

Poland's abortion ban: a crushing blow to reproductive rights

On 22 October 2020, the Constitutional Tribunal in Poland ruled that abortion on the grounds of fetal abnormality was unconstitutional, further restricting Poland's already stringent 1993 abortion law. This verdict means that only two of the previous three grounds for pregnancy termination remain valid: when the pregnancy poses a serious risk to the mother's health, or when it is a result of a criminal act. Abortions justified by these conditions constitute only 2% of legal abortions carried out in Poland. Poland is the only EU state that does not allow for abortion on request [up to 12 weeks?] nor on social grounds [what do you mean by social grounds?]. Even prior to the Constitutional Tribunal's ruling last week, obtaining an abortion on any of the legal grounds was remarkably difficult, with doctors and hospitals resorting to conscientious objection, or purposefully referring women for additional and unnecessary tests in order to exceed the gestational limit of fetal viability.

The ruling of the Constitutional Tribunal is, ironically, in conflict with the Constitution: it disregards women's dignity and breaches the right to freedom from cruelty and torture, and the right to the protection of private life and to healthcare.¹ Taking this decision into the Constitutional Tribunal, rather than following the parliamentary route, evaded the rigour of the legislative process and political consequences of the parliamentary route.²

The aim of the ruling is to force women to carry their pregnancy to term, regardless of the health of the fetus. There are a number of possible consequences to the ruling: Women will have to give birth to and raise children who will survive, but will live with severe disabilities, or they will give birth to children with terminal conditions, who will die within a few days of birth. But often, it will mean waiting for fetal death in utero, leading to stillbirth, which is a life-threatening obstetric complication. This decision will lead to immense suffering of women, their partners and existing children, and especially their newborns who may have life threatening complications.

What is rarely mentioned in the public debate is that two of the grounds for legal abortion—fetal abnormality and risk to the mother's health—are often intertwined, as continuing a pregnancy when there is a fetal abnormality can have serious consequences for a woman's physical and mental health.

As a result of this ruling, it is expected that many women will seek abortion care outside of Poland's health system when faced with a diagnosis of fetal anomaly. While more privileged

women will be able to afford to go abroad to do so, less affluent women might not have that possibility, and will be sentenced to putting their own physical and mental health at risk by carrying an ill fetus to term. This decision will leave abortion care, guidance and support in the hands of independent organisations, which are often not based in Poland and have limited funding.

Last week, Women on Web, a Canadian non-profit organisation facilitating access to safe abortion where it is legally restricted, stated that they would continue supporting Polish women to obtain safe abortions, widening their services to include medical abortions on the grounds of fetal abnormality. There is a key issue with such provision: prenatal tests detecting fetal abnormalities are only conducted in the 12th week of pregnancy. Late medical abortions carry a much higher risk of incomplete termination requiring surgical follow-up, compared to first trimester abortion, and in the current legal upheaval, it is uncertain whether doctors would be allowed to provide essential post-abortion care.³⁻⁵

The new ruling to ban abortion on the grounds of fetal anomaly does not bear signs of advocating for life. Both parties [who are the two parties here?] have shown numerous times that they are not working towards minimising the need for abortions. Nationally, there remains a systemic lack of access to contraception and sex education.⁶ Nor do they have respect for the lives of children already born with disabilities. The current Polish government is notorious for its disregard towards families of people with disabilities, who often live on the edge of poverty with minimal national support.

It is crucial that the international medical community condemns this ruling and advocates for Polish women's reproductive rights. That could include campaigns for free or subsidised abortion provision abroad for women from Poland, as was already suggested by the Green Party in Sweden and the Socialist Party in Norway.

The Tribunal's decision is another attempt to victimising Polish women and dismantle Poland's democratic rule. The decision was met with wide scale protests, with almost half a million citizens marching in Poland on last Wednesday to protest against this law. But unless these nationwide protests triumph and bring about a dramatic change in the law, women in Poland will face fear and isolation, being forced to risk their health and life carrying high-risk pregnancies to term, or to seek abortion care online or abroad, suffering the social, financial, mental and physical consequences of the Tribunal's ruling.

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