill health lasting no longer than 7 days, shall be liable to a fine, a penalty of the restriction of liberty or imprisonment for a term not exceeding 2 years.
>
> § 3 If a person who committed an act described in (...) § 2 acts without intent, he shall be liable to a fine, a penalty of the restriction of liberty or imprisonment for a term not exceeding 1 year.
>
> § 4 The prosecution of a crime described in § 2 or 3, if bodily harm or ill health occasioned lasted no longer than 7 days, shall take place under private indictment. ..."

Article 158 § 1 provides:

> "A person who takes part in affray or battery, which creates a direct danger of loss of life or consequences described in Art. 156 § 1 or Art. 157 § 1, shall be liable to imprisonment for a term not exceeding 3 years."

Article 231 § 1 provides:

> "A public official, who by abusing his powers or by failing to fulfil his duties, acts to the detriment of public or private interest, shall be liable to imprisonment for a term not exceeding 3 years."

2. The Civil Code 1964

Article 417 § 1 provides:

> "The State Treasury shall be liable for damage caused by a state official during the execution of duties entrusted to him."

3. Use of force by the police

Article 16 of the Police Act of 6 April 1990 reads, in so far as relevant, as follows:

> "1. If a lawful order given by a police authority or a policeman has not been complied with, policemen may apply the following coercive measures:
>
> 1) physical, technical and chemical means of restraining or escorting persons or of stopping vehicles;
>
> 2) truncheons;
>
> 3) water cannons;
>
> 4) police dogs and horses;

5) rubber bullets fired from fire-arms;

2. Policemen may apply only such coercive measures that correspond to the exigencies of a given situation and are necessary to have their orders obeyed."

Paragraph 5 of the Ordinance of the Council of Ministers of 17 September 1990 on the Use of Coercive Measures by the Police 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."

Paragraph 6 of the Ordinance provides, in so far as relevant, as follows:

"Handcuffs may be used (...) in order to prevent an escape or to prevent an active assault or active resistance. ..."

4. The sobering-up centres

According to Article 39 of the Law of 26 October 1982 on Education in Sobriety and Counteracting Alcoholism sobering-up centres are operated by local authorities.

Article 40 of the Law provides, in so far as relevant:

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

(...)

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

Article 42 provides, in so far as relevant:

"1. Direct force in the form of holding and immobilising may be used against persons admitted to a sobering-up centre, who create danger to their own or the third persons' life or health [or] destroy objects in their vicinity.

2. Holding means a temporary and short immobilisation of a person by using physical force.

3. Immobilising means a longer lasting overpowering of a person by using straps, holders, sheets or a straightjacket.

4. Direct force may last only until such time as the reasons for its application cease to exist. ..."

On 23 October 1996 the Minister of Health and Social Services issued an Ordinance, which regulates the organisation of the sobering-up centres. The relevant provisions of the Ordinance are as follows:

"§1.1. Intoxicated persons, whose behaviour causes offence, whose circumstances threaten their life or health or who threaten the life or health of other persons, may be taken to a sobering-up centre (...) by the police officers, the employees of the centre or other persons."

"§8.1. A person brought to the centre shall be immediately subjected to medical examination.

2. A doctor (paramedic) after examining a person detained in the centre shall assess:

1) medical reasons for placing in the centre, first aid that may be given in the centre, hygiene-sanitary procedures, taking into account the symptoms of intoxication and the lack of contraindications to the detention in the centre, or

2) medical reasons for referring to a hospital or another public health care facility – taking into account the symptoms of intoxication and the existence of indications for hospitalisation, or

3) the lack of symptoms of intoxication justifying a detention in the centre."

"§12.1. If an employee of the centre (...) finds that a person [who was admitted to the centre]:

1) [has] injuries on his body (...)

- the centre shall immediately inform the police and notify the time-limit of his presence in the centre."

"§15. Rooms in which persons intoxicated are present are constantly monitored by the authorised employees of the centre. The employee of the centre shall immediately inform a doctor (paramedic) about symptoms pointing to a deterioration of health of an intoxicated person (...)."

