



EXECUTION OF ECtHR JUDGMENTS IN CASES:

**P. AND S. v. POLAND (APPLICATION NO.
57375/08),**

R. R. v. POLAND (APPLICATION NO. 2761/04),

**TYSIĄC v. POLAND (APPLICATION NO.
5410/03)**

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ECtHR JUDGMENTS

- **Tysi c v. Poland** concerned a woman whose continued pregnancy posed a serious risk to her eyesight and her health but who was denied a medical certificate attesting to her entitlement to a legal abortion. The ECtHR found a **violation of Article 8 ECHR** resulting from the absence of an adequate legal framework for the exercise of the right to therapeutic abortion (Judgment date: 20/03/2007).
- In **R. R. v. Poland**, Poland was found responsible for having failed to safeguard access to prenatal genetic testing, which was required for the informed decision about the termination of a pregnancy. The ECtHR found a **violation of Articles 3 and 8 ECHR**. (Judgment date: 26/05/2011).
- **P. and S. v. Poland** concerned denying access to abortion to a 14-years-old girl whose pregnancy resulted from rape. She faced repeated arbitrary and harmful behavior by medical professionals and other state authorities. Her confidential medical information have been disclosed. The ECtHR found that Poland **violated Articles 3, 5 and 8 ECHR** (Judgment date: 30/10/2012).

The judgment of the ECtHR in P. and S. v. Poland:

- The Court specified that:

*“States are obliged to organise their health service system in such a way as to ensure that the effective **exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services** to which they are entitled under the applicable legislation.”*

*“**effective access to reliable information on the conditions for the availability of lawful abortion, and the relevant procedures to be followed, is directly relevant for the exercise of personal autonomy.** It reiterates that the notion of private life within the meaning of Article 8 applies both to decisions to become and not to become a parent (...].”*

The Law on Family planning, protection of the human foetus and conditions permitting pregnancy termination (Act of 7 January 1993)

The abortion is legal only when:

- pregnancy endangers the woman's life or health;
- ~~prenatal tests or other medical findings indicate a high risk that the foetus will be severely and irreversibly damaged or suffer from an incurable life-threatening ailment;~~
 - Judgement of the Constitutional Tribunal of 22 October 2020: **unconstitutional**.
 - Judgement officially published in the Journal of Laws of 27 January 2021.
- there are strong grounds for believing that the pregnancy is the result of a criminal act.

Steps taken by the Government & CM Decisions

- Act of 6 November 2008 on patients' rights and the Commissioner for Patients' Rights.
 - procedure for lodging objections against a decision or opinion of a doctor.
- No other significant steps.
- Judgement of the Constitutional Tribunal of 7 October 2015: referral mechanism unconstitutional.
 - There is currently no provision of Polish law that would oblige a doctor to inform the patient about an effective way of obtaining a healthcare service from a different medical institution in the case where the doctor refuses to perform the said service by invoking the conscience clause.
- CM Decisions: continuation of supervision of the execution.
 - Decisions of 2011, 2014, 2017, 2018, 2019, 2020.

Decisions of the CM – March 2020 – main points

The Deputies:

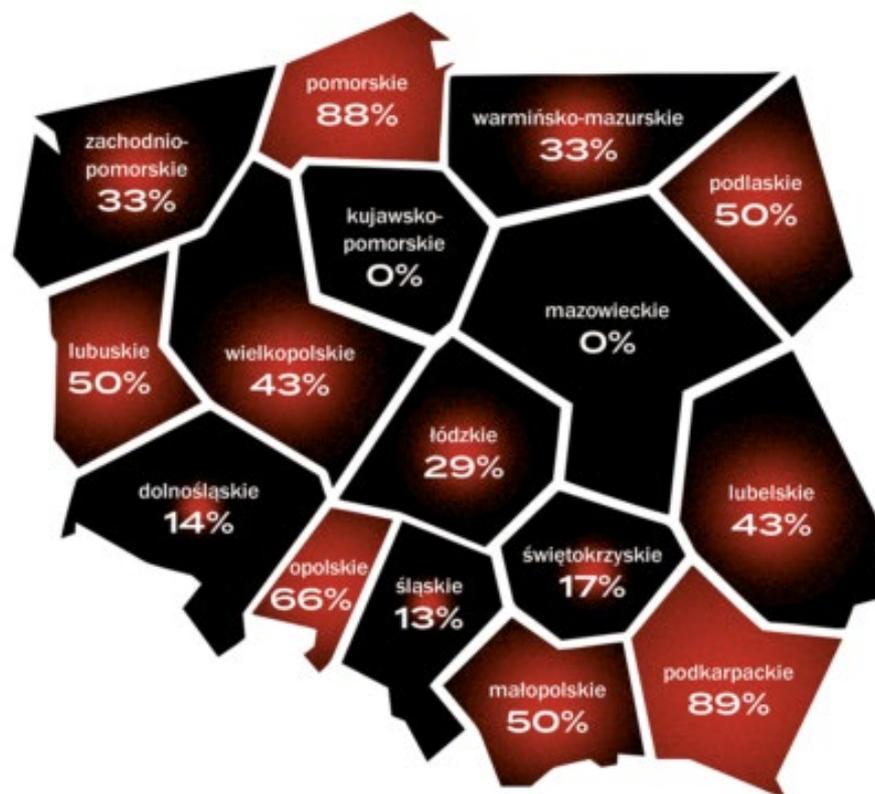
- recalled the need for the authorities to **guarantee clear and effective procedures** ensuring that women seeking lawful abortion are provided with adequate information on the steps they need to take;
- encouraged the adoption of an **amendment of the Medical Professions Act** so as to provide explicitly that a healthcare provider has **an obligation to provide information to patients** on how to obtain healthcare services which were not performed due to the use of the conscience clause;
- strongly urged the authorities to adopt the **reform of the objection procedure** without further delay;
- urged the authorities to provide information, including statistical data, about **the availability of lawful abortion across the country**, together with an assessment of possible regional disparities in this regard;
- urged the authorities to collect **information on hospitals refusing to perform lawful abortion due to the use of the conscience clause** by medical staff and to ensure the effective functioning of the mechanism based on the liability of healthcare providers for breach of their contractual obligation to provide lawful abortion;
- instructed the Secretariat to prepare a draft interim resolution.

Access to abortion for embryopathological reasons in Poland – HFHR’s research

- **Almost 40 %** of the hospitals indicated that abortion procedures could not be performed.
- Only slightly over 50% of the hospitals have clearly declared their willingness to perform abortion procedures.
- Justification for negative answers:
 - all doctors (or all doctors of their gynaecology departments) had signed the conscience clause and refuse to perform abortions;
 - treatment of COVID-19 patients;
 - various organisational and procedural obstacles that prevented from performing abortions which have no basis in law;
 - judgement of the Constitutional Tribunal of 22 October 2020.
- In 2017 **abortions were carried out in 9% of all facilities** which signed contracts with the National Health Fund for gynaecological and obstetrics hospitalization services.

Geographical differences in the availability of abortions in Poland

- In Poland, there are regions where access to abortion for embryopathological reasons was particularly difficult.
- The map presents the percentage of hospitals in provinces (voivodships) which excluded the carrying out of abortions.





Thank you for your attention!

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