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. 37609/97
by Zdzisław SKOWROŃSKI
against Poland

The European Court of Human Rights, sitting on 19 March 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 13 February 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the partial decision of 30 November 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, Zdzisław Skowroński, is a Polish national, who was born in 1957 and lives in Pabianice. He was represented before the Court by Mr Piotr Sendecki, a lawyer practising in Lublin.

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

A. The circumstances of the case

The applicant is a disabled person. His eyesight is impaired.

On 26 November 1993 at 8 p.m. approximately, at a badly lit part of a street, the applicant bumped into a patrol of two municipal guards. They regarded the collision as an assault. He was knocked down, and then one of the guards held his hands behind his back, while the other kicked him in the face and the abdomen. He was then kept for a short time in the municipal guards station, where he was several times hit on the face with a fist. He was then handed over to the police. The police brought him to the Łódź sobering-up centre (*Izba Wytrzeźwień*).

The Government maintain that at 10.30 p.m. one of the guards who had apprehended the applicant officially requested the police that criminal investigations be instituted against the applicant. At 10.45 the police decided to open an inquiry and interviewed the guard. The applicant contends that the guards made such a request much later, only after they had learnt that he had complained about his detention and about their behaviour to the Head of the Municipal Guard.

The applicant maintains that the staff of the centre treated him with verbal insults and physical brutality. As he resisted, he was restrained by belts and locked in a separate cell.

The Government disagree and contend that he was put in the belts exclusively because of his own aggressive and vulgar behaviour. From there on the parties' submissions are in agreement.

The applicant remained restrained in this manner for ten hours.

On 27 November 1993 at 7.05 a.m. the police took the applicant from the sobering-up centre to the police station. At 7.30 a.m. the minutes of the applicant's questioning were drawn up. It was stated that the applicant's arrest and detention on suspicion of assault had started on 26 November at 8.50 p.m.

In the morning the applicant was examined by a specialist in forensic medicine. The report of the specialist first recalled the applicant's submissions that on 26 November 1993 he had been beaten by two municipal guards. They had knocked him down, whereupon one of them held his hands behind his back, and the other kicked him in the face and in the abdomen. He had lost consciousness for a short time. He had been then

taken to the premises of the Municipal Guard and then to the sobering-up centre. While in the custody of the guards he been punched several times on the face. He still felt pain where he had been hit. The applicant could not see with one eye, after a trauma he had suffered several years before. During the incident he had spat out a broken tooth.

The findings of the physical examination were the following: the applicant had bruises and swelling at the base of the nose, covered by red and brownish scabs. On the left side of the chin a grazing covered by a reddish scab. A grazing on the upper lip. On the mucous membrane of the lips, red and bluish bruises, in the central part of the mouth. Lips swollen. One broken molar. Under the rib cage, centrally, a slight bluish -reddish lividity. Lower on the abdomen, further bluish-reddish lividity, and several small grazes. Abdomen soft, no peritoneal symptoms. No further injuries were established.

The physician concluded that the applicant's injuries could have originated either from having been kicked, or from falling on a hard, uneven surface. However, it was more probable that they had originated from kicking, as, had the applicant fallen only once, he would have had a bruise at the end of the nose. His bruises were, however, located on its both sides. The fact that the crown of his tooth had been broken did not seem to originate from a blow, as there were no haematomas of the adjacent mucous membrane. It could have been caused by the fact that the teeth had hit each other when the applicant was hit.

On 1 December 1993 the applicant filed a complaint against the police with the Head of the District Police in Pabianice. He received replies thereto on 29 December 1993 and 18 January 1994. By a letter of 28 December 1993 the Director of the Łódź sobering-up centre apparently apologised to the applicant for the rough treatment that he had been subjected to on 26 November 1993.

On 28 January 1994 the applicant requested the Pabianice District Public Prosecutor to institute investigations concerning the events of 26 November 1993.

On 29 April 1994 a bill of indictment against the applicant on charges of assault and insulting municipal guards was brought to the Pabianice District Court. On an unspecified later date the court convicted the applicant of assault and insulting municipal guards, sentenced him to nine months' imprisonment and suspended execution of the sentence for two years. The applicant's counsel appealed. On 29 May 1995 the Łódź Regional Court set aside the first-instance judgment and ordered that the case be reconsidered.

