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SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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Communication from an NGO and reply of the government in the case of Tysiac against Poland (Application No. 5410/03).

Information made available under Rule 9.3 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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Référence du point : 1100e réunion DH (décembre 2010)

Communication d'une ONG et réponse du gouvernement dans l'affaire Tysiac contre la Pologne (Requête n° 5410/03) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.3 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

This document will be declassified after the 1100th DH meeting, in accordance with Rule 8 (Access to information) of the rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. Ce document sera déclassifié à l'issue de la 1100e réunion DH conformément à la règle 8 (Accès aux informations) des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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).



CENTER FOR REPRODUCTIVE RIGHTS

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10 November 2010

Re: Communication on the Execution of the European Court of Human Rights Judgment in the Case of *Tysic v. Poland* (App. No. 5410/03, Judgment of 20/03/2007, Final on 24/09/2007), Scheduled for Review December 2010.

Dear Committee Members:

The Polish Federation for Women and Family Planning (PFWFP) and the Center for Reproductive Rights (CRR) submit this communication under Rule 9.2 with regards to your forthcoming review in December 2010 of Poland's execution of the European Court of Human Rights (ECtHR) judgment in the case of *Tysic v Poland* (App. No. 5410/03). Our present communication is intended to supplement the information available to the Committee regarding the newly adopted *Act of November 6, 2008 on Patient Rights and the Patient Rights Ombudsman* (the Act), especially *Chapter 8 - The Patient's Right to File an Objection to a Doctor's Opinion or Ruling* and Articles 31 and 32 establishing the procedure of "objections" filed with the Medical Board operating under the Patient Rights Ombudsman. As per our organizations earlier communications to you dated September 2009 and February 2010, the Act continues to omit critical aspects of the judgment and thus, fails to implement the judgment. In addition, the UN Human Rights Committee, which monitors state compliance with the International Covenant on Civil and Political Rights very recently raised concerns regarding the new law in the context of abortion and state failure to effectively implement the Court's judgment.¹

We stress that the information on general measures imposed by the ECtHR presented in our 12 May 2008 CRR Communication and 26 November 2008 Communication are also still relevant in analyzing the text of the Act. It is our hope that the Committee will take them into account together with the above referenced submissions and this current communication.

The Act covers patients' rights in general and is not adapted to the specificities of cases of women patients needing effective access to lawful abortion in Poland, the healthcare issue in the *Tysic* case. This particular aspect of the Acts flaws is reflected throughout our comments below.

We will show how the Act's procedure of "objections" filed with the Medical Board disregards the conditions imposed by the ECtHR with regards to: (1) the timeliness of the procedure, (2) the taking into account the woman's considerations, (3) written requirements (4) the independence of the proposed Medical Board as well as other barriers.

I. Untimely procedure

Article 31.(5) of the Act prescribes up to a thirty day time-limit from the date the objection was filed to the date the Medical Board is to adopt a decision. Such a time limit is not "timely" in the context of pregnancy and understanding of the ECtHR which noted that it is not adequate to limit or prevent damage to a woman's health which might be occasioned by a late abortion.² This is even more important in Poland where time is essential for effective access to legal abortion – in case of pregnancy resulting from a criminal act, legal abortion is allowed until the twelfth week of pregnancy and for fetal impairment, legal abortion is allowed until viability.³ The time issue is further exacerbated as oftentimes doctors impose unnecessary demands on patients so that the patient may not know there is a refusal of care until the lawful time limit for undergoing an abortion is exceeded, and access to lawful abortion is no longer available (see our *12 May 2008 Communication*).⁴

