



FIRST SECTION

CASE OF KUCHTA AND MEŁTEL v. POLAND

(Application no. 76813/16)

JUDGMENT

Art 3 (substantive and procedural) • Inhuman treatment • Excessive and disproportionate force used by arresting police officers, in the absence of a plausible explanation for significant injuries sustained by applicants • Lack of effective investigation into arguable claim of beating by police officers

STRASBOURG

2 September 2021

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

In the case of Kuchta and Mętel v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ksenija Turković, *President*,
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström,
Ioannis Ktistakis, *judges*,
and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 76813/16) 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 two Polish nationals, Mr Robert Kuchta (“the first applicant”) and Mr Sebastian Mętel (“the second applicant”), on 2 December 2016;

the decision to give notice to the Polish Government (“the Government”) of the complaints concerning Article 3 of the Convention and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Polish Bar Council and the Helsinki Foundation for Human Rights, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 6 July 2021,

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

INTRODUCTION

1. The present case concerns the alleged ill-treatment of the applicants during their arrest by police and the allegedly ineffective investigation into the circumstances surrounding the use of force against them.

THE FACTS

2. The first applicant was born in 1976 and the second applicant in 1980. They both live in Cracow. They were represented by Mr A. Majewski, a lawyer practising in Cracow.

3. The Polish Government (“the Government”) were represented by their Agent, Mrs J. Chrzanowska, and subsequently by Mr J. Sobczak, of the Ministry of Foreign Affairs

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

I. BACKGROUND TO THE CASE

5. During the night of 6 and 7 February 2015 the second applicant's neighbour was attacked with a knife in Cracow. The police received information that the persons involved in the attack were hiding in the second applicant's flat. The second applicant lived there with his girlfriend (K.G.) and their five-month-old baby girl (N.).

II. THE EVENTS OF 7 FEBRUARY 2015

A. The applicants' version

6. After midnight the police officers began banging on the door to the second applicant's flat. Since he thought that someone was trying to break in he called the emergency number, 112. The person who took the call informed him that this was a police intervention and he should open the door. During the telephone conversation the police officers broke the door down and entered the flat, spraying tear gas around.

7. As soon as the officers entered the flat they threw the second applicant to the ground. He submits that they started hitting and kicking him; they also sprayed tear gas directly into his face.

8. When the officers discovered that there was a baby in the flat, and as it was not sure whether she had been affected by the tear gas, an ambulance was called. K.G. and N. were taken to a hospital for examination. While she was in the ambulance K.G. called the first applicant, who is the second applicant's friend, informing him of the situation and asking him to come to the flat.

9. Shortly afterwards the first applicant arrived at the flat. As soon as he entered the flat he was hit in the face by one of the officers and thrown to the ground. He was handcuffed and the officers began kicking him, hitting him with truncheons and twisting his leg (where he has metal bolts, of which fact he had informed the officers).

10. During that time, other officers were searching the flat for the weapon (which they believed to be a knife or a machete) allegedly used in the attack. No weapon was found and the applicants were transported to a police station in Nowa Huta for further questioning. On their arrival they were ordered to undress and were handcuffed. They were also again beaten. The first applicant was allegedly kicked by one of the officers in his bad leg. Both applicants repeatedly asked the officers to call an ambulance and inform their lawyers of their arrest.

11. The first applicant was taken to a hospital emergency ward when the officers noticed that his condition was deteriorating.

12. A few hours later, after the new officers' shift had come to work in the morning, the second applicant was also transported to a hospital emergency ward.

B. The Government's version

13. The police officers arrived at the door of the second applicant's flat, where according to the witnesses; the person involved in the attack was hiding. They knocked at the door and warned that they might force the door open. However, the people inside did not react. The Fire Services were called to open the door. While the firefighters were forcing the door open, the police sprayed tear gas.

14. After the officers entered the flat, the second applicant was aggressive towards them. He had visible traces of blood on his T-shirt. He did not follow the officers' orders, tried to hit them and also pushed one of them. In reaction, the officers applied coercive measures such as physical force, using truncheons and handcuffs.

15. At that stage the officers were not using tear gas, given the presence of the K.G. and their baby. In addition, an ambulance was called to the scene to assist K.G and the baby.

