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Communication from Poland concerning the case of P. and S. against Poland (Application No. 57375/08)

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Réunion : 1193 réunion (4-6 mars 2014) (DH)

Référence du point : Bilan d'action

Communication de la Pologne concernant l'affaire P. et S. contre Pologne (requête n° 57375/08) (***anglais uniquement***).

ACTION REPORT[1]
Information about the measures to comply with the judgment in the case of P. and S. against Poland

Case description

P. and S., application no. 57375/08, judgment of 30/10/2012, final on 30/10/2013

The case concerns violations of Article 3, Article 5 § 1 and Article 8 of the Convention.

The first applicant, a minor named P., became pregnant as a result of a prohibited act. Despite the fact that a prosecutor had issued the relevant certificate, as required under the *1993 Act on Family Planning, the Protection of the Human Foetus and Conditions Permitting Pregnancy Termination* (hereinafter 1993 Family Planning Act), in which he confirmed that the pregnancy was the result of a prohibited act, hospitals and health care providers refused to perform a legal abortion, invoking the conscience clause. In addition, in connection with a breach of medical confidentiality, the identity of the applicants was revealed and P. became the object of pressure exerted by Catholic groups and pro-life activists. In the said case, by decision of the court, on account of alleged pressure exerted by the applicant's mother (S., the second applicant) to have her perform an abortion, a preventive measure was applied by placing the girl in a children's emergency shelter. In turn, the mother, applicant S., was subject to proceedings to deprive her of parental rights. Ultimately, following an intervention by the Ministry of Health, the abortion was performed discreetly in a distant city.

In this case, the Court ruled that effective access to information about legal abortion and the relevant procedures have direct bearing on the enjoyment of the right to individual autonomy. The relevant procedures should ensure access to legal abortion within the time limit provided for by the Act. However, in the said case, a striking inconsistency between the theoretical right to a legal abortion pursuant to the said *1993 Family Planning Act* and its enforcement in practice took place.

The Court has also referred to the conscience clause, stating that the state has an obligation to organize its health care system in such a way as to make sure that the effective invocation by doctors of their freedom of conscience does not limit the right of patients to benefits to which they are entitled under the relevant laws.

Referring to the accusation of disclosing P.'s and S.'s personal and medical data, the Court has concluded that the right of the applicants to respect of their private lives had been violated because making this information public was against the law and did not serve a legitimate interest.

Considering all the circumstances of the case, the Court ruled that national authorities did not fulfil their positive obligation to ensure that the applicants' private lives were respected. This led to a violation of Article 8 of the Convention.

[1] Information submitted by the Polish authorities on 29 November 2013

In assessing the charge of a degrading and inhuman treatment, the Court considered the circumstances of the case, having particularly in mind their cumulative impact on the situation of the first applicant, and indicated in its conclusions that P. had been treated by state bodies in a regrettable way and that the pain it caused her exceeded the minimum threshold of hardship within the meaning of Article 3 of the Convention. The Court stressed that the girl was exposed to particular risk and that the authorities had acted in a confused fashion and had not provided access to proper and objective assistance or even information. Consequently, the Court found a violation of Article 3 of the Convention.

The Court also concluded that the placement of the girl in a children's emergency shelter was a violation of Article 5 § 1 of the Convention and was dictated by the need to separate her from her parents and prevent an abortion.

I. Payment of just satisfaction and individual measures

1. Just satisfaction

Pecuniary damage	Non-pecuniary damage	Cost and expenses	Total
-	30,000 EUR 15,000 EUR	16,000 EUR	61 000 EUR
Payment due on: 30/04/2013		Date of the payment: 29/03/2013	

1. Individual measures

A. Violation of Article 3 and Article 8 of the Convention

Actions undertaken in connection to restricted access to legal abortion

In 2008 the President of the National Health Fund in a letter to the Director of Lublin Branch of the National Health Fund asked for urgent implementation of control measures towards the hospital in Lublin which had refused to perform a medical service (i.e. abortion) to which the applicant had been entitled.

The Director of Lublin Branch of the National Health Fund carried out a disciplinary conversation with the Director of the Lublin hospital on 6 August 2008. During that conversation the hospital Director was reminded of the obligation to provide medical services in accordance with the contract. The Director was also reminded that director of hospital was responsible for provision or refusal of health care by its employees or persons, not employed, providing medical care on its behalf, as well as persons delegated by the director to provide medical care. The Director was also reminded about responsibility for damages incurred, also by third-parties, in relation to providing or refusal of medical care.

In addition, the Director of Lublin Branch of the National Health Fund issued recommendations to the Director of the Lublin hospital requiring strict compliance with the provisions of Art. 38 of *the Act of 5th December 1996 on the professions of doctor and*

dentist and the provisions of paragraph 5. 1 and paragraph 3 of *the Ordinance of the Minister of Health of 6th May 2008 on the general terms of the provision of health care services* (Journal of Laws No. 81, item. 484).

Breach of Medical confidentiality

In 2008 the District Ombudsman of Professional Liability in Lublin, after a notice from the Patients' Rights Office at the Ministry of Health, conducted an investigation against the head of the Operational Gynecology Department at the Lublin hospital. The investigation concerned alleged breach of medical confidentiality associated with hospitalization of the first applicant.

The Lublin District Ombudsman decided to discontinue the proceedings be cause of, *inter alia* a wide circle of people who had knowledge of the patient's status which made impossible to prove and assign blame. The Lublin District Ombudsman also pointed to the lack of evidence confirming the fact of transfer by any doctor, especially the person indicated in the notice, of confidential medical information to unauthorized persons. In the Ombudsman's opinion inability to prove and to identify the circumstances surrounding the possible transfer of sensitive medical information by a particular doctor, precluded any allegations in that case.

B. Violation of Article 5 § 1 of the Convention

The first applicant is not entitled to any additional procedural measures with respect to proceedings that would limit parental authority, that was conducted before the Regional Court in Lublin (currently the Regional Court for Lublin-Zachód), and where on 3 June 2008, the court, pursuant to procedure provided for in Article 109 § 1.5 of the *Family and Guardianship Code* (hereinafter FGC) issued an order to place the minor in a shelter for minors. The minor, in particular, is not entitled to file an appeal to resume these proceedings.

Under Article 524 § 1 of *the Code of Civil Procedure* (hereinafter CCP) "a participant in proceedings may request that proceedings that resulted in a final decision adjudicating on the merits of the case be resumed. However, resumption of proceedings is not permitted, if the decision that ends the proceedings can be revised or reversed.''