As we extensively presented in our *12 May 2008 CRR Communication*, most Council of Europe member state laws and regulations on abortion appeals processes have strict time-limits within which such appeals and reviews must be decided, recognizing the inherent time-sensitive nature of abortion procedures and the inability of regular administrative review or other legal processes to respond in a timely manner. In these countries, the time-limits vary between two,⁵ five,⁶ seven or eight days.⁷ In some countries the law prescribes an "immediate" submission of the petition to the appeals committee⁸ or even exempts prior authorization when the abortion is urgent.⁹ The United Kingdom is one Council of Europe Member State which allows the assessment to be extended up to three weeks (ideally it is 5 days) from the initial referral.¹⁰ Importantly, however, Polish abortion legislation distinguishes significantly from the British as abortion in the UK is allowed on social and economic grounds until the 24th week of pregnancy.¹¹ In addition, the UN Human Rights Committee, in monitoring Poland's compliance with the International Covenant on Civil and Political Rights, very recently expressed its concern about the lengthy response deadline and called on Poland to '*drastically reduce medical commissions' response deadline in cases related to abortions*.¹² The UN Special Rapporteur on the Right to Health raised similar concerns in his report to Poland in May 2010, noting that the new law, for numerous reasons does not comply with the Court's judgment.¹³ **Taking into account the standards imposed by the ECtHR judgment, the law and practice in Poland, comparative law in Europe, and opinions of UN Human Rights bodies, the thirty days time-limit of Article 31.(5) of the Act is too long for ensuring effective access to legal abortion in Poland.**

II. The woman's considerations are not taken into account

According to Article 31.(5) of the Act, the Medical Board bases its decision "on the medical records, and, if necessary, an examination of the patient."¹⁴ There is no provision stating that the woman's considerations will be taken into account or at least that she is heard by this Medical Board. Such a shortcoming is not in compliance with the ECtHR's requirements with regards to the review procedure.¹⁵

Furthermore, as we extensively presented in our *12 May 2008 Communication*, many Council of Europe Member States have implemented a system ensuring women access to legal, therapeutic abortions and their legislation contains express language underscoring a woman's rights to dignity and autonomous decision-making within the context of requests for and provision of abortion services.¹⁶ Poland needs to ensure that the woman's considerations are taken into account during the review procedure before the Medical Board established by Chapter 8 of the Act, in accordance with the Court's judgement.

III. The Medical Board's decision is not in writing and cannot be appealed

The Act does not obligate the Medical Board to issue a written decision, as required by the ECtHR judgment.¹⁷ Without a written decision, there is no possibility of appeal. Furthermore, Article 31.(7) provides that the Medical Board's decision cannot be appealed. Not being able to appeal the decision is contrary to the ECtHR judgment and disregards the rights to access to justice and to an effective legal remedy (Articles 6 and 13 of the ECHR) (see also below).

Furthermore, as we extensively presented in our *12 May 2008 Communication*, the Council of Europe Member States' laws introducing an appeal or a review procedure in this field require that the decision of the review body be in writing and accessible to the woman seeking an abortion.¹⁸ Poland needs to expressly state in its legislation that the Medical Board's decision is in written and it is subjected to appeal in due time.

IV. The Medical Board is not an independent body

Article 31.(2) of the Act establishes the "Medical Board", a three-member structure, "operating under the Patient Rights Ombudsman, in the care of the Patient Rights Ombudsman."¹⁹ The three members of the Medical Board are all doctors, appointed by the Patient Rights Ombudsman from a list of doctors in a specific medical discipline compiled every year by the national consultants and the regional consultants of jurisdiction, according to Article 32.(2) of the Act. Each Medical Board handling a case will include two doctors with the same specialization as the doctor who issued the opinion or ruling.²⁰

a) The doctors-only configuration of the Medical Board

The essential feature of the independent body of review required by the ECtHR judgment is the protection of human rights; to ensure women access to abortion they are lawfully entitled to receive.²¹ The Act's Medical Board procedure does not respect this requirement. Given the practice of physicians' unwillingness to question another colleague's decision with regards to termination of pregnancies, the fact that the Medical Board is composed only of doctors raises concerns on its impartiality and independence.²² The body should gather apart from medical professionals (gynecologists or obstetricians, as well as physicians with other medical backgrounds), professions relevant for the work of protecting human rights or patient's rights and interests (lawyers and/or human rights defenders), like in the case of many Council of Europe Member States. For detailed information on the context in Poland and comparative European standards, see earlier communications submitted by the Federation for Women and Family Planning and the Center for Reproductive Rights in November 2008.

b) Conscientious objectors can be members of the Medical Board

The Act did not introduce a procedure of selection of the Medical Board's members to avoid situations when conscientious objectors to abortion sit on the review body analyzing a case of access to lawful abortion. This is even more problematic because the practice of conscience objection is inadequately regulated in Poland as shown in our *12 May 2008 CRR Communication*

– there is no clear evidence who is a conscientious objector, patient’s notification and referral rules are avoided in practice by doctors that invoke other reasons for not providing legal abortion, there are no monitoring and sanctioning mechanisms in place.²³

c) The Medical Board does not respect the *Paris Principles* with regard to national institutions for the protection of human rights

