



P. and S. v. Poland

Application No. 57375/08

Country: Poland

Region: Europe

Year: 2013

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

Health Topics: Health care and health services, Health information, Sexual and reproductive health, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to family life, Right to liberty and security of person, Right to privacy

Facts

The Applicants were a Polish girl who was raped at the age of 14, resulting in pregnancy, and her mother.

The applicants alleged that, when they sought an abortion, which is legal under Polish law for pregnancy resulting from rape, hospital staff attempted to dissuade the girl from having an abortion. At one hospital, she was forced to talk with a priest without being asked whether she wanted to see one. One doctor made her mother sign a declaration acknowledging that an abortion could lead to her daughter's death, even though no medical reasons justified the strong terms of that declaration. Moreover, information about the daughter's situation was leaked to the press, resulting in her receiving unwanted text messages from people she did not know and being harassed by various persons trying to exert pressure on her. After she requested protection from the police when she was accosted by anti-abortion activists after leaving a hospital in Warsaw, she was denied protection. She was instead arrested and placed in a juvenile shelter, and her mother was investigated to determine whether her parental rights should be terminated because she supported her daughter's choice to get an abortion.

Moreover, the authorities instituted a criminal investigation on charges of unlawful intercourse against the daughter who, according to the prosecutor's certificate and forensic findings, should have been considered to be a victim of sexual abuse. The investigation against the applicant was ultimately discontinued, but the mere fact that they were instituted and conducted shows a profound lack of understanding of her predicament.

The daughter ultimately succeeded in getting an abortion 500 kilometres away from her home.

The Applicants alleged violations of Article 3 (prohibition on inhuman or degrading treatment), Article 5 (right to liberty and due process) and Article 8 (right to privacy) of the European Convention on Human Rights (the Convention).

Decision and Reasoning

The Court held that the Applicants' Article 8 rights had been violated. Under Article 8, States not only have to restrain from interfering with the exercise of rights relating to private life which are recognized, but also have a positive obligation to secure respect for private life. The Court reasoned that while the Convention does not grant a right to abortion as a right to private life, because Polish law granted the right to abortion in the case of rape, Poland was to guarantee that the right to abortion was not only theoretical and illusory, but also effective and practically enforced. The Court found that Poland did not have a proper procedure under which the daughter could deliberate and decide about her pregnancy with the help of her mother in a free, well-informed, peaceful and comfortable manner. The Court noted that the abortion finally took place 500 kilometres away from the daughter's home and that the doctors who did not want to carry out the abortion had not referred the patient to other physicians who would perform the abortion.

The Court further held that the applicants' Article 8 rights had been violated when the hospital issued a press release about her pregnancy. The Court reasoned that protection of personal data, particularly medical data, is fundamental to privacy rights under Article 8, and that the medical staff working for the public hospital, considered to be agents of the State under Polish law, had released sensitive information covered by the doctor-patient privilege guaranteed under Polish law. Therefore, the State was responsible for the actions taken by medical personnel.

The Court also held that the applicants' Article 3 rights had been violated. In order for Article 3 to be violated, the ill-treatment must meet a minimum level of severity. The Court found that the minimum level of severity for degrading and inhuman treatment had been met because the daughter had been subjected to the personal views of doctors, been forced to meet with a priest without her consent, and the mother had been forced for no medical reason to sign a declaration that her daughter might die while another doctor called her a bad mother.

Finally, the Court held that the applicants' Article 5 rights had been violated. Neither party disputed that the daughter had been deprived of her liberty when she was placed in a juvenile shelter and removed from her mother's supervision. Poland argued that the deprivation was valid under Article 5, section 1 because it was for the purpose of educational supervision, namely, to establish with certainty whether the daughter had reached a free and well-informed decision about abortion and was not being forced to undergo an abortion. The Court stated that such an objective would have been a legitimate aim, but rejected the argument because it was clear from the facts of the case that the essential purpose for detaining the daughter was to separate her from her parents and to prevent the abortion, not for educational supervision.

Decision Excerpts

“In so far as the Government appear to argue that the first applicant, by contacting a friend via text messages and disclosing her predicament to her, had wished to make her case public, the Court notes that this can reasonably be regarded as a call for assistance, addressed to that friend and possibly also to her close environment, such as the school, by a vulnerable and distraught teenager in a difficult life situation. By no means can it be equated with an intention to disclose information about her pregnancy, her own views and feelings about it and about her family's attitude towards it to the general public and to the press.” Para. 131.

“The Court observes that the Family Court imposed detention on the first applicant, having regard to her pregnancy and referring to the doubts as to whether she was under pressure to have an abortion. The Court has already acknowledged, in the context of Article 8 of the Convention, that there was a difference in the way in which the pregnancy affected the situation and life prospects of the first and second applicants (see paragraph 110 above). It was therefore legitimate to try to establish with certainty whether the first applicant had had an opportunity to reach a free and well-informed decision about having recourse to abortion. However, the essential purpose of the decision on the first applicant's placement was to separate her from her parents, in particular from the second applicant, and to prevent the abortion. The Court is of the view that by no stretch of the imagination can the detention be considered to have been ordered for educational supervision within the meaning of Article 5 § 1 (d) of the Convention if its essential purpose was to prevent a minor from having recourse to abortion. Furthermore, the Court is of the opinion that if the authorities were concerned that an abortion would be carried out against the first applicant's will, less drastic measures than locking up a 14-year old girl in a situation of considerable vulnerability should have at least been considered by the courts. It has not been shown that this was indeed the case.” Para. 148.

“[T]he Court has already found, having examined the complaint under Article 8 of the Convention about the determination of the first applicant's access to abortion, that the approach of the authorities was marred by procrastination, confusion and lack of proper and objective counselling and information (see § 108 above). Likewise, the fact that the first applicant was separated from her mother and deprived of liberty in breach of the requirements of Article 5 § 1 of the Convention must be taken into consideration. The Court concludes, having regard to the circumstances of the case seen as a whole, that the first applicant was treated by the authorities in a deplorable manner and that her suffering reached the minimum threshold of severity under Article 3 of the Convention.” Paras. 167-168.