

October 2012

P. and S. v. Poland - 57375/08

Judgment 30.10.2012 [Section IV]

Article 8

Article 8-1

Respect for private life

Disclosure of information by public hospital about a pregnant minor who was seeking an abortion after being raped: *violation*

Article 3

Degrading treatment

Inhuman treatment

Harassment of minor by anti-abortion activists as a result of authorities' actions after she had sought an abortion following rape: *violation*

Article 5

Article 5-1

Lawful arrest or detention

Placement of pregnant minor in juvenile shelter to prevent her from seeking abortion following rape: *violation*

Article 8

Positive obligations

Article 8-1

Respect for private life

Medical authorities' failure to provide timely and unhindered access to lawful abortion to a minor who had become pregnant as a result of rape: *violation*

Facts – The applicants were a daughter and her mother. In 2008, at the age of fourteen, the first applicant, P., became pregnant after being raped. In order to have an abortion in accordance with the 1993 Law on Family Planning, she obtained a certificate from the public prosecutor that her pregnancy had resulted from unlawful sexual intercourse. However, on contacting public hospitals in

Lublin, the applicants received contradictory information as to the procedure to be followed. Without asking whether she wished to see him one of the doctors took P. to see a Catholic priest who tried to convince her to carry the pregnancy to term and got her to give him her mobile phone number. The second applicant was asked to sign a consent form warning that the abortion could lead to her daughter's death. Ultimately, following an argument with the second applicant, the head of gynaecology in the Lublin hospital refused to allow an abortion, citing her personal views, and the hospital issued a press release confirming. Articles were published in local and national newspapers and the case was the subject of discussions on the internet.

P. was subsequently admitted to a hospital in Warsaw, where she was informed that the hospital was facing pressure not to perform the abortion and had received numerous e-mails criticising the applicants for their decision. P. also received unsolicited text messages from the priest and others trying to convince her to change her mind. Feeling manipulated and helpless, the applicants left the hospital two days later. They were harassed by anti-abortion activists and eventually taken to a police station, where they were questioned for several hours. On the same day, the police were informed that the Lublin Family Court had ordered P.'s placement in a juvenile shelter as an interim measure in proceedings issued to divest her mother of her parental rights on the grounds that she was pressurising P. into having the abortion. In making that order the court had regard to text messages P. had sent to her friend saying she did not know what to do. Later that day, the police drove P. to Lublin, where she was placed in a juvenile shelter. Suffering from pain, she was taken to hospital the following day, where she stayed for a week. A number of journalists came to see her and tried to talk to her. After complaining to the Ministry of Health, the applicants were eventually taken in secret to Gdańsk, some 500 kilometres from their home, where the abortion was carried out.

The family court proceedings were discontinued eight months later after P. testified that she had not been forced by her mother to have an abortion. Criminal proceedings that had been brought against P. for suspected sexual intercourse with a minor were also discontinued as was the criminal investigation against the alleged perpetrator of the rape.

Law – Article 8

(a) *Access to lawful abortion*: As to the right of doctors to refuse certain services on grounds of conscience, Polish law had acknowledged the need to ensure that doctors were not obliged to carry out services to which they objected, and put in place a mechanism by which such a refusal could be expressed. This mechanism also included elements allowing the right to conscientious objection to be reconciled with the patient's interests, by making it mandatory for refusals to be in writing and included in the patient's medical records and, above all, by imposing an obligation on the doctor to refer the patient to another doctor competent to carry out the same service. However, it had not been shown that these procedural requirements and the applicable laws had been complied with in the instant case. The events surrounding the determination of P.'s access to legal abortion had been marred by procrastination and confusion. The applicants had been given misleading and contradictory information and had not received appropriate and objective medical counselling that had due regard to their views and wishes. No set procedure had been available by which they could have their views heard and properly taken into consideration with a modicum of procedural fairness. The difference in the situation of a pregnant minor and that of her parents did not obviate the need for a procedure for the determination of access to lawful abortion whereby both parties could be heard and their views fully and

objectively considered and for a mechanism for counselling and for reconciling conflicting views in the minor's best interests. It had not been shown that the legal setting in Poland had allowed for the second applicant's concerns to be properly addressed in a way that would respect her views and attitudes and balance them in a fair and respectful manner against the interests of her pregnant daughter in the determination of such access.

In this connection, civil litigation did not constitute an effective and accessible procedure since such a remedy was solely of a retroactive and compensatory character. No examples had been given of cases in which the civil courts had acknowledged and afforded redress for damage caused to a pregnant woman by the anguish, anxiety and suffering entailed by her efforts to obtain access to abortion.

