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Date: 20/02/2020

### DH-DD(2020)137-rev

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Meeting: 1369<sup>th</sup> meeting (March 2020) (DH)

Communication from an NGO (Helsinki Foundation for Human Rights) (05/02/2020) in the cases of R.R., TYSIAC and P. and S. v. Poland (Applications No. 27617/04, 5410/03, 57375/08) and reply from the authorities (19/02/2020)

Information made available under Rules 9.2 and 9.6 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 : 1369<sup>e</sup> réunion (mars 2020) (DH)

Communication d'une ONG (Helsinki Foundation for Human Rights) (05/02/2020) relative aux affaires R.R., TYSIAC et P. et S c. Pologne (requêtes n° 27617/04, 5410/03, 57375/08) et réponse des autorités (19/02/2020) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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Warsaw, 4 February 2020

*22.2*/2020/PSP/JJ

**TO:**  
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05 FEV. 2020

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**COMMUNICATION FROM THE HELSINKI FOUNDATION FOR HUMAN RIGHTS  
CONCERNING  
THE EXECUTION OF ECtHR JUDGMENTS IN THE CASES:  
*P. AND S. V. POLAND (APPLICATION NO. 57375/08),  
R. R. V. POLAND (APPLICATION NO. 2761/04),  
TYSIĄC V. POLAND (APPLICATION NO. 5410/03)***

To the attention of:

1. Mr Jan Sobczak

Plenipotentiary of the Minister of Foreign Affairs for cases and procedures before the  
European Court of Human Rights  
Agent of the Polish Government

2. Mr Adam Bodnar

Commissioner for Human Rights

3. Mr Bartłomiej Chmielowiec

Commissioner for Patients' Rights

## EXECUTIVE SUMMARY

- On 14 March 2019, the Committee of Ministers issued a decision in which it urged Polish authorities to ensure effective access to lawful abortion throughout Poland. The Committee underlined the need to safeguard that women seeking lawful abortion are provided with adequate information on the steps they need to take to exercise their rights;
- The Polish Government presented its observations in the report of 20 December 2019. The Government argued that the applicable legal regulations ensure effective access to abortion and information on the availability of the procedure;
- The Helsinki Foundation for Human Rights submitted its communications on the execution of *P. and S. v. Poland* on 1 September 2017 and 9 August 2018. However, given the lack of any positive changes that would ensure effective access to lawful abortion, the Foundation has concluded to reiterate its position on the matter. The Foundation also deems it necessary to comment upon the Government's report of 20 December 2019.
- This communication presents statistical data showing that the procedure for objecting to an opinion or decision of a doctor or the procedure governing the imposition of financial penalties for a breach of contract with the public payer (the National Health Fund) on medical institutions are not effective measures to protect women applying for abortion.
- Polish authorities have not introduced any effective and expedient procedure that would ensure that women can exercise their right to have an abortion which is allowed by domestic law. The existing procedure for objecting to an opinion or decision of a doctor is excessively formalistic and does not guarantee that a pregnancy can be terminated within the legal time-limit. Additionally, medical institutions are currently under no direct legal obligation to inform a woman that abortion can be performed by a different doctor in a situation when a medical practitioner invokes the conscience clause as the basis for the refusal of an abortion.

## RECOMMENDATIONS

- The Helsinki Foundation for Human Rights respectfully recommends that the Committee continues its supervision of the execution of the ECtHR judgments in *P. and S. v. Poland*, *R. R. v. Poland*, and *Tysiac v. Poland*.
- Polish authorities should guarantee that women may receive reliable and objective information on the grounds for the lawful termination of pregnancy and the condition of the foetus. This information should be provided before the end of the legal period when an abortion is allowed. Polish authorities should introduce an expedient and effective procedure to ensure that women have an opportunity to exercise the right to lawful abortion.
- Mechanisms should be introduced to ensure that the right to abortion is not nullified by the invocation of the conscience clause by doctors.

## 1. Introduction

The Helsinki Foundation for Human Rights (“HFHR”) of Warsaw respectfully submits this communication to the Committee of Ministers of the Council of Europe (“CoM”) in order to discuss the execution of the judgments made by the European Court of Human Rights (“ECtHR”) in the cases *P. and S. v. Poland* (application No. 57375/08), *R. R. v. Poland* (application No. 2761/04), and *Tysiac v. Poland* (application No. 5410/03).