In the case at hand, the decision of 3 June, 2008 that the Court has questioned was issued pursuant to Art. 109 § 1.5 of the FGC, which provides that the court issues respective orders if the wellbeing of a child is at risk. This provision contains a directive that orders a family and guardianship court to intervene in the sphere of parental authority as early as when the wellbeing of a child is at risk in order to prevent negative effects. Hence, the child's wellbeing does not have to be violated – a state of risk is sufficient. This decision was not issued on the merits of the case which would have ended proceedings in the case. At the same time, the family and guardianship court, pursuant to Article 577 of the CCP, may at any time revise its decision, even if it is final, if the wellbeing of a person involved in the proceedings so requires. It should be recalled that ultimately the challenged decision was reversed by the court on 18 June, 2008 (among others, as a result of an appeal lodged by the

applicant's legal guardian), while following proceedings as to evidence (opinion of Family Diagnostic and Consultative Centre - RODK), the court discontinued the proceedings to limit parental authority by issuing a decision on 18 February, 2009.

As a result, the decision dated 3 June, 2008 that was reviewed by the Court may not serve as grounds for an appeal to reopen proceedings because the decision is not final; it was reversed by the court, and finally the said proceedings did not end with a decision on the merits of the case, on the contrary, they were discontinued.

For similar reasons, the applicant is not entitled under Article 417^1 § 2 of the Civil Code (hereinafter CC) to claim indemnification from the State Treasury – the Regional Court of Lublin-Zachód in connection with the delivery of the challenged decision. No possible damage was caused by issuing a final decision.

However in the case at hand, one can consider the possibility of the first applicant filing a claim against the State Treasury – the Regional Court for Lublin-Zachód for satisfaction (Art. 24 § 1 of the CC in connection with Art. 448 of the CC) in connection with her being unlawfully deprived of liberty as a result of the delivery of the questioned decision. The burden of proof that the placement of the applicant in a children's emergency shelter was not unlawful would rest on the defendant, while the applicant would have to demonstrate that her personal rights (e.g. freedom, health) were infringed upon and, as a result, she has suffered an injury.

In these circumstances, no other individual measure appears necessary.

II. General measures

1. Violation of the Article 8 of the Convention in the scope of defining access to abortion provided for by law

The Court ruled, invoking the Tysiąc v. Poland judgment, that the state has an obligation to create an adequate procedural framework to permit a pregnant woman access to a legal abortion. The Court stated that the relevant procedures should ensure a pregnant woman at least the possibility of being heard and her arguments considered by an authority. In addition, the relevant authority in the case should provide grounds for its decision in writing. In paragraph 106 of the judgment, the Court indicated, referring to the judgment in the RR v. Poland case, that states are required to organize a system of health benefits in such a way as to ensure that the effective enforcement of the right to freedom of conscience of health care workers in a professional context does not prevent patients from obtaining access to the benefits to which they are entitled pursuant to the relevant laws. The Court noted that the fulfilment of procedural requirements for proper application of the conscience clause by doctors (e.g. the requirement to record the fact that the conscience clause was invoked in the medical documentation) had not been demonstrated. The Court has concluded that the civil law measures applicable to asserting one's rights are solely retroactive and indemnificatory in nature. In paragraph 111 of the judgment, the Court pointed out that abortion decisions should be made at the right time.

A. Appeal of the doctor's decision or opinion

1. Legal measures

Consulting another physician or calling a medical consultation

The Act on Patient Rights and the Ombudsman for Patient Rights of 6 November, 2008 (Dz. U. of 2012, No. 159, as amended) gave patients the right to demand that a physician who provides them with health benefits consult the opinion of another physician or call a medical consultation. The Act also stipulates that a physician may refuse to call a medical consultation or ask the opinion of another doctor, if he or she decides that such request is groundless. What is important, however, is that both the request and the refusal to grant it should be recorded in medical documentation. The legislative provision referred to here is general in nature, i.e. it is addressed to every patient who finds himself in different health conditions, including to pregnant women. The request to ask for the opinion of another physician or to call a medical consultation is not determined by the occurrence of any doubts arising in the process of providing medical benefits (e.g. diagnostic). The intention behind introducing this regulation was to improve the quality of the medical benefit performed.

Prior to the entry into force of *the Act on Patient Rights and the Ombudsman for Patient Rights* of 6 November, 2008, the possibility of asking for a second opinion or calling a medical consultation was only provided for by the provisions of Article 37 of *the Medical Profession Act* and Article 53 of *the Code of Medical Ethics* (hereinafter CME). In light of these provisions, the patient (or his/her statutory representative) has the right to request that such measures be taken, however the obligation to ask for a second opinion or organizing a medical consultation arises only when a doctor decides that there are grounds for it "in light of the requirements of medical knowledge." Based on the CME, the opinion of a consultant has the nature of advice, because the responsibility for the entire procedure rests with the physician in charge.

The regulation adopted in Article 6 § 4 of *the Act on Patient Rights and the Ombudsman for Patient Rights* of 6 November, 2008, which gives the patient the right to demand that another doctor's opinion is asked for or that a medical consultation is called, provided better conditions for respecting the rights of patients, while at the same time changing the nature of the patient-doctor relation in that it gives the patient more rights to decide about his/her health condition. A patient is not obligated to assert this right, but may do so. If, however, he or she fails to do so, the physician may always on his/her own initiative and in the case of "diagnostic or therapeutic doubts," after having found the grounds to do so in light of medical knowledge, ask the relevant medical specialist for opinion or organize a medical consultation pursuant to Article 37 of *the Medical Profession Act* and Article 53 of the CME. Another important fact is that both the patient's demand described above and the refusal to ask for the opinion of another doctor or to call a medical consultation is recorded by a doctor in the patient's medical documentation.

Objection of the doctor's opinion or decision

When *the Act on Patient Rights and the Ombudsman for Patient Rights* of 6 November, 2008, came into effect patients were given the right to object to a doctor's opinion or certificate.

This right is now enjoyed by patients and, on their behalf, by their statutory representatives. Any woman who was refused an abortion can benefit from this right. In line with the above-mentioned law, an objection to an opinion or certificate issued by a doctor or a dentist may be lodged with a Medical Commission with the Ombudsman for Patient Rights, if an opinion or a certificate impacts the rights or obligations of a patient under the law.

The deadline for lodging the objection is 30 days from the date of issue of the opinion or a certificate by the attending doctor about the patient's health condition. An objection has to have grounds, including a reference to the provision of law that lists the rights or obligations affected by the challenged medical opinion or certificate. The Medical Commission, based on medical documentation and, depending on the need, after examining the patient, issues a certificate promptly, but not later than within 30 days from the date of lodging the objection.

The Medical Commission's certificate is issued by absolute majority of votes in the presence of the full composition of this Commission. The Medical Commission is composed of three physicians appointed by the Ombudsman for Patient Rights from an annually updated list of eligible physicians practicing in a given medical field. The list is drawn up by national consultants in consultation with the relevant Voivodeship consultants. Of the three physicians who make up the Medical Commission, two have the same specialization as the doctor who issued an opinion or certificate that is the subject of an objection.

A Medical Commission is appointed every time by the Ombudsman for Patient Rights to examine an objection in a patient's individual case. Medical Commissions operate pursuant to *the Ordinance of the Minister of Health dated 10 March 2010 on Medical Commission with the Ombudsman for Patient Rights* (hereinafter the Ordinance).

