



TEXTS ADOPTED

Provisional edition

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Abortion rights in Poland

European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland (2020/2876(RSP))

The European Parliament,

- having regard to the Treaty on European Union (TEU), and in particular Articles 2 and 7(1) thereof,
- having regard to the European Convention on Human Rights (ECHR) of 4 November 1950 and the related case law of the European Court of Human Rights (ECtHR),
- having regard to the Charter of Fundamental Rights of the European Union ('the Charter'),
- having regard to the Constitution of the Republic of Poland,
- having regard to the Universal Declaration of Human Rights of 10 December 1948,
- having regard to the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) of 16 December 1966 and the UN International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966,
- having regard to the Convention on the Elimination of all Forms of Discrimination against Women of 18 December 1979,
- having regard to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984,
- having regard to the UN Human Rights Committee's concluding observations of 23 November 2016 on the seventh periodic report of Poland,
- having regard to UNESCO's International Technical Guidance on Sexuality Education of 10 January 2018,
- having regard to the International Conference on Population and Development (ICPD) held in Cairo in 1994, its programme of action, the outcome of its review conferences and the 2019 Nairobi Summit on ICPD25,

- having regard to the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women on 15 September 1995 and to the subsequent outcome documents adopted at the UN Beijing +10 (2005), Beijing +15 (2010) and Beijing +20 (2015) special sessions,
- having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which entered into force on 1 August 2014, as well as Parliament’s resolution of 28 November 2019 on the EU’s accession to the Istanbul Convention and other measures to combat gender-based violence¹,
- having regard to the UN Sustainable Development Goals (SDGs) agreed in 2015,
- having regard to the issue paper of the Council of Europe’s Commissioner for Human Rights of 4 December 2017 entitled ‘Women’s sexual and reproductive health and rights in Europe’,
- having regard to the conclusions of the 2017 Annual Colloquium on Fundamental Rights entitled ‘Women’s Rights in Turbulent Times’ organised by the Commission,
- having regard to the 2018 World Health Organization recommendations on adolescent sexual and reproductive health and rights,
- having regard to the mission report of 10 July 2017 of the Committee on Women’s Rights and Gender Equality following its mission to Poland of 22 to 24 May 2017, and to the mission report of 3 December 2018 of the Committee on Civil Liberties, Justice and Home Affairs following the sending of an ad hoc delegation to Poland on the situation of the rule of law (19 to 21 September 2018),
- having regard to its previous resolutions on Poland, and in particular that of 15 November 2017 on the situation of the rule of law and democracy in Poland² and that of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law³,
- having regard to the four infringement procedures launched by the Commission against Poland in relation to the reform of the Polish judicial system and the proposal for a Council decision of 20 December 2017 on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law (COM(2017)0835),
- having regard to its resolution of 1 March 2018 on the Commission’s decision to activate Article 7(1) TEU as regards the situation in Poland⁴,
- having regard to its resolution of 14 November 2019 on the criminalisation of sexual education in Poland⁵,
- having regard to its legislative resolution of 4 April 2019 on the proposal for a

¹ Texts adopted, P9_TA(2019)0080.

² OJ C 356, 4.10.2018, p. 44.

³ Texts adopted, P9_TA(2020)0225.

⁴ OJ C 129, 5.4.2019, p. 13.

⁵ Texts adopted, P9_TA(2019)0058.

regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States¹, and to its legislative resolution of 17 April 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Rights and Values programme²,