The HFHR is a Polish non-governmental organisation established in 1989. Its principal objectives include the promotion of human rights, the rule of law and the development of an open society in Poland and abroad. The HFHR actively disseminates human rights standards based on the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, “ECHR”) and works to ensure the proper execution of ECtHR judgments.

This communication will focus on practical aspects of the accessibility of lawful abortion procedures.

**It is important to emphasise at this point that the conclusions presented in the HFHR communications of 1 September 2017<sup>1</sup> and 9 August 2018<sup>2</sup> on the execution of judgments in *P. and S. v. Poland*, *R. R. v. Poland* and *Tysiac v. Poland* remain fully valid and relevant. The present communication is designed to specifically address the issues indicated in the CoM Decision of 14 March 2019 concerning the execution of the ECtHR judgement of *P. and S. v. Poland*<sup>3</sup> and the response of the Polish Government of 20 December 2019 which refers to the aforementioned decision<sup>4</sup>.**

## 2. ECtHR judgements

The cases *P. and S. v. Poland*, *R. R. v. Poland* and *Tysiac v. Poland* concern access to lawful abortion, which is permitted by the Act on family planning, protection of the human foetus and grounds for the termination of pregnancy (“Family Planning Act”)<sup>5</sup>.

In *Tysiac v. Poland*, the ECtHR found a violation of Article 8 ECHR resulting from the absence of an adequate legal framework for the exercise of the right to therapeutic abortion. In *R. R. v. Poland*, Poland was found responsible for having failed to safeguard access to prenatal genetic testing (allowed under domestic law), which was required for the applicant’s informed decision about the termination of a pregnancy. The ECtHR decided that that failure was contrary to Articles 3 and 8 ECHR. In *P. and S. v. Poland*, the ECtHR found that Poland violated Articles 3, 5 and 8 ECHR by denying access to abortion to a 14-years-old girl whose pregnancy resulted from rape.

The HFHR appreciates the steps taken by the Government to execute the above ECtHR judgements but nevertheless argues that these steps are not sufficient to fully implement the standards established in the ECtHR decisions concerned.

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<sup>1</sup> The Communication is available at [http://hudoc.exec.coe.int/eng?i=DH-DD\(2017\)991revE](http://hudoc.exec.coe.int/eng?i=DH-DD(2017)991revE).

<sup>2</sup> The Communication is available at [http://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)785E](http://hudoc.exec.coe.int/eng?i=DH-DD(2018)785E).

<sup>3</sup> The Decision is available at [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1340/H46-13E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1340/H46-13E).

<sup>4</sup> The Communication is available at [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)5E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)5E).

<sup>5</sup> Act of 7 January 1993 on family planning, protection of the human foetus and grounds for the termination of pregnancy, Journal of Laws no. 17, item 78, as amended.

### 3. Ineffective procedure for objecting to a decision or opinion of a doctor

In its communication of 20 December 2019, the Government reiterated that the procedure for lodging objections against a decision or opinion of a doctor (“objection procedure”), which was introduced by the Act on patients’ rights and the Commissioner for Patients’ Rights (“Patients’ Rights Act”), constituted a sufficient procedural safeguard that can be used by women who have been refused a lawful abortion by a doctor.<sup>6</sup> Being unable to share the above view, the HFHR would like to recall the key criticisms expressed about the objection procedure.

**Arguably, the most serious drawbacks of the objection procedure include its excessive formalism; the impossibility of applying the procedure in cases where a doctor refuses to issue an opinion or decision; concerns as to whether the objection procedure may be used to challenge a refusal to refer a patient for medical testing; and the lack of guarantees of the expedient consideration of an objection.**

The HFHR explained the above issues in detail in its communications of 1 September 2017 and 9 August 2018. These explanations remain fully valid and relevant.

So far, the Patients’ Rights Act has not been amended in a way that would materially alter the objection procedure and transform the procedure into an effective rights protection mechanism.

Arguably, the objection procedure neither satisfies the criteria for an effective remedy set forth in Article 13 ECHR nor meets the standards established by ECtHR in *P. and S. v. Poland*, *Tysiac v. Poland* and *R.R. v. Poland*. The procedure is ineffective and does not secure an objecting person’s right to lawful abortion.

