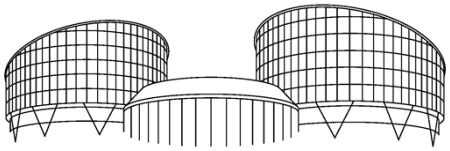

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SKORUPA v. POLAND

(Application no. 44153/15)

JUDGMENT

Art 3 (substantive and procedural) • Degrading treatment inflicted on vulnerable applicant at a police station, in the course of his processing for sobering-up, by keeping him on the floor with his arms handcuffed behind his back for an hour • Treatment excessive and not made strictly necessary by applicant's own conduct • Ineffective investigation

STRASBOURG

16 June 2022

FINAL

16/09/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Skorupa v. Poland,

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

Marko Bošnjak, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 44153/15) 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 Ryszard Skorupa ("the applicant"), on 31 August 2015;

the decision to give notice of the application to the Polish Government ("the Government");

the parties' observations;

Having deliberated in private on 17 May 2022,

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

INTRODUCTION

1. The case concerns the alleged ill-treatment inflicted on the applicant in the course of his processing for sobering-up (Article 3), as well as the unlawfulness of his detention at the sobering-up centre (Article 5).

THE FACTS

2. The applicant was born in 1951 and lives in Czerwionka-Leszczyny. He was represented by Ms D. Salabun, a lawyer practising in Rybnik.

3. The Government were represented by their Agents, Ms J. Chrzanowska and, subsequently, 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 AND CASE OVERVIEW

5. At the time of the events that are the subject of the present application, the applicant was 63 years old.

6. According to various medical records in the case file, sometime in the past the applicant broke one of his vertebrae; in 1998 he underwent surgery twice for a herniated disc; in 2006 he suffered a heart attack; in 2006 he was

diagnosed with cervical degenerative disc disease and coronary artery disease and, in 2012, with degenerative joint disease of the shoulder. In addition, in 2012 and 2013 the applicant underwent surgery twice for glaucoma.

7. On 12 March 2014 at 9.00 p.m. the applicant, who had been drinking, was stopped by two police officers when he was on his way home from a nearby bar. He was then taken to Czerwionka police station, which was situated 500 metres further down the road, in the same street as his home. From there the applicant was taken to Zabrze sobering-up centre which was situated 35 kilometres away from his home. The applicant was released from there the following day at about 11.30 a.m.

II. THE APPLICANT'S ARREST

A. Submissions by the applicant

8. On the day of the incident, the applicant had had a beer in the early afternoon at home. He had then had two 0.5 litre beers and one bottle of beer, which he had not finished, in a bar, where he had stayed from 4.30 to 7.30 p.m.

9. On his way home, the applicant had had the impression that he had been walking in a straight line. In Kombatantów Street, a small street in a residential area (see paragraph 20 below), when he was around 300 metres away from his house, he had seen a female police officer, who had called to him "Sir, are you feeling unwell?" A police van had been parked nearby in the street and a male police officer had been standing next to it. The applicant had replied that he was fine. The female police officer had informed the applicant politely that he had been walking on the wrong side of the road and staggering. She had also inquired about the scratch on his forehead and asked the applicant to show her his identity card. The applicant had told the female police officer that his ID was at his house, which was nearby. He had refused to give his surname.

10. At this point the male police officer had approached and immediately, without any warning, twisted the applicant's arms behind his back and pushed him in such a way that the applicant had hit his head on the police van. The male police officer had handcuffed the applicant's arms behind his back and pushed him to the floor of the van. The officers had then driven the applicant to the police station.

B. Submissions by the arresting officers made in the course of the criminal investigation

1. Female officer, K.S.

11. While patrolling down 3 Maja Street in their police van, K.S. had noticed that several cars ahead were slowing down. She had then seen the

applicant getting up from the road. It had been her understanding that the cars had been slowing down so as not to hit the applicant. K.S. believed that the applicant had fallen over from the side of the road with the lawn and hedge (see paragraph 20 below). When the police van had pulled over, the applicant had started to walk away through the hedge, in the direction of the blocks of flats (ibid.). The applicant had been visibly staggering. When called, the applicant had sped away from the police. K.S. had got out of the van and walked towards the applicant. She had noticed an abrasion on the applicant's forehead and asked if he was feeling well. The applicant had refused to answer any questions and asked to be left alone. K.S. had smelled alcohol on the applicant. She had asked where he lived. Her patrol partner, Officer M.T., had approached K.S. and the applicant. The applicant had refused to give his name and had addressed the officers as "children", "little girl" and "little boy".

12. The police officers and the applicant had walked to the police van, which the applicant had leaned on. The applicant had not responded to any questions and had tried to walk away from the officers.

13. The applicant had then become agitated, clenching his fists and mumbling insults and threats at the police officers. Unable to make the applicant stand still or to obtain any coherent information from him, M.T., having given a warning, had handcuffed the applicant's arms behind his back. The reason for the measure had been the applicant's aggressive behaviour and his lack of cooperation with the police.

14. During the arrest, the applicant had not said that he lived nearby or that he could fetch his identity card from home.

15. M.T. had then sat the applicant on the back seat of the police van. The officer had not pushed the applicant against the van or to its floor. K.S. had sat in front of the applicant at the back. Inside the van, the applicant had tried to stand up and eventually he had sat down on the floor leaning against the back seat.

2. Male officer, M.T.

16. The male officer corroborated all of K.S.'s submissions as described above (see paragraphs 11-15 above). In addition, he stated that he had seen the applicant fall down face-first on the lawn next to the street.

17. The applicant had had a passive-aggressive attitude and had not responded to the police officers' orders. He had not attacked or insulted the officers, but had raised his arms as if he were protecting himself from them. That was when M.T. had decided that handcuffing the applicant was necessary. The situation had been fluid and M.T. could not remember if he had warned the applicant that he would handcuff him.

18. The officer remembered that the applicant had said that he lived nearby but he had not given his address. M.T. explained that police were by law required to take an inebriated person to the police station first. Only then

could they decide whether to take such a person to his or her home or to a sobering-up centre.

19. The applicant had resisted so M.T. had been obliged to use some force to take the applicant to the police van and then to put him inside. The officer had achieved the latter by applying pressure to the applicant's shoulders. The applicant had sat on the floor of the van. K.S. had stayed near the applicant to watch over him during the journey.

C. Documents

20. The applicant submitted photos of the place where he claimed to have been arrested (see paragraph 9 above). The images show a wide, two-lane road – 3 Maja Street – with a pavement on one side and a lawn and hedge on the other (see paragraph 11 above). The road runs between some blocks of flats, parallel to the narrower, two-lane, Kombatantów Street (see paragraph 9 above), which is closer to the residential area. The applicant's handwritten notes on the photos read as follows: "Photo no. 6 shows the place (an opening in the hedge) where I was walking on Kombatantów Street. The photo was taken from 3 Maja Street. It shows the lawn and an opening in the hedge. Kombatantów Street is visible in the background. Photo no. 8 [shows] where I was arrested on Kombatantów Street." On the photo in question, the applicant put a cross on the pavement which is situated between the hedge and Kombatantów Street (see paragraphs 9 and 11 above).

21. On 12 March 2014 at 9.35 p.m., the female arresting officer, K.S., drew up a report of the applicant's arrest for the purposes of the sobering-up centre (*protokół doprowadzenia w celu wytrzeźwienia*) (see paragraph 113 below). The report contains the following details and remarks, in so far as relevant: the applicant's personal details, including his address, with the note "The applicant's identity was established on the basis of his oral submissions"; the applicant was inebriated and had been found in circumstances that threatened his own and other people's life and limb, in particular, that he had been found stumbling on the lawn next to 3 Maja Street. In the paragraph about the reasons why the officers had refrained from taking the applicant to his house, the option "lack of information about [the applicant's] place of residence" had not been checked, the officers had checked "because of [his] aggressive behaviour".

III. THE APPLICANT'S DETENTION AT THE POLICE STATION

A. Submissions by the applicant

22. The male arresting officer, M.T., had taken the applicant to the police station, pushing him on the way. Once inside, M.T. had pushed the applicant into the cell so violently that the applicant had fallen to the floor. That position

had been very uncomfortable for the applicant. The applicant had not asked for his handcuffs to be loosened. He had been verbally insulted by an unidentified police officer. Later, an unidentified police officer had loosened (or, according to other submissions by the applicant, taken off) the applicant's handcuffs and had then kicked him several times in the chest, ribs and abdomen. The applicant subsequently told the doctor appointed for the purpose of the investigation (see paragraphs 103 and 111 below) that that treatment had not left any visible marks, and that all the injuries described in the certificate of 13 March 2014 (see paragraphs 99-101 below) had been caused by his treatment at the sobering-up centre.

B. Submissions by the female arresting officer, K.S.

23. K.S. had not seen M.T. walking the applicant to the police station. When she had arrived at the station, the applicant had been sitting on the floor leaning against the wall, inside the cell (see paragraph 47 below).

24. At the station, K.S. had found a medical prescription in the applicant's bag with his name on it. The applicant had refused to confirm that was his name.

25. The applicant's identity and address had ultimately been established by the station's duty officer.

26. K.S. had drawn up the arrest report (see paragraph 21 above). As a junior officer, she had not had much experience and had had to frequently consult M.T. (see paragraphs 50 *in fine* and 54 below). She had also asked the applicant if he was feeling well and whether he was suffering from any ailments. The applicant had told her in response that he was fine and that he was not suffering from any illness (see paragraph 49 below).

27. Having found out the applicant's address, the officers had still decided not to take the applicant home because of his aggressive behaviour.

28. When, at 10.00 p.m., the new shift had arrived (see paragraph 36 below), the station's duty officer had decided that the night-shift officers should take the applicant to a sobering-up centre.

C. Submissions by the male arresting officer, M.T.

29. M.T. corroborated the submissions of K.S.

30. In addition, he said that when taking the applicant to the station, he had had to support him because the applicant had been staggering (see paragraphs 60-61 below).

31. M.T. denied pushing the applicant into the police station or witnessing anyone insulting the applicant or kicking him in his abdomen or ribs.

32. M.T. also said that he had not loosened or changed the applicant's handcuffs because he had already ensured when he had put them on that they had been loose enough (see paragraph 56 below).

33. At the station, the applicant had continued to shout and insult the officers. He had called on them to beat him up so that he could then have them all dismissed from their jobs.

34. An alcohol test had not been carried out on the applicant at the police station.

35. The officer acknowledged that the decision to take the applicant to the sobering-up centre instead of home had been his. He explained that the applicant had been aggressive and taking a person in such a state to his home risked causing a family row.

D. Submissions by the officers of Czerwionka police station

36. The two officers from Czerwionka police station, M.R and M.B., had started their night shift at 10.00 p.m. The applicant had not had any visible injuries and he had not voiced any complaints. The applicant had been visibly inebriated.

37. M.B. had changed the applicant's handcuffs because M.T., whose shift had been ending, had had to retrieve his own. They had not been too tight on the applicant's wrists. The applicant had resisted so the officers had had to hold him (see paragraph 56 below).

38. The police officers had not witnessed the applicant being beaten or insulted at the station.

39. The applicant had been taken to the sobering-up centre in Zabrze (see paragraphs 60 *in fine* and 61 *in fine* below). One police officer had driven the van and the other had sat in the back with the applicant. The applicant had made threats, confusing the two police officers who had been driving him with those who had arrested him earlier.

E. Documents

1. Paper documents

40. The Government submitted an undated form with the title "Instruction notice [*pouczenie*] for a person taken for sobering-up". They explained that the document had been given to the applicant at Czerwionka police station once the decision had been made to transfer him to the sobering-up centre. The form contains instructions on the right to and the procedure for appealing against placement in a sobering-up centre. The form further states that the applicant, having been informed of his rights, had not made any statement ("*nic nie oświadczył*") and had refused to sign the form. The form bears an illegible signature of an unidentified person.

