

## Europe : the right to abortion under attack

Position paper - 27 April 2016 -

As the Abortion Rights Campaign is holding a rally today in Dublin in solidarity with a woman prosecuted in Northern Ireland for helping her daughter to access abortion pills, FIDH firmly denounces recent attacks against women's access to abortion in several European countries. In **Poland**, a bill providing for a total ban on abortion is being drafted. In **Northern Ireland**, a woman was sentenced to prison for taking an abortion pill. In **Ireland** and **Malta**, draconian laws on abortion are still in force. In **Italy**, Council of Europe's data show that the law granting women the right to abortion is not being adequately implemented and results in this right often being denied to women in practice. FIDH urges European States to uphold women's rights, and not cave in to the demands of those who intend to restrict or violate it.



Several European countries still have very highly restrictive abortion laws in place and interpret them restrictively. **Malta** is the only European country where abortion is completely prohibited. The country is regularly criticized by United Nations human rights treaty bodies for its failure to provide for exceptions to the general ban for cases of therapeutic abortion and when the pregnancy is the result of rape or incest. They have also repeatedly called on Malta to remove from its legislation the punitive provisions for women who undergo abortion.<sup>1</sup> Since 1983, the **Irish** Constitution recognises the right to

<sup>1</sup> See e.g Human Rights Committee, 21 November 2014, CCPR /C/MLT/CO/2, §13 ; Committee on the Rights of the Child, 18 June 2013, CRC /C/MLT/CO/2 ; Committee on the Elimination of Discrimination against Women, 9 November 2010, CEDAW /C/MLT/CO/4, §34-35 ; Committee on Economic, Social and Cultural Rights, 14 December 2004, E/C.12/1/Add.101, §23, 41.

life of the unborn child, which is deemed equal to the right to life of the mother. Under the 2013 Protection of Life During Pregnancy Act, abortion is criminalised even in cases where the pregnancy resulted from rape, incest or fatal foetal abnormality. It carries a maximum penalty of 14 years imprisonment. The only exception is when there is a 'real and substantial' risk to the life of the mother. This has created dire inequality between those women who can afford to travel abroad to seek access to appropriate health and reproductive services and those who cannot. Even provision of information regarding abortion continues to be censored. Other countries apply broader exceptions to the prohibition. For instance, in **Cyprus**, the ban can be lifted in cases where the physical or mental health of the woman is at risk, in case of fetal impairment or when the pregnancy is the result of a sexual crime.

In several European countries, pro-life and religious movements try regularly to advocate for the limitation of women's access to abortion. In **Poland**, access to abortion is already strictly limited. Under a 1993 law, abortion is legal only if it is performed when the pregnancy is threatening the life or health of the woman, is the result of an unlawful act (rape or incest) or in case of severe and irreversible fetal defect or incurable illness threatening the fetus' life. FIDH is very concerned by the restrictive law and its very narrow interpretation. Under this law, data suggests that over 1 800 abortions were performed legally in 2014 whilst according to women's rights groups, up to 200 000 women undergo unsafe clandestine abortions annually or travel to neighboring countries<sup>2</sup> such as Germany, Austria, Slovakia or the Czech Republic to this end. In April 2016, the newly elected conservative Law and Justice party backed a citizen's bill providing for a total ban on abortion. Under the proposed bill, women who undergo abortions and doctors who perform them would risk up to five years' imprisonment, except if the fetus dies accidentally while saving the woman's life. This bill, drafted by pro-life group *Stop Abortion*, and pushed by the Catholic church, needs to be backed by 100 000 signatures within three months to be considered by the parliament. While the government is also considering a ban on the morning-after-pill, thousands of people across Europe protested on social networks and in the streets against the abortion bill. FIDH strongly condemns these attacks against women's sexual and reproductive rights. ***"Poland's legislation on abortion is already one of the most restrictive in Europe. The attacks on this fundamental right of women must stop. When women can't control their own body and sexuality, they are deprived of all their other human rights. This bill falls short of international standards on the promotion and protection of women's rights and must be voted down"***, declared Sophie Bessis, co-coordinator of FIDH Women's Rights Action Group.

