

Ms. Geneviève Mayer

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**AMNESTY
INTERNATIONAL**



EUROPEAN INSTITUTIONS OFFICE

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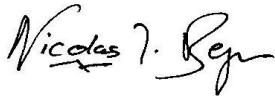
TIGO IOR: EUR 29/08/2014

Dear Ms. Mayer,

**AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF
MINISTERS: *P. AND S. V. POLAND*, APPLICATION NO. 57375/08**

Please find enclosed a briefing submitted in accordance with Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and with the terms of friendly settlements adopted by the Committee of Ministers on 10 May 2006. This is with a view to assisting the Committee of Ministers in its evaluation of the general measures taken to date by the Polish Government to fulfil its obligations to implement the judgment of the European Court of Human Rights in the case of *P. and S. v. Poland*.

Yours sincerely,



Dr. Nicolas J. Beger
Director
Amnesty International European Institutions Office

AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS: P. AND S. V. POLAND, APPLICATION NO. 57375/08

Executive Summary

In light of Poland's obligations under international human rights law, Amnesty International seeks to assist the Committee of Ministers in its evaluation of the general measures that the Polish Government has taken to date to comply with the judgment of the European Court of Human Rights (the Court) in the case of *P. and S. v. Poland*.

On 30 October 2012, the Court delivered its judgment in the case of *P. and S. v. Poland*, ordering Poland to give effect to existing Polish law regarding abortion. It also asked the Government to address the lack of effective and accessible procedures to give effect to a right to an abortion allowed under the law. The judgment became final on 30 January 2013.

On 29 November 2013, the Polish Government submitted its Action Report to the Committee of Ministers on its implementation of the judgment in *P. and S. v. Poland*.¹ In the Action Report, the Government indicates that it has taken numerous general measures to remedy the violations in this case and has therefore implemented the Court's judgment. These measures include the existing appeal mechanisms for review of a medical opinion denying a woman access to abortion and a law sanctioning providers in cases of unlawful practice of conscientious objection. Amnesty International takes the position that the general measures the Government reports having taken do not adequately execute the Court's judgment. In addition, the Government does not address in its Action Report any measures it has taken to ensure respect for adolescent autonomy in decision-making and their physical and mental integrity with respect to ensuring access to lawful abortion.

In view of the current situation, Amnesty International wishes to bring three key human rights concerns to the Committee of Ministers' attention:

1. How can the Polish Government guarantee that its **obligation** to provide lawful abortion for women and girls will be adequately discharged?
2. How will the Polish Government ensure access to abortion and attendant medical care in the context of **conscientious objection** by medical service providers?
3. What measures does the Polish Government plan to take to **prevent** state interference in adolescent decision-making concerning reproductive choices and to protect personal and medical data?

In the following submission, we provide further detail on these concerns, including questions the Committee may wish to ask the Polish Government and recommendations that may address these concerns.

¹ DH-DD(2014)258.

1. The State Must Ensure Access to Lawful Abortion

The Court held that the Polish Government has an obligation to give effect to its current legal framework on abortion and ‘must not structure its legal framework in a way which would limit real possibilities to obtain an abortion.’² The Court found that the uncertainty about the requirements for obtaining a lawful abortion in Poland resulted in a striking difference between the theoretical right to abortion in Poland and its practical implementation.³ In this respect, the Court found that there were no procedures available to P and S under which they could have their views heard and properly taken into consideration with a modicum of procedural fairness.⁴

The Polish Government’s Action Report states that the 2008 Act on Patient Rights and Patient Rights’ Ombudsman satisfies the procedural concerns raised by the Court. Amnesty International does not agree with this assessment as the appeals mechanism provided for in the Act, to which the government refers, concerns the review of a medical opinion where the medical conditions for a legal abortion are deemed not to have been met. In this case, P’s right to lawful abortion had already been established by a prosecutor, in accordance with the Family Planning Act. The applicant’s lack of access to a timely abortion procedure was not due to a questionable medical opinion but to the provision of what the Court called ‘misleading and contradictory information’ from health care providers on the requirements to obtain an abortion.⁵

The Committee of Ministers may wish to **ask** the Polish Government the following questions:

- How does the Polish Government plan to ensure access to lawful abortion?
- How does the Polish Government plan to prevent the provision of misleading or contradictory information that may delay or deter women and girls from obtaining a legal abortion? What measures does it plan to take to ensure access to timely and accurate information?
- How does the Polish Government plan to act in the cases of women and girls who meet the requirements for abortion but are not assisted by health care providers and to provide them with a timely and effective procedural mechanism to enforce their rights in practice?

The Committee of Ministers may further wish to **recommend** that the Polish Government:

- Issue clear guidelines to all health care facilities on the legality of abortion in Poland and the requirements for providing such abortions as set forth in the Family Planning Act
- Issue clear guidelines to all persons working in the health care system and other authorities involved in the provision of information, as regards their obligation to provide accurate and

² *P. and S. v. Poland* (App. No. 5735/08), para. 99.

³ *P. and S. v. Poland* (App. No. 5735/08), para 111.

⁴ *P. and S. v. Poland* (App. No. 5735/08), para 108.

