



Federation for Women and Family Planning

Ul. Nowolipie 13/15

00-150, Warsaw, Poland

intl@federa.org.pl

Warsaw, 16 June 2021

Submission to the UN Special Rapporteur on Health - The right to sexual and reproductive health – Challenges and Possibilities during COVID-19

1. [About the Federation](#)

The Federation for Women and Family Planning is a non-governmental organization based in Poland that works locally, regionally and internationally on advancement of sexual and reproductive health and rights (SRHR) through monitoring, advocacy and educational activities as well as strategic litigation before domestic and international courts. In 1999 the Federation was awarded the Special Consultative Status with the Economic and Social Council of the United Nations (ECOSOC) and conducts SRHR advocacy at the United Nations, Council of Europe and European Union.

2. Introduction

This submission illustrates how Polish state instrumentalised Covid-19 measures to restrict access to SRHR with the particular focus on access to abortion. It outlines main events in the field of SRHR that has happened during Covid-19, and challenges faced especially by women in Poland who are making or living their reproductive choices. Unfortunately, for the scarcity thereof, only small part of the submission is dedicated to the opportunities created by the pandemic crisis.

Poland was the only country at the EU where access to abortion have been drastically restricted and the conditions created by the Covid-19 crisis have facilitated for the Polish authorities the processes leading to the change in laws. It needs to be noted that even before the pandemic, pursuant to the Family Planning Act of 1993, access to abortion was limited to the grounds of severe and irreversible fetal defect or incurable illness of the fetus, rape, incest, and danger to mother's health. Often, even under these grounds access to abortion care was hardly available. On 22 October 2020, "the Constitutional Tribunal" ("CT")¹ found unconstitutional and deleted the ground for abortion for fetal abnormality or incurable illness of the fetus²³. In consequences, a quasi-total ban on abortion has been introduced in Poland, given that the deleted ground accounted for over 98 % of legal abortions performed in public hospitals⁴.

Foremost the Covid-19 pandemic impacts on SRHR in Poland needs to be seen through lenses of its impact on democratic institutions and the rule of law⁵. It helped Polish authoritarian government to consolidate its power and justify human rights' violations⁶. Because of the capturing of the institutions by political powers, Polish government managed to use Covid-19 crisis to restrict women's access to SRHR, especially access to abortion.

The "CT" ruling was a very inhumane decision, stamped by the illegal and politicised institution which is currently having huge impact on bodily autonomy and access to reproductive health services of women and persons who plan to get pregnant or who are pregnant.

¹ The quotation marks are added to reflect the serious concerns regarding the legality and legitimacy of the Tribunal following controversial judicial reforms. The reasons for these concerns will be presented in the following part of the submission.

² <https://en.federa.org.pl/constitutional-tribunal-rules-to-ban-abortion/>

³ <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19930170078/U/D19930078Lj.pdf>

⁴ The UN experts press release, including SR on Health:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26434&LangID=E>

⁵ Among many other international experts and bodies, the Special Rapporteur on the independence of judges and lawyers, after visiting Poland in 2017, stated that "the legitimacy and independence [of the Constitutional Tribunal] have been seriously undermined by the coordinated set of actions put in place by the Government to bring [it] under its control. Today, the Tribunal cannot ensure an independent and effective review of the constitutionality of legislative acts adopted by the legislator. This situation casts serious doubts over its capacity to protect constitutional principles and to uphold human rights and fundamental freedoms." (Report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland,

⁶ <https://for.org.pl/en/publications/for-reports/rule-of-law-in-poland-2020-the-rule-of-law-crisis-in-the-time-of-the-covid-19-pandemic>

3. Government adopted Covid -19 measures and their impact on the right to sexual and reproductive health in Poland

While extraordinary times such as pandemic usually require emergency measures, Law and Justice ruled government decided not to use the emergency laws described in the Constitution. Instead, it introduced numerous restrictions to civil rights and liberties without a proper legal basis. Many of its pandemic-related policies were justified from a medical point of view but their legality was questionable, including some court rulings which favoured people who had been punished and affected by the illegal restrictions⁷.

In the context of the mass protests happening under Covid-19 as a reaction of the abortion ban, please see below the description of the measures taken to limit the freedom of assembly in Poland.

