

**SECRETARIAT GENERAL**  
SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



Contact: Simon Palmer  
Tel: 03.88.41.26.12

Date: 07/04/2011

**DH - DD(2011)248 \***

*Item reference: Action plan / action report*

Please find enclosed a communication from Poland concerning the case of Tysiac against Poland (Application No. 5410/03).

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*Référence du point : Plan d'action / Bilan d'action*

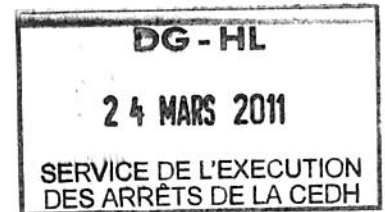
Veillez trouver, ci-joint, une communication de la Pologne relative à l'affaire Tysiac contre Pologne (Requête n° 5410/03) (anglais uniquement).

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\* In the application of Article 21.b of the rules of procedure of the Committee of Ministers, it is understood that distribution of documents at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers (CM/Del/Dec(2001)772/1.4). / Dans le cadre de l'application de l'article 21.b du Règlement intérieur du Comité des Ministres, il est entendu que la distribution de documents à la demande d'un représentant se fait sous la seule responsabilité dudit représentant, sans préjuger de la position juridique ou politique du Comité des Ministres CM/Del/Dec(2001)772/1.4).



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*



Warsaw, 24 March 2011

Ms. Geneviève Mayer  
Head of the Department  
for the Execution of Judgments of the  
European Court of Human Rights  
Council of Europe  
Strasbourg

Tysiąc v. Poland

Application No. 5410/03, judgment of 20/03/2007, final on 24/09/2007

Dear Madam,

Please find enclosed an action report with respect to the execution of the above mentioned judgment.

Yours faithfully,

Jakub Wołosiewicz  
Government Agent

Encl.

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## ACTION REPORT<sup>1</sup>

### Information about the measures to comply with the judgment in the case of Tysi c against Poland

#### Case description

Tysi c, application no. 5410/03, judgment of 20/03/2007, final on 24/09/2007)

The case concerns the authorities' failure to comply with their positive obligation with regard to the respect for the applicant's right to her private life, due to the absence of a legal framework to guarantee her right to therapeutic abortion in 2000 (violation of Article 8 of the Convention).

According to the applicable Polish law (1993 Family Planning Act) abortion is generally prohibited, unless *inter alia* pregnancy poses a threat to the woman's life or health, attested by at least one medical certificate of a specialist in the area concerning the illness of the woman concerned. A doctor who terminates a pregnancy in breach of the law is guilty of a criminal offence.

The European Court noted that the right to respect for private life implies that in case of therapeutic abortion the State must secure the physical integrity of mothers-to-be, striking a fair balance between the interest of the individual and the community. In circumstances such as those in this case, there should be a procedure before an independent body competent to review the reasons for the measures and the relevant evidence. This procedure should guarantee a pregnant woman at least the possibility to be heard in person and to have her views considered. The competent body should issue written grounds for its decision. The procedure should also ensure that such decisions are timely so as to limit or prevent damage to a woman's health which might be occasioned by a late abortion (§§ 117-118 of the judgment).

The European Court concluded that the Polish legal framework, as applied in this case, denied the applicant the possibility of expressing her disagreement with the doctors and made it impossible to determine whether the conditions for therapeutic abortion had been met. In particular the provisions of the Minister of Health's Order of 22/01/1997 provided no particular procedural framework to address and resolve disagreement as to the advisability of therapeutic abortion, either between the pregnant woman and her doctors, or between the doctors themselves. Furthermore the 1996 Medical Profession Act, which allows a doctor to obtain a second opinion from a colleague in the event of therapeutic doubts or at the patient's request, was only addressed to members of the medical profession and gives patients no procedural guarantee to obtain such an opinion or to contest it in the event of disagreement.

#### I. Individual measures

The applicant was awarded just satisfaction in respect of non-pecuniary damage, but not in respect of pecuniary damage, as the European Court considered that it could not speculate as

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<sup>1</sup> Information submitted by the Polish authorities on 24 March 2011



to the correctness of the physicians' conclusions concerning the future deterioration of her eyesight. In these circumstances, no other individual measure appears to be necessary.

## II. General measures

### 1. Legislative measures

In November 2008, a new law was adopted on the patient's rights and the Patient Rights' Ombudsman (*Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta*, hereafter: "Law of 2008"). Most of its provisions entered into force on 5/06/2009. The law defines, *inter alia*, the patients' rights as well as the procedure of appointment and dismissal of the Patient Rights' Ombudsman and his/her competences. One of the patients' rights is the right of appeal against an opinion or a decision of a physician, also in the context of a therapeutical abortion. Law of 2008 specifies the rules for the application of this procedure.

