



R.R. v. Poland

Poland's Obligation to Prevent Inhuman and Degrading Treatment in Reproductive Health Care

In 2011, the European Court of Human Rights (the Court) issued a groundbreaking judgment in the case of *R.R. v. Poland*.¹ For the first time, the Court held that a state's failure to enable a woman to obtain timely access to prenatal genetic testing and information, in order to allow her to make an informed decision about her pregnancy, amounted to inhuman and degrading treatment, in violation of Article 3 of the European Convention on Human Rights.² The Court also found that a state's failure to establish effective procedures enabling women's access to legal abortion services violates the right to respect for private life as enshrined in Article 8 of the Convention.

Case History

Poland has one of the most restrictive abortion laws in Europe.³ Abortion is permitted only in strictly limited circumstances to protect the life or health of a pregnant woman, where there is a high probability of a severe and irreversible fetal impairment, or where the pregnancy results from a crime. However, in practice access to abortion even in these circumstances is difficult and women are often unable to obtain abortion services to which they are legally entitled.

In 2002, when R.R. was 18 weeks pregnant, an ultrasound detected a cyst on the fetus' neck. To determine whether this indicated a severe fetal impairment, further tests were needed, as a genetic specialist concluded it would be impossible to provide a precise diagnosis without prenatal genetic testing. However, despite consulting more than ten medical professionals over almost

Why this case is important

The decision in *R.R. v. Poland* represents a groundbreaking and critically important affirmation of women's right to access reproductive health information that will enable them to make informed choices about their pregnancy, including whether or not to have an abortion. The Court's decision underlines that women's timely access to full and reliable information and prenatal diagnostic services is critical to ensuring their rights under the Convention and central to their ability to exercise personal autonomy and obtain lawful abortions. The decision also reaffirms that Council of Europe member states have clear duties to ensure that lawful abortion is accessible in practice and underlines that failure to do so may result in inhuman and degrading treatment. It also underscores the need for Council of Europe member states to ensure that refusals of reproductive care by health professionals do not jeopardize women's access to services.

five weeks, R.R. was unable to obtain a referral that would have enabled her to undergo the necessary prenatal test (amniocentesis). Finally, in her 23rd week of pregnancy, R.R. was able to undergo the genetic test at a hospital. However, R.R. did not receive the results of the test, confirming the presence of a severe fetal impairment, until two weeks later, at which time she was in her 25th week of pregnancy. When she then requested a termination she was told by doctors that it was too late as the fetus had reached viability. As a result,

R.R. was forced to continue her pregnancy to term. In 2004, after failed attempts to seek justice through the Polish courts, R.R. filed a complaint with the European Court of Human Rights.⁴

Context in Poland

In Poland abortion is regulated by the 1993 Family Planning Act and is permitted in three circumstances only: 1) when the pregnancy endangers the life or health of the woman, abortion is permitted at any stage; 2) when there is a high probability of a severe and irreversible fetal impairment, abortion is permitted until the fetus reaches viability; and 3) when the pregnancy results from a crime, abortion is permitted during the first 12 weeks of pregnancy.⁵

However, in practice access to abortion in Poland is much more limited than the law allows, and women are often unable to obtain abortion services to which they are legally entitled. They regularly encounter a series of practical obstacles resulting from pervasive stigma surrounding abortion in Poland.

The criminalization of abortion in all situations beyond the specific circumstances outlined above, and imposition of a three-year prison sentence for doctors and anyone else assisting a woman with an abortion in such instances, create a chilling effect. This exacerbates doctors' unwillingness to perform legal abortions and provide related health services, such as prenatal genetic testing.⁶ The situation is intensified by the Polish government's failure to provide adequate clarity and certainty to women and their doctors by putting in place appropriate and effective procedures and regulations governing the provision of legal abortions. Additionally, many doctors in Poland regularly refuse to provide reproductive health care, including legal abortion services, to women on grounds of conscience and the Polish government has failed to enact regulations and establish mechanisms that would effectively regulate these practices.

International human rights mechanisms have repeatedly criticized the obstacles women in Poland face in obtaining abortion services.⁷ Yet the state has failed to take adequate and effective measures to address them.

