UPR Submission on sexual and reproductive health and rights in Poland

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Joint Submission by:

Federation for Women and Family Planning (FWFP)

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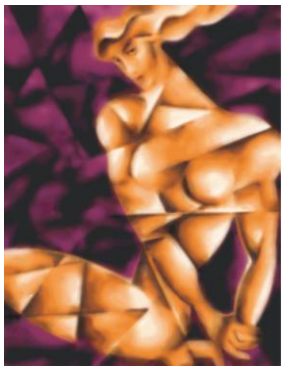

Federation for Women and Family Planning

and

and the Sexual Rights Initiative (SRI)

I. INTRODUCTION

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SEXUAL RIGHTS INITIATIVE

1. The Federation for Women and Family Planning (FWFP)'s experience shows that major violations of sexual and reproductive rights occur in the following areas:

   - Criminalization of abortion on social and economic grounds that force women to seek clandestine, therefore often unsafe, terminations of pregnancy;
   - The anti-abortion law *de facto* is more restrictive than *de jure* (e.g. three cases of R.R., S. and T. v. Poland and X. v. Poland still pending before the European Court of Human Rights – ECtHR);
   - Limited access to modern contraceptives due to social and economic reasons as well as prohibition of voluntary contraceptive sterilization;
   - Limited access to reliable and comprehensive sexuality education, information and services for adolescents;
   - Limited access to legal abortion that is allowed to perform under the Polish law.

II. RESTRICTIONS TO ABORTION

2. According to the law in Poland abortion is illegal unless one of the following circumstances occurs: a threat to a woman's health or life, a serious malformation of a foetus and a pregnancy as a result of a criminal deed. In practice, abortion is inaccessible for most women even in lawful circumstances.

Clandestine abortions

3. Women have abortions in great numbers either in Poland or abroad. FWFP estimates that the number of abortions might reach circa 150.000 or more abortions per year[1]. Access to illegal services offered in Poland depends very much on the economic situation of women. The price varies from 500 to over 1000 Euros which is very expensive for women if taken into consideration that an average income level in Poland is around 500 Euros per month. The same financial obstacles apply to legal services offered to Polish women by clinics located abroad. There is substantial anecdotal data indicating that quality and safety of illegal services provided in Poland is often compromised due to high costs. As there is no control on these services they can be performed in any conditions and by persons who are not sufficiently qualified. Providers who are not skilled enough charge less money for their services than professional gynaecologists do. That can cause a serious danger to women who decide to

[1] Estimation based on the official data of abortions performed in Poland before 1993 (when the law changed into more restrictive reglations), number of women at reproductive age and experience of NGOs working on the issue of women's reproductive rights

undergo abortion in such conditions because of a relatively low price. Additionally, it needs to be added that abortion underground and so called "abortion tourism"[2] seem to increase. The 2010 Hearing on Abortion Tourism in the Polish Parliament revealed this phenomenon to the public as a very common practice.

4. To great disappointment, the Polish Government consistently ignores the effects the restrictive anti-abortion legislation has on the health and life of women in Poland apparently believing that if an issue is not discussed it does have to be recognized nor addressed. The yearly published governmental reports on execution of the Act of 7 January 1993 on family planning, protection of a human foetus and conditions for permissibility to terminate pregnancy[3], show no understanding of a problem that a high number of women have to face trying to execute their rights in these terms. Official data shows that a number of such legal abortions performed is around 600 a year. That number does not reflect the actual number of legal abortions performed. This is particularly evident in terms of abortions performed due to a pregnancy resulting from a criminal deed. Yearly in Poland there are around 3000 crimes that might end with a pregnancy reported (and confirmed) and according to the Polish government not a single procedure on this ground was conducted in 2010. There is a suspicion that these procedures are not registered as abortions and therefore are not reflected in the official data. An example of that is the year 2008 when abortion of the 14 year old girl was performed as she was raped (see para 12). Official statistics referring to the year 2008 presented in the Government's report show that there was not a single abortion performed on grounds of a criminal deed.

Denial of abortion to save a woman's life or health (therapeutic abortion)

5. Restrictive anti-abortion legislation has a chilling effect on access to lawful abortions. The long experience of FWFP, that has been providing counselling services to multiple women who experienced difficulties in access to legal abortion, leads to a conclusion that barriers encountered by women are certainly of a systemic nature and are not just exceptions from the general rule. After almost twenty years of the anti-abortion law, women accessing FWFP regularly report the following problems: difficulties in finding a doctor to perform a legal abortion, problems with obtaining a formal written refusal of services, prolongation of decisions whether to perform an abortion, judging women's decisions, trying to influence the decision-making process and convincing women not to have abortions as well violating women's rights to dignity and confidentiality.

