The Contergan Scandal

The name Contergan stands for the biggest medicinal drug scandal in recent German history. Introduced as a sleeping and tranquilizing medication in 1957, Contergan rose to saddening fame primarily because of its teratogenic effects. In the Federal Republic of Germany, where it was most frequently used, between 4,000 and 5,000 children were born with birth defects, primarily (but not only) affecting the limbs, after their mothers had taken the over-the-counter medication, which was praised as completely harmless. Roughly 10,000 children were affected worldwide. When the negative effects were announced to the public in late November 1961, the producer was compelled to withdraw the medication from the market. As has since become common knowledge, the producer was in possession of reports about several thousand cases of nerve damage (polyneuropathy), some of which were irreversible and affected primarily elderly patients who had taken the drug over extended periods of time. After being withdrawn from the market, Contergan rose to the status of a social scandal that attracted more media attention than virtually any other issue during the 1960s and remains an issue of concern within the medical and scientific communities today. The subsequent effects of the Contergan scandal on society were massive. They led not only to a fundamental reassessment of the laws regarding medicinal drugs but also heightened public awareness of environmental risks and promoted changes in society's treatment of people with disabilities.

Development and testing

The preperidine dione derivative thalidomide, the effective ingredient in Contergan, was developed in the laboratories of the company known as Chemie Grünenthal (now Grünenthal) in the spring of 1954. A product of coincidence, it was discovered in the course of a search for new medications and, in keeping with standard procedure, tested for possible effects. The first pharmacological tests on animals revealed a remarkably acute non-toxicity, as no lethal dosage was identified. Because sleep-inducing effects were believed

to have been observed, a long-unfulfilled pharmacologist's dream seemed to have come true: a harmless sleeping medication that could not be misused with suicidal intent. Internal tests conducted by the company were followed by clinical trials of thalidomide in March 1955, both as a stand-alone agent and in combination with other active ingredients. Binding standards for tests of new medications of the kind in force today did not exist in the mid-1950s (ordinarily, no tests of teratogenic effects were performed). The scope and form of such tests were left more or less to the discretion of pharmaceutical producers and physicians. Prior to its introduction to the market in October 1957, the medication was tested by more than 60 physicians, four of whom published their findings. Although isolated cases of side effects (primarily constipation and the so-called hangover effect) were reported, most reports were positive. And although the testing procedures may seem inadequate to contemporary observers, they met the prevailing requirements of the time.

After the first clinical evaluations were submitted to Chemie Grünenthal, the company applied to the Ministry of the Interior of the State of North Rhine-Westphalia for a permit to produce Contergan and Contergan-forte (25 and 100 mg of the effective ingredient per tablet, respectively) on June 11, 1956. Although the first German Medicinal Drugs Law was not enacted until 1961, medications like Contergan were subject to an approval procedure based on an old legal directive from 1943, which was dubious from a legal point of view and was eventually rescinded by the Federal Constitutional Court in 1959. Medications were tested only superficially in accordance with this procedure, which explains why the approval for Contergan was issued just two months later, on August 9, 1956.

In response to a request by a business partner, the market launch of Contergan was postponed for more than a year. The aggressive marketing strategy developed in the meantime was to have a significant impact on future advertising for Contergan. The medication was advertised as totally harmless and highly tolerable, although isolated indications of side effects had been noted during the testing phase. Because public advertising for sleeping medications was prohibited, marketing efforts were focused initially on

physicians and pharmacists. Consumers could also be addressed directly in the package leaflet.

Contergan was introduced to the market in the Federal Republic of Germany in October 1957, and the first advertisements appeared in early 1958. Described in prospectuses, package leaflets and certain publications as “harmless,” “absolutely free of damaging effects” and “totally non-toxic,” the medication was also recommended specifically for sick persons, children and seniors. That was not without impact. The majority of physicians initially expressed satisfaction with the medication. Critical voices were heard only on the sidelines at first. Thus to a certain degree, the company felt confident about the statements made in its advertising through 1958.

