La CEDU sulla proibizione della tortura
(CEDU, sez. I, sent. 26 settembre 2019, ric. n. 65970/12)

Con il caso Dziunkwski la Corte EDU si pronuncia sulla proibizione alla tortura sancita dall'articolo 3 della Convenzione, disposizione ritenuta violata del richiedente nel momento del suo arresto, nel gennaio 2011. La Corte ribadisce che sono vietati in termini assoluti la tortura e i trattamenti inumani o degradanti. Sottolinea tuttavia che i maltrattamenti, per poter rientrare nell'ambito di applicazione dell'articolo 3, devono raggiungere un livello minimo di gravità. Naturalmente, la valutazione di questo minimo è relativa e dipende da tutte le circostanze del caso, come la durata del trattamento, gli effetti fisici e mentali, il sesso, l'età e lo stato di salute della vittima. Nei confronti di una persona privata della sua libertà, il ricorso alla forza fisica che non è stato reso necessario dalla propria condotta, diminuisce la dignità umana ed è una violazione del suddetto articolo. Nel caso in esame, il trattamento è stato ritenuto dai giudici di Strasburgo "disumano" in quanto premeditato e "denigrante" perché tale da suscitare nella vittima sentimenti di paura e di angoscia. I giudici tengono però a precisare che affinché una punizione o un trattamento ad essa associato siano considerati "disumani" o "degradanti", la sofferenza o l'umiliazione in questione deve andare, in ogni caso, oltre all'inevitabile elemento di sofferenza o umiliazione connesso ad una determinata forma di trattamento o di punizione legittima.

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

FIRST SECTION

CASE OF DZIUNIKOWSKI v. POLAND

(Application no. 65970/12)

JUDGMENT
STRASBOURG
26 September 2019

This judgment is final but it may be subject to editorial revision.

In the case of Dziunikowski v. Poland,

The European Court of Human Rights (First Section), sitting as a Committee composed of:
Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Pauliine Koskelo, *judges,*
and Renata Degener, *Deputy Section Registrar,*
Having deliberated in private on 3 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 65970/12) 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, Mr Roman Dziunikowski ("the applicant"), on 2 October 2012.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, and subsequently by Mr J. Sobczak, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been subjected to inhuman and degrading treatment while being arrested by the police and while being questioned afterwards.

4. On 14 April 2014 the complaints concerning the alleged degrading treatment, the quality of the investigation, and the length of the applicant's pre-trial detention were communicated to the Government, and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Warsaw.

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

The applicant's arrest and the events of 12, 13 and 14 January 2011

7. The applicant is a doctor specialising in emergency medicine. He had two heart attacks in 2005 and in 2008; he is overweight and suffers from coronary artery disease and kidney disorders. At the material time he worked at the first-aid station in Babice Stare.

8. On 10 January 2011 the applicant was charged with benefitting from the proceeds of prostitution on the part of an unknown number of women. The contents of this decision were presented to the applicant on 13 January 2011. On the same day the Warsaw Regional Prosecutor ordered the applicant's detention and compulsory appearance (*zatrzymanie i przymusowe doprowadzenie*). The compulsory appearance and the need to apply preventive measures were justified by reference to the suspicion that the applicant might tamper with evidence: it was found that one of the persons who together with the applicant had allegedly committed the offence had tried to persuade other persons to give false testimony.

9. On 12 January 2011 at 6 a.m., when the applicant's night shift was almost over, several policeman and anti-terrorist brigade officers arrived at the first-aid station where the applicant worked in order to arrest him. The applicant claims that one of the officers kicked him in the chest and stomach. In compliance with the officers' orders he lay on the floor face down and was handcuffed behind his back.

10. Subsequently, the applicant was taken to one of his flats in Warsaw, where the police officers searched the premises. According to the applicant, the handcuffs were too tight and he had a pain in his hand. Only nearly half an hour after he had so requested, the handcuffs were loosened and he was handcuffed again, this time with his hands in front of his body. According to the applicant, he also had a strong pain in his chest but was not offered any help or allowed to take medications. He further submits that at the time of the search the police officers shouted at him with offensive words, such as "you whore, you bandit, you fat pig!" – apparently without any particular reason.

11. Then the applicant was taken to his second flat in Warsaw, which was searched as well.

12. Subsequently, the applicant was transported to a police station where, according to his statements, he was hit in the face and then beaten by several policemen, who also kicked him in the stomach and thighs. His person and clothes were searched. The search started at 11.40 a.m. and ended at 11.50 a.m. According to the search record, during the search "no obstacles or problems appeared". The applicant signed the record, which reads:

"(the applicant) does not demand that the confirmation of the search by the prosecutor be served on him [and] does not raise any reservations as to the way the search was performed."

13. After that, still on 12 January 2011, the applicant was taken to Solec Hospital, where he was hospitalised. The medical certificate issued by that hospital reads as follows:

"[T]he patient [suffers from] chronic coronary artery disease [and has had] two heart attacks and numerous vein angioplasties. For the last three weeks [he has been] suffering from repeated chest pain. Today – [suffered] pain three times while resting (*ból spoczynkowy*). Recommendation: hospitalisation in 'R' cardiological [intensive care] ward."

14. On 12 January 2011 an X-ray examination of the applicant's skull was ordered. According to the medical certificate issued by the Solec Hospital on that day no injuries on the top of the applicant's skull could be traced.

15. Two further medical certificates dated 13 January 2011 issued by Solec Hospital read as follows:

"The patient currently remains in the intensive cardiological ward with suspected acute coronary syndrome. At the moment his state is stable. We are looking for a place to perform an angiography, which will ultimately allow [us] to state whether the patient may be detained without medical supervision. Until that examination, [the patient] needs to be hospitalised and to remain in the intensive care ward.

"We do not see any medical [reasons for not] undertaking prosecution- or court-related activities with the patient, who at the moment remains in the cardiological intensive care ward."

16. On 13 January 2011 the applicant was transported to the Ministry of the Interior's Hospital in Warsaw, where he underwent coronary catheterisation.

17. On 14 January 2011 the Warsaw District Court asked the doctor responsible for the applicant whether his state of health allowed for him to be questioned as a suspect by the court and whether

he could be detained on remand – including in the detention centre's hospital ward. The court's letter was marked "urgent".

18. On the same day the doctor responsible for the applicant replied that:

"At the present moment the patient, R.D. [...] does not require further hospitalisation in the Clinic of Invasive Cardiology *(Klinika Kardiologii Inwazyjnej)*. At the same time there are no medical reasons for excluding the applicant's being questioned today."

The applicant's detention on remand

19. On 14 January 2011 at 1 p.m. the Warsaw District Court decided to detain the applicant on remand for three months. The court relied on a strong suspicion that the applicant had indeed committed offences with which he had been charged. It did not, however, indicate the evidence relied on, because a large part of the investigation material was classified as confidential. The court also considered that the applicant might try to obstruct the proceedings.

20. On 21 January 2011 the applicant's lawyer lodged an appeal against the detention decision.

21. On 10 February 2011 the Warsaw Regional Court dismissed the appeal and upheld the challenged decision.

22. On 31 March 2011 the Warsaw District Court extended the applicant's detention for further three months – that is to say until 12 July 2011. The court also relied on the probability that a heavy penalty might be imposed on the applicant, because he had been additionally charged with the illegal possession of arms and psychoactive substances (four bullet cartridges and 3.5 grams of an illegal psychoactive substance had been found in his flat).

23. The applicant's lawyer appealed and, on 9 May 2011, the Warsaw Regional Court upheld the challenged decision.

24. On 6 July 2011 the Warsaw District Court, relying on the same grounds as previously, extended the applicant's detention for a further three months – that is to say until 12 October 2011.

25. On 10 August 2011 the Warsaw Regional Court dismissed the applicant's lawyer's appeal and upheld the decision extending the applicant's detention.