16. During that time the second applicant was lying down and throwing himself against the floor.

17. Shortly afterwards, the first applicant entered the flat. On his arrival, he attacked one of the police officers by punching him in the face. He was then overpowered by the officers and handcuffed.

18. Subsequently, the records of the applicants' arrest were drawn up. The document stated that the applicants did not complain about the manner in which the arrest was done. The applicants refused to sign the document.

III. MEDICAL EXAMINATIONS

19. The police took both applicants to the emergency ward of the Ministry of the Interior and Administration Hospital in Cracow ("Ministry of the Interior Hospital") in the early hours of 7 February 2015.

20. As regards the first applicant, the duty doctor noted that he had a broken left tibia, a swollen and painful knee and a haematoma on his forehead. He had 60 millilitres of fluid extracted from his knee and his left leg was put into a long plaster cast (*szyna gipsowa*).

21. The second applicant was diagnosed with numerous haematomas to his head and neck, a nose bleed, bruising to his chest, pain in the stomach, and bruising to his back and left leg.

22. Both applicants were released from detention on 9 February 2015. On the same day they went to the medical examinations laboratory at the Faculty of Forensic Medicine of the Jagiellonian University in Cracow

(*Pracownia Ekspertyz Sadowo Lekarskich, Katedry Medycyny Sadowej UJ CM*), where they both underwent physical examinations (*ogłędziny lekarskie*).

23. In his opinion delivered on that day, the doctor who examined the applicants noted that the first applicant had a slight swelling to his right brow ridge and right cheek, haemophthalmia¹ in the right eye, swelling to the left side of his face, pain in his nose, slight swelling over the lower part of the occipital bone, a stiff neck, bruising to both wrists, bruising to both hands, long bruises to the buttocks and thighs, and a long plaster cast on the left leg.

24. In his opinion regarding the second applicant, the same doctor noted that he had bruising around his left eye and around his nose, bruising around his right eye and slight swelling over the right zygomatic bone, slight swelling around his left ear, bruising to the left side of his neck, slight swelling to and pain in the nape of the neck, bruising to the chest, bruising and abrasions to the wrists, bruising and slight swelling to the left thigh, bruising and abrasions to the left knee, more bruising to the lower legs, a long bruise to the right thigh, abrasions and bruising to the right knee, and bruising to the front parts of both feet.

IV. CRIMINAL PROCEEDINGS IN RESPECT OF THE ALLEGATIONS OF ILL-TREATMENT

A. Evidence gathered by the prosecutor

25. On 2 April 2015 the applicants asked the Cracow-Nowa Huta District Prosecutor to institute criminal proceedings.

26. On 29 April 2015 the Cracow-Nowa Huta District Prosecutor initiated an investigation into the alleged abuse of power by the police officers on the night of 7 February 2015.

27. During the proceedings the prosecutor heard evidence from several witnesses (the applicants, eighteen police officers, the second applicant's partner and her friend, the firefighters who had participated in the intervention and the ambulance paramedics), obtained a report from a psychological expert and a report from the Forensic Department of Cracow University.

28. The applicants requested that the case be referred to a prosecutor in a different district; however, their request was refused.

B. Prosecutor's decision

29. On 29 February 2016 the Cracow-Nowa Huta District Prosecutor discontinued the proceedings regarding the applicants' allegations of

¹ extravasation of blood inside the eye

ill-treatment, holding that there was insufficient evidence to conclude that the alleged offences had indeed been committed.

30. With regard to the injuries sustained by the first applicant, relying on the forensic expert's opinion, the prosecutor noted that the broken left tibia could have been sustained in the manner described by the applicant and that the other witnesses (police officers) had not submitted any other credible explanation for the origin of that injury. Moreover, the haemophthalmia in the right eye could have been caused by the use of force or have been the result of excessive physical effort. Since the first applicant had had no visible injuries around his right eye socket and no ophthalmologic examination had been undertaken after the incident it was not possible to determine the origins of that injury. Lastly, the long bruises on the first applicant's right thigh could have been caused by a long linear tool and could have occurred as stated by the applicant. On the other hand, the testifying officers had not described any circumstances which could have explained the origins of those injuries.