Effective access to reliable information on the conditions for having a lawful abortion and the procedures to be followed was directly relevant to the exercise of personal autonomy. The notion of private life within the meaning of Article 8 applied both to decisions to become and not to become a parent. The nature of the issues involved in a woman's decision whether or not to terminate a pregnancy was such that the time factor was of critical importance. The procedures should therefore ensure that such decisions were taken in good time. The uncertainty which had arisen in the instant case had resulted in a striking discordance between the theoretical right to a lawful abortion and the reality of its practical implementation. The authorities had thus failed to comply with their positive obligation to secure to the applicants effective respect for their private life.

Conclusion: violation (six votes to one).

(b) *Disclosure of personal and medical data:* The information made available to the public had been detailed enough for third parties to establish the applicants' whereabouts and contact them, either by mobile phone or personally. P.'s text messages to a friend could reasonably be regarded as a call for assistance, addressed to that friend and possibly also to her close environment, by a vulnerable and distraught teenager in a difficult life situation. By no means could it be equated with an intention to disclose information about her pregnancy, her own or her family's views and feelings to the general public and press. The fact that legal abortion in Poland was a subject of heated debate did not confer on the State a margin of appreciation so wide as to absolve medical staff from their uncontested professional obligations regarding medical secrecy. It had not been argued, let alone shown, that in the present case there were any exceptional circumstances of such a character as to justify a public interest in P.'s health. Accordingly, the disclosure of information about her unwanted pregnancy and the hospital's refusal to carry out an abortion had not pursued a legitimate aim. Furthermore, no provision of domestic law had been cited on the basis of which information about individual patients' health issues, even non-nominate information, could be disclosed to the general public in a press release. P. had been entitled to respect for her privacy regarding her sexual life, whatever concerns or interest her predicament had generated in the local community. The national law expressly recognised the rights of patients to have their medical data protected, and imposed on health professionals an obligation to abstain from disclosing information about their patients' conditions. Likewise, the second applicant had been entitled to the protection of information concerning her family life. Yet, despite that obligation, the Lublin hospital had made information concerning the present case available to the press. The disclosure of information about the applicants' case had therefore been neither lawful nor served a legitimate interest.

Conclusion: violation (unanimously).

Article 5 § 1: The essential purpose of the decision to place P. in the juvenile shelter had been to separate her from her parents, in particular her mother, and to prevent the abortion. By no stretch of the imagination could the detention be considered to have been ordered for educational supervision within the meaning of Article 5 § 1 (d), as the Government had contended. It had been legitimate to try to establish with certainty whether P. had had an opportunity to reach a free and well-informed decision about having recourse to abortion. However, if the authorities had been concerned that an abortion would be carried out against her will, less drastic measures than locking up a fourteen-year old girl in a situation of considerable vulnerability should have at least been considered. Her detention between 4 and 14 June 2008 had thus not been compatible with Article 5 § 1.

Conclusion: violation (unanimously).

Article 3: It was of a cardinal importance that P. was at the material time only fourteen years old. However, despite her great vulnerability, a prosecutor's certificate confirming that her pregnancy had resulted from unlawful intercourse and medical evidence that she had been subjected to physical force, both she and her mother had been put under considerable pressure on her admission to the Lublin hospital. One of the doctors had made the mother sign a declaration acknowledging that an abortion could lead to her daughter's death. No cogent medical reasons had been put forward to justify the strong terms of that declaration. P. had witnessed the argument between the doctor and the second applicant, whom the doctor had accused of being a bad mother. Information about the case had been relayed by the press, in part as a result of the press release issued by the hospital. P. had received numerous unwanted and intrusive text messages from people she did not know. In the hospital in Warsaw the authorities had failed to protect her from contact from people trying to exert pressure on her. Further, when she requested police protection after being accosted by anti-abortion activists, she was instead arrested and placed in a juvenile shelter. The Court was particularly struck by the fact that the authorities had decided to institute a criminal investigation on charges of unlawful intercourse against P., who should have been considered a victim of sexual abuse. That approach fell short of the requirements inherent in the States' positive obligations to establish and apply effectively a criminal-law system punishing all forms of sexual abuse. Although the investigation against the applicant had ultimately been discontinued, the mere fact that it had been instituted showed a profound lack of understanding of her predicament. No proper regard had been given to her vulnerability and young age and to her views and feelings. The approach of the authorities had been marred by procrastination, confusion and a lack of proper and objective counselling and information. Likewise, the fact that P. had been separated from her mother and deprived of her liberty in breach of Article 5 § 1 had to be taken into consideration. In sum, P. had been treated by the authorities in a deplorable manner and her suffering had reached the minimum threshold of severity under Article 3.

Conclusion: violation (unanimously).

Article 41: EUR 30,000 to the first applicant and EUR 15,000 to the second applicant in respect of non-pecuniary damage.

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