



TysiÄ...c v. Poland

App. No. 5410/03, 45 Eur. H.R. Rep. 42 (2007).

Country: Poland

Region: Europe

Year: 2007

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

Health Topics: Disabilities, Health care and health services, Health information, Medical malpractice, Sexual and reproductive health

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right of access to information, Right to bodily integrity, Right to due process/fair trial, Right to family life, Right to health, Right to life, Right to privacy

Facts

Applicant alleged a violation of Article 8 (right to respect for private and family life) of the Convention when she had been refused a therapeutic abortion considered legal under the Family Planning Act of Poland--when the pregnancy is thought to endanger the mother's life, as was the case here.

Applicant suffered from severe myopia and delivered two children by caesarean section prior to her third pregnancy. When she became pregnant third time, her general physician alerted her to the possibility of uterine rupture on account of her past two caesareans, and she was told there was a chance her retina may detach while pregnant. When applicant finally obtained a certificate for the therapeutic abortion and saw Dr. R.D. at the state hospital, he refused to perform the abortion after a 5 minute consultation without any ophthalmologic consideration. She delivered the child after which her eyesight deteriorated considerably.

The applicant then filed a criminal complaint against Dr. R.D., alleging that he had prevented the termination of the pregnancy recommended by the general practitioner. As a result, she suffered an almost complete loss of her eyesight. The district prosecutor discontinued investigations on the grounds that he found no causal link between Dr. R.D.'s actions and the deterioration of the applicant's vision. Applicant appealed to the European Court of Human Rights.

Decision and Reasoning

The Court found the applicant's rights under Article 8 had been violated. The Court concluded that the retrospective measure of criminal investigation could not have prevented the damage to the applicant's health or protect the physical integrity of persons in such circumstances and therefore the State had failed in its positive duty to protect the applicant's right to respect for her private life.

The Court also found that the vagueness of the application of the Polish law facilitated a situation of uncertainty, resulting in the severe distress and anguish of the applicant who was confronted with the adverse effects of her pregnancy on her health. In addition, tort law in Poland did not afford her a remedy for the breach of her right to respect for her private life.

Decision Excerpts

"126....Crucially, the examination of the circumstances of the case in the context of criminal investigations could not have prevented the damage to the applicant's health from arising. The same applies to disciplinary proceedings before the organs of the Chamber of Physicians.

127. The Court finds that such retrospective measures alone are not sufficient to provide appropriate protection for the physical integrity of individuals in such a vulnerable position as the applicant (*Storck v. Germany*, no. 61603/00, Å§ 150, ECHR 2005 ...).

128. Having regard to the circumstances of the case as a whole, it cannot therefore be said that, by putting in place legal remedies which make it possible to establish liability on the part of medical staff, the Polish State complied with the positive obligations to safeguard the applicant's right to respect for her private life in the context of a controversy as to whether she was entitled to a therapeutic abortion.

129. The Court therefore dismisses the Government's preliminary objection and concludes that the authorities failed to comply with their positive obligations to secure to the applicant the effective respect for her private life.

120. The Court concludes that there has been a breach of Article 8 the Convention." Page 28.

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