In order to ensure that the Medical Commission is impartial, a member may be excluded from participating in the proceedings *ex officio* or at the request of a patient or his/her statutory representative, among others, if such member issued the appealed opinion or certificate, is a spouse or relative of the doctor who issued the appealed opinion or certificate or if the appealed opinion or certificate was issued by a doctor who is his/her superior or subordinate (§ 3 of the Ordinance). A new member of the Medical Commission is appointed within 3 days of the exclusion of the hitherto member of the Medical Commission.

Pursuant to par. 5 § 1 of the Ordinance, the Medical Commission acts in sittings. It should be noted that a patient or his/her statutory representative may participate in a sitting of the Medical Commission and give information and clarifications in the case throughout the proceedings, except during a part of the sitting when a debate and voting on the certificate take place (§ 4 of the Ordinance). The provision of § 2.2.5 of the Ordinance provides that the

duty of the Medical Commission's Chair is to notify the patient or his/her statutory representative about the date of the sitting of a Medical Commission or about the date, place and scope of the examination.

Pursuant to § 5 of the Ordinance in the event that a decision is taken to examine a patient, the Chair of the Medical Commission sets a date for the examination, taking into account the patient's health condition and the circumstances that bear upon the implementation of the rights and obligations of a patient. The Chair of the Medical Commission informs the patient or his/her statutory representative about the date of the sitting of the Medical Commission or about the date, place and scope of the examination at the address for correspondence indicated by the patient or his/her statutory representative or by electronic means of communication or by telephone.

The provision of § 6 of the Ordinance provides that the certificate of the Medical Commission is drawn up together with grounds thereto in writing. The certificate should be signed by all members of the Medical Commission and delivered immediately together with grounds thereto to the patient or his/her statutory representative. If they did not participate in a sitting of the Medical Commission – not later than within 7 days of the date of issue of the certificate. The grounds should include a description of the sitting, including information about the decision that was taken with respect to the opinion or certificate that was appealed against and the circumstances under which an examination was conducted.

As mentioned earlier, the Medical Commission is required to promptly issue a certificate, but not later than within 30 days of the date of its issue (Article 31 § 5) of *the Act on Patients' Rights and the Ombudsman for Patients' Rights*). The length of the proceedings carried out by the Medical Commission depends on the complexity and type of the case. The objection procedure is not only applicable to abortion cases, but to every case of a patient objecting to a medical opinion or certificate that affect his/her rights or obligations arising from the provisions of law and with regard to which the lawmaker did not provide for another appellate procedure.

In the Government's opinion such factors as the legal regulations concerning the premsies that have to be met in order to carry out a legal abortion, the specific situation of the woman and the Medical Commission's work regulations determine effciency and promptness of the proceedings before the above-mentioned body.

In addition it is worth to mention that already in connection with execution of the judgment in case of *Tysiąc v. Poland* Polish authorities have undertaken numerous actions in order to disseminate the information about the functioning of the Commission of Physicians and the possibility to lodge an appeal against a physician's opinion or decision, in particular:

- information about the appeal mechanism has been published on the internet site of the Patient Rights' Ombudsman (www.bpp.gov.pl) and non-governmental organizations, e.g. Federation for Women and Family Planning (www.federa.org.pl);
- in October 2010 the Patient Rights' Ombudsman started a countrywide information campaign: "Patient, do you know your rights?" Special leaflets have been prepared and sent out to all local communities in Poland (about 2500) with request to

disseminate them among their inhabitants and to publish information on their internet sites;
- Patient Rights' Ombudsman conducted trainings for non-governmental organisations (among others, the Polish Federation for Women and Family Planning) and participated in a number of conferences and meetings;
- a special free of charge telephone helpline has been created in the office of the Patient Rights' Ombudsman with a view to informing the patients about their rights as well as helping them to find solutions to their problems (the number is available on the internet site of the Patient Rights' Ombudsman).

Practical enforceability by the patients of their rights

As it transpires from the 2012 Report of the Ombudsman for Patient Rights female patients prefer to exercise their right to a legal abortion through informal channels. Consequently, they much more frequently report a problem on the Ombudsman's helpline or by going to the Ombudsman's office, rather than by lodging an objection, which is their right. In 2012 63,913 notifications of possible violations of patient's rights were addressed to the Ombudsman for Patient Rights. This number, which includes letters, phone calls and visits at the office, clearly shows confidence of patients which Ombudsman enjoys.

In this context it is worth to mention that in December 2012 Ombudsman for Patient Rights and representatives of NGOs dealing with protection of women's reproductive rights took part in a meeting of inter-ministerial Team responsible for elaboration of action plans concerning the Court's judgments. Both parties decided to cooperate. NGOs committed that they will recommend Ombudsman for Patient Rights to those women who would come to them to seek help in reproductive health area. Now patients have choice. They can avail themselves of objection path or of an informal way, both available.

There are no barriers to asserting the right of objection. The following case is evidence of that. On 30 July, 2013, the Ombudsman for Patient Rights received a letter objecting to a medical opinion to the effect that the planned abortion did not meet the conditions referred to in the said *1993 Family Planning Act*. This objection fulfilled the formal requirements specified in Article 31 of *the Act on Patients' Rights and the Ombudsman for Patient Rights*. A three-member Medical Commission was convened promptly i.e. as early as on 1 August, 2013. The Commission met at the Ombudsman's office on 7 August 2013. The patient was informed that she had the right to participate in the sitting which she chose not to exercise. The Medical Commission univocally ruled that there were grounds for medical opinion stating that the abortion could not be performed because it did not meet conditions for its performance. The patient was informed about the Commission's decision.

This case clearly demonstrates that the right of objection fully satisfies the requirement of a specifically provided for by law and practically enforceable means of appeal against a medical opinion that did not satisfy the patient, also in the situation similar to the applicant's.

In this context it is worth to add, that in response to the expectations of civil society as well as in order to encourage patients to more frequent use of objection, in 2013 the Ministry of

Health started work on amendment of *the Act on Patients' Rights and the Ombudsman for Patients' Rights.* This change is aimed at simplification of the procedure of objection/appeal against a doctor's opinion or decision - by waiving the requirement of indication by the applicant the provision which is the basis for patient's rights or obligations influenced by the doctor's opinion or decision. In addition Ministry of Health proposed to shortening of time-limit for Medical Commission for issuing a decision from 30 to 10 days.

2. Publication and dissemination of the judgment and information and training activities

P. i S. judgment was translated into Polish by Ministry of Health and published at its website (http://www.mz.gov.pl/wwwmz/index?mr=m15&ms=748&ml=pl&mi=748&mx=0&ma=14907) as well as at the website of Ministry of Justice (www.ms.gov.pl) which contains the Court's case-law data-base.

