CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF BERLIŃSKI v. POLAND

(Applications nos. 27715/95 and 30209/96)

JUDGMENT

STRASBOURG

20 June 2002

FINAL

20/09/2002

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 Berliński v. Poland,

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

Mr G. RESS, *President*,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mr J. HEDIGAN,
Mrs S. BOTOUCHAROVA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 18 January 2001 and on 30 May 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 27715/95 and 30209/96) against the Republic of Poland lodged with the European Commission of Humans Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Polish nationals, Roman and Sławomir Berliński ("the applicants"), on 10 April 1995 and 22 February 1994 respectively.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs. The applicants, who had been granted legal aid, were represented by Mr B. Narain, a lawyer practising in London.

3. The applicants alleged, in particular, that they had been ill-treated by the police on 4 October 1993, and that their defence rights had been violated in that they had no defence counsel for a period of over a year during the preliminary investigation of a criminal case against them.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. The Chamber decided to join the proceedings in the applications (Rule 43 § 1).

6. By a decision of 18 January 2001 the Court declared the applications partly admissible.

7. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within former Fourth Section.

THE FACTS

9. The first applicant, Roman Berliński, is a Polish national born in 1971. The second applicant, Sławomir Berliński, is a Polish national born in 1974. The applicants are brothers. At present they live in Poland.

I. THE CIRCUMSTANCES OF THE CASE

A. Events of 4 October 1993

10. On 4 October 1993 the applicants, who practice body-building, were attending an athletics club at a Lublin university. The club manager urged the applicants to exit, as they had been present at the club without the appropriate permission. He warned that he would call the police if they did not leave. The applicants did not agree to leave. The manager called the police, and six uniformed officers arrived soon thereafter.

11. According to the applicants' account, the officers allegedly "showed a hostile attitude" towards them and "were not interested in checking their [identity documents] but simply to force them out" of the athletics club. The policemen "immediately wanted to handcuff them and pulled their arms backwards". The applicants state that they "resisted this treatment". The first applicant "managed to get free for a moment", while the second applicant was "pushed and pulled" by two police officers. He was treated with tear-gas and struck with a stick.

12. According to the Government, the applicants resisted and attacked the policemen who were trying to apprehend them. One of the officers was kicked in the face and another in the crotch.

13. The parties submit that only when one officer drew a gun from his holster did the applicants yield. They were then handcuffed.

14. The applicants were immediately put in a police vehicle.

15. The Government state that the applicants still resisted whilst being taken to the vehicle, and force again had to be used against them.

16. The applicants were taken to a police station situated 4 kilometres from the athletics club.

17. According to the applicants' account, in the police van they were put on the ground and stayed handcuffed. The van had no separate cell for the arrested. The policemen and the applicants were closed together in the rear part of the van. The applicants "had no chance but to expose their bodies to the treatment of the policemen". They "suffered heavy blows in their heads, kidneys, backs and spines". The policemen used their police sticks to beat them up. The first applicant lost consciousness.

18. The Government deny that any ill-treatment occurred in the van.

19. At the police station the applicants were briefly questioned. The part of the first applicant's custody interview record concerning his physical condition reads: "before [the arrest the applicant was] well, at present [he complains of] pain in the left eye, the neck, the left kidney, the jaw and the head". The relevant part of the second applicant's custody interview record reads: "pain in the temples, the hands, the nose, the teeth, the right thumb". In the late evening of the same day the applicants were examined by doctors. The x-ray photograph of the first applicant's cranium showed no apparent injuries to his head. On the basis of the applicants' physical examination, which disclosed no problems in their circulatory and respiratory systems, a doctor concluded that they could be regarded as fit for detention.

20. The applicants remained in custody until the afternoon of the next day, 5 October 1993, when they were brought before a district prosecutor. They were released after having been questioned by the prosecutor.

21. The first applicant was taken to a hospital where he remained for 11 days. The second applicant was taken to the same hospital, was immediately released, and later underwent out-patient treatment.