### 4. Access to lawful abortion, in particular in a situation where a doctor invokes the conscience clause

The data obtained by the HFHR from the Commissioner for Patients’ Rights<sup>7</sup> show that the objection procedure does not safeguard access to abortion in a situation where the conscience clause is invoked by a doctor. According to the Commissioner’s data, in 2019 only one such objection was lodged by a woman who was not admitted to a hospital gynaecology department due to the lack of possibility to perform an abortion. The woman was eligible for lawful abortion under domestic law, which permits the termination of pregnancy in cases of a high probability of foetal defects or an incurable medical condition endangering the foetus’ life (in this case: Edwards’ syndrome). However, all doctors in the hospital, including the one who issued the negative decision, refused to terminate the pregnancy by invoking the conscience clause. Ultimately, the Medical Review Board at the Commissioner for Patients’ Rights found the objection unjustified. The Board underlined that under Polish law a doctor has the right to refrain from performing a procedure on the basis of the conscience clause.

Additionally, the objection procedure in its current form does not guarantee that a woman may receive reliable, exhaustive and objective information on whether she has the right

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<sup>6</sup> Communication from the Government of the Republic of Poland of 20 December 2019, pp. 7-8.

<sup>7</sup> Commissioner for Patients’ Rights letter to the HFHR of 17 January 2020, ref. RzPP-DPR-WPL.0133.1.2020.

to have a lawful abortion performed. The objection procedure further fails to ensure that a woman will receive information on where the abortion procedure can be performed in a situation where the originally approached doctor invokes the conscience clause.

There is currently no provision of Polish law that would oblige a doctor or other medical practitioner to inform the patient about an effective way of obtaining a healthcare service (here, undergoing abortion) from a different healthcare provider (medical institution) in the case where the doctor or other practitioner refuses to perform the said service by invoking the conscience clause. This state of affairs is a consequence of the judgement of the Constitutional Tribunal ("CT") delivered on 7 October 2015<sup>8</sup>, in which the CT found the provisions introducing such an obligation unconstitutional. According to the CT, if a doctor invoking the conscience clause was legally obliged to refer the patient to a different medical facility, such an obligation would disproportionately interfere with the doctor's freedom of conscience protected under Article 53 (1) of the Constitution. The current legal situation, created after the relevant provisions lost their legal force in consequence of the CT's decision, leads to a significant disparity in the protection of doctors' freedom of conscience and patients' right to obtain medical services.

In its communication of 20 December 2019, the Government underlined that according to the Act of 15 April 2011 on healthcare institutions, medical institutions are obliged to provide publicly accessible information about the scope and type of the healthcare services offered<sup>9</sup>. At a patient's request, the medical institution must also provide detailed information on the healthcare services offered, in particular on the applied testing and treatment methods, as well as the quality and safety of those methods. Appropriate information about medical institutions can also be received from regional branches of the National Health Fund ("NHF").

In HFHR's opinion, the above options of accessing information fail to ensure that women may effectively receive information on the available options of pregnancy termination. Above all, under the applicable law, the burden of searching for a proper facility and reviewing its services falls onto women. Such a search can be time-consuming, which is a substantial consideration given the strict period during which a pregnancy may be terminated under the law.

In this context, the Government also mentioned that legislative works were carried out on an amendment to Article 39 of the Act of 5 December 1996 on the medical and dental profession. As it was stressed in the explanatory note on the draft amendment, the changes sought to execute the CT judgement of 7 October 2015. It was proposed that the obligation to inform a patient about an alternative option for obtaining a medical service from another doctor or a different medical institution and to notify the patient of the possibility to obtain such a service should be imposed on the healthcare provider which employed the doctor who refused to perform a procedure that they considered irreconcilable with their conscience.

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<sup>8</sup> Case No. K 12/14.

<sup>9</sup> Communication of the Government of the Republic of Poland of 20 December 2019, pp. 2-3.

Importantly, the discussed amendment is far from being enacted as the Council of Ministers (Government) sent the draft to the Parliament only on 16 January 2010.<sup>10</sup> It is uncertain whether the draft will be adopted by the Polish Parliament and the change will come into effect.

Also, the proposed regulation arguably fails to ensure that a woman denied access to a medical procedure by a doctor invoking the conscience clause may *always* receive information on where else the procedure can be performed. First of all, according to the draft version of the amendment, a doctor has no obligation to refer the patient to the administration/management department of the doctor's medical institution or to inform the patient about their rights. What is more, the proposed amendment makes no guarantee that the medical institution is informed about each and every case in which its doctors invoke the conscience clause and has the possibility to address such a situation. The draft amendment stipulates that only a doctor employed on the basis of an employment contract (or performing their duties as a service member) is required to notify their supervisor in writing before invoking the conscience clause. Notably, the proposed regulation does not refer to doctors contracted to work for medical institutions on any other basis, such as a contract falling outside the aegis of employment law.