In addition on 25 December 2013 r. Ministry of Health organized a meeting with National Consultant and Regional Consultants in the field of Obsterics and Gynecology as well as with National Consultant in the field of Perinatology.

During that meeting Ministry of Health presented information on the measures already undertaken and activities planned in order to execute the Court's judgment.

In that context Ministry remanded on the earlier Court's judgments concerning reproductive rights, such as: *Tysiąc v. Poland* and *R.R. v. Poland* and presented information on the actions taken in order to implement them.

The Ministry raised also the following issues:

- recalled of the general provisions governing abortion and access to prenatal examinations,
- recalled provisions on objection to an opinion, decision or certificate issued by a doctor,
- emphasized the question of proper use of conscience clause (in the context of the rights and obligations of the doctor as well as his/her liability),
- highlighted the necessity of proper conduct of medical records (f. ex. recording of information on referrals issued and refusals to issue of referrals),
- reminded of the obligation of informing patients in a proper way on their health condition, diagnosis, proposed and possible diagnostic and healing methods, foreseeable consequences of their application or failure to apply, results of therapy and prognosis,
- underlined the meaning of respect of medical and professional confidentiality,
- highlighted the question of providing pastoral care only for those patients who clearly want it.

Finally all the consultants were obliged to provide the above information to the directors of hospitals as well as the doctors working at those hospitals in all regions. Every consultant received also set of information materials concerning implementation of the Court's judgments on reproductive rights.

B. Question of use conscience clause by the doctors and their as well as hospitals' (service providers') liability

1. Legal measures

The conscience clause and doctors' professional liability

Pursuant to Article 39 of the Act on Medical and Dental Professions of 5 December 1996 (Dz. U. of 2008, No.136, item 857, as amended), a doctor may refuse to perform a medical service that violates his/her conscience, subject to Article 30. In so doing, he is obligated to inform the patient about realistic options to receive such service from another doctor or medical facility and record this fact and the grounds of his/her refusal in medical documentation.

Doctors' professional responsibility is regulated by the Act on Medical Chambers of 2 December, 2009 (Dz. U. No. 219, item 1708 as amended). Pursuant to Article 53 of the said Act, members of medical chambers are subject to professional responsibility for violating the rules of medical ethics and regulations on the performance of the medical profession.

In the event that a doctor refuses to perform a medical service by invoking the conscience clause, then pursuant to Article 39 of the Act on Medical and Dental Professions (Dz. U. of 2011, No. 277, item 1634 as amended), he or she is obligated to inform the patient about his/her real options of obtainin such service from another doctor or a medical facility and to record and provide grounds for this fact in medical documentation. If a doctor fails to fulfill this obligation, he or she may be held professionally accountable under the Act on Medical Chambers for breaching its regulations concerning the performance of the medical profession.

According to information sent by the Chief Spokesman for Professonal Liability and the District Spokesmen for Professional Liability, in 2008-2011 four cases were conducted for refusal to provide medical services by doctors who did not indicate an alternative medical facility. As regards other violations relating to Article 39 of the Act on the Medical and Dental Professions, there were twenty-two such cases conducted.

Doctors' professional liability – a detailed description of the procedure

Pursuant to the Act on Medical Chambers, proceedings for doctors' professional liability are conducted irrespective of criminal proceedings or disciplinary proceedings concerning the same act. Proceedings for doctors' professional liability may be suspended until the completion of the criminal or disciplinary proceedings, provided that their outcome may have an impact on the decision in the proceedings concerning the doctors' professional liability. Such proceedings involve verification activities; explanatory proceedings; proceedings before a medical court; enforcement proceedings.

The purpose of verification activities is to make a preliminary examination of the circumstnaces needed to conclude whether there are grounds to institute explanatory proceedings. In the course of verification activities no evidence from the opinion of an

expert is taken nor minutes drawn up, except for conducting a hearing as a witness of the person who filed a complaint against a doctor. The purpose of the explanatory proceedings is to establish whether an act that could constitute a breach of professional conduct was committed, to explain the circumstances of the case, and in the event of finding features of a professional misconduct to establish the alleged offender and to collect, secure and, to the extent necessary, record the evidence for the medical court.

Parties to the proceeidngs in the case of doctors' professional liability are the injured person and the doctor affected by the proceedings or the alleged offender. The Ombudsman for Professional liability is also a party to proceedings conducted before a medical court. In the proceedings concerning professional liability, the Deputy Ombudsman for Professional liability exercises the rights and obligations of the Ombudsman for Professional liability.

The injured party is a natural person, a legal person or an organisational entity without the status of a legal person whose legal interest has been directly brached or jeopardized by professional misconduct. An injured party may appoint not more than two attorneys-in-fact from among doctors, barristers (*adwokat*) or solicitors (*radca prawny*). In the event of the death of the injured party, his or her rights in the proceedings with respect to professional liability of doctors, including the right to access to medical information and medical documentation, may be exercised by a spouse, an ascendant, a descendant, siblings, a relative in lineal affinity or degree, a person who has been adopted or his/her spouse as well as a person living in cohabitation.

An alleged offender is a physician against whom in the course of explanatory proceedings, the ombusman for professional liability issued a decision to present the charges or against whom he filed a motion for punishment with the medical court. The alleged offender may appoint up to two defence counsels from among physicians, barristers or solicitors.

The body conducting the proceedings into doctors' professional liability takes evidence at the moton of the parties or *ex officio*. If special information is required in order to determine whether circumstances have occurred that significantly bear upon the outcome of the case, then an expert or a specialist is asked for his/her opinion. In order to issue an opinion about the mental health condition of the alleged offender, two expert psychiatrists are appointed.
In the course of proceedings in the case of doctors' professional liability, making depositions and providing explanations by a physician with respect to the circumstances covered by proceedings is not a breach of the physician's professional secret.

An alleged offender may not be made professionally liable until his/her professional misconduct is proven and evidenced in a final and non-appealable decision of the medical court. Any doubts that cannot be removed in the course of proceedings dealing with doctors' professional liability should be interpeted to the benefit of the alleged offender. Authorities conducting proceedings into a doctor's professional liability form their opinion on the basis of all evidence taken and evaluated, taking into account proper reasoning, knowledge and life experience.

A final and non-appealabel decision of the court shaping the law and the legal relation is binding for the authorities that are conducing proceedings concerning professional liability.

Proceedings concerning professional liability of physicians are not instituted and if they have been instituted then they are discontinued, in the event that:
1) an act has not been committed or there is not enough data that would conclusively justify the suspicion that it has been committed;
2) an act does not constitute a professional misconduct or the alleged offender has not committed a professional misconduct under the statutes;
3) the alleged offender has died;
4) the act is not longer punishable;
5) proceedings concerning physicians' professional liability as to the same act committed by the same person have been concluded with a decision that is binding and is not subject to an appeal or previously instituted proceedings are still pending. No proceedings involving physicians' professonal liability can be instituted, if three years have elapsed since the act was committed. Punishabilty of professional misconduct ceases if five years have elapsed since its commitment.