On 6 September 1994 the Łódź District Prosecutor, to whom the case had meanwhile been transferred, commenced investigations concerning the applicant's complaint of 28 January 1994. On 30 October 1994 these investigations were discontinued. The prosecuting authorities, having interviewed a number of witnesses, considered that the evidence did not

confirm the allegation that he had been injured by the guards, police or the staff of the sobering-up centre. The applicant appealed. On 27 February 1995 the Łódź Regional Prosecutor upheld the contested decision. On the applicant's complaint, the Łódź Appellate Prosecutor ordered that the investigations be re-opened. They were re-opened, but on 21 August 1995 the Łódź District Prosecutor again discontinued the proceedings, finding that the persons concerned had no case to answer.

On 12 January 1996 the Pabianice District Court acquitted the applicant of charges of assault against a civil servant, committed on 26 November 1993 against Z.Z. and J.T., members of the Municipal Guard, by pushing them and by attempting to punch J.T. The court also discontinued the proceedings insofar as they related to the charges that he had insulted the guards.

The Government submit that no appeal was lodged against this judgment. The applicant submits a copy of the judgment, given following an appeal lodged by the prosecutor.

On 19 April 1996, the Łòdź Regional Court upheld the contested judgment. The court noted that the prosecutor had lodged an appeal against the first-instance judgment, submitting that the first-instance court had committed a substantial error of fact in that it regarded the applicant's testimony as credible, while considering that the evidence given by the guards entirely lacked credibility. The prosecution had further submitted that the court had wrongly established facts relating to the insults used by the applicant, which led to erroneous conclusions as regards the seriousness of this offence. The court observed, *inter alia,* that the first-instance court had thoroughly assessed the evidence, in particular having carefully weighed against each other the evidence for and against the applicant. In particular, the conclusion of that court that the applicant had had his glasses on at the material time, seemed to be justified in the light of a medical expert opinion in the case-file that the applicant's eyesight was so impaired that he could not move about freely without his glasses.

The court further noted that the question of whether the applicant had been in a state of intoxication had not been unequivocally determined since he had not been tested for the level of alcohol in his blood, while the evidence of the witnesses in this respect was divergent. Having regard to the evidence as a whole the court concluded that alcohol had not manifestly influenced the applicant's behaviour. On the other hand, there had been a manifest disproportion between the applicant's behaviour and that of the municipal guards, two young and fit men, who inflicted on him numerous injuries, later confirmed by two medical forensic opinions.

The Regional Court shared the opinion of the District Court that the applicant's evidence should be regarded as credible, coherent and logical. He did not have any criminal record and was a law-abiding citizen. As to the evidence given by the two guards involved in the accident, it would defy

the logic to accept their submissions that the applicant, a disabled person, would first walk calmly towards them and suddenly, without there being any reasons for it, attack them aggressively. It had also to be emphasised that the guards had lodged a complaint that the applicant had committed a criminal offence only after they learnt that the applicant had complained about their behaviour to the Chief of the Municipal Guards. This supported the applicant's argument that they had done so only in order to have their behaviour put into a favourable light.

As to the charges of insulting the personnel of the sobering-up centre, the court noted that the applicant's aggressive behaviour should be regarded as justified and caused by the situation in which he found himself. The municipal guards had treated the applicant in an aggressive and vulgar manner, which was supported by the evidence of witnesses H. and S., who had seen the incident in the street. This part of the proceedings should therefore be discontinued, regard being had to the insignificant danger presented by the conduct in question.

By a letter of 7 January 1997 the applicant, relying on the judgment which had acquitted him of assault charges, submitted a request to be reimbursed the costs of his detention in the sobering-up centre. He stressed that in the light of this judgment he should also be paid compensation for moral damage he had suffered as a result of his detention, which not only lacked any adequate legal basis, but was also in breach of the European Convention of Human Rights.

On 21 January 1997 the Director of the Łòdź sobering-up centre informed the applicant that no compensation would be paid. He emphasised that the judgment given by the criminal court did not contain any ruling as to whether the applicant's detention had been lawful. The court had only stated that the issue of the applicant's inebriated state had not been unequivocally determined, given that no blood test had been made and that the relevant testimonies of the witnesses were divergent. For the centre, it was decisive that the physician who had examined the applicant at his admission found that he had been intoxicated. This diagnosis amounted to a basis on which the decision on the applicant's detention was taken.

