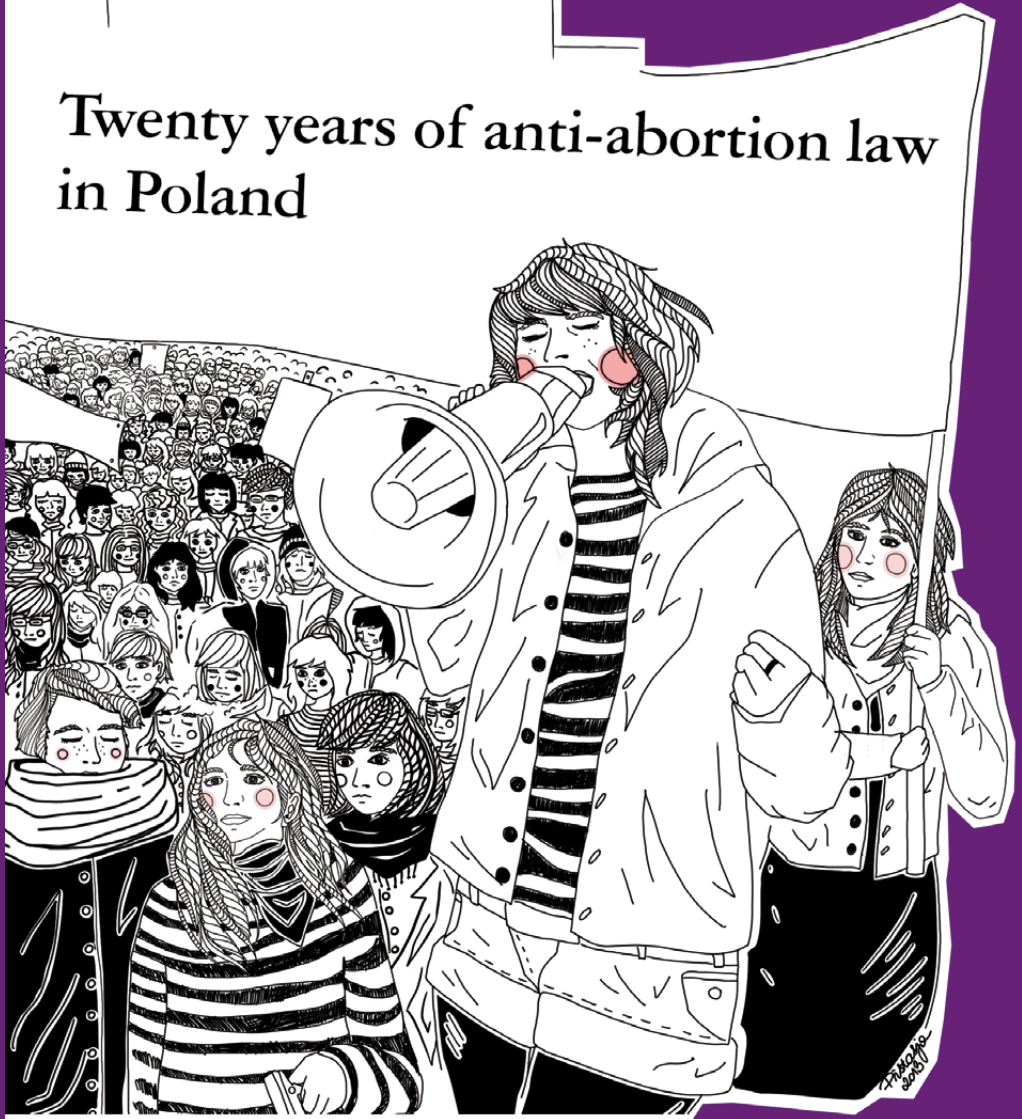


# REPORT

## Twenty years of anti-abortion law in Poland



Federation for Women and Family Planning



# Twenty years of anti-abortion law in Poland

**Report 2013**

Federation for Women and Family Planning

*„Abuse and mistreatment of women seeking  
reproductive health services may be regarded  
as torture or ill-treatment.”*

Juan E. Méndez,  
Special Rapporteur on torture and other cruel,  
inhuman or degrading treatment or punishment,  
UN Human Rights Council

**Twenty Years of Poland's anti-abortion law  
Report 2013**

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# INTRODUCTION

In the past twenty years Federation for Women and Family Planning prepared and published several reports concerning social impact of the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination, which came into force in 1993.

The reports were based on the Federation's experience, analyses of available government, police and medical sources as well as sociological studies and statistics.

The aim of the present report is to draw attention to the failure in implementation and fictional character of the law remaining in force for over two decades. The law which contradicts the secular nature of a democratic state.

Twenty years is enough to provide an overview of social, legal and health impact of the Act. We will try to answer the question whether the basic objective of the regulation, that is the reduction in the number of abortions and the increase in the number of births has been met. Our brief initial reply would be no! As regards demography, statistics say it all. Poland has one of the lowest birth rates in Europe whereas France – where abortion is legal, available and subsidized by the state – birth rate is one of the highest in Europe. Data concerning the number of abortion procedures, for example the 2013<sup>11</sup> CBOS (Centre for Public Opinion Research) study, shows that ca. five million (no less than a quarter and not more than one-third of adult Polish women) have had at least one abortion. In comparison, in 2011 there were only 669 legal terminations according to the government report from the implementation of the Act.

It means that the underground market of abortion services is thriving. It is enough to read an ad section in a daily newspaper to find the necessary contacts. Also, so-called abortion tourism is on the rise. The demand has gone up so much that many clinics in the Netherlands, Germany and Slovakia launched Polish hotlines and websites.

We're wondering – is this what the legislators had in mind? Annual government reports say nothing about the effects of the law. Neither do they make any references to illegal abortions. Despite that politicians claim that the Act has been functioning and the low number of legal procedures seems to be the proof of that. And this is the only thing that matters for them. Those in power do not show the slightest interest in the health and lives of Polish women. Has the Polish state ever done anything to reduce the number of illegal abortions which are by definition dangerous for women's health and lives? For supporters of the present legislation the only thing that matters is that women give birth. That is all. Unwanted children, lost health and lives are not their concern. Once a woman gives birth, nobody cares about her – social policies and support for mothers of young children are at a pathetic level in Poland. Anti-choice organizations are also not very keen to provide support. Their main activities are focused on forcing women to deliver babies and not on helping the mothers

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<sup>11</sup> "Polish Women's Abortion Experiences" (CBOS 2013)



of sick children. Women are not regarded as individuals and their right to decide about themselves and their reproductive life is taken for granted.

If our decision-makers claim that it is impossible to prevent and reduce the rates of illegal abortions, they should at least pay closer attention to whether their laws are respected. Currently the law is a farce. Citizens do not respect it and the state does not make sure it is respected. These basic factors ought to have convinced the lawmakers to liberalize the current Act.

In the following chapters we will discuss the actual implementation of the law as regards legal abortion, access to modern contraception and sexuality education.

It will be proven that the Act has not been properly implemented in any of these spheres. There is no sexuality education, no universal access to contraception and pharmacists have been demanding the right to refuse selling family planning products on the grounds of conscience. Fortunately, this absurd idea never came into force.

The fight to regain women's basic right to make free decisions about their bodies has been going on for more than two decades and the end is nowhere near. Even the current provisions need to be defended in the face of attempts to further restrict abortion access (recent ideas of the Criminal Law Codification Committee, bills in the parliament and suggestions of government agendas). This issue will be discussed later in the report. It needs to be stressed that the proposals of the Criminal Law Codification Committee went back way beyond the current provisions. This caused outrage among women's rights defenders and in the media.

International organizations took note of the situation of Polish women and made numerous appeals to the Polish government to change the restrictive law which violates women's basic rights.

The law, described as compromise, satisfies neither the supporters nor the opponents of abortion rights. Attempts both to liberalize and restrict the current provisions have failed. Decision-makers have been trying very hard to maintain the so-called abortion compromise, approved by the Roman Catholic hierarchy twenty years ago. They have been using the low number of legal abortions as justification. At the same time they have refused to notice illegal procedures and the pain of women risking their health and lives. There are no signs of courage to recognize the actual social impact of the restrictive legislation.

# Abortion in Poland



# ABORTION IN POLAND IN 1993-2013

- ▶ **Realisation of the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination in terms of ensuring access to contraception, prenatal testing and legal abortion and the consequences of the Act**
- ▶ **Commentary to the state actions based on the annual government reports**

In accordance with Article 9 of the *Act on Family Planning, Protection of the Human Foetus and Conditions for Pregnancy Termination* (Family Planning Act) the government is obliged to annually present a report regarding the realisation of the Family Planning Act and its consequences to the Parliament.

This chapter is going to present the Federation's comments to those reports, demonstrate their shortcomings and add the issues that should have been included in their content. Furthermore, it particularly examines the last available report (from 2011) and it also contains a number of general observations regarding the state policy in the field of implementation of the Act. The content related to the access to family planning methods and means will be discussed in the next chapter.

*„During the legislative process in Parliament we need to predict the law's consequences. We must decide: do we want an ostensibly noble provision, or do we want the actual decrease in the number of abortions?“*

Izabela Jaruga-Nowacka†

## Activities in the area of care of the pregnant woman and the foetus

At the beginning it needs to be noted that the reports do not at all tackle the issues of perinatal standards or the government's activities aimed at: on one hand – the implementation of appropriate medical standards for pregnancies and births occurring in a physiological manner (according to the already existing regulation in this respect); and on the other – establishing the standards of conduct for pregnancies and births, which are not regarded as physiological. No attention has been paid also to the issue of childbirth pain relief.

The most burning issues in this section are: access to prenatal testing and abortion.

### Prenatal examinations

It can be noted with satisfaction that currently the prenatal testing programme is being carried out in all state districts, which has not always been the case. However, two groups of challenges in accessing prenatal testing have not been solved since 2010.

The first issue concerns legal regulations. As the authors of 2011 report rightly point out, currently the primary legislation that gives women the opportunity to request additional foetus testing is the regulation of the Minister of Health *regarding services guaranteed in health programmes*. However, the regulation of the Minister of Health *regarding the scope of health care services, including screening and the periods in which these tests are carried out*, which in Annex 3 regulated the issues of prenatal testing, is no longer valid due to the cancellation of its legal basis of the *Act on healthcare services financed from public funds*, which has not been replaced by any other regulation. As a result, there isn't even a general definition of prenatal testing in the Polish law. Despite the fact that the two regulations were not consistent with each other - in terms of terminology ("indications" for carrying out the tests versus "criteria" for admission to the program), the catalogue of indications and criteria (non-binding regulation contained an open list of indications for such tests) or the age eligible women (the age of 40 was an indication and age of 35 years was the criterion for admission to the programme) – non-binding regulation defined what prenatal examinations were and what their purpose was.

At the moment, the list of eligibility criteria for prenatal testing programme is closed, which means doctors often break off a conversation about potential testing in cases where the criteria is not met even when the patient has reasonable concerns regarding possible foetus malformation. Then of course the additional diagnosis might be conducted for a charge in the private sector, but often doctors do not make an effort to inform the patient about this, and they rely solely on the eligibility criteria for the programme, which the patient might not meet.

Another problem is that many doctors are not aware of the prenatal testing programme or they are convinced that only women over 40 are eligible, because they do not know that the regulation stating this limit (in a unbinding way) is no longer valid. This poses a

risk of breaching the patient's right to information and may constitute a violation of the provisions of the Act on the Profession of Doctor and Dentist.

It should also be noted that doctors happen to deny to issue referrals for prenatal testing for women through the claim of "conscience clause". Doctors do not have the right to do so and it violates the patients' rights. Such doctors violate also the provisions of the *Act on the Profession of Doctor and Dentist* and the principles of the *Code of Medical Ethics*. Such cases have been repeatedly reported by NGOs, but none of the government reports on the implementation of the Family Planning Act ever addressed this issue.

Women's requests for prenatal testing are treated by doctors as a way to access legal termination of pregnancy. Such behaviour of medical staff is inappropriate and unjustified and therefore needs to be considered wrongful. Prenatal tests are conducted to obtain information about the foetus and more often in order to exclude the malformation rather than to confirm it. Confirmation does not need to lead to abortion because the malformation might be treatable rather than necessarily serious. Prenatal examinations are often the only way to be fully aware of the condition of the foetus, which is the realization of the pregnant woman's right to information. It needs to be emphasized that in case of severe and irreversible malformation of the foetus, woman is entitled to a decision to terminate a pregnancy under the current Family Planning Act and it is unacceptable for the doctor anticipating such a decision not to issue a referral to the examination, not to carry it or not to inform the patient about its true result.

The second issue is related to the regulations regarding the patient's admission to the prenatal testing programme. According to the order of the President of the NHF (National Health Fund) of 29 October 2009 *regarding the setting and implementing agreements such as preventive health programmes*, the basic requirement is the referral from the doctor leading the pregnancy, which needs to include a description of abnormalities in order to justify admission to the programme. This is irrelevant to the fact that the criterion for admission is reaching the age of 35 and it seems that the referral on this basis neither requires the medical expertise, nor it is necessary for the doctor to lead the pregnancy and know the health conditions of the patient in order to issue the referral. Doubts also arise in "calculating" the age of the woman. Doctors are not aware of the relevant legal provisions concerning the way in which age should be interpreted and often do not issue the referral on this basis. Therefore, women eligible for admission to the prenatal testing programme are often deprived of this opportunity.

Access to prenatal examination is an essential issue. An important signal to the Polish Government should be the judgement of the European Court of Human Rights (hereinafter the Court) in the case *RR against Poland*, which specifically concerned the human rights violations in terms of access to prenatal tests and which will be discussed in detail later in this report. It seems that without particular actions by the government to improve the situation in this respect, there might be similar cases at the ECHR in the future.

## Termination of pregnancy

In terms of analysis of issues concerning pregnancy termination, government reports are very disappointing. Every year this question is limited only to presentation of the legal framework and the number of officially conducted procedures. Substantially, in 2011 report the statistics again did not include any data from the Ministry of Justice or Ministry of Internal Affairs.

According to official data, in 2011 there were 669 legal abortions. 49 of them were conducted because the pregnancy posed a threat to the woman's life or health, and the rest (620) due to foetus malformation. There has not been a single termination of a pregnancy resulting from a criminal act.

As the Federation has repeatedly highlighted, apparently there is a problem with data collection in terms of the number of conducted procedures. It is reasonable to suspect that in the last report these figures are again significantly underestimated. The fact that in 2011 there was no legal termination of pregnancy caused by a crime is particularly scandalous. There are many criminal acts that might result in a pregnancy, such as: rape, sexual abuse of dependence, sexual exploitation or abuse of helplessness or trust, sexual exploitation of a minor, incest, forced prostitution and abuse of close relationship with another person (in cases where sexual violence is a part of it). In total, more than 3,000 crimes of this type are noted every year (in 2011 there were more than 4,000, not including sexual violence as an element of the crime of abuse of close relationship). Obviously some of them result in unwanted pregnancies, which certainly some women would like to terminate. According to data from government reports, however, this is not happening. Due to the fact that the presented statistical picture has not changed in years, a careful monitoring and consultations with NGOs are necessary in order to update data with the information overlooked by official data collection systems.

Reports from recent years refer also to the patients' rights and Office for Patients' Rights in the context of the patient's right to object against medical opinion, which was introduced as a result of the ECtHR judgement in case *Tysi c versus Poland*. „The objection” is a very narrowly applicable mechanism but it can be used in case of a medical opinion which prevents a woman from exercising her right to abortion. Many times the Federation reported on various problems with the regulation of the objection itself as well as with possibilities of its use in practice. Committee of Ministers of the Council of Europe still has not decided whether this mechanism is effective and can be regarded as proper implementation of one of the Court's decisions. Still, there haven't been any governmental activities aimed at a thorough analysis of the right to objection and possibilities of its use.

In 2012 Poland went through the process of Universal Periodic Review at the Human Rights Council. One of the recommendations was to ensure an effective appeal mechanism for women who were unlawfully denied access to reproductive health services.

“Conscience clause” plays a big role in access to legal abortion. It has been pointed out to Poland in two final judgements of the European Court of Human Rights (*Tysi c*

*versus Poland* and *R.R. versus Poland*). According to art. 39 of the *Act on the Profession of Doctor and Dentist*, the doctors may refuse to conduct a procedure that is not in line with their conscience. They are obliged however to refer the patient to another clinic or a doctor who would ensure provision of the service. They are also required to note this fact in the medical history and inform their supervisor.

However, the Federation has received numerous signals that this regulation has not been applied correctly. Furthermore, its misuse substantially limits women's rights and their access to healthcare services. The report does not present any analysis of the practical application of conscientious objection and the limitations in accessing reproductive health services that it causes – it is even more disappointing given the tremendous amount of times when the Federation has alarmed the government about this issue and recommended its thorough analysis.

## ► **Legal and social consequences of the Family Planning Act**

The reports from the implementation of the Act should also discuss the consequences of its application. Significantly, the titles of the yearly reports indicate that they would contain such a reference, according to art. 9 of the Act.

Despite this fact and countless recommendations from the Federation, **the Government has never presented any analysis of the Act's impact.**

The key consequences of the Family Planning Act are:

- **The impact of criminalization of abortion-related activities on actual abortion services,**
- **abortion underground,**
- **abortion tourism,**
- **medical abortion (and the black market of abortion pills),**
- **judgements/decisions of the European Court of Human Rights in Polish cases..**

The following aspects will be analysed below: the criminalization of abortion and abortion underground (along with the problem of abortion tourism and medical abortion). The judgments of the European Court of Human Rights in the field of reproductive rights (including those against Poland) are discussed in the chapter "Reproductive rights as human rights."

## **Criminalisation of abortion**

The provisions of the Family Planning Act are completed by those of the Criminal Code, which introduces criminal responsibility for certain behaviours related to the criminalisation of abortion. Article 152 and 153 of the Criminal Code also form a peculiar definition of illegality of abortions in Poland by showing that such behaviours are not only inconsistent with the law, but also mean risking specific criminal sanctions. Article 154 introduces stricter penalties for conducting illegal abortion when woman's death occurs.

## Article 152

§ 1 Who, with a woman's consent, performs an abortion in violation of the provisions of the Act, shall be punished by imprisonment up to 3 years.

§ 2 The same penalty shall apply to anyone who assists a pregnant woman to have an abortion in violation of the law or pressures her to have one.

§ 3 Whoever commits the act specified in § 1 or 2, when the foetus has become capable of independent life outside the body of the pregnant woman, shall be punished by imprisonment from 6 months to 8 years.

## Article 153

§ 1 Who by the use of violence against a pregnant woman or in any other way without her consent terminates a pregnancy or who by the use of violence, illegal threat or deceit makes a pregnant woman have an abortion, shall be punished by imprisonment from 6 months to 8 years.

