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Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1521<sup>st</sup> meeting (March 2025) (DH)

Communication from NGOs (Foundation for Women and Family Planning (FEDERA) and Center for Reproductive Rights) (22/01/2025) in the cases of TYSIAC, R.R., P. and S. and M.L. v. Poland (Applications No. 5410/03, 27617/04, 57375/08, 40119/21).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1521<sup>e</sup> réunion (mars 2025) (DH)

Communication d'ONG (Foundation for Women and Family Planning (FEDERA) et Center for Reproductive Rights) (22/01/2025) dans les affaires TYSIAC, R.R., P. et S. et M.L. c. Pologne (requêtes n° 5410/03, 27617/04, 57375/08, 40119/21) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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**Communication under Rule 9(2) of the Rules of the Committee of Ministers in the cases  
Tysi c v. Poland (App. No. 5410/03), R.R. v. Poland (App. No. 27617/04), P. and S. v. Poland  
(App. No. 57375/08) and M.L. v. Poland (App. No. 40119/21)**

22 January 2024

Pursuant to Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, the Foundation for Women and Family Planning (FEDERA) and the Center for Reproductive Rights hereby submit updated information to the Committee of Ministers regarding Poland's implementation of four judgments of the European Court of Human Rights regarding access to legal abortion and associated reproductive health care and information, Tysi c v. Poland (App. No. 5410/03), R.R. v. Poland (App. No. 27617/04), P. and S. v. Poland (App. No. 57375/08). The submission also provides a brief update regarding implementation of M.L. v. Poland (App. No. 40119/21).

## **1. FAILURES TO GUARANTEE ACCESS TO LEGAL ABORTION CARE**

Since the Committee of Ministers' latest examination of the state of implementation of the three landmark judgments in Tysi c, R.R. and P. and S, in March 2024, women have continued to experience challenges in access to legal abortion in public hospitals in Poland. For example, FEDERA filed new complaints to the Ombudsperson of Patient's Rights in **5 cases regarding access to legal abortion and related violations of patient rights**. At the same time, as a result of complaints submitted by FEDERA in previous years, the Ombudsperson of Patient's Rights issued **5 decisions concluding that violations of patients' rights had occurred**<sup>1</sup>. Three of these cases concerned refusals by public hospitals to provide legal abortion care to women who were entitled to the care. Two concerned the case of Mrs. Joanna P. from Krakow, whose case shocked public opinion in 2023<sup>2</sup>.

## **2. MINISTRY OF HEALTH GUIDELINES ON ACCESS TO LEGAL ABORTION**

The Minister of Health in August 2024 issued Guidelines for hospitals on access to abortion under the law currently in force (*"Wytyczne w sprawie obowi zuj cych przepis w prawnych dotycz cych dost pu do procedury przerwania ci  y"*). The Guidelines is the first official government guidance on the application of the current legislation in over 30 years. However while they are an important first step towards ensuring implementation of Poland's abortion law, they only provide basic guidance to medical professionals about when abortion is legal. The

<sup>1</sup> The numbers of the Ombudsperson's decisions: RzPP-DPW-WPII.431.5344.2023; RzPP-DPW-WPII.431.4320.2023; RzPP-DPW-WPII.431.3714.2023.URN.

<sup>2</sup> <https://federa.org.pl/joanna-rpp/>.

Guidelines fall short of recommendations provided by FEDERA in the form of Operational Guidelines for Hospitals that were submitted to the Ministry of Health in February 2024.

Furthermore, the implementation of the Guidelines have faced obstacles as professional medical associations have responded negatively to the Guidelines. For example, the Polish Gynecological Association released a statement rejecting the new Guidelines and taking the view that legal abortions in situations of risk to health or life should not be provided after 24 weeks of pregnancy, while the law imposes no time limit<sup>3</sup>. Furthermore, the Polish Psychiatrists' Association in new guidance stated that medical consultations with a psychiatrist to establish the risk to a pregnant woman's mental health and legal entitlement to abortion care must not be conducted online, although this is legal and possible for other types of medical consultations, including psychiatric ones<sup>4</sup>. This presents further obstacles in access to legal abortion care for women whose health is at risk.

The State must take further steps to strengthen the Ministry of Health Guidelines to address the root causes of the obstacles women face in access to legal abortion care and ensure that they are implemented in practice. This will require closer cooperation with all Polish hospitals that have a gynecological ward to ensure that the medical personnel are well aware of the guidelines, measures are taken to widely disseminate the Guidelines including on hospitals' websites and awareness raising efforts targeting patients across Poland are implemented. In addition the Ministry of Health must regularly monitor implementation of the guidelines to ensure compliance in practice.

### 3. MONITORING BY THE NATIONAL HEALTH FUND

On 14 May 2024 the Minister of Health issued amendments to the Ministerial Order on general conditions of healthcare contracts which introduced financial penalties for public hospitals which do not provide legal abortion care<sup>5</sup>. The amendments came into force on 30 May 2024. So far, **four hospitals in Poland have been fined for refusing to provide legal abortion care: 1) hospital in Pabianice (*Pabianickie Centrum Medyczne*); 2) hospital in Lubartów (*SP ZOZ w Lubartowie*); 3) hospital in Wrocław (*Uniwersytecki Szpital Kliniczny we Wrocławiu*); 4) hospital in Łódź (*Instytut Centrum Zdrowia Matki Polki w Łodzi*)**. In all of these cases the factual situations were similar: women whose health was confirmed to be at risk following diagnoses of severe fetal impairments. The patients had approached the hospitals with written requests for an abortion prepared by FEDERA's lawyer. The hospitals refused to provide legal abortions. Those decisions constituted violation of the patients' rights, as found by the Ombudsperson of Patient's Rights. The hospitals were fined accordingly 1) 550,000 PLN (decreased to 250,000 PLN after appeal), 2) 100,000 PLN, 3) 300,000 PLN, 4) 352,000 PLN. These cases did not arise as a result of

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<sup>3</sup> Please see, <https://www.ptgin.pl/artyku/Stanowisko-wspolne-polskiego-towarzystwa-ginekologow-i-poloznikow-konsultanta-krajowego-w>.

<sup>4</sup> Please see, [https://psychiatria.org.pl/aktualnosci,tekst,506,wytyczne\\_dla\\_lekarzy\\_psychiatrow\\_dotyczace\\_wydawani\\_a\\_orzeczenia\\_stwierdzajacego\\_zagrozenia\\_dla\\_zycia\\_lub\\_zdrowia\\_kobiety\\_ciezarnej\\_jako\\_przeslanki\\_leg\\_alnego\\_przerwania\\_ciazy](https://psychiatria.org.pl/aktualnosci,tekst,506,wytyczne_dla_lekarzy_psychiatrow_dotyczace_wydawani_a_orzeczenia_stwierdzajacego_zagrozenia_dla_zycia_lub_zdrowia_kobiety_ciezarnej_jako_przeslanki_leg_alnego_przerwania_ciazy)

<sup>5</sup> Rozporządzenie Ministra Zdrowia z dnia 14 maja 2024 r. zmieniające rozporządzenie w sprawie ogólnych warunków umów o udzielanie świadczeń opieki zdrowotnej, Dz. U. 2024 poz. 730, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20240000730>.

the National Health Fund's investigation or monitoring, but were the result of FEDERA's complaints filed to the Ombudsperson of Patient's Rights on behalf of individual patients whose rights had been violated. The state acknowledges that „the above-described controls and inspection activities were undertaken by the NHF on the basis of the Ombudsman's findings”. There continue to be important shortcomings in the required active monitoring activities by the National Health Fund and the authorities have yet to ensure regular effective monitoring of public hospitals' compliance with their legal obligations to provide abortion care.

#### **4. GUIDELINES OF THE PROSECUTOR GENERAL NO. 9/24**

The Attorney General in August 2024 issued Guidelines for cases regarding abortion (*“Wytyczne Prokuratora Generalnego Nr 9/24 w sprawie zasad postępowania powszechnych jednostek organizacyjnych prokuratury w zakresie prowadzenia spraw dotyczących odmowy dokonania przerwania ciąży oraz tzw. aborcji farmakologicznej”*) resulting from the work of a special team established in April 2024 in the National Public Prosecutor's Office. They concern the conduct of proceedings for abortion offences and the issuance of certificates to women who are pregnant following sexual assault and seeking legal abortion care.

In the Guidelines, the Attorney General suggests that the well-being of women should be the primary consideration when conducting these proceedings. The Guidelines also suggest to note in the record of the interrogation that the woman has been informed that she is not criminally responsible if she has had an abortion outside the scope of the law. The Guidelines fall short of ensuring respect for the rights and needs of women who are seeking abortion care following sexual assault<sup>6</sup>.