There are aspects related to the organization and functioning of the review body that raise concerns on its independence and do not fulfill the *Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles)*.²⁴ First, according to the Act, the Medical Board’s members are not appointed through official acts that also establish the duration of their mandate. The Medical Board’s members are chosen from a list on an ad-hoc basis and do not have a mandate on a certain period of time; they are assigned to each individual appeal.²⁵ Second, the Medical Board does not have the necessary infrastructure, including a budget, to conduct its activities. The Medical Board does not have a separate budget; its operating expenses are funded by the Patient Rights Ombudsman’s budget.²⁶ Third, the Act does not prescribe the manner in which the Medical Board will operate; this matter will be the object of a future regulation issued by the Minister of Health in consultation with the National Chamber of Medicine. Fourth, the Act does not describe the relationship between the Medical Board and the Patient Rights Ombudsman, including with respect to the final decision on individual cases reviewed by the Medical Board. Fifth, according to Article 31.(7) of the Act, the Medical Board’s decisions cannot be appealed. This contradicts the principle that there should be guaranteed by law a procedure to appeal the body’s decisions to a higher administrative institution or directly to courts (in accordance with Articles 6 and 13 of the ECHR). Furthermore, due consideration to the length of procedure should be given throughout the appeals process. All comparative law on independent body of review for termination of pregnancy presented in our earlier communications have timely appeal procedures available for women who require access to legal abortion.

In conclusion, the Medical Board’s institutional profile does not fulfill the independence requirement prescribed by the ECtHR judgment. The Committee of Minister should continue the supervision of the execution of the ECtHR judgment and review the regulations on the Medical Board’s organization, functioning, and relationship with the Patient Rights Ombudsman to be adopted by the Ministry of Health in consultation with the National Chamber of Medicine, according to Article 32.(5) of the Act.

V. Other barriers

Article 31 of the Act imposes three additional barriers that are infringing effective access to the review procedure before the Medical Board: the obligation to file an appeal within 30 days of decision on the patient health condition; the obligation to indicate the law from which the rights or obligations that are allegedly violated arise, under the sanction that the objection will be returned to the complainant without consideration (Art.31.(3), (4) of the Act); and that the law fails to ensure women access to abortion even if she were to receive a positive decision from the Medical Board.

a) Obligation to file appeal within 30 days (Article 31(2) of the Act):

The thirty day time-limit of Article 31.(2) of the Act is an additional restriction to accessing legal abortion in Poland. The Act sets a thirty day time-limit to file an appeal regarding decision on health condition. This 30-day period starts from the date on which the decision was issued. This legal limitation is not justified. As mentioned above, time limitations should be imposed on the

doctors that issue the decision and on the review mechanism, not on women that access the procedure. Moreover, the obligation to know the law before filing an appeal (see immediately below), will further extend the time needed to file an appeal. In addition, this time-limit is in conflict with Poland's abortion law, as Section 4(a) of the *Family Planning (Protection of the Human Foetus and Conditions Permitting Pregnancy Termination) Act, from 1993* does not prescribe such additional time limitations.

b) The obligation to know the law (Art.31.(3) (4) of the Act):

This provision requires the patient to indicate the law from which the rights or obligations that are allegedly violated in the appeal arise, otherwise the objection will be returned to the complainant without any consideration. Such obligation is problematic for numerous reasons based on access to justice. First, it is the independent body of review, as required by the ECtHR judgment, that should safeguard human rights; it is expected from this body to know which laws, rights and obligations apply in each case. Yet, the Act does not require the members of the review body to have legal background. In addition, requiring women to know the law before submitting the appeal is an unnecessary burden on women which may require her to have legal counsel. In addition, the Act does not require the Medical Board to inform the complainant that the appeal did not meet the obligation to provide legal justification and references, depriving the complainant of the opportunity to amend and re-submit the appeal. Imposing such a condition on women while not ensuring effective access to free legal aid is infringing their rights to access to justice and to an effective legal remedy. Under these circumstances, Article 31.(3), (4) of the Act is not justified and in violation of the ECHR.

c) The mechanism introduced to the Polish legislation still does not ensure that women get the services they need.

