



CEE Bulletin on Sexual and Reproductive Health and Rights

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BURNING ISSUE

Polish Constitutional Tribunal bans abortion in case of foetal defects

On October 22, Polish “Constitutional Tribunal” (CT) issued a “ruling” (K 1/20) finding abortion on the grounds of “severe and irreversible fetal defect or incurable illness that threatens the fetus’ life” unconstitutional. The ruling has not yet entered into force which will happen after its publication in the Polish Journal of Laws.

Independent monitors and non-governmental organization’s representatives were not allowed into the building despite numerous requests to observe the proceedings.

Poland has already had one of the most restrictive abortion laws in Europe, with the procedure being banned with three exceptions: with the pregnancy being a result of a crime, on the grounds of fetal defects and when the pregnancy posed a danger to woman's life or health. In a country of almost 38 million inhabitants, the National Health Fund registered around a 1000 procedures per year, 98% out of which on the grounds of foetal malformations.

The ruling imposes a virtual ban on abortion in Poland. The country is believed to have already had one of the biggest abortion undergrounds in Europe, with an estimated 120 000 – 150 000 procedures performed yearly, usually being either self-administered medical abortions or illegal surgical terminations.

The "ruling" violates very many provisions of Polish law and international treaties Poland is a party to. In particular, it fails to take into account the need to protect the inherent dignity of women and it violates the prohibition of cruel treatment and torture, the right to the protection of private life and the right to health. It is contrary to the Polish Constitution (in particular its Articles 30, 40, 47, 68 and the protection that these standards should provide to women) and to the obligations arising from the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, the UN International Covenant on Civil and Political Rights of 19 December 1966 and the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. Poland is a party to the above-mentioned conventions and it is unacceptable to lower the standards of human rights protection expressed therein through the national rules conflicting with them.

International community is appalled by this "ruling" and the consequences it will have on women and families. Dunja Mijatovic, the Council of Europe's Commissioner for Human Rights, took a stand on the decision, publicly declaring the ruling "a violation of human rights"[3]. Indeed "the ruling" opens the possibility of numerous violations of the European Convention of Human Rights and Fundamental Freedoms, in particular the violations may relate to Art. 3 of the Convention (prohibition of torture and inhuman or degrading treatment), Art. 8 (the right to respect for private and family life) and Art. 13 (right to an effective remedy). Thus, women impacted by "the ruling" of the CT may consider submitting a complaint to the European Court of Human Rights.

Legal flaws of the ruling:

The CT issued a "ruling" in a full composition of the Tribunal what means that 3 judges who took part in the procedure were not elected legally (including judge rapporteur J. Piskorski for this particular

case) and this is a ground to find the judgment non-existent. Moreover, the president of the CT J. Przyłębska was also elected in the procedure encumbered with serious violations of the law. Also, the judges recently elected just before election were active MPs of Law and Justice party. These factors prove that “Constitutional Tribunal” is not a legitimate and independent judicial body.

The situation around the CT needs to be seen in the context of many activities since 2015 that the Polish government’s calls the reform to the judiciary. Many aspects of this “reform” have raised have raised serious concerns regarding respect for the rule of law, and led the European Commission to launch the procedure under Article 7(1) TEU in 2017, and several infringement procedures in the past years. As rightly noted by the European Commission in its first Annual Report on the matter, “concerns over the independence and legitimacy of the Constitutional Tribunal, raised by the Commission under the Article 7(1) TEU procedure, have so far not been resolved”.The Venice Commission has noted that changes to procedures for judicial appointments and the operations of the Constitutional Tribunal have undermined its independence and rendered its work ineffective, including due to excessive executive and legislative control of the Tribunal’s operations.

The protests against the “ruling” are organized in the entire Poland, they cover big cities but also small towns. People protest every day from the very day of issuing “the ruling”. Regardless of Covid-19 very strict restrictions people went on the streets but also protest in more innovative ways i.e. on line, blocking the roads. On Sunday 25 October the protesters went in front of churches, entered masses. On 28 the general strike is planned and women are called not to go to work. The language of the protest is direct, the main slogan is “Get the fuck out”/ “don’t fuck with us”. The Warsaw Women Strike are the main organizers of the protests, and they are joined by many other organizations in Poland. To follow the protests please check the social media of Warsaw Women Strike, Federation for Women and Family Planning and the Great Coalition for Equality and Choice.

