



COMMUNICATION
FROM THE HELSINKI FOUNDATION FOR HUMAN RIGHTS (“HFHR”)
CONCERNING
THE EXECUTION OF ECtHR JUDGMENT IN CASE
***P. AND S. AGAINST POLAND* (APPLICATION NO. 57375/08),**

EIN briefing to the Committee of Ministers,
10 September 2018, Strasbourg

EXECUTIVE SUMMARY

- The *P. and S. against Poland* case concerned a 14 years old girl (the first applicant) who was denied access to an abortion, allowed under Polish law in the circumstances, by consecutive doctors. Medical doctors in three hospitals provided the applicant and her mother (the second applicant) with incorrect information about the conditions for pregnancy termination and, as a result, refused to carry out the procedure. While refusing to perform an abortion, the doctors invoked the “conscience” clause.
- In the judgement *P. and S. against Poland*, ECtHR found violations of Articles 3, 5 and 8 of the Convention.
- On 21 September 2017, the Committee of Ministers issued a decision in which it noted that it was necessary for the Polish government to present information on the guarantees of effective access to legal procedures for pregnancy termination;
- The Polish government presented its observations in the report of 21 June 2018. In our opinion, the Polish authorities did not fully and thoroughly address the matters invoked by the Committee of Ministers in its decision of 21 September 2017 on the execution of the judgement in the *P. and S. against Poland* case.
- The Government indicated that, in its opinion, the current regulations ensure effective access both to abortion and to information on the possibility of undergoing such a procedure. In HFHR’s opinion, the Polish authorities have not introduced an effective and swift procedure which would ensure a woman’s right to have an abortion when the latter is allowed by national law.
- The current procedure of objecting to an opinion or decision of a doctor does not guarantee that a woman will be able to terminate the pregnancy within the period provided in law. In our view, the most serious drawbacks of the procedure include: excessive formalism; impossibility to employ the procedure in case of a refusal of a doctor to issue an opinion or decision; doubts as to whether the objection concerns the refusal to refer a person for medical testing; lack of guarantees for fast and timely consideration of the objection.
- In a 2015 ruling, the Polish Constitutional Tribunal held that a doctor who refuses to perform a medical service on moral grounds was under no obligation to refer a patient to another facility where the patient can obtain this service.

- At present no law directly imposes an obligation on any entity to provide a woman with information that abortion can be performed by a different doctor in a situation when medical staff have invoked the conscience clause.
- The information obtained by the HFHR suggests that internal and preliminary analytical works are ongoing in the Ministry of Health on amending the provisions concerning the objection to an opinion or decision of a doctor. However, the Polish government, in its response of 14 September 2017 to the communication of 1 September 2017 sent by the HFHR, admitted that on 16 November 2016, the Permanent Committee of the Council of Ministers decided that matters pertaining to the objection to an opinion or decision of a doctor would not be included in further legislative works on amending the Act on patients' rights and the Commissioner for Patients' Rights.

RECOMMENDATIONS

- We recommend that the Committee continue the supervision over the execution of the judgement in the *P. and S. against Poland* case.
- We recommend that the Committee request the Polish authorities to provide detailed data on proceedings related to penalties imposed on medical facilities in connection with their failure to fulfil contractual obligations towards the National Health Fund on account of a refusal to perform an abortion.
- We recommend that the Committee request the Polish authorities to provide detailed data on all complaints filed with the Commissioner for Patients' Rights, the Ministry of Health and the National Health Fund related to a refusal to perform an abortion, indicating a manner in which the complaints were solved and the actions undertaken by these institutions.
- We recommend that the Committee request the Polish authorities to provide information on the current legislative works concerning the procedure of objecting to a medical opinion or decision, with an indication of the stage of the process, expected time of its conclusion and with a presentation of a detailed rationale for such works.