Even if a woman is to receive a positive decision concerning her appeal there is still no guarantee that she will be able to access the services she is legally entitled to receive.. A woman seeking an abortion, for example, will still need to find a doctor who would provide service which can be highly difficult due to the fact that that doctors in Poland invoke conscience clauses without any oversight or monitoring from the state . The unregulated practice makes it very difficult for women to get the services they need (for recognition of this problem, see for example, the above-referenced Human Rights Committee concluding observations to Poland and UN Special Rapporteur Report on Poland). Hence, the Court's requirement of ensuring access to services in order to prevent harm may still remain illusory for women seeking abortion.

V. Conclusion

The Act of November 6, 2008 on Patient Rights and the Patient Rights Ombudsman does not comply with the basic requirements imposed on the State by the ECtHR judgment in the case of *Tysic v. Poland*. The Medical Board procedure established by the Act does not answer to the specificities of cases of patients that need effective access to lawful abortion in Poland. The Medical Board procedure is not a timely procedure, the woman's considerations are not taken into account, the Medical Board's decisions are not required to be in writing, the Medical Board is not an independent body, and the Act imposes other procedural barriers to women which are not justified and are in contradiction with the Polish abortion legislation. For these reasons, we **respectfully urge the Committee to continue supervising the execution of the ECtHR judgment in the case of *Tysic v Poland* and to issue recommendations to the State to create a legal framework which complies with the requirements imposed by the ECtHR judgment and Poland's obligations under the Convention.**

We hope that the Committee will find this communication useful in the deliberations on the execution of this judgment. Should you need further information, please do not hesitate to contact us.

Respectfully yours,



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Attached:

Unofficial translation of *Chapter 8 - The Patient's Right to File an Objection to a Doctor's Opinion or Ruling, Act of November 6, 2008 on Patient Rights and the Patient Rights Ombudsman.*

¹ Human Rights Committee 100th session Geneva, 27 October 2010, Concluding Observations to Poland, CCPR/CPOL/CO/6 27 October 2010, para. 12; Un Special Rapporteur on the Right to Health, report on country visit to Poland, 20 May 2010, A/HRC/14/20/Add.3, pages 11-12 (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/134/03/PDF/G1013403.pdf?OpenElement>)

² *Tysic v. Poland* (App. No. 5410/03, judgment of 20/03/2007, final on 24/09/2007), Eur. Ct. H.R., at 25-26, para. 118 [hereinafter *Tysic v. Poland*].

³ Family Planning (Protection of the Human Foetus and Conditions Permitting Pregnancy Termination) Act at Section 4(a).

⁴ See CRR Communication of 12 May 2008, p.8 [hereinafter *12 May 2008 CRR Communication*].

⁵ See Law on abortion, 23 October 1986, as amended through Law No. 419/1991 (Slovakia) at Art. 8.

⁶ See Law on abortion, 20 October 1986 (Czech) at Art. 8(1), (2).

⁷ See Decree No. 2 of 1 February 1990 on the conditions and procedures for the artificial termination of pregnancy (Bulg.) at Art. 15(2); Law No. 1252-1978 of 21 April 1978, Act concerning the medical measures for materialization of the right to freely decide on the birth of children (Croatia) at Arts. 23, 24; Law of 30 June 1977, the Act concerning the conditions of and procedures for the termination of pregnancy (Serb.) at Arts. 11, 25; Law of 20 April 1977 on medical measures to implement the right to a free decision regarding the birth of children (Slovenia) at Art. 25;

⁸ See Law No. 50 of 13 June 1975 on the termination of pregnancy, as amended through Law No. 86 of 16 June 1989 (Nor.) at Sections 7, 8; Law No. 25/1975, 27 May 1975, ch. II, art. 10 (Ice.).

⁹ See Law of 30 June 1977, the Act concerning the conditions of and procedures for the termination of pregnancy (Serb.) at Arts. 11; Law No. 194 of 22 May 1978 on the social protection of motherhood and the voluntary termination of pregnancy, §§ 5, 7 (Italy)

¹⁰ See Royal College of Obstetricians and Gynecologists, *The Care of Women Requesting Induced Abortion, Evidence based Clinical Guideline Number 7*, § 2.1.6, at 7 (Sept. 2004).

¹¹ See British Abortion Act of 1967, Art.37.(1).

