



## “Inhuman treatment” of mother denied timely access to an amniocentesis whose baby was born severely disabled

In today's Chamber judgment in the case [R.R. v. Poland](#) (application no. 27617/04), which is not final<sup>1</sup>, the European Court of Human Rights held, by six votes to one, that there had been:

**A violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights; and**

**A violation of Article 8 (right to respect for private and family life) of the Convention.**

The case concerned a pregnant mother-of-two - carrying a child thought to be suffering from a severe genetic abnormality - who was deliberately denied timely access to the genetic tests to which she was entitled by doctors opposed to abortion. Her child was born with Turner syndrome<sup>2</sup>.

### Principal facts

The applicant, R.R., is a Polish national who was born in 1973 and lives in Poland.

On 20 February 2002, R.R., who was 18 weeks pregnant, had an ultrasound scan, following which her family doctor, Dr S.B, told her that he could not rule out the possibility that the foetus was malformed. She told him she wished to have an abortion if his suspicion proved true. She was married with two children at the time.

Two further scans confirmed that her foetus was probably malformed and recommended that she have an amniocentesis.

R.R. then saw a specialist in clinical genetics who recommended that she ask for a formal referral from Dr S.B. to have the amniocentesis carried out in a public hospital in Łódź. Dr S.B. refused.

In the first week of March 2002 R.R. and her husband asked Dr S.B., while he was on night duty at hospital T., to terminate her pregnancy. He refused.

On 11 March 2002 R.R. was admitted to hospital T. and told that a decision on termination could not be taken there and that it would put her life at risk.

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

<sup>2</sup>Turner syndrome - A genetic condition, affecting around one in every 2,500 girls, in which the sufferer does not have the usual pair of two X chromosomes. They are also usually shorter than average and infertile. Other health problems can include kidney and heart abnormalities, high blood pressure, obesity, diabetes mellitus, cataract, thyroid problems, and arthritis. Some sufferers may also have learning difficulties.

On 14 March 2002, immediately after being discharged from hospital T., R.R. travelled 150 kilometres to a university hospital in Kraków, to which she had been referred by hospital T. The doctor she consulted criticised her for considering an abortion and refused to authorise genetic tests. She was also informed that the hospital refused to carry out abortions and that no abortions had been performed there for the last 150 years. She stayed in the hospital for three days and had another scan, with inconclusive results. She maintained that medical staff made degrading remarks about her and kept her in the hospital without explanation, only to conduct tests unrelated to her concerns (for a possible inflammatory condition of the foetus). She was discharged on 16 March 2002. Her discharge record and medical certificate stated that the foetus had developmental abnormalities.

On 21 March 2002 a further scan confirmed that the foetus was malformed.

She had an amniocentesis on 26 March 2002, in the 23rd week of pregnancy, reporting to the hospital as an emergency patient, without a valid doctor's referral (which she had tried and failed to obtain). She was told that she had to wait two weeks for the results.

On 29 March 2002 she submitted a written request to hospital T. for an abortion under the 1993 Family Planning Act, which stipulates that an abortion on the grounds of foetal abnormality can only be performed before the foetus is considered capable of independent life, normally thought to be in the 24th week of pregnancy.

On 3 April 2002 she returned to hospital T. and was told that the consultant could not see her because he was ill.

On 9 April 2002 she received the results of the genetic tests which confirmed that her child had Turner syndrome. She renewed her request for an abortion the same day. The doctors in hospital T. refused because the legal time limit for abortion had passed.

On 11 July 2002 she gave birth to a girl with Turner syndrome.

R.R.'s husband left her after the baby was born.

The applicant asked for criminal proceedings to be brought against the doctors responsible for failing to perform timely prenatal tests. On 2 February 2004, the competent court found that no criminal offence had been committed because doctors were not "public servants".

On May 11 2004 she brought civil proceedings against the doctors and hospitals concerned and claimed compensation from Dr S.B. in relation to a newspaper article published in November 2003 in which he had disclosed personal details about her health and accused her and her husband of being irresponsible parents.

On 19 October 2005 Kraków Regional Court awarded the applicant 10,000 Polish zlotys (PLN) against S.B. concerning his statement to the press, but dismissed all the other claims she had lodged against the doctors and hospitals responsible for dealing with her case.