41. On 3 April 2014 the chief of Czerwionka police station drew up a report (*notatka służbowa*) which contains the following information, in so far as relevant. The chief officer had watched the camera footage from the station recorded on 12 March 2013 between 9 and 10.20 p.m. (see paragraphs 43 et

seq. below). The footage showed the applicant's arrival in the police van (at 9.15 p.m.), his being taken to the station by Officer M.T., and then being taken from the station by two officers (M.B. and M.R. – see paragraph 61 below). The footage also showed, at 9.16 p.m., M.T. walking with the applicant in the corridor inside the station and, at 10.15 p.m., M.B. and M.R walking the applicant out of the building through the same corridor (see paragraph 60 below). Another camera recorded the sequence of events described below which involved the applicant, M.T., K.S., M.B. and M.R. The timings are as follows: at 9.16 p.m. M.T. put the applicant in the cell (see paragraphs 45-46 below); at 10.00 p.m. there was more activity in the station because of the change of shifts (see paragraph 53 below); from 10:05:50 to 10:07:18 (p.m.), M.T. and M.B. were inside the applicant's cell (see paragraph 56 below); and from 10:15:15 to 10:15:55 (p.m.), M.B. and M.R. walked into the cell, picked the applicant up and walked out with him (see paragraph 59 below).

42. The chief of the station also described the sequence of events as established on the basis of various reports and conversations with all the officers who had taken part in processing the applicant on 12 March 2014. He recommended that no disciplinary action be taken against the officers because there had been no appearance of abuse of power in respect of the applicant.

2. Video-recording from Czerwionka police station

43. The applicant submitted two CD-ROMs containing video-footage from six cameras inside Czerwionka police station. The footage does not contain any audio (see paragraph 116 below).

44. The file called 21100600 contains footage from a camera positioned near the ceiling of a long, narrow corridor. The footage lasts one hour and ten minutes. A barred cell is partially visible in the background. The image of the background is not completely clear. A wooden door situated on the right of the corridor, more or less halfway between the camera and the cell, is wide open throughout approximately half of the duration of the footage, covering the right side of the cell.

45. At timestamp 05:46 of the recording in question (which corresponds to 9.16 p.m.), a police officer – presumably the male arresting officer, M.T. – walks in through the door on the right, leading an older man of average build – presumably the applicant. M.T. and the applicant are only visible from behind. The applicant's hands are handcuffed behind his back and he is staggering slightly.

46. Between then and when the timestamp of the recording reads 06:27 (9.17 p.m.), both men enter the cell; M.T. immediately reaches for a chair and places it outside the cell; M.T., using what appears to be a small amount of downwards physical pressure on the applicant's shoulders, sits the applicant down on the floor against the wall on the left; the applicant displays some

resistance, in that he tries to sit up and then to stand up; the police officer maintains the applicant in a seated position using his hands; the applicant then stays down on the floor; M.T. leaves the cell; he puts the chair further down the corridor and closes the cell door.

47. When the timestamp reads 06:28, a female officer – presumably the female arresting officer, K.S. – walks in through the door on the right and approaches M.T. at the cell door. They both walk away.

48. At timestamp 06:40, the applicant lays down on the floor of the cell. He remains in that position from that point onwards.

49. K.S. stays in the corridor not far from the cell, looking at her mobile telephone and at some documents. At timestamp 08:37 of the footage, she is visibly alerted by the man in the cell. She goes over to the cell and takes a long look at the applicant through the bars.

50. At timestamp 08:58 (9.19 p.m.), M.T. joins K.S. They both walk up to the cell door and stand there for about ten seconds. Then they walk away. Throughout the recording, they are visible in the foreground, standing, walking about, talking and filling out paperwork.

51. At timestamp 09:40 (9.20 p.m.), M.T. walks to the cell door and stays there for one minute. It appears that he is looking at the applicant lying on the floor through the bars.

52. Throughout the rest of the video-footage, the arresting officers take turns to stay near the cell and occasionally look at the applicant through the barred door. Between timestamps 24:46 and 26:21 (9.35-9.37 p.m.), the applicant is left alone, with nobody in the visible vicinity.

53. The video also shows a number of police officers walking up and down the corridor, walking through the open door on the right and standing around, talking. None of them enters the cell.

54. At timestamp 27:15 (9.38 p.m.), a senior police officer approaches the two arresting officers and looks over what appears to be their report. He appears to be giving them instructions and the arresting officers continue writing the report, standing in the corridor near the cell. At timestamp 28:53, K.S. is seen making a photocopy of the paper. At timestamp 32:00 (9.42 p.m.), she is seen signing the papers and leaving for a moment with them.

55. At timestamp 35:40 (9.46 p.m.), K.S. kneels down in front of the cell and, possibly, talks to the applicant on the floor. She then continues filling out some paperwork and leaving and reappearing in the frame.

56. At timestamp 55:22 (10.06 p.m.), M.T. and another male police officer – presumably M.B. – walk into the cell. M.B. – visible from the side – leans over the applicant on the floor for approximately one minute. He appears to be manipulating something with his hands. M.T. is visible from the front, kneeling behind the applicant. At timestamp 55:52, K.S. walks over to the cell. She does not go inside. Her body covers part of the image of the cell. The officers inside the cell remain in clear view. Neither of them makes

any fast, forceful or repetitive movements with their legs or any other parts of their bodies. At timestamp 56:26 (10.07 p.m.), the two officers get up and leave the cell.

57. The arresting officers leave through the open door on the right.

58. M.B. stays in the vicinity of the cell, looking at the applicant on the floor through the bars. Another officer – presumably M.R. – joins him later.

59. At timestamp 01:04:40 (10.15 p.m.), M.B. and M.R. walk into the cell, pick the applicant up from the floor and walk with him through the open door on the right.

60. The files called 21100400 and 2110050 contain footage from two cameras positioned near the ceiling at opposite ends of another corridor – resumably the place behind the wooden door from the previous footage. At timestamp 05:40 (9.16 p.m.), both recordings show M.T. passing through with the applicant. The applicant is handcuffed behind his back. At timestamp 01:05:20 (10.16 p.m.), both recordings feature M.B. and M.R. walking with the applicant, whose hands are handcuffed behind his back. The applicant appears to be staggering slightly and saying something to one of the police officers.

61. The file called 21100300 contains a recording from the entrance of the police station. At timestamp 05:26 (9.16 p.m.), M.T. enters with the applicant. The applicant's hands are handcuffed behind his back and he is stumbling badly. At timestamp 01:05:41 (10.16 p.m.), M.B. and M.R. take the applicant out of the police station. The applicant's hands are handcuffed behind his back and he is staggering slightly.

62. The file called 212200400 contains a recording of the paved passageway leading to the entrance of the police station. At timestamp 05:15 (9.15 p.m.), M.T. walks out with the applicant, holding him from the side and leading him forward with one arm on the applicant's back. The applicant is staggering slightly. At some point, near the door of the station, the camera captures the applicant's head suddenly jerking forward slightly. The applicant then turns to the police officer and says something. At timestamp 01:05:50 (10.16 p.m.), M.B. and M.R. leave the station with the applicant. The applicant is staggering slightly. His arms are handcuffed behind his back.

63. The file called 21100200 contains a recording of the yard of the police station. At timestamp 05:08 (9.15 p.m.), the applicant gets out, by himself, from the police van. His hands are handcuffed behind his back and he is staggering slightly. M.T. guides the applicant with his arm to walk forward and takes him inside the station. On his top half, the applicant is wearing a shirt with a collar, a jumper and a winter jacket, which is zipped all the way up. For another minute, K.S. stays near the van. She then goes inside. At timestamp 01:05:57 (10.16 p.m.), M.B. and M.R. leave the station with the applicant. One of them is holding the applicant by his jacket at the back, at shoulder level. It is not possible to see how the applicant gets into the van. At timestamp 01:10:15 (10.20 p.m.), the van leaves the carpark.

IV. THE APPLICANT'S PLACEMENT AT THE SOBERING-UP CENTRE

A. Submissions by the applicant

64. The applicant had subsequently been taken to Zabrze sobering-up centre. Throughout the twenty-five-minute journey, he had been on the floor of the van with his hands still handcuffed behind his back, despite his requests to take them off.

65. Upon his admission to the sobering-up centre, he had been insulted and beaten by two staff members. He had received at least thirty blows to his face and chest. The police officer who had escorted the applicant to the sobering-up centre had witnessed the beating. The applicant had told the doctors who had subsequently examined him that the beating had been in revenge for his refusal to take a breathalyser test. When testifying to the police, the applicant had submitted that his refusal to take the breathalyser test had constituted his own revenge for the beating.

66. Ultimately, the applicant had undressed and had been taken away. His multiple requests to call a doctor and to telephone his wife had gone unanswered. The applicant had been told to keep quiet otherwise the person with whom he had been sharing the room would hurt him.

67. The breathalyser test taken by the applicant the next morning at about 11 a.m. had been negative. A doctor had arrived when the applicant had already been dressed and waiting to be released. The applicant had left the sobering-up centre at about 11.30 a.m.

68. The Government submitted that the applicant had refused to be examined by the doctor on duty because, as he had said, the doctor, who was a foreigner, had not had a good command of Polish.

B. Submissions by the officers of Czerwionka police station, M.R. and M.B.

69. One of the officers did not remember if the applicant had been examined by a doctor upon his arrival at the sobering-up centre. The other stated that he had not seen a doctor examine the applicant.

70. There had been no quarrel or commotion. The officers had not seen anyone at the sobering-up centre hitting the applicant.

C. Submissions by the applicant's fellow patient

71. A certain P.P. who had been admitted to the sobering-up centre immediately after the applicant testified that the applicant had told him that he had been beaten by police officers and members of staff of the sobering-up centre.

D. Submissions by the employees of the sobering-up centre

1. Guards

72. The two employees of the sobering-up centre who were present during the applicant's admission testified that whenever a person was admitted, a breathalyser test was proposed and a doctor was present unless the person concerned refused to be examined.

73. The men denied that they had hit or insulted the applicant. One of the employees stated that the applicant had been aggressive, waving his arms and making threats. It had therefore been necessary to use a manual restraint measure for thirty seconds.

2. On-duty doctor

74. Doctor A.D., who was on duty at the sobering-up centre on 12 March 2014, testified that she did not remember the applicant. She also submitted that she was always present whenever a person was being admitted, and that she always asked whether the person concerned wished to be medically examined. Whenever she saw that the person concerned was unwell, she called for an ambulance and the person was then taken to the hospital for further examination. If the person refused to be examined, she would make a record of any visible injuries but would not touch the person and would not use a stethoscope. If the person refused to take a breathalyser test, the doctor would estimate the approximate level of intoxication by observing the person's speech, movements and smell. A written entry in the sobering-up centre's records would be made to this effect. The place where such examination took place was monitored *via* a camera.

75. The doctor also submitted that she had seen the video-recording of her attempt to examine the applicant. The image showed that she had put on her rubber gloves and had approached the applicant with a stethoscope. The applicant had made an abrupt movement and the doctor had become scared of him. The applicant had been held by the guards of the sobering-up centre. He had refused to be examined and to take the breathalyser test.

76. If the doctor remembered correctly, the applicant had not had any visible injuries and had not voiced any complaints.

77. She remembered that the applicant had been making threats. The doctor had not witnessed the applicant being beaten at the sobering-up centre.

78. The doctor had been present during the applicant's admission for several minutes.

79. She had made an entry in the sobering-up centre's records (see paragraph 90 below) to the effect that the applicant had not wanted to say how much alcohol he had consumed and had not wanted to take the breathalyser test. His inebriation had been confirmed by his staggering,

unintelligible talk and smell of alcohol. Moreover, the doctor described the applicant as vulgar, obstructive and uncooperative.

3. Head of the sobering-up centre

80. The head of the sobering-up centre testified (see paragraph 111 below) that the whole centre, except for the so-called intimacy zone, were monitored by video-camera. The intimacy zone was where a patient undressed and had his or her medical examination.

81. The head of the sobering-up centre submitted that on 11 April 2014 the applicant had complained to him about his ill-treatment by the sobering-up centre's employees. Following this complaint, he had watched the video-recording of the applicant's admission to the sobering-up centre (see paragraph 117 *in fine* below). The last time he had viewed the recording was in early May 2014.

82. The head of the sobering-up centre had not saved the video-recording and had not made paper copies of any of the frames in question. The disc of the monitoring system was overwritten every six weeks. Consequently, when the prosecutor had asked to have access to it on 22 May 2014, the video-recording of 12 March 2014 had already been erased (see paragraph 117 below).

