

**The legalization of abortion in Poland**

Ilse Kemker & Iryna Dzhyhomon

Student paper Hanze University of Applied Sciences

Ethical Dilemma's in Human Rights

Lecturers Frans van der Werf & Sergei Oudman

## **Introduction**

The issue of abortion criminalization has been addressed and criticized by multiple international bodies since the Anti-Abortion law (1993) became a part of the Polish legislative system. The law prohibits the female population of Poland from performing an abortion, leaving only two “reasonable” grounds for the legal pregnancy termination, excluding other possible reasons why women would be eligible for an abortion, based both on needs-based and rights-based approaches. This report presents both legal and ethical sides of the grounds and backing for the argument stating Polish women’s rights being violated due to the limited and restricted abortion services, leading to the harmful mental/physical consequences. Firstly, justification of a chosen topic and factual description of the issue are presented to give a general understanding of the issue. Further, legal articles and documentation supporting the argument highlight the main Polish governments’ violation, followed by the ethical side and the main dilemmas occurring as a result of the current medical practices in the country. Additionally, it is significant to note that possible rebuttals and counter arguments are included in the report to address some pitfalls of abortion decriminalization; as well as constructive solutions to the problem are represented in the end. While Poland does not violate the EU law directly, the women’ rights for free life, equity, being free from discrimination and torture, autonomy and self-determination are disregarded, and the situation has to be changed since these are the basic human rights according to the international/EU legislations.

## **Justification**

Legalization of abortion in Poland is justified as it respects women's autonomy and reduction of harm by unsafe procedures. Additionally, does it guarantee equal access to reproductive healthcare. Upholding the prohibition of abortion violates various international agreements like the Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights. Further, it is ethically wrong to deprive women from their moral rights such as autonomy and justice. Legalizing abortion would make Poland uphold international agreements and therefore promote gender equality, and protect public health

## **Factual description of the issue**

At the International Conference on Population and Development organized in 1994, the states presented the concepts of sexual and reproductive health and reproductive rights.

The Program of Action emphasizes that one of the main public health concerns is an unsafe abortion. According to the World Health Organization (2019), "unsafe abortion occurs when a pregnancy is terminated either by persons lacking necessary skills, or in an environment that does not conform to minimal medical standards or both". It also noted that in most cases, unsafe abortion occurs in the countries where access to abortion is restricted. On the contrary, 87% of 6 580 000 abortions per year in developed countries were completely safe (WHO, 2017).

In Poland, a difficulty with accessing abortion occurred with the Anti - Abortion law (1993), which criminalized abortions carried out on social grounds. It did include the woman's right to terminate pregnancy in case of a fetus having a high probability of having irreversible or severe illnesses. However, in 2021 the new abortion law in Poland reappealed this condition, and as for now, women still have to deliver babies, regardless of their children's health condition.

The only possible abortions can be performed only if giving a birth might be fatal for a woman, or if a pregnancy was a cause of a crime (Filtenborg E., Wechert S., 2022). Within the framework of EU law, Poland is argued to violate women's health and rights, as well as their sexual and bodily autonomy, which potentially results in risking their lives.

The possible reasons for Polish attitudes towards abortion – are the product of past communism and soon after. (Duch D., 2000). In the past, women were considered to lack self-determination and being not able to make autonomous decisions (Patchesky, R., 2023). That is why any argument about the historical reasons for Polish abortion restrictions are not valid, as they run counter to basic human rights, and assume woman having no dignity.

If consider the current situation, the Committee on Elimination of Discrimination against Women in 2024 has found recent practices in Poland, including: criminalizing autonomy and decision-making, inhuman and degradative treatment of women, discrimination, violation of the equal rights to health care, harmful gender stereotypes, no access to information or advice, and harming vulnerable groups (Center of Reproductive Rights, 2024).

It is significant to realize the size of the problem, and the extent of human rights violation in Poland. There is a high possibility of mental and physical consequences for Polish women due to anti - abortion law in the country, and the Polish government refusing to comply with EU law (signed in 2004). Nonetheless, the issue can and should be solved.

## **Legal**

Poland has been called out multiple times by the international UN bodies (Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Political Rights) on women's rights violations concerning the

reproductive system. Since 2021, Poland has an anti-abortion law, which prohibits abortion even in the cases of a fetus having a high possibility of death (Esra Kara, 2021). With this consideration, Polish women are not allowed to terminate abortion, and if they are - the process remains to be very conditional.