B. Proceedings against the police officers

22. On 5 October 1993, when being questioned by the prosecutors, the applicants complained that they had been beaten up by the police officers in the athletics club and in the police van. The applicants said that they had doubts as to the officers' identity, and that they had asked the policemen to present documents attesting to their authority. They alleged that the officers had refused to do so and that the policemen had instead attempted to arrest them. The applicants further stated that, in the police van, which lacked a separate cell for the arrested, the officers had started to inflict heavy blows all over their bodies. They had been defenceless and had not been able to lessen the impact of the blows because of their hands being handcuffed behind their backs and themselves being pushed onto the vehicle's floor. They submitted that the officers had beaten them all the way to the police station.

23. On 15 March 1994 a district prosecutor, on suspicion that offences against the applicants' personal rights had been committed in breach of the Polish Criminal Code and the Police Act, instituted investigations relating to

the applicants' complaints against the police officers. The police officers who allegedly ill-treated the applicants were regarded as witnesses, not as accused, in the proceedings.

24. The applicants were called to appear before the district prosecutor on 25 March 1994, but failed to present themselves on that date.

25. On 28 March 1994 the prosecutor examined a witness DK (policeman). On 30 March witnesses MK and MS (police officers) were examined. On 6 April witnesses MW (the applicants' acquaintance) and EP (the club manager) were questioned. On 13 April the prosecutor summoned witnesses JS and MB, and on 20 April he summoned a witness PW (all police officers).

26. The applicants were examined on 5 and 9 May 1994. During the inquiries the applicants maintained that the officers had been very hostile towards them from the very beginning, that they had not asked them to leave the athletics club, and that they had, without any reason, beaten them up. The policemen contended that they had been attacked by the applicants, and that only threatening them with a firearm had permitted their apprehension.

27. On 23 May 1994 the prosecutor heard witnesses MW, JR and JN (police officers). On 24 May 1994 he summoned witnesses AG and JP (doctors). On 26 May the prosecutor examined a witness DJ, and on 27 May he questioned a witness MH (both doctors).

28. The investigation into the conduct of the policemen was prolonged by decision of a regional prosecutor of 10 June 1994, with a view to examining further witnesses.

29. On 14 June 1994 the district prosecutor examined witnesses AW and RM (doctors).

30. On 16 June 1994 the Forensic Department of the Białystok Academy of Medicine produced an opinion as to the applicants' physical condition following the incident. The opinion was delivered at the request of the Lublin District Court in the proceedings against the applicants (also see § 44 below).

31. The forensic experts, based on the medical records collected throughout the applicants' treatment from 5 October 1993, found that immediately after the incident the first applicant had a haematoma around the left eye, a bruise of 2 x 2 cm on the back of his head, a bruise with grazed skin of 7 x 7 cm on the left side of his jaw, four band-like bruises of significant size on his chest, and that his abdomen and spine were sensitive. The second applicant had small isolated bruises on his chin and neck, bruises on a grazed upper lip, an inner wound in the mucous membrane of the upper lip, lesions of the front teeth, and an injury to the right knee and wrist.

32. The forensic experts also stated that several days after the incident the first applicant had been increasingly complaining of pain in his head,

vertigo, diminished clarity of sight and hearing, and that the second applicant had been complaining about a weak right hand, diminished sensitivity of his fingers, severe headaches, vertigo, nausea, pain in the spine and a reduced ability to move. The experts noted that the subsequent examinations of the applicants had not confirmed any deviations from the normal state of their heath. The experts stated that on 8 October 1993 the first applicant should have been released from hospital but remained following an intervention by the applicants' father. The experts also stressed that the father, himself a doctor, during his visits at the hospital had been instructing the first applicant of what and how he should complain. The first applicant had been released from hospital on 15 October 1993, although after this date he underwent further out-patient treatment of his jaw, chest and spine.

33. The forensic experts concluded that the injuries sustained by the applicants might have occurred from the use of a rigid, blunt instrument, e.g. a truncheon, and that the lesions might have occurred in the circumstances alleged by them, e.g. from blows by truncheons and fists. The experts held that the damage caused by these injuries to the applicants' soft tissues did not last more than seven days, but that those injuries were serious enough to warrant application of Article 156 § 2 of the Polish Criminal Code [causing light bodily harm] against the police officers. The experts also emphasised that the applicants' grievances had contained a certain measure of simulation and exaggeration.

