



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

FOURTH SECTION

CASE OF ORZEL v. POLAND

(Application no. 74816/01)

JUDGMENT

STRASBOURG

25 March 2003

FINAL

25/06/2003

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

In the case of Orzeł v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 4 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 74816/01) 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 Oskar Orzeł (“the applicant”), on 29 June 2000.

2. The Polish Government (“the Government”) were represented by their Agent, Mr Krzysztof Drzewicki.

3. On 11 December 2001 the Third Section decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 15 April 2002 the case was assigned to the Fourth Section (Rule 52 § 1 of the Rules of Court).

THE FACTS

5. The applicant, Mr Oskar Orzeł, is a Polish national who was born in 1978. He is a student and lives in Częstochowa, Poland.

A. The applicant’s eye surgery on 4 November 1988

6. Since early childhood, the applicant suffered from chronic inflammation of the vascular coat of his eyes. On 27 December 1984 the Katowice Clinical Hospital (*Szpital Kliniczny w Katowicach*) began to

provide the applicant with both outpatient and inpatient care. After a few months, Professor G.-Ł. was put in charge of the applicant's treatment.

7. In October 1988 Professor G.-Ł. recommended that the applicant undergo a laser coagulation surgery of his right eye. As she did not have experience in providing that kind of treatment, she decided that Doctor F.-K. would perform the surgery.

8. In the early morning of 4 November 1988 the applicant, who at that time was ten years old, arrived together with his mother at the Katowice Clinical Hospital. At 11 a.m. Doctor F.-K. started to receive patients. The applicant was received at around 2 p.m. as the last patient. He entered the examination room together with his mother. Except for Doctor F.-K., no other medical staff were present in the room.

9. The applicant was seated in a chair facing Doctor F.-K., whereas his mother stood behind her watching the treatment. The applicant was calm and relaxed. A red light on a laser started to flash indicating that the surgery was underway. Suddenly, Doctor F.-K. shouted in a stern voice "look straight". At that moment, the applicant's mother observed that his left eye moved. Soon afterwards, the red light stopped flashing, indicating that the treatment was finished. Doctor F.-K. stood up without saying a word. The applicant and his mother left the room. While putting on his clothes in the hospital corridor, the applicant told his mother that he could not see with his right eye. The mother immediately went back to the examination room and informed Doctor F.-K. about it. She also asked whether this was a normal reaction after the surgery but received no answer. The applicant's mother asked Doctor F.-K. when the applicant should report for a check-up. She was informed that he should keep his previously booked appointment in a week's time.

B. The applicant's post-operative medical treatment and the beginning of the compensation proceedings

10. On 5 November 1988 the applicant was examined in the ophthalmological ward of the Częstochowa Regional Hospital (*Wojewódzki Szpital Zespólny*). He was diagnosed with a cataract and a hole in the capsule of the lens. The doctor who examined the applicant considered that his loss of vision was caused by a laser surgery.

11. In 1989 and 1990 the applicant received medical treatment in Germany, Russia and Poland.

12. On 23 March 1990 the applicant, represented by his mother, lodged with the Katowice Regional Court (*Sąd Wojewódzki*) an action in which he claimed compensation from the Katowice Clinical Hospital. The applicant also asked the court to find the defendant liable for any future deterioration of his health resulting from the alleged medical malpractice. He claimed that because of the negligence of a doctor who carried out the surgery, the

capsule of the lens in his right eye had been punctured. It led to a cataract and required further medical treatment. As a result of the medical malpractice the applicant, who was thirteen, was an invalid and had thoughts of suicide.

13. Before 1 May 1993 nine hearings were held and three medical opinions were submitted to the court.

14. On 22 June 1993 the applicant extended his claim. He requested a monthly allowance. The applicant based his claim on the fact that the alleged medical negligence resulted in his permanent disability and thus increased his needs and deprived him of many opportunities to succeed in his life.

15. On 13 July 1993 the Regional Court held a hearing.

16. On 23 November 1993 the trial court received an expert opinion from the Gdansk Medical Academy.

17. On 7 February 1994 the defendant filed with the trial court written pleadings in which it rejected the applicant's claims.

18. Between 8 February and 18 November 1994 six hearings were held and the court requested two supplementary medical opinions from the Gdansk Medical Academy. They were submitted to the trial court on 17 March 1994 and 16 February 1995.

19. Subsequently, the trial court held hearings on 8 June, 6 July, 28 November 1995 and 22 January 1996.

C. The first-instance judgment

20. On 31 January 1996 the Katowice Regional Court delivered a judgment. It considered that Doctor F.-K. was "negligent, imprudent, clumsy and careless" in performing a laser coagulation surgery of the applicant's eye on 4 November 1988. The court assessed her conduct during the surgery against that of a diligent professional (*dobry fachowiec*) but found on her part several shortcomings, which showed that she failed in her duty of care required under that standard. In particular, the court considered that the doctor did not immobilise the eyeball which was being operated on. The court referred to expert opinions obtained during the proceedings. It awarded the applicant 1,500 Polish zlotys (PLN) by way of pecuniary damage and PLN 15,000 under the head of non-pecuniary damage together with interest. The court dismissed the remainder of the claim for compensation.