In the light of the European Convention of Human Rights (1993), reproductive rights and their violations fall primarily within the scope of the ability to respect private and family life (article 8). Further, Polish violations might also fall under the right to live (article 2), the prohibition of torture (article 3) and even the prohibition of discrimination (article 14). Besides, the rights for equality, freedom and dignity from the Charter of Fundamental EU Rights (1997) might be also under abuse by the Polish government.

Further, it is significant to consider that the EU law counts above the national law, but it is very nuanced in terms of abortion in Poland. For example, Poland signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), but it does not implement EU recommendations in a national law by not officially ratifying the Convention. Poland has also signed the above-mentioned Charter of Fundamental Rights. However, being under Protocol 30 since 1997, together with the United Kingdom (EU, 2008), the country is not under the obligation to follow all the stated laws, leaving the Charter as a form of recommendations and guidelines. That being said, even though Poland does not violate the abortion law directly, current actions and legislation within the country might be argued to contravene the women's rights.

Moreover, Poland violated an effective systematic referral mechanism by UN human rights, when in 2015 Constitutional Court of Poland announced that the doctor refusing to perform abortion, should not be under a duty to refer the women to another doctor or health care

institution (Kapelanska-Pregowska, 2021). On the ethical side, doctors, midwives and nurses have the moral right (called “conscience clause”) to refrain from providing medical services, if these medical services go against their (religious) beliefs (Notes from Poland, 2023).

Historically, Poland repeatedly attempted to ban abortion, and when the UN called it out on that, the country’s Constitutional Court stated the “unconstitutional” reason for not accepting the law (Kapelanska-Pregowska, 2021). The attempt to legalize abortion under the difficult personal or living situation of pregnant women was taken in 1993, which was repealed in 1997 by the Constitutional Court due to the lack of clear procedural mechanisms, prolonged waiting periods, and the denial of parental genetic testing.

So far, Poland has only been trying to make it difficult for women to access safe abortion services, forcing women to an unsafe abortion not by choice, but by given circumstances and legislation. Therefore, it is reasonable to state that Poland doesn’t follow EU law and violates the basic human rights of women.

### **Reasons**

Abortion was legally restricted in most of the counties by the end of the 19th century - some countries in Europe, Asia, many states in America. The main reasons behind this restriction were: 1) abortion was dangerous and unsafe; 2) abortion was considered a sin; 3) abortion was prohibited to protect the life of a fetus.

Nowadays, abortion has become safe, especially if following the World Health Organization’s guidance (Berer, 2017). From a legal perspective, WHO (2024) states that an inaccessible abortion violates the rights for the highest attainable standard of physical and mental

health, the right to benefit from scientific progress and its realization, the right to freely decide on the number of children, the right to be free from torture and degrading treatment.

In the number of Central and Eastern Europe countries, the communist rule and conservative figures have tried to undermine the permissive abortion laws. Poland is considered to have the worst situation. Since 1997, the restrictive law in Poland removed “difficult living conditions” as a reasonable ground for having an abortion, which goes against the basic rights of women for free life and prohibition of discrimination. Moreover, the Polish government has attempted to decrease the number of abortions of already existent fetuses. Such as – offering 1000 euros to women who carry a highly disabled child, even if a baby would be dead, or die soon after delivery.

Poland's lack of legal abortion in cases of fetal results run counter to international standards. In the jurisprudence of the Human Rights Committee, it is considered a violation when it comes to gender inequality and discrimination. On top of that, in November 2020, the European Parliament prepared a Resolution with the purpose of changing legislative regulations of abortion in the country, encouraging the Polish government to provide safe, legal, free, high-quality and accessible abortion services for women. It also underlined the women's rights to life, health and equality, freedom from discrimination, violence and torture. Yet, no following legal actions were undertaken, and all stated recommendations were not considered by the Polish legislation system after all.

Further, when questioning the social views on abortion decriminalization, it can be assumed that the public support for abortion reforms (with positive consequences from them) might rise even more after the decriminalization has been approved. As such, before the anti-abortion reform was approved in Mexico City, only 38% of women supported it. However, two

years later, the number rose to 74% (Becker, Olavarrieta, 2013). Additionally, it is important to respect the lives and rights of minorities, as their self-determination and authority have to count, and it is not ethically correct to limit the abilities of a person based on the opinions of others, even if the number of these opinions is greater.

Thus, it is fair to say that nowadays, forced conservative views and religious principles might lead only to the physical and mental harm of both a mother and a not-yet-born child.

