COMMISSIONER FOR HUMAN RIGHTS

Adam Bodnar

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Ms. Kishwer Falkner
Baroness Falkner of Margravine
Chair of the Board of
Commissioners Equality and
Human Rights Commission

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Dear Ms. Chairwoman,

I address my kind request acting in the capacity of the Commissioner for Human Rights (the Ombudsman) who in Poland is the national human rights institution and the constitutional authority protecting fundamental rights.

Recently, the media – both British and Polish – reported about withdrawal of nutrition and hydration from Polish citizen (referred to as RS) who is currently hospitalised in the University Hospital Plymouth NHS Trust. According to media coverage, RS was admitted to the hospital following a heart attack. His condition deteriorated and patient fell into a coma after suffering brain damage. The doctors at the University Hospital Plymouth NHS Trust concluded that it was in his best interests to withdraw all life-sustaining treatment. Doctors' decision was accepted by patient's wife and children, but the man's mother, sisters and niece disagreed with the decision and claimed that being a Catholic, RS would not have wanted his life to be terminated if it could be preserved. The dispute was submitted to the Court of Protection. The Hospital applied for a declaration that "RS (…) lacks capacity to consent or refuse medical treatment, including ventilation and CANH (that is, feeding and hydration) and for an order that it is lawful and in his best interests for ventilation and for food and

hydration to be withdrawn and for such palliative care as is appropriate to be provided in order to maximise his dignity and ensure he does not suffer unnecessarily". Justice Cohen, after hearing RS's family members, granted the declaration and stated that "it is for the Trust and RS's wife to decide between themselves whether hydration is to be withdrawn"[1]. RS's niece sought permission to appeal, but her application was refused by the Court of Appeal. Members of RS's family unsuccessfully tried to challenge the decision of the Court of Appeal before the European Court of Human Rights (ECtHR).

RS' mother, sisters and niece submitted another application for permission to appeal from the decision of the Court of Protection, but the application was dismissed. Then, members of RS's family submitted another application to the ECtHR, but the application was refused[2].

Currently, members of RS's family are undertaking actions aiming at obtaining a permit to transport RS to Poland. It should be underlined that one of the Polish hospitals expressed its readiness to admit the Polish citizen. Actions have been undertaken also by Polish authorities. A special group petition aiming at protection of RS interests has been already signed by over 15 thousands citizens[3].

I would like to emphasise that there can be observed significant differences in regulations concerning the possibility of withdrawing treatment or discontinuing hydration and nutrition in different European countries. The lack of European consensus among States in favour of permitting the withdrawal of life-sustaining treatment was pointed out by the European Court of Human Rights in the case *Lambert and others v. France* (application no. 46043/14). The Court stated that in the sphere, which concerns one of the fundamental rights, namely the right to life, States must be afforded a margin of appreciation.

In particular, the issue of withdrawal of hydration and nutrition raises substantial controversy among lawyers, doctors and ethicists. Some specialists, while allowing the withdrawal of futile therapy, exclude the possibility of stopping hydration and nutrition. They perceive these interventions as a part of primary care rather than as a treatment that can be discontinued. For example the Polish Working Group on End-of-Life Ethics, which proposed

[1] Z v. University Hospitals Plymouth NHS Trust & Ors [2020] EWCOP 69 (31 December 2020).
[2] Z M S(4)R v. RS and ors, case no. B4/2021/0064 (13 January 2021).
[3] See: https://ratujmyrodaka.pl/

the definition of "persistent therapy"[4], indicated that this definition cannot be extended to primary care treatments, such as pain relief or feeding and hydration, as long as they serve the well-being of the patient.

There is no dispute that the decision regarding the possibility of stopping hydration and nutrition as well as the decision regarding the possibility of transporting RS to Poland should primarily serve patient's best interest. However, understanding of the concept of "patient's best interest" is culturally, ideologically and religiously conditioned. Therefore, in my opinion, those differences that can be observed in legal regulations and social attitudes towards the approach to the end of life treatment in Poland and United Kingdom should be considered in the case of RS. I believe that taking into account broader cultural context would help to correctly establish presumed patient's will. Additionally it would make the decision more socially acceptable.

Therefore, I would be very grateful for any possible action within the competences of the Commission which would aim at resolving ongoing dispute.

Yours sincerely

Adam Bodnar

Commissioner for Human Rights

/- digitally signed /

[4] "Persistent therapy is the use of medical procedures to maintain the terminally ill life function that prolongs its dying, binding with excessive suffering or violation of the patient's dignity. Persistent therapy does not include basic care treatments, pain relief and other symptoms as well as feeding and irrigation, if they serve the well-being of the patient" (Bołoz W, Krajnik M. Definition of Persistent Therapy. Consensus of the Polish Working Group on Ethical Issues of the End of Life, Palliative Medicine in Practice. 2008; 2: 77–78; English definition of persistent therapy quoted after: Krucinska B., Saran M., Czyzewski Ł., The limits of persistant therapy, Disaster and Emergency Medicine Journal 2018, Vol. 3, No. 1, 22–25).