§ 2 Whoever commits the act specified in § 1, when the foetus has become capable of independent life outside the body of the pregnant woman, shall be punished by imprisonment from one to 10 years.

## Article 154

§ 1 If the act specified in Art. 152 § 1 or 2 results in death of the pregnant woman, the offender shall be punished by imprisonment of one to 10 years.

§ 2 If the act specified in Art. 152 § 3 or Article. 153 results in death of the pregnant woman, the offender shall be punished by imprisonment from 2 to 12 years.

According to these provisions, the following is illegal:

### **- termination of pregnancy in breach of provisions of the Act**

This offense can be committed by a doctor who: terminates a pregnancy in circumstances other than those allowed by the Act; terminates a pregnancy, although s/he identified the circumstances entitling the woman to the decision to have an abortion herself/himself (unless there is a direct threat to her life); conducts the procedure outside a hospital or after the date specified in the Act. This offense can also be committed by any other person who is not a doctor, but terminates the woman's pregnancy, even when the legal provisions are met because the Act clearly states that the abortion must be conducted by a doctor in a hospital.

### **- assisting a woman in obtaining an abortion against the provisions of the Act**

Such offense may be committed by any person who helps a woman to terminate her pregnancy. There have been disputes within the doctrine as to what is the range of activities subject to criminal penalties. According to the basic understanding of the term assistance, it is regarded as: providing the tools, means of transport or giving advice or information. But the most important element is the intention of the assisting



person that the person to whom the support is given, undertakes a specific action. As long as the intention is there, assistance in abortion is also: recommending a doctor, transportation, financing the procedure and providing the woman with medical abortion pills, regardless of whether those supplies were admitted for trade in Poland or not.

**- persuading<sup>2</sup> a pregnant woman to have an abortion**

This offense is based on the fact that a person has a direct intention for a woman to have an abortion. The form of action (insisting, request, the promise of benefits and others – except violence, threat or deceit) is not important. The aim of the perpetrator is the key and the offense is committed even if this goal is not reached and the woman does not terminate pregnancy.

**- termination of pregnancy with the use of violence against a pregnant woman (or in any other way without her permission)**

Violence means direct actions against a woman aimed to achieve miscarriage. These behaviours involve the attack on the woman's body, by hitting, kicking, using dangerous tools but also physical coercion to undergo an abortion. Other methods include activities such as: the use of medicinal substances or performing the procedure without the woman's knowledge.

**- making a woman terminate the pregnancy using violence, threats or deceit**

This offense consists of improperly obtaining the consent for termination of pregnancy. In the case of this offense, violence is not only of the physical kind, but also means psychological violence, blackmailing or manipulation. Unlawful threat does not only mean a threat of committing a crime and cause harm to a pregnant woman or a person close to her, but also a threat of prosecution, the disclosure of the dishonouring circumstances of woman or person close to her. Deceit is identified as misleading the woman regarding the circumstances that influence her decision and/or other circumstances affecting the situation.

**- selling pharmaceuticals not admitted for trade in Poland is a criminal offense under the criminal provisions of the Pharmaceutical Law Act.**

These actions, however, are not illegal:

**- self-induced termination of pregnancy**

A pregnant woman cannot be subjected to punishment for illegal abortion or for any other action leading to a miscarriage, even if the miscarriage was the woman's goal. Criminal liability for the acts of a pregnant woman against the foetus starts only in childbirth. Then the "conceived child" becomes "child during childbirth" in the Criminal Code (Article 149 of the Criminal Code, meaning infanticide), and then "a human" (in all other crimes against life and health).

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<sup>2</sup> Offenses of assistance and persuasion, due to the lack of legal consequences for women for having an abortion, were highlighted separately in these provisions. However, their structure is analogous to assistance and incitement to any criminal offense covered by the general provisions of the Criminal Code.

It is not an offense either if the woman purchases medical abortion pills abroad, over the Internet via the foreign website, or in her country – both in person and via the Internet, because the in-country purchase or bringing from abroad for personal use only the drugs not admitted for trade in Poland do not constitute an offense under Pharmaceutical Law.

**- providing information or advice to pregnant woman about the possibility of termination of pregnancy**

This behaviour is sometimes treated as a crime, but it does not fit in any of the definitions of assistance provided above. Providing information, or even advice, or clarification of the woman's doubts, as long as it does not constitute a form of convincing her to have the procedure (and this must be accompanied by the specific purpose and intent) or making her have the abortion, is not prohibited. There are views that supposedly such action could constitute assistance in performing abortion, however, as already mentioned, such support takes place only if the perpetrator acts with intent to commit a specific act by another person. According to the understanding of the term assistance (on general principles) such action as information or advice must also be accompanied by the intention of the assisting person.

**- assisting a woman in having an abortion abroad**

Conducting the procedure abroad, even in cases where it is beyond the conditions of admissibility of abortion under the Act, cannot be interpreted in the light of this Act and the Criminal Code – because the provisions of the Code clearly indicate the principle of acting “contrary to the provisions of the Act.” The doctor performing the procedure in another country where abortion is legal in a wider range of circumstances does not proceed against the provisions of the Polish Act, therefore, help in obtaining such abortion (for example, in the form of financial support or help in transportation) is not a crime.

Despite the criminalization of abortion in all but a few admissible cases, a woman's right to decide whether to terminate her pregnancy in the broad meaning of the term “right” is unlimited. In the absence of punishment for the woman's actions resulting in termination of pregnancy, in practice she has the “right”; for example, to even undergo an illegal abortion or take abortion pills. This right, however, in the human rights language means only freedom, which means that the state has a so-called negative obligation of non-interference in this sphere of life of its female citizens. There is no positive obligation. Such a positive obligation occurs only when a woman wants to exercise her right in its narrow sense, that is, when abortion is allowed under the Polish law. In these cases, the State is obliged to organize the health system in a such way that it guarantees women a real opportunity to exercise their right and access legal and safe abortion.

**What is the purpose of criminalisation?**

The provisions of the Criminal Code were introduced in order to establish penalties for illegal abortion and thereby strengthen the provisions of the Family Planning Act. Initially, during adoption of the Act, the regulations were phrased differently. The new Criminal Code was adopted in 1996 and entered into force in 1997. Between 1993 and 1997 different regulations were in place. Abortion was then defined as “the killing of

the unborn child”, the provisions explicitly pointed to the lack of accountability for the “mother of the unborn child.”

Worth noting is the fact that in the original version of the Criminal Code the term “foetus” was used. The term “unborn child” was introduced in amendments to the Criminal Code of July 1998 (for more information see “Timeline”).

It would seem that these provisions are intended to minimize the phenomenon of abortion underground – meaning the situation in which doctors terminate pregnancies illegally, in violation of the provisions of the Act. The Federation estimates there might be even 100 000 such procedures every year. According to the information from the 2011 report, altogether there were 236 proceedings on the basis of article 152 and 30 on the basis of article 153. A total of 25 cases were referred to the Court. Most of these cases resulted in a conviction to imprisonment with conditional suspension of the punishment.

In light of these data, it becomes clear that the scale of proceedings in cases related to breaching of the provisions of the Act does not at all reflect the scale of the abortion underground.

### **What are the actual results of criminalisation?**

Moreover, provisions for the doctor’s criminal liability in case of conducting an illegal abortion along with the unclear provisions regarding abortion and the lack of clear guidelines in this matter, affect the access to legal procedures. This happens for several reasons and three of them stand out and are interrelated. The first reason concerns the vagueness of the provisions of the Act itself. The second one is related to the fact that in each case the doctor must decide whether abortion is permitted by the law in these particular circumstances. Most frequently this decision is related to the assessment of the seriousness and persistence or genetic malformation of the foetus. The description of the test result identifying the malformation usually does not contain further assessments in terms of the legal abortion criteria. That’s why it is the doctor, to whom the woman turns to perform the abortion, who usually determines whether the defect is severe and irreversible and the possible disease – incurable and life-threatening. The prenatal examinations describe the defect or illness, but not evaluate it in the context of the Act. It is slightly different in the case of a threat the pregnancy poses to the life or health of the pregnant woman, because it is assumed that the existence or lack of such threat should be stated in a medical opinion and additional assessment of the doctor performing the abortion is not necessary or required. In practice, however, misuses have also occurred in these circumstances.

The third reason is the lack of recommendations, standards and code of conduct for doctors on how to proceed with exercising the woman’s right to abortion in particular cases. Due to the regulations stating the criminal responsibility for carrying out illegal abortions, the doctors are afraid and therefore more inclined to refuse conducting the procedure, using various techniques. This situation is referred to as a “chilling effect” of the criminal provisions on access to legal abortion. The existence of this phenomenon in Poland was also recognized in the jurisprudence of the European Court of Human Rights.

The issue of criminalization of reproductive health services was also discussed by the UN Special Rapporteur on the right to health.

## **Abortion underground**

The Family Planning Act criminalises abortion in all but three cases: when on the grounds of prenatal tests or other medical conditions there is a high probability of severe and irreversible damage to the foetus or an incurable life-threatening disease; when the pregnancy poses a threat to the life or health of the woman or when it is the result of a criminal act. In all other circumstances, or in the case of the expiry of the time limit for abortion permitted by law, such treatment is illegal. This does not mean, however, that there haven't been any such procedures in the last twenty years. Women who decided to terminate an unwanted pregnancy will do it no matter what the decision-makers, the Church or the society would wish.

### **Underground, meaning what?**

When the numbers of legal abortions performed in 1988 (105333) and 1993 (676) are compared, it is hard to believe that the introduction of a restrictive bill effectively prevented unwanted pregnancies and resulting abortions. Therefore, the question arises: where are all the procedures that do not meet the legally permitted criteria? It's easy to figure out – they moved outside the formal health care system, to the so-called abortion underground.

Women who cannot count on the public healthcare in terms of terminating unwanted pregnancy, cope with it one of the following ways:

### **Black market of underground clinics**

With the introduction of the abortion ban and the accompanying wide-scale stigmatization of women deciding to terminate an unwanted pregnancy, underground clinics immediately began to appear, where physicians or people claiming to be medical personnel offered assistance in getting the procedure. Especially in the nineties it was the most popular solution for Polish women. Still, today those more or less obvious ads like "restoring the menstruation", "gynaecological support – full range" or "gynaecologist – various services" can be found in just any newspaper. This way to advertise underground services is used also by the doctors who, during the day, refuse to perform abortions in hospitals because of their conscience.

Even if the woman who has, or is able to accumulate in a short time, a certain amount of money for an abortion, there is no possible way to verify the actual qualifications of the person who carries out the procedure, nor the hygiene and sanitary conditions in which abortion takes place. There is neither professional postabortion care, or any real possibility of complaint in cases of medical malpractice, complications or other harm. Additionally, the woman experiences tremendous stress associated with the need to keep everything secret due to the threat of imprisonment for any person who helped her.

## Medical abortion

Medical abortion, meaning inducing miscarriage by using drugs, is used in many countries around the world as a method of terminating the pregnancy in its first weeks. Polish women, just like women in other countries with restrictive abortion laws, are looking for information and assistance in medical abortion at foreign websites, including Women on Waves. This organization employs doctors and provides professional, science-based information and advice, and helps women in obtaining the means to induce a miscarriage.

Women on Web service does not disclose precise data regarding the annual number of parcels sent to Poland, but highlights it is very high. The enormous scope of the interest can be proved by the number of visits to the Women on Web site, which includes practical information on medical abortion in Polish and a form for requesting the pills – each year the organization notes about 200,000 entries only from Poland.

On a growing scale the abortion pills from other, unknown sources are being distributed via the Internet in Poland without any control. There is the black market of abortion pills coming from abroad. In addition, however, also other drugs causing miscarriage are sold, but there is no guarantee as to their actual composition, origin and effect. These are usually fraud attempts aimed to take advantage and extort money from desperate women in difficult situations.

There are drugs admitted for trade in Poland that might cause miscarriage as a side effect, but they are not registered as a means of conducting abortion. This does not mean, however, that they are not used by women, or even recommended by doctors, with this effect in mind.

*„What is key is that it was MY decision. I'm not ashamed. I will never let it happen for my choice to be limited by some damn patriarchal law. It pisses me off - I cannot speak out and I'm afraid all the time..”*

From the online forum Kobiety w Sieci

The phenomenon of black market of drugs may also be discussed in terms of limited access to contraception. Contraceptives, including emergency contraception, are sold on the Internet on a massive scale, because of difficulties in accessing them due to restrictions, which were mentioned in the first part of this chapter.

## Abortion tourism

When Poland and a group of neighbouring countries joined the European Union, the opening of borders brought a breakthrough in terms of access to safe abortion. Visa-free travel within the Schengen area accessed by Poland at the end of 2007, provided much easier access for Polish women to clinics in Western countries. Thanks to the fact that in most European countries abortion is fully legal and forms a part of the

standard package of health services, the facilities must meet certain requirements and standards and they are also subject to regular checks, which guarantees the safety of such procedures. If cases of any harm, patients are also able to exercise their rights and demand compensation. No wonder that women in unwanted pregnancies more often and willingly travel to countries such as Germany, the Czech Republic, the Netherlands, Austria, Great Britain and Slovakia. Depending on the country, the clinic and the stage of pregnancy, abortion costs a few hundred euros. Due to the fact that women have abortions in various countries, it is impossible to accurately assess the scale of abortion tourism. However, the demand is so great that more and more clinics launch hotlines in Polish and employ Polish-speaking staff. Doctor Janusz Rudzinski, who works in Germany close to the Polish border says that only his clinic is visited by more than a thousand women from across Poland every year.

### **„Home remedies“**

Unwanted pregnancies are often the cumulative result of a lack of comprehensive sexuality education in schools, lack of family planning counselling and the lack of effective access to contraception, which is very strongly associated with the level of wealth due to the lack of subsidised contraceptives. Poor women usually cannot afford to pay out of pocket for modern contraception, and therefore are more likely to end up with an unwanted pregnancy. They are left alone in a difficult financial situation, and do not have the ability to quickly mobilize money for a trip abroad or an underground abortion. So they make dramatic choices, trying to conduct abortion themselves in various ways overheard from someone or found on the Internet. They often try to mix chemicals and drugs to induce abortion or mechanically interact with their body. It should be emphasized that these methods are very dangerous, expose women to the risk of serious injury and pose a serious threat to their health and life.

### **Who resorts to the underground?**

There is no one profile of a Polish woman who has an abortion. Any woman can be in an unwanted pregnancy and decide to terminate it. 2013 CBOS survey showed that the group of respondents who have had an abortion at least once in their lifetime was dominated by religious women with right-wing political views. This data dispels the false belief that only young, childless career-women terminate pregnancies. According to the experience of the Federation and the data obtained from “Kobiety w Sieci” (Polish organization providing free hotline dedicated to medical abortion), decision to have an abortion is almost always an act of responsibility – for themselves, for their family, for the children they already have, because most of these women are already mothers. Very often, the reason is the difficult financial situation, but women decide to have an abortion for various reasons, and no one, especially the state, should judge them. Women themselves can most accurately assess their own, already difficult enough situation and make the decision most suitable for them.

The Federation estimates that every year around 80-100 thousand women in Poland decide to terminate the pregnancy. This number is consistently questioned by women's rights opponents, and the government report on the implementation of the Act, as described earlier, consistently remains silent about the fact that women are looking for other than

legitimate ways to exercise their rights. CBOS survey published in 2013, however, proved all myths in this regard false. The data shows that at least one in four, and nearly one in three adult Polish women decided to have an abortion. In the whole of society it is from 4.1 to 5.8 million women. In the statement accompanying the publication of these results, the research centre referred to the atmosphere in which women live on daily basis, as well as to the limited informational value of official statistics on abortion: "Restrictive law, the nature of public discourse, and the overall delicacy of the issue make abortion in Poland a taboo . [...] The criminalisation of abortion raises questions regarding the completeness of the official data – number of legal procedures most likely hardly reflects the reality. Unavailability and stigma of abortion may cause women who are in an unwanted pregnancy to use the unregistered services or have an abortion outside of the country." The results of this study further prove what the Federation has stressed over the last twenty years in the reports, statements and commentaries to the government reports.

### **Abortion and money**

Level of affluence plays a fundamental role in accessing abortion and is a major criterion determining its level of safety. Better informed, better organized and better paid women solve the problem on their own – they travel to western clinics and use the possibility to have abortion in safe conditions. Many of them borrow money from relatives or decide to take a loan for this purpose. Those who cannot afford it, who do not have easy access to information, face multiple exclusion. Left in a very difficult situation, with unwanted pregnancy, they are forced to make dramatic decisions. Desperate, they resort to dangerous methods – they use the services of people with unknown qualifications, who conduct procedures in unknown standards of hygiene, they buy on the black market pills of unknown origin, composition and effect, or they seek help in the most dangerous "home remedies". In addition to the unimaginable stress, anxiety and tension, they are also exposed to a serious threat to health and life.

In practice, this results in a very clear social division between women who can afford to provide themselves access to safe abortion and women who cannot afford it. This means that reproductive rights, which are an integral part of fundamental human rights, in Poland are subject to economic transaction – you just need to pay. This situation leads to a further significant growth of social inequalities, predestines the poorer, less educated women to experience multiple exclusion and leaves them without any help.

*„We do not agree with the accusation of favouring the phenomenon of abortion. We also would prefer to live in a world in which there is no abortion. However, this is not happening. We do not want to, we cannot pretend that we do not see the reality and human tragedies.*

*Restrictive provisions of the current Act affect the poorest women and their families. Ignoring or understating the often tragic living conditions of many Polish families in this context is simple dishonesty.,,*

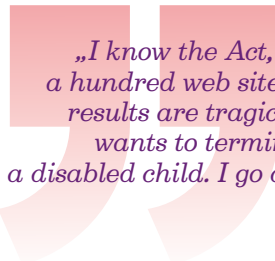
Izabela Jaruga-Nowacka,  
former Deputy Prime minister, Minister of Gender Equality

At the same time it is hard not to notice how tremendously the black market of gynaecological services flourished within twenty years, creating a still growing group of people, who earn gigantic profits on the criminalisation and stigmatization of abortion. Subsequent governments and ministers change, and the conspiracy of silence around the situation of Polish women forced to resort to dangerous underground abortions and people earning on women's dramas continues.

## Chilling effect means that even legal abortion is not available

As mentioned above, the existing ban on abortion in Poland produces the so-called chilling effect, which means that even in a situation where there are grounds for performing legal abortion, doctors avoid or refuse to perform the procedure. They often require additional certificates, referrals, confirmations from other doctors, approved letters from their supervisors, they multiply the administrative obstacles in order to effectively prevent a woman from having an abortion or lead to passing of the permissible time limit for abortion. Behind this lies the fear of having the decisions of the applicability of legal abortion undermined, being charged with violation of the law and thus the threat of imprisonment.