Decision Highlights & Key Findings

The European Court issued its decision on the case on May 26, 2011.⁸ It found that Poland had violated Article 3 (the right to be free from inhuman and degrading treatment) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights. The decision marks the first time the Court

has found a violation of the right to be free from inhuman and degrading treatment in a case concerning access to abortion. It is also the first time any international human rights mechanism has directly addressed the right to access prenatal testing in connection with abortion. In addition to its finding that in denying R.R. timely access to relevant prenatal testing, Poland had violated her rights under Article 3 of the Convention, the Court considered that by obstructing her access to a legal abortion the state had violated her rights under Article 8. It held that states are obliged to create a procedural framework enabling pregnant women to exercise their right to lawful abortions⁹ and are obliged to take effective measures to ensure that health care professionals' conscience-based refusals to provide care do not impede access to lawful reproductive health services.

The Court made a number of important findings:

Denial of legal health services and information can amount to inhuman and degrading treatment

The Court considered that R.R. suffered greatly as a result of the prolonged denial of prenatal genetic testing. It observed that she was deeply distressed by information that the fetus could be affected with some malformation, but that as a result of the procrastination of the health professionals, she had to endure weeks of painful uncertainty concerning the health of the fetus and suffered acute anguish during this time.¹⁰ In the view of the Court, her concerns were not properly acknowledged and addressed by the health professionals dealing with her case. Nor was proper regard given to the time constraints at issue. The Court expressed its concern that R.R. eventually obtained the results of relevant tests when the time-limit for a legal abortion had passed and it was too late for her to make an informed decision on whether to continue the pregnancy or not. The Court expressed its "great regret" that R.R. was "so shabbily treated by the doctors dealing with her case," and it found that her treatment had been humiliating.¹¹ It also noted that her suffering may have been aggravated "by the fact that the diagnostic services which she had requested early on were at all times available and that she was entitled as a matter of domestic law to avail herself of them."¹²

The particular circumstances of pregnant women must be taken into account

In assessing the severity of R.R.'s suffering and determining that she had been subjected to inhuman and degrading treatment in violation of Article 3, the Court held that the specific circumstances of pregnant women must be central to any such assessment. It considered R.R. to have been in a situation of "great vulnerability," as she was "deeply distressed by information that the fetus could be affected

with some malformation.”¹³ The Court considered that in her circumstances it was “natural that she wanted to obtain as much information as possible so as to find out whether the initial diagnosis was correct, and if so, what was the exact nature of the ailment. She also wanted to find out about the options available to her.”¹⁴

Women’s rights to timely access to reproductive health services must be ensured

The Court stressed that “the nature of the issues involved in a woman’s decision to terminate a pregnancy is such that the time factor is of critical importance.”¹⁵ As a result, the Court held that procedures must be in place that guarantee that women are enabled to take such decisions in a timely manner. It considered that the exercise of personal autonomy requires that such procedures extend to ensuring timely access to information concerning the health of a pregnant woman and the fetus, where legislation allows for abortion in certain situations.¹⁶ The Court found that as a result of the procrastination of health care professionals in referring R.R. for the genetic testing, she was unable to obtain a sufficiently certain diagnosis within the time-limit for abortion to remain a lawful option for her. Thus, the Court considered that Poland had violated its obligations to establish procedures enabling R.R. to make a decision in good time regarding her pregnancy and, consequently, to access a legal abortion if she so wished.¹⁷

Women’s rights to make informed decisions about their reproductive health must be guaranteed

The Court held that under Article 8 of the Convention women have the right to make an informed decision about whether or not to access a lawful abortion and found that access to relevant information is a critical requirement to enable women to exercise this right. It underlined that the right to information is decisive for the exercise of personal autonomy, including in the context of decisions relevant to an individual’s health and quality of life.¹⁸ Considering the facts of R.R.’s claim the Court found that the exercise of personal autonomy necessitates women’s effective access to relevant information, including on fetal health.¹⁹ It underlined that where domestic law allows for abortion in case of fetal impairment, the state has a positive obligation to put in place an effective legal and procedural framework to guarantee that relevant, full and reliable information, including on fetal health, is available to pregnant

women.²⁰ The Court found that Poland had failed to put in place any effective mechanisms by which R.R. would have been able to access the decisive diagnostic services, and in light of the results, to exercise her right to make an informed decision about an abortion.²¹ Consequently, the state violated her right to private life under Article 8.