### **Ethical**

Firstly, the legalization of abortion in Poland is desirable given the fact that bodily autonomy is a key principle of individual freedom. It should be a moral requirement that every woman has a right to decide what to do with their bodies. Therefore, women have the right to make decisions about whether to carry the pregnancy to term or not, without state intervention.

Forcing women to carry their pregnancy to term is unjust in relation to men who do not have to give up their right to self-determination. Men are not forced by law to make such impactful sacrifices of self-determination or life choices. This is a creation of a greater imbalance in gender equality by making a system where women are supposed to give away control over their body. To minimize the imbalances in equality abortion should be legalized and provide women with their right to self-determination.

Kant argues that moral self-determination makes us truly human and gives us our dignity. “Dignity as Human dignity: the unearned worth or status that all humans share equally (either inherent or constructed)” (Dignity, 2023) Human dignity in connection to human rights means that we all have the moral right to decide over our body as a basic right to equality, privacy, bodily integrity and self-determination. The ethical principle, autonomy, provides women with



the right to self-determination. Therefore, the right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the core of her basic rights to equality and bodily integrity. Which makes the legalization of abortion an ethical matter to strive for gender equality and the right to self-determination.

“Sex equality observes that abortion restrictions deprive women of control over the timing of motherhood and so predictably exacerbate inequalities in educational, economic and political life engendered by childbearing and childrearing” (Neil S. Siegel and Reva B. Siegel, 2013) This means that allowing women to have legal abortion will provide them to have the same moral consideration and treatment, opportunities, life choices and freedoms as men. Forcing women to continue their pregnancies regardless of their individual situations, fails to judge the moral complexity of someone’s life.

While acknowledging that Poland does not directly violate EU law, it is reasonable to claim that the current law in most cases violates the basic rights of women. Particularly in cases where autonomy, health and equality are impacted.

As mentioned earlier, the rights to self-determination and equality are at the core of legalized abortion. However, we should not forget the current limitations women experience due to the severe restriction on abortion regarding health care.

An important aspect regarding abortion is looking at the four medical ethics principles: non-maleficence, justice, autonomy and beneficence. Within Poland these restrictions are being violated with information provided by the UN: “There were cases where women were left to wait in the hospital in a severely deteriorating health status until either the heartbeat of the fetus had stopped, or their own condition had become life-threatening. The interpretation of when a

situation becomes life-threatening also depends on the interpretation of the individual doctor in charge. The designated members learned that doctors are frequently afraid that they might be carrying out an abortion “too early”, in violation of the law.” (Rights Experts Reveal Impact Of Poland’s Restrictive Abortion Laws On Women, 2024). Unfortunately, this is not all because there are also 7 women that died because they did not receive the medical attention that was needed.

This is a severe violation of all 4 principles of medical ethics. To begin with, non-maleficence means avoiding and doing no harm. These cases contradict this principle of withholding them from access to care, because the medical staff feared violating the law. Lead to unnecessary suffering, complications and death. Secondly, Beneficence means to act in the best interest. In these cases, prioritizing the law over the health of a women undermines this principle. By fearing to act “too early” the doctor is neglecting their obligation to promote the patient’s best interest. Autonomy - the right to make informed decisions and self- determination. Within these cases the women are restricted in their ability about medical procedures. This undermines the right to self- determination. And lastly, justice - everyone is being treated equally and equitably. The lack of clarity in this law creates unequal treatment, where the interpretation of a doctor's life- threatening situation is inconsistent.

### **Dilemma**

Given the very severe restrictions on abortion within Poland where abortion is only allowed when 1) where a women’s life or health is in danger and 2) if the pregnancy is a result of rape, incest (criminal act). The current law fails to respect individual autonomy and the moral requirement that every woman has a right to decide what to do with their bodies. Additionally, the restrictions on abortion create a greater division of equality care. The rights of women should

not be restricted by others as everyone has the right to self-determination. Lastly, any situation where 'my view about what you should do is more important than your view about you', is unethical. Because it gives another's views primacy over one's own views.

Within Poland Christianity was adopted in 966, and currently around 70% of the citizens are catholic. (Tilles, 2023) This is therefore deeply rooted in the cultural values, and makes Catholicism play a significant role in public morality. One of the main values is that human life must be respected and protected absolutely from the moment of conception. (Tilles, 2024)

If abortion is legalized in Poland this does not force women to go against their fate but upholds women their right to self-determination. The demands of democracy are that oneself can have religious reasons to ban abortions, but to do so, they have to explain why abortion violates some principle that is accessible to people of all faiths, including those with no faith at all. Additionally, any religious or personal view that claims that 'my view about what you should do is more important than your view about you', is an unethical situation, because it gives another's views primacy over one's own views. Therefore, if abortion is illegal because of religious views, it is unethical.