31. With reference to the injuries sustained by the second applicant the prosecutor described numerous bruises and haematomas, and concluded that they had been caused by a hard blunt object. However, there had been no specific features capable of arriving at a more detailed description of that object. As regards the allegedly broken coccyx, in an opinion dated 26 February 2015 a radiologist had not described this injury in detail but had merely stated that "there appears to be a broken coccyx". However, this injury had not been confirmed by X-ray examination; the radiologist had based his description solely on the second applicant's complaint.

32. The prosecutor concluded that there were two contradictory versions of the events of 7 February 2015, namely that presented by the applicants and that presented by the police officers. Neither of these versions had been confirmed by the evidence adduced. Moreover, the prosecutor noted that the applicants had been charged with assaulting and insulting police officers and causing minor bodily harm, so it could not be excluded that they had instituted criminal proceedings as part of a line of defence.

33. Lastly, the incident had been dynamic – the officers had acted in a life-threatening situation. They had taken action against a person suspected of an assault with a knife; they had not known who else was in the flat. The applicants had not been passive during the intervention; consequently, they could have sustained superficial injuries as a result of the struggle and the arrest.

34. Having regard to the *in dubio pro reo* principle, the prosecutor discontinued the proceedings for lack of sufficient evidence that the alleged offence had been committed.

C. The applicants' appeal

35. On 14 March 2016 the applicants' lawyer lodged an appeal against this decision, pointing to numerous procedural and substantive errors committed by the prosecution authorities. In particular, he stressed that the prosecutor had accepted the version of events presented by the police officers despite inconsistencies in their testimonies. He submitted that the prosecutor had failed to take into account the version of events presented by the applicants, which had been confirmed by medical evidence.

D. The District Court's decision

36. On 27 June 2016 the Cracow-Nowa Huta District Court adjourned the hearing until 20 July 2016 in order to acquaint itself with the case file for the criminal proceedings against the applicants.

37. On 20 July 2016 the Cracow-Nowa Huta District Court upheld the prosecutor's decision. The court shared the prosecutor's conclusion that there was insufficient evidence that the alleged offences had been committed.

38. The court noted that the applicants merely disagreed with the prosecutor's decision and presented a different assessment of the circumstances of the case. However, the prosecutor had not established a clear version of events, and it was for that precise reason that the proceedings had to be discontinued.

39. In so far as the applicants alleged that the police had sprayed tear gas directly into the second applicant's face, the court found that this allegation had not been confirmed by the police officers who took part in the operation.

40. The court concluded, relying on the *in dubio pro reo* principle, that given the two contradictory versions of the events and the lack of sufficient evidence to confirm that the police officers had committed the offences in question, the proceedings had to be discontinued. The decision is final.

V. CRIMINAL PROCEEDINGS AGAINST THE APPLICANTS

41. On 7 February 2015 the applicants were charged with insulting police officers in the performance of their duty.

42. On 31 December 2015 an act of indictment was lodged with the Cracow-Nowa Huta District Court. Both applicants were charged with verbally abusing four police officers who had been involved in the incident on 7 February 2015. The first applicant was also charged with hitting one of the officers in the face. The second applicant was charged with pulling and pushing two officers.

43. On 12 March 2018 the Cracow-Nowa Huta District Court delivered judgment. The first applicant was convicted as charged. The second applicant was also convicted as charged, although the court ruled that he had acted with diminished capacity. Both applicants were sentenced to twenty hours of unpaid community work.

44. According to the information available to the Court, the judgment is not yet final.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. USE OF FORCE BY THE POLICE

A. Police Act

45. The relevant part of section 16 of the Police Act of 6 April 1990 (*Ustawa o Policji*) reads:

“1. If a lawful order given by a police authority or police officer has not been complied with, a police officer may apply the following coercive measures:

1) physical, technical and chemical means to restrain or escort persons or stop vehicles;

2) truncheons;

...

2. Police officers may apply only such coercive measures as correspond to the exigencies of a given situation and are necessary to ensure that their orders are obeyed.”

46. Section 14 § 3 provides as follows:

“Police officers in the exercise of their official duties should respect human dignity and respect and protect human rights.”

B. Ordinance on the Use of Coercive Measures by the Police

47. The Ordinance of the Council of Ministers of 17 September 1990 on the Use of Coercive Measures by the Police (*Rozporządzenie Rady Ministrów w sprawie określenia przypadków oraz warunków i sposobów użycia przez policjantów środków przymusu bezpośredniego*) was issued on the basis of section 16(4) of the Police Act. It was applicable at the material time.