Moreover, the above issues have not properly been addressed in the May 2019 Recommendations of the National Consultants in the field of obstetrics and gynaecology and perinatology in respect of the care of patients who decide to have their pregnancy terminated in circumstances indicated in the Act of 7 January 1993 on family planning, protection of the human foetus and grounds for the termination of pregnancy. Apart from being a not binding instrument, the Recommendations do not explain who is responsible for informing women about the steps that should be taken when a doctor refuses to perform an abortion in order to obtain a referral to another medical institution. Furthermore, the Recommendations suggest that whenever a medical service is denied by a medical institution, the patient should receive a reasoned decision in writing. The above may suggest that conscience clause can also be invoked by the medical *institution* (rather than exclusively by an individual doctor), what is contrary to the Polish law.

The National Consultants further recommend that medical care over women who decided to have their pregnancy terminated should be provided (1) in the hospital where the woman has so far received medical attention, (2) in the local gynaecological hospital, or (3) in the institution that has performed the prenatal diagnosis. However, under Polish law, the patient, as a rule, has the right to choose the provider of medical service. In consequence, in the HFHR's opinion, the Recommendations may be construed as a basis for the refusal of the provision of a medical procedure by the institutions that are not included in the three groups mentioned. Alternatively, those institutions may require a negative decision in writing from the hospital previously approached by the patient concerned.

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<sup>10</sup> Government-sponsored bill amending the Act of 5 December 1996 on the medical and dental profession, Sejm paper No. 172, <http://www.sejm.gov.pl/sejm9.nsf/agent.xsp?symbol=RPL&Id=RM-10-1-20>.

## 5. Medical services related to abortion and the performance of contracts with the NHF by medical institutions

In its communication of 20 December 2019, the Government emphasised that the NHF supervises the compliance of medical institutions with their contractual obligations. Also, a notification of a service provider's (alleged) violation of a contract for the provision of medical services constitutes a basis for commencement of the clarification proceedings. The Government reported that no such notification had been submitted in 2018, whereas according to the NHF records<sup>11</sup> obtained by the HFHR **the NHF has registered two cases of unjustified refusal to perform a lawful abortion in 2018. Also, the NHF reported that 11 such cases were registered in 2019. What is more, in 2018-2019, the Head Office and Regional Branches of the NHF did not pursue any clarification proceedings related to a refusal to perform an abortion.**

The irregularities recorded by the NHF clearly did not lead to the commencement of any proceedings for the imposition of contractual penalties for the breach of contract by medical institutions. It is worth recalling that the data provided by the HFHR in its communication of 9 August 2018<sup>12</sup> demonstrated that the violations of patients' rights connected with lawful abortion recorded by the Commissioner for Patients' Rights did not give rise to any clarification proceedings launched by the NHF.

It is thus evident that the existing framework of regulatory measures, including contractual penalties for the breach of contracts with the NHF, cannot be considered an effective mechanism ensuring access to lawful abortion. It should be stressed that clarification proceedings (and contractual penalty proceedings) are only pursued (conducted) after a suspected irregularity involving a refusal to perform a medical procedure (e.g. an abortion) appears. No legal provision stipulates that such proceedings should end within a certain time-limit so to enable a woman to exercise her right to a lawful abortion before this right becomes unenforceable. This is yet another reason for considering the existing measures ineffective and devoid of practical applicability as remedies protecting the rights of women seeking an abortion.

## 6. Conclusions and recommendations

In view of the above-mentioned reasoning, the HFHR respectfully argues that the Committee of Ministers should continue its supervision of the execution of the judgments *P. and S. v. Poland*, *R. R. v. Poland* and *Tysiac v. Poland*. As pointed out above, the general measures taken by Polish authorities are not sufficient to prevent further Convention violations similar to those found in the above cases.

According to the HFHR, in order to fully implement the *P. and S.*, *R. R.* and *Tysiac* judgements, Polish authorities should:

- Guarantee that women may receive reliable and objective information on the grounds for the lawful termination of pregnancy and the condition of the foetus. This information should be provided before the end of the legal period when an abortion is allowed;

<sup>11</sup> Letter from the NHF to the HFHR of 29 January 2020, ref. DSOZ-DRS.0123.4.2020 2020.5548.CPKO.