34. On 29 June 1994 the district prosecutor requested experts at the Wrocław Academy of Medicine to produce a medical opinion specifically in the context of the proceedings concerning the applicants' allegations against the police officers.

35. By decisions of 9 September and 15 November 1994 the regional prosecutor again prolonged the investigation.

36. The opinion of the experts at the Wrocław Academy of Medicine was produced on 6 December 1994. They found that following the arrest the first applicant had had bruises on his face and a swollen left eye, and that the second applicant had isolated bruises on the face, a grazed lip and lesions of three teeth. The experts also found that the first applicant had not been suffering from concussion. The experts stated that the injuries of the applicants could occur in the circumstances alleged by the police officers, the applicants or in other circumstances.

37. The applicants requested the district prosecutor to hear additional witnesses, namely their parents, two district prosecutors and an American basketball player who had witnessed the events of 4 October 1993. On 9 September 1994 the prosecutor dismissed the request on the ground that the applicants' parents had not witnessed the incident, that the testimonies of the prosecutors had not been relevant to the determination of the facts, and that the statements of the American basketball player had been recorded in

the proceedings against the applicants. On these grounds the prosecutor considered that no examination of further witnesses was necessary.

38. On 12 December 1994 the prosecutor decided to discontinue the investigation against the policemen. The prosecutor held that there was a lack of evidence in favour of the applicants' allegations that the officers had committed an offence. On the basis of witnesses' evidence, he held that the policemen had been compelled to use force only following the applicants' refusal to leave the sports club. The prosecutor did not establish that any force had been used against the applicants in the police van. By virtue of the medical opinion of the Wrocław Academy of Medicine, the prosecutor stated that the fact of the applicants' hospitalisation for seven days did not necessarily infer that the full period of seven days had been required to complete the treatment of lesions suffered by the applicants. The prosecutor concluded that "the injuries [sustained by the applicants] could occur both in the circumstances alleged by themselves, as well as in the circumstances alleged by the police officers". Given the principle of benefit of doubt in favour of the accused, the prosecutor decided to discontinue the case against the police officers.

39. The applicants appealed against the decision. On 16 January 1995 a regional prosecutor dismissed the appeal and finally discontinued the proceedings. The regional prosecutor found no "unequivocal evidence" of the officers' guilt. He held that the district prosecutor had properly assessed the collected material, and that he had adopted a well-motivated decision.

C. Proceedings against the applicants

40. After questioning the applicants on 5 October 1993, a district prosecutor commenced investigations against them on suspicion that they had attacked the police officers, thereby obstructing them in the course of their duties. On the same day the prosecutor ordered the applicants' bail on suspicion of their having committed an offence under Article 234 of the Criminal Code in regard to the events of 4 October 1993.

41. On 6 October 1993 the applicants appealed against the bail decision, requesting the prosecuting authorities to appoint a free defence lawyer on the ground of their difficult financial situation, referring *inter alia* to Article 6 § 3 (c) of the Convention. The applicants received no reply to the requests.

42. In the course of the investigation the policemen, the applicants and witnesses of the events of 4 October 1993, including witnesses on the applicants' behalf, were summoned. The applicants submitted many applications in which they contended that the allegations against them should have been examined from the angle of their own complaints that the officers had beaten them up. However, by virtue of relevant provisions of domestic criminal procedure, the prosecution decided that the material contained in the case-file relating to the applicants' allegations on their

maltreatment by the police officers be separated and that two parallel investigations be conducted in relation to the incident of 4 October 1993.

43. On 17 February 1994 the applicants were charged with affray, assault and battery on the police officers in the course of the execution of their duties.

44. On 7 April 1994 the Lublin District Court decided to obtain from the Forensic Department of the Białystok Academy of Medicine an opinion as to the applicants' injuries following the incident. The opinion was produced on 16 June 1994 (also see §§ 30-33 above).