83. The recording had showed Doctor A.D. approaching the applicant twice, holding a stethoscope and a breathalyser in her hands. At that point, the applicant had been standing in the intimacy zone, that is to say, in the blind spot of the camera.

84. The recording had also showed one employee on duty suddenly rushing into the room, towards the applicant, and the doctor leaving the room soon afterwards. Another guard had already been present in the room. As the applicant had been standing in the intimacy zone, he and the two guards had not been visible on camera.

85. The head of the sobering-up centre had shown the video-recording to A.D., asking for explanations. A.D. had said that the material moment which had been partly captured by the camera was when the two guards had used a short manual restraint measure on the applicant. The measure had been in response to the applicant's agitation.

86. The head of the sobering-up centre also testified in the investigation that the applicant had told him over the telephone that, on the morning of his release, he had not wished to be examined by the doctor on duty because of the latter's poor command of Polish.

4. Chief accountant of the sobering-up centre

87. The chief accountant, who had watched the video-recording in question, testified that she had seen Doctor A.D. and two employees

approaching the applicant. Because of the intimacy zone, it had been impossible to know what had happened afterwards.

E. Documents

88. The chart issued in respect of the applicant by Zabrze sobering-up centre (no. 701/14) contains the following relevant annotations that were made on 12 and 13 March 2014 by various persons involved in the applicant's processing.

89. On 12 March at 9.10 p.m. the applicant had been stopped by the police in 3 Maja Street. He had been inebriated and stumbling in the road. At 10.45 p.m. the applicant had been taken to the sobering-up centre (notes made by Officer M.R.)

90. At the centre, at 10.45 p.m., the applicant had undergone a medical examination. He had refused to take a breathalyser test. He had been obscene, resentful, vexatious, disobedient and he had threatened to beat up the staff. He had been staggering and his speech had been unintelligible. He had smelled of alcohol. No observations had been made in respect of the applicant's pulse, heart rate, pupils, lungs, abdomen, visible injuries (such as bruises or wounds) because, as it was noted, he had refused to have a physical examination (notes made by Doctor A.D., see paragraph 79 above).

91. A restraining measure in the form of "holding [the applicant] down" had been employed for thirty seconds because the applicant had been clenching his fists, brandishing his arms and making threats; during the "holding down" and during the rest of his stay at the sobering-up centre, the applicant had been cursing, making threats and insulting the employees (notes by the head guard on duty (*kierownik zmiany*), M.B.).

92. On 13 March, twelve hours (in so far as legible) after his placement at the sobering-up centre, the applicant had been medically examined. He had been sober and his breathing and blood circulation had been good (notes made by Doctor D.B.). No observations were made regarding an examination of the applicant's body for injuries.

93. On 13 March at 11.30 a.m. the applicant was released.

94. The chart has been signed in various places by Officer M.R. and Doctors A.D. and D.B., as well as by the head guard, M.B.

95. The field for the comments of the person being released is mostly empty. The following handwritten comment features there: "Due to lack of reading glasses" (*Z powodu braku okularów*). The applicant's signature is next to this comment.

V. THE APPLICANT'S INJURIES

A. Submissions by the applicant

96. The applicant submitted that earlier on the day of his arrest he had hit his head against a tree, which had left a scratch on the right side of his forehead.

97. He also stated that his remaining injuries had resulted from ill-treatment at the sobering-up centre (see paragraph 22 above).

B. Submissions by the applicant's son

98. The applicant's son, who had collected the applicant from the sobering-up centre on the morning of 13 March 2014, testified that he had seen bruises on the applicant's face and redness on his chest.

C. Documents

99. On 13 March 2014 a medical certificate was issued by a local physician who specialised in paediatrics and respiratory diseases and who was listed as a court-appointed expert.

100. The doctor stated that the applicant had the following injuries: abrasions and swelling covering an area of 5 by 5 cm on his forehead near the hairline; a black eye (right); swelling and bruising of the procerus (*nasada nosa*); redness and abrasions of the inner-corner of the left eye; swelling and aching in the area behind the left ear; aching of lower ribs on the left side with suspected cracked ribs; and redness and aching of the applicant's chest in an area of 1 by 1.5 cm.

101. The certificate did not state how old the injuries appeared to be or how they could have been caused.

102. An X-ray of the applicant's rib cage, which was taken on 19 March 2014, did not reveal any injuries.

103. A report drawn up on 15 October 2014 for the purpose of the investigation by an expert in forensic medicine contains the following conclusions about the applicant's injuries. The abrasions on the applicant's forehead had most likely resulted from the applicant's fall during his walk in the forest earlier on 12 March. The injuries to his face, head and chest had resulted (*powstały*) from repeated blunt trauma, for example, punching. Because the applicant had submitted that being kicked in Czerwionka police station had not left any marks, the forensic expert did not elaborate on this (see paragraph 22 *in fine* above). The injuries described in the medical certificate of 13 March 2014 could have been caused (*mogły powstać*) in the circumstances described by the applicant. The injuries had resulted in the applicant being incapacitated for less than seven days.

104. The applicant submitted, without producing any medical proof to that end, that handcuffing his arms behind his back and pushing him into the van had caused him a lot of pain because he had undergone two surgeries to his backbone in the past and had chronic problems with his right shoulder. Since the incident his left thumb had been left completely numb.

VI. CRIMINAL INVESTIGATION IN RESPECT OF THE POLICE OFFICERS AND STAFF OF THE SOBERING-UP CENTRE

105. On 18 March 2014 the applicant lodged a criminal complaint at the police station in Czerwionka, stating that on 12 March 2014 he had been ill-treated by police officers and the staff of the sobering-up centre. He submitted the above-mentioned medical certificate of 13 March 2014.

106. On the same day, the applicant made a statement, presenting his version of the above-mentioned events.

107. On an unspecified date, the case was registered with the Rybnik District Prosecutor.

108. On 4 April 2014 that authority relinquished the investigation and the case was registered with the Racibórz District Prosecutor. On 6 May 2014 a decision to open a criminal investigation was issued.

109. The allegations that were the subject of the investigation included: the unjustified use of coercive measures by police officers during the arrest, at the police station and at the sobering-up centre; failure to notify a relative about the applicant's arrest; failure to perform a blood alcohol test; failure to have the applicant examined by a medical doctor at the police station and at the sobering-up centre.

110. On 15 July 2014 a face-to-face confrontation which had been scheduled between the applicant and the arresting officers did not take place because of the absence of the officers in question. On 18 July 2014 a face-to-face confrontation between the applicant and Officers M.B. and M.R. did not take place for the same reason.

111. The following evidence was obtained for the purpose of the investigation: (i) the applicant's criminal complaint and his subsequent testimony (obtained on 24 April 2014, see paragraph 105 above); (ii) the medical certificate of 13 March 2014 (see paragraph 99 above); (iii) the report of a forensic medicine expert ordered on 9 October and drawn up on 15 October 2014 (see paragraph 103 above); (iv) the witness testimony of the two police officers who arrested the applicant in the street, K.S. and M.T. (obtained on 8 and 22 May 2014 respectively; see paragraphs 11, 16, 23 and 29 above), of three officers from Czerwionka police station, two of whom (M.B. and M.R.) had contact with the applicant on 12 March (obtained on 27 May 2014; see paragraphs 36 and 69 above), and of six employees of the sobering-up centre, two of whom had contact with the applicant on 12 March (obtained in early and mid-June and in early July 2014 respectively;

see paragraphs 72 et seq. above); (v) the witness testimony of Doctor A.D. (obtained on 1 July 2014; see paragraphs 74 et seq. above); (vi) the witness testimony of the head of the sobering-up centre (obtained on 6 October 2014; see paragraphs 80 et seq. above) and its chief accountant (obtained on 14 October 2014; see paragraph 87 above); (vii) the witness testimony of the applicant's son and a fellow patient at the sobering-up centre (obtained on 22 May and 23 October 2014 respectively; see paragraphs 98 and 71 above); and (viii) copies of the entries the police officers had made in their notebooks (*kopia notatnika służbowego*).

112. In addition to the above-mentioned pieces of evidence, investigative officers produced the reports from the face-to-face confrontations between witnesses, including the applicant, carried out in late July, August and early September 2014 (see paragraphs 119 and 121 below). The applicant recognised one of the employees of the sobering-up centre as the one who had beaten him.

113. The prosecutor also obtained a copy of the report which had been prepared by the arresting police officers (see paragraph 21 above).

114. Additionally, a copy of the chart from the applicant's stay at the sobering-up centre was also obtained (see paragraphs 88 et seq. above).

115. On an unspecified date, the prosecutor rejected the applicant's request to obtain additional evidence to determine whether the sobering-up centre's in-house doctor had in fact been present during the applicant's admission there. Among other things, the applicant had asked that the doctor's location at the material time be established using her mobile telephone and that the call log of the fixed line at her office be obtained.

116. On an unspecified date, the prosecutor ordered that the video-recordings from Czerwionka police station be produced for the purpose of the investigation. The recordings in question were sent to the prosecutor on CD-ROMs on 3 April 2014 (see paragraphs 43-63 above). On 22 May 2014 the prosecutor ordered that the CD-ROMs in question be viewed by the staff of the police headquarters because the prosecutor was unable to do so using his own equipment. On 6 June 2014 a report was drawn up after viewing the footage in question. The report concluded that the footage did not show that the police officers visible in the recording had failed in their duties.

117. On 14 August 2014 the prosecutor made a written request to have the video from the sobering-up centre viewed. On 26 August 2014 the sobering-up centre replied that the footage could not be produced owing to the fact that every six weeks the camera disc was automatically overwritten. In the absence of a request submitted within six weeks, the head of the sobering-up centre had not secured the video-recording or made paper copies of the relevant frames. The Government submitted that, pursuant to the applicable law (the Ordinance of the Minister of the Interior of 4 June 2012, see paragraph 164 below), the head of the sobering-up centre had not been entitled to save or otherwise secure the video-footage beyond the statutory

time-limit of sixty days. The head of the sobering-up centre had viewed the video before it was recorded over. He had subsequently testified about the video contents (see paragraph 81 above).

118. The Government submitted that on 26 June, 30 June, 28 July and 2 September 2014, the prosecutor had granted the applicant's requests for access to part of the investigation file. The applicant did not make any submission in this respect.

119. By three separate decisions of 6 August, 1 September and 30 September 2014, the Racibórz Deputy District Prosecutor extended the investigation in order to obtain additional evidence, in particular, a face-to-face confrontation between the applicant and the police officers (see paragraph 111 above) and testimony of other witnesses (see paragraph 111, points (vi) and (vii), above).

120. On 17 September 2014 the prosecutor wrote to the head of Zabrze sobering-up centre, asking for an urgent response as to whether the recording of the monitoring of the room in which the applicant had been held on 12 March 2014 had been secured. In the affirmative, the prosecutor asked that it be sent to him. The prosecutor also asked for the hard drive on which the original recording had been made and, six weeks later, overwritten.

121. The Government submitted that the applicant's lawyer, in reply to the prosecutor's request of 18 August 2014, had asked that the face-to-face confrontations between the applicant and witnesses be postponed.

122. On 28 October 2014 the Racibórz District Prosecutor dismissed the applicant's requests for evidence, which had been lodged in July and September 2014. The applicant had asked, in particular, that the following evidence be produced: that it be verified whether or not the doctor had in fact been present at the sobering-up centre when she had been on duty on 12 March 2014 by means of checking her phone calls, internet connections and employment records; that the employment history of the two employees of the sobering-up centre be looked into to establish whether similar accusations to those made by the applicant had ever been made against them in the past; that the video-recording from Czerwionka police station be examined by experts in order to establish whether it had been manipulated; that an experiment be carried out to establish how long it took to switch handcuffs; and that a number of the witnesses be heard again in order to prove that they had committed perjury when testifying that they had seen the video-recording from the sobering-up centre. The prosecutor considered that the information which was sought to be obtained was either not relevant to the investigation or that the evidence in question could not prove the circumstances as sought.

123. On 30 October 2014 the Racibórz District Prosecutor discontinued the investigation on the ground that the police officers involved in the applicant's apprehension in the street, his transfer and admission to Zabrze

sobering-up centre and the employees of the sobering-up centre had not abused their power or failed in their duties.