¹² Human Rights Committee 100th session Geneva, 27 October 2010, Concluding Observations to Poland, CCPR/CPOL/CO/6 27 October 2010, para 12;

¹³ Un Special Rapporteur on the Right to Health, report on country visit to Poland, 20 May 2010, A/HRC/14/20/Add.3, pages 11-12 (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/134/03/PDF/G1013403.pdf?OpenElement>)

¹⁴ *Act of November 6, 2008 on Patient Rights and the Patient Rights Ombudsman*, Art. 31.(5) [hereinafter *the Act*]

¹⁵ See *Tysic v. Poland*, *supra* note 1, at 24 paras. 113,116,117.

¹⁶ See Law No. 50 of 13 June 1975 on the termination of pregnancy, as amended through Law No. 86 of 16 June 1989 (Nor.) at Sections 7, 8; Law No. 239 of 24 March 1970 on the interruption of pregnancy, as amended through Law No. 572 of 24 July 1998 (Fin.) at Art. 7; Law of 30 June 1977, the Act concerning the conditions of and procedures for the termination of pregnancy (Serb.) at Art. 18; Law No. 194 of 22 May 1978 on the social protection of motherhood and the voluntary termination of pregnancy, § 5 (Italy). While Italy's law only provides that a woman's considerations should be taken into account within the first 90 days of the pregnancy, the law provides language which might be useful for a similar provision, regardless of the gestational stage.

¹⁷ See *Tysic v. Poland*, *supra* note 1, at 25, para. 117.

¹⁸ See Law of 1 May 1981 (Stb. 257) on the termination of pregnancy, § 3(5) (Nether.); Law No. 239 of 24 March 1970 on the interruption of pregnancy, as amended through Law No. 572 of 24 July 1998 (Fin.) at Art. 6; Law No. 50 of 13 June 1975 on the termination of pregnancy, as amended through Law No. 86 of 16 June 1989 (Nor.) at Section 8; Law No. 50 of 13 June 1975 on the termination of pregnancy, as amended through Law No. 86 of 16 June 1989 (Nor.) at Section 8; Decree No. 2 of 1 February 1990 on the conditions and procedures for the artificial termination of pregnancy (Bulg.) at Art. 14(5); Law of 30 June 1977, the Act concerning the conditions of and procedures for the termination of pregnancy (Serbia) at Art. 23, 25; Law on abortion, 20 October 1986 (Czech) at Art. 8(2); Law on abortion, 23 October 1986, as amended through Law No. 419/1991 (Slovakia) at Art. 8; Law No. 75-17 of 18 Jan. 1975, concerning the Voluntary Termination of Pregnancy, as amended by Law No. 79-1204 of 31 Dec. 1979 at Art. L. 162-12 (Fr.).

¹⁹ The Act, *supra* note 11, Art. 31.(2).

²⁰ *Id.*, Art. 32.(1).

²¹ See *Tysic v. Poland*, *supra* note 1, at 25, para. 117.

²² 12 May 2008 CRR Communication, *supra* note 3, at 2-3.

²³ *Ibid.*

²⁴ *Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles)*, endorsed by the Commission on Human Rights in March 1992 (Resolution 1992/54) and by the General Assembly in its Resolution A/RES/48/134 of 20 December 1993.

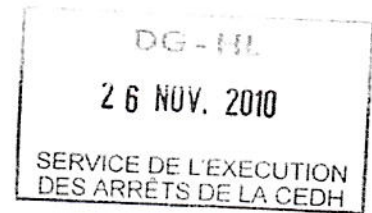
²⁵ See the Act, *supra* note 11, Art. 32.(1), (2).

²⁶ *Id.*, Art. 32.(4).



REPUBLIC OF POLAND
 MINISTRY OF FOREIGN AFFAIRS
 PLENIPOTENTIARY OF THE MINISTER
 OF FOREIGN AFFAIRS FOR CASES BEFORE THE
 EUROPEAN COURT OF HUMAN RIGHTS
 GOVERNMENT AGENT

DPOPC 243/1078/01/ARP



Warsaw, 26 November 2010

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

ALICJA TYSIAC v. POLAND

Application no. 5410/03

Judgment of 20 March 2007, final on 24 September 2007

Dear Madam,

With reference to the judgment in the aforementioned case, I have the honour to acknowledge the receipt of your letter of 18 November 2010, enclosing a copy of the communication from of the Polish Federation for Women and Family Planning and the Center for Reproductive Rights, concerning the general measures adopted in the *Alicja Tysiąc v. Poland* case.

