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

FOURTH SECTION

DECISION

Application no. 46536/14
Marianna PONIEWIERSKA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 5 January 2016 as a Committee composed of:

Nona Tsotsoria, *President,*
Krzysztof Wojtyczek,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 June 2014,

Having regard to the declaration submitted by the respondent Government on 13 October 2015 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Ms Marianna Poniewierska, is a Polish national, who was born in 1945 and lives in Warsaw. She is represented before the Court by Mr M. Pietrzak, a lawyer practising in Warsaw.

The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

On 28 November 2003 the applicant's daughter, Anna Pobiarżyn (A.P.) was arrested and subsequently detained on remand on suspicion of attempted fraud. On 2 December 2003 A.P. underwent a standard medical check. She was examined by W.T., a doctor of the Warsaw-Grochów Remand Centre. A.P. informed the doctor that she suffered from duodenal ulcer (*choroba wrzodowa dwunastnicy*).

On 3 December 2003 the same doctor examined A.P. again. In the afternoon of the same day an ambulance was called to A.P. The doctor of the emergency service diagnosed her with peptic ulcer (*choroba wrzodowa żołądka*). On 4 December 2003 A.P. was examined by doctor W.T. On 5 December 2003 A.P. was transferred to the hospital of the Warsaw-Mokotów Remand Centre where she was diagnosed with peritonitis (*zapalenie otrzewnej*). She was admitted to the intensive care unit in a serious condition. On 9 December 2003 A.P. was transferred unconscious to a civilian hospital in Warsaw. Despite efforts her condition continued to deteriorate and she died on 21 December 2003.

On 19 September 2005 the prosecutor filed a bill of indictment against doctor W.T. with the Warsaw District Court. Doctor W.T. was charged under Article 160 § 2 in conjunction with Article 160 § 3 of the Criminal Code with having exposed A.P. to an immediate danger of loss of life or a serious impairment of health. The charge was related to A.P.'s examination on 4 December 2003 during which doctor W.T. had failed to diagnose A.P.'s obvious peritonitis and to urgently recommend surgical consultation.

The applicant had the status of auxiliary prosecutor in the proceedings.

On 29 May 2009 the Warsaw District Court gave judgment and acquitted doctor W.T. Having regard to the forensic opinions and medical documentation, it found that there was no evidence indicating that on 4 December 2003 A.P. had suffered from peritonitis and therefore it could not have been alleged that the defendant had failed to diagnose it. With regard to the defendant's alleged failure to recommend an urgent consultation, the trial court found that his decision to recommend a standard consultation had reflected his experience and the circumstances of the case. The applicant and the prosecutor appealed.

On 10 February 2010 the Warsaw Regional Court quashed the trial court's judgment and remitted the case. It found that the prosecutor had committed fundamental errors in formulating the charge against doctor W.T. by having limited it to an examination carried out on 4 December 2003 instead of referring to the entire diagnostic process between 2 and 4 December 2003. The trial court had followed that erroneous approach. It had further erroneously assessed the forensic opinions.

On 10 June 2013 the Warsaw District Court gave judgment. It convicted doctor W.T. of having inadvertently exposed A.P. to an immediate danger of loss of life or a serious impairment of health. The trial court held that the defendant failed to make a proper diagnosis and to recommend urgently further consultations and tests. The defendant was sentenced to a suspended term of eight months' imprisonment and a fine. The trial court further prohibited the defendant to practise as a doctor for one year. Doctor W.T. appealed.

On 16 December 2013 the Warsaw Regional Court gave judgment. It quashed the District Court's judgment and discontinued the proceedings since the criminal liability of the accused had become prescribed.

The applicant alleged a breach of Article 2 of the Convention in its substantive aspect. In her view, the authorities had failed in their positive duty to provide to her daughter proper medical care in detention. The applicant also complained under the procedural limb of Article 2 that the authorities had not carried out an effective and prompt investigation into the death of her daughter. As a result of procedural errors and delays in the investigation and subsequent judicial proceedings, the authorities were unable to determine the question of criminal responsibility of doctor W.T. and the proceedings against him were finally discontinued as time-barred.

The application was communicated to the Government.

THE LAW

After unsuccessful friendly-settlement negotiations, by letter dated 13 October 2015 the Government informed the Court that they proposed to make a declaration with a view to resolving the issues raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "...the Government hereby wish to express – by way of the unilateral declaration – their acknowledgment for the fact that the applicant['s daughter] has been subjected to treatment contrary to Article 2 of the Convention on account of the inadequacy of medical treatment provided to the applicant's daughter in detention and failure to conduct effective and prompt investigation into the death of her daughter. Simultaneously, the Government declare that they are ready to pay the applicant the sum of EUR 15,000 which they consider to be reasonable in the light of the Court's case law in similar cases (see, *inter alia*, *Ciechońska v. Poland*, application no. 19776/04, judgment of 14 June 2011; *Mojsiejew v. Poland*, application no. 11818/02, judgment of 24 June 2009; *Łochińska-Stawikowska and Stawikowski v. Poland*, application no. 8731/10, decision of 23 August 2011; *Wojtoń v. Poland*, application no. 53403/10, decision of 4 February 2014). The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points.
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> The Government respectfully suggest that the above declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention."

On 20 November 2015, the Court received a letter from the applicant informing the Court that she had agreed to the terms of the Government's declaration.

The Court finds that following the applicant's express agreement to the terms of the declaration made by the Government the case should be treated as a friendly settlement between the parties.

It therefore takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases pursuant to Article 39 of the Convention.

Done in English and notified in writing on 28 January 2016.

Fatoş Aracı Deputy Registrar	Nona Tsotsoria President