In **Northern Ireland (UK)**, women who undergo abortions risk life imprisonment, except in cases where the woman's health or life is in danger, in compliance with the 1861 Offences Against the Persons Act. It is estimated that every year, over 1000 women go to England to terminate their pregnancy. In November 2015, the High Court in Belfast ruled in a landmark decision that this legislation breaches the European Convention on Human Rights by failing to provide an exception to the prohibition of abortion in cases of fatal foetal abnormality (FFA) and where pregnancies are a consequence of sexual crime. In April 2016, a woman was sentenced to 3 months suspended for one year for taking a pill to induce miscarriage when she was 19 as she could not save enough money to travel to England to get an abortion. That same month, another one was charged for breaking the country's abortion ban after helping her daughter to access abortion pills on-line. ***"It is appalling that Northern Irish women's sexual and reproductive rights are governed by a 150 years old legislation! The fact that such an archaic rule is being enforced in Europe in 2016 is beyond me. It belongs to the past and not the 21<sup>st</sup> century. It is urgent for Northern Ireland to amend its legislation so that it complies with international standards"***, stated Khadija Cherif, co-coordinator of FIDH Women's Rights Action Group.

If most European countries recognise women's right to abortion, access to abortion services is often limited in practice. For instance, in April 2016, the Council of Europe (CoE) criticised **Italy** for not adequately implementing its law 194/1978 allowing for voluntary termination of pregnancy<sup>3</sup>. According to the CoE, one of the major obstacles that women face in exercising their right is that doctors are not

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2 Federation for Women and Family Planning, The anti-abortion law in Poland, Report, 2000.

3 Council of Europe, Confederazione Generale Italiana del Lavoro (CGIL) v. Italy Complaint No. 91/2013 April 2016 : <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063ecd7>

obliged to perform abortions and many use this option (7 out of 10 in 2013). The Italian General Confederation of Labour (CGIL) stated that the number of illegal abortions could be as high as 50,000 every year<sup>4</sup>. In its latest General comment, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) recalled that where healthcare providers could invoke conscientious objection, 'States must appropriately regulate this practice to ensure that it does not inhibit anyone's access to sexual and reproductive healthcare, including by requiring referrals to an accessible provider capable of and willing to provide the services being sought, and the performance of services in urgent or emergency situations'. In February 2016, Italy raised fines for women who undergo illegal abortions from 50 euros to up to 10 000 euros. This new measure risks deterring women from seeking help after unsafe abortions.

Sexual and reproductive rights are protected by several international instruments, such as the Convention on the elimination of all forms of discrimination against women (CEDAW) or the International Covenant on Economic, Social and Cultural Rights (CESCR) through the protection of the right to health or healthcare, as specifically recognised by UN treaty bodies. These rights are also enshrined in the Programme of Action of the International Conference on Population and Development (Cairo, 1994) and the Beijing Declaration and Platform for Action (1995). The 2016 Committee on Economic, Social and Cultural Rights (CESCR) General Comment 22 on the right to sexual and reproductive health<sup>5</sup> recalled that this right is indivisible from and interdependent with other human rights. As UN treaty bodies and special rapporteurs often recall, restrictions on abortion also prevent women from enjoying their other human rights, including the right to life or to non-discrimination. In his 2011 landmark annual report<sup>6</sup>, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health called for the immediate removal of 'barriers arising from criminal laws and other laws and policies affecting sexual and reproductive health (...) in order to ensure full enjoyment of the right to health.' The European Court of Human Rights (ECtHR) also developed an [abundant case law](#) on women's access to a lawful abortion – notably against Poland and Ireland –. In several cases, the Court found that the denial of the right to abortion by Council of Europe member states resulted in violations of the Convention, especially its article 8 (right to the protection of private and family life).

FIDH calls on all European States, which still have laws restricting women's access to abortion and criminalising or otherwise sanctioning women and medical staff who perform this procedure to repeal them. States must resist pressures from conservatives, pro-life groups and religious leaders in order to uphold women's rights. FIDH also calls on EU institutions to promote women's sexual and reproductive rights.

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FIDH is an international human rights NGO federating 178 organizations from close to 120 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration for Human Rights. FIDH's headquarters are in Paris and the organization has offices in Abidjan, Bamako, Brussels, Conakry, Geneva, The Hague, New-York, Pretoria and Tunis.

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4 Ibid.

5 Committee on Economic, Social and Cultural Rights, General Comment No. 22 : Right to sexual and reproductive health, 2016: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f22&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f22&Lang=en)

6 Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Interim report, 2011: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement>