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We need to fight for legal and accessible abortion - everywhere

On the 27th of January 2021, after a three-month delay, the verdict of the Polish Constitutional Tribunal from October 2020 has come into force, prohibiting abortion on the ground of fetal anomaly, and effectively banning abortion whatsoever.

This decision further restricts the already stringent law from 1993, which had allowed legal termination in only three cases: when the pregnancy posed a serious risk to the mother's life or health; when it was a result of a criminal act; or when prenatal tests show a high risk of severe and irreversible fetopathy. This legislation was among the most restrictive ones in Europe; Poland was the only of the 27 European Union states that did not allow for abortion on request, nor on social grounds. In practice, almost all legal abortions were carried out under the premise of fetopathy: in 2018, it was 1,036 (98%) out of the total 1,061 abortions.¹ In comparison, that same year, England and Wales saw 213,894 abortions overall, among them 3,428 (just 1.6%) carried out on the grounds of fetal anomaly.

The ruling of the Constitutional Tribunal virtually bans abortion in Poland, and is, ironically, itself in conflict with the Constitution of Poland: it disregards women's indefeasible dignity and breaches the right to freedom from cruelty and torture, and the rights to the protection of private life and to healthcare. The aim of the Tribunal's ruling is to force women to carry pregnancies to term regardless of the health condition of the fetus. This will have acute consequences not only on the mental wellbeing of the pregnant person, but also on their physical health. An abnormal pregnancy should be treated like an illness, and forcibly continuing such a pregnancy can lead to a grave risk to the life and health of the mother. This decision will lead to immense suffering: of pregnant women, of their partners, of their families, of their existing children, and finally of their newborns - often birthed only to die in agony.

This abortion ban will also have severe consequences on prenatal care. How will it affect intrauterine therapy performed in some severe fetopathies? What will happen in cases of multiple pregnancies, where one critically ill fetus must be terminated for the normal fetus to survive, as is the case in TRAP syndrome? Law and Justice (PiS), the ruling party, has proved many times how eager they are to prosecute doctors, and it is to be expected that doctors might abstain not only from performing intrauterine therapeutic procedures, but providing any invasive antenatal care at all. This will lead to a drastic deterioration of antenatal care in Poland to a level unseen in high income countries.

Undoubtedly, many women faced with a diagnosis of fetal abnormality, will seek abortion care outside of Poland's health system. While those more privileged will be able to afford to access abortion care abroad - in Czechia, Slovakia, Berlin or elsewhere - that might not be a possibility for less affluent women. Instead, they will be sentenced to put their own health at risk to sustain a fetus with severe anomalies. The abortion restrictions in Poland, as is the case worldwide, will affect women of lower socioeconomic status disproportionately.

The verdict of the Constitutional Tribunal, seen as a direct attack on women's rights, was immediately met with mass protests back in October. These were possibly the largest public demonstrations in Poland's history.² The decision was criticised by law specialists, who questioned its very legality, as it was issued by an illegitimate state apparatus; by medical societies, who stressed the severe consequences it will have on reproductive health; by women's rights organizations, who called for the right to choose; and finally by women themselves. The protests took place daily in the week following the ruling, with their peak on the 28th of October, when nearly half a million citizens marched in over 400 cities across the country, and further thousands demonstrated in front of embassies worldwide.³ The protestors were met with brutal repression; police used tear gas, rubber bullets and metal batons to quash the demonstrations, including on members of the parliament monitoring the protests and journalists reporting on them. Thousands were arrested. In a recent interview the President of Poland, Andrzej Duda, has told a reporter of TVN24 that the police have acted highly professionally: "Please note that no one was killed during the riots," the President said.⁴ This appalling statement, together with the levels of state brutality unseen in the thirty years of the country's democratic rule, show that Poland following its Eastern neighbours on their dangerous path towards despotic autocracy with no respect for human rights.

These protests have now revived, following the long-postponed publication of the law. Thousands have marched in Warsaw, Katowice, Łódź, Bydgoszcz, Cracow, Poznań, Wrocław, Gdańsk, Lublin, Toruń, Płock, Szczecin, Piaseczno and other towns across Poland in the evening of the 27th of January, immediately after the law was published. In line with the law, all doctors, nurses, midwives and anyone helping a pregnant person (financing their abortion or giving them abortifacients) can be prosecuted and sentenced to up to three years in prison. Only time can tell whether these massive protests will manage to bring a change in law, and whether the politicians and judges behind this decision, which violates the reproductive rights of millions of women, will be held responsible for their actions.

Nonetheless, what can undeniably be attributed to the powerful demonstrations that flooded Poland is increasing the visibility of the issue of abortion in the public sphere. Suddenly, the stigmatised and silenced issue of abortion made it to television stations, billboards, leaflets and certainly flooded social media, greatly increasing the awareness around pregnancy terminations and the access to them outside of the health system. Nongovernmental organisations, such as Abortion Dream Team, reported a great increase in the number of abortion enquiries they have been receiving since October 2020. More and more women in Poland are becoming aware that it is possible (and legal, unlike in the United Kingdom) to obtain legitimate abortion medications online and safely self-manage an early medical abortion at home, which can be less costly - both financially and emotionally - than the alternative of travelling abroad for a surgical termination.

Another crucial outcome of the crisis in Poland is that many have realised how inadequate the existing, restrictive abortion law was - in spite of nearly thirty years of being taken for granted and widely accepted as the so-called "abortion compromise". This compromise, now seen more as a treaty between the authorities and the Catholic Church, reinforced the latter's position in Poland's newly-established democracy, and has paved the way for the Church to further intervene in the reproductive and sexual health of Polish citizens. This intrusion is on display on numerous levels of Poland's policies: from the lack of sexual education in schools,

to the inadequate access to contraception, to the stigmatisation of transgender people, to the lack of legalisation of same-sex unions, to the issue at stake here - the restrictions to abortion access. In 2019, 53% of Poles opposed the "compromise" and thought that a woman should be able to terminate a pregnancy up until the 12th week, in comparison to 66% after the start of the 2020 protests.⁵ Some centrist politicians in Poland, in an attempt to satisfy both the Catholic right and the progressive left, have called for a referendum on the abortion question following the events of October 2020. But we must remember that the freedom to make decisions about one's body cannot be subject to popular vote. Argentina has recently sparked some hope that a change for the better is possible even in the most restrictive contexts. We must advocate for the draconian abortion law in Poland to be repealed. It does not belong in Europe; it does not belong in the twenty-first century.

We must continue advocating for the entirety of inclusive reproductive rights - for abortion to be legalised and accessible in Poland and everywhere else.

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1. Federacja na Rzecz Kobiet i Planowania Rodziny. *Raport Roczny 2018*. (2019).
2. Karpiuk, D. „Nie cofniemy się o krok. Najpierw prawa kobiet, a potem nowa Polska”. *Newsweek* (2020).
3. Davies, C. Pro-choice supporters hold biggest-ever protest against Polish government. *The Guardian* (2020).
4. Woźnicki, Ł. Duda przymyka oko na przemoc ze strony policji: Działa profesjonalnie, nikt nie zginął. *Gazeta Wyborcza* (2020).
5. Chrzczonowicz, M. 66 proc. Polaków za prawem do aborcji. Rekordowy wynik w sondażu Ipsos dla OKO.press. *OKO.press* (2020).