- having regard to its resolution of 13 February 2019 on experiencing a backlash in women’s rights and gender equality in the EU³,
 - having regard to its resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI-free zones⁴,
 - having regard to its resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences⁵,
 - having regard to the Commission’s 2020 Rule of Law Report of 30 September 2020 entitled ‘The rule of law situation in the European Union’ (COM(2020)0580) and the Country Chapter on the rule of law situation in Poland,
 - having regard the letter sent by the five majority group leaders of the European Parliament to the Prime Minister of Poland on 30 October 2020⁶,
 - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the Union purports to be founded on the values of respect for human dignity, freedom, democracy, equality, justice, the rule of law, respect for human rights and non-discrimination, as set out in Article 2 TEU; whereas all Member States have assumed obligations and duties under international law and the EU Treaties to respect, guarantee and fulfil fundamental rights;
- B. whereas an efficient, independent and impartial judicial system is essential to ensure the rule of law and the protection of the fundamental rights and civil liberties of people in the EU;
- C. whereas the right to equal treatment and non-discrimination is a fundamental right enshrined in the Treaties and the Charter, and must be fully respected; whereas, according to the Charter, the ECHR and the case law of the ECtHR, women’s sexual and reproductive rights (SRHR) are related to multiple human rights, such as the right to life, freedom from inhuman or degrading treatment, the right to access healthcare, the right to privacy, information and education and the prohibition of discrimination; whereas these human rights are also reflected in the Polish Constitution;

¹ Texts adopted, P9_TA(2019)0349.

² Texts adopted, P8_TA(2019)0407.

³ Texts adopted, P8_TA(2019)0111.

⁴ Texts adopted, P9_TA(2019)0101.

⁵ Texts adopted, P9_TA(2020)0054.

⁶ Manfred Weber, President of the PPE Group, Iratxe García Pérez, President of the S&D Group, Dacian Cioloş, President of the Renew Group, Philippe Lamberts, Co-President of Verts/ALE Group, and Manon Aubry and Martin Schirdewan, Co-Presidents of GUE/NGL Group.

- D. whereas Parliament has addressed SRHR in its newly adopted EU4Health Programme, to ensure timely access to goods that are needed for the safe provision of SRHR (e.g. medicines, contraceptives and medical equipment);
- E. whereas the Constitutional Tribunal was established as one of the central elements to ensure the checks and balances of constitutional democracy and the rule of law in Poland;
- F. whereas the Committee on the Elimination of all Forms of Discrimination against Women and the UN Committee on the Rights of Persons with Disabilities issued a joint statement in August 2018 emphasising that access to safe and legal abortion, as well as to related services and information, is an essential aspect of women's reproductive health, and urging countries to put an end to restrictions on the SRHR of women and girls, as this threatens their health and lives; whereas access to abortion constitutes a human right, while the delaying and denying thereof constitute forms of gender-based violence and may amount to torture and/or cruel, inhuman and degrading treatment; whereas SRHR are targets under UN SDG 3, and whereas gender-based violence and harmful practices are targets under SDG 5;
- G. whereas access to comprehensive and age-appropriate information, sexuality and relationship education, and SRHR, including family planning, contraceptive methods and safe and legal abortion, as well as girls' and women's autonomy and ability to make free and independent decisions about their bodies and lives, is a precondition for their economic independence and is thus essential for achieving gender equality and eliminating gender-based violence; whereas it is their body, their choice;
- H. whereas Poland has ratified the Istanbul Convention, the Lanzarote Convention, the ICCPR, the ICESCR and the Convention on the Rights of the Child, and is obliged under international human rights law to provide access to comprehensive sexuality education and information, including on the risks of sexual exploitation and abuse, and to challenge gender stereotypes in society; whereas Poland did not implement the judgments of the ECtHR on access to legal abortion; whereas the Committee of Ministers of the Council of Europe has criticised Poland for its lack of progress in this regard;
- I. whereas there are many differences in access to abortion across the Member States; whereas Poland has one of the lowest scores in the European Union in the 2020 European Contraception Atlas, having one of the most restrictive policies regarding access to contraceptive supplies, family planning, counselling and the provision of online information; whereas Poland is one of the few countries that requires a prescription for emergency contraception, which is often denied by doctors on the grounds of personal beliefs;
- J. whereas since the Constitutional Tribunal ruling of 2015 regarding the Act of 5 December 1996 on doctors' and dentists' professions, neither healthcare practitioners nor healthcare facilities are legally obliged to provide names of alternative facilities or practitioners if they deny a patient sexual and reproductive health services due to personal beliefs; whereas the final version of the Act as amended in July 2020 did not include the referral obligation, as was initially proposed; whereas such an omission shows complete disregard for the recommendation of the Committee of Ministers of the Council of Europe as regards the execution of the ECtHR judgments against Poland in

the field of SRHR;