26. On 27 September 2011 a bill of indictment against the applicant was lodged with the Warsaw District Court. The applicant was accused of having committed three offences: deriving material benefit from prostitution practiced by another person (under Article 204 § 2 of the Criminal Code); illegal possession of ammunition (under Article 263 § 2 of the Criminal Code); and possession of drugs (under Section 62 § 1 of the Act on the Countering of Drug Abuse).

27. On 5 October 2011 the Warsaw District Court again extended the applicant's detention, until 12 January 2012.

28. A further appeal by the applicant's lawyer was dismissed by the Warsaw Regional Court on 10 November 2011.

29. On 21 December 2011 the Warsaw District Court extended the applicant's detention until 29 February 2012. The court found that it was necessary to hear three witnesses without the presence of the applicant because of the reasonable fear that he might attempt to obstruct the proceedings; one of the witnesses, M.M., had stated at the investigative stage of the proceedings that she was afraid of the applicant, and another witness, P.J.S., stated that he was still afraid of the applicant. The court found that a hearing in the absence of the applicant was necessary in view of the fact that the applicant had been charged with cooperating with groups which aimed to commit crimes. It furthermore held that it would examine the need for the applicant to be further detained after the witnesses M.M., M.S. and P.J.S. had been heard.

30. On 12 January 2012 the Warsaw Regional Court dismissed an appeal lodged against this decision by the applicant's lawyer.

31. On 24 February 2012 the Warsaw District Court extended the applicant's detention until 6 April 2012. After an appeal by the applicant's lawyer, this decision was upheld by the Warsaw Regional Court on 27 March 2012.

32. At a hearing on 3 April 2012 the Warsaw District Court decided to lift the applicant's detention. The court held that after the witnesses M.M., M.S. and P. J.S. had been heard, the fear that the applicant might influence their testimony was no longer pertinent. At the same time the court pointed to the high probability that the applicant had committed the offences with which he was charged and imposed on him a less severe preventive measure – namely a prohibition on his leaving the territory of Poland.

The applicant's injuries and criminal proceedings against the police officers

33. The applicant submits that owing to the state of shock in which he had found himself following his arrest he had not demanded that his body be examined for any injuries that he may have sustained at the time of his arrest.

34. Only twelve days after the alleged events – that is to say on 24 January 2011, when he was questioned by the prosecutor – did he complain of the beating which had allegedly taken place on 12 January 2011.

35. The applicant then underwent then a body check *(oględziny)*. As can be seen from the case file, the applicant had not requested such a check; it had been ordered by the prosecutor. According to the record of the check, which was conducted on 24 January 2011, the applicant had the following body injuries:

"Irregularity of the mucous membrane on the inner part of lips, three [different] shades of skin colouring on the right side of the stomach – one about 5-5.5 cm., ... [one] about 3 cm., yellow colour inside with blue borders and one on the other side of umbilicus barely visible, with yellow colouring; on the right arm close to elbow on the inner side three [areas of] yellow colouring; one [area of] yellow colouring on the right thigh."

36. The medical opinion ordered by the prosecutor, issued after the examination of the medical documentation of the case, dated 8 April 2011, read, in so far as relevant, as follows:

"[I]n the medical documentation from Solec Hospital dated 12 January 2011 there is no note of any injuries [having been] found on R.D.'s body. In [an entry in] the medical records of the detainee [dated] 14 January 2011 it is stated that in the course of an initial examination of the applicant no injuries were found on the applicant's body."

37. The opinion further relied on the record of the body search, on 24 January 2011 (see paragraph 35 above) and concluded that:

"The irregularity of the mucous membrane on the inner part of lips [and] colouring on the applicant's right arm and on the right thigh are the result of blunt trauma [and are] at least seven days old ... . [T]hese injuries are of a light nature and resulted in impairment to health, within the meaning of Article 157 § 2 of the Criminal Code, lasting less than seven days and did not expose R.D. to a direct threat to life or grievous bodily harm. These injuries could have appeared at the time and under the circumstances described by R.D.; they could also have been caused by some other blunt trauma sustained within the period of some two hours.

...