COMPLAINTS

The applicant submitted that the ill-treatment inflicted on him by the police officers and the employees of the sobering-up centre was in breach of Article 3 of the Convention. He also complained that the prosecuting authorities and the Gostynin District Court rejected his request to prosecute individuals responsible for his ill-treatment.

Furthermore, with respect to the applicant's pre-trial detention between 28 December 1998 and 14 July 1999 on a charge of robbery, the applicant complained about a breach of Article 5 § 1 (c) (unlawful detention),

Article 5 § 2 (right to be informed promptly about reasons for arrest) and Article 5 § 4 (right to be released from unlawful detention). He also complained under Article 6 § 1 about the length of his detention on remand.

THE LAW

1. The applicant complained that the ill-treatment to which he was subjected was in breach of Article 3 of the Convention, which provides:

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

a) The Government submitted firstly that the applicant "did not exhaust any available domestic remedy with reference to his complaint submitted under Article 3 of the Convention." Although the Gostynin District Prosecutor discontinued the investigation under Articles 158 § 1 and 231 § 1 of the Criminal Code of the allegations made by the applicant, the medical certificate issued on 1 October 1998 correctly qualified the applicant's injuries as falling under Article 157 § 2 of the Criminal Code. The applicant could therefore have brought private prosecution under Article 157 § 4 after the District Prosecutor had discontinued the investigation.

Furthermore, the applicant could have brought a civil action for compensation under Article 417 of the Civil Code. Since the police officers and the employees of the sobering-up centre were "state officials" within the meaning of that provision, the State Treasury was liable for damage caused by them.

The Court recalls that the aim of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is to afford Contracting States an opportunity to put matters right through their own legal system before having to answer before an international body for their acts. However, although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that in cases where the national law provides for several parallel remedies in the sphere of both civil and criminal law, the person concerned, after a sustained but eventually unsuccessful attempt to obtain redress through one such remedy, must necessarily try all other means (see *H.D. v. Poland*, no. 33310/96, 7 June 2001).

The Court does not therefore consider that, after the prosecuting authorities had discontinued the investigation instituted at the applicant's request, he was required to bring private prosecution against the police officers and the employees of the sobering-up centre in order to fulfil his

obligation under Article 35 § 1 (see, *mutatis mutandis*, the *H.D.* decision cited above).

Furthermore, the Court notes the Government's submission that the applicant should have sought compensation in the civil proceedings.

However, the Court recalls that in cases where – as in the instant one – an individual has an arguable claim under Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-XII).

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 his allegations of ill-treatment, discharged his 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*, the *H.D.* decision cited above).

Accordingly, the Court does not consider that the applicant has failed to exhaust domestic remedies in respect of his complaint about the ill-treatment by the police officers and the employees of the sobering-up centre.

b) Furthermore, the Government submitted that "the applicant's treatment by the police and employees of the Płock sobering-up centre on 29 and 30 September 1998 was fully based on the Polish law applicable at the material time and did not constitute 'torture, inhuman or degrading treatment or punishment' within the meaning of Article 3 of the Convention."

The investigation of the applicant's complaints did not confirm his allegations of ill-treatment. Although the police officers and the employees of the sobering-up centre used force against the applicant, it was exercised lawfully in response to the applicant's very aggressive behaviour. The use of force by the employees of the sobering-up centre was based on the legal provisions issued under Article 42 of the Law on Education in Sobriety and Counteracting Alcoholism.

The Government further submitted that the investigation conducted by the prosecuting authorities established that the skin abrasions on the applicant's face had resulted from the use of force by the police officers when they had been overpowering the applicant. Moreover, the investigation did not confirm that other injuries suffered by the applicant resulted from the police intervention or the use of force by the employees of the sobering-up centre.

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 or mental effects and, in some instances, 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 (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV).