124. The decision to take the applicant to a sobering-up centre had been in compliance with the law and aimed at protecting the applicant's life and limb as he had been visibly inebriated and had been walking/standing in the middle of the road. Also, the use of handcuffs had been lawful and justified in view of the applicant's refusal to comply with the orders given by the officers and his aggressive behaviour. The latter had been demonstrated by the applicant clenching his fists, making threats and his attempts to walk away. It had not been proven that the applicant had been pushed into the police van or that force had been used against him when he had been taken to the police station. The applicant's submissions that he had been driven to the police station lying on the floor of the van, that he had not been allowed to call his family and his requests to call a doctor had gone unanswered, and that he had been insulted and hit by the employees of the sobering-up centre, were not corroborated by any evidence. The prosecutor acknowledged that in the absence of the videorecording from the sobering-up centre, it was impossible to objectively and convincingly establish whether or not the doctor had been present when the applicant had been taken there. It was also acknowledged that the medical certificate obtained by the applicant shortly after his release did indeed list some injuries. On the other hand, in view of the sequence of events and the number of people who had had contact with the applicant on 12 March, it was impossible to determine what or who had caused those injuries. The applicant's version of events was not corroborated by any evidence, whereas a completely different and more or less coherent version was supported by all the other witnesses.

125. On 1 April 2015 the Rybnik District Court upheld that decision.

VII. COMPLAINT ABOUT THE ARREST AND PLACEMENT AT THE SOBERING–UP CENTRE

126. On 17 March 2014 the applicant lodged a complaint (*zażalenie*) about his arrest and placement at the sobering-up centre.

127. On 10 April 2015 the Zabrze District Court dismissed this complaint on the ground that the applicant's arrest and his subsequent placement at the sobering–up centre had been lawful and justified. It was considered that the materials in the case file clearly showed that on 12 March 2014 the applicant had been inebriated, staggering and stumbling near a busy road. He had therefore posed a threat to his limb and life. His subsequent aggressive behaviour, resistance and uttering obscenities and threats had justified the suspicion that the applicant had also been a threat to others. All the procedural requirements had been complied with. The alleged abuse of power by the police officers and employees of the sobering-up centre (namely, the use of

force) was beyond the scope of the examination of the complaint, which was limited to the legality of the measure (decision no. VII Kp 172/14).

128. Having held the above, the court observed that placing a person in a sobering-up centre constituted a serious inconvenience and the practice in general had been criticised. The court encouraged a social debate about the future of sobering-up centres in Poland. Specifically, in respect to the case at hand, the court took note of the fact that the applicant had experienced an increased inconvenience because, firstly, he had been placed at a sobering-up centre far away from the place of his arrest and his home and, secondly, the change of shifts at the police station had unnecessarily prolonged the applicant's processing.

129. The Government submitted that in the course of these proceedings, the authorities had examined the police officers who had had contact with the applicant and had viewed the video-footage from the applicant's stay at the police station.

VIII. POLICE INTERNAL INQUIRIES

130. On 23 March 2014 the applicant lodged a complaint (*skarga*) with the Katowice regional police headquarters (*Komenda Wojewódzka Policji*) about the brutality and unjustified use of force of the police officers involved in his arrest and transfer to the sobering-up centre.

131. By a letter of 25 April 2014, the Deputy Chief of the Regional Police informed the applicant that his complaint was ill-founded. That decision was based on the same grounds as those relied on by the prosecutor (see paragraph 127 above).

132. The Government submitted that the Complaints and Motions Unit of the Audit Office of the Main Police Headquarters (*Komenda Główna Policji*) had come to the same conclusion as above, having carried out its own inquiry. The documents issued in the course of these proceedings have not been provided to the Court.

133. The Government also submitted that a similar inquiry had been carried out by the Commander of the Rybnik Municipal Police Headquarters in his capacity as the supervisor of the police officers in question. He had found no appearance of a disciplinary offence on the part of the officers. Consequently, on 23 April 2014, he decided not to institute disciplinary proceedings. A copy of that decision was not submitted to the Court.

IX. COMPLAINT TO THE OMBUDSMAN

134. On 23 July 2015 the applicant complained about the events that are the subject of the present application to the Polish Ombudsman (*Rzecznik Praw Obywatelskich*). These proceedings appear to be ongoing.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. IDENTITY CHECK, ARREST AND USE OF FORCE BY THE POLICE

A. Identity checks and arrests

135. The Police Act of 6 April 1990 (*Ustawa o policji*), in the version applicable at the relevant time, authorised police officers, in the course of their maintaining-order activities, to check identity documents and to arrest persons who clearly posed a direct danger to life and limb (sections 14 and 15). Arrest could only be carried out if other measures had proven pointless or ineffective (section 15(3)).

B. Use of force

136. Pursuant to section 16 of the Police Act and section 11 of the Coercive Measures and Firearms Act of 3 June 2013 (*Ustawa o środkach przymusu bezpośredniego i broni palnej* – "the Coercive Measures Act"), police officers are authorised to have recourse to coercive measures, that is to say, to use direct physical force, for the following reasons: forcing compliance with an order given by a police officer; preventing actions directly threatening the life or health of the person concerned or of others; preventing breaches of public order and security; and overcoming passive or active resistance of the person concerned (section 11).

137. Section 12 of the Coercive Measures Act lists the permissible coercive measures. These include the use of physical force and handcuffing. Pursuant to section 14(2), when such force is being used, it is forbidden to strike the person against whom the action is being carried out, except in self-defence or to counter an attack against another person's life, health or property. Section 15 authorises handcuffing a person's arms behind his or her back. In the event of preventive handcuffing – for example, when the risk of passive resistance, self-harm or danger to others is low – the police officer has discretion to handcuff the arms of the person concerned in front of him or her.

138. Pursuant to section 34 of the Coercive Measures Act, force can be used only after the person concerned has been called on to obey and warned about the intention to use a coercive measure. That provision does not apply in the event that there is a direct threat to the life and limb of the person concerned or of others, or if a delay in the use of force would result in danger to a legally protected interest.

139. Police officers, in carrying out their official duties, must respect human dignity and human rights (section 14(3) of the Police Act).

C. Medical examinations

140. Pursuant to the Ordinance of the Minister of the Interior of 13 September 2012 (*Rozporządzenie w sprawie badań lekarskich osób zatrzymanych przez Policję*) – in the version applicable at the relevant time – a person who had been arrested had, without delay, to be subjected to a medical examination if that person: (i) reported needing medicine which was a part of his or her long-term treatment and the discontinuation of which would pose a threat to the life and limb of the person concerned; (ii) requested a medical examination; or (iii) had non-life-threatening injuries (*niewskazujące na stan nagłego zagrożenia zdrowotnego*) (sections 1 and 4).

141. The medical examination had to enable the assessment of whether the arrested person was fit for placement in any type of space designated for persons placed there for sobering-up (see paragraph 149 below, and section 5 of the above-mentioned Ordinance).

142. Detention for sobering-up could take place even in the absence of consent for medical examination of the person concerned (section 8 of the above-mentioned Ordinance).

II. MEASURES IN RESPECT OF INEBRIATED PERSONS

A. Detention for sobering-up

143. Measures which could be applied in respect of "intoxicated persons" were laid down in the Education in Sobriety and the Fight against Alcoholism Act of 26 October 1982 ("the 1982 Act") (*Ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi*), in the version applicable at the material time. Other relevant provisions were set out in the Ordinance of the Minister of Health of 4 February 2004 on the conditions for admission and release of intoxicated persons and the organisation of sobering-up centres (*Rozporządzenie w sprawie trybu doprowadzania, przyjmowania i zwalniania osób w stanie nietrzeźwości oraz organizacji izb wytrzeźwień i placówek utworzonych lub wskazanych przez jednostkę samorządu terytorialnego* – "the 2004 Ordinance"), which was in force at the material time.

144. Pursuant to section 39 of the 1982 Act, sobering-up centres were to be set up and managed by the authorities of municipalities with more than 50,000 inhabitants.

145. The relevant part of section 40 of the Act (in the version applicable at the material time) provided:

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

2. In the absence of a sobering-up centre, such persons may be taken to a [police station].

...

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

146. Pursuant to section 40(3) and (4) of the 1982 Act, a police officer who was taking an intoxicated person to a sobering-up centre or to that person's place of residence, was to draw up a report. The report was to contain various details of the person concerned. If in doubt about the identity of the person being taken to a sobering-up centre or to a police station, the police officer was to verify and confirm the personal data of that person (see also section 2(3) and (4) of the 2004 Ordinance).

147. Decisions on detention for sobering-up at sobering-up centres or at police stations were taken by the head of the centre or the chief of the police unit respectively (section 403 of the 1982 Act and section 5 of the 2004 Ordinance).

148. Further relevant rules are set out in the Ordinance of the Minister of the Interior of 4 June 2012 on spaces designated for persons placed there for sobering-up ..., internal regulations for placement in such spaces ... and processing of video-recordings from such spaces ... (*Rozporzadzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb* –the 2012 Ordinance").

149. The 2012 Ordinance regulates the material conditions and the organisation of spaces designated for persons placed there for sobering-up. It lists, in so far as relevant, the following types of spaces: (i) spaces for persons arrested or detained for sobering-up (*pomieszczenia przeznaczone dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia*) – in which a person can be held for up to twenty-four hours; (ii) transit rooms (*pokoje przejściowe*) – in which a person can be held for up to six hours; and (iii) *ad hoc* transit spaces (*tymczasowe pomieszczenia przejściowe*) – in which a person can be held for up to eight hours.

150. Section 4 of the 2012 Ordinance, in turn, enumerates the types of rooms comprised in the first above-mentioned category, that is to say, spaces for persons arrested or detained for sobering-up. These are: (i) rooms for persons detained for sobering-up and rooms with the necessary technical infrastructure (*pokój do obsługi pomieszczenia*); (ii) offices for processing the person concerned in his or her presence; (iii) guard's stations; (iii) kitchens; (iv) storage and deposit rooms; (v) toilets and shower rooms; (vi) hallways; and (vii) cloakrooms.

B. Testing for alcohol

151. The basis for admitting someone for sobering-up at a sobering-up centre or a police station was to be an alcohol breathalyser test showing that the person concerned was inebriated (section 40^1(1) of the 1982 Act and section 4 of the 2004 Ordinance). Such a test could only be carried out with the consent of the person taken to a sobering-up centre or to a police station (section 40^1(2) of the 1982 Act and section 3(2) of the 2004 Ordinance). Otherwise, in the absence of obtaining consent for the test, the person concerned was to be admitted for sobering-up only if he or she showed signs of inebriation, as confirmed in writing by an in-house doctor or a designated police officer (section 40^1(3) of the 1982 Act and section 3(3) of the 2004 Ordinance).

C. Medical examinations

152. Section 40^2 of the 1982 Act and section 4 of the 2004 Ordinance regulated the medical examination of a person detained for sobering-up. In particular, such a person had to immediately be given a medical examination. Such examination was allowed even in the absence of consent if the person concerned: (i) posed a risk to the life and limb of him or herself or of others; or (ii) was in need of medical aid.

153. Moreover, pursuant to section 4 of Annex no. 1 to the 2012 Ordinance, the doctor examining the person concerned had to determine whether that person was medically fit to be detained for sobering-up or was in need of medical treatment, or that the person concerned had refused to undergo such an examination.

154. Pursuant to section 27 of the 2004 Ordinance, sobering-up centres had to keep logs of persons placed in them. The logs had to contain, among others, a doctor's report (*opinia lekarza*) in respect of each patient. Section 27(3)(2) set out the sections which such a report had to contain. These were, among others: (i) an interview establishing the patient's health condition, and the type and amount of alcohol consumed; and (ii) a medical examination enabling an assessment of the degree of the patient's impairment of consciousness, his or her behaviour, mood, balance and speech, whether there were traces of vomit, his or her pulse, heartbeat, pupils, skin, lungs and stomach, and whether he or she had any injuries. The above-mentioned information had to be obtained on admission of the person concerned. Another medical report had to be prepared on release. In particular, the medical examination was to establish the degree of sobriety and mental and physical state of the patient (section 27(3)(6) of the 2004 Ordinance).