According to Section 31 § 1 of the Law of 2008, a patient or his/her legal representative may lodge an appeal against a physician's opinion or decision, if the latter has an impact on his/her rights and/or obligations stemming from the provisions of law. The appeal should be lodged through the Patient Rights' Ombudsman to the Commission of Physicians within 30 days following the delivery of the opinion or decision by the physician.

The functioning of the Commission is regulated by the Ordinance of the Minister of Health on the Commission of Physicians (*Rozporządzenie Ministra Zdrowia w sprawie Komisji Lekarskiej działającej przy Rzeczniku Praw Pacjenta*, hereafter: "Ordinance"), adopted on 10 March 2010.

Section 32 of the Law of 2008 stipulates that the Commission of Physicians is composed of three physicians, two of which must have the same specialisation as the one who delivered the contested opinion or decision. The members of the Commission of Physicians are appointed by the Patient Rights' Ombudsman from a list of physicians, updated each year.

In order to guarantee the impartiality of the Commission of Physicians, it is possible to exclude its member from participation in the proceedings, either *ex officio* or upon request of the patient or his/her legal representative, in particular, if the given member of the Commission of Physicians has issued the appealed opinion or decision, is married or related to the physician, who issued the appealed opinion or decision, or if the appealed opinion or decision was issued by a physician remaining with him/her in relation of superiority or subordination (Section 3 of the Ordinance). A new member of the Commission of Physicians shall be appointed within 3 days from the exclusion of the former member of the Commission of Physicians.

The Law of 2008 provides that the Commission of Physicians delivers a decision on the basis of medical documentation and, if need be, after the examination of the patient (Section 31 § 5), by the absolute majority of votes in the presence of all its members (Section 31 § 6). Further modalities concerning the participation of the patient and the form of the decision are specified in the Ordinance.

According to Section 5 (1) of the Ordinance, the Commission of Physicians shall work at hearings. It should be stressed that the patient or his/her legal representative may attend the hearings of the Commission of Physicians and submit information and clarifications concerning the case at stake at all stages of the proceedings, except the deliberation and voting phase (Section 4 of the Ordinance). Section 2 (2) point 5 of the Ordinance stipulates that it is a tasks of the Chair of the Commission of Physicians to notify the patient or his/her

legal representative of the date of the hearing of the Commission of Physicians or of the date, the place and the scope of the medical examination.

Pursuant to Section 5 of the Ordinance, if the Commission of Physicians decides to carry out an examination of a patient, its Chair when determining the date of the examination shall take into account the state of health of the patient and the circumstances which have the impact on the exercise of the patient's rights and obligations. The Chair shall notify the patient or his/her legal representative of the date of the hearing of the Commission of Physicians or of the date, the place and the scope of medical examination by regular mail sent at the address indicated by the patient or his/her legal representative, or by means of electronic communication, or by phone.

Pursuant to Section 6 of the Ordinance, the decision shall be delivered and reasoned in writing. It shall be signed by all members of the Commission of Physicians and submitted together with reasoning to the patient or his/her legal representative without delay and, in the event that they did not participate in the hearing of the Commission of Physicians, not later than within 7 days from the date of the adoption of the decision. The reasoning shall contain the description of the course of the hearing, including the information about the adopted decision concerning the appealed opinion or decision, and the circumstances which led to the conduct of the medical examination.

The Commission of Physicians, appointed by the Patient's Rights Ombudsman for the examination of each individual appeal, shall deliver its decision without delay, in any event not later than within 30 days from the date of lodging the appeal (Section 31 § 5 of the Law of 2008). The length of the proceedings before the Commission of Physicians depends on the complexity and nature of the case. The appeal procedure applies not only to abortion but to all kinds of situations in which the patient disagrees with a physician's opinion or decision which affects his/her rights or obligations protected by law, provided that no other appeal procedure is available. Taking into account legal provisions related to the conditions under which legal abortion may be performed and the regulations concerning the Commission of Physicians, it may be assumed that the proceedings before this body will be efficient and speedy. In this context it is worth to recall that Polish law does not provide any time-limit for an abortion carried out in case where the pregnancy endangers the mother's life or health (Article 4a § 1 point 1 of the 1993 Family Planning Act).

The Polish authorities consider therefore that the legislative measures described above correspond to the requirements stemming from the Court's judgment in the present case.

## *2. Information activities*

The 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](http://www.bpp.gov.pl)) and various non-governmental organizations, e.g. Polish Federation for Women and Family Planning ([www.federa.org.pl](http://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 (the number is available on the internet site of the Patient Rights' Ombudsman).

### *3. Publication and dissemination*

The judgment of the European Court was translated and published on the internet site of the Ministry of Justice ([www.ms.gov.pl](http://www.ms.gov.pl)). It has been also disseminated to the Ministry of Health and the Patient Rights' Ombudsman.

### **III. Conclusions of the respondent state**

The government considers that the measures adopted will prevent similar violations and that Poland has thus complied with its obligations under Article 46, paragraph 1 of the Convention.