



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

FOURTH SECTION

CASE OF D.M. v. POLAND

(Application no. 13557/02)

JUDGMENT

STRASBOURG

14 October 2003

FINAL

14/01/2004

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 D.M. 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. PAVLOVSCHI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 13557/02) 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, Mrs D.M. ("the applicant"), on 30 October 2000.

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

3. On 14 January 2003 the Fourth Section decided to communicate the complaint concerning the length of the proceedings and the alleged lack of effective remedy 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. It also gave priority to the application, pursuant to Rule 41 of the Rules of the Court. The President of the Chamber further decided to authorise the anonymity of the applicant (Rule 47 § 3 of the Rules of Court).

THE FACTS

4. The applicant was born in 1927 and lives in Zamość, Poland.

5. In 1991 the applicant noticed a lump on her neck and went to the Lublin Hospital. After a general examination she was diagnosed with a non-cancerous salivary gland tumor. In October 1991 she underwent a surgery. Only after her operation were the relevant tests carried out, which proved the malignant nature of her tumor. Subsequently, the applicant turned to another hospital, in Szczecin, where she underwent a second

operation. This additional surgery has led to serious complications such as jaundice and post-traumatic stress disorder.

6. On 27 January 1994 the applicant initiated before the Lublin District Court (*Sąd Rejonowy w Lublinie*) civil proceedings for compensation against the State Treasury represented by the Lublin Hospital. She claimed that she was a victim of medical malpractice because of the errors committed while making the diagnosis and during the first surgery which led to additional surgery and caused enormous suffering and general deterioration of her health.

7. On 17 March 1994 the applicant was partly exempted from the court-fees.

8. On 20 June 1994 the trial court held a first hearing.

9. Between 21 November 1994 and 28 March 1995 six hearings were held. The trial court heard witnesses and the applicant, and ordered preparation of expert opinions.

10. In April and July 1995 two expert opinions prepared by the Lublin Medical Academy were submitted to the court.

11. Between 29 March 1995 and 19 August 1996 no hearings were held.

12. At the hearings held on 20 August and 10 December 1996 the court ordered two additional expert medical opinions.

13. On 17 March 1997 the court, sitting *in camera*, dismissed the parties' applications for another expert opinion because they had failed to pay the costs of the opinion.

14. At the hearing held on 4 April 1997 the court allowed the parties' application for an additional expert opinion.

15. On 9 June 1997 the opinion was submitted to the court.

16. Subsequently, the trial court held hearings on 2 September and 27 November 1997.

17. In 1998 the trial court held in total six hearings and on 24 November 1998 it gave judgment. It awarded the applicant PLN 3,500 in compensation and dismissed the remaining part of her action.

18. Both parties appealed against the judgment.

19. On 6 May 1999 the Lublin Regional Court (*Sąd Wojewódzki*) held a hearing and on 20 May 1999 it gave judgment. The court quashed the first-instance judgment and remitted the case to the Lublin District Court.

20. On 4 November 1999 the trial court held the first hearing at which the applicant changed the value of her claim. In consequence, the case was transferred to the Lublin Regional Court.

21. Subsequently, hearings were held on 25 January and 21 March 2000.

22. On 4 May 2000 the trial court, sitting *in camera*, decided that in view of the changes in the law on the administrative organisation of Poland the Lublin Governor would represent the Lublin Hospital.

23. On 18 July 2000 the applicant further extended her action. She requested PLN 35,000 as compensation for non-pecuniary and pecuniary damage.

24. On 7 September 2000 the trial court, sitting *in camera*, ordered two medical expert opinions. The court also exempted the applicant from the court-fees for the extended value of her claim.

25. On 11 September, 11 December 2001 and 23 January 2002 the court held hearings.

26. On 1 February 2002 the Lublin Regional Court gave judgment. It awarded the applicant PLN 20,000 for non-pecuniary damage and PLN 4,000 for pecuniary damage. The court found, *inter alia*, that the surgery carried out in the Lublin Hospital did not satisfy the requirements of diligent medical care (*niezgodna z zasadami sztuki lekarskiej*) and was done without the obligatory consent of the applicant. The malpractice during the surgery had to be remedied by the second, additional, operation which resulted in unnecessary physical and psychological suffering on the part of the applicant and prolonged the period of insecurity about the final diagnosis of her life-threatening illness.