4. Regressive path for SRHR

Abortion

a) Abortion before the ban introduced by the “CT” on 22 October 2020

Abortion was barely accessible in Poland even under the limited legal grounds stipulated by the Act on Family Planning. According to the Federation’s monitoring only 10 % of the public hospitals contracted by law to provide abortion care, were in fact fulfilling this obligation⁸. The outburst of the pandemic has significantly exacerbated this deficiency.

From the beginning of the pandemic, several hospitals have been dedicated to patients with coronavirus only, while some ob-gyn departments were temporarily shut down due to infections among medical personnel. This has worsened accessibility of legal abortion.

b) Regressive draft bills in the Polish Sejm in April 2020

⁷ <http://humanrights21.eu/the-pandemic-assault-on-freedom-of-assembly-in-poland-a-case-study/>

⁸ Summary of UN <https://en.federa.org.pl/summary-overview-of-un-recommendations-on-abortion-in-poland-oct-2020/>

Already at the beginning of coronavirus pandemic, in April 2020, the Polish Sejm decided to proceed with the 1st reading of the two legislative proposals in the field of SRHR.

- The first legislative initiative called “Stop abortion” has been brought for Sejm’s attention in 2017 and following the wide social protests froze in the parliamentary commission until now. The draft bill provided for a prohibition of termination of pregnancy due to severe and irreversible fetal impairments and was to delete this ground for abortion in the Law on the Family Planning of 1993.
- Another bill concerned the further restrictions to barely existing sexuality education in Poland. The signatures in support of this bill were gathered in widely criticised campaign called “Stop Pedophilia” which focused its message on associating sexuality education with pedophilia. This bill proposed amendments to criminal code. It may result in the criminalisation of sexuality educators in Poland and further stigmatise the sexuality education in Poland.

Both draft bills passed through a first reading in the Sejm and were forwarded to the expert Parliamentary Commissions. The Sejm proceeded with the draft bills when the free movement of persons and freedom of assembly were gravely limited due to public health grounds and protests against the bills could not happen on the streets. Nevertheless Polish Women Strike and supporting feminist organisations coordinated Poland wide protests which were very innovative (e.g. on line, in the queues for groceries with posters, on bikes, on the cars)⁹.

c) “CT”’s ruling on abortion of 22 October 2020

On 22 October 2020 (case no. K 1/20) Poland’s “Constitutional Tribunal’s” issued a “judgment” which after its publication in the Journal of Laws on 27 January 2021 entered into force¹⁰.

The “ruling” violates many provisions of Polish law and international treaties Poland is a party to. Additionally it goes against the recommendations of the UN treaty bodies,

⁹ <https://balkaninsight.com/2020/04/21/pires-find-creative-ways-to-protest-despite-the-pandemic/>

¹⁰ <https://www.epfweb.org/node/799>

Special procedures and other UN review mechanisms on abortion in Poland¹¹. 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.

d) Consequences of the ruling

A ban on abortion obviously does not mean that Polish women and persons in need of abortion don't access them: few hospitals provided abortions but obviously most were induced by pills or, in cases of later pregnancies in the clinics abroad. However, the burden of providing information, help, resources and access to abortion fell on the NGOs, informal groups and initiatives in Poland or abroad that help Polish women in accessing medical abortion and abortion care abroad. Needless to say, Covid-19 pandemic exacerbated the difficulties relating to access to services abroad for the costs of travel increased by the necessity to do expensive tests and made these services available only to these persons who have financial resources and who can access information on the services available.

In the 6 months from the issuing of the ruling, reports have already emerged of denial of abortion care to women who are entitled to obtain care under the law on the grounds of a risk to their life or health, further extending and exacerbating the obstacles that women face in accessing legal abortion care in Poland. One of the most acute impact of the compromised decision is the chilling effect on doctors who risk up to 3 years of imprisonment for performing abortion outside the legal framework. The Federation forges a path for an extensive interpretation of the ground for abortion which refers to the

¹¹ <https://en.federa.org.pl/summary-overview-of-un-recommendations-on-abortion-in-poland-oct-2020/>

threat to women's life/health so that it could cover mental health problems related to pregnancy. Moreover, at the Federation, we are building a coalition of women friendly network of doctors (gynaecologists, psychiatrists) who are willing to help women in these challenging circumstances. However, these are lengthy, long term processes while women and pregnant persons need access to abortion services now.