### **Potential solution**

The necessary steps have to be taken to allow broader access to abortion of Polish women. There are several ways to do so. Firstly, some legal reforms inside the country might advocate for expanding the existing borders for the access to abort freely. According to Amnesty International (2024), the Polish government (specifically Donald Tusk) who was elected for a prime minister of the country, had promised to make abortion accessible and free. After he won the elections, the situation did not change under the influence of the coalition members. Amnesty

International, and other organizations are working together to indirectly help Polish women. However, to aid as many women as possible, and to make it right, the leaders of coalition parties have to realize the women's rights violations that they are committing, and make their promises come true to stop Polish women from dying or suffering due to the legislative system within the country.

Secondly, another way to cope with the problem is by supporting and making use of political parties that advocate for pushing legislative changes is another way to cope with the issue. For instance, Poland has officially agreed to remedy its human rights violations identified by the above-mentioned Committee on the Elimination of Discrimination against Women in August 2024. The members of the Committee had visited Poland before, to overview the process of reproductive system, and recently, the Committee has released the report on the women's rights disregard within Poland. It also has given some recommendations and encouraged the country to take meaningful actions to guarantee non-repetitions of the current violations.

Additionally, the joint work of public awareness campaigns such as those of Amnesty International, supportive services for women who seek abortion, and continuous international pressure on the Polish government may aid in the problem resolution, as well as support women while the issue with accessing abortion in Poland is being solved.

### **Critical evaluation**

To conclude, Poland should further legalize abortion given the arguments that have been mentioned in the previously mentioned part of Legal and Ethical. To uphold international legal commitments and ethical principles such as equality, dignity and women's self-determination.

Denying women access to legal and safe abortion is a refusal to acknowledge everyone's fundamental human rights, named in the European Convention on Human Rights (ECHR) and UN treaties like Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). One of the main disregards of Poland is that they have not ratified the Convention. Ethically, are these restrictions against the principle of bodily autonomy, forcing women to keep their pregnancy against their will and prioritizing religious ideologies over individual rights. This is therefore also a contribution to gender inequality, and it fails to respect the moral complexity of individual circumstances.

To confront these injustices, Poland should decriminalize abortion and ensure fair and safe access, adhere to international standards to protect women's health, autonomy, and fundamental human rights.

## References

*A year after Tusk came to power, why is access to safe and legal abortion still a distant dream in Poland?*. Amnesty International. (2024, October 16).

<https://www.amnesty.org/en/latest/news/2024/10/a-year-after-tusk-came-to-power-why-is-access-to-safe-and-legal-abortion-still-a-distant-dream-in-poland/>

Alicja Ptak Alicja Ptak is senior editor at Notes from Poland and a multimedia journalist. She previously worked for Reuters. (2023, July 17). *Polish pharmacist who refused prescription for morning-after pill has case against her discontinued*. Notes From Poland. <https://notesfrompoland.com/2023/07/13/polish-pharmacist-who-refused-prescription-for-morning-after-pill-has-case-against-her-discontinued/>

Berer, M. (2017, June). *Abortion law and policy around the world: In search of decriminalization*. Health and human rights.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473035/>

Charter of Fundamental Rights of the European Union (n.d.).

[https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

Convention on the elimination of all forms of discrimination against women New York, 18

December 1979 | OHCHR. (n.d.-a). <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

*Dignity* (Stanford Encyclopedia of Philosophy). (February 18, 2023). Stanford Encyclopedia Of Philosophy. Retrieved on October 11, 2024, from

[https://plato.stanford.edu/entries/dignity/#:~:text=Dignity%20as%20Status%3A%20noble%20or,\(either%20inherent%20or%20constructed\)](https://plato.stanford.edu/entries/dignity/#:~:text=Dignity%20as%20Status%3A%20noble%20or,(either%20inherent%20or%20constructed))

European Convention on Human Rights. (n.d.-a).

[https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG)

Ganatra, B., Gerdtts, C., Rossier, C., Johnson, B. R., Jr., Tunçalp, Ö., Assifi, A., ... Alkema, L. (2017). Global, regional, and subregional classification of abortions by safety, 2010-14: Estimates from a Bayesian hierarchical model. *The Lancet*, 390\*(10110), 2372–2381.