48. Section 1(1) of the Ordinance stipulated that the police may use coercive measures in accordance with the rules laid out in section 16(1) and (2) of the Police Act. Coercive measures could be used after a person had failed to comply with an order and after a warning had been given (section 1(2)). A police officer could act without giving an order or a warning if a delay would cause danger to life, health or property

(section 1(3)). The Ordinance prescribes that a police officer should use coercive measures in a manner which causes as little harm as possible, and should discontinue their use if the person complies with orders (section 2(1)(2)).

49. Section 5 of the Ordinance provides that physical force can be used to overpower a person, to counter an attack, or to ensure compliance with an order. When such force is being used, it is forbidden to strike a person, except in self-defence or to counter an attack against life, health or property.

II. COUNCIL OF EUROPE MATERIALS

50. The report on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) from 11 to 22 May 2017, stated in particular:

“21. Whilst taking due note of the different measures referred to in paragraph 18 above, the delegation’s findings during the 2017 visit clearly indicate that persons taken into police custody in Poland continue to run an appreciable risk of being ill-treated. This is a source of the CPT’s serious concern and demonstrates the need for the Polish authorities to step up their efforts in this area.

In this context, it is noteworthy that, shortly before the Committee’s visit, the Ombudsman issued a statement concerning the on-going resort to torture (and other forms of severe ill-treatment) by the police.

In the light of the above, the CPT calls upon the Polish authorities to pursue rigorously their efforts to combat ill-treatment by the police. Police officers throughout the country should receive a firm message that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are unlawful and will be punished accordingly.

It should also be reiterated to the police officers that no more force than is strictly necessary is to be used when carrying out an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them. Further, police officers must be trained in preventing and minimising violence in the context of an apprehension. In cases in which the use of force becomes necessary, they need to be able to apply professional techniques which reduce as much as possible any risk of harm to the persons whom they are seeking to apprehend.”

51. Between 9 and 16 September 2019 the CPT carried out its first *ad hoc* visit to Poland in order to review the implementation of the CPT’s long-standing recommendations concerning the treatment of persons in police custody. The report on that visit stated in particular:

“17. More generally, the delegation’s findings during the 2019 *ad hoc* visit clearly indicate that – despite all the different measures referred to in paragraph 15 above – persons taken into police custody in Poland continue to risk being ill-treated, in particular at the time of apprehension. This is a source of ongoing serious concern to the CPT and demonstrates the need for the Polish authorities to step up their efforts in this area.

In the light of the above, the Committee once again calls upon the Polish authorities to pursue rigorously their efforts to combat ill-treatment by the police. Police officers throughout the country should receive at suitable intervals a firm message that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are unlawful and will be punished accordingly. It should also be reiterated to the police officers that no more force than is strictly necessary is to be used when carrying out an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them. Where it is deemed essential to handcuff a person at the time of apprehension or during the period of custody, the handcuffs should under no circumstances be excessively tight and should be applied only for as long as is strictly necessary.

Further, police officers must be better trained in preventing and minimising violence in the context of an apprehension. In cases in which the use of force becomes necessary, they need to be able to apply professional techniques which reduce as much as possible any risk of harm to the persons whom they are seeking to apprehend.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

52. The applicants complained under Article 3 of the Convention that they had been ill-treated at the time of their arrest and during their questioning at the police station. They also complained, relying on Article 6 of the Convention, that the investigation into the events complained of was not “thorough and effective”. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 124, 20 March 2018), considers that the applicants’ complaints should be examined under Article 3 of the Convention alone, which provides as follows:

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

A. Admissibility

53. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits*1. Substantive aspect of Article 3***(a) The parties' submissions***(i) The applicants*

54. The applicants submitted that on 7 February 2015 they had been ill-treated during the intervention in the second applicant's flat and had subsequently been taken to the police station. They pointed out that the Government had not denied the use of coercive measures on that day. They noted that the Police Act contained specific rules limiting the use of coercive measures and provisions ordering their moderate use.

55. They noted that the second applicant had been hit by the officers when already handcuffed and lying on the ground. He had also been kicked and tear gas had been used on him. These acts could not be explained by the dynamics of the situation and his allegedly aggressive behaviour.