21. Both parties appealed to the Katowice Court of Appeal (*Sąd Apelacyjny*).

D. The quashing of the judgment

22. On 17 May 1996 the Katowice Court of Appeal quashed the first-instance judgment and remitted the case to the trial court. The appellate court considered that some of the shortcomings on the part of Doctor F.-K. found by the trial court were “problematic” and did not have “a direct influence on the resultant damage”. Only the failure to immobilise the eyeball could have constituted relevant negligence. The Court of Appeal also criticised the Regional Court’s assessment of compensation awarded to the applicant and found that some facts had not been properly established. In particular, the trial court had failed to ascertain whether the applicant and his mother had been informed how he was to conduct himself during the operation and about its potential complications.

E. The proceedings after the remittal of the case

23. On 1 and 4 October 1996 the Katowice Regional Court held hearings. Subsequently, it requested an expert opinion from the Wrocław Clinical Hospital. The opinion was submitted on 18 December 1996.

24. Between November 1996 and August 1998 no hearings were held.

25. On 11 September and 4 December 1998 the trial court held hearings. Between 3 March and 29 September 1999 the proceedings were stayed.

26. On 29 September 1999 the trial court held a hearing.

27. On 2 October 2000 the expert opinion prepared by Mr E.W. was submitted to the court.

28. Between October 1999 and October 2000 no hearings were held. At the hearing held on 21 November 2000 the court heard the expert witness Mr E.W.

29. The hearing held on 20 December 2000 was adjourned until 6 March 2001.

30. On 6 March 2001 the court decided that it would deliver a judgment on 20 March 2001. However, on the latter date the court resumed the proceedings and ordered a ninth expert opinion.

31. On 23 October 2001 a hearing took place before the trial court.

32. On 6 November 2001 the Katowice Regional Court gave a judgment. The trial court established that the applicant’s surgery in 1988 had been carried out according to medical standards at the material time and dismissed allegations of medical malpractice on the part of the doctor who had performed it. In the court’s opinion the deterioration of the applicant’s health was caused by a rare post-surgery complication aggravated by his illness from which he had been suffering prior to the surgery. Despite finding the defendant not liable, the court established that the applicant sustained damage in connection with the surgery and found it justifiable to award him PLN 50,000 in compensation. The applicant was also awarded a

monthly allowance of PLN 100, which in the court's opinion would compensate his increased needs.

The court dismissed the remaining part of the applicant's action, in particular, relating to the pecuniary damage sought by him. In this respect the court found that the applicant's breakdown of costs of special eye-care products, lenses and other medicaments was completely unreliable and that his treatment abroad was unjustified since he could have been treated in Poland. The court also dismissed the part of his action relating to finding the defendant liable for any future deterioration of his health.

33. On 18 January 2002 the applicant lodged an appeal against the judgment. He complained, *inter alia*, that in spite of the fact that many expert opinions from different medical centres in Poland had been taken, the trial court had based its findings solely on the expert opinion of Mr E.W., who was a colleague of the doctor who had performed the surgery and worked in the same city.

34. On 8 May 2002 the Katowice Regional Court issued a decision in which it declared final the part of its judgment of 6 November 2001 concerning the amount of compensation. The applicant lodged an appeal against this decision.

35. The proceedings following his appeals against the Katowice Regional Court's judgment of 6 November 2001 and the decision of 8 May 2002 are pending before Katowice Court of Appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

37. The Government contended that the facts of the case disclosed no breach of that provision.

A. Admissibility

38. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments before the Court.

(a) The Government

39. The Government submitted that the case was particularly complex which was shown by the number of expert opinions.

40. As to the conduct of the applicant, the Government accepted that the applicant did not significantly contribute to the length of the proceedings. However, in the Government's view, on 19 October 2000 the applicant challenged an expert opinion and on 6 March 2001 requested another expert opinion which prolonged the proceedings.

41. With regard to the conduct of the relevant authorities the Government argued that the domestic courts demonstrated due diligence and "wanted to thoughtfully establish the factual circumstances of the case". Moreover, the Government submitted that the courts "displayed a conducive attitude towards the applicant" because they exempted him from the court fees and gave judgments favourable to him.

42. Lastly, the Government stressed that the applicant's claim was of a pecuniary nature and was already satisfied by the domestic authorities because the Katowice Regional Court had awarded him compensation in the amount of PLN 50,000.

43. In conclusion, the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

(b) The applicant

44. The applicant submitted that his case was not complex. He claimed that the facts and the medical background were rather simple and could not have justified an inordinate length of the proceedings which had been pending for over twelve years. He further raised doubts as to the necessity to order so many expert opinions since from the beginning of the proceedings the courts had had available extensive evidence from foreign and Polish experts.