B. Relevant domestic law

1. Domestic remedies against ill-treatment by the State's agents

a) Under criminal law

In principle, acts of ill-treatment causing physical harm amount to criminal offences prosecuted under the relevant provisions of the Criminal Code on various forms of assault. In instances concerning ill-treatment amounting to moral harm, in particular an attack on the privacy or dignity of

the person concerned, a victim may avail himself of two remedies. Firstly, in cases concerning acts committed by police officers he may, under Article 142 of the Police Act of 6 April 1990 (as amended), request the prosecutor to institute criminal proceedings against police officers who have infringed his or her privacy or other personal rights (including dignity and physical inviolability). Secondly, he may bring, under Articles 181 and 182 of the Criminal Code, as applicable at the relevant time, a private prosecution against any other person who has insulted him.

b) Under civil law

Article 417 § 1 of the Civil Code provides that the State Treasury shall be liable for damage caused by a civil servant in the course of his duties.

Pursuant to the case-law of the Polish Supreme Court, a plaintiff seeking damages under Section 417 of the Civil Code must show that the act or omission in question is unlawful and that the State's agent committed a fault (the Supreme Court judgments: no. I PR 468/70 of 29.12.1970, unpublished, no. I CR 24/71 of 19.4.1971, unpublished, and no. I CR 152/74 of 11.4.1974, unpublished).

2. Arrest of intoxicated persons under the Law of 26 October 1982 on Education in Sobriety and Counteracting Alcoholism

The Law on Education in Sobriety and Counteracting Alcoholism (*Ustawa o wychowaniu w trzeźwosci i przeciwdziałaniu alkoholizmowi*) provides for measures which may be applied in respect of intoxicated persons. Articles 39-40 set out measures which may be applied to such persons.

Pursuant to Article 39 of the Law, sobering-up centres shall be set up and managed by the authorities of municipalities with more than 50,000 inhabitants. Article 40 of the Law, as applicable at the relevant time, provided, insofar 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 establishment, or to their place of residence."
>
> 2. In the absence of a sobering-up centre, such persons may be taken to a [police station].
>
> 3. [Intoxicated] persons who have been taken to a sobering-up centre or a [police station] shall remain there until they become sober but for no longer than twenty-four hours. ..."

A person arrested and, subsequently, confined in a sobering-up centre under Article 40 of the Law is not entitled to bring proceedings challenging the lawfulness of deprivation of his liberty since, according to Article 206 of

the Code of Criminal Procedure, only a person arrested on suspicion of having committed an offence may appeal against a decision to arrest him (see the Supreme Court judgment No. I KZP 43/91 of 12 February 1992 reached by a bench of seven judges, published in *OSNKW* 1992 No. 5-6/32).

The Ordinance of the Minister of Administration, Local Economy and Environmental Protection of 7 May 1983 on taking intoxicated persons to sobering-up centres, the organisation of those centres, the medical care provided by them and the fees for transportation to and staying in sobering-up centres or police stations (repealed by an Ordinance of the Minister of Health and Social Care of 23 October 1996) set out detailed rules relating to detention in a sobering-up centre.

Paragraph 9 of the Ordinance, as applicable at the material time, provided that a person brought to a sobering-up centre should promptly be given a medical examination in order to ascertain whether he or she should be placed in a sobering-up centre, or in a hospital or other medical establishment, or whether there were no signs of intoxication justifying a placement in a sobering-up centre.

No provision obliged the authorities to carry out in addition any tests (e.g. blood or breath tests) to establish whether or not a given person was intoxicated. Paragraph 16 of the Ordinance provided that an alcohol test should be carried out at the request of the intoxicated person.

3. Proceedings for compensation for unjustified detention

Chapter 50 of the Code of Criminal Procedure of 1969, as applicable at the material time**,** provided in its Article 487 § 4 for compensation for damage arising out of obviously unjustified detention on remand and for police arrest and detention up to 48 hours. The Regional Court in whose region the detained person had been released was competent to examine whether the conditions for awarding compensation were met. The decision of the Regional Court could be appealed to the Court of Appeal.

According to Article 489 of the Code, a request for compensation for manifestly unjustified detention on remand had to be lodged within one year from the date on which the final decision terminating the criminal proceedings in question had become final. In respect of a compensation claim arising out of a manifestly unjustified arrest, such a claim had to be lodged with a competent court within three months from the date of release.

COMPLAINTS

The applicant complained invoking Article 3 of the Convention that he had been beaten first by the municipal guards, and later, after he was admitted to the sobering-up centre, by its agents. He had, in particular, been

put into restraining belts for ten hours. He had felt deeply humiliated. This amounted to inhuman and degrading treatment within the meaning of this provision of the Convention.

