

Status of Human Rights in Poland for the 41st Session of the Universal Periodic Review

Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting and protecting human rights around the world. The ECLJ holds Special Consultative Status before the United Nations Economic and Social Council. This report raises concerns about human rights abuses in the Republic of Poland (Poland) for the 41st Session of the Universal Periodic Review (UPR).

Background

2. Poland is a country located in central Europe with an estimated population of 38.1 million people¹. The country is predominately Christian with 85% of the population identifying as Catholic, 12% as unspecified, and 1% as Orthodox Christian².

3. Poland's last UPR was held on 9 May 2017³. As a result of the review, Poland received 185 recommendations, 154 of which Poland supported⁴. One of the recommendations supported by Poland was that the government "[e]nsure that safe legal abortions are available and accessible in practice, in keeping with the 1993 Act on Family Planning and consistent with Poland's obligations under articles 12 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women"⁵. It was further recommended, and supported by Poland, that the government also "[e]nsure the protection of the right of women to have access to sexual and reproductive health and rights"⁶. It should be noted that abortion is not a sexual or reproductive right but is in fact the taking of another life. There were no recommendations made regarding freedom of religion.

Legal Framework

4. Under Article 38 of the Constitution of Poland, "The Republic of Poland shall ensure the legal protection of the life of every human being"⁷. Furthermore, under Article 72 of the Constitution, "The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense"⁸.

5. The preamble to Poland's Family Planning, Protection of Human Embryo and Conditions of Termination of Pregnancy Act adopted on 7 January 1993 states:

Recognizing that life is a fundamental right of a human being, and that life and health care shall be subject to special protection by the State, society and citizen; recognizing the right of everybody to decide responsibly about having children and to have access to information, education, counseling and the means that

ensure the enjoyment of this right . . .⁹

6. Furthermore, under Article 1 of this Act, “The right to life shall be subject to protection, including in the prenatal phase, to the extent provided in the Act”¹⁰.

7. Article 4a of the Act regulates when abortion is permitted under law:

Article 4a. 1. A termination of pregnancy may be performed only by a doctor, when:

1) The pregnancy poses a threat to the life of the pregnant woman,

2) Prenatal examinations or other medical conditions indicate that there is a high probability of a severe and irreversible fetal defect or incurable illness that threatens the fetus’s life,

3) There are reasons to suspect that the pregnancy is a result of an unlawful act¹¹,

8. Poland is a party to the Convention on the Rights of Persons with Disabilities (CRPD), which recognises:

the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty¹².

9. Under Article 6 of the Convention on the Rights of the Child (CRC), to which Poland is a party:

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child¹³.

10. Moreover, Article 2 of the CRC states that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s . . . disability”¹⁴.

11. Additionally, under Article 6 of the International Covenant on Civil and Political Rights (ICCPR), “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”¹⁵.

Abortion in Poland

12. Since Poland's last UPR in May of 2017, the government has continued to uphold protections for the unborn, despite external pressure by the European Union Parliament who passed a resolution condemning Poland's efforts to protect the life of the unborn¹⁶.

13. As previously stated, the abortion law in Poland permits abortion in cases where "prenatal examinations or other medical conditions indicate that there is a high probability of a severe and irreversible fetal defect or incurable illness that threatens the fetus's life"¹⁷. On 19 November 2019, 119 members of Poland's Parliament submitted an application to the Constitutional Tribunal Court to determine if abortion in the cases of fetal abnormalities is compatible with the Constitution¹⁸. On 22 October 2020, the Polish Constitutional Tribunal issued a ruling on this question and declared that abortion in cases of fetal abnormalities is unconstitutional¹⁹. One government politician praised the decision, stating that now "[t]he state can no longer take a life away only because someone is sick, disabled, in poor health"²⁰.

14. The ECLJ commends this decision, especially as other countries in Europe are taking the exact opposite approach. In countries such as Iceland for example, abortion rates for the unborn who potentially could be born with a disability are astronomical. This ruling preventing abortion based on birth defects will undoubtedly save the lives of many innocent babies.