<sup>12</sup> The communication may be read at [http://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)785E](http://hudoc.exec.coe.int/eng?i=DH-DD(2018)785E).



- Introduce an effective and expedient procedure to ensure that women have an opportunity to exercise the right to lawful abortion;
- Introduce mechanisms that would ensure that the right to abortion is not nullified by the invocation of the conscience clause by doctors.

We believe that this written communication proves to be useful for the Committee of Ministers in performing the task defined in Article 46(2) of the Convention.

*This communication was prepared by Jarosław Jagura, a lawyer of the Strategic Litigation Programme of the Helsinki Foundation for Human Rights, under the supervision of Katarzyna Wiśniewska, the coordinator of the Strategic Litigation Programme.*

On behalf of the Helsinki Foundation for Human Rights,



Piotr Kładoczny, Ph.D.  
Secretary of the Board



Danuta Przywara  
President of the Board





Warsaw, 19 February 2020

**Republic of Poland  
Ministry  
of Foreign Affairs**

Plenipotentiary of the Minister  
of Foreign Affairs for cases and procedures  
before the European Court of Human Rights  
Agent for the Polish Government

DPT.432.121.2019/55

DGI

19 FEV. 2020

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**Mr Fredrik Sundberg  
Head of the Department  
for the Execution of Judgments  
of the European Court of Human Rights  
Council of Europe  
Strasbourg**

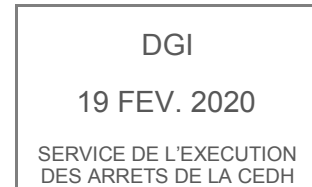
*Dear Sir,*

With reference to the communication submitted to the Committee of Ministers of the Council of Europe on 5 February 2020 by the Helsinki Foundation for Human Rights concerning execution of the judgments of the European Court of Human Rights in the cases of *Tysiac v. Poland* (application no. 5410/03), *R.R. v. Poland* (application no. 27617/04) and *P. and S. v. Poland* (application no. 57375/08), I would like to submit the following comments prepared on the basis of information submitted by the Ministry of Health.

*Yours sincerely,*

  
Jan Sobczak  
Government Agent

Encl.



**Enclosure**

In reply to the Communication of the Helsinki Foundation for Human Rights (hereinafter: HFHR) of 5 February 2020 concerning the execution of the European Court of Human Rights' judgments in the cases of *Tysiac v. Poland*, *R.R. v. Poland* and *P. and S. v. Poland*, the Government of Poland should like to submit the following comments.

In its submission the HFHR referred to the procedure of objection against a physician's or a dentist's opinion or ruling, in particular referring to its alleged excessive formalism, lack of possibility to use it in cases when a physician refuses to give an opinion or ruling, the doubts whether it can be used in case of refusal of medial test referral and lack of guarantees of quick examination of an objection.

It should be underlined that the objection constitutes a legal remedy, *i.a.* for women who were refused a pregnancy termination (in all circumstances provided for by the *Law of 7 January 1993 on Family Planning, Human Foetus Protection, and Acceptable Conditions of Pregnancy Termination*, hereinafter: *Law of 1993*), prenatal test referral, or if they were refused the prenatal tests despite a referral. Under the aforementioned act, a patient may file an objection against a physician's or a dentist's opinion or ruling within the Medical Commission operating at the Commissioner for Patients' Rights, if an opinion or a ruling impacts the rights or obligations of a patient under the law. The activities of the Medical Commission operating at the Commissioner for Patients' Rights are governed by the *Regulation of the Minister of Health of 10 March 2010 on the Medical Commission operating at the Commissioner for Patients' Rights*. National consultants, in agreement with the relevant regional consultants, prepare a list of physicians eligible to seat in the Medical Commission by 30 March each year.

Patient's right to object is of a general nature, that is, it has not been limited to the cases of pregnancy termination on grounds provided for by the Law of 1993. Rendering the right general in nature was a purposeful action with the intention of providing protection for all patients when a physician's opinion or ruling affects their right or obligations under the law (and in a situation in which no other legal remedy has been foreseen). A physician's refusal to perform pregnancy termination affects the patient's rights, irrespective of the indications for the procedure in that specific case and the reason of the refusal.