The applicant further complains under Article 5 § 1 of the Convention that his detention in the sobering-up centre was in breach of the Convention in that this kind of detention did not fall within the ambit of any of the grounds of deprivation of liberty permitted under this provision of the Convention. He further submits that he was not intoxicated, that his detention was arbitrary and unjustified, and that in view of his handicap he should not have been detained.

The applicant further complains under Article 5 § 4 of the Convention that under Polish law he had no remedy available to him in order to call in question the fact that he was deprived of liberty in the sobering-up centre. In particular, he was not entitled to take judicial proceedings by which the lawfulness of his detention could be decided. He also invokes Article 13 of the Convention.

The applicant further complains, relying on Article 5 § 5 of the Convention, that under Polish law he cannot obtain compensation for his unlawful detention in a sobering-up centre in breach of the provisions of the Convention.

THE LAW

1. The applicant complained invoking Article 3 of the Convention. that he was ill-treated by the guards and the staff of the sobering-up centre.

Article 3 of the Convention reads:

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

On 30 November 2000 the Court, by way of a partial decision, declared this complaint inadmissible for non-exhaustion of domestic remedies. It noted that that it was not alleged that domestic law did not provide for a relevant and sufficient remedy concerning the complaints of alleged ill-treatment by the State agents. The Court further observed that the applicant had failed to show or argue that he had set in motion any procedure in order to have these complaints examined by the competent domestic authorities.

However, in their observations the respondent Government submitted that the applicant in fact requested that investigations of the allegations of ill-treatment be instituted by the prosecuting authorities, and the applicant confirmed it. The Court therefore finds that the circumstances of the present case justify restoration of the application insofar as it is related to the

allegations of ill-treatment, contrary to Article 3 of the Convention, to its list of cases in accordance with Article 37 § 2 of the Convention.

The Court notes in this context that on 28 January 1994 the applicant requested the Pabianice District Public Prosecutor to institute investigations concerning the events of 26 November 1993. The applicant's allegations of ill treatment were investigated by the first-instance prosecuting authorities, which interviewed a number of witnesses. On 30 October 1994 these investigations were discontinued, the prosecutor having found that the evidence did not confirm the allegations that a criminal offence had been committed. The applicant appealed and on 27 February 1995 the Łódź Regional Prosecutor upheld the contested decision. On the applicant's complaint, the Łódź Appellate Prosecutor ordered that the investigations be re-opened. On 21 August 1995 the Łódź District Prosecutor again discontinued the proceedings, finding that the persons concerned had no case to answer.

Under Article 35 § 1 of the Convention, the Court may only deal with the matter within six months from the date on which the last domestic decision was taken. The Court notes that the applicant brought this complaint to the Convention organs on 13 February 1997, which is more than six months from the last decision given in respect of his complaint under Article 3 of the Convention. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. The applicant complains under Article 5 § 1 of the Convention that his detention in the sobering-up centre was in breach of the Convention in that this kind of detention did not fall within the ambit of any of the grounds of deprivation of liberty permitted under this provision of the Convention. He further submits that his detention was arbitrary and unjustified.

The applicant further complains under Article 5 § 4 of the Convention that under Polish law he had no judicial remedy available to him in order to call in question the fact that he was deprived of liberty in the sobering-up centre.

Article 5 § 1 of the Convention, insofar as relevant, reads:

> "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:
>
> (e) the lawful detention of ... alcoholics ..."

Article 5 § 4 of the Convention reads:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Applicability of Article 5 of the Convention to the circumstances of the present case

The Court first recalls that the confinement in the sobering-up centre in Poland, as designed under domestic law, does amount to a "deprivation of liberty" within the meaning of Article 5 § 1 of the provision (*Litwa v. Poland*, no. 26629/95, 4.04.2000, § 46). The Court sees no circumstances on which to hold otherwise in the present case.

B. The Government's preliminary objection as to non-exhaustion of domestic remedies

The Government acknowledged that the Polish law as applicable at the material time did not provide for a particular judicial remedy to challenge the lawfulness of the deprivation of liberty in the sobering-up centres. However, they contend that in the present case the applicant was arrested by the municipal guards on 26 November at 8.20 p.m., then handed over to the police who brought him to the sobering-up centre. On 27 November 1993 the police questioned the applicant and drew up the minutes of the questioning, stating therein that the applicant's arrest had started on 26 November at 8.50 p.m. Therefore his detention was ordered within the framework of his arrest by the police on suspicion of having committed a criminal offence. It was therefore open to him to lodge an appeal with the court competent to examine appeals against arrest under Article 207 (a) of the Code of Criminal Procedure. The applicant did not avail himself of this remedy and, consequently, did not comply with the obligation provided for by Article 35 by the Convention.