R.R. appealed to Kraków Court of Appeal, which dismissed her appeal on 28 July 2006.

On 11 July 2008 the Supreme Court allowed her cassation appeal, held that R.R. had suffered stress, anxiety and humiliation as a result of the way her case had been handled and remitted the case.

On 30 October 2008 Kraków Court of Appeal awarded R.R. PLN 20,000 because Dr S.B. had failed to refer her for genetic tests in time. It also ordered Dr S.B. to pay her PLN

30,000 concerning his statement to the press. It found the hospitals liable for the negligent acts of their employees and that the doctors had also failed to make any record of their refusals and the grounds for them, in contravention of section 39 of the Medical Profession Act. The court awarded the applicant PLN 5,000 against hospital T. and PLN 10,000 against Kraków University Hospital.

## Complaints, procedure and composition of the Court

R.R. complained that she was denied access to the prenatal genetic tests to which she was entitled when pregnant due to doctors' lack of proper counselling, procrastination and confusion. She therefore missed the time-limit for a legal abortion and subsequently gave birth to a baby suffering from Turner syndrome. She relies on Articles 3, 8 and 13 (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 30 July 2004.

Third-party comments were received from the United Nations Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, from the International Federation of Gynaecology and Obstetrics and from the International Reproductive and Sexual Health Law Programme, University of Toronto, Canada.

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

Nicolas **Bratza** (the United Kingdom), *President*,  
Lech **Garlicki** (Poland),  
Ljiljana **Mijović** (Bosnia and Herzegovina),  
Sverre Erik **Jebens** (Norway),  
Päivi **Hirvelä** (Finland),  
Ledi **Bianku** (Albania),  
Vincent A. **de Gaetano** (Malta), *Judges*,

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

## Decision of the Court

### Article 3

The Court noted that R.R. had received insufficient compensation (PLN 35,000) from the Polish courts in relation to the issues raised before the European Court of Human Rights. It therefore considered that she had not lost her status as a victim.

The Court also considered that it had not been necessary for the applicant to lodge a constitutional complaint.

The Court observed that the scan carried out in the 18th week of the applicant's pregnancy confirmed the likelihood that the foetus was affected with an unidentified malformation. Following that scan R.R. feared that the foetus was affected with a genetic disorder and, in the light of the results of subsequent scans, her fears could not be said to have been without foundation. She tried repeatedly (and failed) to obtain access to genetic tests which would have provided her with information confirming or dispelling her fears. For weeks she was made to believe that she would undergo the necessary tests. She was repeatedly sent to various doctors, clinics and hospitals far from her home and even hospitalised for several days for no clear clinical purpose. The Court found that the determination of whether the applicant should have had access to genetic

tests, as recommended by doctors, was marred by procrastination, confusion and lack of proper counselling and information.

Ultimately she only obtained admission to a hospital in Łódź by means of subterfuge where she finally had the tests conducted in the 23rd week of her pregnancy.

It was not in dispute that it was possible only by means of genetic tests to establish whether the initial diagnosis was correct and it had not been argued, let alone shown, that at the relevant time genetic tests were unavailable for lack of equipment, medical expertise or funding.

Under the 1993 Act, the State was obliged to ensure unimpeded access to prenatal information and testing, particularly where there was a possible genetic disorder or development problem. There were various unequivocal legal provisions in force at the relevant time which specified the State's obligations towards pregnant women regarding their access to information about their health and that of the foetus.

However, there was no indication that the legal obligations of the State and of the medical staff regarding R.R.'s rights as a patient were taken into consideration by the people and institutions dealing with her requests to have access to genetic tests.

The Court noted that she was in a very vulnerable position. Like any other pregnant woman in her situation, she was deeply distressed about the possibility that her foetus could be malformed and it was therefore natural that she wanted to obtain as much information as possible in order to decide what to do. As a result of the procrastination of medical professionals, she had had to endure weeks of painful uncertainty concerning the health of the foetus, her own and her family's future and the prospect of raising a child suffering from an incurable illness. She suffered acute anguish through having to think about how she and her family would be able to ensure the child's welfare, happiness and appropriate long-term medical care. Her concerns were not properly acknowledged and addressed by the health professionals dealing with her case. Six weeks elapsed between the first relevant ultrasound scan and the results of the amniocentesis, too late for her to make an informed decision on whether to continue the pregnancy or to ask for a legal abortion, as the legal time limit had by then expired.