The Court also points out that where an individual is taken into police custody 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, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

The Court notes that the applicant was released on 30 September 1998 at 7.00 a.m. However, he obtained his medical certificate only on 1 October 1998, after apparently spending the whole day working on a construction site. The applicant has failed to submit any evidence explaining the delay in obtaining the certificate. In particular, he has failed to substantiate his claim that on 30 September 1998 he went to a doctor in Płock but was refused admission. In these circumstances, the Court considers that there is no evidence that the injuries described in the medical certificate of 1 October 1998, in particular the burn on the applicant's scrotum, existed at the time of his release from detention.

What is more, the prosecution service and the District Court reached the conclusion that the skin abrasions on the right side of the applicant's face resulted from the justified use of force by the police officers when they were overpowering him. In reaching that conclusion the domestic authorities had the benefit of seeing various witnesses give their evidence and of evaluating their credibility. No material has been adduced in the course of the Strasbourg proceedings which could call into question the findings of the domestic authorities and add weight to the applicant's allegations before the Court (see, *mutatis mutandis*, *Klaas v. Germany*, judgment of 22 September 1986, Series A no. 269, p. 17, § 30).

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

2. The applicant further complained that the prosecuting authorities and the Gostynin District Court rejected his request to prosecute individuals responsible for his ill-treatment. He submitted that the District Court's conclusion concerning his complaints was arbitrary and unreasonable. There was therefore a breach of Article 3 of the Convention.

The Government asserted that the applicant's complaint about the lack of effectiveness of the investigation conducted at his request was manifestly ill-founded. The investigation was diligent and effective. It was conducted personally by the Gostynin District Prosecutor without participation of the Gostynin police officers. All the witnesses testified and the existing documentary evidence was collected. The investigation showed that the police intervention had taken place in order to protect the women threatened by the applicant. At the same time, it did not provide any confirmation of the applicant's allegations about "the large scale of injuries suffered by him" and the abusive use of force against him.

Furthermore, the Government asserted that the applicant "prevented the Gostynin District Prosecutor of the possibility of preserving very important unstable evidence in the investigation." He worked on a construction site on the day following his release from the sobering-up centre. The applicant "went to a doctor as late as on 1 October 1998, i.e. two days after the alleged ill-treatment by the police and the employees of the sobering-up centre had taken place." Moreover, the applicant lodged his complaint with the prosecuting authorities on 9 October 1998 and therefore "the objective medical examination of his injuries by an expert appointed by the Public Prosecutor could not be conducted." On 19 October 1998 he was intoxicated and therefore his examination was delayed until 20 October 1998.

The Government also pointed out that the outcome of the investigation conducted by the prosecution service was approved by the Gostynin District Court.

The Court first 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 similar 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.

As with an investigation under Article 2, such an 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 or 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, *Caloc v. France*, judgment of 20 July 2000, § 131, ECHR 2000-IX).

Turning to the facts of the present case, and assuming that the applicant made a credible assertion that he had suffered treatment infringing Article 3 at the hands of the agents of the State, the Court considers that the investigation in the applicant's case was effective and capable of leading to the identification and punishment of those allegedly responsible. This

conclusion is based on the number of witnesses heard by the prosecutor, the documents taken into account and the promptness of the investigation. What is more, the decision of the prosecution service was verified by the District Court. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant also complained about the unreasonable length of his detention on remand. In particular, the applicant's counsel in his observations submitted that the applicant's detention for six months and fifteen days was in breach of Article 6 § 1 of the Convention.

However, the Court notes that this complaint, which falls to be examined under Article 5 § 3 of the Convention, was already declared inadmissible on 14 December 2000.

4. The applicant's counsel further submitted in his observations of 25 June 2001 that the applicant's detention disclosed a breach of Article 5 § 1 (c) (unlawful detention), Article 5 § 2 (right to be informed promptly about reasons for arrest) and Article 5 § 4 (right to be released from unlawful detention).

However, the Court notes that the applicant's pre-trial detention ended on 14 July 1999. It follows that this complaint is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President