Commercial breakthrough and reports of side effects

As sales grew, the Contergan product range was expanded step-by-step to include drops, syrup and suppositories. Various combinations containing thalidomide, such as Grippex and Algosediv, were added to the mix. Contergan achieved a commercial breakthrough in 1959. Six-figure sales revenues were reported for the first time in June. Chemie Grünenthal continued to pursue its advertising strategy for the most part, although the company toned down some its claims. In 1959, however, the first reports of severe side effects were received at corporate headquarters. In a letter to the company dated October 2, 1959, neurologist Ralf Voss of Düsseldorf reported a case of severe nerve damage, which he attributed to Contergan. The company rejected his suspicions, despite the fact that it had already received similarly alarming news beginning in March 1959. Initially, that had no impact on the product’s commercial success – on the contrary, Contergan advanced to the status of the top-selling sleeping medication in the Federal Republic of Germany in the spring of 1960.

Rising sales were accompanied by an increasing number of reports of side effects. In the late summer of 1960, the problem associated with the requirement that certain medications be sold only on prescription became more acute for the company, which took a number of different measures to

circumvent it. From that point on, the Chemie Grünenthal made an effort (successfully in many cases) to dissuade critical physicians and prevent or at least delay the publication of negative reports. In order to be on the safe side, the company decided in November 1960 to print an equally vague and trivializing reference to neural side effects on the package leaflets that had been back-dated to September. But when the wave of negative reports refused to abate, Chemie Grünenthal intensified its contacts with state and federal health authorities in order to dispel any reservations about Contergan they may have had at the time and to prevent the adoption of a prescription requirement.

The financial success of Contergan continued in the meantime. Sales revenue peaked at roughly DM 1,350,000 in December 1960, and reports of side effects multiplied in response. By February 1961, over 120 physicians (including more than ten professors) had notified the company of more than 400 cases of severe nerve damage. Added to those were several thousand reports of other, milder side effects. An increasing number of physicians abroad had become aware of the Contergan problem, the first published reference to which appeared on December 31, 1960. In a letter to the editor, the Scottish physician Leslie Florence reported four cases of nerve damage following the consumption of a thalidomide monodrug.

A debate on Contergan-related nerve damage began to emerge among medical experts in February 1961. Although the incidence of reports of side effects also rose in response, the company stubbornly continued to pursue a marketing strategy devoted to downplaying such negative aspects. By then, however, the responsible corporate executives had become well aware that thalidomide could indeed cause massive damage. Not only did the company attempt to clarify the causal relationships through experimentation, it was also expressly informed of possible liability risks by its insurer. Chemie Grünenthal virtually ignored the rapidly rising tide of criticism. The benefits of the medication were emphasized in dispatches, while the side effects were played down.

The prescription requirement

The Interior Ministry of North Rhine-Westphalia was first informed directly about the problem in April 1961. The Ministry adopted a passive, wait-and-see stance, especially in view of the fact that both the basis of available information and the legal options for imposing sanctions were limited. Consequently, the producer and, somewhat later, leading neurologists were asked to submit position statements in the hope that the company would apply for adoption of a prescription requirement on its own volition. While the company downplayed the case statistics, physicians expressed urgent warnings against the use of Contergan (the physicians in question had not notified the Ministry themselves, however).

When the first soundly documented expert reports on damage caused by thalidomide appeared in May 1961, corporate management realized that a further delay was no longer justifiable, particularly as the tide of reports on side effects refused to abate. Thus on May 25, the company decided to seek prescription-only status for thalidomide, and the application was submitted to the Ministry in Düsseldorf the next day. Because the application did not cite negative side effects but was based instead upon the rapid rise in the use of the medication, it was clear to Ministry officials that the company was employing delaying and obfuscation tactics. As the imposition of a prescription requirement was a relatively complicated procedure carried out at the state level, things moved relatively quickly from that point on. North Rhine-Westphalia officially imposed the prescription requirement effective July 31, 1961. When the Medicinal Products Act took effect the next day, the prescription requirement was already in force in the states of Baden-Württemberg and Hessen as well. In view of the rapidly growing risk of claims for damages, the company sought to bring about the adoption of a prescription requirement in the other states as well. Following its earlier attempts to delay the imposition of a prescription requirement, Chemie Grünenthal was now intent upon speeding up the process. The wait was longest in Bavaria, where

the prescription requirement took effect on January 1, 1962. By then, Contergan was no longer even on the market.