56. As regards the first applicant, he had not been suspected of any offence. Moreover, he entered the second applicant's flat alone, where several police officers had been present. The police action against him had been entirely unjustified and in violation of the law. Moreover, after he had been handcuffed he had been subjected to gratuitous acts of violence.

57. The applicants further stressed that the police officers had not operated in a life-threatening situation. They pointed out that no weapon had been found in the second applicant's flat. Following their arrest, they had not been given access to a lawyer and had received medical assistance only several hours later, during which time they had had to endure the pain of the serious injuries (including fractures) which they had suffered. In their view they had been subjected to ill-treatment in the hands of the officers in order to obtain testimony.

58. Lastly, they concluded that the Government had provided no other explanation for their injuries, which had been very serious and which could not be considered as a normal consequence of a police intervention.

(ii) Government

59. The Government submitted that the use of force against the applicants had been necessary on account of their aggressive behaviour and had been in accordance with the domestic law. In their view the applicants' allegations of ill-treatment had not been supported by appropriate evidence.

60. The Government submitted that the applicants' description of events had not been confirmed during the criminal investigation or on appeal when the case had been examined by the District Court. They noted that the legitimacy of the police intervention had not been contested by the applicants and their lawyer. The victim of the stabbing had clearly identified the second applicant as the perpetrator of the attack. Moreover, the incident

had been dynamic and the officers had acted in a life-threatening situation against a person suspected of an attack with a knife or a machete.

61. As regards the presence of a child in the second applicant's flat, the police officers had not been aware that there was a baby in flat. As soon as they had realised that a child was present they had stopped using tear gas and called an ambulance.

62. The Government stated that apart from providing a forensic medical opinion the applicants had not produced any conclusive evidence in support of their allegations of ill-treatment. They also stressed that the applicants had been charged with assaulting police officers, and therefore the criminal proceedings instituted could have provided their line of defence.

63. Consequently, in the light of the applicants' aggressive behaviour the physical force used by the officers had not been excessive or disproportionate. Moreover, as stated by the national authorities, it had been impossible to establish from the evidence adduced whether the police officers had committed the offence of abuse of power.

(b) Third-party interveners

(i) Helsinki Foundation for Human Rights

64. The Helsinki Foundation for Human Rights ("HFHR") submitted information about the applicable domestic provisions concerning police violence in Poland; statistical information relating to the scale of police violence; information about the cases monitored by HFRH and proposals how to remedy this issue.

(ii) Polish Bar Council

65. The Polish Bar Council (*Naczelna Rada Adwokacka*) relying on observations of practising lawyers and media reports stated that there was a pattern of ill-treatment by the police in Poland. More often than not, the situations in question occurred during police intervention, at the beginning of criminal proceedings, during the arrest and just before the first questioning at the police station. In addition, most common situations of ill-treatment were linked to the abuse of coercive measures. In the intervener's view, the safeguards against possible abuse of power by the Police should include effective access to a lawyer during the very initial stages of criminal police, even before the first questioning at the police station, and installation of body cameras and CCTV cameras at police stations, especially in the interrogation rooms. Such recordings could be used in evidence during any subsequent criminal proceedings.

(c) The Court's assessment*(i) General principles*

66. The general principles with respect to the obligation of the High Contracting Parties under Article 3 of the Convention not to submit individuals under their jurisdiction to inhuman or degrading treatment or torture in the course of encounters with the police were set out in detail in paragraphs 81-90 of the Court's judgment in *Bouyid v. Belgium* ([GC], no. 23380/09, 28 September 2015). In respect of recourse to physical force during an arrest, the Court reiterates that Article 3 does not prohibit the use of force for effecting a lawful arrest (see *Annenkov and Others v. Russia*, no. 31475/10, § 79, 25 July 2017). However, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). The burden rests on the Government to demonstrate that this was the case (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Boris Kostadinov v. Bulgaria*, no. 61701/11, § 53, 21 January 2016).

(ii) Application of the above principles to the present case

67. The Court notes that in the present case it is undisputed between the parties that on 7 February 2015 the police officers carried out an intervention in the second applicant's flat. In the early hours of 7 February 2015 the police transported the applicants to the emergency ward of the Ministry of the Interior Hospital, where numerous serious injuries were noted (see paragraphs 19-21 above). Subsequently, on 9 February 2015 another medical examination of the applicants was carried out, and again the doctor who examined them recorded a number of serious injuries, including fractures (see paragraphs 22-24 above). In his discontinuance decision the prosecutor accepted that the applicants had sustained the injuries as described in the forensic opinions (see paragraphs 30, 31 above).

