



## **Federation for Women and Family Planning**

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### **Alternative report of the Federation for Women and Family Planning on the implementation by Poland of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence**

#### **I) Introduction to the report of the Federation for Women and Family Planning**

Federation for Women and Family Planning<sup>1</sup> is a non-governmental organization advocating for reproductive health and rights. It was established in 1991. It is based in Poland and works locally, regionally and internationally on advancement of women's reproductive rights through monitoring, advocacy and educational activities as well as strategic litigation before domestic and international courts.

For the scope of the Federation's activities, the report will focus on the question of sexual and reproductive rights, from the perspective of how the protection of women victims of violence covered by the scope of the Convention is affected.

When sexual violence has a direct impact on the sexual and reproductive health of victims, its consequences should be taken into account by support services in order to respond to the needs and possibly trauma suffered by these victims of sexual violence. In the Federation view, this is not done properly by the Polish government and its agencies responsible for the implementation of the Convention.

#### **II) Chapter 2 of the Convention**

##### **1) Article 9 - Non-governmental organisations and civil society**

In the Federation's view Poland fails to "recognise, encourage and support, at all levels, the work of relevant nongovernmental organisations and of civil society active in combating violence against women and to establish effective co-operation with these organisations".

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<sup>1</sup> <https://en.federa.org.pl/about-us/>



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After the 2016 so called Black Protest (Czarny Protest) and Women's Strike (Strajk Kobiet) movements against the bill introducing total abortion ban women's rights activists and organizations in Poland were and are under attack. Since coming to power in 2015, the PiS government has targeted women's rights groups through raids and denial of funding, often with little warning and no clear rationale. PiS leaders, politicians, and church-backed groups have publicly smeared women's rights organizations, mischaracterizing their work as dangerous to families and traditional values. High-level PiS leaders and civil servants have championed retrogressive laws and policies, sought to reinforce traditional gender roles, disparaged feminism, and publicly discouraged efforts to combat violence against women<sup>2</sup>.

Federation for Women and Family Planning is not an organisation which is government founded however an express alignment of the government with the fundamentalist movement and obvious opposition to our work in terms of our mission creates very hostile working environment for the Federation as well. The sexuality education component is under particular attack of the government propaganda.

In May 2020 the Poland's justice ministry has awarded an honour to a pro-life activist, Z. Wiewiórka<sup>3</sup>, who prevented a teenager from having an abortion by informing the girl's parents about her plans<sup>4</sup>. According to the information available from the social media platform, Wiewiórka violated the girl's privacy and harassed her online. The so called "merit in the field of justice" was awarded by the vice Minister of Justice Romanowski who openly criticised the Istanbul Convention and said the ministry always supports the defence of human life and highly values the actions of all NGOs that are actively involved in pro-life campaigning. This shows clearly the stand government takes and what NGO mission it values. In the Federation view it amounts to official legitimisation and institutionalisation of violence against women.

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<sup>2</sup> [https://www.hrw.org/sites/default/files/report\\_pdf/poland0219\\_web2\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/poland0219_web2_0.pdf)

<sup>3</sup> Z. Wiewiórka is a 25-year-old volunteer at Fundacja Pro-Prawo do Życia, an NGO known for organising demonstrations with posters of aborted fetuses as well as seeking to criminalise sex education and driving loudspeaker vans through Polish cities broadcasting messages linking LGBT people to paedophilia.

<sup>4</sup> <https://notesfrompoland.com/2020/05/18/polish-government-honours-pro-life-activist-who-stopped-teen-having-abortion-by-informing-her-family/>



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Moreover, the Federation wishes to draw attention to the fact that the report submitted by Poland to GREVIO has been drafted in consultation with the fundamentalist organisation Ordo Iuris that at the core of its activities has the withdrawal of Poland from the Istanbul Convention. Additionally, it is worth adding that the vice president of this organisation is a member of the Council of the National Institute of Freedom<sup>5</sup> which is the government organisation involved among other things in the distribution of funds for the civil society.

### **2) Article 11 - Data collection and research**

Poland has failed to collect relevant statistical data as regards the cases of all forms of violence covered by the Convention and especially not “at regular intervals”. There is no relevant research available either. All the research which is available was incited and done by the non-governmental organisations with the support of foreign partners. The police statistics on proceedings initiated in the case of the sexual violence against women date back to 2017. The three years interval seems to constitute the unproportionally long period for collecting the data especially in such important theme requiring taking timely and appropriate preventive/reactive measures. There are no reports, researches or analysis available from the government agencies. This makes it very difficult to draft the alternative report for lack of relevant data.