Consequently, despite the three circumstances in which Polish law allows for abortion, exercising this right is extremely difficult. In practice, therefore, the chilling effect significantly deepens already extremely restrictive ban on abortion, because in numerous cases it also prevents access to legal abortion.



*„I know the Act, I know the provisions. But now, after going through a hundred web sites, I know that things might be uncertain. If the test results are tragic for me, it may happen that, despite the law, no one wants to terminate the pregnancy. And I am not able to look after a disabled child. I go crazy from fear. What will I do if I get bad results?”*

List z forum Kobiety w Sieci

This means that not only women ineligible for legal abortion use the underground services – also women who meet one of the permitted criteria decide to do so, even though theoretically they could try to exercise their right to legal abortion. Sometimes they have already tried and lost the battle with this hostile system. Although the Federation offers women full support in claiming their rights, they usually do not decide to take further actions – they do not want to experience humiliation, judgmental comments, endless unnecessary paperwork, discussions on morality. They do not have the strength and time for long battles with an uncertain outcome. They prefer to go to the Western clinics, which respect the patient's right to an autonomous decision, privacy and health services, and where abortion is treated as a simple gynaecological procedure, in accordance with well-established international medical, legal and psychological standards. Some of these women decide to fight for their rights, which results in legal proceedings in the national courts and in the European Court of Human Rights (more on this in the chapter “Reproductive rights as human rights”).



Why the underground is dangerous and Polish women need to be guaranteed access to safe and legal abortion without the need to specify the reason?

The vast disparity between the number of legal abortions and the scale of procedures conducted "outside the system" clearly shows to what extent the law fails to meet the reality. The law in no possible way reflects the reality in which Polish women live, it is also blind as to why there are unwanted pregnancies, and why women decide to terminate them. For twenty years since the implementation of the Act, no state institution or body has ever examined and analysed this phenomenon.

The World Health Organization (WHO) calls for universal access to legal abortion and emphasizes that every illegal abortion is unsafe and poses a threat to the woman's health and life. Obviously there is a literal and direct threat arising from the lack of verification of the qualifications of people claiming to be doctors or medical staff and the hygiene standards of the place where the procedures are conducted. However, WHO indicates that such threat is also posed by experiencing a huge stress, tension and anxiety that the woman faces as she already is in a difficult situation (unwanted pregnancy) when she is forced to seek help in the underground. In addition, the Act also exposes them to the uncertainty and loneliness – due to the fact that convincing or assistance in obtaining abortion might result in imprisonment, women are afraid to put their partners, family and loved ones who accompany the procedure or provide financial support at risk. Although they are not subjected to any liability themselves, when they look for support, they must operate in conspiracy like criminals.

#### Abortion underground and subsequent governments

It is hard to find in the annual governmental reports on the implementation of the Act any expression of interest in the situation of Polish women forced to resort to abortion underground. Instead, there has been a consistent strategy of subsequent governments pretending that there is no problem. Over the twenty years of the Act, official reports have noticed neither its existence nor its consequences. They do not analyze the issue, as if this would make the phenomenon disappear. Meanwhile, it is doing well, for many people it constitutes a source of huge profits, and it exposes women to enormous health, financial and social costs.

The phenomenon invisible to the public administration however is clearly recognized by the international organizations and institutions – both non-governmental and intergovernmental. Within 20 years of the anti-abortion law, Poland was repeatedly asked and drawn attention to the problem of abortion underground, its scale, scope and impact of its existence by the UN Human Rights Council; UN Special Rapporteur on the Right to Health Anand Grover; The European Court of Human Rights in Strasbourg; Committee Against Torture; and many others.

As it has been reiterated by the World Health Organization, United Nations agencies and other international institutions – the criminalisation of abortion does not lead to a reduced number of procedures. It only reduced the number of safe procedures. Woman in unwanted pregnancy will find a way to terminate it anyway, regardless of the law. On this law depends, however, whether the abortion takes place in a safe, hygienic conditions, and is conducted by a doctor, whether it is safe for women or puts her at risk.

# Contraception in Poland



# CONTRACEPTION IN POLAND 1993-2013

## ► **Implementation of the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination as regards access to contraception**

One chapter of the government report from the implementation of the Act as regards access to means and methods of responsible procreation ought to include the specification of government activities aimed at ensuring free access to means and methods of responsible procreation. It seems obvious that an annual report from the implementation of the Act should include current actions undertaken as a result of the analysis of the situation. The reports, however, do not include analyses at all and are only limited to the description of provisions of the Act and actions undertaken to enforce them.

The chapter devoted to regulations provides only an overview of legal guarantees arising from the Act. The first of them is the right to decide about having children, included in the Act's preamble. The second constitutes an obligation of the State to ensure space for decision making in this respect. The third and most precise guarantee obliges the State to ensure free access to contraception for citizens.

In the first few years of the Act on Family Planning (hereinafter referred to as the Act) government reports included relatively detailed data on availability and sales of contraceptives. For instance the 1995 report<sup>3</sup> quoted the results of a study commissioned by the Ministry of Health. The study revealed that only 12% of respondents declared consistent use of contraception. Among the barriers in using contraceptives were the absence of a good habit of using these methods and the position of the Church (39.2%) as well as being ashamed of buying contraceptives and other obstacles indicating gaps in general awareness of the society about the mechanisms of action and side-effects of contraception. In the 1990s a constant increase in sales of oral contraceptives (1.3 mln packs in 1992, 4.6 mln in 1996 and 7.4 mln in 1998) had been noted. Also spermicides were available, for example creams, vaginal suppositories. Today their selection and availability is much more limited. In 1998 during the term of a conservative coalition AWS-UW the promotion of natural family planning was revived "keeping in mind the need for broader promotion in the society". Among other activities 15 natural family planning counselling points were opened and hired teachers of NFP.

Also the 1999 report displays a clear preference for NFP<sup>4</sup>. the document discusses in detail the activities of a National Natural Family Planning Promotion Team. The demands

<sup>3</sup> Council of Ministers' 1995 report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination

<sup>4</sup> Council of Ministers' 1999 report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination

concerning subsidized contraception were ignored and deemed too costly. No analysis of social benefits that the price reduction of modern oral contraceptives or IUDs could bring was conducted, however. Better availability would naturally contribute to the reduction in the number of unwanted pregnancies and abortion procedures.

*„There are not many things which ensure women’s freedom and autonomy as well as contraception. It’s effective, safe and gives us the control of our fertility and lives. I can’t imagine how women lived when it did not exist”*

professor Magdalena Środa

The attitude of governments towards reproductive rights, including contraception has changed depending on the dominant political power. When a centre-left coalition SLD-UP-PSL took over the National NFP Team was dissolved in 2001 due to the fact that it focused solely on these methods which – as the government report rightly noted – “have limited effectiveness”. Instead a number of educational activities were planned, taking into account a broader scope of family planning methods<sup>5</sup>.

The government report which quoted the study “Maternity Questionnaire 2000/2001”, conducted among a random group of new mothers showed condoms to be the most popular contraceptive (35.9%). What was worrying was the fact that the second and third most popular methods were ineffective and historical methods – the calendar method and withdrawal. The report also pointed to the dropping of the age of first sex and the rising number of teenage pregnancies. It also concluded that access to means and methods of responsible procreation was particularly important for very young girls. Unfortunately the conclusions did not have a follow-up of further actions to improve the situation (such as subsidized contraception and legal changes to ensure teenagers had access to prescribed contraception without parental consent).

The government report on the implementation of the Act in 2002<sup>6</sup> referred to the study “Changes in reproductive attitudes and behaviours among the young and middle generation of Poles” (SGH and GUS), conducted in 2001<sup>7</sup>. The results confirmed that condoms were the most popular contraceptives while the second-largest group admitted to not using any method. Hormonal contraceptives remained unpopular. The government admitted that “women’s access to safe and effective means of responsible family planning was guaranteed in Poland at a basic level”. Unfortunately this sad conclusion was not followed by information whether the government was planning to do anything to improve it.

<sup>5</sup> Council of Ministers’ 2001 report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination

<sup>6</sup> Council of Ministers’ 2002 report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination

<sup>7</sup> Description of a study published by the National Population Council “Demographic Situation of Poland. Report 2001”, Rządowe Centrum Studiów Strategicznych, Warsaw 2003

After another change towards a right-wing government (PiS-Samoobrona-LPR) the report showed lack of interest in improving the accessibility of any type of family planning. Only one paragraph dealt with those issues, stating that there were the most modern contraceptives available in Poland. At full price<sup>8</sup>.

The document referred to a study conducted by professor Zbigniew Izdebski<sup>9</sup>, which showed that condoms were still the most popular method (54% of respondents) and that the number of women using oral contraceptives rose (to 30%) but still one in five relied on ineffective withdrawal method.

Between 2007 and 2009 government reports provided the same information regarding availability of contraception every year, quoting the recommendations of the Polish Gynaecological Association on responsible procreation, listing natural methods in the first place. Additionally, data by the Central Statistical Office (GUS) concerning the use of family planning methods in 2004 was quoted.

The last available report for 2011<sup>10</sup> (similarly to a few preceding ones) fails to describe any activities undertaken towards the implementation of the provision concerning free access to methods of responsible procreation, neither did they provide diagnoses of the situation. Reports only make an obvious assessment that contraception is becoming increasingly modern, safe and comfortable for women. Free access to these methods is however, largely limited in Poland.

## ► Actual accessibility of contraceptives

It should be stressed that the only contraceptives available without limitations are male condoms and spermicides (available in pharmacies but over-the-counter with a limited selection of products). Female condoms are available only in sex shops and online and they are quite expensive.

Real access to other products (especially modern hormonal contraception) consists only of permission to trade in these on the territory of Poland and the fact that according to the Pharmaceutical Law they ought to be available in every pharmacy or ordered upon request. Free access (term used in the Act) is more that the availability of contraceptives on shelves in pharmacies and it is much more than a possibility to purchase those. For many women modern contraception is inaccessible due to its price. **This could be solved by subsidizing contraception – something that is currently not being realized to the desired extent and therefore access to responsible procreation cannot be described as free.**

IUDs are not subsidized and women must purchase them individually. In theory the procedure of insertion and removal of an IUD is guaranteed by the state, in practice

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<sup>8</sup> Council of Ministers' 2004 report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination

<sup>9</sup> Report: Health of Women in Reproductive Age 15-49. Poland 2006. UNDP, Warsaw 2007

<sup>10</sup> Council of Ministers' 2011 report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination

however many public health facilities demand charges or the service is not provided at all. In private practice the price of the service (800-1000 PLN) is much higher than the price at the National Health Fund (NFZ), which is 40 PLN. The price of a private medical service is too high for most women who would have liked to use this form of contraception. The Federation sent letters regarding this issue to the Minister of Health, Chair of the NFZ and Patient's Rights Representative (RPP). The RPP office sent a reply ensuring that the insertion and removal of IUDs is a guaranteed service and ought to be provided under public health system. Also the Chair of NFZ regards these obligations as binding. That doesn't change the fact that the services are not provided in an appropriate manner. So far the government has not analyzed the actual situation.

Modern contraceptives include patches and vaginal rings. They are regarded as modern due to their chemical composition and the fact that they pass over the digestive system as the hormones enter the body through the skin or mucous membrane. These features make them accessible for women who otherwise could not use hormonal contraception. None of these products are subsidized.

Partial state funding concerns only certain pills mentioned in government reports (Microgynon 21, Rigevidon and Steridil 30). These brands are basically the same medical product (their chemical composition is identical). Looking back, in 1997 eight types of pills were co-funded by the state.

Each combined contraceptive pill contains estrogen-type of hormones and progestin-type hormones. There are different progestin types contained in pills and they have different doses. In subsidized pills there is the older generation progestin – levonorgestrel (which is also used in emergency contraception). Modern contraceptives do not include levonorgestrel, instead they contain other types of progestin which are safer, ensure more comfort of use and cause less side effects. Additionally, the dose of ethinylestradiol in these newer products has been reduced compared to levels in state-funded pills. None of the modern contraceptives is currently subsidized. It is worth mentioning that also minipills, i.e. pills containing only progestin and safe for use by breastfeeding women, are also not subsidized.

The 2011 government report states that the subsidy for pills mentioned above has been granted due to their non-contraceptive action, such as cycle regulation or painful periods. The report makes it clear it was not the contraceptive action of those pills that was the basis for state funding. This was not the first time that the government presented this position. A common interpretation has been that contraceptives cannot be subsidized only for their contraceptive action as they are not drugs and only drugs can be subsidized. However the analysis of legal provisions in the *Act on Pharmaceutical Law and the Act on Healthcare Services Funded by the State* does not contain provisions preventing the introduction of subsidies for contraceptive products even if they do not have non-contraceptive action. According to current provisions a drug or medicinal product (these terms are regarded as equal) is not only a substance or a mix of substances whose function is to prevent or treat disease or to enable a diagnosis. The definition also includes substances "used to bring back,

improve or modify physiological functions of the body through their pharmacological, immunological or metabolic action.” Hormonal contraceptives are therefore legally drugs and there are no obstacles to including them among state-subsidized drugs in connection with their contraceptive action. Moreover, to ensure the implementation of the principle of ensuring free access to the means of responsible procreation it seems necessary to expand the list of subsidized contraceptives. For many years Poland has not undertaken any action to improve the situation.

It is worth noting that also emergency contraceptives are not subsidized and the price is relatively high (60-120 PLN). Access is additionally limited as doctors are reluctant to give prescriptions and these products are prescription-only in Poland. In many countries around the world – even conservative ones, like Ireland – these products are currently available over the counter as they do not cause any serious side-effects if taken properly. Polish doctors often exercise conscientious objection (based on Article 39 of the *Act on the Profession of Doctor and Dentist*) or refuse to issue prescription without a reason. Refusal to issue prescription based on one’s conscience is an abuse of the above provision. Federation’s experience shows that emergency contraceptives are – deliberately or not – mistaken with abortion pills (commonly named “early miscarriage pills” by doctors)<sup>11</sup>. This may be a result of poor education during medical studies or have ideological grounds. It needs to be noted that in time-sensitive cases of the need for emergency contraception refusal to provide prescription forces women to pay for a private appointment in order to get EC in time to prevent an unwanted pregnancy. Polish law still does not contain any legal means women could use to effectively enforce access to emergency contraception in the public health system.

In 2012 access to emergency contraception became even more difficult. In connection with announced plans of amending the pharmaceutical law and the support for certain changes expressed by the chair of the National Pharmacists’ Council pharmacists began to exercise conscientious objection on a large scale despite the fact that it is currently not allowed in their case. Pharmacists’ union did not react to this new phenomenon, ignoring a letter sent by the Federation. The Federation received a reply to the letter sent to the Main Pharmaceutical Inspector in which he stressed that pharmacists’ refusal to sell medication based on conscientious objection was illegal and ought to be reported to regional pharmaceutical inspectorates.

## ► Access to contraceptive counselling

Authors of government reports have informed that OB-GYN counselling is guaranteed by the ordinance of the Minister of Health on guaranteed specialist outpatient services. The said ordinance does not, however, define the scope of such services. In consequence, the statement that “counselling includes in particular reproductive healthcare, including the selection of contraceptives” (government report for 2011) is neither grounded in the wording of the ordinance nor in medical practice. No study results or analysis was presented to support these conclusions.

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<sup>11</sup> Contraceptives prevent the pregnancy and abortion pills cause miscarriage.

Moreover the report did not state that there was any study on the availability of contraception conducted in 2011. The report also did not make any references to any sources or even analyze the Federation's 2010 commentary which provided a comprehensive diagnosis.

As was mentioned before, reports from implementation of the Act did not in any way refer to the availability of contraception. Neither did they contain any analysis of availability of individual contraceptives, the results of the lack of state funding nor its impact on the actual ability to exercise one's right to make conscious reproductive decisions. Despite the fact that the Federation has regularly signalled in its commentaries to government reports that the principle of free access is largely limited yet another government report does not make any comments regarding that issue. The Federation's position is that free access to contraception cannot be limited to allowing the sale of even a broad selection of contraceptives or to the presence of relevant legal obligations concerning the availability of such products in all pharmacies. The lack of comprehensive system of contraceptive counselling, abuse of conscientious objection by doctors who ought to provide prescriptions for contraceptives, potential threat of amending the pharmaceutical law and current violations by pharmacists who refuse to sell contraceptives based on their conscience and the lack of subsidies for modern contraception mean that the principle of free access to the means of responsible procreation is not implemented properly in Poland. The Federation believes that the obligation of ensuring free access to contraception implies that public institutions must organize the system in such manner so as not to limit the accessibility by the lack of information, faulty practice or drug prices. In practice modern contraception is available in Poland to women who know of its existence and correct use, who are well-off and have access to regular healthcare by doctors who would not try to limit their choices. This goes against the internationally recognized principle of human rights protection according to which access to family planning should include good availability – also price-wise – of contraceptives which are acceptable by those using them and have good quality<sup>12</sup>.

Government reports from the implementation of the Act in the past two decades and daily messages sent to the Federation by women – especially adolescents – who face obstacles in accessing the methods and means of responsible procreation indicate that the authorities do not take seriously their legal obligation to undertake action aimed at reducing the number of unplanned pregnancies which are often terminated in unsafe conditions. Failure to recognize the need to improve access to contraception for women whose life situation is difficult or to teenagers and the lack of broad programmes of free condom distribution (which is a norm in many EU countries) have shown that subsequent governments have ignored the needs of their citizens and their own legal obligations.

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<sup>12</sup> Available, accessible, affordable, acceptable and of good quality



## ▶ Access to family planning in Poland. A conversation with Bożena Jawień, OB-GYN

*You have been a doctor for many years. Based on your experience has the number of Polish women using contraception increased in the past two decades?*

Among my patients, the number of those using contraception had been increasing gradually until last year when it dropped significantly. Now it's coming back to the previous level. In my opinion the drop was a result of two factors: the economic crisis – the price of annual check-ups, bi-annual appointments and monthly prescriptions is often too high for patients, especially young ones. The other reason is patient's worries about health, especially blood clot complications of OCPs: a year ago there was rather sensational news in daily press about a study which revealed about 20 cases of fatal complications from using one of the hormonal pill types (the reality was that the 20 cases happened during a 20-year period), many of my patients asked me about the credibility of the study.

*Are more women today using modern contraceptives?*

Yes but many still rely on the calendar method or withdrawal.