The applicant argued that he had no remedy available to him at the material time as the law did not provide for any appeal against a decision on his confinement in the sobering up centre. In particular, he was not entitled to take judicial proceedings in this respect. The applicant draws the Court's attention to the Government's own statement that Polish law as applicable at the material time did not provide for a particular judicial remedy to challenge the lawfulness of the deprivation of liberty in the sobering-up centres.

The applicant further challenges the Government's argument that his arrest was effected within the framework of detention on suspicion of having committed an offence. He draws the Court's attention to the written grounds of the Łódź Regional Court's judgment of 19 April 1996 in which the court stated that "it had also to be emphasised that the guards had lodged a complaint that the applicant had committed a criminal offence only after they learnt that the applicant complained about their behaviour to the Chief of the Municipal Guards. This supported the applicant's argument that they had done so only in order to have their behaviour [during the incident in

question] put into a favourable light." The applicant concludes that in the circumstances of the case his confinement cannot be regarded as detention by the police on suspicion of having committed an offence, against which an appeal to the court would lie, as he was clearly arrested only because the guards treated him as being intoxicated and no charges were brought against him at that time.

The Court notes the applicant's reference to the judgment of the Regional Court and finds that it confirms the version of facts relied on by the applicant. It further notes that no documentary evidence has been submitted by the Government as to contradict the version of facts on which the Regional Court relied as regards the time when criminal investigations were instituted by the police against the applicant. The Court therefore concludes that it has not been shown that the applicant's detention was ordered in the evening of 26 November 1993 as detention of a person suspected of having committed a criminal offence against which an appeal to the court would be available.

The Court finally notes that it has been acknowledged that Polish law, as it stood at the material time, did not authorise a person confined in a sobering up centre to have the lawfulness of such detention examined by a court. Consequently, this part of the application cannot be rejected for non-exhaustion of domestic remedies.

C. Compliance with the six-months rule

Under Article 35 § 1 of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted and within six months from the date on which the last domestic decision was taken.

The Court first recalls that, according to the established case-law of the Convention organs, where no domestic remedy is available the six-month period runs from the act alleged to constitute a violation of the Convention; however, where it concerns a continuing situation, it runs from the end of the situation concerned or from the date of disclosure of the alleged violation (see, e.g. Eur. Comm. HR, 14807/89, Dec. 12.2.92, D.R. 72, p. 148; 19601/92, Dec. 19.1.95, D.R. 80-B, p. 46, No. 23413/94, Dec. 28.11.95, D.R. 83, p. 31; No. 20357/92, Dec. 7.3.94, DR 76, p. 80.)

The Court notes that the applicant was released from detention complained of on 27 November 1993. He lodged his application with the Convention organs on 13 February 1997, which is more than six months from the date on which he had been released.

The Court further notes that insofar as the applicant complains under Article 5 § 4 about the lack of remedy to challenge the lawfulness of his detention, and even assuming that he could be understood as complaining that this created a continuous situation in which he could not bring his complaint before any judicial authority in Poland to which the six month

requirement would be inapplicable, the Court recalls that that the concept of a "continuing situation" refers to a state of affairs which involves continuous activities by or on the part of the State (Eur. Comm. HR, Nos. 11192/84, dec. 14.5.87, D.R. 52 p. 227, 12015/86, D.R. 57 p. 108 and 24841/94 dec. 30.11.94). The applicant's complaints originate from a specific event, i.e. his detention, which occurred on 26 November and ended on 27 November 1993, and therefore they cannot be regarded as a "continuing situation" for the purposes of the six month rule. It follows that this part of the application is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

The applicant further complains, relying on Article 5 § 5 of the Convention, that under Polish law he cannot obtain compensation for his unlawful detention in a sobering-up centre in breach of the provisions of the Convention.

Article 5 of the Convention reads:

> "5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Court recalls that complaints based on Article 5 § 5 of the Convention may be examined directly by the Court only if the domestic authorities have found a violation of any of the provisions of paragraphs 1 to 4 of this Article. In the absence of such a finding, the Court itself must first establish the existence of such a violation (Eur. Comm HR, No. 7950/77, Dec. 4.3.80, D.R. 19 p. 213; No. 21522/93, Dec. 10.10.1994). In the present case, however, no such violation has been established by either the domestic authorities or the Court. In the absence of such a finding, no issue arises under Article 5 § 5 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President