The first report on Contergan-related damage published in the mainstream press appeared in an article in *Der Spiegel* entitled “Zuckerplätzchen forte” (extra-strength sugar cookies) on August 16, 1961. The company then formed a Contergan committee tasked with coordinating all further measures undertaken by Chemie Grünenthal. Although the company continued to deny the harmful effects of the medication, it now reached settlements on compensation for damages with an increasing number of victims. Following the imposition of the prescription requirement and publication of the *Spiegel* article, sales of Contergan fell dramatically, while reports of side effects continued to multiply. More than 7,300 such reports, 2,800 of which cited nerve damage and neural disorders, were received at company headquarters before the product was withdrawn from the market.

Malformations

The issue of the increasing incidence of malformations in the Federal Republic of Germany came up even before the Contergan scandal. Concern with the matter emerged above all in the debate regarding the effects of nuclear weapons tests. Unfortunately, a 1959 survey initiated by the German Federal Government led to the conclusion that there had been no such increase. As a result, physicians and other experts were immunized, so to speak, against recognizing the increase in thalidomide-related malformations that followed immediately. State-appointed physicians responsible for the treatment of physically disabled persons under the so-called Physically Disabled Persons Act of 1957 and medical specialists at major university clinics were the first to recognize the rising incidence of malformations among newborns during the first six months of 1961. That insight, however, applied only to the limited circle of cases with which these medical experts were acquainted. It only gradually became clear that the phenomenon was present all over West Germany. The first relevant publication appeared in September 1961.

Widukind Lenz deserves special recognition for his contribution to awareness of the teratogenic effects of Contergan and its eventual removal from the market. The physician from Hamburg was informed of an increase in rare limb malformations in North Rhine-Westphalia in mid-1961. Lenz pursued the matter further and identified a substantial rise in the number of similar cases in Hamburg. An increasing number of references to Contergan were noted in the course of interviews with parents during the first weeks of November 1961. Lenz first reported his suspicions to Chemie Grünenthal on November 15. The company rejected Lenz's demand that the medication be withdrawn from the market. Lenz discussed his suspicions at a conference of pediatricians in Düsseldorf on November 18, 1961, but did not actually name the medication in question at the time.

Lenz was visited by representatives of the company in Hamburg on November 20, 1961. The health authority in Hamburg had been informed in the meantime, and Lenz presented his findings to company representatives in the presence of city officials that afternoon. Yet since North Rhine-Westphalia had jurisdiction, as the company was registered in the state, a conference was scheduled there. In spite of the substantial grounds for the suspicions in question (which did not justify prohibition of the drug in the eyes of the officials from Hamburg) the company remained unwilling to withdraw the product from the market and sent out more than 66,000 copies of a physician's statement that downplayed the side effects of Contergan that same day.

Lenz met with representatives of the company at the Ministry of the Interior of North Rhine-Westphalia on November 24, 1961. Although he reported his suspicions and demanded that sales be discontinued, the company's representatives succeeded in diverting the discussion to fundamental issues. Ministry officials remained hesitant to take action, as there was no legal basis – scientifically proven facts that would hold up in court – for prohibiting sale of the drug. Instead, the officials tried unsuccessfully to bring about a voluntary withdrawal from the market. Representatives of the company made it clear that they would take legal action against any attempt to prohibit the sale of Contergan and that the burden of proof rested with the Ministry, which would

face claims for compensation for damages amounting to millions. The Ministry representatives took note of this and opted to take no further steps. They explained that they would convene an expert commission and notified the relevant federal and state authorities of the date.