From 22 October 2020 to 22 April 2021, the Federation for Women and Family Planning has consulted around 2, 000 persons. Federation's employees and helplines every day assist women in all kind of reproductive health queries: on access to abortion but also about pregnancy care, contraception (including emergency contraception and access to intrauterine device), prenatal testing which is performed drastically less since the decision of the illegitimate Tribunal. The questions refer also to legal penalties for helping in abortion, ordering pills, legal issues around access to benefits/services after having abortion care in Poland or abroad. The Federation's helpline provides SRHR assistance by gynaecologists, sexuality educators, psychologists and lawyers. For the lack of any sexuality education provided for youth, sexuality educators at the Federation are stormed with questions regarding basic information on contraception, sexual initiation and prevention of sexually transmitted diseases.

Abortion Without Borders Initiative (AWB), a network of organisations in Poland and abroad helping Polish women in access to medical abortion or abortion care abroad helped persons in unwanted pregnancies order/use abortion pills or travel abroad, even in the lockdown stage. Due to the closure of abortion clinics in neighbouring countries many persons had to turn to medical abortion at home (typically in the first trimester), and the continuity of deliveries was maintained. Abortion migration to the Netherlands or the Great Britain was chosen mainly by those in the second trimester, as long as they were able to meet challenges such as ability to travel, undergo 14-day quarantine on arrival and organize childcare. [AWB assisted people to reach foreign clinics despite cancelled flights](#); except for a few cases when patients were past the cut-off point by the time they arrived at the clinic. During 6 months from the decision of the "CT", Abortion Without Borders, [announced](#) that they have assisted 17,000 women in access to abortion, 600 of which left for abortion care to the clinic abroad.

As per first official statistics, they show that there were 112 so called “induced miscarriages” carried out in the public health care system during January and February 2021 while in the same period of 2020 there were 255. The decline is expected to be even greater since February was the first full month the decision of the flawed Tribunal came into force (only in February the number fell from 130 to 30). As regards the prenatal testing, during these first 2 months there were 4 thousands patients less than during the same period in the last year. This is due to the general decrease in the number of pregnancies but also due to the fact that doctors do not encourage women to have the tests done as for the lack of options after receiving the results of the tests (as it has been confirmed by many doctors the Federation spoke to or who have been interviewed by the media recently)¹² For lack of medical assistance in the Polish facilities in this regards, women having any concerns as to the state of their pregnancy, often decide to go directly to clinics abroad helping them with diagnostic and abortion care if needed.

e) Protests during pandemic amidst Covid-19 measures ignited by the abortion ban

After the politicized Constitutional Tribunal issued its decision on the 22nd of October 2020, effectively banning abortion in cases of damage or illness of the fetus, the unconstitutional restriction on the right to freedom of assembly was already widely imposed by public authorities in Poland. This did not prevent massive, spontaneous street protests from happening. Protesters were continuously deterred from participating in the gatherings, even though they remained spontaneous in their nature and it is impossible to effectively suspend the application of the Statute on Assemblies without introducing a State of Emergency.

According to Article 57 of the Polish Constitution freedom of peaceful assembly and the act of participation in such assemblies shall be ensured to everyone. Limitations can be imposed solely on the basis of a statute¹³. However, even in such an event, according to Article 31 sec. 3 of the Constitution, any limitation upon the exercise of constitutional freedoms and rights may be imposed not only solely by statute, but also only when

¹² The statistics are still partial and have been provided upon request of the journalists:
<https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8166757,legalne-aborcje-w-polsce-statystyki.html>

¹³ <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Even then any such limitations cannot violate the essence of the restricted freedoms and rights.

The above provisions would not set the base for the protections of freedom of assembly, had the authorities decided to introduce the State of Emergency, or a State of Natural Disaster which is the possibility provided by the Polish Constitution and what most of the European States did facing Covid-19. Nonetheless – neither a State of Emergency, nor a State of Natural Disaster was declared by the competent authorities. Therefore, regular laws on assemblies apply.

Instead of figuring out a way to conduct public gatherings in a COVID-19-regulated way, public authorities in Poland have taken to using the epidemic to stifle any protests. This has been made especially clear once the National Prosecutor's Office issued a document addressed to prosecutors conducting or supervising cases relating to the gatherings officially considered as illegal, ordering them to be assessed in the context of the risk of posing a threat to the health and life of multiple persons. All this was meant to serve as a way to potentially increase the possible penalties which the protesters could potentially face¹⁴.