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[2] Abortion tourism refers to the situation where women are unable to access safe abortion services in their own jurisdiction and are forced to seek out safe services in other jurisdictions were abortion is more accessible.

[3] Journal of Law 1993 number 17, item 78

6. Physicians often refuse to issue a certification required for therapeutic abortion, even when there are serious and legal grounds for issuing such a referral. In cases where a woman gets a referral, a physician to whom she goes for the service questions the referral's validity as well as the competence of the physician who issued the referral and eventually denies services.

7. There are no guidelines as to what constitutes a threat to a woman's health or life. Some physicians do not take into account any threat to a woman's health as long as she is likely to survive the delivery of a child. Also, there is a problem with assessment whether pregnancy constitutes a threat to woman's health or life in cases when she is suffering multiple and complex health problems, as there is no physician who would be recognized as a competent one to decide about her whole health status, not just about the specific organ or disease. General practitioners' (or so-called "family physicians") opinions are not respected in health providers hierarchy as they are usually not specialized in any particular branch of medicine.

8. Also there are no guidelines for doctors as to what kinds of malformations of a foetus can be lawful reasons for termination of pregnancy if a woman decides to ask for it. That causes a situation in which a particular doctor in each case decides whether to terminate pregnancy or not. There have been many cases in Poland in which women were refused abortion when their foetuses suffered from the Down syndrome or the Turner syndrome. As there is no procedure to execute services in such cases women have to search for a doctor who will make a different decision. If they are not successful in seeking for abortion that is allowed by law they are therefore forced to continue their pregnancies against their will.

9. Restrictive anti-abortion legislation has also a chilling effect on health care services provided to pregnant women who did not seek abortion in first place but due to health risks abortion should be advised by health providers as an option. This phenomenon can be best illustrated by a case of a 25-year-old pregnant woman from Pila who died of septic shock before being fully examined and properly diagnosed by a doctor. Her mother is currently an applicant before the ECtHR represented by lawyers collaborating with the FWFP (the case of *X v. Poland*). The case has been communicated to the Polish Government. In May 2004, the woman was informed that she was between 4 and 5 weeks pregnant. Prior to or early during her pregnancy she developed ulcerative colitis (UC). She was repeatedly admitted to a number of hospitals (in Pila, Poznan and Lodz). Certain examinations such as a colonoscopy and full endoscopy, which would have made it possible to make proper diagnosis, were not performed because the doctors were afraid of endangering the life of the foetus. In July she was diagnosed with an abscess. Three operations to remove it were performed. During several months of her suffering and exposure to inefficient health care treatment she was never properly informed about the threat of her illness to her life and health, as a result of which a young woman and her family were family were not aware either of possible worst implications

of continuing pregnancy under her health status. The woman lost the foetus on 5 September 2004. On 29 September 2004 she died of septic shock.

10. The UN Special Rapporteur on the right to Health[4] noted "with regret that women in Poland face numerous obstacles in accessing abortion services even if they are legally entitled to an abortion". A situation in that matter has not improved throughout years which is reflected in the cases pending before the EctHR.

Conscientious objection

11. One of the reasons of restricted access to therapeutic abortion is inappropriate performance of the procedural safeguards contained in the "conscientious clause". The conscientious clause is regulated in the Polish Law.[5] It makes it possible for physicians to refuse to provide a medical service that is in opposite to their conscience. However, they are obliged to report that to their supervisor, to note that in medical files of a patient and to point another doctor who will perform that service.

12. With respect to the therapeutic abortion, the "conscience clause" is seriously abused. Generally physicians referring to the "conscience clause" do not fulfill any procedural requirements stemming from it. It is important to underline that not only physicians abuse the conscientious objection but the clause is invoked by healthcare institutions as a whole. The hierarchical relations in Polish hospitals lead very often to a situation in which a decision concerning the possibility of abortion is made by the director on his/her own, without consulting other doctors, who sometimes do not even share his/her point of view. It is not only directors of hospitals and gynaecologists who refuse to perform therapeutic abortions; it is also anaesthesiologists and auxiliary medical personnel (midwives, nurses).

13. Serious malpractice related to conscience clause can be best illustrated by a case of an anonymous 14-year old girl called Agata from Lublin – pregnant as a result of rape. Despite meeting all necessary legal requirements for legal abortion on criminal grounds, several hospitals denied her abortion services. Only due to the intervention of the Minister of Health, the abortion was finally provided secretly in a town several hundred kilometers from her home town, although abortion was not registered in the hospital files (see para 4). And it is obvious that this intervention was made due to the heavy media coverage of the case. Most women whose cases are not public, do not experience the same kind of ministerial support. Agata's case is currently pending before the ECtHR coded as *P. and S. v. Poland* and was recently communicated to the Polish Government.

[4] A/HRC/14/20/Add.3, para 38

[5] Act of 5 December 1996 on medical professions (Journal of Law 1997 number 28, item 152)

14. In its Concluding Observations to Poland, the Committee on Economic, Social and Cultural Rights[6] called upon the State authorities to implement a mechanism of timely and systematic referral in cases of conscientious objection as it found lack of such legal regulation as one of the reasons for which basic services in the area of sexual and reproductive rights are not guaranteed in Poland. No mechanism of the recommended kind has ever been proposed.

Regulation aimed at improving implementation of conscience clause withdrawn

15. In May 2005, a legally binding regulation of the Minister of Health (ordinance) was enacted which obliged a hospital to subcontract services in cases where doctors invoked conscientious objection. Moreover, this regulation allowed the National Health Fund to dissolve its entire contract with a hospital if this regulation was breached by a hospital. This regulation – the only legal instrument we had to held the government accountable for implementing women's rights to services in question – was withdrawn by another Minister of Health by the regulation of 13 May 2008. In the response to the letter from the FWFP to the MoH requesting explanation of this extremely disappointing decision, the Minister responded that this regulation was an overregulation – not necessary because of the existing conscious clause contained in the Act on medical profession (para 10).

Inaccessibility of abortion based on criminal grounds

16. Although abortion on any legal grounds is difficult to obtain, it is particularly evident by yearly number of legal abortions due to a criminal deed, especially rape but also sexual intercourse with a minor under 15 years of age, incest, sexual abuse of dependence or trust, forcing into prostitution etc. Every year no more than 1 or 2 abortions are performed on this ground while there are around 2000 rapes reported a year. Additionally international research repeatedly shows that only a small percentage of deeds of this kind is reported. The situation is worsened by the fact that sometimes non-medical professionals deny women's right to legal abortion. A woman who wants to undergo abortion because she was raped or the pregnancy is a result of a criminal deed, needs to present an official document from a prosecutor's office in order for a doctor to perform abortion. It happens that a prosecutor refuses to issue a referral on religious grounds. Moreover, long criminal procedures make it difficult for women to receive legal abortions before the 12 week deadline.

17. Additional problem in that area that also refers to women's rights is that despite the fact that Police is required to take a victim of a sexual offense to a medical facility, official guidelines do not include any suggestions to inform a woman

[6] E/C.12/POL/CO/5, para 28

about her right to emergency contraception or antiretroviral drugs – neither by a police officer nor by a doctor.

Complaint procedures available to patients

18. The Federation for Women and Family Planning has expressed its concerns at national and international forums regarding the effectiveness of a new mechanism included in the 2008 Law on Patient Rights which allows patients to file an objection against a doctor's opinion to the Medical Commission. This is the Polish Government's response to the ECtHR's judgement in the case of *Tysiac vs. Poland.* When there is an opinion that states there is no threat to a woman's life or health caused by or connected with her pregnancy and a woman does not agree on that, she can file an objection.

19. The mentioned concerns include several issues. Firstly, the 30 day term for the Medical Commission to decide on a case may have a serious impact on the final access to abortion services. That is because of the fact that the time frames within which an abortion can be performed are not defined in the law. Theoretically to save a woman's health or life, an abortion can be performed with no limitations regarding the age of pregnancy. In reality though the resistance on doctors' side in terms of performing abortion is growing proportionally to a foetus' age. Secondly, there is no appeal mechanism of the Commission's decision. Thirdly, the ECtHR directed that the mechanism implemented should guarantee that a woman's view will be considered during proceedings. Actual regulations do not meet this criterion as the Commission is to base its opinion on medical files, an examination of a woman and her presence before the commission is regulated as optional. Finally, the procedure and requirements for writing such an objection seem to be incomprehensible for an ordinary patient. Most of women who seek help at the FWFP find this procedure too complicated and do not believe that it is available without professional legal support and a lawyer's services. That of course can constitute a significant barrier to disadvantaged patients.

20. The Committee of Ministers have not yet approved of the changes that were to be made in the Polish law on the grounds of the ECtHR's ruling in the case of *Tysiac vs. Poland*. The FWFP's monitoring of the implemented mechanism shows that it is not working in practice which might result in lack of acceptance by the Committee.

21. Although this mechanism was introduced many months ago, there have been no complaints yet. And this is not surprising as there is no knowledge about it either in the society nor in the medical community. The raising awareness campaign run by the Office of the Ombudsman Person for Patient's rights has started recently, after almost 3 years of the law being enacted.