If material evidence collected in the course of explanatory proceedings points to the fact that a professional misconduct has been committed, the Ombudsman for Professional liability issues a decision to press charges against the physician.

If there are grounds to draw up a motion for punishment, the Ombudsman for Professional liability informs the alleged offender and his/her defence counsels about the deadline until which they can study documents realting to the explanatory proceedings and instructs them on the possibiltiy of earlier examination of the files.

In the event that the evidence collected indicates with high probability that a physician affected by the proceedings or the alleged offender has committed a serious professional misconduct and that the nature of such misconduct indicates that the performance by the alleged offender of the profession of a physician threatens the well-being of the patients or risks committing another professional misconduct, the medical court, at the request of the Ombusdman for Professional liability issues a decision to temporarily suspend him/her in his/her profession or to limit the scope of activities in the performance of the profession of the physician by the alleged offender for a period of one year. The decision is enforceable immediately.

The medical court may decide to mete out the following punishment:
1) admonition;
2) reprimand;
3) cash fine;
4) ban on performing managerial functions in healthcare units for a period from one to five years;
5) limiting the scope of activities performed as a physician for a period from six months to two years;
6) suspension of the right to perform the profession from one year to five years;
7) stripping of the right to perform the profession.

<u>The conscience clause and the liability of the service provider</u>

It should be noted that under Article 14.2 of the Act on Health Care Benefits Financed out of Public Funds, the beneficiary is entitled to the so-called guaranteeed benefits. Lists of such benefits have been specified by way of relevant ordinances to the said Act.
In line with the provisions of the Ordinance of the Minister of Health of 29 August 2009 on Guaranteed Hospital Treatment Benefits (Dz. U. of 2009, No. 140, item 1143, as amended) artificial miscarriage is listed in the catalogue of guaranteed hospital treatment benefits.
In view of the above, it should be stated that the service providers, by providing guaranteed health care benefits, perform contractual obligations arising from a contract that they enter into with the National Health Fund (the "NHF"). Mandatory provisions of agreements entered into with service providers have been set out in the general terms and conditions of contracts for the provision of health care benefits (the "GTCC") which are an attachment to the Ordinance of the Minister of Health dated 6 May, 2008 on the General Terms and Conditions of Providing Health Care Benefits (Dz. U. No. 81, item 484).

Pursuant to Article 5(1) of the GTCC, the service provider shall be required to perform the contract pursuant to the terms and conditions of providing benefits that are referred to in the Act, the general terms and conditions of the contract, separate regulations and pursuant to the terms and conditions required from the service providers by the President of the National Health Fund. The service provider is also required to provide benefits to beneficiaries with due diligence and in keeping with the rules of professional ethics and to observe patients' rights arising form the applicable provisions of law. In addition, it should be noted that pursuant to Article 9.1 of the GTCC, the service provider provides services (benefits) throughout the term of the contract, pursuant to the timetable of work set out in the contract and the contribution and financial plan that is attached to the contract. It should also be noted that in the event that benefits cannot be provided and this could not be forseen in advance, the service provider is required to immediately undertake activities in order to preserve continuity of provided services, while concurrently informing the Voivodeship branch of the NHF about this event and the activities that have been undertaken.

It should also be noted that pursuant to Art. 8 of the GTCC, the service provider guarantees comprehensive services that include, in particular, the performance of the necessary laboratory tests, image diagnosis, other medical tests and procedures relating to the provision of these services.Consequently, if a physician practising his/her profession based on employment relationship or while on duty has informed the service provider that he/she is likely to refuse the service in the circumstances specified in the provision under discussion, i.e. by invoking the conscience clause, the service provider is obligated to have on hand an agreement with a subcontractor whereby this service can be provided. This provision also applies to a situation where such refusal (by invoking the conscience clause) was communicated later, i.e. during the performance of a contract with the National Health Fund. A service provider who fails to meet these obligations may be charged with violating patients' rights, on pain of fine. Failure to satisfy these obligations may also provide the NHF with grounds to terminate the contract with such service provider.

It should also be stressed that conscience is an individual category and the conscience clause can be invoked only by individual persons. The idea is to exercise the right of free (e.g. free

from any pressure) self-determination in world outlook cases, which condition is not fulfilled by a collective refusal. Hence, the declaration that in a hospital, which provides gynaecological and obstetrics services, abortions are not pereformed at all should be considered inadmissible. It is inadmissible because it does not take into account the situation in which abortion will be required because it fulfills the prerequisites of Article 30 of the Act. It assumes the existence of a "collective conscience" of all physicians employed in an entity – the very idea is contrary to the essence of the conscience clause.

With respect to the possibility of applying legal measures in the event of the occurrence of damage, to agreeements for the performance of medical care benefits a reservation may be introduced about a contractual penalty in the event of non-performance or default on an agreement for reasons attributable to the service provider (Art. 29 of the GTCC). The NHF is also empowered to seek damages exceeding the amount of a contractual penalty.

Pursuant to Article 30.1.1(d) of the GTCC, in the event that a contract provides for contractual penalties, the amount of a contractual penalty amounts to 2 percent of the amount of the liability resulting from an agreement for every confirmed breach in the event of groundless refusal to provide the beneficiary with benefits (services). The Supreme Court, in resolution of seven judges dated 6 November, 2005, III CZP 61/03, OSNC 2004, no. 5, item 69[81], which it turned into a legal principle, concluded that the contractual provision of a contractual penalty in the event of non-performance or default on the performance of an obligation, does not release the debtor from the obligation to pay it in the event that it is demonstrated that the creditor has not suffered any damage as a consequence. This means that in the event of the occurrence of any of the circumstances referred to in Art. 30 of the GTCC, the service provider may not release himself/herself from an obligation by demonstrating that the Fund has not suffered damage.

Competences of the Minister of Health

The Minister of Health, pursuant to the Act on Health Care Benefits Financed out of Public Funds, was granted solely oversight powers in respect of entities remaining outside the sphere of public administration, including also service providers. Pursuant to Article 163.1 of the Act on Health Care Benefits, the Minister of Health performs oversight by applying the criterion of legality, reliability and purposefulness over the operations of:

1) the Fund;
2) service providers in the scope of the implementation of contracts signed with the Fund;
3) entities whom the Fund has entrusted the performance of certain activities;
4) pharmacies in the scope of refunding the price of drugs.