D. Use of force

155. Pursuant to section 42 of the 1982 Act, an inebriated person detained for sobering-up, who was a threat to him or herself or to others, could be subjected to so-called coercive measures. Permissible coercive measures included holding someone back briefly, immobilisation with the use of belts or a straitjacket, and isolation.

156. The type of measure used had to be the least intrusive possible for the person concerned. Moreover, force had to be used with particular caution and concern for the person's well-being.

157. At sobering-up centres, it was the in-house physician that authorised and decided on the type and duration of the coercive measure. The doctor also personally supervised the execution of the measure. At police stations, the use of force had to be authorised either by the police chief (*komendant*), a designated police officer or, in the latter's absence, a police officer on duty. In the event the above-mentioned persons could not immediately be located, any police officer was entitled to decide on the coercive measure and to use force. The police officer had to then, without delay, file a report on the use of force.

158. Pursuant to section 42(6) of the 1982 Act, the person concerned had to be warned about the coercive measure which was to be used.

E. Camera monitoring

159. Section 42^3(1) of the 1982 Act provided that sobering-up centres had to have, for safety reasons, a system enabling the monitoring of persons placed there. Pursuant to section 22(2) of the 2004 Ordinance, closed-circuit television monitoring could be installed, if needed, at sobering-up centres, in particular in common rooms (*sala ogólna*), hallways, isolation rooms, and admission rooms.

160. Detailed regulations in this field were set out in the 2012 Ordinance (see paragraph 148 above).

161. Pursuant to section 14 of the 2012 Ordinance, spaces for persons arrested or detained for sobering-up – whether they were situated in sobering-up centres or at police stations – could be equipped with monitoring systems, including those which permitted round-the-clock recording of images.

162. Section 15(3) of the 2012 Ordinance provided that camera equipment could be installed in all types of rooms comprising a "space for persons arrested or detained for sobering-up" (see paragraph 150 above). Images from the toilets and shower rooms had to conceal the private parts of the person concerned (section 15(4)).

163. All of the above-mentioned rules also applied to "transit rooms" and "*ad hoc* transit spaces" (see paragraph 149 above, and sections 25 and 30 of the 2012 Ordinance).

164. Under section 41(1) of the 2012 Ordinance, video-footage from all types of spaces designated for persons placed there for sobering-up (see paragraph 149 above) had to be stored for a minimum of thirty days and a maximum of sixty days, starting from the date of the recording. Such footage could be stored longer providing that it had been secured as evidence in the course of ongoing proceedings. The video-recording was to be subsequently destroyed (section 42 of the 2012 Ordinance).

165. Persons detained for sobering-up had to be informed about the camera monitoring in place (section 1 of Annex no. 1 to the 2012 Ordinance).

III. DOMESTIC REMEDIES AGAINST ILL-TREATMENT BY STATE AGENTS AND AGAINST PLACEMENT IN A SOBERING-UP CENTRE

166. The domestic remedies against ill-treatment by State agents are set out in the admissibility decision in *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001.

167. In addition, sections 132 et seq. Of the Police Act regulate the disciplinary responsibility of police officers.

168. The 1982 Act sets out a remedy by which to complain to a court about the lawfulness or the reasonableness of decisions to arrest a person and detain him or her for sobering-up, as well as about the compliance with the law of the way in which the measure was executed (sections 6-8).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

169. The applicant complained under Article 3 of the Convention that he had been ill-treated during his arrest, at Czerwionka police station and at Zabrze sobering-up centre. In particular, the applicant complained that he had been treated in a rough and humiliating manner that had not been called for, that the use of handcuffs had been unjustified and disproportionate, and of his alleged assault and battery by the police officers and sobering-up centre staff. He considered such treatment to be degrading and inhuman.

170. The applicant also complained that the criminal investigation into his alleged ill-treatment had been ineffective.

171. Article 3 of the Convention reads as follows:

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

A. The parties' submissions

1. The applicant

(a) As to the substantive limb of Article 3

172. The applicant complained that on 12 March 2014 he had been ill-treated during his arrest and subsequent processing by State agents.

173. As regards his arrest, the applicant submitted that he had clearly and repeatedly stated that he lived near the place where he had been stopped by the police. He also maintained that the male arresting officer had been violent with him. In particular, he had used a special grip on him and had thrown the applicant against the police van and, then, to the floor of the van. The applicant had not been defensive or aggressive. In fact, he submitted, the police officers had not asked him many questions or given him any orders.

174. As regards his treatment at Czerwionka police station, the applicant observed, firstly, that checking a person's identity at the police station was, by its nature, a simple and quick procedure. In his opinion, the fact that he had remained at the station for over an hour had been a deliberate decision of the two police officers whose shift had been coming to an end. The applicant was of the view that the officers in question had calculated that taking him to the sobering-up centre would have led to them having to work overtime.

175. Secondly, the applicant argued that the video-recording from Czerwionka police station (see paragraphs 44-45 above) had clearly captured how Officer M.T. had brutally sat him down on the floor. The applicant denied having been so intoxicated that he had not been able to sit on the chair. Instead, he argued that the officers had acted with the purpose of causing him suffering.

176. Thirdly, the applicant submitted that his hands had been handcuffed behind his back, which – in the light of his orthopaedic condition (see paragraph 6 above) – had made the sitting position very uncomfortable. To relieve the pain, he had lain down on the floor. None of the officers passing by had taken any interest in him lying on the cold concrete floor for approximately an hour. The applicant stated that the measure had been unlawful because handcuffing someone's arms behind his or her back was to be used exceptionally, as a response to very aggressive behaviour by the person concerned, whereas the applicant's conduct or demeanour had not been, even in the slightest, threatening. Moreover, having him handcuffed inside a barred and locked cell had been completely unnecessary and disproportionate – the latter especially in view of the duration of the applicant's stay at the police station.

177. The applicant also submitted that he had been kicked in the ribs and abdomen while at the police station. This had taken place around the time when his handcuffs were being changed inside the cell. The applicant argued that the police officers had spent over a minute in the cell which had given

them enough time to kick him. He also argued that the female arresting officer had intentionally blocked the view, so that there would be no evidence of the applicant's ill-treatment.

178. The applicant stressed that none of the six cameras installed at Czerwionka police station provided a good quality view of the cell for arrested persons. That, in the applicant's opinion, encouraged excessive use of force by the police.

179. The applicant also claimed that the recordings from the cameras installed outdoors clearly showed that the male arresting officer had been pushing the applicant. That being the case, the applicant stated that the female arresting officer had lied in the course of the investigation, denying that the male officer had engaged in any such behaviour. The applicant asked the Court to take note of the fact that, as shown by the video-footage, the female arresting officer had stayed behind and had therefore not been able to see her partner's conduct.

180. With regard to the transport, the applicant argued again that handcuffing his arms behind his back had not been justified. He also submitted that in the van, he had again been put in a horizontal position on the floor.

181. At the sobering-up centre, the applicant claimed to have been beaten up and insulted. His requests for a medical check-up had gone unanswered. The applicant argued that no doctor, female or male, had been present during his admission to the sobering-up centre. To that end, the applicant noted that there had been discrepancies between the testimonies of witnesses heard for the purpose of the investigation.

182. The applicant also explained that he had not asked for any amendments to be made to the report of his stay at the sobering-up centre, not because he had had nothing to rectify or complain about but, simply, because he had not had his spectacles on him and had not been able to read the report or to sign it.

183. Lastly, in this context, the applicant complained that the video-recording had been lost as a result of the gross negligence of the State authorities.

(b) As to the procedural limb of Article 3

184. The applicant argued that the criminal investigation had not complied with the requirements of Article 3 in that it had not been thorough.

185. In particular, the authorities had not examined the question of why the applicant had been handcuffed for such a long time, especially when he had been locked up in the cell at the police station.

186. They had also failed to establish whether a doctor had been present during the applicant's admission to the sobering-up centre. To that end, the applicant argued that the authorities should not have rejected his request for

evidence with regard to the doctor's location at the material time (see paragraph 115 above).

187. Moreover, the often contradictory submissions of various witnesses had not been examined with adequate care.

188. In addition, negligence on the part of various authorities had led to the loss of the main piece of evidence, namely, the video-recording from the sobering-up centre. Securing that evidence beyond the statutory time-limit should have been a matter of a simple request communicated in a timely manner by the prosecutor to the administration of the sobering-up centre. In this context, the applicant stressed that the prosecutor had contacted the head of the sobering-up centre as late as in August 2014 (see paragraph 117 above).

189. The applicant also called into question the veracity of the submissions of the head of the sobering-up centre who had claimed to have viewed the video-recording from the centre's camera at the beginning of May 2014, whereas the six-week period the recording would normally have been saved on the disc before being automatically overwritten had come to an end on 24 April 2014. It followed that the testimonies of that person and of anyone else who had claimed to have seen the video should have been dismissed as unreliable.

190. As for the recording from Czerwionka police station, the applicant was outraged that the prosecutor had discontinued the investigation without personally seeing the footage. The applicant argued that it had been possible to play the CD-ROMs in question on any kind of basic computer. It had therefore not been justified to have the files viewed by someone else and then to rely only on the report drawn up by those who had viewed the video (see paragraph 116 above).

2. The Government

(a) As to the substantive limb of Article 3

191. The Government argued that the applicant had not been subjected to ill-treatment within the meaning of Article 3 of the Convention. They essentially submitted that the force used on the applicant during his arrest, processing and detention for sobering-up, had been necessary, adequate and proportionate in view of the applicant's disobedience, lack of cooperation and aggressive resistance. They also stated that the applicant's arrest had been warranted in view of his visible inebriation and the risk that he had posed to himself and others owing to his staggering in the road.

192. The Government also stressed that the State agents involved in the events in question had acted in compliance with domestic law and the European Convention on Human Rights.

193. As for the applicant's injuries, the Government stressed that the applicant's injury on his forehead had been caused prior to his encounter with the police on 12 March 2014. The additional abrasions could likewise have

been caused beforehand, by the applicant falling and rolling around on the road. To that end, the Government submitted that it had taken the applicant over an hour to walk the less than 1 kilometre distance between the bar and the place where he had been spotted by the police patrol. His pre-existing injuries could not have been recorded by the sobering-up centre's doctor because the applicant had not given his consent for a medical examination. The applicant had also waived the opportunity to register any grievances in the sobering-up centre's chart, which he had refused to sign (see paragraph 95 above). At the end of his stay, the applicant had again refused to undergo a medical examination on his release on 13 Mach 2014.

194. The Government also asked the Court to take note of the X-ray examination of 19 March 2014 which had not revealed any injuries to the applicant's rib cage.

195. Lastly, the Government called into question the accuracy and credibility of the medical certificate that the applicant had obtained after he had left the sobering-up centre. To that end, they stated that the doctor who had examined the applicant was not trained in forensic medicine and that he had been privately consulted by the applicant, basing his diagnosis only on the applicant's version of events. The forensic report of 15 October 2014 had necessarily been drawn up on the basis of the first medical certificate, as any injuries would have healed by that time.

196. As for the applicant's arrest, the police officers had only handcuffed the applicant after asking him to cooperate and giving him a warning. Any discomfort he might have felt had been of a short duration, as the police station to which he had been taken was located 300 metres down the road from where the applicant had been arrested. The applicant's continued resistance had given the arresting officers no choice but to push him into the police van.

197. As for the processing at the police station, the video-recording from the police station clearly showed that the applicant had been sat down on the floor by the accompanying police officer. The applicant had then lain down on the floor.

198. As for the treatment at the sobering-up centre, the applicant had refused to undergo a medical examination and had continued to act in a threatening and uncooperative manner. That behaviour had justified the thirty-second manual restraint measure that had been used.

199. The Government also stressed that the authorities involved in dealing with the applicant on 13 March 2014 had been unaware of the applicant's medical history as the applicant had omitted to convey that information. The Government also noted that the applicant had not produced any proof of his alleged numbness of the thumb. In any event, they denied any link between that ailment and the applicant's treatment during his arrest.

200. Overall, the Government submitted that the level of suffering which the applicant must have felt had not gone beyond the inevitable element of

suffering connected with the legitimate and lawful arrest of and subsequent dealing with a person behaving aggressively. Likewise, there had been no element of humiliation or debasement in the applicant's treatment.