III. LIMITED ACCESS TO FAMILY PLANNING

22. Access to family planning continues to be limited. Social and economic barriers often prevent women and girls from obtaining contraception. Firstly, it has to be prescribed by doctors. It can be difficult to obtain such a prescription from a doctor in small societies as hormonal contraception is not recommended by the Catholic Church authorities. A visit at a private practice is simply unaffordable for most women, especially in small towns and villages. Secondly, there are no state subsidies[7] for contraception and women have to pay full price for hormonal pills, patches or vaginal rings. Despite the fact that insertion and removal of inter-uterus devices is a guaranteed service and should be available for free, women still have to buy devices themselves and are also often refused a service in public facilities which makes them search for that service at private practices, which causes additional costs.

23. There is also a problem with obtaining a prescription for emergency contraception as it is erroneously seen by doctors as abortion pills and they often refuse to prescribe it on the grounds of conscience clause.

24. Contraceptive counseling is not integrated into primary health care system. In reality only gynecologists provide contraceptive counseling, not e.g. family physicians (general practitioners) or other medical specialists. More and more women report that doctors refuse contraceptive counseling, especially on emergency contraception, due to conscience clause.

25. In its Concluding Observations to Poland, the Committee on Economic, Social and Cultural Rights[8] reiterated that contraceptives needed to be available at affordable prices. In fact, nothing was done by the Polish state authorities to change women's situation in this field.

26. Due to the outdated law which has been in effect since 1932, voluntary contraceptive sterilization is being interpreted illegal for both women and men against the opinion of many lawyers. A doctor who performs sterilization, even with a patient's consent is subject to criminal accusation.

IV. SEXUALITY EDUCATION

27. The school curriculum provides for realization of the “Preparation for Family Life”. Nevertheless, it is not obligatory but optional. The content of the teaching is very problematic and often does not conform to scientific standards.

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[7] Oficially in Poland, there are three medicines of contraceptive effect that are refunded from the state budget. They are though one medication (as they have exactly the same composition) registered under three different trade names. It is a pill of so called old generation – with a relatively high dose of hormons that are not used in modern contraceptive pills.

[8] E/C.12/POL/CO/5, para. 27.

The vast majority of textbooks are not objective but present sexuality from the point of view of the Catholic Church. Among officially recommended textbooks by the Ministry of National Education, we find ones that state, for instance, that "contraception is a denial of a true love"[9]. According to the research done by the Group of sexual educators "Ponton"[10] other harmful information is presented at school, statements such as "masturbation causes infertility", "contraception destroys health" etc. Such misinformation has consequences for young people in terms of their vulnerability for STIs incl. HIV/AIDS as well as unintended pregnancies, which especially affects adolescent girls. Furthermore, these textbooks strongly stereotype women and promote traditional model of family with differentiated gender roles for men and women. They also present strong anti-choice discourse. Moreover, in some places "abstinence-only" programs are introduced to schools.

28. The UN Special Rapporteur on the right to Health[11] pointed out a question of comprehensive curricula on sexual education and called Polish Government to review the content of these curricula to ensure the provision of comprehensive sexual education at Polish schools. According to the FWFP this has not been efficiently preformed by the Polish Government.

29. There is no a sexuality-related counseling service for young people available in Poland nor specialized medical services. Parental consent constitutes a serious barrier in accessing reproductive health services.

V. RECOMMENDATIONS

30. The Polish Government should ensure the relevant monitoring of execution of the law on abortion, taking into consideration that there are two new cases communicated by the ECTHR that show very serious difficulties in access to legal abortion in Poland.

31. The Polish government should review the realization of the sexual education in public schools, especially the curricula and qualifications of teachers, to assure comprehensive sexual education.

32. The Polish government should take all the possible measures to guarantee access to modern contraception subsidized from the State budget.

33. The Minister of Health should establish an ordinance that obliges all medical facilities that provide gynecological services to ensure also legal abortion

[9] Teresa Król, Maria Ryś, *Wędrując ku dorosłości (Wandering towards adulthood),* a textbook for schools, Warsaw, p. 144

[10] http://www.federa.org.pl/dokumenty_pdf/edukacja/zeszyt3.pdf

[11] A/HRC/14/20/Add.3, para 26

services upon a liability to dissolve a contract between the National Health Fund and a particular medical facility that does not fulfill this obligation.

34. The Polish government should review and the regulations on the right to object against a doctor’s statement on opinion and proposes changes in law that will make that remedy an effective one as it is required based on the ECtHR's judgment in the case of *Tysiac v. Poland.*