*And what about state support? Are more contraceptives subsidized nowadays?*

Except for a 9-month period in 1997 when the Act on Family Planning was in force in its liberalized version, no contraceptives have ever been subsidized. The Federation rightly noted that in its annual commentaries to government reports from the implementation of the Act. I need to stress that some hormonal products which are subsidized have contraceptive action. The doctor may prescribe those, however, only if there are other non-contraceptive indications to use. In the absence of such indications you have to pay full price. If a doctor takes pity of a poor patient and violates the regulations, he or she may have to pay a penalty. Penalties are usually imposed every 5 years which means they are higher.

*Can an average Polish couple afford contraception?*

Condoms are quite expensive in Poland so it depends on how often you have sex. OCPs have been a bit more accessible since last year when a number of generic products appeared on the market at a price of ca. 15-20PLN per month. It's still a high price for some but it's cheaper than brand products. Prices are still an issue for many patients. I often prescribe emergency contraception (EC) to women who could not afford buying pills in a given month and condoms failed. EC is extremely costly – due to the difficulties with getting an appointment with a doctor at a public clinic women often need to get a private appointment and also pay several dozen zlotys for a prescription.

A very effective and long-term contraceptive, hormonal IUD costs about 700-800 PLN which is too much for most women. In my opinion all IUDs, hormonal and not, ought to be subsidized. It's a very good solution for many women, especially those who don't want more children or those who are not able to visit a doctor regularly or would not remember taking a pill every day.

When talking to patients I get an impression that they don't even dare to dream about subsidized contraception. Some tell me stories about their friends in the UK who can get contraception for free.

***Let's go back to EC, is it available over the counter in other countries and do you think it would be a good solution to introduce it in Poland?***

It's available OTC in many countries (England, France and even conservative Ireland or the US) with counselling from a pharmacist. I have not heard about complications happening more often in those countries.

In Poland there are even difficulties in obtaining prescriptions as many doctors refuse to issue them. Gynaecologists tend to apply conscientious objection even if it doesn't apply to their own conscience but that of their superiors. This is convenient in the context of emergency rooms for example where there are too many patients and not enough staff to serve them anyway. Mid-level staff don't register patients for appointments saying that the doctor would not give a prescription anyway and patients hear this in non-confidential settings, like hallways. Women rarely file complaints with the Representative for Patients' Rights, probably because the procedure requires that they provide their names.

Pharmacies are another obstacle. Some of them don't have enough pills on stock. Also, groups of pharmacists are demanding the right to apply conscientious objection.

***According to Polish regulations the age of consent for sex is 15 but does a sexually active minor have access to contraception?***

The basic issue here is that they ought to come to the clinic with their legal representative. Many girls have no idea of this requirement. In my mind it is crucial that teenagers over 15 are allowed to visit a gynaecologist on their own. We need to change the law to make it happen so I'm not hoping for a quick success.

Another thing is the use of IUDs by young women. Polish catalogue of medical products states that hormonal IUDs should not be regarded as first choice for women who have not given birth whereas the original document only says that IUDs are not recommended before a patient gets her first period. There is no other explanation to this than moral prejudice!

***Are doctors educated about fertility awareness methods and are patients interested?***

In the current system it is impossible for a doctor to educate his/her patients because appointment duration is limited. Basics of these methods should be taught in schools, doctors currently are only able to provide guidance in chart analysis. When I have asked my patients to bring charts for 3-4 months of observations they usually looked frightened and never came back.

***Thank you for the interview.***



# Sexuality education in Poland



# SEXUALITY EDUCATION IN POLAND BETWEEN 1993 AND 2013

## ► Legal status

Article 4.1 of the Act on Family Planning defines the state's obligation to introduce into school curriculum "knowledge of human sexuality, conscious and responsible parenthood, value of the family, life in its prenatal phase and methods of conscious procreation". Detailed rules of implementing that provision have been specified in the Ordinance of the Minister of Education of 12 August 1999 as amended on Pre-school and General Education Curriculum in Elementary Schools, Middle Schools and Secondary Schools. According to current provisions school subject "Preparation for Family Life" (hereinafter referred to as PFL) ought to comprise 14 lessons per year since 5th form of elementary school. Class attendance is not obligatory. After recent changes in regulations parents who do not wish their child to attend must provide a written statement. In 1996 when the Act had been changed for a brief period a new school subject "Knowledge on Human Sexuality" was introduced but in 1999 it was renamed „Preparation for Family Life"<sup>13</sup>. The name itself indicates that the lessons' content does not meet the international standards of sexuality education. The term „family" used in the name is also problematic as none of the legally binding documents referring to the education system provides its definition<sup>14</sup>.

## ► International standards of sexuality education

International standards of sexuality education have been laid down in final documents of the International Conference on Population and Development (Cairo 1994) and Fourth World Conference on Women (Beijing 1995) to which Poland agreed without reservations and in documents from five-year reviews of implementation of the above provisions. According to these documents education about health, including sexual and reproductive health, and related services, about gender equality, responsible sexual behaviours, STIs (including HIV and AIDS) or sexual violence ought to take place at all levels of formal and informal education and states should introduce such programmes in cooperation with NGOs. Provisions also stress the role of adolescents in shaping curricula. UN CPD 2012 resolution adds even more weight to these provisions by appealing to governments to provide "science-based, comprehensive education about

<sup>13</sup> Council of Ministers' report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination in 1999.

<sup>14</sup> Chustecka, M., 2011. Analiza podręczników i podstawy programowej – przedmiot wychowanie do życia w rodzinie. (Analysis of course books and teaching curriculum for the subject Preparation for Family Life) In: M. Abramowicz, ed. Wielka nieobecna. O edukacji antydyskryminacyjnej w systemie edukacji formalnej w Polsce. Raport z badań. Warsaw: Towarzystwo Edukacji Antydyskryminacyjnej, p. 227-289.

human sexuality, sexual and reproductive health, human rights and gender equality so that people could realize their sexuality in a positive and responsible manner." The right to sexuality education is regarded as a human right. This was laid down in the Declaration of Sexual Rights adopted in 1999 at the 14<sup>th</sup> World Congress of Sexology. In 2010 WHO Europe published „Standards for Sexuality Education“ which contain detailed recommendations on content and format of sexuality education, underlining that psychosexual development begins at birth and parents or guardians ought to be a model of positive human relationships from the child's earliest moments.

## ► Sexuality education in Poland – implementation of the Act

### ► Student attendance and lessons in schools

First statistics of student attendance at Preparation for Family Life courses were published in the government report from the implementation of the Act in 2000. Official statistics, however, did not specify how many pupils were absent because courses were not provided in their school and how many did not obtain parental consent.

In 2000 79% of schools provided "Knowledge on Human Sexuality" courses and 9% had it planned in for the following term.

Next available data was for 2003 when 55% Polish schools had been subject to monitoring. Out of these 100% declared providing PFL courses and 95% stated they included related topics in its additional educational and prevention programmes.

In 2005 surveys showed that PFL was present in 96% of schools.

According to 2006 surveys only 85% of schools provided PFL, including 90.7% of middle schools and 81.7% of vocational schools and 81.5% specialized secondary schools. The report did not include any analysis as to why the number of schools providing such courses dropped compared to the preceding year.

More detailed statistics concerning student attendance started in the report from 2007. This was a result of amendments to the Ordinance of the Minister of Education and Sports of 16 December 2004 on Detailed Scope of Data in Educational Databases, Data Identifying Entities Maintaining Educational Databases, Deadlines for Sharing Data Between Educational Databases and Templates of Summary Report Print-Outs. The new provisions stated that educational data ought to include statistics of student attendance at PFL courses and the number of teachers qualified to provide such courses.

In 2011 the Centre for Education Development (ORE) conducted a study on PFL in middle schools. Researchers analyzed 635 first forms and 635 second forms. Data collected revealed that 56 second forms (8.81%) and 67 first forms (10.55%) did not include PFL in lesson plans. Where courses had been planned 452 parents of first form students (0.99%) and 673 parents of second form students (1.48%) did not consent to their children's participation in class.

## Students attending class (in %)

	2007	2008	2009	2010	2011
Elementary school	76,2	64,7	69,19	70,4	70,83
Middle school	77,2	65,4	67,54	69,7	74,87
Secondary school	46,7	37,7	39,76	38,4	35,85
Specialized secondary school	52	43,7	48,40	46,7	46,47
Technical secondary school	56,9	50,5	52,12	51,1	50,38
Vocational school	46,3	43,7	57,78	47,6	46,86

2007-2011 data indicates that at secondary school level attendance at PFL classes is the lowest. So far the Ministry of Education has not commissioned a detailed analysis of the causes of this situation. One of the possible reasons could be that classes are planned as first or last lesson during the day. Ponton Group of Sex Educators asked pupils in 2009 during the study "What Does Sexuality Education Really Look Like in Poland?" about their lesson plans<sup>15</sup>. 73.8% said that classed had been planned at the beginning or end of the day's schedule. Many young people suggested also that they had asked their parents to opt them out of PFL classes due to strictly conservative content as regards human sexuality and family. Another reason for opting out of class was the fact that this subject was not obligatory and young people – especially at secondary school level – are generally overloaded with learning content and prefer to concentrate on their exam preps, giving up on any additional courses.

### ► Professional qualifications of teachers and state support for teacher training

In the period following the introduction of education on human sexuality teacher and educator training was conducted on a large scale. Unfortunately training provided through the programme „Promoting Physical, Mental and Social Well-Being in and through the Education System” was rated unsatisfactory in 1995. Ministry of Education ordered modifications to the programme „so as to include – beside psychological and moral aspects – also comprehensive medical knowledge of family planning, responsible parenthood and promotion of healthy behaviour”<sup>16</sup>. Despite availability of postgraduate studies in sexuality education in several regions few teachers enrolled – wherever courses required long travel and lodging. Additionally the price and poor chances of finding relevant jobs were discouraging factors.

<sup>15</sup> Ponton Group of Sex Educators "What Does Sex Education Really Look Like in Poland" [online], Warsaw, 2009, accessed 17 December 2013 Available online:

<[http://ponton.org.pl/sites/ponton/files/raport\\_jaka\\_edukacja\\_seksualna\\_grupa\\_ponton\\_2009.pdf](http://ponton.org.pl/sites/ponton/files/raport_jaka_edukacja_seksualna_grupa_ponton_2009.pdf)>

<sup>16</sup> Council of Ministers' report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination in 1995

According to the government report in 1998 there were 1134 fully qualified teachers of Preparation for Family Life but at the end of the year the number grew to 5000 as a result of trainings organized by the Ministry of Education and Sports. The Ministry of Health organized regular courses in HIV and AIDS prevention education for teachers.

In 1999 4600 teachers completed PFL education courses. The government had made an optimistic assumption that in September 2000 there would be a filled PFL teaching post in every school<sup>17</sup>. This plan has not been fulfilled until today.

In 2000 the Ministry of Education organized PFL education courses for 2433 teachers and sponsored a teacher conference "Adolescents and Love – Attitudes to Sexuality in HIV Prevention". In 2001 a conference for PFL teachers was organized in order to evaluate the progress in introducing the subject to schools so far. An evaluation form was also sent to teacher consultants for the purpose of evaluating the qualifications of PFL teachers. 29 people returned the survey comprising 65% of all consultants. According to them in their respective regions 6497 people taught the subject, of whom 34% completed postgraduate courses, 53.5% did additional courses, 10% did not possess full qualifications and 2.7% had no qualifications. 43.4% taught Preparation for Family Life in one or more schools and 4.2% taught another subject. The data is incomplete because not all consultants answered all questions. After the government coalition had changed to centre-left (SLD-UP-PSL) government reports revealed that „ideological approach to sexuality education made it difficult for teachers who completed postgraduate courses in PFL at renowned universities to find jobs". Jobs were usually given to people who completed courses in the Ministry of Education's Centre for Psychological and Teaching Support"<sup>18</sup>.

Statistics based on surveys conducted in 2003 in 55% of Polish schools say that 83% of PFL teachers possessed required qualifications. In order to support teacher qualifications the Ministry of Education organized a conference „Prevention of Sexual Violence and Abuse of Children in the Sex Industry". Additionally 641 religious education teachers and 666 other teachers attended courses on HIV and AIDS and provided HIV prevention education to 45679 students. The Ministry of Education and Sports organized four supplementary courses for teachers, psychologists, pedagogues, school principals and local government officials responsible for education. These courses covered i.a. issues of Preparation for Family Life education. The Ministry also organized conferences, seminars and workshops about sexuality education in schools.

In 2004 the Ministry in cooperation with the Social AIDS Committee organized a conference for school system supervisors on the issue of HIV and AIDS prevention in schools. In the same year the Ministry of Education and Sports held teacher conferences „Risks in Adolescence" and "HIV and AIDS Prevention in Schools" during which participants obtained medical guides to be used in education on HIV and AIDS and other STIs. The Ministry had increased the budget for its Psychological and Teaching Support Centre which organized training conferences on the issue of HIV

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<sup>17</sup> Council of Ministers' report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination in 1999

<sup>18</sup> Council of Ministers' report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination in 2001.



and AIDS. The National AIDS Centre conducted a series of courses on these issues for teachers of children and youth and for educators applying for an expert certificate.

In 2005 the National AIDS Centre organized a training conference „Preparation for Family Life – Problems and Dilemmas. Prevention of HIV/AIDS in Schools“.

In 2006 there 31827 teachers taught PFL of whom 90% possessed required qualifications.

In 2007 10202 people taught the subject. 301 had a PhD, 8922 had an M.A. or B.A. and 73 had secondary education. Among them 85.6% were qualified to provide PFL courses and 0.30% had no official teaching skills. In the same year the Ministry of Education sponsored a conference at the Cardinal Wyszyński University (UKSW) “For the Good of the Family – in Search of Truth, Goodness and Beauty”, aimed at teachers of PFL. The conference did not have much to do with science as the majority of panellists openly spoke from their personal, Roman Catholic point of view and the day started with Holy Mass. The conference’s honorary patron was Primate Józef Glemp.

In 2008 some 1790 teachers were employed to provide PFL full time. In earlier reports the numbers had been much higher, possibly due to the fact that PFL teachers have other forms of job contracts or classes are provided by external educators, however the inconsistency in presenting these statistics makes it impossible to provide an analysis.

In the following years reports failed to mention the number of people teaching PFL in schools, only the list of training institutions was provided.

In 2009 Ponton Group of Sex Educators published a report “What Does Sex Education Really Look Like in Poland?”<sup>19</sup>, which revealed that among the people who have had some kind of formal sex education, 24.1% reported having a priest, nun or religious education teacher providing PFL courses. Young people complained that in their schools the subject was taught by teachers of other subjects – PE, biology or Polish literature – who were not prepared to teach PFL. 79.2% admitted that it was not allowed to discuss with the teacher in class and instead one set of values was imposed on them. Letters from pupils revealed shocking examples of information provided by teachers:

*In secondary school they told us only calendar method can help prevent pregnancy because condoms were Satan’s invention.*

*We had Preparation for Family Life with a 60-year-old teacher who told us that one of contraceptive methods was for a girl to get into a bathtub filled with water and vinegar so as to rinse out and kill sperm!*

*Our PFL teacher refused to discuss contraception and called us poorly behaved brats (we were 15 then) when we suggested a conversation about contraceptive pills.*

Letters of young people to Ponton Group of Sex Educators

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<sup>19</sup> Idem

A study conducted by Interaktywny Instytut Badań Rynkowych (2010) for Gazeta Edukacja among middle school students and their parents revealed that PFL is taught by teachers of different subjects – history and social sciences (20%), biology (21%), religious education (14%) or Polish literature (5%). In its report from implementation of the Act on Family Planning in 2011 the government admitted that out of 14578 people teaching PFL 3722 did not possess required qualifications. The Ministry of Education has not presented any solutions so far.

The question that needs to be asked is why, despite twenty years of postgraduate courses for PFL teachers many schools still employ people who do not possess the necessary qualifications and many other schools do not have a staff PFL teacher at all. Ponton Group of Sex Educators and other organizations working on issues of sexuality education receive requests to organize lectures all over Poland. It seems the big obstacle to ensuring full access to sexuality education is money and government budgets. Decision makers ought to consider how to solve this problem.

### ► **Preparation for Family Life curricula, teaching aids and course books**

In 1995 there were 14 course books for PFL including several representing comprehensive view of sexuality education. At the same time many teachers used brochures and publications which promoted anti-choice views and strictly natural family planning accepted by the Catholic Church. Due to financial difficulties teaching posters “Family Planning Methods” were not produced in 1995<sup>20</sup>.

In 1998 when the Constitutional Court repealed the amended Act on Family Planning and new Ministry of Education ordinances came into power the newly named subject “Preparation for Family Life” was introduced in schools. Government report from 1998<sup>21</sup> is a good example of conservative attitudes of decision-makers at the time. Young people were supposed to study human sexuality in the broader context of relationships and psychology which was in line with modern concepts of sexuality education. Unfortunately government experts decided to take one step further and connect education with pro-family upbringing with the assumption that every young person was supposed to get married and have children in the future. Moreover, the upbringing of children was described using the term “formation”, typical for Catholic groups (it is used in Christianity to name the process of a faithful person’s development towards sainthood and perfection).

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<sup>20</sup> Idem

<sup>21</sup> Council of Ministers’ report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination in 1998

*„The misunderstanding comes from the very name of sexuality education – if it’s called preparation for family life it is no longer education. It is the family which prepares for family life - parents, grandparents, sometimes foster parents. It is not something that can be done in school because this is not science but rather a practical skill. Getting access to knowledge and information is the right of everyone and we all should be free to apply it according to our capabilities, needs, views and life situation.”*

Alicja Długolecka, PhD, pedagogue, sexuality educator

In 1998 the Advisory and Evaluation Team responsible for implementation of the subject “Education on Human Sexuality” prepared course books and lesson plans for teachers. The Ministry of Education and Sports set aside 50 000 PLN for implementation purposes. The money was spent on: educational posters about the human reproductive system, slides “Mom, Dad and Me”, foils about HIV and AIDS, models “How I was conceived” presenting the phases of foetal growth, foils “Medical foundations of NFP” and lesson scripts. The Ministry of Education and Sports produced three series of educational films: “The Road to Adulthood” (for elementary and middle schools), “Let’s Choose Together” (for middle and secondary schools), “Marriage and Family” (for elementary schools).

In 1999 the schools which bought course books and scripts got access to the health education curriculum. The Ministry of Education purchased course books and distributed them in schools.

By the end of 2000 the list of course books and teaching aids for PFL contained 111 items. The ministry bought films, foils and teaching curricula and distributed them in school and teacher libraries. By the end of 2000 twenty teaching curricula and eight course books had been approved.

By the end of 2001 the ministry had approved 116 teaching aids for PFL. In the same year it also approved seven curricula and one course book. The government report noted that certain curricula and teaching aids were subject to criticism and the new ordinance obliged schools to provide neutral education about contraception starting in middle schools<sup>22</sup>.