Effective measures must be taken to alleviate chilling effect of criminalization of abortion

The Court underlined that the combination of heavy legal restrictions on abortion in Poland and the criminal prohibition on doctor’s performing abortions except in a small number of narrow circumstances gives rise to a “chilling effect” which discourages doctors from authorizing and performing legal abortions. The Court held that Poland must ensure that domestic legal provisions regulating access to lawful abortion are formulated in such a way as to alleviate this chilling effect.²² It underlined what it called the “striking discordance” between the theoretical legal right of access to abortion services in Poland on exceptional grounds and the reality of women’s inability to access abortion in practice in such cases. It considered that this discord was created by Poland’s failure to establish effective and accessible procedures by which women could to establish their right to a lawful abortion in particular circumstances.²³

Refusals of care by health professionals must not impede women’s exercise of their reproductive rights

The Court held that states are obliged under the Convention to ensure that health care professionals’ refusals to provide care on grounds of conscience do not impede women’s access to reproductive health services to which they are entitled under domestic law, including abortion services. It considered that states have a duty to organize health services in such a way as to ensure that such refusals do not prevent patients from obtaining access to services to which they are entitled.²⁴ It also implicitly rejected the assumption that such refusals are necessarily relevant to the right to freedom of thought, conscience, and religion enshrined in Article 9 of the Convention.

Remedies

The Court awarded €45,000 (59,850 USD) in non-pecuniary damages to R.R. She was awarded an additional €15,000 (19,950 USD) for legal fees.

Endnotes

- ¹ R.R. v. Poland, No. 27617/04 Eur. Ct. H.R. (2011).
- ² Article 3 of the European Convention on Human Rights provides: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Convention for the Protection of Human Rights and Fundamental Freedoms, *adopted* Nov. 4, 1950, art. 3, 213 U.N.T.S. 222, Eur. T.S. No. 5 (*entered into force* Sept. 3, 1953).
- ³ Center for Reproductive Rights, The World’s Abortion Laws 2014 Map (Sept. 2014), *available at* <http://www.reproductiverights.org/document/the-worlds-abortion-laws-map>.
- ⁴ She was assisted by the Federation for Women and Family Planning (Poland) and the University of Warsaw Law Clinic in cooperation with the Center for Reproductive Rights.
- ⁵ Law of Jan. 7, 1993 on Family Planning, Human Embryo Protection, and Conditions of Legal Pregnancy Termination *amended as of* Dec. 23, 1997, art. 4a.1 (1-3) (Pol.).
- ⁶ Criminal Code, arts. 152-154 (Pol.).
- ⁷ *See for example, Tysi c v. Poland*, No. 5410/03 Eur. Ct. H. R. para. 116 (2007). Human Rights Committee, *Concluding Observations: Poland*, para. 10, U.N. Doc. CCPR/C/79/Add.110 (1999); Committee on Economic, Social, and Cultural Rights, *Concluding Observations: Poland*, para. 28, U.N. Doc. E/C.12/POL/CO/5 (2009); *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report on Mission to Poland*, para. 24, U.N. Doc. A/HRC/14/20/Add.3 (2010).
- ⁸ R.R. v. Poland, No. 27617/04 Eur. Ct. H.R. (2011). The judgment became final on November 28, 2011.
- ⁹ *Id.* para. 200.
- ¹⁰ *Id.* para. 159.
- ¹¹ *Id.* para. 160.
- ¹² *Id.* para. 160. The Court’s finding that the willful denial of medical care aggravated the inhuman and degrading treatment the applicant suffered reinforces the standard developed in *K.L. v. Peru*, where such a denial is described at para. 6.3 as having the effect of “add(ing) further pain and distress.” *K.L. v. Peru*, Human Rights Committee, Communication No. 1153/2003, para. 6.3, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).
- ¹³ *Id.* para. 159.
- ¹⁴ *Id.*
- ¹⁵ *Id.* para. 203.
- ¹⁶ *Id.* paras. 197 & 203.
- ¹⁷ *Id.* paras. 203 & 204.
- ¹⁸ *Id.*
- ¹⁹ *Id.* para. 197.
- ²⁰ *Id.* para. 200.
- ²¹ *Id.* para. 208.
- ²² *Id.* para. 193.
- ²³ *Id.* para. 210.
- ²⁴ *Id.* para. 206.
- ²⁵ *Id.* paras. 193, 200, 206, 210 & 213.