



## Woman forced to travel abroad to have an abortion following legislative amendments in Poland breached the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [M.L. v. Poland](#) (application no. 40119/21) concerning restrictions on abortion rights the European Court of Human Rights held, by five votes to two, that there had been:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The applicant alleged in particular that she had been banned from having access to a legal abortion in the case of foetal abnormalities, following a 2020 Constitutional Court judgment. She had become pregnant and the foetus was diagnosed with trisomy 21. A scheduled hospital abortion had been cancelled when the legislative amendments resulting from the Constitutional Court ruling had come into force. Unable to have an abortion in Poland, she had ultimately had to travel to a private clinic abroad for the procedure.

The Court found that the legislative amendments in question, which had forced her to travel abroad for an abortion at considerable expense and away from her family support network, had to have had a significant psychological impact on her.

Such interference with her rights, and in particular with a medical procedure for which she had qualified and which had already been put in motion, had created a situation which had deprived her of proper safeguards against arbitrariness.

Moreover, the composition of the Constitutional Court that had issued the ruling impacting the applicant's rights had included judges who had been appointed in a procedure tainted by serious irregularities (see the Court's previous judgment of 2021 [Xero Flor v. Poland](#)).

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In parallel, the Court has today unanimously **declared inadmissible** a case involving 927 women of child-bearing age who alleged that they were potential victims of a violation of their rights as the amendments to the law now forced them to carry pregnancies to term even in the case of foetal abnormality. As in the leading case [A.M. and Others v. Poland](#), the Court found that these applicants had failed to provide any evidence proving that they had been at real risk of being directly affected by the legislative amendments. They could not therefore arguably claim to be "victims" within the meaning of the European Convention. This decision, [M.B. v. Poland](#) (no. 3030/21) and **926 other applications**, is final.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicant, M.L., is a Polish national who was born in 1985 and lives in Warsaw.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

The conditions for legal abortion in Poland are set out in the Law on family planning, protection of the human foetus and conditions permitting the termination of pregnancy (*Ustawa o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży* – “the 1993 Act”).

Initially, the 1993 Act provided for three situations where legal abortion was possible: where the pregnancy endangered the mother’s life or health; where there was a high risk of foetal abnormality or where there were grounds to believe that the pregnancy was a result of rape or incest. In 1997 it was amended to allow abortion for reasons of difficult living conditions or difficult personal situations. However, shortly afterwards, the Constitutional Court gave judgment, finding that amendment incompatible with the Constitution.

This situation remained unchanged until a judgment by the Constitutional Court of 22 October 2020, following an application lodged by 104 parliamentarians. The Constitutional Court held in particular that sections 4a(1)2 and 4a(2) of the 1993 Act, provisions relating to legal abortion due to foetal abnormalities, were incompatible with the Constitution. That judgment came into force on 27 January 2021.

M.L. was scheduled for a legal abortion on 28 January 2021 in a hospital in Warsaw. She had become pregnant in 2020 and at about 14 weeks the foetus was diagnosed with trisomy 21. Her doctor informed her that, given the amendments to the domestic law, she could not have an abortion in the hospital in Warsaw or in any other medical institution in Poland. The appointment for the procedure was cancelled.

M.L. ultimately travelled to the Netherlands where the pregnancy was terminated in a private clinic on 29 January 2021.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman and degrading treatment) and Article 8 (right to respect for private and family life), M.L. complained that she had been forced to choose between giving birth to a seriously ill child or travelling abroad to have an abortion, causing her serious emotional suffering, that that restriction on her rights had not been “prescribed by law”, and that the judges whose ruling introduced the restriction had been appointed in a procedure that had been in violation of Article 6 (right to a fair trial).

The application was lodged with the European Court of Human Rights on 26 July 2021.

The following were granted to leave to intervene as third parties: *the European Centre for Law and Justice (ECLJ)*; *the Ordo Iuris – Institute for Legal Culture*; *the Polish Ombudsman for Children*; *the Helsinki Foundation for Human Rights (HFHR)*; and, *the European Network of National Human Rights Institutions (ENNHRI)*.

Judgment was given by a Chamber of seven judges, composed as follows:

Alena Poláčková (Slovakia), *President*,  
Krzysztof Wojtyczek (Poland),  
Péter Paczolay (Hungary),  
Ivana Jelić (Montenegro),  
Gilberto Felici (San Marino),  
Erik Wennerström (Sweden),  
Raffaele Sabato (Italy),

and Renata Degener, *Section Registrar*.

## Decision of the Court

The Court decided that the applicant's complaints had to be examined solely under Articles 3 and 8 of the Convention.

It declared, by a majority, the complaint concerning Article 3 inadmissible. Although it recognised that the applicant had suffered emotional and mental pain, it found that the threshold of severity required to bring her complaint within the scope of Article 3 had not been met.

However, it found that the ban on abortion in Poland in the case of foetal abnormality, when sought for reasons of health and well-being, *did* come within the scope of her right to respect for her private life. It declared, by a majority, the complaint concerning Article 8 admissible.

It found that that ban had amounted to an interference with the applicant's right to private life. The Constitutional Court's ruling had led to her hospital appointment being cancelled and she had almost instantly been left with no other option than to travel abroad to have an abortion.

It reiterated that the whole of the European Convention drew its inspiration from the principle of the rule of law. Thus, any interference with Article 8 rights had to come from a body which was itself "lawful", without which it would lack the legitimacy required in a democratic society.

However, the Court found that the composition of the Constitutional Court that had issued the ruling which had impacted the applicant's rights had included judges who had been appointed in a procedure which it had already found to be in breach of the Convention in its judgment [Xero Flor v. Poland](#) of 2021. In particular, the Court had held in that judgment that there had been serious irregularities in the election procedure of Constitutional Court judges.

Specifically, in December 2015 the President of Poland had refused to swear in three judges who had been legally elected to the Constitutional Court by the old *Sejm* (the lower house of Parliament). The new *Sejm* had then elected three new judges to the seats that had already been filled. One of those new judges and replacements of the other two (who had passed away in the meantime) had been on the bench of the Constitutional Court which had issued the ruling of 2020 holding that the provisions relating to legal abortion due to foetal abnormalities were incompatible with the Constitution.

The Court therefore found that the interference with the applicant's rights had not been lawful in terms of Article 8 of the Convention because it had not been issued by a body compatible with the rule of law requirements.

Furthermore, the Constitutional Court's ruling had interfered with the procedure for which the applicant had qualified and which had already been put in motion, creating a situation depriving her of proper safeguards against arbitrariness.

In conclusion, the interference with the applicant's rights had not been "in accordance with the law", in violation of Article 8.

### Just satisfaction (Article 41)

The Court held that Poland was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,004 in respect of pecuniary damage.

## Separate opinions

Judges Paczolay and Wojtyczek expressed a joint dissenting opinion, while judges Jelić, Felici and Wennerstrom expressed a concurring opinion. These opinions are annexed to the judgment.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.