According to the ordinance of the Minister of Education of 24 April 2002 on terms and mode of approval of curricula, pre-school curricula, course books and recommended teaching aids (Journal of Laws, Dz. U. of 2002 no. 69, item 635) in 2002 the verification of PFL course books started and opinions sent by experts were analyzed. As a result of this process one course book was removed from the list. The list was available online and teachers were to choose the book they preferred.

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<sup>22</sup> Council of Ministers’ report from the implementation of the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination in 2001

In 2003 the list of approved course books included one item for elementary school level (written from Catholic point of view), seven books for middle schools (including ones appropriate from the point of view of international standards of sexuality education) and two books for secondary schools (both representing the Catholic approach).

In 2004 a pilot project "Be Responsible – Education for Responsibility and Partnership in the Family" was launched in three regions. The curriculum included practical childcare skills using an interactive baby model. The programme was evaluated as good and schools made requests to continue its implementation. In 2005 the project was expanded to other regions and implemented in 90 schools. Unfortunately it was not continued in following years.

The Ministry of Education and Sports informed publishers that the selection of PFL course books was not satisfactory to teachers and requested publishers to consider working on new books.

In school year 2009/2010 the new curriculum for Preparation for Family Life was launched<sup>23</sup>. In elementary schools the subjects ought to be introduced in fourth form. The curriculum for 4-6 form lessons included family and emotional ties, conflicts and conflict solution, pregnancy and birth. The curriculum suggests that teachers discuss not only health aspects but also ethical and psychological aspects of family planning. This recommendation raises doubts as it goes beyond facts and science based education. Ethical aspects of contraception are usually discussed during religious education, ethics or life skills lessons.

The new middle school curriculum for PFL includes such topics as human development; friendship; infatuation; love; basic information about human sexual development – gender identity, masculinity and femininity; dangers of puberty – sexual pressure, addiction, pornography, teenage prostitution; values of human sexuality: love, marriage, parenthood, the meaning of responsible sexual behaviour and building lasting and happy relationships. Many items listed in the curriculum can be understood as recommendations for teachers to make their lessons heteronormative and treat questioning of one's gender identity (it is hard to say what the curriculum authors meant by this term). The document pays a lot of attention to self-identification of students as boys or girls and the differences between genders and the need to accept gender characteristics. Only one family model is supported – marriage. People who raise their children alone are described with a judgmental term "incomplete families". Young people's sexuality is a vision of threats. Even behaviours typical and normal in most cases, such as masturbation are described as problems.

PFL curricula for secondary schools include such topics as: norms in sexual behaviour; sexual violence and crimes and their prevention; medical, legal and psychological counselling; STIs and their prevention; youth and family counselling in Poland; puberty and love. Again at this level issues of sexuality are discussed contrary to international standards of sexuality education. It seems authors of the curriculum mixed up subjects they had been assigned to work on. For example teachers are recommended to discuss "moral arguments for delaying sexual debut" and impose unscientific views

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<sup>23</sup> Ordinance of the Minister of Education of 23 December 2008 on teaching curricula by school type in pre-schools and general education institutions (Journal of Laws [Dz.U.] of 15 January 2009. no. 4, item 17)

on abortion as a “threat to physical and mental health”. Much attention is dedicated to preparation for marriage while in the modern world this is not the only form of human relationships. According to the recent Centre of Public Opinion Research (CBOS)<sup>24</sup> study 68% of Poles accept that young people are delaying or skipping marriage altogether. Since social attitudes are changing it would be more recommended to talk about building healthy relationships at PFL regardless of their legal status.

Current procedures for using course books in school education have been laid down in the Ordinance of the Minister of Education of 21 June 2012 on Approval for Use of School and Pre-School Curricula and Course Books. Books ought to take into account “the up-to-date scientific knowledge”, be adapted to the “education level” and contain “information within the limits of the law including ratified international agreements”. For approval a course book requires three positive opinions of ministry experts. Currently there are 19 experts, five of whom work at Catholic universities, one is a priest and several others are well-known activists of anti-choice groups which oppose sexuality education, contraception and abortion rights and are hostile towards LGBT persons. Even though Preparation for Family Life should begin at elementary school level, books for this stage of education are missing from the official list. Middle school level offers only two titles, “Walking Towards Adulthood”, edited by Teresa Król<sup>25</sup> and “Preparation for Family Life” by Felicja Kalinowska<sup>26</sup>. A secondary school edition of “Walking Towards Adulthood” has been only recently approved by the ministry. When the education system reform entered into force a review of course books took place. One book “Who Am I? Preparation for Family Life” by Tomasz Garstka, Michał Kostrzewski and Jacek Królikowski was removed from the list as a result of a negative opinion issued by father J. Augustyn. The same book had been positively reviewed in the past by such experts as professor Zbigniew Lew Starowicz, head of the Polish Sexology Association. The reviewer decided that a mention of same-sex marriages in some countries was demoralizing to students. The authors appealed from this decision but the ministry never replied<sup>27</sup>.

Content-wise Król and Kalinowska’s books favour a conservative model of a Catholic family with many children. Students are also fed negative attitudes about women’s right to decide including about abortion in all cases and are discouraged from using contraception and encouraged to practice natural family planning and periodic abstinence (according to the Vatican teachings). Gender stereotypes are not only clear in the books’ texts but also in illustrations – Król’s books feature pictures of girls in miniskirts, high heels and jewellery which clearly support messaging in the chapter on puberty, according to which the biggest advantages of women are their looks and their only ambition is to get married and have kids. “Walking Towards Adulthood” also includes shocking statements around sexual violence. One story suggests that female students who drink at parties and wear big cleavage can “provoke” boys to rape them. Instead of focusing on shaping young men’s attitudes towards understanding that

<sup>24</sup> „Społeczne oceny alternatywy życia małżeńskiego (Social views on alternatives to marriage), CBOS, 2013, Warsaw. Available online <[http://cbos.pl/SPISKOM.POL/2013/K\\_032\\_13.PDF](http://cbos.pl/SPISKOM.POL/2013/K_032_13.PDF)>

<sup>25</sup> Król, T., red., 2011. Wędrując ku dorosłości. (Walking Towards Adulthood) Cracow: Wydawnictwo Rubikon

<sup>26</sup> Kalinowska, F., 2002. Wychowanie do życia w rodzinie. (Preparation for Family Life). Warsaw: Efka Wydawnictwo Szkolne Felicja Kalinowska

<sup>27</sup> Obidniak, D., 2011. Polityczna edukacja seksualna. (Politicized Sex Education) IN: D. Obidniak, ed. Czytanka o dyskryminacji. Warsaw: ZNP, p. 148-171.

sex must be consensual and educating young women that they have a right to say no in all circumstances, the book puts the blame on victims. Similar undertones can be found in the “Contraception” chapter where it’s pointed out that a woman using contraception is “always available” and cannot refuse sex to her partner. Publications like these should not be approved by the Ministry of Education which is obliged by international agreements to provide sexual violence prevention programmes in schools. Unfortunately the Polish school system turns a blind eye on these vital subjects. According to the study by Interactive Institute of Market Research<sup>28</sup> 88% of middle school students would like to have discussed issues of violence in class but only 32% actually have. This is particularly worrying in light of recent statistics indicating a rise in the number of rapes committed in schools (72 in 2012 compared to 14 in 2011).

PFL course books are of equally poor quality on issues of sexual orientation and gender identity. Professor Lew Starowicz<sup>29</sup> prepared an expert sexological evaluation and concluded that LGBT issues are discussed in full or partly in a judgmental way and books contain factual errors. Another researcher, Jacek Kochanowski<sup>30</sup>, PhD stated that some content of the book by T. Król is “scandalous” in their stigmatization of homosexuality, its depiction as a deviation from the norm and justification of hostility to non-heterosexual persons. Even the chapter structure – both in Kalinowska’s and Król’s books – is problematic as it discusses homosexuality or transgender identity next to disorders such as paedophilia and exhibitionism. Moreover, sections about HIV and AIDS reinforce inaccurate divisions into “high-risk” groups and include gay men and lesbians among them.

Modern theories of sexuality education do not concentrate on negative consequences of sexual activity, instead they highlight positive effects of our actions. Sexuality itself is not regarded as something evil, to be condemned but as one of the important parts of our life in all its stages. Official PFL course books take a different approach and it’s not that surprising, taking into account the teaching curriculum which lists masturbation among “problems of puberty and how to deal with them”. And so „Walking Towards Adulthood” claims (only in the chapter aimed at boys) that masturbation is an “immature” form of sexual activity and recommends that teenagers strive for “self-control” and exercise the strength of their character by giving up on doing it. Girls are fed slightly different messages – they are to “respect themselves” so as to “give themselves to their loved one” for the rest of their life, after marriage.

Both books for middle school impose Catholic responses to questions about the beginning of life and claim that life starts at conception, despite the fact that modern

<sup>28</sup> Interaktywny Instytut Badań Rynkowych, 2010. Wychowanie do życia w rodzinie w gimnazjum – przedmiot i podręczniki. (Preparation for Family Life in Middle Schools – Subject and Coursebooks) Warsaw: Interaktywny Instytut Badań Rynkowych.

<sup>29</sup> Lew Starowicz, Z. et al., 2013. Szkoła milczenia. Sprawozdanie z przeglądu treści szkolnych podręczników do biologii, wiedzy o społeczeństwie i wychowania do życia w rodzinie pod kątem przedstawienia w nich problematyki LGBTQ i treści homofobicznych. (School of Silence. Study of LGBT Messaging in School Books) Toruń: Stowarzyszenie Na Rzecz Lesbijek, Gejów, Osób Biseksualnych, Osób Transpłciowych Oraz Osób Queer „Pracownia Różnorodności”

<sup>30</sup> Kochanowski, J. Przegląd podręczników z punktu widzenia gender studies. IN: Z. Lew Starowicz, Z. et al. Szkoła milczenia. Sprawozdanie z przeglądu treści szkolnych podręczników do biologii, wiedzy o społeczeństwie i wychowania do życia w rodzinie pod kątem przedstawienia w nich problematyki LGBTQ i treści homofobicznych. Toruń: Stowarzyszenie Na Rzecz Lesbijek, Gejów, Osób Biseksualnych, Osób Transpłciowych Oraz Osób Queer „Pracownia Różnorodności”

science regards implantation of the fertilized egg in the uterus as the beginning of pregnancy. For Król a fertilized egg is already a “tiny person”. Views of both authors on the consequences of abortion are also in opposition to psychological knowledge. According to Król and Kalinowska abortion always leads to trauma in women. Their books also depict modern contraception – contrary to research results – as dangerous (pills) and ineffective (condoms are described as leaky which is not true – all condoms are tested and don’t have pores). It is difficult to comprehend how experts could have approved the book by Teresa Król in which emergency contraception is erroneously described as the abortion pill. This information is untrue and contradicts the official position of the World Health Organization (WHO) on the issue.

In recent years sex educators from Ponton Group have noted rising influence of pornography on sexual behaviours and attitudes of adolescents. There are new threats such as sexting, cyber bullying (sending of sexually explicit pictures and films via mobile phones, often a means of blackmail or humiliation), grooming and sponsoring. According to studies<sup>31</sup> conducted by Dzieci Niczyje Foundation and Gemius SA during the campaign “Children Online” among 12-17 year-olds 68% of children have been asked out by people met online and 71% found pornographic content (63% accidentally). 14% of respondents admitted that someone distributed compromising materials about them online or by mobile phone. EU Kids Online<sup>32</sup> study conducted among children aged 9-16 revealed that one in seven children in Poland found sexually-related content online. To make things worse parents usually have no idea that their children saw such materials – 85% of parents (in Poland and 52% EU-wide) whose children received sexually explicit materials online did not know about that. PFL teaching programs and course books completely ignore threats surrounding new technologies.

## ► Conclusions

Sexuality education is the most politicized and ideologically played subject in Polish schools. An overview of governmental reports sheds some light on political arguments around this issue happening over the last 20 years. Constant changes in regulations, teaching curricula and course books make the implementation of the subject unsustainable. Moreover, government investments in teacher training or book purchases for schools are insufficient. Government reports mention numerous instances of decreasing budgets for educational tasks prescribed in the Act on Family Planning. Another visible problem is the lack of dialogue and consultation with parents and children as to their needs and expectations from sexuality education. This is striking since studies, such as a study by CBOS<sup>33</sup>, indicate that 90% of Poles believe teaching in schools about sexuality is important. Research by professor

<sup>31</sup> Wojtaszik, L., 2008. Charakterystyka zagrożeń dla dzieci w Internecie (Types of Internet Threats for Children), Warszawa: Fundacja Dzieci Niczyje, Available in: [http://dzieckowsieci.fdn.pl/sites/default/files/file/pdf/zagrozenia\\_dzieci\\_w\\_internecie.pdf](http://dzieckowsieci.fdn.pl/sites/default/files/file/pdf/zagrozenia_dzieci_w_internecie.pdf) [Access 08.04.2013]

<sup>32</sup> Kirwil, L., 2010. Polskie dzieci w Internecie. Zagrożenia i bezpieczeństwo na tle danych dla UE (Polish Children Online. Threats and Security Compared to EU Data) Warszawa: SWPS, Available in: [http://www.swps.pl/images/stories/dokumenty/raport\\_eukidsonline\\_polska.pdf](http://www.swps.pl/images/stories/dokumenty/raport_eukidsonline_polska.pdf) [Access 11.04.2013]

<sup>33</sup> Centrum Badań Opinii Społecznej (CBOS), 2007. O wychowaniu seksualnym młodzieży. (On Sex Education of Young People) Warsaw: CBOS

Zbigniew Izdebski<sup>34</sup> has confirmed these results – according to it 91.8% of adults in Poland believe sexuality education is needed in schools. Government reports rightly present the implementation of sexuality education in Polish schools as chaotic. There is no regular and consistent monitoring of progress and difficulties. Politicians have surrendered to pressure from Roman Catholic hierarchy – a clear example is the recent proposal by the Minister of Education Joanna Kluzik-Rostkowska to introduce student segregation in access to sexuality education. According to her parents should have the right to decide whether their children would learn about sexuality in a comprehensive manner or only about the conservative, Catholic attitudes towards the matter.

Based on many years of working with teens and teachers as well as studies Federation for Women and Family Planning and Ponton Group of Sex Educators have the following recommendations for the Ministry of Education:

1. An obligatory subject “Education on Human Sexuality” should be introduced and a new teaching curriculum prepared according to comprehensive, reliable and neutral sexuality education standards.
2. The list of approved course books needs to be updated and titles containing unscientific and judgmental information should be removed from it.
3. Training of PFL teachers ought to be evaluated to eliminate ideological and unscientific courses. It is also necessary to resolve the issue of PFL teachers without necessary qualifications.
4. Monitoring of sexuality education should be put in place and effectiveness of courses should be studied in the context of teen pregnancy, HIV and STI and sexual violence reduction.

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<sup>34</sup> Izdebski, Z., Niemiec, T., Wąż, K., 2011. (Zbyt) młodzi rodzice. (Too Young Parents) Warsaw: Wydawnictwo TRIO



# Timeline of the act on family planning, protection of the human foetus and conditions of pregnancy termination (and other relevant legal acts)

## 1<sup>st</sup> term of the Polish Sejm (1991-1993)

- **25 March 1993** – deputies tabled a bill on legal protection of the conceived child (reference no. (druk sejmowy) 190), Anna Knysok, MP was the rapporteur;
- **7 January 1993** – the Sejm passed the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination. The law permitted abortion on three grounds: 1. when the pregnancy posed a threat to woman's life or health, 2. when screening revealed a serious risk of severe and irreversible malformation of the foetus or an incurable life-threatening disease, 3. when pregnancy was a result of a crime. The Act also amended the Criminal Code and specified penalties for "causing the death of a conceived child," with the exception of actions by "the mother of the conceived child" and the doctor in three above cases (Journal of Laws [Dz.U.] of 1993, no. 17, item 78);
- **14 March 1993** – the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination entered into force.

## 2<sup>nd</sup> term of the Polish Sejm (1993-1997)

- **3 December 1993** – Parliamentary Women's Group tabled a bill amending the Criminal Code which removed penalties for doctors performing abortions to women justifying their decision with difficult circumstances (ref. no. 157), rapporteur Barbara Labuda, MP;
- **11 June 1994** – Sejm passed the Act Amending the Criminal Code, removing penalties for doctors performing abortions to women justifying their decision with difficult circumstances;
- **4 July 1994** – President Lech Wałęsa vetoed the Act;
- **2 September 1994** – the Sejm failed to repeal the President's veto (40 votes missing), the Act Amending the Criminal Code did not enter into force;
- **2 March 1995** – parliamentary Committee on Social Policies and Family and Committee on Health tabled a bill amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination to oblige the government to prepare reports from the Act's implementation (ref. no. 893);

- **30 March 1995** – the Sejm passed the act amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination and therefore obliged the government to submit annual reports from the implementation and on the effects of the Act (Journal of Laws of 1995, no. 66, item 334);
- **14 December 1995** – deputies submitted a bill amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination and the Criminal Code so as to decriminalize abortion, expand the list of grounds allowing for legal termination of pregnancy, subsidize contraception and introduce sexuality education in schools (ref. no. 1502), rapporteur Marek Balicki, MP;
- **30 August 1996** – the Sejm passed the bill amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination and other acts, making abortion legal for women facing personal difficulties (Journal of Laws of 1996, no. 139, item 646);
- **4 January 1997** – the Act entered into force but a group of senators made a constitutional complaint against it;
- **28 May 1997** – the Constitutional Court judged that the provision allowing for abortion on grounds of a difficult personal situation of a woman was unconstitutional (case no. K 26/96);
- **18 December 1997** – President of the Constitutional Court issued an announcement about the removal of the provision permitting abortion on the grounds of difficult personal circumstances (Journal of Laws of 1997, no. 157, item 1040);
- **6 June 1997** – the Sejm passed the Act Criminal Code including Articles 152 and 153 imposing penalties for abortion and abortion aid or induction. Penalties for women undergoing abortions were not introduced (Journal of Laws of 1997, no. 88, item 553).