68. The Court further observes that it is faced with different versions as to the circumstances in which the applicants sustained the above-mentioned injuries. The applicants alleged that the injuries had been sustained on 7 February 2015 during the police intervention in the second applicant's flat and subsequently, when they had been taken to the police station in Nowa Huta. They stressed that they had been beaten by the police officers on that day. The Government did not argue that the applicants had any injuries before the police intervention. Nor did they deny that physical force and coercive measures had been used against the applicants. However, they stated that the use of measures of direct coercion, even when applied in a proportionate manner, could cause bruises or injuries. They stressed that the injuries in the present case had been inflicted as a result of lawful and proportionate use of force by police officers.

69. The Court has already held on many occasions 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 *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

70. The Court must therefore determine whether the injuries sustained by the applicants were the result of force strictly necessary to subdue them (see *Georgi Dimitrov v. Bulgaria*, no. 31365/02, §§ 56-57, 15 January 2009, with further references). The burden rests on the Government to demonstrate this (see, among many other authorities, *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001 and *Lenev v. Bulgaria*, no. 41452/07, § 113, 4 December 2012). In the present case they submitted that the applicants had behaved in an aggressive and violent manner. Moreover, they noted that criminal proceedings on charges of assaulting the police officers had been instituted against them (see paragraphs 62, 63 above). On this point the Court observes that the applicants' injuries were numerous, serious and extensive. While some of them – for instance those to their wrists – may well have been the inevitable result of the arresting officers' efforts to overpower them, others – for instance, the first applicant's broken tibia and his knee injury, or the second applicant's serious head injuries, do not appear to have been inflicted as a result of strictly necessary and proportionate use of force by the police.

71. The Court does not call into question the findings of the domestic courts that the applicants resisted arrest. However, the domestic investigation failed to clarify how force had been used against the applicants (see paragraph 88 below) and failed to answer the question whether the use of force was strictly necessary in the circumstances. In that connection, the Court notes that the prosecutor agreed that some of the injuries could have occurred as submitted by the applicants. The forensic expert confirmed that the broken tibia could have been sustained in the manner described by the applicant. Likewise, other injuries such as bruises and haematomas had been caused by a hard blunt object. Nevertheless, the prosecutor did not explain the origin of those injuries and what specific techniques were applied by the arresting officers, but instead found that they could not be attributed to the actions of the police officers (see paragraphs 30, 31, 33 above).

72. The Government argued that the events in the present case did not concern a planned operation but a random intervention which had given rise to unexpected developments. However, the Court considers that that argument does not carry significant weight in the circumstances of the case. While the applicants had struggled with the police officers as noted by the domestic courts (see paragraphs 42 and 43 above), there is no evidence that they were particularly dangerous. In that connection the Court notes that no weapon was found in the second applicant's flat (see paragraph 10 above).

Moreover, the applicants strongly disagreed with the version presented by the Government that on entering the flat the first applicant had punched one of the officers in the face (see paragraphs 9 and 17 above). The Government did not advance any additional argument that would allow the Court to establish that the applicants' conduct was of such character as to justify recourse to the considerable physical force that, judging by the relative seriousness of their injuries, must have been employed by the police (see *Dzwonkowski v. Poland*, no. 46702/99, § 55, 12 April 2007).

73. The applicants also complained that they had been beaten by the police officers after being handcuffed and taken to the police station. In this connection the Court notes that it remains unclear whether force had been used against the applicants at the police station as the investigation did not elucidate this issue. Neither the prosecutor nor the Government demonstrated that the applicants had engaged in any conduct that might have justified the use of force against them after they had been subdued and transported to the police station.

74. In the Court's view, the absence of such explanation, either at the domestic investigation stage or before the Court, gives rise to a strong adverse inference that the force used by the police force officers to overcome resistance by the applicants was excessive and disproportionate. The use of such force had as a consequence injuries, which undoubtedly caused serious suffering to the applicants of a nature amounting to inhuman treatment (see *Rehbock*, cited above, § 77).

75. In view of the above considerations the Court finds that the measures taken against the applicants in the present case amounted to a conduct in breach of Article 3 of the Convention. Accordingly, there has been a violation of Article 3 of the Convention in its substantive aspect.

