



R.R. v. Poland

App. No. 27617/04, Eur. Ct. H.R. Rep. 648 (2011).

Country: Poland

Region: Europe

Year: 2011

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

Health Topics: Health care and health services, Health systems and financing, Hospitals, Sexual and reproductive health

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

Facts

The applicant Ms. R.R., a Polish citizen, brought an action against the then Malopolska Regional Medical Insurance Fund and Dr. S.B. for failure to perform timely prenatal examinations and allow her the possibility of deciding whether to terminate her pregnancy with the conditions provided by law for the malformation of her child (Turner syndrome). The Regional Prosecutor did not find the doctors and institutions involved guilty of any criminal offense. Further, the applicant filed a civil lawsuit arguing a breach in her personal rights and dignity under section 4 (a) 1.2 of the 1993 Family Planning Act and Articles 23 and 24 of the Civil Code. She also claimed compensation for the disclosure of her private information. The Court found the doctors guilty of disclosing private information to the public but dismissed the remaining claims. The Supreme Court quashed the previous judgment and ordered the case to be re-examined arguing that there had been failure to refer her for genetic testing and a breach of her right to make an informed decision.

After the whole process, the applicant complained that the facts of the case had caused a breach of Articles 3 (freedom from inhuman or degrading treatment) and 8 (right to privacy) of the European Convention on Human Rights, resulting from a lack of review procedures and poor regulation in Polish law. The applicant also argued that she had received insufficient compensation from the Government at the time of the final appeal judgment. The Polish Government argued that the national courts had acknowledged the applicant's rights and had afforded redress to her.

Decision and Reasoning

The Court held that the Supreme Court was right in acknowledging the applicant's personal rights had been breached and that the Government's objections to the breach of Article 34 should all be dismissed. The Court found that the applicant's medical process was flawed with procrastination, a lack of proper counseling and information. The Court noted that the applicant could have made an informed decision with means of genetic testing and that the doctors had the obligation to give information to the patient about her condition. Further, the Court held that the applicant had been humiliated and had suffered, violating Article 3 (freedom from inhuman or degrading treatment). The Court concluded that because the authorities were unable to secure respect for her private life, breaching Article 8 (right to privacy) of the Convention.

Decision Excerpts

"156. In this connection, the Court cannot but note that the 1993 Act determining the conditions permitting termination of pregnancy expressly and unequivocally provides, and provided at the relevant time, for the State's obligation to ensure unimpeded access to prenatal information and testing. Section 2 (a) of this Act imposed such an obligation on the State and local administration in particular in cases of suspicion of genetic disorder or development problems. This obligation covered all cases in which such suspicion arose in respect of a pregnancy, with no distinction whatsoever being drawn in the Act based on the severity of the suspected ailment (see paragraph 66 above).

157. The Court further observes that the Medical Profession Act clearly provides and provided at the material time for a general obligation for doctors to give patients comprehensible information about their condition, the diagnosis, the proposed and possible diagnostic and therapeutic methods, the foreseeable consequences of a decision to have recourse to them or not, the possible results of the therapy and about the prognosis (see paragraph 74 above). Likewise, the Medical Institutions Act, applicable at the material time, provided for

patientsâ€™ right to obtain comprehensive information on their health (see paragraph 72 above). Hence, there was an array of unequivocal legal provisions in force at the relevant time specifying the Stateâ€™s positive obligations towards pregnant women regarding their access to information about their health and that of the foetus." Page 34.

"203. The Court observes that the nature of the issues involved in a womanâ€™s decision to terminate a pregnancy is such that the time factor is of critical importance. The procedures in place should therefore ensure that such decisions are taken in good time. The Court is of the view that there was ample time between week 18 of the pregnancy, when the suspicions first arose, and week 22, the stage of pregnancy at which it is generally accepted that the foetus is capable of surviving outside the motherâ€™s body and regarded as time-limit for legal abortion, to carry out genetic testing. The Court notes that the Supreme Court criticised the conduct of the medical professionals who had been involved in the applicantâ€™s case and the procrastination shown in deciding whether to give the applicant a referral for genetic tests. Such a critical assessment on the part of the highest domestic judicial authority is certainly, in the Courtâ€™s view, of relevance for the overall assessment of the circumstances of the case." Page 47.

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