The skin colouring on the stomach was caused by injections of the medication Clexane, which the applicant received during his hospitalisation in Solec Hospital."

38. For the first four months the investigation was conducted by N.M. – the same prosecutor who had ordered the applicant's arrest.

39. On 13 May 2011 the proceedings were severed and the part concerning the alleged abuse of power by the police officers was transferred to the Warsaw District Prosecutor.

40. The prosecutor questioned several witnesses, in particular the applicant's two colleagues (paramedics) who had been working with him at the time of his arrest. They were questioned on 20 June 2011. One of them, R.S., testified that he had not witnessed the moment of arrest because he had been sleeping in another room. When he had woken up, the applicant had already been handcuffed. He had not seen any of the policemen hit or insult the applicant. According to R.S., the policemen had behaved "normally". The other paramedic, K.S. had been sleeping in the same room as the applicant. He had been woken up by banging on the door. When he had opened the door, "about five anti-terrorist officers" had entered the room. They had ordered the applicant to lie on the floor, which he had done. Then he had been handcuffed with his face down. According to K.S. there had been no argument at the time of arrest; the applicant "had obeyed orders". The police officers had "behaved normally, although they [had been] vulgar". When the prosecutor read out to K.S. a part of the applicant's testimony concerning his arrest, K.S. continued:

"I now recall that indeed one of the police officers said 'I will show you what police means'. I am not sure how many officers entered the room or who entered first. I do not remember a flying kick or the second kick. I was not looking at R. [that is to say the applicant] all the time. At the beginning, when I opened the door, R. was standing close to me. However, he was knocked over (*przewrócony na ziemię*) and handcuffed some three metres from me. I do not know how he found himself there. Now I do not remember the moment of R.'s being knocked over, I might not have

seen it. I was shocked and I was also looking at my other colleague [R.S.]. It was narrow and tight there and [there were] several policemen, so I could not see everything ..."

41. The prosecutor also questioned all the police officers and anti-terrorist brigade members who had come to arrest the applicant on the morning of 12 January 2011. They all denied having abused their power by beating or hitting the applicant. One of the police officers, T.R., who was also a doctor, confirmed that when they had been in the applicant's flat in Warsaw, the applicant had complained of a pain in his chest and had informed the police officers that he suffered from coronary artery disease and hypertension. T.R. testified that, speaking as a doctor, he had not observed any symptoms which would require medical intervention and denied that in the flat the applicant had asked to be allowed to take medications. He confirmed however that the applicant, when taken to the police station, had asked to be allowed to take medication; on that occasion his request had been granted.

42. In a letter of 12 September 2011, the applicant contested the reliability and accuracy of the medical opinion of 8 April 2011, especially as regards the provenance of the injuries on his stomach. He requested that a fresh opinion be commissioned and indicated questions that he considered should be posed to the forensic expert.

43. At the request of applicant, a new expert opinion was ordered. The expert was asked questions indicated by the applicant. The relevant part of the opinion, dated 2 December 2012, reads as follows:

"If the injuries of the applicant's mucous membrane are treated as scarring it should be stated that this injury was sustained in a result of a dull blow of rather moderate power ... [I]t cannot be excluded that such an injury might be the result of a strong slap ... .

The haematoma on the applicant's right arm and right thigh are the result of three dull blows of moderate power. The nature of the injuries, especially those on the applicant's arm, indicates that they might be a result of his having been held firmly.

... [T]aking into consideration the nature of injuries to the applicant's stomach and the fact that the applicant was administered Clexane twice in Solec Hospital on 12 and 13 January, and after that in the Ministry of the Interior's Hospital on 13 and 14 January 2011, it cannot be excluded that [those injuries] could be the result of haematomas which appeared after the injection of that medication. Such changes as those noted in the course of the applicant's body search of 24 January 2011 are usually not typical, but could be the result of intradermal administration of medication.

...

From the medical standpoint it cannot be excluded that the haemetomas on the applicant's stomach could also be the result of dull blows; however, it must be noted that in the case file (in the medical documentation) ... there is no information dated 12-13 January 2011 of these injuries. Assuming that the injuries appeared in the afternoon of 12 January 2011, their effects ([allegedly] resulting from numerous kicks) should have been noticeable and noted in the medical examination.

