
1419th meeting, 30 November – 2 December 2021 (DH)

H46-25 *Tysi c* and R.R. (Applications Nos. 5410/03, 27617/04), P. and S. (Application No. 57375/08) v. Poland

Supervision of the execution of the European Court's judgments

Reference document
CM/Notes/1419/H46-25

Decisions

The Deputies

1. recalled that these cases concern the lack of an effective procedure to enable women to effectively access lawful abortion on grounds of maternal or foetal health where the doctor disagrees that such grounds exist or that prenatal tests are necessary to assess this or make other decisions (*Tysi c and R.R.*) and the authorities' failure to provide access to reliable information on the conditions and procedures enabling pregnant women and girls, including victims of rape, to effectively access lawful abortion (in the case of *P. and S.*);
2. stressed that the need to put in place unified and clear procedures to be followed by all hospitals is even more important at present, since it appears that following the Constitutional Court's judgment of October 2020 new situations arise related to risks for pregnant women's life or health, causing additional uncertainty for pregnant women and doctors; underlined that such situations require particular attention by the authorities who must ensure that a doctors' assessment of risks to the woman's health as a ground for lawful abortion, is guided solely by the genuine need to protect the life or health of the woman and is not compromised by pressure from other possible factors, such as the risk of criminal liability for performing an abortion combined with the very limited situations when abortion is currently permitted;
3. in this respect noted the communiqué published on the website of the Ministry of Health after a recent death of a pregnant woman in one of the Polish hospitals, clarifying that a risk to woman's health constitutes a sufficient ground for lawful abortion and that doctors in such situation must not be afraid of making obvious decisions based on their experience and knowledge; strongly urged again the authorities to put in place unified procedures for access to lawful abortion, including when abortion is refused on grounds of conscience or when the woman's life or health might be at serious risk, and to provide women with adequate information on them beforehand;
4. noted with profound regret the persisting lack of reforms to provide for an explicit obligation of hospitals to refer patients to alternative services when a medical procedure was not performed due to the use of the conscience clause and strongly urged the authorities to include in the legislation such an obligation and to monitor effectively its observance in practice; invited the authorities to submit information on the functioning of the conscience clause, the procedure followed in such situations and the current monitoring of the referral obligation;
5. noted with regret that no explanation was provided as to the apparent regional disparities in the access to lawful abortion, urged again the authorities to ensure that lawful abortion and pre-natal examination are effectively accessible across the country without substantial regional disparities and without delay caused by the use of the conscience clause by doctors and requested information on the measures envisaged in this respect as well as on the availability of pre-natal testing in the regions;

6. noted the letter from the Minister of Health to the President of the National Health Fund of 23 August 2021 requesting active monitoring of the contractual obligations of hospitals as regards lawful abortion; invited the authorities to submit information on the monitoring effectively undertaken by the National Health Fund in 2020 and 2021 and its results, including any sanctions imposed in this period, and to clarify whether the Fund can act on its own initiative;
7. stressed the increased importance for women to be able to effectively contest decisions refusing lawful abortion on medical grounds or pre-natal examination at present, as while a foetal impairment is no longer a separate ground to access lawful abortion in some cases it can be at the origin of a serious risk for the woman's health; strongly urged again the authorities to adopt the necessary reforms of the objection procedure without further delay;
8. noted with interest the information that the number of pregnant women accessing pre-natal examination in the period following the entry into force of the Constitutional Court's judgment of 22 October 2020, restricting the grounds for lawful abortion in Poland, appears to remain unchanged; called on the authorities to ensure constant monitoring of the trends in this respect;
9. recalling their previous decisions and the Interim Resolution CM/ResDH(2021)44 adopted in March 2021 containing repeated calls for the adoption of the abovementioned reforms and procedures, underlined Poland's unconditional obligation to abide by the Court's judgments fully, effectively and promptly, and exhorted the authorities to heed to these calls without any further delay; in this respect strongly encouraged the authorities to enter into high level consultations with the Secretariat to explore possible solutions for the outstanding questions;
10. decided to resume consideration of this group of cases at their 1443rd meeting (September 2022) in the light of information to be submitted by the authorities by 15 June 2022.