

**Submission of the Report on
Sexual and Reproductive Rights in Poland
By Federation for Women and Family Planning (FWFP)
related to Universal Periodic Review of Poland
for session scheduled for April 2008**

The FWFP has a Special Consultative Status with UN ECOSOC

INTRODUCTION

FWFP is a formal alliance of seven non-governmental organizations established in 1991. The main mission of the FWFP is to promote sexual and reproductive health and rights as a human rights issue and a gender equality issue. From the very beginning, the FWFP is monitoring the situation in Poland in this area and submitted a number of reports to international human rights bodies about gender discrimination in the area of reproductive health and rights.

Although Poland has ratified several international human rights documents, conventions and protocols; and voluntarily pledged to ensure “*respect for all human rights and fundamental freedoms without any exception*” it continues to fail to protect sexual and reproductive rights which remain seriously violated in Poland. A number of UN Treaty Monitoring Bodies, including Human Rights Committee (1999, 2004), Committee on the Elimination of Discrimination Against Women (2007) as well as Committee on Economic, Social and Cultural Rights (1998, 2002), Committee on the Rights of the Child (2002), Commissioner for Human Rights of the Council of Europe and recently the European Court of Human Rights in the case of Alicja Tysiac expressed deep concerns about severe consequences of the anti-abortion law in force since 1993 on life and health of women.

Numerous women were denied access to legal under the Polish law but hardly accessible, reproductive health services such as contraception counselling, prenatal testing for pregnant women and lawful interruption of pregnancy. We could observe at first hand how the system works, or rather does not work, in practice, what are the barriers women face.

The major violations of sexual and reproductive rights occur in the following areas:

- 1) Criminalization of abortion on the social and economic grounds that force women to seek clandestine, therefore often unsafe, terminations of pregnancy;
- 2) The anti-abortion law in practice is more restrictive than *de iure* (e.g. Alicja Tysiac case);
- 3) Limited access to modern contraceptives due to social and economic reasons as well as prohibition of voluntary sterilization;
- 4) Limited access to reliable and comprehensive sexuality education, information and services for adolescents.

RESTRICTIONS TO ABORTION

The Government has failed to implement any recommendations made by a number of TMBs related women’s human rights violations due to restrictive anti-abortion legislation. The anti-

abortion prohibited abortion on grounds of social reasons. Moreover, a side-effect of this prohibition, it resulted in a serious limitation of access to abortion permitted under present law. Existing problem with access to abortion is well illustrated by the official numbers of abortions performed in public hospitals. According to the official governmental data, annually, there is about 200 such abortions performed.

Table 1: *Numbers of legal abortions (1998 – 2005)*

YEAR	Total Number of legal abortions	Abortions to save women's life and health	Abortions on genetic grounds	Abortions when pregnancy is a result of crime
2001	124	63	56	5
2002	159	71	82	6
2003	174	59	112	3
2004	193	62	128	3
2005	225	54	168	3

Principal reasons of the denial of the therapeutic abortions

The long experience of FWFP, which has been providing counselling services to multiple women who experienced difficulties in access to legal abortion, leads to conclusion that barriers encountered by women are certainly of systemic nature and are not just exceptions from the general rule. The fourteen years of the anti-abortion in force allows for a number of observations on the real effects of the law on the women's life and health.

Physicians refuse to issue a certification required for therapeutic abortion, even when there are genuine grounds for issuing such a permit. Furthermore, it happens that in case a woman gets a permit, the physician to whom she goes for a service questions its validity as well as the competences of a physician who issued the permit and eventually denies services.

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

Alicja Tysiac was denied right to legal abortion despite serious medical indications. European Court of Human Rights which found that there had been a violation of Article 8 (right to respect for private life), stated in its judgment: *"The Court further notes that the legal prohibition on abortion, taken together with the risk of their incurring criminal responsibility under Article 156 § 1 of the Criminal Code, can well have a chilling effect on doctors when deciding whether the requirements of legal abortion are met in an individual case. The provisions regulating the availability of lawful abortion should be formulated in such a way as to alleviate this effect. Once the legislature decides to allow abortion, it must not structure its legal framework in a way which would limit real possibilities to obtain it"*.

This case is a reflection of the failure of the state to implement the HRC concluding observations. The European Court of Human Rights, in its decision referred to the concluding observations of the HRC to highlight some of the problems in Poland.

The conscience clause

The Polish state has failed to take into account and implement the Concluding Observations of the HRC from 2004, specifically on the issue conscience clause.

One of the reasons of restricted access to the therapeutic abortion is inappropriate performance of the procedural safeguards contained in the "conscience clause". Under Article 39 of the Act of 5 December 1996 on the medical profession, "*the doctor may abstain from accomplishing medical services discordant with his conscience, (...) nevertheless s/he is obliged to indicate real possibilities of obtaining the service from another doctor, or in another medical institution and justify his decision and mention about the refusal in the medical documentation*".

With respect to the therapeutic abortion, the "conscience clause" is abused. Generally physicians relying on the "conscience clause" do not fulfill any procedural requirements stemming from it, which aim at safeguarding the patient's rights.

Refusal to perform therapeutic abortion in public-health providers

It is important to underline that not only physicians abuse the conscience clause, but the clause is invoked by healthcare institutions as a whole. The hierarchical relations in Polish hospitals lead very often to the situation where the decision concerning the possibility of abortion is made by the director on his own, without consulting other doctors, who sometimes do not even share his / her point of view.