45. On 17 October 1994 the Lublin District Court decided to obtain an opinion from forensic psychiatrists to establish whether the applicants had been "able to ascertain and measure their actions" to determine their criminal responsibility. The court also decided to appoint a free lawyer to represent the applicants in view of the concern over their state of mind, in accordance with Article 70 § 1 of the Code of Criminal Procedure.

46. By a letter of 18 October 1994 the applicants informed the court that they refused to undergo a psychiatric examination. They did not appear for the out-patient psychiatric examination at the Lublin Centre for Mental Health on the date fixed by the court on 10 January 1995. The court ordered compulsory appearance of the applicants on the next date fixed for out-patient psychiatric examination on 2 February 1995. The applicants were brought to the experts on the above date, but refused to be subjected to an examination. The above situation repeated itself on 8 March 1995. In view of the fact that the applicants had refused to undergo out-patient psychiatric examination three times, on 8 March 1995 the forensic psychiatrists requested the court to place the applicants at a mental hospital for a forensic-psychiatric opinion to be produced.

47. On 23 March 1995 the Lublin District Court ordered the applicants' compulsory placement at the Lublin Centre for Mental Health for a period of no longer than six weeks. The applicants and their counsel appealed against the above decision. In the appeal the applicants' representative declared that he undertook to ensure their voluntary appearance for out-patient psychiatric examination. On 3 April 1995 the Lublin Regional Court, having regard in particular to the above commitment by the applicants' defence counsel, quashed the decision of 23 March 1995.

48. On the next day fixed for the applicants' out-patient psychiatric examination on 30 May 1995, they again failed to submit to out-patient examination. On 21 June 1995 the experts repeatedly requested the court to order compulsory measures against the applicants in order to produce a forensic-psychiatric opinion.

49. On 11 July 1995 the Lublin District Court again ordered the applicants' compulsory placement at a mental hospital for a period of no more than six weeks. On the applicants' appeal from this decision,

on 24 July 1995 the Lublin Regional Court upheld the decision of the District Court.

50. On 1 December 1995 the first applicant was placed at the Lublin Centre for Mental Health. Upon the experts' application requesting to prolong the first applicant's stay at the ward in view of his negative attitude obstructing the production of a proper diagnosis, on 11 January 1996, the Lublin District Court extended the term of the first applicant's examination until 23 February 1996. On his appeal against the above decision, on 22 January 1996 the Lublin Regional Court upheld the decision of the District Court. The first applicant was released from the psychiatric ward on 15 February 1996.

51. On 22 February 1996 the final opinion as to the mental condition of the first applicant was issued. The forensic psychiatrists concluded that at the moment of the incident with the police on 4 October 1993 he was able to comprehend the meaning of his acts and to control his conduct. The first applicant was not found to be of unsound mind. The experts also noted that he had been very suspicious and distrustful of the examination.

52. As the second applicant expressed his willingness to undergo out-patient psychiatric observation, he was not placed in a mental hospital. The forensic psychiatrists delivered their opinion in regard to the second applicant on 27 February 1996. According to the experts' conclusions, the second applicant was mentally sane. The experts also noted that he had been very stressed throughout the examination, often speaking with a raised voice and not noticing the requests to calm him down.

53. On 7 August 1996 the Lublin District Court found the applicants guilty under Article 234 of the Criminal Code in that they had resisted and assaulted the officers on 4 October 1993. It held that the manager of the athletics club had been entitled to demand the applicants' removal notwithstanding his motives therefor, and that the police had lawfully enforced this demand. The applicants were sentenced: the first applicant to one year and six months' imprisonment and the second applicant to one year's imprisonment. The court suspended the sentences for three years for each of the applicants.

54. On 17 December 1996 the Lublin Regional Court, upon the applicants' appeal, upheld the first-instance judgment. The Regional Court concluded that “the fact that the defendants did not comply with the request of the five police officers to leave the sports hall shows a lack, on their part, of a critical judgment of their own conduct - this was also confirmed by the forensic psychiatrists”. That decision was final. The applicants were not imprisoned as a result of the conviction.

