

Press release issued by the Registrar

CHAMBER JUDGMENT
TYSIĄC v. POLAND

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Tysiąg v. Poland* (application no. 5410/03).

The Court held:

- by six votes to one, that there had been **a violation of Article 8** (right to respect for private life) of the European Convention on Human Rights; and
- unanimously, that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention;

Under Article 41 (just satisfaction), the Court awarded the applicant 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 14,000 for costs and expenses (less EUR 2,442.91 received by way of legal aid from the Council of Europe). (The judgment is available in English and French.)

1. Principal facts

The applicant, Alicja Tysiąg, is a Polish national who was born in 1971 and lives in Warsaw.

Having suffered for many years from severe myopia (approximately -20 dioptries in each eye), she was assessed by a State medical panel, for the purposes of social insurance, as suffering from a disability of medium severity. The applicant decided to consult several doctors when she discovered in February 2000 that she was pregnant for the third time, as she was concerned that her pregnancy might have an impact on her health.

The three ophthalmologists whom the applicant consulted each concluded that there would be a serious risk to her eyesight if she carried the pregnancy to term. However, they refused to issue a certificate for the pregnancy to be terminated on therapeutic grounds, despite the applicant's requests to that effect². The applicant also consulted a general practitioner, who

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

² Abortion is prohibited in Poland except under certain conditions as set out in the 1993 Family Planning, Protection of the Human Foetus, and Conditions Permitting Pregnancy Termination Act (when pregnancy endangers the mother's life or health; when prenatal tests indicate a high risk that the foetus will be severely and

issued a certificate stating the risks to which her pregnancy exposed her on account of both the problems in her retina and the consequences of giving birth again after two previous deliveries by caesarean.

By the second month of her pregnancy, in April 2000, the applicant's myopia had already deteriorated to a level of -24 dioptries in each eye.

Ms Tysiąg was given an appointment on 26 April 2000 at the gynaecology and obstetrics department of a public hospital in Warsaw, with a view to terminating the pregnancy. She was examined by the head of the department, Dr R.D., who found that there were no medical grounds for performing a therapeutic abortion. The applicant was therefore unable to have her pregnancy terminated and gave birth to her third child by caesarean in November 2000.

Following the delivery, the applicant's eyesight deteriorated considerably as a result of what was diagnosed as a retinal haemorrhage. A panel of doctors concluded that her condition required treatment and daily assistance and declared her to be significantly disabled.

The applicant lodged a criminal complaint against Dr R.D., but the investigation was discontinued by the district prosecutor on the ground that there was no causal link between the doctor's decision and the deterioration of the applicant's eyesight. Moreover, no disciplinary action was taken against the doctor.

Ms Tysiąg, who is raising her three children alone, is now registered as significantly disabled and, on that account, receives a monthly pension equivalent to 140 euros. She cannot see objects more than 1.50 metres away and fears that she will eventually become blind.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 January 2003. The application was declared admissible following a hearing that took place in public in the Human Rights Building, Strasbourg, on 7 February 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (British), *President*,
Giovanni **Bonello** (Maltese),
Matti **Pellonpää** (Finnish),
Kristaq **Traja** (Albanian),
Lech **Garlicki** (Polish),
Javier **Borrego Borrego** (Spanish),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina), *judges*,

and also Lawrence **Early**, *Section Registrar*.

irreversibly damaged; when there are strong grounds for believing that the pregnancy is a result of a criminal act).

3. Summary of the judgment¹

Complaints

Ms Tysi c considered that she satisfied the statutory conditions for access to abortion on therapeutic grounds. She maintained that the fact that she was not allowed to terminate her pregnancy in spite of the risks to which she was exposed amounted to a violation of Articles 8, 3 and 13. She further complained that no procedural and regulatory framework had been put in place to enable a pregnant woman to assert her right to a therapeutic abortion, thus rendering that right ineffective. Finally, relying on Article 14, she alleged that she had been discriminated against on the grounds of her sex and her disability.

Decision of the Court

Article 3

In the circumstances of the applicant's case, the Court found that the facts did not reveal a breach of Article 3 and considered that it was more appropriate to examine Ms Tysi c's complaints under Article 8.

Article 8

The Court observed that, under the 1993 Pregnancy Termination Act, abortion was lawful in Poland where pregnancy posed a threat to the woman's life or health and that it was, therefore, not the Court's task, in the applicant's case, to examine whether the Convention guaranteed a right to have an abortion.