Withdrawal from the market

In the meantime, Chemie Grünenthal had received a letter dated November 21 from its English business partner Distillers in reference to the suspicion expressed by the Australian gynecologist William McBride that thalidomide could have teratogenic effects. The company's board of management refused to withdraw the drug from the market nonetheless. Only after Lenz's suspicion was made public in an article entitled "Mißgeburten durch Tabletten?" ("Miscarriages caused by pills?"), which appeared the next day in *Welt am Sonntag,* did corporate management decide to remove Contergan from the market, even though the name of the drug was not mentioned in the article.

Beginning on November 27, 1961, Chemie Grünenthal withdrew Contergan and the other thalidomide-based products from the retail trade in the Federal Republic of Germany (the withdrawal was delayed in some other countries). However, government authorities were reluctant to issue a prohibition, which had only recently become possible at all on the basis of the newly enacted Medicinal Drugs Law. The prerequisite for prohibition was sufficient justification for suspicion, which had not yet been established by November 1961, as no one could say with certainty whether the number of cases would actually decrease during the summer of 1962. At this point, the influence of Chemie Grünenthal was evident. The company attempted to influence the health authorities through its seeming or actual willingness to cooperate, on the one hand, while threatening legal action, on the other. It was not until November 1962, when it was made known that remaining pharmacy stocks of Contergan had been sold legally in isolated cases, that the authorities decided to prohibit sales of the drug. A corresponding directive was issued in North Rhine-Westphalia on March 8, 1963.

The media scandal associated with Contergan

With publication of the article in *Welt am Sonntag* on November 26, 1961, the Contergan story finally became an official public scandal that drew strong media attention, but one that passed through several phases of varying intensity. As media logic had now begun to dominate the Contergan debate, the case took on a momentum of its own that has lasted to the present and has been repeatedly rekindled under the influence of a wide range of interests and interventions. The first reports were largely objective and reflected an effort to placate the public. Although the issue receded from the public eye temporarily, it returned to the headlines in the spring of 1962 when the victims became a major focus of public attention. The full extent of the damage caused by the drug gradually became clear. That prompted numerous families, many of which had initially viewed their cases as isolated strokes of fate, to recognize their common interests and demand help and explanations, which in turn fueled the public debate on Contergan. For many reasons, Contergan remained a dominant issue in the media. And because its victims were children, its impact was particularly shattering in an emotional sense. Furthermore, the matter impacted on a number of social taboos, as it addressed the sensitive issue of abortion and evoked memories of the dark chapter known as the “Children’s Euthanasia Program.” Propelled by interest in the biographies of the victims, concern with the issue eventually spread through many different areas of life, from initial medical care and treatment to kindergardens to matters of schooling and the social integration of people with disabilities. As a result, Contergan continued to occupy the public consciousness like virtually no other topic in the 1960s (and still does so today).

Reactions by experts and government authorities

Once Lenz’s suspicions were made public, the media turned its attention to the issue. That forced the authorities, which had initially taken a relatively passive stance, to act. The Interior Ministry of the state of North Rhine-Westphalia

established an expert commission tasked with assessing Lenz's suspicions, which it described as "sufficiently probable" in its first session. In its work, the commission pursued a widely accepted authoritarian approach according to which the job of finding a solution to the problem was to be left entirely to medical experts. The need to warn the public against the consumption of Contergan, which could still be found in numerous home medicine cabinets, was considered less important. The commission did not draft a report, however, as its work was hindered by disagreements between medical experts and government authorities, coupled with pressure brought to bear by Chemie Grünenthal. Yet by early 1963, when the commission held its last session, most medical experts were convinced that the teratogenic effects of thalidomide had been proven.