2. *Procedural aspect of Article 3*

(a) **The parties' submissions**

(i) *The applicants*

76. The applicants submitted that the authorities had failed to conduct an objective, thorough and independent investigation into the incident in question. In particular, the investigation had been tendentious and one-sided.

(ii) *The Government*

77. The Government submitted that the authorities had complied with the procedural obligation stemming from Article 3 of the Convention. The prosecuting authorities had registered the applicants' criminal complaint on 14 April 2015 and the investigation had been completed within ten months. During the proceedings the prosecutor had examined all the witnesses, including the applicants, eighteen police officers and the

medical staff from the ambulance. The proceedings before the District Court had lasted a further five months and all the applicants' arguments had been thoroughly examined.

78. In sum, the Government maintained that the investigation and the criminal proceedings had been effective and thorough.

(b) Third-party interveners

(i) Helsinki Foundation for Human Rights

79. The HFHR submitted, referring to the results of a survey conducted amongst forty seven lawyers specialising in criminal cases, that in all cases concerning police violence the lawyers had encountered evidentiary difficulties. The complaints about ill-treatment by the police officers had usually been ignored, and there had been neither an appropriate reaction from the police authorities to those claims nor an adequate approach from the judges dealing with those cases.

(ii) Polish Bar Council

80. The intervener first relied on information provided by the State Prosecutor's Office concerning criminal investigations into the allegations of abuse of power by police officers in the years 2014 and 2016. According to those data, 50% of criminal complaints relating to the alleged acts of abuse of power by the police officers had not led to the institution of criminal proceedings. Only about 2% of instituted proceedings had resulted in an indictment against the police officers and had reached a court. The remaining 98% of cases where criminal proceedings had been instituted had been discounted already at the investigation stage.

81. The intervener further noted that the problems in investigating those complaints arose, firstly, from the fact that the investigations were usually conducted by district prosecutors who operated in the same area as the police officers against whom the allegations had been brought. This posed a fundamental threat to the impartiality of such investigations, in particular as regards the gathering and assessment of evidence.

82. Secondly, it was noted that there was a problem as regards the effective notification of procedural rights during police interventions. Thirdly, the intervener submitted that there had been difficulties as regards gathering evidence and biased assessments of evidence. Victims' testimony had generally been disregarded, and the prosecutors and judges tended to believe the version presented by the police officers on the grounds that they were public officials. Fourthly, there was insufficient cooperation and exchange of information between the prosecution authorities and the Police Internal Affairs Bureau (*Biuro Spraw Wewnętrznych Policji*), an internal police structure charged with investigating criminal offences allegedly committed by the police officers. Lastly, the investigations were often

excessively protracted, and were on some occasions discontinued owing to the lapse of time.

(c) The Court's assessment

(i) General principles

83. The Court reiterates its general principles concerning the States' duty to conduct an effective investigation of arguable claims concerning ill-treatment set out in, among other judgments, *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC] no. 39630/09, §§ 182-185, ECHR 2012), and *Mocanu and Others v. Romania* ([GC] nos. 10865/09 and 2 others, §§ 316-326, ECHR 2014 (extracts)). In particular, in order to be effective, the investigation must be prompt, thorough – which 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 – and be capable of leading to the identification and – if appropriate – punishment of those responsible.

(ii) Application of the above principles to the present case

84. In the present case the applicants' allegations that the police had subjected them to ill-treatment in the course of their arrest were arguable under the Convention. They were made shortly after the events, and were supported by medical evidence. The authorities were therefore required to carry out an effective investigation into the applicants' alleged ill-treatment (see *Gök and Güler v. Turkey*, no. 74307/01, § 38, 28 July 2009).

85. The Court notes that following the applicants' complaint of 2 April 2015 that they had been ill-treated on 7 February 2015, the prosecutor promptly opened an investigation (see paragraphs 25-26 above). It is not, however, persuaded that this investigation was sufficiently thorough and effective to meet the above-mentioned requirements of Article 3.

86. The Court first of all observes that the investigation was conducted by the Cracow-Nowa Huta District Prosecutor, that is to say the prosecution services from the district in which the implicated officers served (see paragraphs 10 and 26 above). The applicants' request to have the case assigned to a prosecutor in a different district was dismissed (see paragraph 28 above).