### **III) Chapter 4 of the Convention**

#### **1) Article 25 - Lack of adequate support afforded to women who are victims of rape and other forms of sexual violence in terms of access to SRHR services**

##### **Federation’s commitment to assisting victims of violence**

One of the pillars of the Federation’s activity is running a helpline where psychologists, lawyers, sexuality educators, gynaecologists on daily basis provide assistance to women and girls mostly as regards sexual and reproductive services. Minor part of questions concern aspects of sexual violence and prevention (2 %). The experts are ready to provide assistance to women who were victims of sexual violence and who are in need of advice as regards access to sexual and reproductive health services. Additionally, the Federation’s Legal Team

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<sup>5</sup> <https://niw.gov.pl/langen/?lang=en>



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consists of lawyers who undertake often pro bono litigation aiming at helping women who were victims of domestic violence to have their rights respected and enforced. These activities are however in no way State coordinated or assisted.

### **Procedures relating to sexual violence crimes**

When women who have been victims of sexual violence report the crime with the police (articles 197-200 of the criminal code), the police officers who receive the notification of the crime shall follow the special procedure<sup>6</sup>. Further, the medical professionals have also a procedure to follow while examining the victims of violence<sup>7</sup>. According to the procedure the girl or a woman who was a victim of sexual violence needs to be examined by a gynaecologist and get full information on the emergency contraception and the prescription if necessary. The biological evidence needs to be secured for the purposes of the institution of criminal proceedings and prevention of the sexually transmitted diseases. Adequate psychological support needs to be guaranteed together with the follow up of medical visits.

The procedure of dealing with victims of sexual violence was established in agreement between the representatives of Ministry of Health, Ministry of Interior, Ministry of Justice, Ministry of Labour and Social Policy, Chief Police Commandant, Prosecutor General and non-governmental organisations on 25 November 2010. This is however not a binding procedure.

These procedures are quite comprehensive and clear; however, it has been affirmed by persons working with victims of violence that they are neither known or implemented. From the information gathered from the NGOs supporting women who are victims of violence police declared to follow the procedure while the medical professionals not even subscribed to respecting the procedure. In 2012 the research has been conducted which showed among medical professionals, doctors and midwives who work in the hospitals and have contact with victims of sexual violence. The results showed that 54.5% of doctors and 26.9% of midwives know the Procedure of contact with victims of sexual abuse<sup>8</sup>. The testimonies of the police

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<sup>6</sup> <https://przemoc.gov.pl/procedura-policji-postepowania-z-osoba-ktora-doswiadczyła-przemocy-seksualnej>

<sup>7</sup> [https://przemoc.gov.pl/uploads/83/Procedura%20medyczna%2025.11.2015\\_1448462498.pdf](https://przemoc.gov.pl/uploads/83/Procedura%20medyczna%2025.11.2015_1448462498.pdf)

<sup>8</sup> Research conducted by Teresa Lewandowska-Abucewicz, Katarzyna Kęcka, Jacek Brodowski  
[https://journals.viamedica.pl/seksuologia\\_polska/article/view/14-18/34809](https://journals.viamedica.pl/seksuologia_polska/article/view/14-18/34809)



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officers additionally confirm that these procedures are not de facto applied in the medical units where the police bring over the victims of sexual violence. The police officers who were interviewed underline the lack of cooperation between the medical units and police, no follow up controls by the doctors who examined the victims of violence, no procedure of prevention against the sexually transmitted diseases, difficulties in getting the emergency contraception<sup>9</sup>. One policeman drew attention to the fact that the only case in which the emergency contraception is free of charge is precisely when there was a suspicion of sexual violence<sup>10</sup>. This may put women purchasing the contraceptives in additionally uncomfortable situation and stigmatise them further.

Moreover, it stems from the information available that no effort has been made to disseminate the procedure or teach the medical professionals or the police how to correctly apply its provisions. Without the binding procedures in place, police and medical professionals act in regulatory chaos and the standard of care differs according to the arbitrary decisions of individual professionals and capacities of the units providing assistance. This often leaves victims without access to adequate services and support.