15. Poland has taken a strong pro-life stance. In addition to preventing abortion in the cases of birth defects, it has also taken a stance on affirming protections for the unborn on the international stage. In October of 2020, Poland was a signatory on the Geneva Consensus Declaration on Promoting Women's Health and Strengthening the family. As stated in this Declaration:

Furthermore, we, the representatives of our sovereign nations do hereby declare in mutual friendship and respect, our commitment to work together to:

Ensure the full enjoyment of all human rights and equal opportunity for women at all levels of political, economic, and public life;

Improve and secure access to health and development gains for women, including sexual and reproductive health, which must always promote optimal health, the highest attainable standard of health, without including abortion; [and]

Reaffirm that there is no international right to abortion, nor any international obligation on the part of the States to finance or facilitate abortion, consistent with the long-standing international consensus that each nation has the sovereign right to implement programs and activities consistent with their laws and policies²¹.

Conclusion

16. We are proud of the work Poland is doing to uphold human rights, especially its protections for the unborn. While outlawing abortion in cases of fetal abnormalities is a crucial and important step, we would like to encourage Poland to further these steps. The value of human life is not dependent upon the nature in which it began, and an unborn baby conceived by rape is no less valuable and deserving of life than any other. Therefore, we request that Poland reform its laws to protect the life of the unborn baby with no exception based on how the baby's

life began.

¹ Poland, THE WORLD FACTBOOK (Jan. 26, 2022), <https://www.cia.gov/the-world-factbook/countries/poland/>.

² *Id.*

³ *Universal Periodic Review – Poland*, UNHRC, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/PLIndex.aspx>.

⁴ *UPR of Poland – Thematic List of Recommendations*, OHCHR, https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/PL/UPR27_Poland_ThematicList_of_Recommendations_E_2.docx.

⁵ *Id.* at A/HRC/36/14/Add.1.

⁶ *Id.*

⁷ THE CONST. OF THE REPUBLIC OF POL. Apr. 2, 1997, art. 38.

⁸ *Id.* art. 72.

⁹ The Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1992 [Family Planning Act of 7 January 1992] (Pol.), Preamble, available at <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Polish%20abortion%20act--English%20translation.pdf>.

¹⁰ *Id.* art. 1.

¹¹ *Id.* art. 4a.

¹² Convention on the Rights of Persons with Disabilities, Preamble, *opened for signature* Mar. 30, 2007, 2515 U.N.T.S. 3, available at https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf.

¹³ Convention on the Rights of the Child art. 6, *adopted on* Nov. 20, 1989, 1577 U.N.T.S. 3, available at <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>.

¹⁴ *Id.* art. 2(1).

¹⁵ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 6 I.L.M. 368 (1976), 999 U.N.T.S. 171, art. 6.

¹⁶ *EU Parliament Condemns Polish Abortion Law*, AP (11 Nov. 2021), <https://apnews.com/article/abortion-european-union-poland-europe-reproductive-rights-4fe63cb363ae1f2c0a3d0ab993db56fc>.

¹⁷ Family Planning Act of 7 January 1992, art. 4a(2) (Pol.).

¹⁸ *MEPs Want to Know if Eugenic Abortion Does Not Violate the Constitution*, TVP INFO (23 Nov. 2019), <https://www.tvp.info/45914594/grupa-poslow-pis-konfederacji-i-psl-kukiz15-chce-by-tk-zbadal-konstytucyjnosc-przepisow-dot-tzw-aborcji-eugenicznej>.

¹⁹ Joanna Plucinska & Anna Wlodarczak-Semczuk, *Poland Puts into Effect New Restrictions on Abortion*, REUTERS (Jan. 27, 2021, 10:45 AM), <https://www.reuters.com/article/us-poland-abortion/poland-puts-into-effect-new-restrictions-on-abortion-idUSKBN29W1ZN>.

²⁰ *Id.*

²¹ Geneva Consensus Declaration on Promoting Women’s Health and Strengthening the Family, <https://aul.org/wp-content/uploads/2021/06/geneva-consensus-declaration-english.pdf>.