(b) As to the procedural limb of Article 3

201. The Government argued that the criminal investigation into the applicant's allegations of ill-treatment on 13 March 2014 had been effective.

202. In particular, the investigation had been impartial and independent in that it had been carried out, not locally, but in the jurisdiction of Racibórz.

203. The investigation had also been prompt in that the matter had been taken up immediately after the applicant had lodged his criminal complaint and in that the evidence had been secured without delay. The Government argued that the prosecutor had acted swiftly and diligently. His inability to secure the video-recording from the sobering-up centre had been attributable to the applicable regulations.

204. The investigation had also been thorough in that the prosecutor had obtained all the necessary evidence, including the testimony of all the persons that had taken part in the impugned events and all the documents that had been produced in relation to those events. The video from the police station had also been secured as direct evidence. As a result of the inability to have access to the video-recording from the sobering-up centre indirect evidence, in the form of the testimony of the officer who had watched it prior to its destruction, had been admitted to the investigation file.

205. The applicant's requests for additional evidence had been partly rejected in so far as the evidence proposed would have been irrelevant. On the other hand, in line with the applicant's requests, the prosecutor had heard numerous witnesses, including A.W. and other patients of the sobering-up centre.

206. Throughout the investigation, the applicant had been informed of its progress and had had access to the investigation file.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) The substantive aspect of the complaint

(i) General principles

208. The general principles are set out in the judgment in *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81-90, ECHR 2015.

(ii) Application to the present case

(α) Forms of the alleged ill-treatment under examination

209. The Court notes that the applicant's complaint under the substantive limb of Article 3 revolves around three sets of grievances that are distinguishable from each other by reason of the degree of suffering allegedly caused to the applicant, as well as of the degree of the likelihood of their occurrence.

210. Firstly, the applicant complained that, during his arrest, as well as during his subsequent processing at the police station and at the sobering-up centre, he had been treated in a rough and humiliating manner that had not been called for. In particular, the male arresting officer had allegedly gripped the applicant painfully, thrown him to the floor of the police van, forcefully pushed him while taking him to the police station (see paragraph 173 above) and violently sat him down on the floor inside the cell (see paragraph 175 above).

211. Secondly, the applicant complained that his arms had been tightly handcuffed behind his back (see paragraphs 176 and 180 above), as well as that he had been forced to lie down and to remain lying down for an unnecessarily long time between his arrest and his admission to the sobering-up centre.

212. Thirdly, the applicant complained that at the police station he had been kicked in the ribs and the abdomen (see paragraph 177 above), and that, at the sobering-up centre, he had been beaten up (see paragraph 181 above).

213. The Court observes that all three sets of grievances above together comprise the complaint that State agents used excessive force on the applicant and thus subjected him to degrading and inhuman treatment within the meaning of the Convention.

(β) Establishment of the facts

214. 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. Nonetheless, where allegations are made under Article 3 of the Convention, as in the present case, the Court must apply a particularly thorough scrutiny (see *Wiktorko v. Poland*, no. 14612/02, § 48, 31 March 2009, with further references).

– *The applicant's inebriation*

215. It is undisputed that, on the day of the events which are the subject of the present application, the applicant, who was in his early 60s and of average build (see paragraphs 5 and 45 above), had drunk several bottles of beer (see paragraph 8 above). No alcohol test was carried out on 13 March (see paragraphs 34, 67, 75, 90 and 109 above), so the exact degree of the applicant's inebriation cannot be determined. The video-recording submitted to the Court clearly shows, however, that the applicant was visibly staggering (see paragraphs 60-62 above). Moreover, the persons who were involved in the applicant's arrest and his processing for sobering-up – including the arresting officers, the officers at the police station and the sobering-up centre physician – uniformly reported that the applicant had smelled of alcohol, had been unintelligible, had not been able to keep his balance and had behaved in a way that indicated that he had been drunk. The reports in question were made either on 13 March 2014 or at various stages of the subsequent criminal investigation (see paragraphs 11, 16, 21, 79, 89 and 90 above). The criminal investigation also concluded that the applicant had been inebriated (see paragraph 124 above).

216. In the light of the above considerations, the Court accepts that the applicant was inebriated. This condition was very likely to have impaired – at least to a certain extent – his capacities of observation and recollection. It follows that the applicant's version of the events in question is, in and of itself, not entirely reliable.

– *First set of grievances*

217. As to the first set of the applicant's grievances as described in paragraph 210 above, the Court observes that the applicant's allegations are not corroborated by the evidence that was produced in the course of the criminal investigation or that was submitted to this Court.

218. It is reasonable to assume that while the applicant was being handcuffed, the arresting officer (M.T.) did indeed twist the applicant's arms behind his back, thus causing him some discomfort or perhaps even a degree of pain. To this end, the Court notes that the applicant had a pre-existing condition of degenerative joint disease of the shoulder and some backbone ailments (see paragraphs 6 *in fine* and 104 above).

219. It is impossible to establish without doubt whether the arresting police officer had warned the applicant before carrying out that measure (see paragraphs 10, 13, 17 and 124 above).

220. Furthermore, all the material in the case file contradicts the applicant's allegation that M.T. threw him to the floor of the police van. The conclusion of the criminal investigation was that that allegation had not been corroborated by any evidence (see paragraph 124 above). The Court accepts as likely, however, that M.T. did indeed use some force to take the resisting

applicant to the police van and to put him inside. The Court also finds it possible that the applicant himself moved to the floor of the van (see paragraphs 15 and 19 above).

221. The actions of M.T. when taking the applicant from the van to the police station, and then when putting the applicant in the cell, were captured by the station's monitoring cameras. It is indeed visible that, at some point near the building, the police officer pushed the applicant with enough force to cause the applicant to jerk forward slightly (see paragraph 62 above). It is also clear that, when sitting the applicant on the floor inside the cell, a downwards physical pressure on the applicant's shoulders was applied by the arresting officer (see paragraph 46 above).

– *Second set of grievances*

222. As to the second set of grievances (see paragraph 211 above), the Court considers it established that the applicant was handcuffed with his arms behind his back from approximately 9 p.m. to approximately 10.45 p.m. (see paragraphs 13, 17, 40, 45 and 61-64 above). The Court also notes that the physician who examined the applicant on 13 March 2014 did not report any redness, bruises or abrasions on the applicant's wrists (see paragraph 100 above). This leads the Court to conclude that the applicant's handcuffs were not too tight.

223. The Court also finds it sufficiently proven that the applicant was indeed on the floor of the police van taking him to Czerwionka police station immediately after his arrest (see paragraphs 15, 19 and 220 above). Conversely, the applicant's submission that he was also on the floor during the second journey – from the police station to the sobering-up centre – is not supported by any other source (see paragraph 64 above).

224. Lastly, it is not disputed that, throughout his one-hour stay at Czerwionka police station, from 9.17 to 10.16 p.m., the applicant was lying on the bare floor (see paragraphs 40 and 48 above).

– *Third set of grievances*

225. As to the third set of grievances (see paragraph 212 above), the Court notes that the applicant's medical examination on 13 March 2014 revealed that he had abrasions on and swelling and bruising to different parts of his face and head; that his lower ribs and chest were painful on the left side and that his chest was also red in an area of 1 by 1.5 cm (see paragraph 100 above). The X-ray of the applicant's rib cage, taken on 19 March 2014, did not reveal any cracked or broken ribs (see paragraph 102 above). The forensic expert's report of 15 October 2014 concluded that the applicant's injuries on his face, head and chest had resulted from repeated blunt trauma, such as punching, and that they could have been caused in the circumstances described by the applicant (see paragraph 103 above). Those injuries had led to the applicant

being incapacitated for less than seven days (ibid.). In the light of these medical documents and in the absence of any counter argument from the Government, the Court must conclude that the applicant was discharged from the sobering-up centre with the above-described injuries.

226. As to the cause of those injuries, the Court makes the following observations.

227. The applicant admitted that, prior to his arrest, he had hit and scratched his head against a tree (see paragraph 96 above). He then stated that the remainder of his injuries had resulted from ill-treatment – his alleged beating – at the sobering-up centre (see paragraphs 97 and 181 above), the kicks that he had allegedly received at the police station not having left any marks (see paragraph 103 above). The Court finds the applicant's statements concerning the period after his arrest confusing and unreliable (see paragraph 216 above).

228. Moving on, the Court notes that the moment when, according to the applicant, two police officers kicked him in the ribs and abdomen, was recorded by one of the station's monitoring cameras. On the basis of the recording in question, the Court finds that, although the image is not of the highest quality and although the scene is partly obscured by K.S., the video in question still shows that one of the officers leant over the applicant for approximately one minute and manipulated something (presumably his handcuffs) with his hands, while the other officer was kneeling behind the applicant. Neither of the officers is seen to make fast, forceful or repetitive movements with their legs or any other part of their bodies (see paragraph 56 above).

229. The same camera also captured an earlier moment when M.T. put the applicant in the cell. The Court reiterates that M.T. is seen sitting the applicant on the floor, using a downwards physical pressure on the applicant's shoulders (see paragraphs 46 and 221 above). At a different point, the recording shows the applicant lying down on the floor inside the cell (see paragraph 48 above).

230. In the light of the above elements, the Court concludes that at the police station, the police officers did not inflict any injuries on the applicant.

231. In respect of the allegation that the applicant's injuries resulted from his ill-treatment at Zabrze sobering-up centre, the Court notes that the video-monitoring of the applicant's admission and stay at the centre was not saved (see paragraphs 81 and 117 above). Before its destruction, the footage was watched by Doctor A.D., as well as by the head and the chief accountant of the sobering-up centre (see paragraphs 75, 81 and 87 above). These persons later testified about what they had seen occur outside of the intimacy zone. The Court emphasises that the space where the applicant was standing at the moment when two of the sobering-up centre's guards were with him was not visible on camera (see paragraphs 84 and 87 above).

232. Moreover, the sobering-up centre's doctor could have witnessed only part of the scene as she was recorded leaving the room where the intimacy zone was and where the applicant remained with the two guards (see paragraph 84 above).

233. Other than that, the applicant's admission, stay and release from the sobering-up centre were documented in the chart that was filled out by various persons as they were processing the applicant for sobering-up.

234. In so far as noted in the chart and reiterated in the course of the subsequent investigation by various witnesses, the Court accepts as proven (despite the applicant's arguments to the contrary, see paragraph 181 above) that the applicant was seen, but not examined by, the in-house doctor, A.D., on admission (see paragraphs 75, 78 and 90 above). On his release, the applicant received a cursory examination by the new doctor on duty (see paragraphs 67 and 92 above). It is very likely that it was the applicant who refused to undergo the medical examinations (see paragraphs 68, 75, 83, 86-87 and 90 above). It follows that the doctors would only have been able to observe facial but not bodily injuries that the applicant might have had. The Court notes that no facial injuries were reported by the sobering-up centre doctors (see paragraphs 90 and 92 above).

235. The applicant's son, who collected the applicant from the sobering-up centre in the morning of 13 March 2014, testified that he had seen bruises on the applicant's face and redness on the part of his chest that was visible when dressed (see paragraph 98 above).

236. The Court notes that the applicant's submission that at the sobering-up centre he had received multiple blows to his face and chest (see paragraphs 65 and 71 above) was refuted by the police officers who had taken the applicant to the sobering-up centre, as well as by the sobering-up centre's guards and the in-house doctor (see paragraphs 70, 73 and 77 above). In their uniform submission, while the applicant was in the intimacy zone (see paragraph 84 above), the two guards had used the thirty-second manual restraint measure on him (see paragraphs 73, 75, 85 and 91 above). The use of that measure was also recorded in the applicant's sobering-up centre chart (see paragraph 91 above).

237. The Court also notes that the medical certificate issued on the day of the applicant's release from the sobering-up centre recorded multiple, albeit superficial, injuries on the applicant's face, head and chest (see paragraph 100 above). Conversely, the alleged injury to the applicant's ribs was ruled out by the X-ray taken on 19 March 2014 (see paragraph 102 above).