Following the withdrawal of Contergan from the market, medical experts and government authorities faced a huge problem, namely that they did not know how many victims had been effected, since the obligation to report neonatal malformations had been eliminated in view of the experiences of the Nazi regime. Initial estimates ranged from a few hundred to several thousand. Thus both state and federal health authorities made an effort to identify the cases in question. The figures remained unreliable, however, because many of those affected were mistrustful of government involvement in the matter, because more than a few physicians cited their obligation to maintain confidentiality and because there was no agreement about which cases should or could be identified. By the fall of 1963, an approximate total of 2,300 to 2,400 living victims had been identified. Of those, roughly 1,000 cases were classified as severe and requiring "prosthetic treatment." Due to the limited visibility of the defects in some cases (especially in cases of damage to internal organs) and the difficulty involved in distinguishing them from other types of damage, the number fluctuated during the following period as well. A rough idea of the total number of victims can be gained from the figures published by the Conterganstiftung für behinderte Menschen (Contergan Foundation for the Disabled), which cited a total of 2,646 persons suffering from damages caused

by thalidomide in the Federal Republic in 2016. Other sources put the figure at over 3,000, however.

A major focus of press reporting was the Federal Ministry of Health, which had not been established until November 1961 and was headed by Elisabeth Schwarzhaupt, the first female Minister in the Federal Republic of Germany. The authorities received numerous submissions from the general public following the withdrawal of Contergan from the market and especially since the spring of 1962. The standardized notifications sent to the victims reflected a defensive attitude on the part of the government, which was meant above all to reduce its vulnerability to attack and offered no effective help. The frequently observed practice of referring victims from one authority to another (which was practically unavoidable for administrative reasons), sometimes evoked the impression that the authorities simply wanted to “get rid” of them. The behavior of the authorities drew harsh criticism in the press, which peaked in the summer of 1962 and was directed primarily at Schwarzhaupt herself, who, as a woman, was indirectly accused of being incapable of performing the duties of a federal minister.

Beginning in the fall of 1962, this public pressure prompted a slight change of course, which failed to overcome the authorities’ defensive stance completely or immediately, however. Only gradually did the behavior of politicians and government officials towards victims change, especially in cases of direct contact. In the mid-1960s, both state and federal ministers began, for example, to sign letters sent to victims in response personally or to take part in personal discussions with victims’ representatives. Although more attention was gradually paid to victims’ associations and their interests (in the form of financial support and inclusion of those organization in deliberations regarding political measures, for example), such contacts were always marked by a certain amount of tension, especially since the victims’ associations were forced to cope with divergent currents that were vehemently opposed to one another and often engaged in legal battles. As a consequence, especially the ministerial bureaucracy deliberately maintained a certain distance from these associations. That would change only in the course of the following decades.

Medical treatment of disabilities

The impact of the Contergan scandal on the medical treatment of disabilities can hardly be overemphasized. Orthopedic medicine had become the primary discipline responsible for the treatment of so-called physical disabilities after 1945. Orthopedic specialists were responsible above all for the rehabilitation of disabled veterans of war and had a major influence on the definition of goals. According to the orthopedic view, the causes of physical damage were of secondary importance, and thus little attention was paid to the urgent need for clarification expressed by the victims. Instead, the objective was to replace missing or shortened limbs with prostheses in order to restore victims to the status of “full and valuable members of society,” as it was often described at the time. Medical practitioners and many contemporaries were of the opinion that victims should be “normalized” (in a visible sense as well), an approach that was ultimately devoted above all to integrating victims into the labor market. This approach still reflected a rather authoritarian concept of medicine, according to which it was up to the “demigod in white” to determine what was good for the patient and what was not.

In North Rhine-Westphalia, the Regional Councils and the university orthopedic clinic in Münster headed by Prof. Oskar Hepp played a leading role in this context. Government agencies maintained a passive stance towards both and confined themselves primarily to providing funding support. Numerous research projects were initiated in the following years, including studies on the development of the embryo in the womb and the medical rehabilitation of disabled persons. That has had a major impact on our knowledge, but also on our perception of disabilities. There were several important consequences: victims were afforded greater say in the matter, and more importance was attached to their needs, as evidenced in the field of orthopedics in particular. Hardly any child was willing to accept permanent prostheses.