II. RELEVANT DOMESTIC LAW AND PRACTICE

55. Articles 15 and 16 of the Police Act entitle the police to arrest a person who obstructs the public order and to use direct coercive force "to accomplish subordination to given orders".

A special governmental ordinance of 17 September 1990 (DZ.U.90.70.410) provides that coercive means should cause as little ailment as possible, and should be abandoned if a person conforms to orders.

Under Article 69 of the Code of Criminal Procedure, an accused may apply to a prosecutor to be appointed a free defence counsel in case of insufficiency of means. The prosecutor must refer the request to the court for a lawyer to be appointed.

Under Article 70 § 1, in the course of the trial the court may of its own motion appoint a lawyer to represent the defendant in view of the justified concern over his state of mind.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

56. The applicants alleged a violation of Article 3 of the Convention which provides as follows:

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

A. Alleged ill-treatment by the police on 4 October 1993

57. The Government denied any ill-treatment of the applicants on 4 October 1993. They stated that the use of force had been necessary to effect the applicants' submission to the lawful requirements of the police officers. No excessive force had been used against them, and no beating had occurred in the police van.

58. The applicants contested the Government's conclusions. They stated that the police officers had beaten them up while attempting to apprehend them, and while the policemen had been conveying them in the police van lacking a separate cell for the arrested. The applicants alleged that the policemen had employed excessive and unnecessary physical force against them in breach of the above provision of the Convention.

59. The Court recalls that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. 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 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 violation of Article 3 (see *Labita v. Italy* [GC], no. 26772/95, 6.4.2000, §§ 119-120, ECHR 2000-IV). 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 (*loc. cit.*, § 121).

60. In the instant case, the ill-treatment complained of by the applicants consisted of their beating up by the police officers on 4 October 1993 which resulted in a number of injuries (see §§ 19, 30-33, 36 above). The Court considers that the degree of bruising found by the various experts who examined the applicants indicates that the injuries were sufficiently serious to amount to ill-treatment within the scope of Article 3 (see, *mutatis mutandis*, *Assenov and Others v. Bulgaria*, no. 24760/94, 28.10.1998, § 95, ECHR 1998-VIII). It remains to be considered whether the State should be held responsible under Article 3 in respect of these injuries.

61. The Court observes that the parties have not disputed that the impugned injuries were caused by the police officers, by way of their using fists and truncheons against the applicants and applying tear-gas on the second applicant (see §§ 11-15 above). It is also uncontested that the police officers used force on 4 October 1993 at the athletics club and while carrying the applicants to the police van in order to effect the arrest against which the applicants resisted. The parties disagree however on whether the applicants were beaten up whilst being taken to the police station in the

police vehicle (see §§ 16-18 above). It must be noted that the applicants' allegation that they had been beaten up while lying handcuffed in the van had not been confirmed following the domestic investigation of their complaints at two levels (see §§ 38-39 above; also see §§ 66-71 below). While the Court is not bound by the findings of the domestic authorities as to facts alleged to be in breach of the Convention, the Court, on the basis of the parties observations and the material in possession, finds it impossible to establish whether any ill-treatment occurred in the police van as alleged by the applicants.

62. The Court observes that on 4 October 1993 the applicants were arrested in the course of an operation giving rise to unexpected developments to which the police were called upon to react. Secondly, while the six police officers outnumbered the two applicants, account must be taken of the fact that the applicants were practising bodybuilders, and that they effectively resisted the legitimate actions of the police officers - by refusing to comply with the verbal demands to leave the athletics club, resisting the attempts of the policemen to apprehend them, and kicking two officers (see, *by contrast, Rehbock v. Slovenia*, no. 29462/95, 28.11.2000, ECHR 200-XII, where thirteen police officers had had sufficient time to evaluate the possible risks in connection with the arrest of three suspects, and where an applicant had shown no sign of resisting the arrest). Worse still, the applicants submitted to the arrest only when threatened with a gun, and were subsequently convicted of an assault on the policemen. The Court agrees with the domestic courts' conclusion that the applicants lacked a critical judgment of their own conduct when faced with a simple obligation to submit to the legitimate requirements of the law enforcement officers - an obligation which is part of the general civil duty in a democratic society. These circumstances count heavily against the applicants, with the result that the Government's burden to prove that the use of force was not excessive in this case is less stringent (see, *mutatis mutandis*, *loc. cit.*, §§ 65-78).