### 3<sup>rd</sup> term of the Polish Sejm (1997-2001))

- **26 November 1997** – government tabled a bill amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination which would remove the competencies of the Minister of Education and his/her obligations as regards the introduction of sexuality education to school curricula and training of teachers (ref. no. 53), Minister of Education was the rapporteur;
- **11 December 1997** – the Sejm passed the Act amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination;
- **26 December 1997** – President Aleksander Kwaśniewski vetoed the act;
- **30 December 1997** – the Sejm failed to repeal the veto (88-votes in majority) and the amendments did not enter into force;
- **4 June 1998** – deputies tabled a bill amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination so as to revoke statutory prerogatives of the Minister of Education as regards the introduction of a school subject “Education on Human Sexuality” (ref. no. 418), rapporteur Kazimierz Marcinkiewicz;

- **16 December 1998** – the Sejm passed the act amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination but its wording was different than the bill; the new law granted the Minister of Education prerogatives to introduce sexuality education in schools and prepare the curriculum and organize teacher training, (Journal of Laws of 1999, no. 5, item 32);
- **8 July 1999** – the Sejm passed the Act amending the Act on Criminal Code and the Act on the Medical Profession. In the amended Articles 152 and 153 of the Criminal Code and articles referring to medical experiments on the Act on the Medical Profession the term “foetus” was replaced by “conceived child” and a provision banning the use of “conceived children” in medical experiments was introduced. Also new Article 157a of the Criminal Code criminalized “damaging the body of the conceived child” but making an exception for “the mother of the conceived child” (Journal of Laws of 1999, no. 64, item 729).

#### 4<sup>th</sup> term of the Polish Sejm (2001-2005)

- **21 November 2001** – the government tabled a bill amending the acts on welfare; on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination; on social and professional rehabilitation and employment of disabled persons and the Act on the Social Security System (ref. no 66), Minister of Labour and Social Policy was the rapporteur;
- **17 December 2001** – the Sejm passed the Act amending the acts on welfare; on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination; on social and professional rehabilitation and employment of disabled persons and the act on the Social Security System. The amendments of the Act on Family Planning were introduced in Article 2 section 1 (2) from “during pregnancy, labour and postpartum” to “according to the Act on welfare” (Journal of Laws of 2001, no. 154, item 1972);
- **2 April 2004** – citizens tabled a bill on responsible parenthood (ref. no. 3215), Joanna Senyszyn, MP was rapporteur;
- **30 July 2004** – bill on responsible parenthood was sent to first reading in plenary;
- **15 February 2005** – the Sejm (by 16 votes) repealed the bill to maintain agenda item “First reading of the citizen’s bill on responsible parenthood”. The bill never got back to plenary.

#### 5<sup>th</sup> term of the Polish Sejm (2005-2007)

- **7 September 2006** – citizens tabled a bill amending the Constitution of the Republic of Poland and introducing legal protection of life from conception (ref. no. 993) into the document; Marek Kotlinowski was rapporteur;
- **13 April 2007** – the Sejm rejected the bill (by 148 votes) amending the Constitution of the Republic of Poland.

## 6<sup>th</sup> term of the Polish Sejm (2007-2011)

- **24 October 2008** – citizens tabled a bill amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination so as to expand access to contraception and family planning counselling (ref. no. 1786), Izabela Jaruga-Nowacka, MP was rapporteur;
- **17 March 2009** – the bill was sent to the Committee on Education, Science and Youth, the Committee on Social Policy and Family, the Committee on Local Government and Regional Policy and the Health Committee;
- **10 April 2010** – the bill was revoked;
- **29 April 2010** – deputies tabled a bill amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination which did not include new abortion provisions but introduced obligatory sexuality education and subsidized contraception (ref. no. 3085), Bartosz Arlukowicz, MP was rapporteur;
- **21 May 2010** – the bill was sent to the Committee on Education, Science and Youth, the Committee on Social Policy and Family, the Committee on Local Government and Regional Policy and the Health Committee;
- **3 September 2010** – the government issued its position on the bill but the document was never discussed again;
- **9 December 2010** – citizens tabled a bill amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination introducing a complete ban on abortion (ref. no. 4222), Mariusz Dzierżawski was rapporteur;
- **25 July 2011** – bill was sent to first reading in plenary;
- **8 July 2011** – citizens' bill on responsible parenthood was tabled, allowing for abortion up to 12 weeks; subsidizing contraception and enabling access to family planning counselling and services as well as introducing universal sexuality education (ref. no. 4603), Marek Balicki, MP was rapporteur;
- **1 July 2011** – first reading and debate on the act restricting abortion rights took place in plenary, a 106-vote majority sent the bill to the Committee on Health and Committee on Social Policy and Family for further proceedings;
- **19 August 2011** – citizens' bill was repealed by the Committee on Health and Committee on Social Policy and Family;
- **31 August 2011** – the Sejm rejected the citizens' bill by 5 votes;
- **31 August 2011** – first reading of the bill on responsible parenthood took place and the Sejm rejected the document by 338 votes.

## 7<sup>th</sup> term of the Polish Sejm (from 2011)

- **16 January 2012** – citizens tabled a bill on responsible parenthood allowing for termination up to 12 weeks, subsidized contraception and obligatory, comprehensive sexuality education (ref. no. 562), Armand Ryfiński, MP was rapporteur;
- **11 July 2012** – bill on responsible parenthood was sent to first reading in plenary;

- **19 June 2012** – citizens’ bill amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination eliminating abortion rights in cases of serious foetal malformations or incurable disease (ref. no. 670), Arkadiusz Mularczyk, MP was rapporteur;
- **26 September 2012** – first reading of the bill on responsible parenthood takes place in the parliament;
- **10 October 2012** – the Sejm rejected the bill on responsible parenthood in first reading by 295 votes;
- **18 September 2012** – the bill amending the Act on Family Planning was sent for first reading;
- **26 September 2012** – first reading, debate and vote on the bill amending the Act on Family Planning took place and the document was sent for further proceedings to the Committee on Social Policy and Family and the Health Committee (18 vote majority);
- **23 October 2012** – Committee on Social Policy and Family and the Health Committee made a joint request for the bill to be rejected;
- **24 October 2012** – the Sejm rejected the bill by 61 votes;
- **20 November 2012** – deputies submitted a bill on sexuality education (ref. no. 1036), Wanda Nowicka, MP was rapporteur;
- **8 January 2013** – bill on sexuality education was sent for first reading in the Committee of Education, Science and Youth;
- **13 January 2013** – the bill was rejected;
- **20 February 2013** – citizens tabled a bill amending Act on the education system and other acts (ref. no 1246) introducing a subject “sexuality education” in schools; Halina Szymiec-Raczyńska, MP (from 28 August 2013 Marek Poznański) was rapporteur;
- **22 February 2013** – deputies tabled a bill on sexuality education (ref. no. 1298) introducing a school subject „Education on human sexuality”; Wanda Nowicka, MP was rapporteur;
- **9 i 24 April 2013** – both bills were sent for first reading at the meeting of the Committee on Education, Science and Youth;
- **21 March 2013** – citizens submitted a bill amending the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination (ref. no. 1654) banning abortion in cases of serious and irreversible malformation or serious, life-threatening condition of the foetus;
- **26 September 2013** – first reading and debate on the bill took place in plenary, motion to reject the bill was tabled;
- **27 September 2013** – by 49 votes the Sejm repealed the bill amending the Act on Family Planning;
- **5 December 2013** – the Committee on Education, Science and Youth held first reading and vote on bill on sexuality education and the bill amending the Act on the education system and related acts, both bills were rejected.

# Reproductive rights as human rights



# REPRODUCTIVE RIGHTS AS HUMAN RIGHTS

## ▶ International Standards

### ▶ What are the origins of reproductive health and rights?

The concept of reproductive rights derives from the achievements of the International Conference on Population and Development held in Cairo in 1994. The final document of the Conference contained the definition of reproductive health, which led to specific legal rights. Programme of Action developed at the Conference included a definition of reproductive health, which is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes". It was also a clear reference to the definition of health adopted by the World Health Organization. These provisions were confirmed at the IV International Conference on Women in Beijing just a year later. Platform for Action developed in the framework of this Conference became another fundamental source of definitions of reproductive health and rights. Reproductive health from this perspective meant a state in which both women and men can lead satisfying and safe sex life. The definition cited above formed the basis of the right to decide freely whether or not, how and in what spacing to have children.

This does not mean, however, that the same guarantees for the protection of reproductive rights hadn't been recognized and formulated in the form of a declaration or the proper legal language in international documents earlier. For example the outcomes of the International Conference on Human Rights in Tehran in 1968 already use this concept and, even more importantly, the right of parents to decide whether or not, how and in what spacing to have children was recognized as a human right. Among other events following this conference the most important were the UN World Population Conference in 1974 and the World UN Conference on Human Rights held in Vienna in 1993. Specific legal guarantees date back to 1979 and they were documented in the UN Convention for the Elimination of All Forms of Discrimination against Women (CEDAW).

Year 1994 is considered a breakthrough in the approach to the issue of reproductive rights, and - above all - their recognition as human rights. This was largely due to the development of the definition of reproductive health, which was included in the final document of the Conference as a result of joint work of the participants, as well as due to the fact that reproductive rights were defined in the fullest range so far. As mentioned above, this was somehow sealed by the outcomes of the Conference in Beijing in 1995,

which tackled women's issues. The concept of women's sexual rights was formulated and recognized as human rights. They include the right to exercise control over their own sexuality, including sexual and reproductive health, as well as free and responsible decisions in these matters, made without coercion, discrimination and violence<sup>35</sup>.

*„I wish for women to understand that women's rights are our common interest. This is probably the minimum requirement.”*

Izabela Jaruga-Nowacka†,  
former Minister of Gender Equality and Member of Parliament

## ► Reproductive rights in the human rights framework

Reproductive rights as human rights reflect the realization of the principle of dignity of the individual. They include such rights as the right to adequate information and access to safe, effective, affordable and acceptable methods of family planning, as well as relevant health services, providing women with a safe pregnancy and childbirth, and couples with the best chance of having healthy children.

The most important guarantees, however, formulated during the Cairo Conference and considered as fundamental, are the rights to decide freely and responsibly on whether, when and how many children to have and in what spacing, the right to information and access to resources in order to be able to exercise the right to decide, the right to the highest standard of sexual and reproductive health and the right to make decisions related to sexuality free from coercion, discrimination and violence. Programme of Action explicitly states that reproductive rights contain those human rights that are already recognized in national laws, in international human rights law and other agreed documents. Furthermore, it set goals that need to be achieved in order for reproductive rights to be fully realized. These goals are: to provide comprehensive and accurate information and the full range of health services that are accessible, affordable, acceptable and of good quality for all; to enable and support voluntary decisions on people's own reproduction and provide the resources necessary to ensure that every individual can make such decisions; and to recognize the reproductive health needs changing over the life cycle.

Reproductive rights must not be seen in isolation from other human rights described in various international documents. The most important of them are the right to self-determination, the right to respect for private and family life, freedom from torture, inhuman or degrading treatment, the right to benefit from the achievements of science, the right to life, the right to the highest standard of health, freedom from discrimination and violence. Reproductive rights can also be derived from the human rights enshrined in the Polish Constitution and similar documents in other countries.

<sup>35</sup> Beijing Declaration and Platform for Action, Beijing 1995, para. 96



Polish Constitution protects such rights as: the prohibition of discrimination (Article 32) , in particular on grounds of sex (Article 33), the right to life (Article 38), the prohibition of torture and inhuman and degrading treatment (Article 40), the right to legal protection of private and family life , honor and good reputation and to make decisions about his personal life (Article 47) and the right to protection of health (Article 68). Violations of these rights may also occur in health care, including reproductive health care. These regulations provide certain guarantees for all individuals, but also certain obligations which the State had committed to respect. Failure to comply with these regulations may lead to various consequences, including proceedings before international human rights bodies such as the CEDAW Committee, UN Human Rights Committee, the European Court of Human Rights or the UN Human Rights Council.

The oldest human rights document is the Universal Declaration of Human Rights. Article 12 of the Declaration highlights that arbitrary intrusion in anyone's private, family and home life is prohibited and that every individual needs to be legally protected from such interference. The Declaration is not binding, it is a collection of certain standards that give direction to the human rights protection worldwide. At the same time, Declaration is a well-established document and despite the lack of sanctions for violating its provisions, it is recognized and respected throughout the world and reflected in many other international human rights law documents.

## ► CEDAW Convention

The key international document directly linked to the area of reproductive health is the already mentioned United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention). This document from 1979 aims to protect women against discrimination in all areas of life. The principle of equal treatment in health originates exactly from this Convention. As the first international document, the CEDAW Convention also recognizes reproductive rights as a special area of women's lives and stresses that equal treatment must also apply to reproductive health. It does not use this phrase directly, but the Article 12 obliges the States to aim at ensuring that they have taken all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on an equal basis as men, access to health services , including those "related to family planning". Paragraph 2 of this Article obliges the States to provide particular care to women during pregnancy and childbirth.

## ► Reproductive rights and equal treatment

At this point it is worth mentioning why freedom from discrimination and the principle of equal treatment play such a crucial role in protecting women's reproductive rights. The prohibition of discrimination is associated with the fact that, due to the some legally protected characteristics, among which there is also gender, someone may be treated less favourably than others without this feature. Such differentiation of people and different treatment of individuals with specific features on the grounds of having this feature is a violation of the principle of non-discrimination. In various

areas of life women are treated worse only because they are women. Legal protection mechanisms against discrimination aim on one hand at preventing such practices, and on the other, they make it possible to hold accountable those who violate them. However, the principle of equal treatment does not mean treating all individuals in the same way, although such interpretation happens to be derived from the prohibition of discrimination.

Prohibition of derogatory treatment of persons having a specific characteristic is often seen as an order to treat everyone the same, but this is not accurate. The principle of equal treatment means also treating different people differently. It is also linked to the legally protected characteristics which certain individuals represent. The difference in treatment is the result of the specific needs of the particular group, which are the consequence of the group's specific features. Different, favourable treatment of such individuals does not constitute the violation of the prohibition of discrimination. The perspective must be reversed here – people with a particular characteristic and consequently specific needs are treated differently (often better) in order to meet those specific needs. Derogatory treatment of people who do not have this characteristic is not allowed. In the area of health this is especially important for women as they have specific needs in terms of health, that are result directly from their gender. Reproductive health is important for both women and men, but the ranges of reproductive health services and protection are fundamentally different.

Therefore the implementation of the principle of equal treatment of women in health care must come with a diagnosis of their specific needs and ensuring women's access to services. The human rights violations in this area, such as laws, policies and system solutions maladjusted to the specific needs of women in terms of services that only women need, must be considered in the context of breach of the principle of equal treatment.

Discrimination based on sex also has its roots in gender stereotypes. This is evident in Article 5 of the CEDAW Convention, which indicates the responsibility of states to take "all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

Under the CEDAW Convention operates the CEDAW Committee. Its extensive competences and achievements cannot be omitted in analysis of the human rights protection standards under the same Convention. In fact, the content of the Convention is supplemented by the case law of the Committee in individual cases (which will be discussed in the next section) and by the mechanism of general complaint, which may tackle important systematic violations of women's rights protected by the CEDAW Convention. In addition, the Committee regularly subjects countries that have signed the relevant protocol to the Convention to the reporting procedure (Poland is one of those countries and the results of the Committee observations will be discussed later), and it publishes general recommendations as commentaries to particular provisions of the Convention.

General Recommendation No. 24 refers to Article 12 of the CEDAW Convention regarding the right to standards of health. The Committee clearly shows there that access to reproductive health is one of the fundamental rights under the Convention. It also discusses the need to understand the specific needs of women in the area of health and highlights that restricting access to specific services must be considered in the context of discriminatory practices. In this recommendation, the Committee also explicitly obliges the states to ensure that in the reporting procedure they present activities aimed at ensuring adequate access to sexual and reproductive health services, particularly in the field of family planning. The Convention requires states to provide women with the full range of good quality and affordable reproductive health services. One of paths in this direction is removal of any barriers in access to these services. The Committee refers directly to the issue of respect for the patients' privacy and the right to confidentiality and shows how important it is particularly in the area of reproductive health services. Inadequate laws and practices in this area may discourage women from using the services in fear of violation of their privacy, which means that such practices constitute a de facto restriction on the access to services. Committee explicitly refers to such services as contraception and abortion.

In this recommendation, however, the most meaningful seems to be the States' obligation to ensure that preventing unwanted pregnancies through the family planning services and comprehensive sexuality education as well as the maternal mortality and morbidity through adequate prenatal care and diagnosis are considered as priorities. The Committee clearly indicates that the provisions criminalizing behaviours related to termination of pregnancy should be changed in such a direction as to avoid punishment of women who undergo illegal procedures.

Other international documents do not relate directly to reproductive health, but it needs to be emphasized that – without any doubt at the current state of understanding of human rights – reproductive health is part of the concept of health and therefore its protection is inscribed to the provisions regarding health care.

## ► Other UN documents

Apart from the CEDAW Convention, another important document in the UN system applicable to the protection of reproductive rights is the International Covenant on Economic, Social and Cultural Rights. Article 12 of the Covenant points out the need to ensure the realization of the right of every individual to the enjoyment of the highest attainable standard of physical and mental health. This article has been further supplemented by the General Recommendation No. 14 of the Committee on Economic, Social and Cultural Rights. The Committee noted the significance of the right to control one's health and body, and sexual and reproductive freedom as the spheres in which the state should not interfere. The Committee also stressed that the right to health described in the Covenant includes not only the relevant services in the field of health, but also other factors affecting the level of health. Among them access to information and education in the field of sexual and reproductive health was mentioned.

Another important UN document is the International Covenant on Civil and Political Rights. None of the provisions of the Covenant explicitly refer to health, but precisely this document, similarly to the European Convention (see below), includes provisions such as: particular prohibition of discrimination based on sex in access to the enjoyment of rights and freedoms, the right to life, the prohibition of torture and inhuman and degrading treatment and the prohibition of unlawful interference in the private life of the individual. On the basis of the Additional Protocol to the Covenant operates the Human Rights Committee, which issued judgments from the field of the reproductive rights protection (it will be discussed further).

## ► **European Convention for the Protection of Human Rights and Fundamental Freedoms**

In the Council of Europe the fundamental document governing the obligations of States in the field of human rights is the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR), which is supplemented by a very extensive case law of the European Court of Human Rights, just as the CEDAW Convention and its provisions must be seen through the prism of the case law of the CEDAW Committee in individual cases and other achievements of the Committee.

The European Court of Human Rights (hereinafter: the Court) is an institution established to resolve individual complaints. Reproductive rights cases already considered by the Court tackle various reproductive health issues and violations occurred in many countries.

The European Convention does not explicitly refer to the concept of reproductive health or reproductive rights. What is more, the document does not even contain directly expressed right to health. However, on the ground of Court's extensive case law, human rights related to health care and their violations that individuals may experience fall primarily in the scope of the right to respect for private and family life (Article 8). Those violations may however be also related to the right to life (Article 2) and the prohibition of torture (Article 3). Furthermore, they might be related to the prohibition of discrimination (Article 14) and other rights and freedoms.