Social assistance

The issue of the social care and treatment of victims was influenced above all by the Bundessozialhilfegesetz (Federal Social Assistance Act, BSHG), which took effect in June 1962 and was regarded in bureaucratic circles as a genuinely progressive law. Thus it hardly comes as a surprise that government officials answered the queries of many affected persons with references to the BSHG. Yet many of those affected were dissatisfied with such responses. Not only did problems arise in the enforcement of the new law at first, the victims also found themselves faced through no fault of their own with a state of emergency that could have resulted in a huge financial burden. In this situation the political Contergan debate shifted progressively to the question of the extent to which the causes of disabilities were the determining factors when it came to decisions regarding social assistance services. Beginning in the early summer of 1962, calls for special regulations and funding for children with disabilities multiplied in the media and among those directly affected, who believed that the government was responsible as well. The majority of representatives of government authorities and political bodies denied government liability and took the position that all children with disabilities were to be treated equally, regardless of cause. Thus the proposal to create a hardship fund was initially rejected in favor of a broad interpretation of the BSHG, according to which the prescribed copayment would not be required for persons with incomes below a certain amount. Ultimately, the fundamental idea behind the BSHG remained in effect despite the founding of the Contergan Foundation. For until 2009, the funds contributed by the government did not benefit Contergan victims alone but were also used in support of the integration of disabled children and youth as well.

Legal consequences

The legal consequences of the Contergan issue were tremendous. The plaintiffs in suits against Chemie Grünenthal faced the insurmountable problem of the burden of proof. As all civil suits against the company had been

lost, victims' hopes rested on the criminal proceedings pending with the Public Prosecutor's Office in Aachen since December 18, 1961. The initially ponderous investigations were stepped up when Dr. Havertz took over as Chief Public Prosecutor in early June of 1962. He left an indelible imprint on the proceedings and thus on the entire Contergan case. Searches of producers' facilities and extensive witness interviews followed. A special unit at the Public Prosecutor's Office and a special commission at the State Office of Criminal Investigation were established in order to consolidate the workload. The question of the role of Contergan as a cause of neural and birth defects took on increasing importance, which is why the Public Prosecutor's Office interviewed numerous medical experts, some of whom were ordered to submit expert opinions. Investigating officers began conducting systematic interviews of victims in mid-1963. The material collected in the process (medical case sheets, physician's reports, prescriptions, etc.) was to serve as evidence of specific cases of damage in subsequent proceedings.

The investigation generated a considerable response in the press as well. The company's attorneys used that as justification for disciplinary complaints filed against Chief Public Prosecutor Havertz. Although Havertz oversaw the investigations with considerable skill, higher authorities were highly dissatisfied with his cooperative behavior towards the media. An intensive investigation of Havertz's past brought several dubious details to light (membership in the Waffen SS, possible cheating to obtain his high school diploma). Yet it was decided that no measures would be taken against the outstanding jurist in order to avoid endangering the progress of the proceedings.

The proceedings now expanded in scope. In early October 1963, the main case file encompassed 145 separate files. A total of 2,269 victims were registered, and interviews were conducted with some 1,000 individuals, including 66 professors, 31 medical officials and 62 other experts as well as 380 victims and witnesses. The scope of the proceedings began to take a massive toll. Delays ensued due to the questioning of the defendants by judges and the need to solve the problem of providing access to the files, which could only be accomplished through the time-consuming process of

copying the entire case file for each defense attorney. The job of drafting the indictment was similarly time-consuming. A first draft dated August 1964 comprised more than 1,000 pages. Although the most important investigations were completed in early 1965, they continued due to differences in legal opinions within the Public Prosecutor's Office and because some of the expert medical opinions that were indispensable for the necessary clarification of individual cases were not yet available. Once they were submitted, the investigations of nine defendants were formally concluded on July 20, 1965.