238. While the medical certificate of 13 March 2014 did not state how old the injuries were or what was likely to have caused them (see paragraph 101 above), the report that was drawn up on 15 October 2014 by an expert in forensic medicine offered the following explanations: the abrasions on the applicant's forehead had most likely resulted from the applicant's fall during his walk in the forest earlier on 12 March 2014; and the other injuries to his

face, head and chest had resulted from repeated blunt trauma, for example, punching. They could have been caused in the circumstances described by the applicant – that is to say, as a result of the applicant being beaten at the sobering-up centre (see paragraph 103 above).

239. Lastly, the Court observes that the prosecutor, when closing the investigation, stated that in view of the sequence of events and the number of people who had come into contact with the applicant on 12 March 2014, it was impossible to determine what or who had caused the injuries that had been recorded by the physician soon after the applicant had left the sobering-up centre. Still, it was concluded that the applicant's version of events had not been corroborated by any evidence (see paragraph 124 above).

240. In the light of all the above elements, the Court must rely on the well-established principle that where an individual displays traces of blows after being under the control of the State authorities and complains that those traces are the result of ill-treatment, there is a – rebuttable – presumption that this is indeed the case (see, among other authorities, *Bouyid*, cited above, § 83). In order to benefit from the above-mentioned presumption, individuals claiming to be the victims of a violation of Article 3 of the Convention usually provide medical certificates for that purpose, describing injuries or traces of blows, to which the Court attaches substantial evidential weight (ibid., § 92).

241. The Court notes that the medical certificate produced in the present case – the authenticity of which is not contested – mentions a series of facial and bodily injuries (see paragraphs 100 and 237 above). This medical certificate was issued by a fully qualified physician shortly after the applicant had left the sobering-up centre. The fact that the physician was not a specialist in forensic medicine and that he had a private practice does not undermine the accuracy or the credibility of his observations in respect of the applicant's visible injuries (see paragraph 195 above). The medical certificate in question was complemented by the report of a forensic expert who concluded that the possible cause of some of the injuries on the applicant's face, head and chest had been repeated blunt trauma, for example, punching (see paragraphs 103 and 238 above). This report was drawn up by a State-appointed expert in forensic medicine.

242. The Government, rebutting the said presumption of fact, argued that the applicant had had pre-existing injuries, sustained during his walk in the forest or on his way home from the bar (see paragraph 193 above). As to why those injuries had not been recorded at the time of the applicant's arrest or later, during his admission to the sobering-up centre, the Government explained that the applicant had not given his consent for a medical examination by a sobering-up centre doctor (ibid.). The Government also stressed that the applicant had not reported any ill-treatment when he had had the opportunity to do so on his release. To this end, they observed that the applicant had not written any comments in the sobering-up centre's chart (see paragraph 95 and 193 above).

243. The Court observes that in its Grand Chamber judgment in *Bouyid*, cited above, it relied on the presumption in question and deemed it sufficiently established that the injuries described in medical certificates obtained by the applicants upon their leaving the police station had been sustained while they had been under police control (ibid., § 98).

244. In that case, however, it was not disputed that the applicants had not displayed any injuries on entering the police station (ibid., § 95). Conversely, in the case at hand, the Government have provided the hypothesis that the applicant had sustained his injuries before his arrest.

245. Another important difference with the case at hand is that the applicants in *Bouyid* were not offered the opportunity to be medically examined either as they were entering or as they were leaving the police station. The Court finds it established, in the light of the materials in the case file, that the applicant in the present case was indeed seen by the on-duty doctors at the sobering-up centre in the evening and in the morning. The doctors attempted to give the applicant a proper medical examination and they recorded the applicant's refusal (see paragraphs 68 and 90 above).

246. It follows that, in so far as the Government's hypothesis is partially supported by the applicant's own submission that he had walked into a tree earlier on the day in question (see paragraph 96 above), the Court accepts that some of the applicant's facial abrasions and swelling had very likely been sustained prior to his arrest (see paragraphs 11 and 103 above).

247. In respect of the remainder of the applicant's facial and bodily injuries, which, the Court observes, included a black eye, aching lower ribs on the left side and redness and aching of the applicant's chest, the Court makes the following observations. Given the applicant's inebriation it is not impossible that he did indeed fall down and hurt himself on his way home. It is uncertain, however, that that was what caused the applicant's black eye and the other injuries – in respect of the latter, especially given that he had been wearing several layers of clothes, including a winter jacket (see paragraph 63 above).

248. According to the notes made in the applicant's chart on his admission to the sobering-up centre, Doctor A.D. observed the applicant long enough to confirm his inebriation. The fact that she did not make a note of any facial injuries – especially those which the applicant had undeniably sustained when he had walked into a tree earlier in the day (see paragraphs 96 and 103 above), can only be explained if the doctor's visual contact with the applicant was too brief. The Court accepts that this was likely the case, given the fact that the applicant was agitated and that responsibility for him was quickly taken over by the centre's guards who, as recorded and recalled by witnesses, subjected the applicant to a restraining measure and then processed him further for sobering-up.

249. Likewise, the annotations made in the applicant's chart by the doctor on the morning shift appear to be standardised. By the time of his release, the

applicant was sober, and the Court does not find it justified on his part to refuse, as he did, to undergo a medical check-up (see paragraphs 68 and 92 above). The Court therefore considers that by doing so, the applicant effectively undermined the credibility of his version of events and the evidentiary value of the medical certificate that was later drafted by a doctor in private practice (contrast *Bouyid*, cited above, § 94).

250. Lastly, the Court would also attach importance to the scene that was captured by the camera monitoring, as described by the three people who watched it. This material indicates that there was a physical confrontation between the applicant and two of the guards of the sobering-up centre (see paragraph 84 above). What happened exactly in the centre's intimacy zone, however, escaped the monitoring. The authorities insisted that the applicant had been held down by the guards but never punched or hit. The Court stresses that, similarly to the Belgian authorities in the *Bouyid* case, the Polish authorities did not claim that the applicant's injuries had resulted from the use of force, such as the manual restraint measure. Instead, they consistently denied that the applicant had sustained any injuries at the sobering-up centre or anywhere else while under the control of State agents (see, *mutatis mutandis*, *Bouyid*, cited above, § 96).

251. In the light of all the above considerations, and given the fact that the criminal investigation, which was marked by serious shortcomings (see paragraphs 276-81 below), regrettably failed to establish the material facts beyond reasonable doubt, the Court concludes that the Government have cast serious doubt on the applicant's version of events, according to which at least some of his facial and bodily injuries were caused by the sobering-up centre employees hitting or beating him.

252. As a result, the Court does not deem it sufficiently established that the applicant's black eye and bodily injuries described in the medical certificate produced by the applicant occurred while he was under the control of the authorities at the sobering-up centre (contrast *Bouyid*, cited above, § 98).

(γ) Recapitulation in respect of forms of the alleged ill-treatment under examination

253. The Court recapitulates that the treatment which it has found sufficiently established comprises the following: (i) M.T. twisting the applicant's arms behind his back to handcuff him during the arrest (see paragraph 218 above); (ii) M.T. using some force to take the applicant to the police van and to put him inside (see paragraph 220 above); (iii) M.T. pushing the applicant on the way from the van to the police station (see paragraph 221 above); (iv) M.T. using physical pressure to sit the applicant on the floor inside the police station's cell (see paragraph 221 above); and (v) keeping the applicant lying on the floor with his arms handcuffed behind his back for an hour at the police station (see paragraph 224 above).

254. The Court notes that the applicant did not complain about the use of the manual restraint measure by the guards of the sobering-up centre.

(δ) Classification of the treatment inflicted on the applicant

255. The Court will now determine whether the applicant is justified in claiming that the treatment described above and of which he complains was in breach of Article 3 of the Convention.

256. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25). Moreover, 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, and *Bouyid*, cited above, § 88).

257. The Court has emphasised that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for, because the severity threshold has not been attained. Any interference with human dignity strikes at the very essence of the Convention. For that reason, any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question (see *Bouyid*, cited above, § 101, and *Pranjić-M-Lukić v. Bosnia and Herzegovina*, no. 4938/16, § 73, 2 June 2020).

258. Turning to the circumstances of the present case, the Court considers it established that the applicant was stopped by the police and then kept under the control of the authorities on the grounds that he was inebriated and posed a danger to himself and to others (see paragraph 216 above). In particular, the applicant was found staggering either on or in the vicinity of a road with cars on (see paragraphs 9, 11 and 20-21 above). Throughout the events under the Court's scrutiny, the applicant was uncooperative (see paragraphs 9, 11-12 and 19 above).

259. As to the applicant's treatment at the hands of the arresting officer (M.T.), the Court accepts that the applicant's conduct, namely waving his arms and shouting insults (see paragraphs 13 and 17 above), might reasonably have been perceived by the arresting police officers as threatening.

260. The Court therefore considers that M.T.'s decision to handcuff the applicant in the street and to keep him handcuffed during his transfer to the police station (see paragraph 253, point (i), above) was with the aim of

effecting a lawful arrest or detention (see paragraph 295 below) and strictly necessary. In view of the applicant's non-compliance with police orders, the Court also considers that M.T. had to use some force to put the applicant's arms together behind his back. The fluid nature of the incident – especially the applicant trying to walk away (see paragraphs 11-12 above) – would, in the Court's view, justify doing this even without clear warning (see paragraph 10 above, and, *mutatis mutandis*, *Staszewska v. Poland*, no. 10049/04, §§ 56-57, 3 November 2009).

261. Some discomfort for the handcuffed person is inherent in handcuffing. The applicant, who had various chronic shoulder and backbone ailments, might also have felt a degree of pain (see paragraph 218 above). The material in the case file indicates, however, that the applicant had not told M.T. about his orthopaedic condition (see paragraphs 8-19 and 21 above). Moreover, neither M.T.'s restraint measure nor his handcuffing of the applicant caused any visible marks, injuries or any impairment of the applicant's health. The applicant argued that he had had numerous other medical issues as a result of his alleged ill-treatment, but that assertion is not supported by the materials in the case file (compare, *mutatis mutandis*, *Y* v. *Latvia*, no. 61183/08, §§ 55-56, 21 October 2014).

262. The Court is also satisfied that, given the applicant's resistance, as well as his lack of balance when walking or sitting up on a chair, the force used by M.T. was made strictly necessary by the applicant's conduct.

263. In particular, the arresting officer used a very small degree of force in order to take the applicant to the police van and to put him inside (see paragraph 253, point (ii), above). As for M.T. pushing the applicant as they walked from the van to the police station (see paragraph 253, point (iii), above), the Court finds that the movement in question was isolated and, in any event, inconsequential, as it did not cause the applicant to stumble, fall down or have a painful neck. The applicant was not complying with verbal orders and had difficulty maintaining his balance. It follows that pushing him forward appeared to be strictly necessary in the circumstances. For the same reasons, M.T.'s use of minimal physical pressure to sit the applicant on the floor inside the police station's cell can be considered as strictly necessary to bring about the applicant's cooperation and to be able to carry on with his processing for sobering-up (see paragraph 253, point (iv), above).

264. The Court's conclusion above is based on the materials in the case file, which include – in respect of the treatment described in points (iii) and (iv) above – the recording of the video-monitoring of the police station (see paragraphs 46 and 62 above), which the Court has seen first-hand.

265. The same cannot be said in respect of the measure described under point (v) above, namely, keeping the applicant lying on the floor with his arms handcuffed behind his back for an hour at the police station (see paragraphs 224 and 252 *in fine* above).

266. The applicant was a vulnerable individual, firstly, because he was in custody and, secondly, because he was inebriated. As soon as he was placed in the locked cell, he no longer posed any threat to the police officers. Moreover, since the cell was completely bare and the applicant had, by that time, visibly calmed down, it cannot reasonably be argued that keeping him handcuffed ensured his own safety. As the cell's doors were barred, the police officers could easily, and indeed did, monitor the applicant's behaviour inside the cell.