In this context, I would like to bring to your attention several details the consideration of which should lead to the conclusion that the Ordinance of 10 March 2010 of the Minister of Health concerning the functioning of the Commission of Physicians (full Polish name of this ordinance: *Rozporządzenie Ministra Zdrowia w sprawie sposobu działania Komisji Lekarskiej przy Rzeczniku Praw Pacjenta*, hereafter quoted as "Ordinance of 10 March") and the Law of 6 November 2008 on patients' rights and the Ombudsman for Patients (full Polish name of this law: *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta*, hereafter quoted as "Law of 6 November") guarantee the rights envisaged by Article 8 of the Convention.

First of all, according to Article 31.5 of the Law of 6 November the Commission of Physicians (*Komisja Lekarska*) shall act without delay and adopt a decision not later than within 30 days, counted from the date of filing of an objection (*sprzeciw*), on the basis of medical records and, if necessary, after the examination of the patient. The above provision guarantees that the 30-

day time-limit for the Commission's decision is the maximum term, whereas the Commission should issue the decision immediately. The reason for the absence of immediate decision may result, for example, from the necessity to perform additional medical examination or the necessity to become acquainted with the position of the patient.

Secondly, in accordance with § 2.2 point 5 of the Ordinance of 10 March, it is a task of the Chair of the Commission to notify the patient or 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. At the same time, § 4 of the Ordinance states that the patient or 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. The Chair shall notify the patient or 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 means of ordinary mail, sent to the address indicated by the patient or her legal representative, by means of electronic communication or by phone. In this context it should be stressed that the introduction of a possibility to inform the patient by means of electronic communication or by phone should also contribute to the shortening of the time to issue a ruling.

Thirdly, it should be noted that § 6.3 of the above Ordinance states that the decision shall be issued in two copies of equal importance, signed by all the members of the Commission of Physicians. In addition, § 6.5 of the Ordinance states that the decision, accompanied by written reasoning, shall be delivered to the patient or her legal representative without delay and if 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.

Fourthly, it should be emphasized that apart from the possibility to terminate pregnancy where there are strong grounds for believing that it is a result of a criminal act, the grounds for legal abortion under Polish law are medical in nature. Particularly, Section 4(a) of the „Family Planning, Protection of the Human Foetus and Conditions Permitting Pregnancy Termination Act” (full Polish name of this act: *Ustawa o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży*) reads, in its relevant part:

- “1. An abortion can be carried out only by a physician where
- 1) pregnancy endangers the mother's life or health;
 - 2) prenatal tests or other medical findings indicate a high risk that the foetus will be severely and irreversibly damaged or suffering from an incurable life-threatening disease;
- (...)”

Therefore in order to assess the occurrence of these conditions medical knowledge is necessary. The members of the Commission of Physicians are appointed from a list submitted by the National Consultants competent in the relevant fields of medicine, which should ensure its highest professional and ethical level (lists of physicians have already been transferred to the Office of the Ombudsman for Patients).

The composition of a particular Commission of Physicians shall be determined by the Ombudsman for Patient's order (*zarządzenie Rzecznika Praw Pacjenta*). The rules of procedure of the Commission is regulated by the Ordinance of 10 March. The funding for its operation has been also guaranteed (thus, the Ombudsman, among others, has already adopted an order setting out the remuneration of the members of the Commission of Physicians).

The time-limit of thirty days to submit the objection by the patient seems to be sufficient. With respect to the requirement to indicate the law from which the rights or obligations that are allegedly violated arise, it should be stressed that its aim is to eliminate those objections to which other laws and remedies apply (such as decisions on the ability to drive). The entire Polish legal system is based on the presumption of knowledge of law by all citizens. The requirement to indicate legal provision in her objection should not be considered as an additional burden, in particular taking into account that the objection does not have to fulfil strict formal requirements. Furthermore, relevant information how to make an effective objection can be found on numerous web sites, including those operated by NGOs (such as the web site of the Polish Federation for Women and Family Planning).

Finally, the Polish authorities would like to recall that the issue of conscientious objection clause goes beyond the scope of the implementation of the above judgment of the European Court of Human Rights.

Yours faithfully,

pp. Jan Sobuch

Jakub Wołasicwicz

Government Agent