[https://doi.org/10.1016/S0140-6736\(17\)31794-4](https://doi.org/10.1016/S0140-6736(17)31794-4)

Kapelańska-Pręgowska J. (2021). The Scales of the European Court of Human Rights: Abortion Restriction in Poland, the European Consensus, and the State's Margin of Appreciation. *Health and human rights*, 23(2), 213–224.

<https://pmc.ncbi.nlm.nih.gov/articles/PMC8694290/#r2%20EUR-Lex%20-%2012008E/PRO/30%20-%20EN%20-%20EUR-Lex>

Kapelańska-Pręgowska, J. (2021, December). *The scales of the European Court of Human Rights: Abortion Restriction in Poland, the European consensus, and the state's margin of appreciation*. *Health and human rights*.

<https://pmc.ncbi.nlm.nih.gov/articles/PMC8694290/>

Neil S. Siegel and Reva B. (2013). *Siegel Equality Arguments for Abortion Rights*. Duke Law. Retrieved on November 14, 2024, from

[https://scholarship.law.duke.edu/faculty\\_scholarship/2872/](https://scholarship.law.duke.edu/faculty_scholarship/2872/)

Nowicka, W. (2009). *The Struggle for Abortion Rights in Poland*. SexPolitics. Reports from the Front Lines (p.167 - 195).

<https://swannet.org/files/swannet/File/Documents/sexpolitics.pdf#page=167>

Professional, C. C. M. (September 19, 2024). *Fetal development*. Cleveland Clinic. Retrieved on November 16, 2024, from <https://my.clevelandclinic.org/health/articles/7247-fetal-development-stages-of-growth>

Ray, N. (2024, October 31). *Fact sheet: CEDAW inquiry into Poland's abortion law (English and Polish)*. Center for Reproductive Rights. <https://reproductiverights.org/fact-sheet-cedaw-inquiry-poland-abortion-law/>

*Rights experts reveal impact of Poland's restrictive abortion laws on women* (By United Nations). (August 21, 2024). UN News. Retrieved on October 22, 2024, from <https://news.un.org/en/story/2024/08/1153591>

Sally Sheldon, *The Decriminalisation of Abortion: An Argument for Modernisation*, *Oxford Journal of Legal Studies*, Volume 36, Issue 2, Summer 2016, Pages 334–365, <https://doi.org/10.1093/ojls/gqv026>

The American Journal of Public Health (AJPH) from the American Public Health Association (APHA) publications. (n.d.-e).

<https://ajph.aphapublications.org/doi/full/10.2105/AJPH.94.6.1027>

*The four Principles of Medical Ethics*. (February 8, 2024) Medical Protection. Retrieved on November 10, 2024, from <https://www.medicalprotection.org/uk/articles/essential-learning-law-and->



[ethics#:~:text=Autonomy%20%E2%80%93%20respect%20for%20the%20patient's,all%20people%20equally%20and%20equitably.](#)

Tilles, D. (January 26, 2024). *Catholic Church criticises New Polish government's abortion and contraception plans*. Notes From Poland. Retrieved on November 17, 2024, from <https://notesfrompoland.com/2024/01/26/catholic-church-criticises-new-polish-governments-abortion-and-contraception-plans/>

Tilles, D. (September 29, 2023). *Proportion of Catholics in Poland falls to 71%, new census data show*. Notes From Poland. Retrieved on November 30, 2024, from <https://notesfrompoland.com/2023/09/29/proportion-of-catholics-in-poland-falls-to-71-new-census-data-show/>

United Nations. (n.d.). *Rights experts reveal impact of Poland's restrictive abortion laws on Women* / UN News. United Nations. <https://news.un.org/en/story/2024/08/1153591?form=MG0AV3>

United Nations. (n.d.-a). *Rights experts reveal impact of Poland's restrictive abortion laws on Women* / UN News. United Nations. <https://news.un.org/en/story/2024/08/1153591>

Women's Autonomy, Equality and Reproductive Health in international Human Rights: Between recognition, backlash and regressive Trends. (2017). *United Nations Human Rights Special Procedures*. Retrieved on November 14, 2024, from <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf>

Working Group on discrimination against women and girls. (n.d.). *Women's autonomy, equality and reproductive health*. United Nations. Retrieved on October 24, 2024, from

<https://www.ohchr.org/en/special-procedures/wg-women-and-girls/womens-autonomy-equality-and-reproductive-health>

World Health Organization. (2024). *Abortion*. World Health Organization.

<https://www.who.int/news-room/fact-sheets/detail/abortion>