### **Impeded access to abortion for victims of rape and other forms of sexual violence**

One of the consequences of sexual violence may be unwanted pregnancy. The Act of 1993 on family planning, human embryo protection and conditions of permissibility of abortion<sup>11</sup> (hereinafter called Act of 1993) allows for legal abortion in the case where “there are reasons to suspect that the pregnancy is a result of an unlawful act” (Article 4a § 1 p. 3). Abortion may be performed until the 12<sup>th</sup> week of pregnancy. For the abortion to be performed, the prosecutor is bound to issue a certificate on the suspicion that pregnancy occurred as a result of a criminal act.

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<sup>9</sup> Report on sexual violence, Foundation for Equality and Emancipation STER, 2016, p. 128-129.

<http://www.fundacjaster.org.pl/upload/Raport-STERu-do-netu.pdf>

<sup>10</sup> Ibidem, p. 129.

<sup>11</sup> <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Polish%20abortion%20act--English%20translation.pdf>



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In practice, access to abortion under the above described ground does not appear to be effective and real. The data contained in the Polish Council of Ministers report from the execution of the Act of 1993<sup>12</sup> shows that the number of abortions performed in the public hospitals under this ground in the years 2009-2018 oscillated from 0-3. In 2018 only 1 abortion on this ground was performed while there were over 5,000 proceedings which were instituted following the notification of sexual violence crimes<sup>13</sup>. The latter number indicates high likelihood that more abortions were performed as a result of sexual violence without being included in the official statistics. It may also suggest difficulties in obtaining the certificates. It is worth noting that this ground allows for the abortion to be performed in the private premises.

Federation for Women and Family Planning conducted monitoring of the hospitals performing legal abortions in Poland which shown that only 10 % of hospitals do provide abortion service. These two combined factors may mean that women who got pregnant as a result of sexual violence are afraid to face barriers in access services in public hospitals and go to private doctor's offices instead. The private gynaecological practices do not fall under the official statistics.

There is another important issue which relates to the difficulty in access to abortion resulting from the criminal act i.e. infanticide. Unfortunately, there is no research available that could examine the links between the two and the role of the women's husband/partner in infanticide. This has not been verified if the murder of the child had been primarily a result of a sexual violence, or/and fear against violence which could be a particular case of poor families with many children. Low interest is shown in Poland in the consequences of rape for women in marriage, in terms of mental and emotional toll it's taking<sup>14</sup>. These are taboos in the society which are reflected in the lack of research, policies and regulations on these themes.

### **Criminalisation of abortion as a form of violence against women**

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<sup>12</sup> <http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?documentId=6F82FBB36BAA945CC125839200434FC7>

<sup>13</sup> <http://statystyka.policja.pl/>, available at: <https://bit.ly/2JaAkQs>

<sup>14</sup> Diana E. H. Russell "Rape in marriage". 2019 Polish edition. Introduction by K. Ferenc and A. Kuczyński.



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According to Polish law (art. 152 of the Criminal Code) a person who performs abortion with a women's consent in breach of law is liable to the prison sentence up to 3 years (§1). Same penalty applies to someone who helps pregnant women to have abortion in breach of law or to someone who incites a woman to undergo the abortion (§2). If these crimes (§1,2) are committed at the time when the foetus has become capable of living outside the pregnant woman's body, the perpetrator is subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

United Nations Special Rapporteur on Torture and the Committee on the Elimination of Discrimination against Women in its General recommendation no. 35 on gender-based violence against women has explicitly mentioned that violations of women's sexual and reproductive health and rights, such as forced sterilizations, forced abortion, forced pregnancy, criminalisation of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment<sup>15</sup>. As regards Poland specifically, the UN Committee observations on Poland from 2019 called on Poland to decriminalise abortion and considered that in cases when denial of procedure of access to abortion results in physical and mental suffering so severe in pain and intensity that it can amount to torture<sup>16</sup>.