87. It further notes that during the investigation the prosecutor concluded that there had been two contradictory versions of the incident, neither of which had been confirmed by the adduced evidence (see paragraph 32 above). It was stated that the applicants had not been passive and could have sustained superficial injuries as a result of the struggle (see paragraph 33 above). Those findings were subsequently upheld

by the District Court. At the same time, the prosecutor confirmed, relying on the medical evidence, that the applicants' numerous injuries had been caused by a hard blunt object and that the second applicant's broken tibia could have occurred in the manner which he had described (see paragraphs 30 and 31 above).

88. The Court acknowledges the difficulty the prosecuting authorities face in a case, in which allegations of use excessive force are made, in a context in which the persons concerned resisted the police. However, in view of the foregoing considerations, the Court finds it-unsatisfactory that the authorities did not undertake all the required steps to try to provide answers to a number of major questions arising in the case, including how and when the officers had used force against the applicants, whether its use had been proportionate, and what had caused the injuries noted. Having regard to the multiple injuries sustained by the applicants, those are significant flaws in the investigation in the present case.

89. In particular, the investigation failed to determine important factual circumstances of the case, that is to say when exactly the applicants' injuries occurred, whether still in the second applicant's flat or later when they were handcuffed and transported to the Nowa Huta police station. The authorities focused on the arrest and the dynamic nature of the incident in the flat but overlooked the applicants' allegations of beatings at the police station.

90. In that connection, the Court reiterates 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 investigations (see *Bouyid*, cited above, § 123). In the instant case, however, the authorities accepted the statements of the police officers who had taken part in the intervention, without taking note of the fact that they obviously had an interest in the outcome of the case and in diminishing the extent of their responsibility (see *Lewandowski and Lewandowska v. Poland*, no. 15562/02, § 73, 13 January 2009). At the same time, the investigation accorded less weight to the very detailed version of events presented by the applicants, stressing the fact that they had an interest in the outcome of the case.

91. In the light of the foregoing considerations, the Court considers that the investigation was not carried out with due diligence.

92. Against this background, in view of the lack of a thorough and effective investigation into the applicants' arguable claim that they had been beaten by police officers, the Court finds that there has been a violation of Article 3 of the Convention in its procedural aspect.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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.”

A. Damage

94. The applicants each claimed 15,000 euros (EUR) in respect of pecuniary damage and EUR 80.000 in respect of non-pecuniary damage.

95. The Government contested the claims.

96. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects these claims. On the other hand, the Court considers that the applicants have undoubtedly suffered non-pecuniary damage as a result of the violations found. Having regards to the circumstances of the case and making its assessment on an equitable basis the Court awards each of the applicants EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

97. The applicants also claimed EUR 3,500 each for the costs and expenses incurred before the domestic courts for those incurred before the Court. In that regard, they provided copies of invoices issued by their lawyer’s legal firm between 6 March 2015 and 5 June 2018, for “legal services” for a total amount of 25,169 Polish zlotys (PLN), concerning the translation of their observations before the Court for an amount of PLN 1,175 (approximately EUR 293) and postage fees for PLN 34.60 (approximately EUR 8).

98. The Government argued that the applicants had failed to substantiate the costs claimed and had provided no proof that the sums paid to their lawyer had actually concerned remuneration for representing them before the Court or in the domestic proceedings which were the subject-matter of the present application.

99. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that they were actually and necessarily incurred and were reasonable as to quantum. However, save in relation to the translation and postage expenses, the applicants failed to comply with the requirements set out in Rule 60 § 2 of the Rules of Court, in that they did not produce any relevant supporting documents to prove that the legal representation fees had actually been incurred in connection with the present application.

100. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs of legal representation and considers it reasonable to award each of the applicants the sum of EUR 150 for translation and postage expenses incurred in the proceedings before the Court.

A. Default interest

101. 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,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in its substantive aspect;
3. *Holds* that there has been a violation of Article 3 of the Convention in its procedural aspect;
4. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 25,000 (twenty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 150 (hundred and fifty euros), plus any tax that may be chargeable to the applicants, 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

KUCHTA AND MEȚEL v. POLAND JUDGMENT

Done in English, and notified in writing on 2 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Renata Degener
Registrar

Ksenija Turković
President