On the basis of the nature of the injuries and the fact that a body search was conducted only several days after the events it is impossible to establish whether those injuries were the result of the injection of the medication Clexane or as a result of a dull blow (for example, a kick).

In summary, the injuries sustained by the applicant, as recorded in the course of the body check of 24 January 2011, are not (in the submission of R.D.) typical of those caused by numerous blows and kicks to somebody's head, torso and limbs. Moreover, the injuries to the right thigh are not typical of so called "defensive injuries", which appear when one attempts to shield oneself from a blow."

44. On 21 December 2011 the Warsaw District Prosecutor discontinued the investigation. Having analysed (i) evidence from all witnesses – including those of the applicant's colleagues who had been present at the moment of the arrest and all police officers present at the police station at the time of the alleged beating of the applicant – and (ii) the two expert opinions referred to above, the prosecutor concluded that "it was not possible to establish facts beyond doubt as regards the suspicion of the [commission of the] offence of abuse of power by the police officers". The prosecutor found that the applicant's version of the events was denied by the police officers and, "more importantly, it had not been confirmed by the remaining, objective and impartial evidentiary material." Within three days of the arrest the applicant had been examined by various doctors on three occasions – in two hospitals and at the detention centre – and on none of those occasions had any information of the applicant's injury been recorded. The prosecutor concluded that the only evidence which might confirm the applicant's version of events was the statement made by the applicant himself. The prosecutor did not completely deny that the applicant's statements had any credibility but held that even though all possible evidence had been adduced it was still impossible to establish the course of the events of the case. Therefore, applying the principle of *in dubio pro reo*, the proceedings against the police officers had to be discontinued.

45. On 4 January 2012 the applicant's lawyer appealed and requested that the decision of 21 December 2011 be quashed and the case be returned to the prosecutor for completion of the investigation. He pointed to the fact that the prosecutor's findings had not corresponded to the expert opinions obtained in the course of proceedings. In particular, whereas the prosecutor managed to find possible alternative explanations for the applicant's other injuries, the origin of the injuries on his mucous membrane was not explained. He further raised that the prosecutor had failed to investigate into the genuine need to have recourse to an anti-terrorist brigade in order to arrest the applicant. Finally, the applicant's lawyer requested that the prosecutor question certain T.B. who, in another set of proceedings stated that one of the policemen present at the applicant's arrest, M.Z., had tried to obtain false evidence which would charge the applicant.

46. On 26 March 2012 the Warsaw District Court upheld the challenged decision. It endorsed the prosecutor's reasoning and held that the version of events, as described by the applicant, could not be confirmed by the exhaustive evidence produced in the course of the proceedings. It further held that the applicant's appeal did not raise any new circumstances and only amounted to contesting the prosecutor's assessment of evidence. As regards the request to supplement the expert opinion and to hear T.B. the court held that it would not influence the result of the case and it would only

cause the unnecessary prolongation of the proceedings. The court did not refer to the applicant's lawyer's argument concerning the examination of the necessity to use the anti-terrorist brigade.

RELEVANT DOMESTIC LAW AND PRACTICE

As regards the offence of exceeding authority by a public official

47. Article 231 § 1 of the Criminal Code provides as follows:

"A public official who, exceeding his authority, or not performing his duty, acts to the detriment of the public or an individual's interest shall be subject to the penalty of deprivation of liberty for up to three years".

As regards the applicant's detention on remand

48. The relevant domestic law and practice concerning the imposition of detention on remand *(aresztowanie tymczasowe)*, the grounds for its extension, release from detention, and the rules governing other so-called "preventive measures" *(środki zapobiegawcze)* are set out in the Court's judgments in the cases of *Gołek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

THE LAW

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicant complained that his treatment at the time of his arrest on 12 January 2011 and later, during his questioning at the police station, had been inhuman and degrading; he also complained of insufficient quality of domestic proceedings in breach of Article 3 of the Convention, which reads as follows:

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

50. The Government contested that argument. They considered that the alleged ill-treatment had not attained the minimum level of severity and that the investigation was thorough and effective and therefore invited the Court to find that there had been no violation of Article 3 of the Convention.