- K. whereas, according to civil society organisations such as the Federation for Women and Family Planning, in 2018 only 10 % of hospitals contracted by the Polish National Health Fund provided legal abortions, which means that entire Polish voivodeships refuse to provide safe and legal abortion, making it extremely difficult, and often impossible, for women to access such services;
- L. whereas as a result of fear and pressure from peers and the medical authorities, doctors in Poland prefer not to be associated with abortion procedures; whereas apart from the widely used conscience clause, doctors create additional non-statutory obstacles, such as unnecessary medical examinations, psychological consultations or additional consultations with experts, or limit women's rights to prenatal tests and information, which should be guaranteed for all under the public health scheme;
- M. whereas access to gynaecological care in Poland is highly restricted and in some regions almost impossible, resulting in a high number of unwanted pregnancies, poor reproductive health, a high prevalence of cervical cancer and insufficient access to contraception; whereas access to sexual and reproductive healthcare and the rights of LGBTI+ people are highly restricted; whereas trans and non-binary people requiring gynaecological care face discrimination in medical settings and are often denied access to care;
- N. whereas since the beginning of 2019, over 80 regions, counties or municipalities in Poland have passed anti-LGBTI+ resolutions declaring themselves free from so-called 'LGBT ideology', or have adopted all or part of the 'Regional Charters of Family Rights', discriminating in particular against single parents and LGBTI+ parents and people, and de facto limiting the freedom of movement of these EU citizens;
- O. whereas it is estimated that up to 200 000 women terminate pregnancies each year in Poland and are forced to undergo clandestine abortions, relying mostly on medical abortion pills without the necessary professional medical supervision and advice; whereas up to 30 000 women are estimated to be forced to travel abroad each year from Poland to receive the healthcare that they need and seek an abortion¹; whereas access to such measures is linked to payment for services, meaning that they are not equally accessible to all women, especially socio-economically disadvantaged women and migrant women in irregular situations; whereas this means that safe abortion is only accessible to a limited group of women in Poland;
- P. whereas, in response to the motion of 119 Members of the Polish Parliament with the support of the so-called 'pro-life' movements, on 22 October 2020 the Polish Constitutional Tribunal ruled unconstitutional the provision of the 1993 Act on Family Planning, Protection of the Human Foetus and Conditions for Termination of Pregnancy that allows for abortion in cases where a prenatal test or other medical considerations indicate a high probability of a severe and irreversible foetal defect or an incurable illness that threatens the foetus's life;
- Q. whereas a high probability of a severe and irreversible abnormality or an incurable disease of the foetus constituted the legal basis for 1 074 of the 1 110 pregnancy

¹ <https://www.theseus.fi/handle/10024/138222>

terminations in 2019, while the remaining cases occurred when pregnancy posed a threat to the life or health of a woman or resulted from a prohibited act (i.e. rape), which are the only other cases allowed by the 1993 Act on Family Planning;