⁵ *P. and S. v. Poland* (App. No. 5735/08), para 108.

timely information to women and girls on their lawful entitlement to abortion and to refrain from providing misinformation

- Provide women and girls who are legally entitled to an abortion that is not performed by health care providers with a timely, effective and accessible mechanism to enforce their rights

2. Conscientious Objection

The Court found that the minimum legal requirements governing the practice of conscientious objection in Polish law have not been met, including that such refusals be made in writing and in the patient's medical record and that the objecting doctor refer the patient to another physician competent to carry out the service. The Court found that this failure impeded P's access to abortion services she was legally entitled to receive. The Court held that 'states are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation.'⁶

The Polish Government's Action Report noted that the sanctions against doctors provided for in the Act on Medical Chambers (2009) are an effective measure to regulate and penalise the unlawful practice of conscientious objection, including institution-wide objection. However, to date, according to information available to Amnesty International, this law has not been used to sanction providers in this context. Moreover, the remedies provided by this law are retroactive and compensatory in nature and do not prevent violations of patients' rights. In addition, the Act does nothing to implement the existing law governing conscientious objection, which requires objecting doctors to refer women to other providers willing and able to perform abortions.

The Committee of Ministers may wish to **ask** the Polish Government the following questions:

- How does the Government ensure or plan to ensure oversight and implementation of the existing law governing conscientious objection, so as to ensure that women's and girls' access to lawful abortion is not imperilled by medical service providers who refuse to provide this care on grounds of conscience?
- How does the Government ensure or plan to ensure that those women and girls who are entitled to a legal abortion by law are adequately informed about their doctor's refusal and grounds for refusal, including, but not limited to, conscientious objection?
- How does the Government plan to guarantee that those medical providers who do provide abortions are not subjected to punitive actions in their workplace, including, for example, being overlooked for promotion?

⁶ *P. and S. v. Poland* (App. No. 5735/08), para. 106

The Committee may also wish to **recommend** to the Polish Government that relevant regulations at the very least:

- Preclude medical providers who object to abortion from involvement in abortion review boards
- Prioritise women's and girl's access to health care services over conscientious objection, so that, where no timely referral or alternative service is available, accessible, or adequate, there can be no room for medical service providers to opt out of providing abortion and related medical care
- Preclude objections at least in the following cases: the provision of information, including prenatal diagnostic information or any information on the status of the woman's health or the status of her pregnancy which may lead a patient to undergo an abortion (which some may find objectionable); referrals of women to other providers who are willing and able to perform abortions; and the practice of conscientious objection by whole health care institutions or any subdivision of a health care institution.⁷

3. The Right to Autonomy in Reproductive Decision-Making and the Protection of Personal and Medical Data

The Court found a violation of Article 3 of the Convention, in part due to the young age of P, which the Court considered 'of cardinal importance' for its analysis of the violations.⁸ The Court recognised that the state failed to give proper regard to the applicant's 'vulnerability and young age and her own views and feelings'.⁹ It further held that, taken as a whole, she 'was treated by the authorities in a deplorable manner and that her suffering reached the minimum threshold of severity under Article 3 of the Convention.'¹⁰

While in this case, it was the state that interfered with the applicant's (P's) decision to undergo an abortion - not her mother (S) who supported her decision - the Court recognised that a minor enjoys personal autonomy in the decision whether or not to obtain an abortion, both in relationship to the state and in relationship to a parent. As such, the Court noted that legal guardianship does not automatically confer on parents the right to take decisions concerning the minor's reproductive choices, including in cases of abortion.¹¹ The Polish Government's Action Report, however, does not address any measures taken by the state to protect the autonomy of minors in their decisions around abortion, either in relationship to the state or to a parent/guardian. This issue must be recognised in the Polish Government's implementation of the Court's ruling.

⁷ One hospital, in the case of *P. and S. v. Poland* practiced institution-wide objection, see para 23.

⁸ *P. and S. v. Poland* (App. No. 5735/08), para. 161.

⁹ *P. and S. v. Poland* (App. No. 5735/08), para 166.

¹⁰ *P. and S. v. Poland* (App. No. 5735/08), para. 168.

¹¹ *P. and S. v. Poland* (App. No. 5735/08), para 109.

In addition, the state must take measures to prevent the unauthorised release to third parties of confidential information about patient care. This case involved the release of P's confidential personal and medical data to the public and to third parties, in violation of the protections under Article 8 of the Convention.¹²

The Committee of Ministers may wish to **ask** the Polish Government the following questions:

- How does the Government ensure that minors are able to make voluntary decisions concerning their reproductive autonomy without state interference? What measures will the Government take to guarantee this?
- How does the Government ensure the privacy and confidentiality of minors, including in relationship to their legal guardians and other third parties, when seeking sexual and reproductive health care services such as abortion? What measures will the Government take to guarantee this?

The Committee of Ministers may further wish to **recommend** to the Polish Government to:

- Ensure that the decisions of minors are respected without interference by state authorities
- Ensure laws and practices protect the privacy and confidentiality of minors seeking health care by not making parental or guardian authorisation or notification mandatory in law or in practice for such services, when this is in the best interests of the child
- Ensure that laws guaranteeing patient confidentiality and privacy are fully respected and that health care workers violating these rights are appropriately sanctioned

Conclusion

Amnesty International urges the Committee of Ministers to recognise that Poland continues to deny women and girls access to lawful abortion. This is evidenced by the number of decisions against Poland by the Court on this issue as well as continued concerns raised by United Nations (UN) Treaty Monitoring Bodies, including most recently, in December 2013, by the UN Committee against Torture, which monitors state compliance with the UN Convention against Torture.¹³

In the light of such an evident lack of political will, we urge the Committee **to continue to monitor the implementation of *P. and S. v. Poland* until the judgment is fully executed.**

¹² *P. and S. v. Poland* (App No. 5735/08), paras. 128-137.

¹³ UN Committee against Torture, Concluding Observations to Poland (2013) CAT/C/POL/CO/5-6, para. 23.