45. The applicant did not agree with the Government's opinion that he contributed to the length of the proceedings. He submitted that none of the

nine expert opinions prepared during the proceedings were ordered at his request. He claimed that each time they were ordered *ex officio* by the courts. The applicant maintained that he had requested the courts on several occasions to order a medical opinion from the Hamburg Clinical Hospital, which he considered the most independent and professional, however, the courts never granted his request.

46. As regards the conduct of the authorities the applicant maintained that the courts were solely responsible for the length of the proceedings. He submitted that the Katowice Regional Court had examined the case twice, each time for six years. Moreover, the court stayed the proceedings for seven months and ordered too many expert opinions.

47. Referring to what was at stake for him, the applicant contested the Government's opinion that his claim was satisfied by the domestic authorities. He submitted that he turned to a court asking for justice and fairness which could remedy medical malpractice of which he was a victim and which caused his disability. However, the courts had not only not awarded him any financial compensation which would have given him access to better medical treatment, but had also caused him additional stress and financial hardship by prolonging the proceedings.

The applicant further argued that the Katowice Regional Court's judgment could not be considered as satisfying his action because the court dismissed his allegations concerning medical malpractice and excluded any responsibility of the hospital for his invalidity. The judgment also excluded the liability of the defendant for any future deterioration of the applicant's health. In the applicant's opinion his state of health continued to be unstable and new post-operative complications were still likely to appear. Therefore, he needed constant medical care to prevent total blindness.

2. The Court's assessment.

(a) Period to be taken into consideration

48. The Court notes that the period to be taken into consideration began not on 23 March 1990 when the applicant initiated the proceedings, but on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. The proceedings are still pending (see paragraphs 12 and 35 above).

It follows that the proceedings have lasted so far nearly thirteen years, out of which nine years and ten months are to be taken into consideration by the Court.

49. In assessing the reasonableness of time in question the Court will have regard to the state of the case on 1 May 1993 (see, among other authorities, *Malinowska v. Poland*, no. 35843/97, § 84, 14 December 2000, unreported).

(b) Reasonableness of the length of the proceedings

50. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

51. The Court considers that the case was one of some complexity as it concerned allegations of medical malpractice and therefore the facts of the case had to be assessed against the expert evidence on ophthalmology. However, the overall length of the proceedings cannot be explained by their complexity.

52. As regards the conduct of the applicant, the Court observes that the Government acknowledged that he did not substantially contribute to the length of the proceedings (see paragraph 40 above). Although the parties disagreed on whether the applicant challenged one expert opinion or requested new ones (see paragraphs 40 and 45 above), this would not in any event change the Court's view that the applicant's conduct could not justify the overall length of the proceedings.

53. With respect to the conduct of the national authorities, the Court notes that no hearings were held between 19 November 1994 and 7 June 1995 (see paragraphs 18 and 19 above). Following the quashing of the first-instance judgment by the appellate court, the Katowice Regional Court needed almost five and a half years to reconsider the case. During that period it held only nine hearings (see paragraphs 23-31 above). In particular, no hearings were held between November 1996 and August 1998 or between October 1999 and October 2000 (see paragraphs 24 and 28 above). Although during that time the trial court took some steps in the proceedings, such as ordering expert opinions, these do not explain such long delays between the hearings.

54. As regards what was at stake for the applicant, the Court observes that the applicant, who was a child at the beginning of the proceedings, made before domestic courts very serious allegations of medical malpractice which made him an invalid and deprived him of a normal childhood and many opportunities to succeed in life. The proceedings were therefore of considerable importance for the applicant since they were intended not only to result in compensation for his sufferings but also to enable him to receive the best medical treatment. However, he reached the age of majority without any final decision on his claim. Therefore, the Court cannot agree with the Government's statement that the domestic authorities satisfied the applicant's claim.

(c) Conclusion

55. The Court considers that, in the particular circumstances of the instant case, a period of nearly thirteen years, out of which nine years and ten months are to be taken into consideration by the Court, without any final decision having been reached yet, exceeds a reasonable time.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

56. The applicant also complained that he had been subjected to inhuman and degrading treatment resulting from the length of the impugned proceedings. He relied on Article 3 of the Convention.

57. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

58. Having regard to the finding relating to Article 6 § 1 (see paragraph 55 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 3 (see, *mutatis mutandis*, *Nasri v. France*, judgment of 13 July 1995, Series A no. 320-B, § 48).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant asked the Court to award him EUR 2,823 and PLN 69,565 in respect of pecuniary damage. He also claimed PLN 100,000 for non-pecuniary damage.

61. The Government submitted that the applicant’s claim was excessive.

62. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

63. On the other hand, the Court is of the view that the applicant suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. In addition, they were augmented by the tragic circumstances which were at origin of the applicant’s civil action. Accordingly, the Court considers that, in the particular circumstances of the instant case and deciding on equitable basis,

the applicant should be awarded EUR 10,000 under the head of non-pecuniary damage.

B. Default interest

64. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], application no. 28957/95, §124, to be published in ECHR 2002).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to examine the complaint under Article 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage to be converted into Polish zlotys at the rate applicable at the settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 March 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President