



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

FOURTH SECTION

CASE OF WYSOCKA-CYSARZ v. POLAND

(Application no. 61888/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

1 July 2003

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

In the case of Wysocka-Cysarz v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Mr J. BORRERO BORRERO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 10 June 2003,

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

PROCEDURE

1. The case originated in an application (no. 61888/00) 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, Teresa Wysocka-Cysarz ("the applicant"), on 30 December 1999.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant complained under Article 6 § 1 of the Convention about the length of a set of civil proceedings

4. On 1 October 2002 the Court decided to communicate the application 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.

5. On 31 January 2003, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 11 February 2003 and on 18 February 2003 the Government and the applicant respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1951 and lives in Gdynia.

7. On 26 October 1993 the applicant lodged a civil claim against the Public Health Care Centre No. 1 in Gdynia, claiming compensation for

health loss she had suffered as a result of a shock caused by the injection of a product to which she had been allergic.

8. By a letter of 7 January 1994 the Health Care Centre No. 1 in Gdynia submitted that, as a result of organisational changes, it was the Gdynia-Śródmieście Specialised Clinic which had standing to be a defendant in the case.

9. On 1 March 1994 the court summoned the Gdynia-Śródmieście Specialised Clinic to become a party to the proceedings.

10. On 29 April 1996 the court ordered that expert opinions of a neurologist and urologist be prepared.

11. On 19 September 1996 the Gdańsk Medical Academy refused to give an opinion as in principle they refused to prepare expert reports in cases in which civil liability was potentially involved of physicians working in institutions of the public medical service, supervised by that Academy.

12. The court ordered that the Bydgoszcz Medical Academy be requested to prepare the opinion, apparently without success. It appears that they indicated that the preparation of such opinion would require that the applicant be hospitalised for observation.

13. On 9 May 1998 the Poznań Medical Academy refused to prepare a report, relying on their workload.

14. On 6 August 1998 the Kraków Medical Academy likewise refused to prepare the opinion, invoking an impossibility to find available specialists required by the court.

15. On 1 September 1999 the Wrocław Medical Academy refused to prepare the opinion, also invoking an impossibility to find available specialists required by the court, and also indicating that it would be necessary that the applicant undergo a hospital observation.

16. On 13 January 1999 the Gdynia-Śródmieście Specialised Clinic submitted that as a result of further organisational changes in the public health care system, the State Treasury should be represented by the Gdańsk Governor, and that the Gdynia Municipality should not be a party to the proceedings. By a decision of 28 January 1999 the court summoned the Governor as a party to the proceedings and discontinued the proceedings in respect of the Gdynia Municipality.

17. On 3 February 2000 the court transmitted the case to the Gdańsk Regional Court, which had become competent to deal with the case following the change of the defendant.

18. By a letter of 17 February 1999 the Gdańsk Governor submitted that he had no standing in the proceedings as since 1 January 1999 the Gdynia Municipality had become competent in matters of public health services.

19. On 11 April 2000 the Gdańsk Regional Court held a hearing and decided that eventually the Gdynia-Śródmieście Specialised Clinic should be the defendant.

20. The next hearing was scheduled for 6 June 2000. On an unspecified date two expert opinions were submitted to the court.

21. On 16 June 2000 the Gdynia District Court gave its judgment and dismissed the applicant's claim.

22. On 31 January 2001 a hearing was held before the Gdańsk Court of Appeal. The court decided to call further experts.

23. On 23 October 2001 the Court gave its judgment, partly changed the first-instance judgment and awarded the applicant compensation of PLN 5,000 and costs.

THE LAW

24. The applicant complained under Article 6 § 1 of the Convention that the proceedings in her case had exceeded a reasonable time.

A. Admissibility

25. 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. The Court will therefore declare the application admissible.

B. Solution reached

26. On 11 February 2003 the Court received the following declaration from the Government:

“I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Poland offer to pay 12,500 zlotys to Teresa Wysocka-Cysarz. This sum is to cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable within three months from the date of delivery of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.”

27. On 18 February 2003 the Court received the following declaration signed by the applicant:

“I note that the Government of Poland are prepared to pay me the sum of 12,500 zlotys covering pecuniary and non-pecuniary damage and costs with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

I accept the proposal and waive any further claims against Poland in respect of the facts of this application. I declare that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and I have reached.”

28. The Court takes note of the agreement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

29. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Decides* to strike the case out of the list.

Done in English, and notified in writing on 1 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President