The State must take effective steps to halt any criminal investigations and prosecutions against anyone for assisting women with access to voluntary abortion. Polish law allows this on the basis of the lack of social harm caused. The Guidelines provide instructions on how to conduct the investigation instead of preventing unnecessary investigations from being conducted. The communication of the authorities to the Committee of Ministers highlights that between 2016-2023, a total of 590 cases regarding criminal liability for assisting a woman with access to abortion outside the scope of Polish law were considered. This data clearly shows the negative impact that the criminalization of assistance with abortion is having. The introduction of the new Guidelines have yet to have a demonstrated impact on the high number of criminal cases regarding abortion.

In fact, there are several ongoing criminal prosecutions. For example, in October 2024, the trial of a gynecologist, Dr. Maria Kubisa, began before the Regional Court in Szczecin. The Central Anticorruption Bureau had entered her practice in January 2023 and seized the medical records of several thousand patients from 28 years of medical practice. Dr. Kubisa is accused of assisting in abortion under Article 152 par. 2 of the Criminal Code.

As further outlined below, the Committee on the Elimination of Discrimination Against Women, following an official three year inquiry into the impact of Poland's abortion law, have called for the urgent introduction a moratorium on all investigations and prosecutions of anyone providing assistance to women who need an abortion.

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<sup>6</sup> In response to the release of the Guidelines, FEDERA has prepared recommendations and guidelines for prosecutors. Please see <https://federa.org.pl/wytyczne-spoleczne-dla-prokuratury/>.

## **5. REGULAR MEETINGS WITH REPRESENTATIVES OF MEDICAL PROFESSIONS AND CIVIL SOCIETY CONCERNING THE SAFETY OF WOMEN'S HEALTH IN ACCESS TO ABORTION**

The authorities' submission refers to the establishment of a Team for the Improvement of Women's Health Security ("*Zespół do spraw poprawy bezpieczeństwa zdrowotnego Kobiet*"). It should be noted that the Team while it has a focus on reproductive health generally, it officially agreed at the beginning of its work that the topic of abortion care would be excluded from its agenda. Furthermore, of the most recent meeting between the authorities and medical professions and civil society, which discussed access to abortion, was organized in June 2024.

## **6. CEDAW INQUIRY FINDINGS AND RECOMMENDATIONS**

The Committee on the Elimination of Discrimination against Women, following information submitted by FEDERA and the Center, conducted an official inquiry into the grave and systematic violations of women's rights resulting from Polish abortion laws. In its report on the inquiry published in August 2024, the CEDAW Committee found that the State was responsible for grave any systematic human rights violations<sup>7</sup>. The Committee's report provides landmark recognition of the extensive harm caused by Poland's longstanding criminalization and legal restrictions on abortion. The Committee's findings outline that Poland's abortion law inflicts significant harm on women, resulting in multiple violations of their human rights, including the rights to freedom from torture and other ill treatment, to health and to privacy.

The Committee recommends that Poland legalize and fully decriminalize abortion recognizing abortion as a fundamental right and placing women's autonomy at the center of its policy. As an interim measure pending the adoption of comprehensive legal reform, the Committee recommends that Poland introduce a moratorium on the application of the current criminal law provisions regarding abortion, including halting all arrests, investigations and prosecutions of anyone assisting women in need of abortion care.

The findings from the Committee confirm the ongoing nature of the human rights violations recognized in the European Court of Human Rights' landmark cases against Poland. The authorities must act urgently to take the necessary steps to prevent and halt these violations and bring its law and practice into line with its human rights obligations.

It can be noted that on 12 July 2024, Poland's lower house of parliament failed to pass draft legislation to decriminalize abortion during the first 12 weeks of pregnancy and later under certain conditions.

Three other draft bills to decriminalize and legalize abortion remain under review by a special parliamentary commission. However, the government has stated that it is unlikely that the parliament will be able to adopt legislation to reform the highly restrictive law and legalize abortion.

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<sup>7</sup> FEDERA and Center for Reproductive Rights, Factsheet: Committee on the Elimination of Discrimination against Women Inquiry into Poland's Abortion Law, <https://reproductiverights.org/fact-sheet-cedaw-inquiry-poland-abortion-law/>.