- R. whereas the ruling will become applicable upon its publication, which pursuant to Polish law is mandatory, and once published will result in an almost complete ban on the right to abortion in Poland, criminalising abortion and leading to the expansion of clandestine, unsafe abortion and abortion tourism, which is only accessible to some, thus undermining women's health and rights and putting their lives at risk; whereas despite the ruling not having been published, many pregnant women who have been informed that there is a high probability of the foetus having a severe and irreversible abnormality or an incurable disease have had their access to legal abortion restricted;
- S. whereas the ruling is a new attack on the rule of law and fundamental rights and an additional attempt to limit SRHR in Poland, among the many made in recent years; whereas these attempts were initially halted in 2016, 2018 and 2020 as a result of mass opposition from Polish citizens, as expressed in the 'Black Friday' marches, which were strongly supported by Members of the European Parliament from different political groups;
- T. whereas the ruling took place at a time when, owing to the second wave of the COVID-19 pandemic, public-health-based restrictions were in place in all EU Member States, including Poland, severely impeding any proper democratic debate and due process, which is crucial when it comes to fundamental rights issues;
- U. whereas despite the sanitary restrictions and risks, unprecedented protests have taken place across Poland, and around the world; whereas thousands of demonstrators continue to protest against serious restrictions that undermine their fundamental SRHR; whereas the riot police and the military gendarmerie were deployed to control the protests and law enforcement officials have used excessive force and physical violence against peaceful protesters, including Members of the Polish Parliament and Polish Members of the European Parliament; whereas these actions are contrary to the Polish Government's obligations under international human rights law, including the Charter, which guarantees the right to peaceful assembly, and guidelines from the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, which state that as a general rule, the military should not be used to police assemblies;
- V. whereas public authorities used threats to prevent Polish citizens and people living in Poland from participating in manifestations, including substantial financial fines, while the national public prosecutor and Minister for Justice, Zbigniew Ziobro, has announced that criminal charges which could lead to a prison sentence of up to eight years will be filed against the protests' organisers; whereas many protesters have been unlawfully detained, including minors;
- W. whereas on 28 October 2020, Deputy Prime Minister Jarosław Kaczyński encouraged people to defend traditional Polish values and protect churches 'at all costs', which led to acts of aggression against protesters by nationalistic hooligans; whereas cultural and religious values in Poland are thus being abused as reasons to impede the full realisation of women's rights, equality for women and their right to make decisions about their own bodies; whereas a fundamentalist organisation, Ordo Iuris, which is closely linked to the ruling coalition, has been a driving force behind campaigns aiming to undermine

human rights and gender equality in Poland, including attempts to ban abortion, calls for Poland's withdrawal from the Istanbul Convention and calls for the creation of 'LGBTI-free zones';

- X. whereas according to recent polls, the majority of people in Poland support the right to access to abortion on request up to the 12th week; whereas the demonstrators are also asking for the resignation of the government, owing to its repeated attacks on the rule of law; whereas the protests have mostly been organised and coordinated by women-led organisations, activists and civil society organisations, with the support of the Polish political opposition; whereas the Polish President's proposal for abortion legislation following the protests is unsatisfactory;
- Y. whereas the acts of the Polish Parliament concerning the Constitutional Tribunal adopted on 22 December 2015 and 22 July 2016, as well as the package of three acts adopted at the end of 2016, seriously undermined the Constitutional Tribunal's independence and legitimacy; whereas the acts of 22 December 2015 and of 22 July 2016 were declared unconstitutional by the Constitutional Tribunal on 9 March 2016 and 11 August 2016, respectively; whereas those judgments were not published or implemented at the time by the Polish authorities; whereas the constitutionality of Polish laws can no longer be effectively guaranteed in Poland since the entry into force of the aforementioned legislative changes¹;
- Z. whereas the aforementioned ruling was pronounced by judges elected by and totally dependent on politicians from the PiS (Law and Justice)-led coalition; whereas the Marshal of the Polish Senate considered the ruling nonexistent and called on the government not to publish it, notably because it violates Poland's human rights obligations and is not in line with the previous legislation on the Polish Constitution, and because of the unlawful appointments of three judges and the President of the Constitutional Tribunal²;
- AA. whereas the Commission and Parliament have expressed serious concerns regarding the rule of law, including the legitimacy, independence and effectiveness of the Constitutional Tribunal; whereas the Commission triggered an Article 7(1) procedure following the 2015 reforms of the justice system in Poland;
- 1. Strongly condemns the Constitutional Tribunal's ruling and the setback to women's SRHR in Poland; affirms that the ruling puts women's health and lives at risk; recalls that it has strongly criticised any legislative proposals or restrictions that aim to further prohibit and limit access to safe and legal abortion in Poland, which come close to banning access to abortion care in Poland, as most legal abortions are performed on the grounds of a severe and irreversible foetal defect or an incurable illness that threatens the foetus's life; recalls that universal access to healthcare and SRHR are fundamental

¹ Venice Commission Opinion of 14 and 15 October 2016 on the Act on the Constitutional Tribunal, paragraph 128; UN Human Rights Committee, Concluding observations on the seventh periodic report of Poland, 23 November 2016, paragraphs 7-8; Commission Recommendation (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland (OJ L 228, 2.9.2017, p. 19).