Brute police force was also used to disperse those gathering on multiple occasions¹⁵, including the usage of the 'kettling' method¹⁶. It must hereby be mentioned that the UN Special Rapporteur on freedom of assembly and association noted that the 'kettle-lock' tactic remains inherently detrimental to the possibility of exercising freedom of assembly as it is massive and disproportionate¹⁷. Moreover, the European Court of Human Rights also pointed out that the tactic of detaining protesters behind a police cordon may have a deterrent effect on the exercise of the right to freedom of assembly, as citizens may choose not to participate in peaceful demonstrations for fear of getting caught in a "kettle".

¹⁴ <https://pk.gov.pl/aktualnosci/aktualnosci-prokuratury-krajowej/oswiadczenie-prokuratury-krajowej-13/>

¹⁵ Please see the letter explaining the violence against protesters sent to UN mandates, including SR on Health signed by the Federation and over 100 other Polish organisations together with the international human rights organisations in December 2020: <https://www.civicus.org/index.php/media-resources/news/4807-poland-concerns-over-intimidation-violence-and-detentions-of-peaceful-protesters>

¹⁶ <https://www.euronews.com/2020/11/24/police-using-excessive-violence-against-peaceful-protesters-in-poland>

¹⁷ A/HRC/23/39/Add.1, par. 37

Contraception

Poland has [the worst accessibility of modern contraception](#) among 46 European countries. Gynecological healthcare sector is strongly privatized due to insufficient number of healthcare providers.

The pandemic has severely restricted access to both public and private gynecological offices. In the beginning of pandemic many facilities were not prepared to provide telemedicine services like consultations or prescriptions. Moreover, GPs, entitled to write out prescriptions for contraception, tended to send patients to gynecologists, who were hardly accessible under the lockdown. Consequently, new private web portals emerged that issue prescriptions in return for 15-20 Euro. The only non-profit initiative was the Doctors for Women initiative that provided patients with prescriptions for emergency contraception for free.

The Federation reacted to notifications about shortages of contraception and of hormone replacement therapy in pharmacies by calling on the Ministry of Health and the Chief Pharmaceutical Inspectorate for explanations. Both institutions claim that there are no problems with accessibility of contraception in drug stores, which contradicts statistics from online databases that inform where to buy a medicine. According to the Ministry of Health, telemedicine remains a preferred method of medical care provision. Nevertheless, patients have the right to demand in-person consultation, if this is required by their condition.

Education system and comprehensive sexuality education

Since mid-March 2020 until spring 2021 schools operated only in an online mode. The Polish Commissioner for Human Rights observed increased inequalities in access to education e.g. when pupils could not attend online lessons (no computer or Internet) or when teachers were not prepared for a new format.

In Poland there is no proper sexuality education. Conservative SRHR-related narratives¹⁸ are proliferated as part of the school subject “Preparation for family life”. There are no indications that these lessons are being covered during the pandemic.

5. Campaigns and initiatives of anti-rights organisations¹⁹

➤ Poland-wide billboard campaign

From the end of 2020 cities in the whole Poland are flooded by the antiabortion and anti-divorce billboards. Only until 1 February 2021, according to the estimates of Media People (relying on data from Kantar Media), the foundation behind the campaign is estimated to [have spent approximately 5,5 mln PLN](#) (1 mln 200 EUR). These billboards, with the new designs keep appearing in the public space and keep spamming our collective perceptions.

In April 2021 the Federation commissioned a [poll](#) with the purpose to find out what the public opinion thinks about this anti-abortion campaign and whether it influences citizens views on abortion. According to the answers received, 82 % of the people who had seen the billboards of the campaign, have not changed their view on abortion. It is however concerning that such significant resources are spent on ineffective campaigns while the money could be spend on so many initiatives who could help women and families in Poland.

➤ Launching of the new citizen’s initiative to criminalise women for abortion

In March 2021 [a new bill criminalizing abortion](#) was presented by citizens’ initiative led by anti-rights group. If adopted, the bill would afford full legal protection to the fetus from the moment of conception and limit the grounds for legal care by banning abortion in cases where pregnancy results from sexual assault or if the health of a pregnant person is at risk, as provided for in the Family Planning Act currently in force. [Abortion would be treated as homicide](#) punishable up to 25 years of imprisonment or even life imprisonment, although the court would have discretion to issue a more lenient punishment or waive the punishment altogether.