The Minister of Health has also been provided with legal instruments helping him/her to perform proper oversight. Article 165.1 of the Act enumerates the following instruments:

1) request the Fund to provide the Minister with documents relating to the operations of the Fund or copies thereof and acquainting himself/herself with their contents;
2) request all information and explanations concerning the Fund's operations, addressing such requests to the Fund Council, the President and his/her deputies, the Fund Voivodeship branch councils, the directors of Fund Voivodeship branches, the Fund's

employees and other persons who perform work for the Fund pursuant to a mandate contract, a contract for a specific work or another type of contract to which provisions regulating mandates apply as stipulated in the Civil Code;
3) request that the service provider furnish all kind of information, documents and explanations concerning the implementation of the agreement for the provision of health care benefits;
4) request all kind of information, documents and explanations concerning activities performed for the Fund from the entity referred to in Article 163.1.3 of the Act;
5) requests all kind of information, documents and explanations concerning refunding the price of drugs from the entity referred to in Article 163.1.4.

Note should also be taken of the wording of Article 171.1 of the Act on Health Care Benefits, according to which if a material breach of the law or a material breach of the interests of the beneficiaries by a service provider or an entity referred to in Article 163.1.3 has been found based on information, explanations or documents referred to in Article 165.1.1-4, the Minister of Health shall have the right to impose a monetary penalty on such entities up to a monthly value of the agreement to which the irregularities apply (Art. 171.1) entered into by such entities with the Fund.

As it transpires from the information presented above there are appropriate provisions of law, which in a very detailed way, govern the issue of use of conscience clause as well as question of liability for refusal to perform a medical service to provide of which a doctor or medical entity, f. ex. hospital, is obliged. However the practice is not always in line with the law.

2. Information activities and training

As it was already stated above the Court's judgment was translated, published and disseminated.

In this context, one should recall the activities undertaken in connection with the performance of the judgment in the *R.R. v. Poland* case. First, the judgment was translated into Polish and posted on the Ministry of Health's website (www.mz.gov.pl). Second, on 12 March, 2012, the Ministry of Health circulated a letter to the National Consultant for Obstetrics and Gynaecology and the Voivodeship Consultants for Obstetrics and Gynaecology concerning the right application by doctors of the conscience clause. The said issue was again raised at a meeting of the National Consultant's Group for Obstetrics and Gynaecology on 25 June, 2012. In addition, the Ministry of Health's website (http://www.mz.gov.pl/wwwmz/index?mr=m15&ms=739&ml=pl&mi=739&mx=0&ma=20002) and the specialist periodical *Ginekologia Polska* issued by the Polish Gynaecological Society published a communication on invoking the conscience clause by doctors which contained the conclusions of the Court's judgment in the case *R.R. v. Poland*.

The issue of proper use of conscience clause was also the subject of the above-mentioned meeting organized for gynecology consultants by the Ministry of Health on 25 November 2013.

2. Violation of the Article 8 of the Convention in connection with the disclosure of personal data of the applicants.

The Court has found that the protection of personal data, not only medical ones, has fundamental importance for any person and the enjoyment of such persons' right to respect of his private and family life. The Court has concluded that information that has been made public by the Jan Boży Hospital in Lublin allowed third parties to contact the applicant by phone or personally (even though they did not disclose their surnames). The violation of the medical confidentiality rules did not arise from the premises of Article 8(2) of the Convention: the interests of national security, public safety or the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.

A. Legal measures

Act on Family Planning, the Protection of the Human Foetus and Conditions Permitting Pregnancy Termination

Provision of Article 4c of the above Act imposes an obligation on persons who perform acts arising under the Act to maintain confidentiality with respect to everything that they have learned about in connection with the performance of such acts, as stipulated in separate provisions of law. In the event of a culpable disclosure of the above-mentioned information, the court may award to the injured person a relevant sum as pecuniary compensation for the suffered injury.

Medical confidentiality

Medical confidentiality is regulated in the Act on Medical and Dental Professions and the CME rules. A breach of the rules of medical ethics specified in the CME provides grounds for instituting proceedings concerning professional liability.

Code of Medical Ethics

The duty of every physician and dentist is to apply rules specified in the CME. Any breach of these rules is subject to proceedings concerning professional liability. Medical confidentiality issues are covered by Articles 23-29 of the CME. Pursuant to the said rules, physicians and dentists are required to maintain professional confidentiality. Information about patients and their backgrounds obtained by a physician in connection with performed professional activities is confidential. A patient's death does not release a physician from the obligation to maintain professional confidentiality. Information passed on to another physician about the health condition of a patient is not a breach of medical confidentiality, provided such information was needed for subsequent treatment of the patient or to issue a decision about the patient's health condition.

A physician may be released from professional confidentiality under the following conditions: if a patient gives his consent, if maintaining confidentiality seriously threatens the health or life of a patient or other persons or if provisions of law so require.

It is not a breach of medical confidentiality to hand over the results of a medical examination to a body that was authorised to order such examination. However, the physician who discloses such information is obligated to inform the patient about this fact before he starts to examine him. Any information that is not required to justify the findings of a medical examination should continue to remain confidential. The CME also gives physicians the right to disclose observed facts proving that a patient's health or life is at risk as a result of a human rights violation. Moreover, a physician is also obligated to make sure that persons assisting or helping him in his work observe professional confidence. Disclosing confidential information to such persons should only apply to information that they need to know in order to properly perform their professional activities. A physician has to make sure that medical documentation is properly kept and protected against disclosure. Medical records should contain such information as is necessary for medical procedures. A physician and persons who collaborate with him/her are required to protect the confidentiality of information contained in the genetic material of patients and their families.

Professional secret – Act on Medical and Dental Professions

Medical confidentiality is regulated by the Act on Medical and Dental Professions. Pursuant to Article 40 of the Act, a physician is obligated to keep secret information relating to a patient and obtained in connection with practicing his/her profession. A physician may be released from such obligation, if:
1) laws so provide;
2) a medical examination was carried out at the request of the authorized parties pursuant to separate laws, authorities and institutions; in such case the physician is obligated to inform only those authorities and institutions about the patient's health condition;
3) maintaining confidentiality may endanger the life or health of a patient or other persons;
4) a patient or his statutory representative consents to disclosing the secret, after being previously informed about the negative consequences of disclosing it for the patient;
5) there is a need to hand over necessary information about the patient to a court physician;
6) there is a need to convey necessary information about the patient relating to the provision of health care benefits to another physician or authorised persons participating in the provision of such benefits.
However, it should be noted that in the situations indicated above, the disclosure of confidential information may take place solely in the essential scope. A physician, subject to the situations referred to in points 1-5, is bound to confidentiality also after the death of a patient. A physician may not disclose to the public any data that would enable the identification of a patient without his or her prior consent.

Scope of medical confidentiality – commentary

Medical confidentiality applies both to the results of carried out examinations and the diagnosis made on their basis, the history of the illness and previous medical treatment, methods and progress in medical treatment, earlier or co-existing illnesses, hospitalisation, administered medications. The confidentiality also covers all materials relating to the making of a diagnosis or treatment, like: certificates, notes, files, etc. irrespective of the place and manner of recording information. Confidentiality also applies to information not related

directly to a patient's health condition that a physician has learned about while practicing his profession. Such information may include the patient's activities, his level of intelligence or his material status. The limits of the confidentiality have to be defined by common sense. Facts and circumstances that are generally known will not be covered by the obligation to maintain discretion, even if a physician learned about them in connection with practicing his profession.