The “ruling” was met with international outrage and numerous organisations, including [International Planned Parenthood Federation](#), [Human Rights Watch](#) and [Center for Reproductive Rights](#), have published their statements and letters of solidarity.

Source: [Federation for Women and Family Planning](#)

Note from the editor:

Federation for Women and Family Planning is the oldest Polish non-governmental organisation working for sexual and reproductive health and rights. Given current circumstances, Federa is in need

of all forms of support, including financial support, as the organisation's resources are limited. You can [support Federa](#) and Polish SRHR movement with a donation:

Details of Federa's bank account:

BP PKO S.A. 7 Aleje Jerozolimskie Street, Warsaw, Poland

Account number: 45 1020 1156 0000 7902 0060 3951

IBAN: PL 45 1020 1156 0000 7902 0060 3951

Reference: "Donation"

Federation for Women and Family Planning

13/15 Nowolipie St

00-150 Warszawa

Poland

REGIONAL UPDATES

Poles take to the streets after the Constitutional Tribunal's ruling

Poles have been protesting non-stop after [Constitutional Tribunal's decision to ban abortion](#) on the grounds of foetal malformations.

For the past week, mass protests were held in every part of the country, including rural areas. On Sunday, October 25, some protesters were spotted in churches, holding pro-abortion banners during Sunday Masses. A day later, protests blocking the streets took place in multiple Polish cities.

A general strike on Wednesday caused many businesses to close down for a day as a sign of solidarity with the protesters. On Friday, October 30, a mass protest of the opponents of the ban is to happen in Warsaw, with possibly hundreds of thousands participants from all across the country in the streets of Polish capital.

At the same time, Poland is currently struggling with one of the highest rates of new diagnosed cases of COVID-19, with over 20 000 news infections registered on October 29, around 2 000 more than the day before. Polish government blames the protesters for the rise and already announced a harsh response to the situation in the streets. On Monday, October 26, Polish Prime Minister, Mateusz Morawiecki, [gave an order for the military gendarmerie](#) to join police forces in the streets.

Source: [ASTRA Network](#)

Slovak abortion law stays intact

Slovak Parliament has voted against a bill that would restrict access to abortion in the country.

The bill, proposed by the leading parliamentary group back in July, has already passed the first out of three votes in September. It proposed a number of amendments into various Slovak laws concerning, among others, reproductive care and social support. The changes included a prolongation of the mandatory waiting period from 48 hours to 96 hours, extension of information to be collected for statistical purposes (to include a reason for having the procedure and detailed description of domestic situation), a requirement that abortions on health grounds and abortions on the grounds of fetal impairment can only be provided upon obtaining two medical opinions attesting the grounds and introduction of a ban on informing of providing abortion services.

Proposed legislation has attracted international attention, with numerous organisations taking a stand in order to show solidarity and support for Slovak women – i.e. [an open letter](#) signed by over 100 NGO's, including ASTRA Network, was issued in September.

Results of the vote can be accessed [here](#).

Source: [ASTRA Network](#)

Poland, Hungary and Belarus among signatories of ultra-conservative anti-abortion declaration

Poland, Saudi Arabia and 29 other countries have joined the United States in signing a declaration on women's health that denies the right to abortion, promotes "the family as foundational to society", and emphasises "each nation's sovereign right" to implement its own policies in these areas.

The document – officially titled the Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family – is seen as a rebuke to United Nations human rights bodies that have sought to protect access to abortion, notes the Washington Post.

Among the signatories, the only two countries from the European Union are Poland and Hungary. They are ranked as the bloc's worst two places for access to contraception in the annual Contraception Atlas created by the European Parliamentary Forum for Sexual and Reproductive Rights. (...)

The document was signed during a "virtual gathering" organised by US Secretary of State Mike Pompeo and Secretary of Health and Human Services Alex Azar. It aims to "defend the unborn and reiterates the vital importance of the family," said Pompeo. (...)

The document states that “there is no international right to abortion nor any international obligation on the part of states to finance or facilitate abortion”. The signatories emphasise that “in no case should abortion be promoted as a method of family planning”.

They say that decisions “related to abortion within the health system can only be determined at the national or local level”, and that “each nation has the sovereign right to implement programs and activities consistent with their laws and policies”.