¹⁸ <https://en.federa.org.pl/fundamentalist-propaganda-against-sexuality-education-in-poland/>

¹⁹ https://www.wielkakoalicja.pl/wp-content/uploads/2020/02/OI_EN_wer-2.pdf

➤ **New legislative initiative of Polish conservative MPs**

16 Polish MPs aligned with the conservative ruling coalition [have presented](#) another [draft bill](#), which, under the pretext of providing care to pregnant women whose fetuses have a “suspected or diagnosed lethal defect,” would require them to be referred to antenatal hospices where their pregnancies would be monitored and their decisions about pregnancy could be influenced.

➤ **“Stop abortion crimes” campaign**

The anti-rights campaigners launched action called “Stop abortion crimes”²⁰ which encourages citizens to lodge criminal complaints against anyone, especially SRHR activists and persons providing help in access information and SRHR services which may constitute a crime of assisting in abortion under the Polish law (art. 152 of the Polish criminal code). Persons supporting women to access medical abortion on the private groups on social media were already reported to the police for the alleged “genocide”.

In June 2021 the Federation representative was also called to testify in the case concerning assisting in abortion.

6. Hostile working environment and threats to Women Human Rights Defenders

SRHR organisations in Poland are not subsidised by any public funding. Quite on the contrary, because of our work, we are the subject of the ongoing smear campaign and are/may be accused in criminal cases for assisting in abortion.

At the same time, the anti-rights organisations are more and more wealthy and powerful, becoming parts of government structures²¹ and receiving public funding for their activities²².

²⁰ <https://stronazycia.pl/stop-przestepczosci-aborcyjnej/>

²¹ <https://oko.press/podboje-ordo-iuris/>

²² <https://oko.press/tak-ludzie-ordo-iuris-zachowuja-finansowa-niezaleznosc-od-wladzy-dotacje-z-rzadu-i-panstwowych-spolek/>

Moreover, activists from numerous organisations working in the SRHR field (including all the Federation employees) were receiving emails with death threats²³.

7. Opportunities provided by Covid-19 in Poland

➤ Movement building – feminist revolution

Under Covid-19 the massive protests have taken place in Poland to oppose the quasi total abortion ban introduced by the “CT. The greatest gain of the protests is the creation of a community that is united around shared feminist values which is steadily fueled by the Polish Women’s Strike and supported by other human rights organisations in Poland. Right to abortion since then became an important subject for a public debate.

This has not been one-time revolt; it will bring a long-term societal change which seems to be unstoppable and irreversible, and which in turn will make systemic changes possible. Because of the state’s authoritarian and disrespectful methods of dealing with the Covid-19 crisis, professional groups, such as agriculturists, taxi drivers, and entrepreneurs, joined the protests happening from October 2020, which then slowly transformed into an anti-government movement. In this sense, it seems to be inclusive and intersectional; it is run by different fractions of society experiencing oppression originating from the same source and surely symbolised by the coalition of the parties associated with the United Right. Also, the rise of young people conscious of their rights and needs and in favour of legalised abortion is unprecedented and should be considered a tangible effect of recent mobilisation.

➤ Cross-border feminist solidarity

In the midst of this acute recent backlash on women’s rights in Poland we could observe the impressive rise of solidarity from the feminist organizations and movements in the world, the Federation and other organisations in Poland are part of. This energy and international solidarity helps the NGOs in Poland to have their messages be heard abroad and on the fora of international organisations.

²³ More here: <https://www.hrw.org/news/2021/03/31/poland-escalating-threats-women-activists>

8. Recommendations (specific on Poland):

- Call on Poland to abide by the international standards of health including sexual and reproductive health as addressed by many occasions to Poland by the UN Treaty Monitoring Bodies, UN Special Procedures and other UN human rights review mechanisms.
- Call on Poland to ensure uncompromised access to available, accessible, acceptable and quality sexual and reproductive health commodities and services, including modern contraception and comprehensive abortion and post-abortion care on request, as part of universal health coverage and as essential health care, at all times, including during COVID-19. This should include the option of telemedicine, medical and self-managed abortion.
- Call on Poland to remove laws and policies making access to abortion almost impossible, criminalizing doctors for performing and other persons for helping in abortion. These laws and policies are inherently discriminatory, contrary to bodily autonomy, and their effects are compounded in times of crisis.
- Call on Poland to support the women's rights movement and protect human rights defenders working in the field of SRHR.
- Call on Poland not to make anti-rights agenda a part of the mainstream policy of Polish government.