63. The Court notes in addition that, although the first applicant remained in hospital for 11 days, it has not been established that such a period of time was necessary for him to recover from the injuries sustained on 4 October 1993, in that he could have been released from the hospital four days following the incident (see § 32 above). It is further noted that the second applicant sustained less serious injuries and underwent out-patient treatment.

64. The seriousness of the impugned injuries, as such, does not overshadow the fact that the recourse to physical force in this case was made necessary by the applicants' own conduct. Therefore, while the applicants admittedly suffered as a result of the incident of 4 October 1993, the use of force against them cannot be held to have been excessive.

65. Accordingly, there has been no violation of Article 3 of the Convention in regard to the alleged ill-treatment by the police on 4 October 1993.

B. The nature of the investigation carried out

66. The Government submitted that a thorough and effective investigation of the applicants' allegations of ill-treatment had been conducted by the prosecutors. 15 witnesses of the events of 4 October 1993 had been questioned, and opinions of the experts had been obtained in order to establish the credibility of the applicants' complaints. The prosecution had decided to discontinue the investigation as the majority of the testimonies had confirmed the version of the events given by the police; the decision had been taken also with due respect to the principle of the presumption of innocence of the policemen.

67. The applicants argued that they had been denied an adequate investigation of their complaints. In particular, they disputed the interpretation of certain evidence by the prosecution. The applicants also stated that not all witnesses of the events of 4 October 1993 had been questioned, and only part of the medical reports had been taken into account by the prosecution in discontinuing the case.

68. The Court recalls that Article 3 ensures the right to a thorough and effective domestic investigation of credible assertions of ill-treatment, leading to the identification and punishment of those responsible for such conduct. In the *Labita* case cited above, the Court found a violation of Article 3 on the ground that the authorities had not investigated the alleged numerous acts of violence, humiliation, and other forms of torture of an applicant. It must be noted however that in that case the Court's conclusion was reached on account of the manifest inactivity of the authorities regarding the investigation of that applicant's complaints (*loc. cit.*, §§ 117-136).

69. By contrast, in the present case, a number of persons, including independent witnesses, were questioned, and two separate expert opinions were produced in the context of the investigation into the applicants' allegations of ill-treatment on 4 October 1993 (see §§ 22-39 above). The Court notes that the applicants' request to examine certain additional witnesses was rejected by a reasoned decision (see § 37 above). Subsequently, the prosecution decided not to charge the policemen and to discontinue the investigation because of the lack of the unequivocal evidence of the officers' guilt. The investigation of the district prosecutor was completed on 4 December 1994 - i.e. fourteen months after the impugned events - but that period could be considered as acceptable, given the number of procedural acts carried out by the authorities (see §§ 22-39 above; also see, by contrast, the above mentioned *Labita* case, *loc. cit.*,

§ 133; where only photographs of the alleged perpetrators had been taken during the same period).

70. Furthermore, the applicants had the subsequent opportunity to review the decision of the district prosecutor before a higher prosecutor. However, the fact that at each stage they were unsuccessful cannot be considered as pertinent. There is no evidence that the prosecution should have taken any other steps in order to establish the facts alleged by the applicants. Nor is there any indication that the prosecutors used the statutory discretion, allowing them to evaluate the material before them in order to decide as to whether or not to charge the alleged perpetrators with a criminal offence, in an arbitrary manner.

71. Against this background, the Court concludes that the investigation of the applicants' allegations of ill-treatment was thorough and effective. There has thus been no breach of Article 3 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 and 3 (c) OF THE CONVENTION

72. The applicants also alleged a violation of Article 6 of the Convention which provides, insofar as relevant, as follows:

> "1. In the determination of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] tribunal ... .
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ... ."