The countries also pledge to “support the role of the family as foundational to society” and “express the essential priority of protecting the right to life”.

PATENT, ASTRA Network’s Hungarian partner, published a [statement](#) regarding the declaration.

Full article by [Notes from Poland](#) is available online.

FROM ASTRA MEMBERS

Important steps toward improving access to safe abortion in the EECA region

Two years ago at the regional conference “Bringing WHO recommendations on safe abortion and family planning closer to women in countries of Eastern Europe and Central Asia (EECA)”, supported by the Safe Abortion Action Fund, six EECA countries committed themselves to updating their existing national abortion protocols to be better aligned with the latest WHO recommendations. Since then, country coordinators and their working groups, in collaboration with experts from the Reproductive Health Training Center (RHTC), have achieved important milestones that are expected to benefit individuals with unwanted pregnancy across the region well into the future.

In the past few months, Moldova, Armenia, Kyrgyzstan, Uzbekistan, and Turkmenistan have all received approval from their Ministry of Health for their revised National Safe Abortion Protocols. Two more countries, Azerbaijan and Kazakhstan, are expected to present the finalized versions of their respective national protocols to the MoH in the near future. Some key improvements contained in the protocols that have been approved thus far include extending the upper limit of gestational age permitted for medical abortion, banning of unsafe abortion methods such as dilation and curettage and instillation abortion, detailed pre- and post-abortion counseling guidance, and in the case of Moldova and Kyrgyzstan, guidance for medical abortion via telemedicine.

Two of the countries, Armenia and Kyrgyzstan, have already organized online dissemination meetings with medical providers to discuss modifications/additions and the most recent safe abortion recommendations from WHO, including those specific to COVID-19.

Updated National Safe Abortion Standards can be accessed in Russian on [RHTC's website](#).

Source: [Reproductive Health Training Center](#)

RESOURCES

Contraception Atlas 2020 published

[The newest issue of Contraception Atlas](#), prepared annually by European Parliamentary Forum for Sexual and Reproductive Rights, was published earlier this month.

The Atlas is an annual publication monitoring governmental policies on access to contraceptive supplies, family planning counselling and the provision of online information on contraception.

Unfortunately, the map clearly shows a striking difference between Western and Eastern Europe. Just as last year, Poland turned out to be the country with worst access to contraception in Europe, closely followed by Russia, Bosnia and Herzegovina and Hungary. A detailed summary of each country's situation is to be found on the second page of the Atlas.

Source: [European Parliamentary Forum for Sexual and Reproductive Rights](#)

ASTRA Network Members: Albania - Albanian Family Planning Association; Armenia - Society Without Violence; Armenia - Women's Resource Center; Armenia - Women's Rights Center; Azerbaijan - Center "Women and Modern World"; Belarus - Women's Independent Democratic Movement of Belarus; Bulgaria - Bulgarian Family Planning and Sexual Health Association; Bulgaria - Bulgarian Gender Research Foundation; Bulgaria - Gender Education, Research and Technologies; Bulgaria - Demetra Association; Bulgaria - Gender Alternatives Foundation; Bosnia and Herzegovina – Sarajevo Open Center; Croatia - B.a.b.e.; Croatia – CESI; Croatia - Women's Room; Georgia – HERA XXI; Georgia – Real People, Real Vision; Georgia - Women's Center; Hungary – PATENT; BOCS Foundation; Kazakhstan - The Legal Center for Women's Initiatives "Sana Sezim"; Lithuania - Family Planning and Sexual Health Association; Latvia - Latvia's Association for Family Planning And Sexual Health; Macedonia - Association for emancipation, solidarity and equality of women; Macedonia – H.E.R.A.; Macedonia – Shelter Center; Moldova – Family Planning Association; Moldova - Reproductive Health Training Center; Poland - Federation for Women and Family Planning; Ponton Group of Sex Educators; Romania - A.L.E.G.; Romania - AnA: Society for Feminist Analysis; Romania - Euroregional Center for Public Initiatives; Romania - The East European Institute of Reproductive Health; Russia - Novogorod Gender Center; Russia – Russian Association for Population and Development; Slovakia – Pro Choice; Tajikistan – Gender and Development; Ukraine - Women Health and Family Planning; Ukraine - Charitable SALUS Foundation; Uzbekistan - Future Generation

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