27. The parties did not appeal against this judgment and it became final.

THE LAW

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

28 The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement 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 ... hearing within a reasonable time by [a] ... tribunal...”

29. The Government contested that argument.

30. The period to be taken into consideration began on 27 January 1994 and ended on 1 February 2002. It thus lasted eight years and five days.

A. Admissibility

31. The Court notes that the complaint 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 it admissible.

B. Merits

1. *The submissions before the Court*

32. The Government submitted that the case was complex as it concerned medical malpractice and required recourse to specialised medical knowledge. In particular, the Government noted that the trial court had taken expert evidence.

33. The Government acknowledged that the applicant did not contribute to the length of the proceedings.

34. As regards the conduct of the domestic authorities the Government was of a view that they showed due diligence in examining the case. The Government submitted that there were no periods of inactivity attributable to the domestic authorities and some delays were caused by preparation of the expert opinions.

35. Finally, the Government maintained that the applicant's claim was almost entirely satisfied in the domestic proceedings.

36. The applicant submitted that the trial court was solely responsible for the protracted length of the proceedings. She noted that the Lublin District Court held hearings too rarely and prepared a number of unnecessary expert opinions.

37. The applicant further submitted that the delay in examining her allegations of medical malpractice had caused additional stress and financial hardship for her. Finally, she pointed out that, given her advanced age and poor health, the nature of the litigation called for expedition.

2. *The Court's assessment*

38. 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 and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

39. 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. However, the overall length of the proceedings cannot be explained by their complexity.

40. As regards the conduct of the applicant, the Court observes that the Government acknowledged that she did not contribute to the length of the proceedings (see paragraph 33 above). It sees no reason to hold otherwise.

41. With respect to the conduct of the national authorities, the Court notes that no hearings were held between 29 March 1995 and 19 August 1996 as well as between 22 March 2000 and 10 September 2001 (see paragraphs 11, 21 and 25 above). These periods lasted fifteen and eighteen months respectively. 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.

42. Finally, the Court considers that what was at stake for the applicant in the domestic litigation was of significant importance to her.

43. Consequently, the Court considers that, in the particular circumstances of the instant case, a period of eight years and five days, exceeds a reasonable time.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

44. The applicant further complained that she had no domestic remedy to complain about the excessive length of the proceedings. She relied on Article 13 of the Convention.

45. The Government submitted that at the time of lodging her application with the Court the applicant did not have at her disposal an effective remedy for her complaint under Article 6 § 1 of the Convention. However, they noted that on 4 December 2001 the Polish Constitutional Court gave judgment, in consequence of which a remedy in respect of the excessive length of proceedings had been created. The Government concluded that after 18 December 2001 the applicant had at her disposal an effective remedy and “encouraged” her to resort to that remedy.

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

47. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see, *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). While the *Kudła* case concerned criminal proceedings, the Court finds that this requirement applies equally to civil law procedure. Furthermore, the Court refers to its case-law to the effect that no specific remedy in respect of the excessive

length of proceedings exists under Polish law (see, the Kudła judgment cited above § 160 and *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82-A, p. 76).

48. The Court notes that the Government acknowledged that at the time of lodging her application with the Court the applicant did not have an effective remedy in respect of the length complaint.

49. As regards the Government contention that after 18 December 2001 the applicant had an effective remedy at her disposal, the Court observes that the Government's objection is confined to a mere assertion, and neither further information about the Constitutional Court's judgment nor any juridical practice relating thereto have been provided. In the absence of such evidence the Court finds that the Government have failed to substantiate their contention that the remedy at issue is an effective one (see *Skawinska v Poland* (dec), no. 42096/98, 4 March 2003).

50. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce her right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 10,000 US dollars (USD) in respect of non-pecuniary damage.

53. The Government submitted that her claim was exorbitant.

54. 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. Accordingly, it awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Default interest

55. 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.

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 there has been a violation of Article 13 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 5,000 (five 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 amount 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 14 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President