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Implementation of *Tysiiąc, R.R. & P. and S. v. Poland*

Presentation by the Federation for Women
and Family Planning and
the Center for Reproductive Rights



Three cases against Poland before ECHR on access to legal abortion:

- *Tysi c v. Poland (2007)*
- *R.R. v. Poland (2011)*
- *P. and S. v. Poland (2013)*

Distinct but also overlapping issues regarding access to legal abortion.

Each case requires specific implementation measures.

FACTS

Ms. Tysi c's continued pregnancy posed a serious risk to her eyesight and health.

She was repeatedly denied medical certificate attesting to her entitlement to a legal abortion.

No procedures were available to review the doctor's decision and to provide Ms. Tysi c with a timely abortion.

She had no option but to carry her pregnancy to term.

After the delivery her eyesight seriously deteriorated.

THE COURT'S JUDGMENT



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Lack of an effective procedure to challenge and resolve disagreements with and between doctors concerning the right to legal abortion on medical grounds.

Legal prohibition on abortion can have a chilling effect on providers.

Once the legislature decides to allow abortion, it must not structure its legal framework in a way which would limit real possibilities to obtain it.

FACTS

In the 18th week of R.R.'s pregnancy, an ultrasound detected a potential fetal anomaly.

She was repeatedly denied diagnostic tests preventing her from being able to legally obtain an abortion on indication of risk of severe fetal impairment.

R.R. eventually had the tests performed but received the results in the 25th week.

She then requested an abortion but was informed that the time frame for a legal abortion had passed.

THE COURT'S JUDGMENT



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Absence of effective frameworks to guarantee that relevant, full and reliable information is available to women enabling them to make informed decisions about their pregnancy.

“Striking discordance” between the right to abortion and women’s inability to access legal abortion care in practice.

Failure to ensure that access to legal reproductive health services is not jeopardized by medical professionals’ conscience-based refusals of care.

FACTS

A 14-year old girl became pregnant after sexual assault.

She had a prosecutor's certificate entitling her to a legal abortion.

But she faced misinformation, procrastination, refusals of care, arbitrary requirements for medical certificates, breaches of medical confidentiality, harassment and pressure.

She was placed in a juvenile center following a court order.

In the end she obtained an abortion 500 km from her home.

THE COURT'S JUDGMENT



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Failure to create legal framework enabling exercise of the right to legal abortion.

Applicant's right to legal abortion care had been established by a prosecutor's certificate.

Strengthening enforcement policies and procedures for holding health facilities and professionals accountable for failures to comply with legal obligations to provide legal abortion care.

Failure to ensure that access to legal reproductive health services is not jeopardized by medical professionals' conscience-based refusals of care.

POLAND'S ACTION PLAN AND REPORTS



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Existing framework for accountability for medical professionals and health care institutions.

Complaint procedure under the Patient Rights Act.

Clarification procedures for breach of National Health Fund contracts.

Existing provisions on doctors' and health institutions' legal duty to provide information to patients.

Existing provisions on medical confidentiality.



ONGOING REALITY IN POLAND

Legal abortion remains a theoretical right, not a reality.

Only between 0 and 3 legal abortions are performed each year in situations where pregnancy results from sexual assault.

Number of legal abortions on grounds of risk to health or life has dropped from approx. 80 in 2000 to approx. 25 abortions annually in recent years.

Continuing failures to enforce existing legal regulations on abortion and conscience-based refusals of care.



COMPLAINT PROCEDURE

Not tailored to the specific needs of individuals seeking abortion care or prenatal testing.

30-day timeline does not guarantee timely decision and access to abortion care.

Overly cumbersome and formalistic.

Decision is not legally enforceable and does not mandate provision of abortion care sought.

No judicial appeal possible.

Wholly inapplicable to the circumstances of *P. and S.*, which does not involve a doctor's medical opinion.

CONSCIENCE-BASED REFUSALS



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Remains a widespread practice.

No longer a legal duty on doctors to refer to an alternative provider or facility when refusing care.

No obligation on health facilities and providers to give information on where abortion care is available.

Institutional refusals exist and are unlawful but not sanctioned.

NATIONAL HEALTH FUND CONTRACTS



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Placing onus for enforcement of public contracts on patients is unreasonable.

State authorities should monitor compliance and sanction contract breaches.

Clarification proceedings are discretionary, potentially lengthy and *post facto* and thus ineffective.

Does not result in order to mandate provision of care but only in contractual penalties.

CONTINUING FAILURE TO ACT



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Three Court judgments (2007, 2011, 2013).

For two decades human rights monitoring mechanisms have pointed to lack of compliance.

No effective measures have been taken to address systemic barriers and enforcement deficits.

Continuing enhanced scrutiny by the Committee of Ministers of implementation of these judgments is critical.

RECOMMENDATIONS



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Adopt urgent procedural mechanism: decision within max. 3 days; the right of judicial appeal; enforceable orders mandating the care to be provided.

Adopt effective measures to ensure that conscience-based refusals by providers do not undermine or delay women's access to legal abortion services or prenatal testing.

Strengthen enforcement procedures and measures, incl. by ensuring appropriate sanctions and disciplinary actions.

Monitor and enforce National Health Fund contracts.

RECOMMENDATIONS



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Adopt effective measures to guarantee women access to reliable information on the conditions and procedures for their access to legal abortion care.

Guarantee that full and reliable information is provided to women and adolescent girls enabling them to make informed decisions about their pregnancy.

Adopt effective measures to enhance protection of patient data confidentiality.

Introduce targeted measures to ensure that the needs of adolescents seeking legal abortion are met and that they are treated with respect and due consideration for their vulnerability.