Admissibility

51. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

Merits

52. The Court observes that the applicant's complaints concern both the substantive and the procedural aspects of Article 3 of the Convention. As regards the former aspect, the Court notes that the parties disagreed as to whether some of the applicant's injuries had been caused during his arrest on 12 January 2011 and later on 13 and 14 January 2011, and whether they had been the result of the use of proportionate force.

53. The Court is sensitive to the subsidiary nature of its task, and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case. Therefore, the Court considers it appropriate to firstly examine whether the applicant's complaint of ill-treatment was adequately investigated by the authorities (see, for example, *Dzhulay v. Ukraine*, no. 24439/06, § 69, 3 April 2014; *Chinez v. Romania*, no. 2040/12, § 57, 17 March 2015; and *Chatzistavrou v. Greece*, no. 49582/14, § 45, 1 March 2018). It will then turn to the question of whether the alleged ill-treatment took place, bearing in mind the relevant domestic findings.

Adequacy of the investigation

(a) The applicant's submissions

54. The applicant submitted that the domestic proceedings had not been sufficiently thorough and effective to meet the requirements of Article 3 of the Convention. He maintained that the domestic authorities had failed to examine thoroughly all the circumstances of the case; in particular, he submitted that the doctor who had examined him in Solec Hospital should have been questioned and that the video surveillance recordings from the first-aid station and the police headquarters of 12 January 2011 should have been secured and used as evidence in the investigation. He furthermore maintained that the authorities had failed to take into account the fact that he was an obese person at the time in question and the possibility that some injuries might have only appeared on his body at a later time – that is to say not on the date of the ill-treatment complained of. He also complained that the investigating authorities had failed to examine the circumstances of his skull X-ray examination of 12 January 2011. In this respect he submitted a copy of the medical certificate issued after the examination on 12 January 2011, according to which there were no injuries on the top part of his skull. Finally, the applicant maintained that the authorities should have heard another witness, T.B. In this connection he submitted a record of T.B.'s questioning during the court hearing of 19 February 2014 in the criminal proceedings against the applicant and further documents dated 2009, from which, according to him, it resulted that T.B. testified that the police had tried to frighten him and fabricate false evidence against him.

(b) The Government's submissions

55. The Government contended that the investigation and judicial proceedings in the present case had complied with Article 3 requirements. They reiterated that the State's obligation to carry out a thorough and effective investigation was an obligation of means and not of result. They argued that the domestic authorities had taken all reasonable steps to secure the necessary evidence and to clarify the circumstances of the case. They further maintained that the proceedings had been prompt and thorough. There had been no other evidence that the prosecuting authorities could or should have taken in order to establish the facts of the alleged ill-treatment. The circumstances of the case had been examined by the Warsaw District Prosecutor and further, in independent judicial proceedings. In the course of the investigation and judicial proceedings all relevant witnesses had been questioned and forensic reports had been commissioned.

(c) The Court's assessment

56. 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* [GC], no. 26772/95, 6.4.2000, § 131, ECHR 2000-IV). 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 v. Bulgaria*, 28 October 1998, § 103 et seq., *Reports of Judgments and Decisions* 1998-VIII).

57. Turning to the circumstances of the present case, the Court notes that the prosecutor questioned all the witnesses who had been present at the first-aid station at the time of the applicant's arrest, including the applicant's colleagues and police officers. Also, evidence was taken from the police officers who had questioned the applicant at the police station (see paragraph 44 above).