The Court found that the case related to Ms Tysi c's right to respect for her private life, reiterating that legislation regulating the interruption of pregnancy touched upon the sphere of private life, since, whenever a woman was pregnant, her private life became closely connected with the developing foetus.

The Court decided to examine the complaint from the standpoint of the State's positive obligation under Article 8 to secure the physical integrity of mothers-to-be.

The Court observed that it was not in dispute that from 1977 Ms Tysi c suffered from severe myopia. The Court stressed that it was not its role to question the doctors' clinical judgment as regards the seriousness of the applicant's condition but found it sufficient to note that Ms Tysi c feared that the pregnancy and birth might further endanger her eyesight and that those fears, in the light of her medical history and the advice she had been given, could not be said to have been irrational.

Having regard to the general context, the Court noted that, according to the Polish Federation for Women and Family Planning, doctors were often deterred from authorising an abortion, it being essentially a criminal offence in Poland punishable by up to three years' imprisonment if the conditions specified in the 1993 Act were breached. Doctors were particularly reticent in the absence of transparent and clearly defined procedures to determine whether the legal conditions for a therapeutic abortion were met. The Polish Government had even acknowledged deficiencies in the manner in which the Act had been applied in practice. With that in mind, the Court noted that once the legislature had decided to allow abortion, it must

¹ This summary by the Registry does not bind the Court.

not structure its legal framework in such a way as to limit the use of that possibility. Furthermore, it should ensure some form of procedure before an independent and competent body, which, after having had the opportunity to hear the pregnant woman in person, issued prompt and written grounds for its decision. The Court, bearing in mind the very nature of the issues involved in deciding to terminate a pregnancy, observed that the procedures in place should also ensure that such decisions are timely so as to limit or prevent damage to a woman's health.

Against that general background, the Court examined how the legal framework regulating the availability of a therapeutic abortion in Polish law had been applied to Ms Tysi c's case and how it addressed her concerns about the possible negative impact of pregnancy and birth on her health.

Firstly, the Court noted that the Government had referred to an Ordinance by the Minister of Health of 22 January 1997 which provided a procedure governing decisions on therapeutic abortion and that that procedure, based on medical considerations, was relatively simple and enabled relevant measures to be taken promptly. However, the Court found that the Ordinance did not provide any particular procedural framework to address and resolve disagreement as to the advisability of therapeutic abortion, either between the pregnant woman and her doctors, or between the doctors themselves.

Secondly, it noted that the Government referred to Article 37 of the 1996 Medical Profession Act which allows a doctor, in the event of therapeutic doubts, or at a patient's request, to obtain a second opinion from a colleague. However, the Court emphasised that that provision, having only been addressed to members of the medical profession, did not give patients a procedural guarantee to obtain such an opinion or to contest it in the event of disagreement. The provision did not address either the more specific issue of a pregnant woman seeking a lawful abortion.

The Court therefore concluded that that Polish law, applied to the applicant's case, did not contain any effective mechanism capable of determining whether the conditions for obtaining a lawful abortion had been met. That created a situation of prolonged uncertainty for Ms Tysi c and, as a result, she suffered severe distress and anguish about the possible negative consequences on her health of her pregnancy and the imminent birth.

The Court was of the opinion that the provisions of Polish civil law on tort did not give Ms Tysi c the opportunity to uphold the right to respect for her private life either. Those provisions were retroactive and could only have resulted in the courts granting compensation. Similarly, criminal proceedings against Dr R.D. could not have prevented the damage to the applicant's health from arising. The Court therefore found that retrospective measures alone did not provide appropriate protection for the physical integrity of individuals in such a vulnerable position as Ms Tysi c.

Having regard to the circumstances of the case as a whole, the Court concluded that, within the context of a controversy such as entitlement to a therapeutic abortion, the Polish State had failed to safeguard Ms Tysi c's right to the effective respect for her private life and that there had therefore been a breach of Article 8.

Article 13

Observing that Ms Tysiąc's complaint under this Article essentially overlapped with the issues examined under Article 8, the Court held that no separate issue arose under Article 13.

Article 14 read together with Article 8

The Court, having regard to its reasons for finding a violation of Article 8, did not consider it necessary to examine the applicant's complaints separately under Article 14.

Judge Bonello expressed a separate opinion and Judge Borrego Borrego a dissenting opinion, which are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Beverley Jacobs (telephone: 00 33 (0)3 90 21 54 21)

Tracey Turner-Tretz (telephone: 00 33 (0)3 88 41 35 30)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.