At this point, the question of a final hearing, a legal principle first introduced in 1965, needed to be addressed. Following the conclusion of all investigations, the defendants and their attorneys were to be given an opportunity to refute the allegations. The Office of the Public Prosecutor wanted to conduct such final hearings in early 1966, but the defense attorneys protested and demanded more time, as they claimed that it would be impossible to prepare effectively on such short notice. The defense ultimately got what it wanted. The Ministry granted more time for preparation in order to avoid a time-consuming preliminary judicial investigation, among other reasons. Thus the final hearings took place in August 1966, and defendants were given a chance to refute the allegations levied against them to an extent sufficient to have the proceedings against them dismissed.

The Neuberger case and the indictment

The appointment of Josef Neuberger as Minister of Justice of the state of North Rhine-Westphalia in December 1966 caused quite a stir. With his appointment, the primary defendant's defense attorney became the superior officer in charge of the state's public prosecutors, although he declared that he would recuse himself from the proceedings as a minister. Fears that the proceedings would be prolonged or even dismissed soon proved unjustified. Instead of hindering the progress of the proceedings (which had not yet been made public at that point), this accelerated the process perceptibly. After consulting with the Office of the Public Prosecutor in Cologne, the Ministry of

Justice issued the requisite approval of the indictment, which the State Attorney's Office filed with the District Court in Aachen on March 13, 1967.

Once the indictment was filed, it was now up to the Superior Criminal Court of the District Court of Aachen to decide on the next steps in the proceedings. This took time as well, since in addition to a review of the 972-page indictment, the defense attorneys filed numerous complaints and petitions for rejection with the court. These problems were resolved in favor of the prosecution with the support of the Ministry of Justice, after which the Criminal Court convened the main proceedings on January 18, 1968. Everyone involved in the proceedings was well aware that they were now facing a mammoth trial that would last several years. Accordingly, extensive preparations were required for the purpose of organizing the trial, for which it was necessary to rent the casino of the coal mine Anna in Alsdorf as an out-of-town courtroom. Equally time-consuming was the process of determining who would be admitted as a joint plaintiff (312 joint plaintiffs had been recognized by the end of the proceedings).

The trial

When the trial began on May 27, 1968, 200 representatives of the media were present to cover the story from Alsdorf. The number of defendants had declined from nine to seven by the first day of the trial, as proceedings against two defendants had to be scheduled separately due to illness. The tremendous difficulties involved in dealing with the entire complex of events from the perspective of criminal law became apparent during the early phase of the trial. That applied above all to the questioning of witnesses who were to present evidence of the role of Contergan as the cause of individual cases of nerve damage shortly after the proceedings were initiated. All witnesses for the prosecution stated that they had taken numerous different medications and suffered from other illnesses as well, some of them severe. More than a few found themselves entangled in contradictions. The intensive press coverage also had a substantial impact on the behavior of the witnesses. The Office of

the Public Prosecutor had little to offer by way of rebuttal, particularly as the prosecuting attorneys had been advised to exercise restraint.

The medical expert witnesses engaged to present their opinions regarding the neurological and teratogenic effects of thalidomide were interviewed in a subsequent phase. Thirty-five witnesses testified on the issue of nerve damage alone. In the process, the courtroom was nearly virtually transformed into a medical lecture hall, as discussion revolved around a number of abstract basic questions. Although the expert witnesses for the defense made an effort to cast doubts, the neurological and teratogenic effects of thalidomide were regarded as proven among medical experts and the general public as well.

It became increasingly clear as the proceedings progressed that the Code of Criminal Procedure was not designed with such “mammoth proceedings” in mind. Thus a trial could not be interrupted for longer than ten days, for example, or it would have to be reinitiated from the beginning in accordance with Article 229 of the German Code of Criminal Procedure (StPO). The process of gathering evidence had to encompass all available evidence, regardless of whether the intended proof had already been established or was irrelevant to the question of guilt (§ 245 StPO). Since the volume of evidence to be covered increased, rather than decreased, over the course of the proceedings, time worked against the trial, so to speak. Added to this and many other problems was the fact that the conflicts between the individuals involved in the proceedings grew increasingly acute, while disciplinary complaints, interruptions and criminal charges slowed the progress of the deliberations. After more than 1,200 documents had been read during the early months of 1969 in keeping with the requirement that the main proceedings be conducted orally, general questioning of witness began in April 1969. These complex phases lasted until the end of the trial but were repeatedly interrupted by other matters.