58. On 21 December 2011 the prosecutor discontinued the investigation. The decision was based on an opinion prepared by an expert witness. A second expert opinion was ordered after the applicant expressed doubts regarding the reliability and accuracy of the opinion of 8 April 2011. It is true that the author of the second expert opinion was asked questions suggested by the applicant (see paragraph 43 above). However, as noted by the applicant's lawyer in his appeal (see paragraph 44 above), even though the prosecutor managed to find possible alternative explanations for some of the applicant's injuries, the injury of his mucous membrane, which, as found by the expert might be a result of a strong slap, was not plausibly explained. The Court would also agree with the applicant that the domestic authorities had failed to examine whether indeed the applicant's arrest had required having recourse to an anti-terrorist brigade. Likewise, they did not establish whether in the applicant's case, who at the relevant time was an obese person, the administration of the medication Clexane could cause the appearance of the injuries on his stomach after several days (see paragraphs 43 and 46 above).

59. The Court would further note that the questioning of the doctor who had examined the applicant in the Solec Hospital could contribute to elucidating of the circumstances of the applicant's injuries. The same holds true as regards safeguarding of the video surveillance recordings from the first-aid station and the police headquarters of 12 January 2011.

60. Furthermore, indeed, as results from the reasoning of the domestic decisions, the circumstances and reasons of the X-ray examination of the applicant's skull on 12 January 2011 in the Solec Hospital were not investigated into by the domestic authorities.

61. As regards further arguments that the applicant raised in his observations – namely that the domestic authorities should have questioned another witness, T.B., the Court does not find these arguments convincing. It therefore does not consider that the authorities' refusal to take evidence

from T.B. adversely affected establishment of the circumstances in which the applicant's injuries appeared.

62. However, regard being had to the overall inadequacy of the investigation, in particular to a number of shortcomings as referred to above, the Court concludes that there has been a violation of Article 3 of the Convention in its procedural aspect.

Alleged ill-treatment by the police

(a) The applicant's submissions

63. The applicant submitted in general terms that Article 3 had been violated by the police officers who had allegedly mistreated him. They had used physical force to apprehend him, which had not been justified by the circumstances of the case. They had addressed him using offensive words and had failed to immediately call the ambulance when he had complained about a pain in his chest (which had exposed him to a direct threat to his health or even life). The applicant furthermore submitted that he had been suffering from post-traumatic stress and had had to undergo psychiatric treatment.

(b) The Government's submissions

64. The Government submitted that the applicant had complained of the alleged inhuman or degrading treatment only on 24 January 2011 – that is to say 12 days after the events in question. They furthermore relied on the medical opinions issued in the course of investigation which had not confirmed the applicant's version of events. The Government also pointed out that there was no information regarding the applicant's alleged injuries in the medical documentation issued by the two hospitals between 12 and 13 January and between 13 and 14 January 2011 or by the detention centre, where the applicant also had also undergone a medical examination.

(c) The Court's assessment

65. The Court reiterates that where an individual is taken into police custody in good health and is found to be injured upon 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).

66. 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, *inter alia*, *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001; *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007; and *Rehbock*, cited above). 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).

67. The Court furthermore reiterates 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 of 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 a violation of Article 3 (see *Labita v. Italy*, cited above, §§ 119-120). 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 (ibid., § 121).

68. The Court firstly notes that the applicant was arrested on the morning of 12 January 2011 at his workplace, the first-aid station in Babice Stare. Between 12 and 14 January 2011 the applicant was examined by three different doctors – in two hospitals and upon admission to the detention centre. The Court notes that in the medical documentation from those three places there is no information regarding any injuries sustained by the applicant.

69. The applicant did not lodge an appeal against his arrest. In this regard the Court reiterates that in previously examined cases it has not found it necessary that applicants who alleged ill-treatment by the police at the time of their arrest appeal against their arrest for the purposes of the exhaustion of domestic remedies (see, for example, *Staszewska v. Poland*, no. 10049/04, § 44, 3 November 2009*).*

70. The applicant informed the domestic authorities of the alleged beating only on 24 January 2011 – that is to say twelve days after his arrest at the first- aid station. Even then he did not request that his body be examined; however, an examination was ordered by the prosecutor (see paragraph 35 above).