² https://www.senat.gov.pl/aktualnoscilista/art_13159_zespol-ekspertow-przy-marszalku-senatu-o-wyroku-trybunalu-konstytucyjnego.html

human rights;

2. Notes that restricting or banning the right to abortion by no means eliminates abortion, but merely pushes it underground, leading to an increase in unlawful, unsafe, clandestine and life-threatening abortions; insists that the performance of an abortion should not be included in the criminal code, as this has a chilling effect on doctors who refrain from providing SRHR services out of fear of criminal sanctions;
3. Deplores the fact that the ruling was released at a time when sanitary restrictions related to the COVID-19 pandemic were seriously undermining due democratic processes; strongly criticises the restrictive ban on public assemblies, which has been in force without the introduction of a state of natural disaster, as laid down in Article 232 of the Polish Constitution;
4. Recalls that women's rights are fundamental human rights and that the EU institutions and the Member States are legally obliged to uphold and protect them in accordance with the Treaties and the Charter, as well as international law;
5. Notes that the unjustified excess of restrictions on access to abortion resulting from the aforementioned ruling of the Constitutional Tribunal fails to protect the inherent and inalienable dignity of women, as it breaches the Charter, the ECHR, the case law of the ECtHR, numerous international conventions to which Poland is a signatory, as well as the Constitution of the Republic of Poland;
6. Strongly urges the Polish Parliament and authorities to refrain from any further attempts to restrict SRHR, as such measures are contrary to the principle of non-retrogression under international human rights law; strongly affirms that the denial of SRHR is a form of gender-based violence; calls on the Polish authorities to take measures to fully implement the judgments handed down by the ECtHR in cases against Poland, which has ruled that restrictive abortion laws violate the human rights of women; stresses that unhindered and timely access to reproductive health services and respect for women's reproductive autonomy and decision-making is critical to protecting women's human rights and gender equality;
7. Emphasises the need to provide comprehensive, evidence-based, non-discriminatory and age-appropriate sexuality education and information to all, as a lack of information and education about sex and sexuality results in higher rates of unintended pregnancies;
8. Strongly condemns the recent decision by the Polish Minister of Justice to officially start Poland's withdrawal from the Istanbul Convention, which would be a serious setback with regard to gender equality, women's rights and the fight against gender-based violence; urges Polish authorities to ensure the effective and practical application of that Convention, including the provision of a sufficient number of quality shelters for women who are victims of violence and their children, taking into account the escalation of gender-based violence during the COVID-19 pandemic, as well as access to essential support and health services, including sexual and reproductive healthcare;
9. Regrets that access to healthcare services in certain areas of Poland is still restricted, and that according to the Supreme Audit Office, in 2018 only 2 % of pregnant women living in rural areas in Poland underwent all standard tests that are necessary during pregnancy, such as a foetal ultrasound, a cardiotocography or maternal blood testing;