While the trial grew progressively less stringent, the problems continued to multiply. Presiding judge Peter Weber withdrew due to illness in September 1969. Judge Wolfgang Melster, who replaced him, was also forced to withdraw from the proceedings after it was revealed that he had secretly met with a

defense attorney outside of the courtroom. That left only one of three substitute judges. The number of defendants decreased as well. Another defendant dropped out of the proceedings for health reasons in the summer of 1970 and died shortly thereafter. Yet another was eliminated in October, thus reducing the number of defendants from the original nine to five. The trial threatened to collapse, as the likelihood that other defendants would be eliminated due to illness increased as time passed.

Termination of the proceedings

Shortly after the trial began, judges and prosecuting attorneys discussed the possibility of dismissing the case in 1968, as the court was tasked with determining whether the corresponding prerequisites had been met. The legal basis for such a decision was set forth in § 153 StPO, which provided for the option to dismiss if the defendant's guilt (not the consequences of the crime!) was only slight and there was no evident public interest in further criminal prosecution. At the time, there was no other justification for dismissing criminal proceedings once an indictment had been filed. While these initial discussions were conducted for purposes of orientation only, the question of dismissal was first addressed in earnest in the spring of 1969. The matter was discussed at the Ministry of Justice on April 10. On this occasion, Ministry representatives stated that they would issue no instructions. Although opinions regarding a dismissal of the proceedings differed, it became clear after this meeting that everyone involved in the process – the Public Prosecutor's Office, the court, defense attorneys and co-plaintiffs – were aware of the arguments in question. In-depth reports were also published in the press. Of importance in this context is the fact that the Bundestag had passed a bill providing for the introduction of an absolute statute of limitations in mid-1969. That suggested the possibility that most of the crimes could no longer be prosecuted if the trial lasted much longer.

In the fall of 1969, at the latest, confidential negotiations were initiated, at first between defense attorneys and representatives of the joint plaintiffs and later with the Public Prosecutor's Office as well, in which the possibility of

dismissal in conjunction with the payment of compensation for damages to the victims was discussed. Reports on these negotiations were published in early 1970. The result was a settlement concluded by Chemie Grünenthal and joint plaintiffs' representative Rupert Schreiber on April 10, 1970. Although no mention of a dismissal of proceedings was made in this agreement, there could be little doubt in the minds of attentive observers that there was a link between the civil settlement and the termination of the criminal proceedings, or at least that the settlement would lead to a dismissal of the proceedings. However, because the company was only required to pay if the social- and health-insurance providers agreed to waive the transferred claims, the negotiations continued for several months.

Negotiations regarding dismissal of the proceedings were concluded for the most part in November 1970. On November 18, the Ministry of Justice was informed that the Public Prosecutor's Office intended to issue the approval required for dismissal. Justice authorities had been informed in advance that the defense would petition for dismissal of the proceedings. Once the Public Prosecutor's Office had obtained approval for its declaration of agreement to the higher justice authorities and most (but not all!) of the joint plaintiffs agreed to, or at least chose not to protest, the termination of proceedings on December 11, the district attorneys presented their statement and gave the necessary approval. On December 18, 1970, the following and last day of the trial, District Court Counsel Benno Dietz announced the resolution in which the proceedings were irreversibly terminated – exactly 9 years to the day after the Public Prosecutor's Office in Aachen had initiated the preliminary proceedings.

Recommended reading: *Niklas Lenhard-Schramm, Das Land Nordrhein-Westfalen und der Contergan-Skandal. Gesundheitsaufsicht und Strafjustiz in den „langen sechziger Jahren".* Göttingen, 2016; Thomas Großbölting/Niklas Lenhard-Schramm (eds.), *Contergan. Hintergründe und Folgen eines Arzneimittel-Skandals.* Göttingen, 2017.