A physician's professional confidentiality will also include, in addition to information entrusted to him by the patient himself, also such information that were obtained as a result of independent findings. Hence, confidentiality also applies to information obtained independently of a patient's will (e.g. from a third party) or even against the patient's will, irrespective of the fact whether a physician's action without the consent of the patient will be considered illegal or justified. Hence, confidentiality applies to information obtained from persons other than the patient, e.g. family members, medical personnel. Although there is no direct reference to it in the provision of law, there is no doubt that confidentiality applies to information that concerns not only a patient, but also other persons about whom the patient has talked about that a physician has obtained in connection with his professional practice. Article 23 of the CME refers directly to the need to maintain confidentiality of information about persons who are close to the patient.

The obligation to maintain confidentiality applies to every physician, irrespective of the legal form of practicing his profession and the post or function that he exercises. Medical confidentiality is an absolute secret and there are numerous examples when a doctor is released from the obligation to maintain confidentiality, and sometimes even outright required to disclose confidential information. A catalogue of exemptions is provided for in Article 40.2 of the Act on Medical and Dental Professions. Such situations may be generally classified in two groups. The first covers circumstances which reveal that the patient has no interest in maintaining confidentiality and maintaining it would pose a risk to his health and life. The second group of these circumstances is related to an important public interest or the interest of third parties in lifting confidentiality.

Pursuant to Article 40(2) (1) of the Act, a physician is not required to maintain confidentiality if "the laws so provide." This provision is similar to Article 25 of the CME which provides that the release of medical confidentiality may occur if "provisions of law so require." The laws and regulations referred to above are as follows:
1) Act on Collection, Storage and Transplant of Cells, Tissue and Organs of 1 July 2005 (Dz. U. No. 169, item 1411), whose Article 19 provides that disclosure of personal data of the donor and the recipient is permitted when an organ is collected from a living person;
2) Act on Protection of Mental Health of 19 August 1994 (Dz. U. No. 111, item. 535 as amended), whose Article 50.1 provides that the medical personnel of a health care centre is required to maintain confidentiality of all information that they have learned about in connection with their medical practice arising under the Act, except for providing explanations to a physician who provides care to a person with mental disorders; informing competent bodies of government and local government bodies about the circumstances in which disclosure is necessary in order to perform social assistance tasks; persons who take part in the performance of activities falling under social assistance to the extent necessary; state protection services and their officers or soldiers authorised in writing in the scope

necessary to carry out vetting proceedings pursuant to regulations on the protection of confidential information;
3) Act on Infectious Diseases and Infections of 6 September, 2001 (Dz. U. No. 126, item 1384 as amended), whose Art. 20(1-6) imposes on the physician (or paramedic) the obligation to report within 24 hours a case of suspected infection, falling ill with an infectious disease or diagnosis such disease or death to the poviat (port) sanitary inspector having competent jurisdiction over the place where the illness has been located or a specialist unit competent for tuberculosis and pulmonary diseases (in the event of diagnosing tuberculosis) or a specialist unit competent for sexually transmitted diseases (in the event of AIDS, syphilis. gonorrhoea , non-gonorrhoea infection of lower urogenital organs and other chlamydias and trichomoniasis). Primarily, exceptions are provided for in the Law of 6 June 1997 r. – Code of Criminal Procedure (Dz. U. No. 89, item 555 as amended) and the Act of 17 November 1964. – Code of Civil Procedure (Dz. U. No. 43, item 296 as amended).

Liability for breach of medical confidentiality

Breach of medical confidentiality may result in a physician's professional liability. Article 53 of the Act on Medical Chambers provides that members of medical chambers are professionally liable for breaches of medical ethics and provisions of law relating to the performance of the medical profession, subsequently referred to as "professional misconduct" that is in the scope discussed here for breaching Articles 23-29 of the CME and Article 40 of the Act.

Employee liability for unauthorised disclosure of data covered by medical confidentiality is borne by a physician employed on the basis of an employment contract in a medical centre. As an employee, a physician is accountable to his employer pursuant to Articles 114-122 of the Act of 26 June 1974 - the Labour Code (Dz. U. of 1998 No. 21, item 94 as amended). As a rule, the material liability of a physician for damage caused is limited to three months' remuneration as at the day of the injury. A physician bears full liability (for unlimited amount of money) in the event that he causes intentional injury. A physician is obligated to provide medical treatment consistent with his licensed qualifications. Consequently, the rules set out in the Act on Medical and Dental Professions and CME which apply to a physician performing his profession and the current stage of medical knowledge and the art of medicine constitute a catalogue of employee obligations that medical and dental professionals are bound to observe as employees. Hence, any breach of the generally accepted standards of medical practice (e.g. failure to obtain the patient's consent for a medical procedure, breach of medical confidentiality, intentional error in medical practice) shall be treated as a breach of an employee obligation and result in the employee's liability towards his employer.

Disclosure of confidential medical information may result in civil liability on account of an infringement of patient's personal rights pursuant to Articles 23-24 of the Act of 23 April 1964 - The Civil Code (hereinafter the "CC"). Pursuant to the aforementioned Article 23, a person's personal rights, specifically his health, freedom, dignity, freedom of conscience, surname or pseudonym, image, confidentiality of correspondence, inviolability of his dwellings, scholarly, artistic, inventive and rationalisation output are protected under civil law irrespective of the protection provided for in separate provisions of law. Anyone whose moral right is threatened by an act committed by another person may request that such act

be stopped, unless it is lawful. In the event of an infringement, a person who has been affected by it may request the person who has committed it to perform actions needed to eliminate its consequences, in particular to make a representation that is relevant in content and form. Under the rules set out in the CC, such person may also demand relief in the form of pecuniary damages or the payment of an adequate amount of money to a social cause so indicated. If, as a result of an infringement of a moral right, property has been damaged, the injured person may demand its redress under generally applicable rules.

Article 448 of the CC provides that in the event of an infringement of personal rights, the court may award to the person whose personal right was violated adequate pecuniary damages as redress for the injury such person has suffered or, upon his request, award an adequate amount to a social cause he indicates, irrespective of other measures needed to eliminate the effects of the infringement. If a patient has suffered as a result of disclosure of confidential medical information, it is also possible to claim liability for unlawful acts under Article 415 of the CC.

