



H. v. France

Application No. 10073/82; (1989) 12 EHRR 74

Country: France

Region: Europe

Year: 1989

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Disabilities, Health information, Hospitals, Informed consent, Medical malpractice, Mental health

Human Rights: Right to bodily integrity, Right to due process/fair trial

Facts

The applicant, a French citizen, struggled with depression, schizophrenia and, at some points, symptoms of catatonia. In May of 1961, the applicant, who was a primary school supply teacher, voluntarily reported to the neurological clinic at Strasbourg Hospital for observation. He expected to be in the hospital for two weeks. In June of 1961, the head of the psychiatric clinic diagnosed him with schizophrenia and developing symptoms of catatonia. He prescribed narcoanalysis, which is an investigation of the subject's unconscious after he has been put into a sleeplike state. The next day, a house physician gave the applicant an injection of an unspecified dose of Maxiton, dexamphetamine, which cause amphetamine shock. The applicant alleged that the doctor administered this injection without the applicant's consent, without a prior examination, and without instruction from the heads of the clinic. In the case of schizophrenics, amphetamine shock was noted to generally worsen catatonic symptoms. At the time, the applicant was informed that he had been injected with a powerful tonic, but was not informed that he had been injected with amphetamines. The applicant ended up staying in the facility for more than three and a half months. Although the applicant returned to work after leaving the hospital, he was asked to leave his position not long after as his condition worsened.

Only in 1970 did the applicant become aware that the injection he received while in the hospital was an amphetamine dose. He asked the hospital to disclose his medical file, but the request was refused. In May of 1973, he applied for legal aid to file a complaint in the Strasbourg Administrative Court seeking a declaration that the hospital was liable for the harmful consequences of the amphetamine injection. Although the applicant sought permission from the administrative court to receive an expert opinion on his medical condition and the impact of the amphetamine injection, the court denied the request on the grounds that the applicant had not demonstrated a causal connection between the injection and his illnesses. The court dismissed the action in May of 1978. There was evidence that the applicant's legal representation was not of high quality in the proceeding and may have contributed to certain delays in the case. The court also considered a letter from a physician where the letter specifically stated that it was not to be used in court.

In November of 1978, the applicant appealed the dismissal to the Conseil d'Etat. In that proceeding, the applicant entered a new letter for evidence from the same physician, but one that was intended to be used in court. The Conseil d'Etat, however, dismissed the appeal after again denying the request for an expert medical opinion to evaluate the impacts of the amphetamine injection.

The applicant alleged that the acts of the Strasbourg Administrative Court and the Conseil d'Etat violated his rights under Article 6 para. 1 (due process) of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) based on claims that (1) the administrative courts had not heard the case within a reasonable time and (2) the applicant did not receive a fair trial as the courts failed to order an expert opinion and a proper investigation into the applicant's health.

Decision and Reasoning

The Court held that the actions of the Strasbourg Administrative Court were not within a reasonable timeframe and therefore violated Article 6 of the Convention. The Court did not find violations of Article 6 with regards to the timeframe of the Conseil d'Etat or with regards to the fairness of either of the proceedings.

The Court first noted that Article 6 para. 1 was applicable because, despite the fact that the applicant's action

was directed against a public body which was subject to France's domestic rules on liability, "the determination of... civil rights and obligations" required by Article 6, para 1 applied irrespective of the parties' public or private status.

With regards to the reasonableness of the length of the proceedings, the Court found a violation of Article 6 (entitling individuals to a fair hearing within a reasonable amount of time) by the Strasbourg Administrative Court, but not by the Conseil d'Etat. The overall period between filing the complaint with the Strasbourg Administrative Court and receiving the decision from the Conseil d'Etat was more than seven years and seven months. The segment related to the Strasbourg Administrative Court lasted approximately four years. The Court noted that the reasonableness of the length of proceedings depends on the circumstances of the case, specifically on complexity, the behaviour of the applicant, and the conduct of the relevant authorities. The Court found that this case was not complex and that, although the applicant's attorney may have contributed to delays, the conduct of the relevant authorities had also contributed to the delay in the Strasbourg Administrative Court. Specifically, the Court referenced occasions where the administrative court requested information that it had already received from the applicant.

The Court did not find sufficient evidence to support a claim of violation of Article 6 with regards to the Conseil d'Etat as the delays were not as severe and were partially caused by the applicant's delay in seeking new legal representation.

With regards to the fairness of the proceedings, the Court did not find a violation of Article 6. In both the Strasbourg Administrative Court and the Conseil d'Etat, the applicant was denied the ability to seek an expert opinion as the courts claimed that he failed to demonstrate a causal connection between the amphetamine injection and his illnesses. The applicant complained that the reason he desired to receive an expert opinion was in order to prove that causal connection. The Court found that as the applicant had not presented a prima facie case of causal connection, the administrative court could reasonably find it unnecessary to seek an expert medical opinion. With regards to the Conseil d'Etat, the Court found that the new evidence presented by the applicant, including a letter from his physician to be used in the proceeding, was sufficient to allow the court to conduct a preliminary examination of the case. Therefore, the denial of an expert opinion did not violate the applicant's right to a fair trial.

Two judges partially dissented, arguing that the applicant did not receive a fair trial within the meaning of Article 6 para 1. The dissenting judges noted that the Conseil d'Etat did not take any investigative steps and that the evidence present to the Conseil d'Etat was in the applicant's favor. Thus, the Conseil d'Etat should have refused the applicant his only means of proving the causal relationship on the grounds he had not yet established that link.

Decision Excerpts

47. It is clear from the Court's established case-law that the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law and that Article 6 para. 1 (art. 6-1) applies irrespective of the parties' status, be it public or private, and of the nature of the legislation which governs the manner in which the dispute is to be determined; it is sufficient that the outcome of the proceedings should be "decisive for private rights and obligations" [48].

50. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the behaviour of the applicant and the conduct of the relevant authorities.

55. The Court points out that in civil proceedings the parties too must show "due diligence" and that any delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement [49].

58. Nevertheless Article 6 para 1 (art. 6-1) requires that cases be heard "within a reasonable time"; in providing, the Convention underlines the importance of rendering justice without delays which might jeopardise its effectiveness and credibility.