HFHR questions the effectiveness of this measure in case when a physician refuses to terminate pregnancy due to the so-called "conscience clause", recalling that in 2019 the Medical Commission declared the objection concerning the conscience-based refusal of pregnancy termination as unfounded because the refusal had its legal basis. It should be, however, clarified that, according to the clarifications of the Commissioner for Patients' Rights, the patient had received information about the possibility to terminate pregnancy in another medical facility. The Commission underlined that according to the legal provisions in force, every hospital that concluded a contract with the National Health Fund in the field of obstetrics and gynecology, is obliged to perform the termination of the pregnancy in the cases provided for in the Law of 1993. The breach of law in this respect may result in an imposition of contractual penalties by the National Health Fund, in a civil claim submitted by a patient or in sanctions imposed by the Patient's Rights Commissioner. It was also indicated that at the time of issuing of the decision by a medical commission 23 weeks of pregnancy have not yet elapsed.

It should be noted that the *Law of 6 November 2008 on Patients' Right and the Commissioner for Patients' Rights*, aside from introducing the right to object the physician's opinion or ruling, created a central governmental authority – the Commissioner for Patients' Rights – that is crucial to the protection of the rights of all patients, including pregnant women experiencing difficulties with access to pregnancy termination. The Commissioner for Patients' Rights activities aim at protecting patients' rights guaranteed by the 2008 law and other regulations. His/her tasks include:

- 1) conducting proceedings in cases of practices infringing collective rights of patients;
- 2) conducting proceedings under Articles 50-53 of the Law of 2008 (these provisions provide for the possibility of the Commissioner to commence an investigation if he/she becomes aware of information on a probable violation of patients' rights);
- 3) performing activities in the civil cases referred to in Article 55 of the law;
- 4) cooperation with public authorities, specifically with the minister competent for health, in order to ensure that patients' rights are respected;
- 5) providing the competent public authorities, organizations and institutions, and self-governments of medical professions with assessments and proposals to ensure effective protection of patients' rights;
- 6) cooperation with non-governmental organizations, social and professional organizations whose statutory objectives include the protection of patients' rights;
- 7) analysis of patients' complains in order to identify the risks and areas of the health care system in need of repair.

The Commissioner for Patients' Rights also provides patients with the information about the broadly defined issues related to pregnancy – in response to written applications, e-mails and phone calls and following his/her personal meetings with patients who come to his/her Bureau. Therefore, it needs to be noted that a pregnant woman who was refused access to a service that she was entitled to, can request the help of the Commissioner for Patients' Rights, who can institute clarification proceedings into the matter. Consequently, a patient who was refused to have her pregnancy terminated can assert her right also with the help of the Commissioner for Patients' Rights, along with objecting to the opinion or the ruling of a physician.

In order to facilitate contact with the Bureau of the Commissioner for Patients' Rights, the nationwide free phone helpline 800 190 590 operated ten years. Since 2018 the helpline has continued to operate as a common phone number for the National Health Fund and the Bureau of the Commissioner for Patients' Rights, operating across Poland. The helpline's staff are composed of several dozen employees of the NHF provincial units and of the Bureau of the Commissioner for Patients' Rights. The new uniform all-Poland number replaced several earlier numbers operating in NHF provincial units. It provides quick, comprehensive and clear information on the functioning of the Polish health care system. Staff operating the 800 190 590 number inform callers on the rights of insured persons, guide them on how to report on a violation of patients' rights, provide contact details to medical facilities and offices that cooperate with the NHF, inform about the rules of medical services and universal health insurance. According to the Commissioner for Patients' Rights almost 50 000 calls yearly are conducted via this helpline.

In 2019 as regards the patients that indicted their difficulties in their access to legal abortion, the Commissioner for Patients' Rights both conducted clarification proceedings and undertook interventions on the basis of the notifications received.

Furthermore, the HFHR's communication also refers to the question of implementing in practice the provisions of the Law of 1993 as regards the "conscience clause" following the Constitutional Tribunal's judgment of 7 October 2015 (case no. K 12/14). In this context it should be firstly underlined that both Polish legal system (Article 53 (1) in connection with Article 31 (3) of Constitution) and international law (Article 18 of the International Covenant on Civil and Political Rights and Article 18 of the Universal Declaration of Human Rights) guarantee the right to freedom of conscience. In Poland the use of the so-called "conscience clause" by the physicians has been regulated in such a way as to safeguard both the physician's right to refrain from a service contrary to his/her conscience and the patient's right to receive a medical service (as well as the performance of the patient's right to information). Patients' rights in this field have not been diminished as the result of the above-mentioned judgment of the Constitutional Tribunal.