Irrespective of civil liability, criminal liability can also be claimed. A disclosure of medical confidentiality can also constitute a disclosure of state or official secret (Articles 265 and 266 of the Criminal Code in connection with Article 2.2 of the Classified Information Act of *22* January 1999, restated text of Dz. U. of 2005, No. 196, item 1631 as amended). Under Article 266 of the Criminal Code (CC) the disclosure or use contrary to relevant laws or undertaken obligation to maintain confidentiality of information obtained in the course of performing one's work is an offence. If a physician intends to use knowledge obtained about his patient or from his patient for non-medical purposes, it will be considered as use of information. Information disclosed or used by a physician does not have to come directly from a patient, but can also originate from medical records. The act described in Article 266(1) of the CC is an intentional offence. Hence, a physician has to know or at least consent to the fact that confidential medical information may be accessed by an authorised person as a result of the physician's action. The obligation to keep information confidential falls on the person committing the offence under Article 266(1) of the CC not only at the time of disclosure of the information, but also at the time such information becomes known to someone. Anyone who has acquired specific information, before voluntarily assuming the obligation to maintain such information confidential or being obligated to do so by law, may not be charged with the offence under Art. 266 (1) of the CC. The punishability of acts described in this provision of law arises from the fact that the obligation to maintain confidentiality of information and the ensuing relation of trust that is formed between the holder of information and its depositary makes it easier for the latter to obtain information and thus turns him into a specific guarantor. In the meaning of this provision of law, disclosing confidential information by a physician, irrespective of the form of organisation (e.g. a private clinic, a non-public health care centre) in which he practices his profession constitutes an unlawful act. Such offence is liable to a fine, restriction of liberty or deprivation of liberty of up to two years and is prosecuted on the motion of the injured person.

The information presented above on available legal measures indicates that there are in place legal provisions which in a detailed way govern the issue of an obligation of medical /

hospital personnel to keep confidential information concerning their patients as well as question of liability for failure to fulfill that obligation.

A. Publication and dissemination of the Court's judgment as well as information activities and training

As it was already stated above the Court's judgment was translated, published and disseminated.

The issue of confidentiality was also the subject of the above-mentioned meeting organized for gynecology consultants by the Ministry of Health on 25 November 2013.

3. Violation of Article 5 § 1 of the Convention in connection with unlawful deprivation of liberty of the first applicant

The Court has established that a family court deprived the first applicant of her liberty being aware that the first applicant was pregnant and that doubts arose as to whether she was being pressured to have an abortion (§148 of the judgment). The Court has concluded that the first applicant was deprived of her liberty in children's emergency shelter pursuant to Article 109 of the Family and Guardianship Code (FGC). Therefore, the court's decision complied with domestic law.

The Court raised doubts about the lawfulness of the deprivation of liberty of the first applicant under Article 5 § 1 (d) of the Convention (the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority). The Court has concluded that the main reason behind the court's decision to place the first applicant in a children's emergency shelter was to separate her from her parents (in particular, the second applicant) in order to prevent her from having an abortion. Furthermore, the deprivation of liberty of the first applicant cannot be deemed to have been ordered for the purpose of educational supervision (in the meaning of Article 5 § 1(d) of the Convention), since the main purpose was to protect the minor against having an abortion. The Court has concluded that if the authorities were concerned about the abortion being performed against the will of the first applicant, they should have applied measures that would have been less drastic than depriving a fourteen-year-old girl of liberty.

A. Legal measures

The Court did not question the provisions relating to orders issued by the guardianship court under Article 109 § 1 of the FGC and did not raise the court decision's lack of formal legality. At the same time, it evaluated negatively the manner in which the court applied the legal order in force, finding – unlike the Government – that the real premises on which the court delivered its order pursuant to Article 109 § 1.5 of the FGC essentially involved separating the minor from her parents and preventing her from having a legal abortion. Furthermore, the Court raised the objection that the court in applying the aforementioned provision of

law could have ordered a less burdensome measure than placing a minor in a children's emergency shelter (which the Court has found to be a form of deprivation of liberty).

B. Publication and dissemination of the judgment as well as information activities and training

In view of the foregoing, the execution of the Court's judgment does not entail the enactment of legislative amendments. Educational measures and measures that disseminate the said judgment together with its reasons will be considered sufficient measures. This has been done by placing a link to a Polish translation of the judgment on the Ministry of Justice's website and by sending, in February 2013, the Court's judgment to the court that had delivered the questioned decision and to the court of higher instance. This jugdment, as the other judgments of the Court delivered in cases v. Poland was included in the curriccula of training for judges and prosecutors.

4. Violation of Article 3 of the Convention in connection with inhuman and degrading treatment of the first applicant

In assessing the charge of a degrading and inhuman treatment, the Court considered the circumstances of the case, having particularly in mind their cumulative impact on the situation of the first applicant. Therefore the Court stated in its judgment that the first applicant had been placed in a situation of great risk. The Court concluded that in relation to the first applicant the following events occurred resulting in a violation of Article 3 of the Convention:

1) the physician in the Lublin hospital had exerted pressure on the first applicant,
2) the first applicant was forced to talk to a priest,
3) the physician in the hospital had given the second applicant a statement to sign that the abortion could result in the death of the first applicant,
4) following the hospital's disclosure of information about the case, the first applicant received numerous unwanted messages from unknown persons,
5) the first applicant was placed in a children's emergency shelter,
6) proceedings against the first applicant were instituted for sexual relations with a minor.

In consideration of the above facts and the young age of the first applicant, the Court has concluded that Article 3 of the Convention was violated.

A. Legal measures

Apart the legal measures presented before it is also important to highlight the question of pastoral care.

The provisions of the Law on the Rights of the patient and the patient's Ombudsman grant the patient staying in a medical unit performing medical activities such as stationary and round-the-clock health benefits under the provisions on medical activity, the right to

pastoral care. In case of deterioration in health or threat to life such medical unit is obliged to allow the patient contact with a priest of his denomination.
The Polish Constitution in art. 53 grants every person the right to freedom of conscience and religion, regardless of the place of stay, place of residence and citizenship. The patient during his stay in a hospital, treatment-care facility, nursing-care facility, a hospice or any other treatment facility for persons whose condition requires a stay in a stationary facility, has a right to pastoral care. The right is granted regardless of citizenship, faith, or age. As it is an important and delicate aspect of spiritual life no one can interfere with the patient's choices nor restrict the ways of their implementation.
Pastoral care over a child should be carried out in respect of child's rights and parental authority. The parents have to right to raise their child in accordance with their own beliefs, having the child's well-being in mind.
It is not allowed to impose a pastoral care on a patient who doesn't want to avail himself/herself of this right. The state is obliged to respect the freedom of conscience and freedom of religion of patients.

The Government is of the opinion that all legal measures presented in this action report are sufficient to prevent future violations of the Convention similar to those which occurred in the case of P. and S. also at the scope of violation of Article 3 of the Convention.

A. Publication and dissemination of the judgment and information activities

All the activities concerning publication and dissemination of the judgment as well as information activities presented above are relevant also to violation of Article 3 of the Convention.

III. Conclusions of the respondent state

The Government is of the opinion that in the present case there is no need to apply any further individual measures and all the adopted general measures, in particular legislative amendments and dissemination of the Polish translation of the Court's judgment are sufficient to state that Poland fulfilled its obligations deriving from Article 46 par. 1 of the Convention.