71. As regards the injuries found on the applicant's body on 24 January 2011, the Court notes that according to the expert medical opinion of 8 April 2011 they resulted in an impairment to health lasting less than seven days and did not expose the applicant to a direct threat to life or grievous bodily harm. The expert was not in a position to name the unequivocal cause of the injuries; according to the opinion they could have appeared at the time and under the circumstances

described by the applicant; they could also have been caused by some other blunt trauma (see paragraph 37 above).

72. Given its conclusion above concerning the lack of an effective investigation and taking into consideration the findings made by the domestic authorities, the Court considers that the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to treatment contrary to Article 3 (see *Hovhannisyan v. Armenia*, no. 18419/13, § 60, 19 July 2018). The Court therefore considers that there is insufficient evidence for it to conclude that there has been a violation of Article 3 of the Convention under its substantive head.

ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

73. Relying on Article 5 § 3 of the Convention, the applicant complained that his pre-trial detention had been excessively lengthy.

74. Article 5 § 3 of the Convention, in so far as relevant, reads:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The parties' submissions

The applicant

75. The applicant maintained that the length of his pre-trial detention had been excessive and unreasonable.

The Government

76. The Government submitted that in the present case all of the criteria for the application and extension of pre-trial detention had been met. The applicant's detention had been justified throughout the whole period in question. The grounds relied on by the domestic courts had been "relevant" and "sufficient". In particular, the imposition and extension of the applicant's detention had been justified by the persistence of a reasonable suspicion that the applicant had committed the offences in question. Furthermore, the case was relatively complex and concerned offences that caused significant social harm. Lastly, they submitted that the national authorities had displayed due diligence in the conduct of the proceedings against the applicant.

The Court's assessment

Period to be taken into consideration

77. The applicant's pre-trial detention started on 14 January 2011; however, he was arrested two days earlier (see paragraph 9 above). On 3 April 2012 the Warsaw District Court decided to lift his detention and instead imposed on him a less severe preventive measure (see paragraph 32 above). Accordingly, the period to be taken into consideration amounts to one year, two months and twenty-one days.

Reasonableness of the length of detention

78. According to the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its particular features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, as the most recent authority, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 90, ECHR 2016).

79. The Court is prepared to accept that the applicant's detention was warranted by the need to secure the proper conduct of the proceedings (see paragraph 19 above). The Court also notes that certain witnesses declared in their testimonies that they had been afraid of the applicant.

80. Similarly, the Court is satisfied that the domestic authorities furnished relevant and sufficient reasons when they relied on the fear that the applicant might try to obstruct the proceedings – particularly given the fact that some of the witnesses had stated that they had been afraid of the applicant, given his alleged contacts with groups which aimed at committing crimes (see paragraph 29 above). The Court notes in this connection that after those witnesses had been heard, the applicant was released from detention since the court found that the risk of obstruction of the proceedings no longer existed (see paragraph 32 above).

81. Lastly, the Court notes that there is no indication of a lack of "special diligence" in the conduct of the proceedings (see, *Roman Petrov v. Russia*, no. 37311/08, § 58, 15 December 2015).

82. In conclusion, the Court finds that the complaint under Article 5 § 3 of the Convention is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

Damage

84. The applicant claimed 604,295 Polish zlotys (PLN) in respect of pecuniary damage and EUR 65,000 in respect of non-pecuniary damage.

85. The Government considered these amounts excessive and groundless.

86. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 6,500 in respect of non-pecuniary damage.

Costs and expenses

87. The applicant also claimed PLN 19,495.50 for the costs and expenses, including PLN 3,690 costs of legal representation before the domestic courts and PLN 12,300 costs of proceedings before this Court.

88. The Government likewise considered these amounts excessive and groundless.

89. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,625 covering costs under all heads.

Default interest

90. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Declares the complaint under Article 3 of the Convention admissible and the remainder of the application inadmissible;

Holds that there has been a violation of the procedural limb of Article 3 of the Convention;

Holds that there has been no violation of the substantive limb of Article 3 of the Convention;

Holds

(a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,625 (three thousand six hundred twenty five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Ksenija Turković
Deputy RegistrarPresident