It is important to note further that public hospitals are funded by the National Health Fund for the whole package of ob/gyn. services without any exceptions. It means they are paid for potential abortions they refuse to provide. The problem of non-performance of therapeutic abortions by hospitals was highlighted by Minister of Health Marek Balicki who in 2004 issued the official letter to voivods (*województwa*), in which he urged voivods to remind managers of the public healthcare institutions about the necessity to comply with the women's rights provided in Article 4a of the Law on Family Planning.¹

It is not only directors of hospitals and gynaecologists who refuse to perform therapeutic abortions; it is also anaesthesiologists and auxiliary medical personnel (midwives, nurses).

Inaccessibility of abortion due to criminal grounds

Although abortion on any legal grounds is difficult to obtain, it is particularly evident by yearly number of legal abortions due to rape. Every year no more than 2-3 abortions are performed on this ground while highly unreported rape statistics indicate several thousands rapes per year. Media reported cases of women who were denied to receive necessary referral for abortion services from a persecutor who objected on religious grounds. Moreover, long procedures make difficult for a women to receive legal abortion before the deadline which is 12 weeks of pregnancy.

¹ See information on <http://www.oil.org.pl/xml/oil/oil68/gazeta/numery/n2003/n200304/n20030422>.

Limited access to prenatal tests and, as a result, to abortions on genetic grounds

Pregnant women quite often experience difficulties in receiving prenatal tests in public healthcare. Some clinics refuse to issue necessary referral on the grounds that it may lead to abortion. Barbara Wojnarowska from Lomza is one of many women who was denied prenatal tests in spite of clear indications and, as a result, forced to give birth to the second baby (1999) with the same serious genetic disease as her first child. She sued the doctor to the court. The Prosecutor did not find the doctor guilty and abandoned the case. The Civil Court found the doctor guilty and she was received a symbolic compensation. The case is still pending in the Polish court.

Unsafe abortions

Unsafe abortion poses a major threat to women's health in Poland. Some women even died in its result. The anti-abortion law did not eliminate and probably did not diminish the phenomenon of abortion. Illegal terminations are very common. Federation made estimates in its 2000 report that the number of illegal abortions may yearly be from 80,000 to 200,000.

ACCESS TO CONTRACEPTIVES

The Polish state has failed to take into account and implement the Concluding Observations of all TMBs incl. the HRC from 2004 which recommended the government to "assure the availability of contraceptives and free access to family planning services and methods".

The anti-abortion law obliges relevant state authorities to provide people with full access to contraceptive methods. However, the Government fails to meet this obligation. In 1999 five contraceptives have been withdrawn from the list of refunded medicines. Since then any action taken to introduce contraceptives on the lists of subsidized medicines has failed. In recent years the Ministry of Health concentrated its efforts on the promotion of "natural" family planning methods. There is no any governmental programs promoting modern contraceptive methods. In 2006, the Minister of Health established a Ministerial Task Force to promote natural family planning.

Social and economic barriers often prevent women and girls from obtaining contraception which can be bought on the basis of medical prescription. Contraceptive counseling is not integrated into primary health care system. Private gynecological visits, which are quite often the only option for women, are expensive, and some doctors require patients to visit the clinic every month to get a prescription for a monthly packet of the Pill. Many women report that doctors quite often do not know modern forms of contraceptives (e.g. emergency contraception) or impose religiously-based biases on women during medical counseling what constitutes a serious barrier in access. The cost and time required to visit a clinic every month can be prohibitive for any woman, but is especially burdensome for adolescent girls.

Oral contraceptives may be practically inaccessible because they are so expensive relative to income. Furthermore, they require prescription and there are gynecologists who refuse to issue them by referring to conscience clause, especially as regards morning after pill.

Poland has the lowest contraception prevalence Europe. According to World Health Organization only 19 % of women protect themselves against pregnancy by using hormonal contraception or diaphragms.

Due to the outdated law which has been in effect since 1932, voluntary contraceptive sterilization remains illegal for both women and men.

SEXUALITY EDUCATION

The Polish state has failed to take into account and implement the Concluding Observations of TMBs incl. of the HRC from 2004, on the issue of sexuality education. The state to this day, despite attempts by civil society to improve the situation and advocate for comprehensive sex ed in schools, had not taken any action.

The school curriculum provides for realization of the “*Preparation for Family Life*”, which is offered to pupils in secondary school (aged 15-18). Nevertheless, it is not obligatory but facultative. The content of the programme leaves a lot to be desired and by no means conforms to scientific standards. The vast majority of textbooks is not objective but present sexuality from the point of view of Catholic teaching. Among officially recommended by the Ministry of National Education textbooks, we find ones that state, for instance, that “*masturbation causes infertility*” or “*contraception is a denial of a true love*”. Such misinformation has consequences for young people in terms of their vulnerability for STIs incl. HIV/AIDS as well as teenage pregnancy. Furthermore, these textbooks strongly stereotype women and promote traditional model of family. They also present strong anti-choice discourse.

The government does not undertake any efforts to incorporate evidence-based sexuality education into school curriculum. This stays in stark contrast with the society’s attitudes. Recently carried out national poll (2007) shows that almost 80% of Poles is for sexuality education in schools.

RECOMMENDATIONS

- Implement comprehensive sexuality education programme in school curriculum;
- Introduce education, information as counseling programs improving access to all modern forms of family planning;
- Review the effects of restrictive anti-abortion law on women and undertake legal initiative which will address systematic violations of sexual and reproductive rights;
- Introduce regulations to avoid abuses of the Conscience Clause;
- Establish appellation mechanisms to improve access to reproductive health services legal under present law.

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