## ► **UN Special Rapporteurs**

The recent report<sup>36</sup> of the UN Special Rapporteur on Torture, who referred to the issue of reproductive rights violations in the context of torture and inhuman treatment, is worth mentioning. The Rapporteur called upon the numerous statements of the UN Committee against Torture (CAT), which has repeatedly<sup>37</sup> voiced its concerns regarding restrictions in access to abortion and total bans on abortion as violations of the prohibition of torture and inhuman and degrading treatment. The Special Rapporteur's Report summarizes many previous observations and collects them into the fundamental claim that reproductive rights' violations are a form of inhuman and degrading treatment, gender-based violence and unequal treatment. This report even

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<sup>36</sup> A/HRC/22/53

<sup>37</sup> CAT/C/PER/CO/4

identifies a term *gender-based torture*. It gives examples of the most serious violations (including cases described below), and calls on States to ensure effective access to procedures where they are legal, so that women do not have to fear any consequences.

One of the most important documents on reproductive rights in the UN system is the 2011 report<sup>38</sup> of the Special Rapporteur on the right to health, which discusses the effects of criminalization of reproductive health behaviours. The report is of an extreme significance, because in many countries laws on abortion and other reproductive health services are complemented by criminal provisions. This is also the case in Poland<sup>39</sup>. Anand Grover pointed out that the penal provisions may result in restrictions in access to numerous services, they have an impact on the doctors' behaviour and thus affect the situation of women who are seeking access to certain services. Criminalization of certain behaviours significantly limits the respect for the dignity of the individual, violates the right to health, leads to unequal treatment based on gender and strengthens the institutional system of control over women, for example by actually forcing them to continue the pregnancy. Interlinks between stereotypes, discrimination and exclusion of women in access to fundamental reproductive health services are to the Rapporteur obvious and extensively documented.

He identifies criminalization of reproductive health behaviours as another tool for stigmatization. He considers criminalization of abortion behaviours as an example of an unacceptable restriction of the women's right to health and calls for elimination of such provisions. Although of course it is recognized that different countries criminalize abortion behaviours to different extents, it is highlighted that the point is not only to condemn the regulations that punish women themselves. Other mechanisms, such as punishing doctors or even the conscience clause, affect access to legal abortion and therefore they are also criticized.

## ► The case-law of human rights violations in reproductive health cases

### ► European Court of Human Rights

The Court proceeded in many cases crucial for the standard of reproductive rights as human rights. The complaints concerned a number of issues related to the reproductive health of both women and men. The scope of this report is limited to matters governed by the Polish Family Planning Act, therefore only such cases will be discussed. For the record however, it is worth noting that apart from cases concerning abortion and prenatal testing, which will be discussed in detail, the Court held a number of other important reproductive rights cases. They concerned issues related to IVF, including the legal status of the embryo at the stage of pre-implantation (e.g. case *Knecht v. Romania*) as well as of the foetus already in the pregnant woman's body (e.g. case *Vo v. France*). Those cases concerned the right to life and the Court clearly indicated

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<sup>38</sup> A/66/254

<sup>39</sup> More in chapter „Abortion in Poland in 1993-2013”

that neither the embryo nor the foetus in the pregnant woman's body are not subjects of protection on the basis of the right to life, and the breach in terms of the embryo destruction and faulty prenatal diagnosis can be considered only as violations of women's rights. The Court also tackled the issue of gametes donation (case *Costa and Pavan v. Italy*), the availability of in-vitro procedures (case *S.H. and others v. Austria*, and *Dickson v. the United Kingdom*) and the right to have children and the right not to have them (case *Evans v. the United Kingdom*). Another important group of cases are those related to forced sterilization and associated discrimination (there are two crucial cases against Slovakia – *K.H. and others* and *V.C.*, which concerned Roma women). Very meaningful is also the Court's judgment in the case regarding home birth (*Ternovsky versus Hungary*), which established that the right to a particular method of birth is a human right.

The Court delivered three judgments against Poland identifying violations of reproductive rights related to prenatal testing and abortion and another one in which the Court was unable to determine whether the violations occurred or not.

## Case *Tysic versus Poland*

The first case is *Tysic versus Poland*. It concerned a woman suffering from a serious eyes condition who became pregnant. Pregnancy increased the risk of substantial impairment of her vision, which would intensify her already identified disability. However, doctors could not agree as to whether the woman's condition and the damaging for her vision influence of pregnancy constitute circumstances that entitle her to legal termination of pregnancy according to the provisions of the Family Planning Act. She wasn't able to obtain a clear medical opinion and in conjunction with the use of the conscience clause in the end she was denied the procedure. The case went to the Court, which in 2007 issued a groundbreaking decision finding numerous violations committed by the Polish state. This ruling has been one of the fundamental reproductive rights standards so far. First of all, it has been confirmed that the right to legal termination of pregnancy falls within the scope of the right to respect for private and family life. The Court did not indicate how countries should regulate termination of pregnancy – this issue is covered by the large margin of freedom in the absence of consensus among the Council of Europe member states. However, the Court strongly believes that in cases in which abortion is legally allowed, women must be guaranteed a real opportunity to exercise their rights. The State has not only the negative obligation not to interfere in the woman's private sphere and her decisions, but also a positive obligation to organize the health care system in a way that effective access to health services is ensured. If the state fails to take those progressive actions, it violates the right to respect for private and family life, which happened in this case. In case *Tysic v. Poland* crucial was identifying the problem of the conscience clause abuse by the doctors and the state's obligation to resolve this issue in such a way that doctors' privileges would not limit exercising the rights of others. For the first time this judgment also analyzed the accessibility of legal abortion in the context of criminal provisions that allow for holding doctors accountable for illegal procedures. It described a "chilling effect" of the penalization risk for the doctors, who in each individual situation must assess whether it is possible to conduct the procedure

under the provisions of the Family Planning Act without facing legal consequences. Considering how the provisions are formulated, as a result of this risk of legal charges, the doctors prefer not to perform legal abortions. The Court defined this phenomenon and criticized the state's actions in this area just as the conscience clause. These observations and conclusions were repeated in two subsequent judgments.

*Tysic* case is unique as it is the first judgment of the Court, which refers to abortion. Its uniqueness also lies in recognizing the violation of the right to an effective remedy (Article 13). The Court stated that the applicant had no possibility to turn to any independent authority to issue an opinion or decision in her case, she could not in any way appeal against the content of the doctor's opinion or question the denial of the procedure. On the grounds of this judgment, the State introduced far imperfect measure in the form of the right to object to a medical opinion, which is hardly ever used, even though it was introduced in Poland almost 5 years ago. The Committee of Ministers of the Council of Europe still has not decided to close the implementation process of the judgment in *Tysic* case.

### Case R.R. versus Poland

The second Polish case, decided by the Court in 2011, was *R.R. versus Poland*. It concerned a woman who found out during her pregnancy that there was a risk that her foetus suffered from a serious genetic defect (Turner syndrome). Although the Family Planning Act indicates the necessity of only a high probability of foetus malformation, diagnostics in this condition could offer a certainty as to whether or not the foetus had it. Because the woman admitted that in case the defect was confirmed, she would consider terminating the pregnancy, the diagnostic process was extremely extended in order to make it practically impossible. Despite the availability of procedures, equipment, and qualified medical staff, the woman was being denied the prenatal tests for over six weeks. She was hospitalized multiple times without any reason, she had blood tests and ultrasound, which were pointless and she was kept in uncertainty as to the condition of the foetus. When the prenatal testing was finally conducted and the results were obtained, it was already too late for legal abortion. As a result, the woman was practically forced to give birth to a sick daughter.

The Court upheld the existing line of jurisprudence and decided that such behaviour of doctors and lack of adequate procedures constituted a violation of the right to respect for private and family life (Article 8). The Court reiterated its observations regarding the conscience clause and the "chilling effect". It also stressed that the fact that a woman anticipates the decision to terminate pregnancy must not result in withholding information about the foetus or making it impossible for her to obtain such knowledge. This judgment should be treated as another milestone in constructing the standard of protection of reproductive rights as human rights and there are several arguments for that. First of all, the case did not directly touch upon abortion, only access to prenatal diagnosis. Nevertheless, the Court in its decision contained key issues related to abortion, because it thought that in this case these issues must be considered together, and the circumstances which lead to the violations, were significantly interlinked. Secondly, the Court found that the patients' right to information about their health (and in case patient is a pregnant woman, the health of the foetus is an integral

part of the health of the woman) falls within the scope of private life and is therefore protected by the European Convention.

The most critical breakthrough was however the Court's decision that the situation the applicant had experienced, the doctors' treatment and approach towards her and the lack of the state's response to these violations, exceed the threshold of minimum severity, which was associated with the fact of being pregnant. Exceeding the threshold constituted a violation of the prohibition of torture (Article 3). Although the Court did not claim that torture took place, in a groundbreaking way it identified the applicant's suffering as inhuman and degrading treatment. It was the first such decision in the history of the Court with respect to reproductive rights. The Court also emphasized that the woman did not have access to any legal measure that would give her a chance to benefit from the additional diagnosis of the foetus, which also was considered a violation. This judgment has still not been implemented by the Polish government either.

## Case P. and S. versus Poland

Another case is *P and S. versus Poland*, decided by the Court in 2012. It concerned the case of a teenager who got pregnant as a result of sexual violence. She was 14 years old at that time, therefore the pregnancy came from a criminal act (sexual intercourse with a person under 15 years of age is a criminal act regardless of the age of the perpetrator). Despite the obvious entitlement to legal abortion and such decision of the girl and her mother, they were refused the procedure in several hospitals. Furthermore, medical confidentiality was breached and the name of the girl was disclosed to the public, which exposed her to attacks of anti-choice groups and priests. Additionally, the family court decided to separate the girl from her mother and to place her in juvenile shelter. The Court had no doubts as to how many human rights violations occurred in this case. Despite the fact that through a special intervention of the government the girl eventually underwent the abortion (in the hospital more than 400 kilometres away from her place of residence), the Court considered her status as a victim of violations and issued judgment in this case.

The Court stated clearly the violation of the right to respect for private and family life (Article 8) and confirmed the standard of jurisprudence established in the judgment in R.R. case in terms of violation of the prohibition of inhuman and degrading treatment (Article 3). The girl's young age was taken into account here as this factor made her suffering greater and the behaviour of individual institutions even more cruel. The Court also identified an unauthorized imprisonment of a minor by placing her in isolation. This ruling does not introduce any new observations or the interpretations by the Court. What is critical and worth emphasizing, however, the Court referred to the standards established in previous judgments in cases against Poland, reaffirmed them and again pointed to the problems that Poland has to solve on the road to ensuring proper realization of the right to abortion. It was also explicitly emphasized that Poland must organize the operating system of the Family Planning Act in such a way that the right to legal abortion is real, not illusionary.



## Case Z. versus Poland

The last case is *Z. versus Poland*. It concerns a young woman who got ulcerative colitis while pregnant. She was not diagnosed in a sufficient manner (colonoscopy was not performed) and no treatment was applied. According to the patient's family and the evidence collected for the purposes of criminal and civil lawsuit in the national courts, such situation could have arisen due to the fact that doctors did not want to take the risk associated with possible consequences for the health and life of the foetus. It is worth noting that the woman did not request an abortion and did not apply for any document stating that her pregnancy – due to the fact that it makes performing appropriate diagnostics impossible (however, the gastroscopy or colonoscopy were not dangerous for the foetus) – posed a threat to her health or life. The woman did not want to terminate the pregnancy, but she explicitly declared that she wanted to be diagnosed and treated and she agreed to the possible risk to the foetus. However, obviously in this case the woman's health and life were not considered a priority. In the absence of any medical intervention, the woman's condition deteriorated to such an extent that it led first to a miscarriage and then to sepsis, which resulted in woman's death in enormous pain and suffering.

Although these circumstances seemed obvious, national courts did not find any violations. Appeal to the Court had two main themes. The first concerned the right to life, which was a serious charge against the Polish state. It was argued that the doctors through their actions contributed to the death of the woman. The Court, however, did not consider this aspect and did not go into assessing the causes of the woman's death and whether it was anyone's fault. Possible violation of the right to life was not considered from the substantive perspective. At the same time it was acknowledged that the Polish state adequately investigated the circumstances of the woman's death (which is also an element of Article 2 governing the right to life) and no violation of the right to life in the procedural context was found.

The second aspect was the fact that the lack of adequate treatment of the woman was associated with her pregnancy, the doctors' beliefs and lack of respect for the patient's decision and the Court generally did not express any opinion. This was due to the fact that in a civil lawsuit the domestic appeal was not used, which resulted in the inadmissibility of the complaint in this regard. The abuse of the conscience clause was considered to be insufficiently manifested. This case shows that there are situations in which the obvious drama of the individual and the failure of the health care system may be impossible to be grasped by the courts and other institutions protecting human rights. Human tragedy might get shattered against the wall of evidentiary requirements and remain institutionally unnoticed.

## Case A, B and C versus Ireland

An extremely important case in the context of the right to abortion was *A, B and C versus Ireland*. Ireland is a country with a very restrictive abortion law, resulting in its ban in all circumstances apart from the situations where there is a threat to the pregnant woman's life and the abortion can be performed in order to save her. This

is one of the four cases decided by the Court concerning the right to abortion and the conclusions of this case are critical in the context of the standard of the Council of Europe jurisprudence, also in relation to Poland. Therefore, the circumstances of the case and the Court's decision will be presented in detail. The case concerned two very different situations in which applicants were – the first two women wanted to terminate the pregnancy without giving a reason and argued that the ban was a violation of Article 8 of the Convention. The Court did not agree with this argument. As it was already mentioned, the Court does not intervene in the content of the abortion laws in the Council of Europe member states. Therefore, neither the breach of the right to respect for private and family life, nor the prohibition of inhuman and degrading treatment were found. The Court stated that the state had no obligation to allow for terminating pregnancy without specifying the reason. The women could have had the procedure in another country without any consequences and thus the Court saw neither excessive interference with the right to private life, nor the violation of the prohibition of inhuman treatment in the form of forcing women to have abortion abroad.

However, the most significant in this case was the decision concerning the third applicant. The woman suffered from a rare form of cancer. She decided to have abortion outside Ireland because she was afraid of the consequences the pregnancy could have had for her life and health in connection with her condition. The law did not allow for the procedure without proper medical opinion confirming the risk. The diagnostic procedures provided in the Irish law and the specific regulations concerning the doctors' code of conduct were insufficient in providing the applicant with the opportunity to obtain reliable knowledge about the risks to her health posed by the pregnancy. Therefore she was also unable to determine whether her case qualified for legal abortion.

Having examined the case, the Court came to the conclusion that there was no effective procedure in Ireland, either legal or provided on other grounds, as a result of which the risk of the pregnancy to the life of a woman with a specific health condition could be determined. Furthermore, no procedure protected the patients in cases of a significant discrepancy between the different doctors' opinions, or between the opinion of the doctor and the patient herself, as to the possible impact of pregnancy on the patient's health and life. This situation was very similar to the one from the *Tysi c* case. In the judgment in *Tysi c versus Poland* the Court also found a violation of Article 8 of the Convention in the context of the state's failure to provide effective procedures allowing for the implementation of the applicant's right to respect for her private life by providing the knowledge necessary to make a decision regarding abortion. In case *C v. Ireland* the Court also decided that through the lack of accessible and effective procedure allowing the woman to identify whether she qualifies for legal abortion, the state did not provide its citizen with a proper respect for her private life, despite the positive state obligation in this regard.

## ► CEDAW Committee

CEDAW Committee decided three cases directly concerning reproductive rights. It needs to be noted that the Committee operates on the grounds of the Additional Protocol to the CEDAW Convention and rules on the basis of the Convention's provisions. Therefore it finds violations (or their lack) of the principle of equal treatment on grounds of gender in various areas, including reproductive health. The first such case was *Alyne de Silva Pimentel Teixeira versus Brazil*. It concerned the death of a pregnant woman due to inadequate medical care during pregnancy. This case clearly shows that the issue of providing adequate access to medical services which are specifically related to gender, falls within the scope of the protection against unequal treatment on the grounds of on gender. The Committee also decided the case *A.S. versus Hungary*, which involved forced sterilization. But the most important case from this report's perspective is *L.C. versus Peru*. It concerned a minor girl, who was refused a termination of pregnancy which resulted from violence and threatened her health. The CEDAW Committee without a doubt stated the violation of the right to equal treatment in health. Additionally, violation of Article 5 (protection from harmful gender stereotypes) was found. The Committee noted that this case clearly showed that the gender stereotype of women as mothers had been adopted here as the basis for action – rights of the foetus and the belief that women have no right to make decisions regarding their health which could affect the foetus were prioritized over the girl's right to life and health, and over her dignity and the right to self-determination.

## ► UN Human Rights Committee

Similar, very drastic cases were decided by the UN Human Rights Committee acting under the International Covenant on Civil and Political Rights. The first of them was *K.L. versus Peru*. It concerned a 17 years old girl who was refused a termination of pregnancy even though the foetus had no brain and no chances to survive. The girl was forced to give birth and breast-feeding the child till its death. The Human Rights Committee found that the State, acting through its institutions, did not consider in any way the actual circumstances of the case and did not interpret the facts in a way that would balance the provisions criminalizing and allowing for abortion. The Committee also identified the violation of the prohibition of inhuman and degrading treatment.

The second case was *L.M.R versus Argentina*. It involved a minor girl with an intellectual disability who became pregnant. Despite the right to legal abortion, the procedure had to be performed in the underground, due to social pressure and the prolonged juridical route. The Human Rights Committee found multiple violations in this case. In contrast to the previous case, the violation the principle of equal treatment also on the grounds of gender was identified. Additionally, the Committee stated that the court's interference in the decision of the girl, her mother and the doctor was unauthorized and led to the violation of the respect for private and family life. Furthermore, the proceedings of the courts and doctors resulted in inhuman and degrading treatment, which caused enormous suffering of the patient – even greater due to her disability.

## ► Conclusions from case-law

The case-law of the three human rights institutions discussed above presents four very distinctive jurisdiction trends in protection of women's reproductive rights. The first is the obvious recognition – both within the UN system, as well as the Council of Europe – that reproductive rights violations fall into the scope of respect for private and family life. In situations where the state allows for abortion, the decision about whether or not to undergo the procedure must belong exclusively to the woman (and in case of the minority or intellectual disability also to her legal guardian). Neither the doctors, nor the hospital authorities, neither the court nor even the state authorities can interfere in this decision. Arbitrary decisions against existing laws and the state's inability to solve them form human rights violations committed by the state. The criticism of the state's failure to implement effective mechanisms of protection against those violations is the second theme in the individual cases' rulings. The mere possibility to claim compensation for the experienced damage is insufficient from this point of view. The point is to prevent violations, and not only react when they already happened. The third aspect is the consideration of cases not only in the context of life and health protection, but also prohibition of torture and inhuman and degrading treatment. It happens differently on the grounds of the Covenant and the European Convention, due to the different scope of the provisions in these documents, but this aspect needs to be considered crucial as it highlights the fact that the human rights protection system acknowledged how significant consequences for women might have interference with their integrity, privacy, health, life and dignity. The ability to self-determination in terms of reproduction is one of the most basic elements of every human's life and the suffering experienced by women in situations when they are deprived from this possibility is rightly considered in the context of inhuman and degrading treatment. It is particularly visible in cases of minors, women with disabilities or suffering from various health conditions. The last key area is treating reproductive rights violations in the context of freedom from discrimination on grounds of gender. This standard is manifestly and most clearly established in the CEDAW Committee case-law, but it is worth noting that it appears also in the UN Human Rights Committee decisions. This perspective has not yet been present in the European Court for Human Rights, however it is reasonable to assume it might change over time.