267. The Court also observes that the applicant's position – lying flat on the floor, either on his stomach or on his side, as his arms were handcuffed behind back – increased his vulnerability and was likely to cause the applicant to feel humiliated. Having the applicant in that position highlighted his own inferiority and the superiority of the State agents (compare with *Bouyid*, cited above, § 106). The Court does not find it relevant that the applicant lay down on the floor of his own volition. In view of the applicant's inebriation, M.T.'s decision not to sit him on the chair cannot be contested. Conversely, sitting the applicant on the floor against the wall was not a viable option because the applicant had his arms handcuffed behind his back. In this way, forcing the applicant into a horizontal position would likely have caused him a feeling of arbitrary treatment, injustice and powerlessness (ibid.). The applicant's feeling of humiliation in his own eyes (ibid., § 105) was likely made worse by the fact that he was seen in this inherently debasing position by numerous employees of the police station who passed in front of his cell, especially around the time of the change of shifts.

268. In addition to the element of humiliation, the Court also notes that the applicant was kept in the same position for approximately an hour and that the floor on which he was lying was bare and, therefore, cold. This, combined with the applicant's orthopaedic ailments, was likely to cause him some physical discomfort or pain.

269. In view of the above, the Court considers that the applicant's treatment on 13 March 2014 at the hands of Officer M.T. (see paragraph 253, points (i)-(iv), above) was made strictly necessary by the applicant's own conduct, and as such cannot be considered as having diminished his dignity. Conversely, keeping the applicant handcuffed at the police station for an hour was not called for and reached the minimum level of severity required to fall within the scope of Article 3 of the Convention (see, *mutatis mutandis*, *Y. v. Latvia*, cited above, § 57). The authorities inflicted humiliation on the applicant, treatment that was not strictly necessary and excessive. By doing so, the authorities disregarded their duty to protect persons who, like the applicant, are under the control of the police and in a situation of vulnerability (see, *mutatis mutandis*, *Bouyid*, cited above, § 107 and *R.R. and R.D. v. Slovakia*, no. 20649/18, § 160, 1 September 2020).

270. Given that the applicant did not demonstrate that he had undergone serious physical or mental suffering, the treatment in question cannot be

described as inhuman or, *a fortiori*, torture. The Court therefore finds that the present case involved degrading treatment (see, *mutatis mutandis*, *Bouyid*, cited above, § 112, and compare with *Polanowski v. Poland*, no. 16381/05, § 56, 27 April 2010).

(iii) Court's conclusion as to the substantive aspect of the complaint

271. The Court holds that there has been a violation of the substantive limb of Article 3 on account of the fact that by keeping the applicant – a vulnerable individual – on the floor with his arms handcuffed behind his back for an hour, the authorities subjected the applicant, who was under their complete control, to degrading treatment.

(b) Procedural aspect of the complaint

(i) General principles

272. The general principles in respect of effective investigation are set out, *inter alia*, in *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 316-26, ECHR 2014 (extracts).

(ii) Application to the present case

273. The Court considers that the applicant's allegations that he was subjected to treatment breaching Article 3 of the Convention by officers during his arrest and processing at the police station and/or in the sobering-up centre were arguable – especially in the light of the medical certificate which the applicant produced with his criminal complaint. Article 3 thus required the authorities to conduct an effective investigation.

274. The Government submitted that the manner in which the investigation had been conducted had been satisfactory in the light of the criteria established in the case-law set out above.

275. The Court does not share the Government's view.

276. Firstly, the Court takes note of the authorities' attempt to ensure institutional independence of the investigation by relinquishing the case to a prosecutor outside of the local jurisdiction (see paragraphs 108 and 202 above). The Court also acknowledges that the authorities proceeded relatively speedily to secure testimony from all persons that had taken part in the impugned events – including a number of witnesses suggested by the applicant. The prosecutor also obtained, for the purposes of the investigation, all the documents that had been produced in relation to those events (see paragraphs 111-14 above).

277. However, the Court takes issue with the authorities' inability to secure the video-recording from the sobering-up centre which was clearly attributable to the prosecutor's failure to make a timely request for this evidence. In view of the existing statutory and internal regulations on the storage of video-recordings from the monitoring of sobering-up centres, the

prosecutor should have, and indeed could have in the circumstances of the case, obtained it shortly after the applicant had lodged his criminal complaint. No explanation has been given as to why the prosecutor, having made a successful request for the video from Czerwionka police station (see paragraph 116 above), waited until 14 August to make a similar request in respect of the recording from the sobering-up centre (see paragraph 117 above). The Court notes that the statutory deadlines for video storage elapsed on 11 April 2014 – for the minimum period of thirty days – and on 11 May 2014 – for the maximum period of sixty days – and the six-week period set out in the sobering-up centre's internal regulations, in turn, elapsed on 23 April 2014. Given that the applicant lodged his criminal complaint on 17 March 2014, the prosecutor had sufficient time to submit his request.

278. In the Court's view, the omission to secure the video in question as direct evidence had two types of repercussions.

279. Firstly, it significantly affected the substantive assessment of the facts, as the evidence which was obtained during the investigation was inconclusive as to the (pre-)existence of injuries and as to the applicant's alleged ill-treatment during his admission to the sobering-up centre. The video-recording would also have helped to confirm that the doctor had been present during the applicant's admission. It follows that, despite the fact that voluminous evidence was obtained, the investigation was not thorough.

280. Secondly, in the absence of the video, the prosecutor uncritically relied on indirect evidence produced by persons in charge and responsible for the running of the institution where the alleged ill-treatment had occurred.

(iii) Court's conclusion as to the procedural aspect of the complaint

281. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to carry out an effective investigation into the applicant's credible allegations of ill-treatment (see, *mutatis mutandis*, *Ibrahimov and Mammadov v. Azerbaijan*, nos. 63571/16 and 5 others, §§ 104-05, 13 February 2020, and *Mustafa Hajili v. Azerbaijan*, no. 42119/12, § 51, 24 November 2016). It is therefore unnecessary to address the other elements of the applicant's grievance under the procedural limb of Article 3.

282. There has accordingly been a violation of Article 3 of the Convention under its substantive and procedural limbs.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

283. The applicant complained under Article 5 of the Convention that his arrest and placement in the sobering-up centre had been arbitrary and unjustified.

284. The relevant part of Article 5 of the Convention reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

..."

A. Admissibility

285. The Court notes that this complaint 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. The parties' submissions

286. The applicant appears to be arguing that his admission to the sobering-up centre was unlawful because his inebriation had not been confirmed by means of a breathalyser test or a medical assessment. As to the latter, the applicant insisted that the doctor had not been present during his admission. The applicant also complained that he had not been informed of the reasons for his placement in the sobering-up centre and that his family had not been informed of his whereabouts.

287. The Government argued that the applicant's arrest and deprivation of liberty had been lawful measures. The procedure had not been arbitrary, and the measure had been necessary. The applicant had clearly been inebriated, and he had been found staggering near a road. As such, the applicant had posed a danger to himself and to others. Moreover, the decision to take the applicant for sobering-up, instead of taking him home, had been to avoid a family row. Although the applicant had refused to undergo an alcohol test, his inebriation had been obvious and confirmed by the doctor on duty at the sobering-up centre.

2. The Court's assessment

288. The Court first notes that the events complained of occurred during the applicant's detention for the purpose of sobering-up – initially in Czerwionka police station and then in Zabrze sobering-up centre. The Court has already held that confinement in a sobering-up centre in Poland, as provided for by domestic law, amounts to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention (see *Witold Litwa v. Poland*, no. 26629/95, § 46, ECHR 2000-III). By extension, confinement in a police

station during a person's processing for subsequent treatment in a sobering-up centre also falls within the scope of this provision.

289. The Court further finds that the applicant's deprivation of liberty from the time of his arrest, throughout his stay in the police station, and until his release the next day from the sobering-up centre, had a basis in national law (see, *mutatis mutandis*, *Wiktorko*, cited above, § 62, and *Witold Litwa*, cited above, § 74), in section $40^1(3)$ of the 1982 Act and section 3(3) of the 2004 Ordinance (see paragraph 150 above). The applicant was clearly inebriated throughout his arrest and his processing for admission to a sobering-up centre. As he was stopped staggering near a road with cars on, the Court accepts that the applicant posed a danger to himself as well as to others.

290. As regards the explicit statutory requirement that, for placement in a sobering–up centre, a patient's inebriation must be confirmed by a medical doctor, the Court finds that the material in the case file does not support the applicant's assertion that Doctor A.D. was not present during his admission to the sobering-up centre. It is true that, in his decision to discontinue the investigation, the prosecutor stated that a conclusive determination could not be made in this respect (see paragraph 124 above). However, the Zabrze District Court held, in the proceedings specifically concerning the legality of the applicant's detention, that all the procedural requirements had been complied with (see paragraph 127 above). Lastly, the Court notes that the doctor's signature and ample annotations are present in the applicant's chart (see paragraph 90 above).

291. Moving on, the Court reiterates that a necessary element of the "lawfulness" of the detention within the meaning of Article 5 § 1 (e) is the absence of arbitrariness. The detention of an individual is such a serious measure that it is only justified where other, less severe, measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is executed in conformity with national law, but it must also be necessary in the circumstances (see *Witold Litwa*, cited above, § 78).

292. As the law requires that a report be drawn up for the purposes of taking someone for sobering-up, the Court considers it justified that the applicant was taken for an identity check to Czerwionka police station.

293. The Court has, admittedly, taken issue with the duration of the applicant's identity-check procedure and with the conditions in which it was carried out. Having concluded that the applicant's detention in Czerwionka police station ran counter to the prohibition of degrading treatment (see paragraphs 265-71 above), the Court does not find it necessary, however, to examine this issue separately under Article 5 of the Convention.

294. Furthermore, the Court does not consider that the decision to commit the applicant for sobering-up was manifestly unjustified. Sufficient

consideration was given to the fact that section 40 of the 1982 Act provided for the option of taking an inebriated person to his or her place of residence (contrast *Witold Litwa*, cited above, § 79). The Court finds it credible that the police officers chose to detain the applicant in order to avoid a row between the applicant and his wife, which could have occurred if the applicant had been taken directly home. Prevention of situations which may lead to domestic violence or to neighbourhood disturbance constitutes a legitimate individual and general public reason for the applicant's detention. Lastly, the fact that the police officers chose the more burdensome option of driving the applicant to a sobering-up centre some distance away, instead of taking him to his home which was situated in the vicinity of the police station, only shows diligence on the part of the authorities.

295. In the light of the above considerations, the Court finds that the applicant's deprivation of liberty for the purposes of his sobering-up had a basis in national law, and the reasons given by the authorities cannot be considered arbitrary.

296. The Court accordingly finds that the complaint does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

298. 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

299. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage resulting from the physical pain that had been inflicted on him and that persisted for a week after his release, from his humiliation at the hands of the officers, and from his anxiety linked to the fact that his family had not been informed about his detention. The applicant also claimed pecuniary damage in the amount of 300 Polish zlotys (PLN – EUR 75). The latter amount corresponded to the statutory fee for a stay in the sobering-up centre, which the applicant had had to pay.

300. The Government found these sums to be exorbitant.

301. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. The Court also

rejects the applicant's claim for pecuniary damage as the violations found in the present case did not result from the applicant's detention for sobering-up as such but instead from his ill-treatment at the hands of the police officers at the police station, as well as shortcomings in the ensuing criminal investigation (see paragraphs 271 and 281-82 above).

B. Costs and expenses

302. The applicant also claimed PLN 1,500 (approximately EUR 375) for the costs and expenses incurred before the domestic authorities and PLN 3,000 (EUR 750) for those incurred before the Court. In support of his claims, the applicant submitted a copy of a numbered invoice dated 26 April 2016, issued by his lawyer before the Court. The invoice indicates that the sum of PLN 3,000 was charged for the applicant's legal representation in the present case. The applicant also produced a copy of a contract between him and a lawyer, L.M., dated 7 August 2014. The object of the contract is indicated as legal representation before the first-instance court. The contract is signed by both parties. It also features a handwritten annotation that PLN 1,500 has been paid.

303. The Government argued that the applicant had not justified that he had borne any costs of legal representation in connection with the present application.

304. 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 these were actually and necessarily incurred and are reasonable as to quantum. 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 1,125 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

305. 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 complaints concerning Article 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in its substantive and procedural aspects;

3. *Holds*

(a) that the respondent State is to pay the applicant, 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 Polish zlotys at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,125 (one thousand one hundred and 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;

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

Done in English, and notified in writing on 16 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Marko Bošnjak President