73. In this respect the applicants complained that on 6 October 1993, when appealing against the bail order of 5 October 1993, they both had requested that an official defence counsel be provided for them. However, the prosecutor had not replied to the request nor had referred it to the court, thereby breaching the requirements of Article 69 of the Code of Criminal Procedure. The applicants stated that they had had no lawyer until 17 October 1994, when the Lublin District Court had appointed a defence counsel under Article 70 § 1 of the Code out of concern for their state of mind. As a result they had not been able properly to defend themselves, in breach of Article 6 §§ 1 and 3 (c) of the Convention.

74. The Government admitted that no reply had been given to the request of 6 October 1993, and that "the prerequisites of Article 6 § 3 (c) of the Convention [had not been] satisfied" in the present case.

75. The Court recalls that, even if the primary purpose of Article 6, as far as criminal matters are concerned, is to ensure a fair trial by a "tribunal"

competent to determine "any criminal charge", it does not follow that this provision of the Convention has no application to pre-trial proceedings. Thus, Article 6 - especially paragraph 3 - may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions. The manner in which Article 6 §§ 1 and 3 (c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case (see *Brennan v. the United Kingdom*, no. 39846/98, 16.10.2001, § 45, ECHR 2001-X).

76. In its judgment in the case of *John Murray v. the United Kingdom* (no. 18731/91, 8.2.1996, § 63, ECHR 1996-I), the Court also observed that, although Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer at the initial stages of police interrogation, this right, which is not explicitly set out in the Convention, may be subject to restriction for good cause. The question, in each case, is whether the restriction, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing (also see the *Brennan* case cited above, *ibid.*).

77. The Court observes that it is undisputed that the applicants lacked means to employ a private representative in the context of criminal proceedings against them. It is also uncontested that the applicants' request for an official lawyer to be appointed was ignored by the authorities, with the result that they had no defence counsel for more than a year. Given that a number of procedural acts, including questioning of the applicants and their medical examinations, were carried out during that period (see §§ 40-45 above), the Court finds no justification for this restriction which deprived the applicants of the right to adequately defend themselves during the investigation and trial.

78. Accordingly, there has been a breach of Article 6 §§ 1 and 3 (c) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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. Pecuniary damage

80. The applicants claimed 202,000 Polish zlotys (PLN) for loss of earnings and opportunities caused by the violation of the Convention.

81. The Government considered the claim to be unjustified.

82. The Court is of the view that there is no causal link between the violation found and the alleged pecuniary damage (see, *inter alia, R. D. v. Poland,* nos. 29692/96 and 34612/97, 18.1.2001, § 66). Consequently, it finds no reason to award the applicants any sum under this head.

B. Non-pecuniary damage

83. The applicants also claimed PLN 300,000 for non-pecuniary damage.

84. The Government considered the applicants' claim exorbitant.

85. The Court accepts that the applicants have suffered non-pecuniary damage, such as distress and frustration resulting from the impossibility of adequately defending themselves (see, *mutatis mutandis,* the *R. D. v. Poland* judgment cited above, *loc. cit.,* § 57). Making its assessment on an equitable basis, the Court awards each of the applicants EUR 2,000 (two thousand euros) under this head.

C. Costs and expenses

86. The applicants also claimed PLN 3,000 for legal costs and expenses.

87. The Government did not comment on this claim.

88. The Court notes that the applicants have been granted legal aid to present their case before the Court (see § 2 above). There is no evidence that they incurred any additional legal costs and expenses in connection with their complaints regarding the violation established by the Court, other than the costs already paid under the Court's legal aid scheme. In these circumstances, the Court does not make any award under this head.

D. Default interest

89. The Court will award default interest at a simple annual rate of 7.25 %.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 3 of the Convention;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

3. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) to each of the applicants in respect of non-pecuniary damage, these sums to be converted into the national currency of the respondent State on the day of payment;

(b) that simple interest at an annual rate of 7.25 % shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER	Georg RESS
Registrar	President