Her suffering, both before the results of the tests became known and after that date, could be said to have been aggravated by the fact that she was legally entitled to the diagnostic services requested and that those services were at all times available.

It was a matter of great regret that she was so shabbily treated by the doctors dealing with her case. The Court could only agree with the Polish Supreme Court's view that the applicant had been humiliated. There had therefore been a violation of Article 3.

## Article 8

The Court noted that, while States had a broad margin of appreciation regarding the circumstances in which an abortion would be permitted, once that decision had been taken, there had to be a coherent legal framework in place to allow the different legitimate interests involved to be adequately taken into account in accordance with the Convention.

The Court reiterated that prohibition of the termination of pregnancies sought for reasons of health and/or well-being amounted to an interference with the applicants' right to respect for their private lives. A pregnant woman should at least have a chance to be heard in person and to have her views considered. The competent body or person should also issue written grounds for its decision.

The Court noted that the 1993 Act specified situations in which abortion was allowed. A doctor who terminated a pregnancy in breach of the conditions specified in that Act was guilty of a criminal offence punishable by up to three years' imprisonment. The Court reiterated that the legal restrictions on abortion in Poland, taken together with the risk of their incurring criminal responsibility under Article 156 § 1 of the Criminal Code, could well have a chilling effect on doctors when deciding whether the requirements of legal abortion had been met in an individual case. The Court considered that provisions regulating the availability of lawful abortion should be formulated in such a way as to alleviate that "chilling effect".

In R.R.'s case, what was at stake was essentially timely access to a medical diagnostic service that would, in turn, make it possible to determine whether or not the conditions for lawful abortion had been met.

In the context of pregnancy, the effective access to relevant information on the mother's and foetus' health, where legislation allowed for abortion in certain situations, was directly relevant for the exercise of personal autonomy.

The difficulties R.R. experienced seemed to have been caused, in part, by reticence on the part of certain doctors involved to issue a referral, and also by a certain organisational and administrative confusion in Poland's health system.

The Court stressed that, as Polish domestic law allowed for abortion in cases of foetal malformation, there had to be an adequate legal and procedural framework to guarantee that relevant, full and reliable information on the foetus' health be made available to pregnant women.

In R.R.'s case, however, there had been a six week wait between the first relevant scan and the receipt of the amniocentesis results. It was important to note too that the Supreme Court had criticised the conduct of the medical professionals who had been involved in R.R.'s case and the procrastination shown in deciding whether to give her a referral for genetic tests. As a result, she was unable to obtain a diagnosis of the foetus' condition, established with the requisite certainty, by genetic tests within the time-limit, for abortion to remain a lawful option for her.

The Court did not agree with the Polish Government that providing access to prenatal genetic tests was in effect providing access to abortion. Women sought access to such tests for many reasons. In addition, States were obliged to organise their health services to ensure that an effective exercise of the freedom of conscience of health professionals in a professional context did not prevent patients from obtaining access to services to which they were legally entitled.

The Court considered that it had not been demonstrated that Polish law contained any effective mechanisms which would have enabled the applicant to have access to the available diagnostic services and to take, in the light of their results, an informed decision as to whether or not to seek an abortion.

The Court reiterated that effective implementation of the relevant part of the 1993 Act would necessitate ensuring that pregnant women had access to diagnostic services which would show whether or not the foetus was damaged - services which were available.

The Court also noted that legislation in many other European countries specified the conditions governing effective access to a lawful abortion and established procedures to implement those laws.

The Court concluded that the Polish authorities had failed to comply with their obligations to ensure the effective respect of R.R.'s private life and that there had therefore been a violation of Article 8.

### Article 13

The Court held unanimously that no separate issue arose under Article 13.

### Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Poland was to pay the applicant 45,000 euros (EUR) in respect of non-pecuniary damage and EUR 15,000 in respect of costs and expenses.

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Emma Hellyer (tel: + 33 3 90 21 42 15)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Nina Salomon (tel: + 33 3 90 21 49 79)

**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.