Currently, under Article 39 of the *Law of 5 December 1996 on the Physician and Dental Surgeon Professions*, a physician may refrain from providing a medical service which is against his/her conscience, save Article 30 of the law (to the extent that it provides for the physician's obligation to provide medical assistance in each case when a delayed medical service would expose a patient to an immediate danger of loss of life, a severe bodily injury, or a serious impairment of health). Such a refusal must be justified and recorded in the medical documentation. An employed physician or a physician on duty service must also inform his/her superior in writing in advance. With regards to the aforementioned judgement by the Constitutional Tribunal, the following articles were repealed:

1) Article 39, first sentence in conjunction with Article 30 of the *Law of 5 December 1996 on the Physician and Dental Surgeon Professions* (Journal of Laws of 2015, item 464) insofar as it obliged a physician in "other urgent cases" to perform a medical service contrary to his conscience;

2) Article 39, first sentence of the *Law of 5 December 1996 on the Physician and Dental Surgeon Professions* insofar as it obliged a physician who refrained from performing a medical service contrary to his/her conscience to redirect the patient to another available physician or medical entity.

Therefore, the wording changed by the judgment of the Constitutional Tribunal was analysed to see if it safeguards both the physician's right to refrain from a service contrary to his/her conscience and the patient's due right to receive a medical service (as well as the performance of the patient's right to information in this case).

In the light of the legislation in force, in particular the *Regulation of the Minister of Health of 8 September 2015 on general terms and conditions of providing medical services*, all medical entities (hospitals) that have signed contracts with the National Health Fund are obliged to deliver medical services included therein – in the full scope and in compliance with the current laws. The use of the conscience clause shall not violate this obligation. By signing a contract to provide medical care services, the service provider undertakes to deliver all services listed as guaranteed in the relevant secondary legislation to the *Act on health care services financed from public funds*. The inability to provide services constitutes a faulty realisation of the contract. The refusal of the medical service provider who is contracted in the field of obstetrics and gynecology, to perform the termination of the pregnancy in the cases provided for in the Law of 1993 with a simultaneous failure to indicate a

medical facility where a woman could obtain the said healthcare service, counts as a faulty realisation of the contract.

At the same time, according to the provisions of the *Law of 15 April 2011 on Healthcare Institutions*, any entity engaging in medical treatment activities shall make information concerning the scope and types of medical services publicly available. Furthermore, any entity engaging in medical treatment activities shall, at the patient's request, issue detailed information concerning the medical services provided, especially information concerning the diagnostic and/or therapeutic methods applied, including information on the quality and safety of said methods. Consequently, in a case where a physician refuses to perform a termination of pregnancy by invoking the conscience clause, the obligation of providing information on how to enforce the contract with the National Health Fund in this respect lays within the service provider, *i.e.* healthcare facility where the physician refrained from performing medical procedure contrary to his or her conscience. It should be also underlined that the right to invoke the "conscience clause" is the physician's right and cannot be invoked by a medical entity. This procedure is regulated by law and is general in nature and therefore applies to all healthcare services.

Concluding when a physician refrains from performing the termination of pregnancy on the basis of his/her conscience, the obligation to inform a patient lies on the side of the service provider, *i.e.* the medical entity where a physician refrain from performing a medical procedure. It should be emphasized that, as it is the case with all publicly-financed healthcare services, information on the healthcare entities providing services in the field of obstetrics and gynecology is provided by the regional branches of the National Health Fund. In addition, the patient's charge-free helpline is also helpful in this regard.

The Government wish to submit that the above regulations were reflected in the *Recommendations of national consultants in the field of obstetrics and gynecology and perinatology, concerning the care of patients who decide to terminate the pregnancy in circumstances indicated in the Law of 7 January 1993 on Family Planning, Human Foetus Protection, and Acceptable Conditions of Pregnancy Termination*, elaborated in May 2019. These recommendations underline that every hospital that has concluded a contract with the National Health Fund for the provision of healthcare services in the field of obstetrics and gynecology is obliged to ensure that the said procedure is carried out (accordingly with the list of guaranteed services in the field of hospital treatment). National consultants indicated in these recommendations that "the breach of law in this respect may result in an imposition of contractual penalties by the National Health Fund, in a civil claim submitted by a patient or in sanctions imposed by the Commissioner for Patients' Rights". The recommendations at hand were distributed among the regional consultants.