10. Deplores the increased use of the conscience clause, which is resulting in the absence of reliable referral mechanisms for those seeking abortion services and slow appeals processes for those who are denied such services, and also deplores the fact that gynaecologists frequently invoke the conscience clause when asked to prescribe contraceptives, thus effectively restricting access to contraception in Poland; notes that the conscience clause also hinders access to prenatal screening, which is not only a violation of the right to information on the condition of a foetus, but also obstructs the successful treatment of a child during pregnancy or immediately after; urges the Polish authorities to repeal the law limiting access to the emergency contraceptive pill;
11. Is deeply concerned that thousands of women have to travel to access a health service as essential as abortion; emphasises that cross-border abortion services are not a viable option for the most vulnerable and marginalised people; is disturbed by the fact that traveling abroad puts women's health and wellbeing at risk as they are often alone; stresses the importance of post-abortion care, especially for women who experience complications from an incomplete or unsafe abortion;
12. Expresses its support and solidarity for thousands of Polish citizens, in particular for Polish women and LGBTI+ persons, who, despite the sanitary risks, took to the streets to protest against grave restrictions on their fundamental freedoms and rights; notes that the protesters' demands include not only the annulment of the Constitutional Tribunal's ruling, but also the denunciation of the so-called 'abortion compromise', the liberalisation of the right to abortion law and respect for bodily autonomy; recalls that freedom of assembly and freedom of association define the European Union, even during a pandemic;
13. Strongly condemns the excessive and disproportionate use of force and violence against protesters, including activists and women's rights organisations, by law enforcement authorities and non-state actors such as far-right nationalistic groups; calls on the Polish authorities to ensure that those who attack protesters are held accountable;
14. Urges the Polish authorities to reinforce the national legislation for the advancement of women's rights and gender equality by providing all the necessary financial and human resources to institutions dealing with discrimination on the grounds of sex and gender;
15. Calls on the Commission to carry out a thorough assessment of the composition of the Constitutional Tribunal, the unlawfulness of which constitutes grounds for challenging its rulings and thus its ability to uphold the Polish Constitution; underlines that the aforementioned ruling is yet another example of the political takeover of the judiciary and the systemic collapse of the rule of law in Poland;
16. Calls on the Council to address this matter and other allegations of violations of fundamental rights in Poland by expanding the scope of its current hearings on the situation in Poland, in accordance with Article 7(1) TEU; urges the Council to proceed with the formal hearing on the state of play in Poland scheduled for 10 and 11 December 2020;
17. Welcomes the provisional agreement of 5 November 2020 on legislation establishing a mechanism that would allow the suspension of budget payments to a Member State violating the rule of law; urges the Commission to act with determination on the recently agreed conditionality for the future multiannual financial framework for 2021-

2027;

18. Calls on the Council and the Commission to provide adequate funding for national and local civil society organisations to foster grassroots support for democracy, the rule of law and fundamental rights in Member States, including Poland; urges the Commission to immediately and directly support programmes and Polish civil society organisations working to ensure that women's SRHR are protected; calls on the Commission and Member States to support awareness-raising and training through funding programmes;
19. Calls on the Commission to make it a priority to ensure that everyone has equal and strong legal protection on all the grounds included in Article 19 TFEU; calls on the Council to immediately unblock and conclude the negotiations on the horizontal directive on non-discrimination and welcomes the new commitments of the Commission in this area;
20. Calls on the Commission to support Member States in guaranteeing universal access to sexual and reproductive health services, including abortion; urges the Commission to guarantee SRHR by including abortion rights in the next EU Health Strategy;
21. Highlights the expressions of support for and interest in the cause of Polish women from many Member States; calls for the EU to fund organisations that facilitate cross-border cooperation between organisations providing safe and legal abortion;
22. Calls on the Commission to confirm the application of Directive 2004/113/EC¹ to SRHR goods and services and recognise that limits on and barriers to accessing SRHR goods and services constitute gender-based discrimination, as they disproportionately affect one gender (women) or vulnerable groups (e.g. trans and non-binary persons); condemns the Polish Government's abuse of the judiciary and its legislative powers to instrumentalise and politicise the lives and health of women and LGBTI+ persons, leading to their discrimination in this regard;
23. Calls on the Commission to adopt guidelines for Member States to ensure equal access to SRHR goods and services in line with EU law and the jurisprudence of the ECtHR;
24. Calls on the Council to urgently conclude the EU ratification of the Istanbul Convention; strongly condemns the attempts in some Member States to revoke measures already taken in implementing the Convention and in combating gender-based violence; calls on the Commission to submit a proposal to add gender-based violence to the list of EU crimes pursuant to Article 83 TFEU;
25. Instructs its President to forward this resolution to the Commission, the Council, the President, Government and Parliament of Poland and the governments and parliaments of the Member States.

¹ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37).