### **Chilling effect affecting medical professionals and activists**

According to the police statistics in 2017<sup>17</sup> there were 132 crimes of aiding abortion established. Doctors are under chilling effect to refer pregnant women for prenatal testing and to provide information on the existing grounds for abortion. Polish activists' groups who run internet forums and cooperate with the European networks of medical abortion pills providers who provide information on access to medical abortion have criminal proceedings instituted for

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<sup>15</sup> Report of SR on Torture, 5 January 2016, A/HRC/31/57; CEDAW Committee, L.C. v. Peru, CEDAW/C/50/D/22/2009, para 8.18; Human Rights Committee, Whelan v. Ireland,

<sup>16</sup> [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/POL/CAT\\_C\\_POL\\_CO\\_7\\_35715\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/POL/CAT_C_POL_CO_7_35715_E.pdf)

<sup>17</sup> <http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko/63421,Przerwanie-ciazy-za-zgoda-kobiety-art-152.html>



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helping abortion<sup>18</sup> or they are threatened by the pro-life groups that such proceedings will be instituted. In 2020 the notice on the crime against the initiative helping women access medical abortion was filed by the Children Ombudsman<sup>19</sup> who considers this initiative as inciting to abortion and as a form of financing it. Moreover, women who ordered pills are also called to testify to the police because of the proceedings instituted against the providers, which strengthens the chilling effect on those who try to help women in accessing services for which the need was even more pronounced in the time of pandemic where travelling to foreign abortion clinics was very limited. This creates an overall climate of intimidation and fear among medical professionals, activist groups and organisations trying to provide basic SRHR services as well as among women themselves.

In the Federation's view, this all factors combined together constitute the form of violence against women and discrimination based on sex and person's sexual and reproductive choices. This form of violence originates from the State's failure to protect women against violence as stated in the Convention. The Federation recent report called "Institutional violence"<sup>20</sup> refers to this combination of factors led by the lack of will of authorities and institutions to provide assistance and services to women who in consequence are deprived of basic rights, services and dignity. This form of violence is characterised by use of power by ways of action/inaction by people whose professional function gives prerogatives in decision making. These are law enforcement officers, public officials in the ministries, members of Polish Parliament and National Health System. Their inertia and lack of sensibility together with the restrictive legal provisions that do not offer adequate protection may result in systemic violence against women and constitutes a threat to women's life and health.

### **Conclusions and Recommendations:**

In the Federation's view, Poland fails to ensure the adequate protection to victims of sexual violence in so far as the sexual and reproductive health of victims is concerned.

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<sup>18</sup> This notice was filed by the antiabortion group in 2018: <https://www.wysokieobcasy.pl/wysokie-obcasy/7,115167,23436005,to-nagonka-aborcyjny-dream-team-on-tour-pod-lupa-prokuratury.html>

<sup>19</sup> <https://www.tvp.info/45759740/rpd-zawiadomi-prokurature-ws-inicjatywy-aborcja-bez-granic>

<sup>20</sup> „Institutional violence in Poland. Systemic violations of reproductive rights”: report of the Federation for Women and Family Planning, Warsaw 2019. [https://federa.org.pl/przemoc-instytucjonalna/przemoc\\_instytucjonalna/](https://federa.org.pl/przemoc-instytucjonalna/przemoc_instytucjonalna/)





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Federation recommends that the Polish government:

- 1) **Start recognising and supporting the work of relevant nongovernmental organisations** and of civil society active in combating violence against women and to establish effective co-operation with these organisations.
- 2) **Stop the cooperation and withdraw the support to the organisations** that act openly against the principles enshrined in the Istanbul Convention (e.g. Ordo Iuris).
- 3) **Start collecting relevant statistical data** at regular intervals on cases of all forms of violence covered by the scope of this Convention, including the data on access of victims of sexual violence to SRHR.
- 4) **Draft the binding procedure for professionals (police and doctors)** who are dealing with women victims of sexual violence. Such procedure should ensure immediate examination by the gynaecologist in terms of protection against sexually transmitted diseases and immediate and free of charge access to emergency contraception.
- 5) **Ensure that professionals providing support are adequately trained** to respond to the trauma suffered by victims of sexual violence.
- 6) **De-criminalize abortion** and
  - **issue precise guidelines to prosecutors** on issuing the certificates allowing for abortion
  - **issue separate guidelines for public hospitals** on how to proceed with legal abortions resulting from pregnancies being the consequence of rape or another act of sexual violence so that women don't need to pay for the services guaranteed under the public insurance scheme
  - **collect data on all abortions** performed as a result of pregnancy being the consequence of rape or another act of sexual violence