## ► International Institutions' observations and recommendations to Poland

As a signatory to many international human rights agreements and documents, Poland is subject to the control processes regarding implementation of these rights by various institutions (*Treaty Monitoring Bodies*). In the area of interest of these institutions operating within the UN system, due to the broad guarantees for reproductive rights, lays the way in which these guarantees are implemented by particular countries.

Poland signed the relevant international agreements and on their basis it must report on the implementation status of various conventions and covenants, accept delegations of representatives of certain institutions and engage in dialogue and in the observational

processes. The most important processes described below are associated with the activities of the CEDAW Committee, the UN Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the CAT Committee and the UN Human Rights Council – including the Universal Periodic Review and the mandate of the UN Special Rapporteur on the right to health. The latest achievements of these organizations with respect to Poland are presented below.

*„In Poland, we have never had a real and honest debate about sexual and reproductive rights. What is being said in the media or from the parliamentary rostrum can only be called a pseudo-debate, which exposes a dramatic lack of comprehensive arguments based on universally recognized concepts of human rights.”*

Wanda Nowicka, Deputy Speaker of the Polish Sejm

## ► CEDAW Committee

In 2007 CEDAW Committee issued the latest document<sup>40</sup> with concluding observations on Poland and recommendations regarding implementation of the CEDAW Convention. In this document<sup>41</sup> the Committee included, inter alia, its observations and concerns related to the status of reproductive rights implementation. As it was described earlier, the status of reproductive rights implementation is recognized by the CEDAW Committee as part of implementation of the principle of equal treatment in access to health. It was considered significant that the Polish state in no way examined the abortion underground phenomenon and its consequences to women's health and lives.

The Committee urgently called upon Poland to improve the quality of women's access to health care, in particular to sexual and reproductive health services, as well as for the examination of the number, reasons and consequences of illegal abortions and their influence on the women's safety. Despite explicit recommendations from the Committee, such analysis still has not been included in any of the official reports on the implementation of the Act so far, which was already highlighted in this report. Furthermore, the Committee urged the Polish state to ensure women's access to abortion in cases where it is legal and they have so decided and indicated that it must not be limited by the use of conscience clause. The Committee also pointed and warned Poland to take the necessary steps to prevent unwanted pregnancies by providing access to a wide range of contraceptives and affordable education and information on family planning. Recommendations also discussed the particular situation of young people and the need for sexuality education in schools.

<sup>40</sup> Currently, Poland is undergoing the reporting process to the CEDAW Committee for the next period.

<sup>41</sup> CEDAW/C/POL/CO/6

## ▶ UN Human Rights Committee

In its report on Poland in 2010<sup>42</sup> UN Human Rights Committee (operating on the grounds of the International Covenant on Civil and Political Rights) contained numerous observations and recommendations regarding reproductive rights. The Committee expressed its concern that women in Poland are, against the existing law, deprived of access to reproductive health care – family planning counselling and information, prenatal screening and legal abortion. It stressed that the misuse of conscience clause by doctors was significantly worrying. The large scale of abortion underground was pointed out and doubts as to the objection mechanism and the time the Medical Commission had for issuing a decision were expressed. In the recommendations the Committee obliged Poland to analyze the effects of the restrictive abortion law and its implications for women's rights. It emphasized the importance of investigating the scale and consequences of the abortion underground. The Committee very clearly underlined the need for additional regulations of the use of conscientious objection and revision of the time given for Medical Commission's decisions in objection cases. It explicitly stressed the need to strengthen measures to prevent unwanted pregnancies by increasing access to wide range of contraceptives, also by placing them on the list of subsidized medicines.

## ▶ UN Committee on Economic, Social and Cultural Rights

The UN Committee on Economic, Social and Cultural Rights also included observations and recommendations on reproductive rights in the last document regarding Poland<sup>43</sup> in 2009. The Committee expressed a great concern regarding the fact that Poland does not guarantee access to basic reproductive health services, with an emphasis on the visible lack of services in the field of contraception and family planning within public health care. The Committee also expressed its disappointment that the previous recommendation in this regard had not been implemented, and reiterated that adequate access to reproductive health care, including in particular access to a wide range of contraceptives at affordable prices, must be ensured.

## ▶ The UN Committee against Torture (CAT)

In 2013 Poland underwent a review process at the UN Committee against Torture (CAT). In its report<sup>44</sup> CAT Committee for the first time took into account the issue of abortion in Poland. Concerns regarding restrictions in access to abortion, particularly for rape survivors and in connection with the conscience clause abuse, were raised. It was emphasized that such restrictions lead to the fact that women seek treatment in the abortion underground, which is dangerous to their health. The Committee recommended that women, who decide to have an abortion in compliance with the law, have access to legal and safe procedures. A reference was made to the WHO document from 2012, which clearly indicated that the doctors' right to use conscientious objection must not

<sup>42</sup> CCPR/C/POL/CO/6

<sup>43</sup> E/C.12/POL/CO/5

<sup>44</sup> CAT/C/POL/CO/5-6

stand in the way of exercising the individual's right to health services. The Committee recommended creating and implementing an adequate legal framework or code of conduct that would enable women to exercise their right to abortion in accordance with the current law.

## ► UN Human Rights Council

Poland was reviewed in the process of the Universal Periodic Review for the second time in 2012. This unique mechanism was developed in the UN Human Rights Council framework. Its uniqueness lies in the fact that the dialogue on the human rights implementation in particular country is at a horizontal level, between the reviewed state and other UN member states which express their concerns, ask questions and give recommendations. Due to the very broad spectrum of issues covered by the Council's activities within the well developed UN system of human rights protection, reproductive rights clearly could not be the priority of other countries' interest. Poland in fact has many other problems with the realization of human rights, which are of interest and concern at the international level. However, it needs to be emphasized that reproductive rights are the subject of the Council members' interest and criticism of their realization is observed. Therefore Poland was asked many questions about the abortion law and how its realization is guaranteed (and even if Poland is not going to liberalize these – extremely restrictive in opinion of, for example, France – regulations). Key recommendations were given by Slovenia and Norway. Slovenia suggested that Poland introduced an appropriate, effective mechanism that would aim to protect women, who were unlawfully denied access to reproductive health services, from such violations. Furthermore Slovenia recommended clearly defining the circumstances in which it is possible to perform therapeutic abortion (when the woman's life or health is at risk). Norway and proposed that Polish state, as a certain minimum, at least ensures access to legal abortion under the current law by creating a clear and legally binding regulations regarding implementation of the provisions of the Act.

Within the UN Human Rights Council there operate also Special Procedures, which are, for example, mandates the UN Special Rapporteurs on issues that are particularly important from the human rights protection point of view.

A very significant document is the report from the visit of the Special Rapporteur on health to Poland in 2009<sup>45</sup>. It was presented at 14th session of the Human Rights Council as additional document to the aforementioned report on the consequences of criminalization of reproductive health behaviours. In his report Anand Grover discussed a broad spectrum of realization of reproductive rights in Poland – access to sexuality education and information, access to contraception, access to legal abortion, the *Tysiąc* case, unsafe abortions, issues related to the medical professions and access to the assisted reproduction services. Rapporteur criticized the quality of sexuality education in Poland and called on the government to analyze the content of school curricula in the field of sexuality education in order to ensure that they include accurate and evidence-based information, free from prejudice and stereotypes.

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<sup>45</sup> A/HRC/14/20/Add.3

With reference to the observations of the Committee on Economic, Social and Cultural Rights, the report reflected concerns regarding the low standard of access to modern contraceptives and the need to improve their affordability and address the practice of limiting access to reliable information by physicians due to their personal beliefs. The negative effects were explained, such as women's lack of information on preventing pregnancy, unwanted pregnancies and the need to seek termination instead of having possibility of proper prevention of pregnancy. The Rapporteur noted that in Poland there are very strict regulations on abortion, in comparison with other parts of Europe, which results not so much in the lack of abortions but in the fact that women have to resort to abortions in clandestine conditions or travel abroad. He stressed that many institutions consider abortion law in Poland to be very restrictive in comparison with other EU countries.

It was also noticed that due to the form of the legislation and the social environment around it, the actual access to legal abortion was even more restrictive than under the Act itself. This raised concerns regarding the fact that the right to decide whether to continue or terminate a pregnancy is one of the most fundamental issues relating to women's bodily integrity, and controlling one's own body is one of the most fundamental human rights. A situation in which doctors, priests and others interfere with a woman's right to decide whether or not to have a legal abortion, the Rapporteur considers highly disturbing and requiring intervention from the state so that the decision in this area belonged to the woman. The Rapporteur also raised the issues of the criminalization of abortion and abortion underground, which was already mentioned in this report. He pointed out that the Polish government ignored the fact that the prohibition of abortion did not prevent women from having the procedure and criticized the fact that the scale and consequences of the phenomenon remain unexamined. He recommended that the Polish government sought to remove the actual – legal, social, cultural and religious – obstacles in exercising the woman's right to terminate a pregnancy in accordance with the law. Particular attention was paid to medical professionals – insufficient education in the field of human rights and, above all, abuses of the conscience clause were highlighted. The Rapporteur recalled the opinion of the Human Rights Committee, shared its concerns and recommended changes so that the use of the conscience clause was clearly defined and did not constitute an obstacle to the realization of women's reproductive rights, or access to health services in general.

The UN Special Rapporteur on torture and other inhuman or degrading treatment referred to the situation in Poland in the report to the Human Rights Council mentioned earlier. He pointed to cases *R.R. versus Poland* and the *P. and S. versus Poland* as evidence that restrictive abortion laws and insufficient guarantees for their proper implementation (despite heavily restricting the right to abortion), can lead to cases of inhuman and degrading treatment of pregnant women. Poland was cited as a bad example of realization of the right to abortion, and as one of the very few countries in the report was so explicitly mentioned and condemned.

## ► Council of Europe Commissioner for Human Rights

The UN human rights framework is the most extensive in terms of state control in the area of respecting the standards. The European Court of Human Rights does not conduct



such controlling activity, but this does not mean that the system of the Council of Europe does not have any control mechanisms. One of them is the activity of the Commissioner for Human Rights. The Commissioner regularly issues human rights recommendations for specific countries and holds them accountable for the implementation of these recommendations after study visits in those countries.

One of the topics of the last Memorandum to the Polish government<sup>46</sup> in 2007 was in fact the realization of reproductive rights protection standards. The document shared the concerns of other institutions (such as the CEDAW Committee) and non-governmental organizations, as well as recalled the judgment in case against Poland (*Tysiąc*), the only one available at the time. The Commissioner also noted that access to legal abortion in Poland was significantly hindered. Therefore, the Polish government should ensure that women entitled to the procedure had effective access to it without any obstacles. It was also noted that such a low number of legal abortions (according to the official statistics) should be a signal for the Polish government that illegal procedures take place on a large scale, which posed an obvious threat to women. The Commissioner also recommended taking appropriate actions to introduce comprehensive sexuality education in schools.

## Main activities of the Federation for Women and Family Planning in 2013

### ► Conference “Twenty Years of Polish Anti-Abortion Law. Laws concerning reproductive rights in Poland and other EU countries”

The conference was held on 21 January 2013 in Warsaw. January 2013 marked the twentieth anniversary of the adoption of the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination. The aim of the conference was to summarize the two decades in the context of reproductive rights in Poland and to make comparisons with other EU member states. The first panel was devoted to historical and social aspects of (the lack of) reproductive rights in Poland including the right to abortion, modern contraception and sexuality education. Barbara Labuda, former MP, minister and social activist spoke about the increasing conservatism of the society and reasons for this trend. Katarzyna Kądziała, director of Izabela Jaruga-Nowacka Foundation, made comments about the role of religion in shaping of attitudes of Poles after transition to democracy. Marek Balicki, former MP and Health Minister referred to changing attitudes of OB-GYNs. Wanda Nowicka, Deputy Speaker of the

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<sup>46</sup> CommDH(2007)13

Sejm ad former President of the Federation assessed the historical content if Poland in comparison to other CEE countries. Małgorzata Księżopolska, current President of the Federation stressed the meaning of feminist organizations in defending women's rights and mentioned that ridiculing feminists and feminism has been a part of a strategy to limit citizens' rights.

The second panel focused on the future of reproductive rights in Poland. Director of the Federation Krystyna Kacpura said that in order to change the legislation we need to raise awareness among women that reproductive rights are human rights. Writer, journalist and lecturer Kazimiera Szczuka added that equally important are grassroots initiatives to raise public awareness, for example the campaign of Women on Waves with its pirate symbols.

Paulina Piechna-Więckiewicz, deputy president of Democratic Left Alliance party expressed her surprise about the hypocrisy of many young women who go abroad to fulfil their reproductive rights and then return to Poland and do not protest or even say that the current provisions are OK.

Agnieszka Grzybek, President of the Green Party of Poland and pro-choice activist pointed out that the struggle to regain the right to decide is not only the struggle of big city feminists, for example during the campaign „Yes for Women” many people from smaller towns also signed the citizen's bill to liberalize abortion law. Many signatures were collected in small villages and conservative regions.

## ► **Panel at the Fifth Polish Congress of Women “Women's Health and Sexuality throughout Lifecycle”**

The debate was held on 14 June 2013 in Warsaw. Women's health is largely connected with their sexuality and their sexual decisions have a significant impact on their health and lives. Each phase of life is different and women have different needs and sexual experiences.

Panelists who discussed burning issues and pleasures of each stage of life were Bożena Jawień, MD; Paulina Wawrzyńczyk, sexuality educator from Ponton; Karolina Więckiewicz, lawyer; Joanna Pietrusiewicz, president of Rodzić po Ludzku Foundation; Justyna Wydrzyńska and Anna Szreniawa from a collective Kobiety w Sieci and Paulina Reiter, deputy editor-in-chief of „Wysokie Obcasy” magazine. Director of the Federation Krystyna Kacpura opened and closed the discussion.

In the first part the topic of girls' and adolescents' sexuality was discussed, including sex education and access to modern contraception.

The second part was devoted to women of so-called reproductive age and specific issues such as sexuality during pregnancy and the rights of women during labour. Also, abortion underground, its scale and impact was discussed.

The last part on mature women covered such topics as the invisibility of older women and menopause. The Federation also offered a stand with brochures and publications during the Congress.

## ▶ Rally and advocacy against the bill restricting abortion access

The Federation started a coalition of over forty organizations which were advocating among Members of Parliament to reject the bill restricting the Act on Family Planning, Protection of the Human Foetus and Conditions of Pregnancy Termination and banning abortion in cases of serious foetal malformations. Organizations encouraged their supporters to send out letters and visit MPs offices. International organizations, such as the ASTRA Network and Centre for Reproductive Rights also supported the campaign. On 24 September press conference took place and a rally was organized the day after. On 26-27 September the Sejm discussed the bill. 233 deputies voted against the bill and 182 supported it, 6 abstained. On 27 September the Polish Sejm rejected the bill amending the Act on Family Planning (ref. no. 1654). This was another success of the Federation and women's and human rights organizations defending basic reproductive rights. Unfortunately for many years governments have shown no interest in liberalizing the ineffective law and our efforts have concentrated on defending the present regulations. Simultaneously we have been doing advocacy work aimed at increasing access to contraception and introducing comprehensive sexuality education.

## ▶ Other advocacy activities

The Federation launched several initiatives aimed at improving access to reproductive rights of Polish women, the most important ones being:

### ***Work to amend the law concerning the right to appeal against the doctor's decision***

The Federation believes that the current law on appealing against the doctor's decision or opinion does not meet the good legal standards and does not provide an effective mechanism to protect women from reproductive rights violations. The mechanism has failed even in its current, limited scope. Throughout 2013 the Federation took a number of initiatives in order to push for legal amendments. A series of meetings with the office of Patients' Rights Representative and the Minister for Equal Treatment took place. As a result the Ministry of Health included the proposal of amending the current law in its objectives for amendments of the Act on Patients' Rights.

### ***Activities aimed at the enforcement of implementation of ECtHR judgments in Polish cases.***

Several judgments of the Court in Polish cases ought to have been implemented. So far the Committee of Ministers of the Council of Europe has not declared any of these judgements as implemented. The Federation spoke about that at the parliamentary meeting of the Committee on Justice and Human Rights and the meeting of the Team on ECHR, pointing out the gaps and stressing the need to take relevant steps in order to ensure access to legal abortion for women. The Court listed numerous obstacles women face in exercising their rights granted by the Act on Family Planning.

## **Reaction to Criminal Code amendment proposals**

The Federation has been watching carefully the attempts to change legislation concerning reproductive rights. We immediately reacted to Criminal Code amendments proposed by the Criminal Code Codification Committee. Changes in wording on abortion suggested by this body are unusual even in countries with most restrictive abortion laws. The adoption of these solutions would largely limit the already poor framework for protecting Polish women's reproductive rights, therefore the Federation has spoken out against them and will continue to monitor the process and undertake advocacy as needed.

## ► **Main activities of the Federation for Women and Family Planning in 2013**



Conference “Twenty Years of Polish Anti-Abortion Law” Laws concerning reproductive rights in Poland and other EU countries”



Panel at the Fifth Polish Congress of Women “Women’s Health and Sexuality throughout Lifecycle”



Team of the Federation en route to the rally against restrictions in the abortion law



*Rally at the Parliament against restrictions in the abortion law*



*Ponton Group of Sex Educators affiliated with the Federation at Warsaw feminist march Manifa*



*Director of the Federation Krystyna Kacpura delivering a statement at Human Rights Council in Geneva*

*Fot.: archiwum własne*



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She has been working at the Federation since 2010. She graduated in marketing at University of Abertay Dundee and the European Diplomacy Academy. She also studied Peace Studies at the University of Bradford. She was in charge of the nationwide campaign of the Federation aimed at raising awareness of patient's rights among women. Since 2013 she has been a coordinator of ASTRA Youth network gathering youth activists working on SRHR in CEE region.



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