

Country Overview

Case Study: Z. v. Poland¹

The Republic of Poland is a country in Central Europe with a population of over 38 million.² The population growth rate is -.062%, despite a lack of access to family planning information or services. This rate is comparable to many European countries, but is lower by as much as one third than the population growth rate in Northern and Western European countries.

Geographically, Poland is 120,726 square miles and the ninth largest country in Europe. Globally, it is the 69th largest country and the 34th most populous state.

Poland is a member of the European Union (EU), NATO, the United Nations, the World Trade Organization and the Organisation for Economic Co-operation and Development. In July 2011, it ascended to Presidency of the Council of the EU – replacing Hungary. Poland is the sixth most populous member of the EU and its most populous post-communist member with 71.6% being between the ages of 15 and 64. Given that the number of votes allocated to each EU country reflects the size of its population, Poland's voting strength within the EU is significant; it has 27 votes and is on par with Spain. There are only four countries with more voting power: Germany, France, Italy, and the United Kingdom. They each have 29 votes.

Poland has one of the top ten largest economies in the EU and is one of the fastest growing in Central Europe. It is the only country in the EU to have maintained positive GDP growth during the 2008-2009 worldwide recessions.

Poland is currently a parliamentary democracy wherein the President is the head of state and the Prime Minister is the Chairman of the Council of Ministers. The current constitution dates from 1997. There are three branches of power: executive, legislative and judicial. The executive branch is made up of the President and the Council of Ministers; the legislative branch consists of 2 chambers of Parliament, the Sejm and the Senate; and the judicial branch is comprised of the Supreme Court and the Constitutional Tribunal. The Tribunal has the power to annul laws that violate freedoms protected in the constitution. Its legal system is based on civil rights and its constitution guarantees a multi-party state, the freedoms of religion, speech and assembly, among others, and prohibits the practices of forced medical experimentation and corporal punishment.

While the Polish Constitution protects freedom of religion, there is a clearly dominant one: 89.8% of the population identify as Roman Catholic. In 1993 Poland signed an agreement with the Polish Episcopate, and the Vatican – the Polish Concordat – that essentially makes Catholicism the state religion. Although the Vatican has signed concordats with other European nations, the Polish Concordat is “particularly sweeping” and gives the Church a uniquely “privileged political position.”³ For example, Article

¹ Z v. Poland, App. No. 46123/08, Eur. Ct. H.R. (2008).

² Central Intelligence Agency. As of 2011, Poland's population was 38,441,588. Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/pl.html>. Accessibility verified August 29, 2011.

³ The Vatican signed concordats with the following European nations: Austria, Croatia, Italy, Latvia, Lithuania, Luxemburg, Malta, Portugal, Slovak Republic, Slovenia, and Spain. France and Czech Republic have declined signing a concordat. European Union Network of Independent Experts on Fundamental

25(1) of the Constitution of Poland guarantees equal rights to all churches and faith-based institutions, but 25(4) states that the relationship “between the Republic of Poland and the Catholic Church [is] defined by an international treaty with the Holy See as well as [Polish] laws.” Other religions are instructed to pursue their own agreements with the Polish state, but only the Polish Orthodox Church has done so. Article 27 of the Constitution determines that any regulation of Church-state relations not covered by the Concordat must go through trilateral talks between the Polish government, the Episcopate, and the Vatican; Article 28 stipulates that any conflict arising between the Church and state about implementation or interpretation of the Concordat must go through the same process. Because this entails international diplomatic negotiations, this Article and what it prescribes undermines the legislative power of the Polish parliament and Polish sovereignty within its own territory.⁴

Because the Concordat was written before the new constitution in post-war Poland, the Polish legal framework has conformed to the terms of the agreement rather than the other way around, thereby preventing a formal constitutional separation of Church and state.⁵ Indeed, the Church successfully lobbied for the deletion of the word “separation” from the constitutional description of Church-state relations.⁶ The Concordat’s Article 5 states that whenever civil or criminal law would apply to other citizens, canonical law shall apply to clergy, placing the clergy outside of Polish constitutional law and exposing the lack of separation of Church and state.

The Concordat redefined the legality of marriage within Poland: while the validity of the Catholic marriage ceremony is recognized by the state, the Church does not recognize the validity of civil ceremonies and religious affiliation is officially recorded during marriage rites. There are also mandatory religion classes in schools: Article 12 of the Concordat requires religious education from preschool to high school with the Church reserving the right to conduct religious classes at higher levels as well. Though the law stipulates that non-Catholic children should have the option of attending ethics courses instead, few public schools across Poland actually offer these.

Rights. *Opinion No. 4-2005, The Right to Conscientious Objection and the Conclusion by EU Member States of Concordats with the Holy See*. Geneva, Switzerland: EU Network of Independent Experts on Fundamental Rights; 2005. Available at: http://www.fd.uc.pt/igc/pdf/eu_fund_rights/CFR-CDFopinion4-2005.pdf.

⁴ Mishtal J. The Polish Concordat: Sovereign Church and Limited State. August 2011.

⁵ *Ibid.* Citing Krystyna Daniel (1995:408).

⁶ *Ibid.*

Poland Factsheet – Basic Indicators

Demographic Data	Year	Estimate	Source
Total Population	2011	38, 442	UN Population Division
Population aged 15-49	2007	19, 663	UN Population Division
Female population aged 15-24 (thousands)	2007	2,891	UN Population Division
Annual population growth rate	2005-2010	-0.1	UN Population Division
Maternal mortality ratio	2005	8	WHO, UNICEF, UNFPA, World Bank
Infant mortality ratio	2010	6	State of the World's Population
Total fertility rate	2010	1.27	UN Data
Socio-Economic Data			
Gross national income	2006	14, 250	World Bank
Per capita, total expenditure on health	2005	843	World Health Statistics 2008

History of Poland

The original establishment of the Polish state is identified with the adoption of Christianity in 966 after which Poland went through many iterations and divisions, ultimately regaining its independence from Prussia, Russia, and Austria in the form of the Second Polish Republic in 1918.

On September 1, 1939, Poland was invaded by Germany, which is the putative start of World War II; before World War II, Poland had one of the world's largest Jewish communities with over three million; the Polish Jews had survived every-growing anti-Semitism and years of pogroms. During the war, Poland lost one-fifth of the Polish population overall –six million citizens—but 90% of its Jewish population—around three million.

After the war, Poland reemerged within the Soviet sphere as the People's Republic of Poland until 1989. During the revolutions in 1989, communist rule was overthrown and Poland became the Third Polish Republic. Poland is now a unitary state—one sovereign

state with a central government—and has a market economy.

Soviet-controlled state socialism was established in Poland in 1948. Marxist egalitarian principles drove many new policies regarding expanded access to education, healthcare, and employment, especially for women. Generous social service policies were established to relieve women of the burdens of caretaking and to facilitate their entry into paid employment. As a result of these policies, Polish women's full-time employment rose. Despite state policies support of maternal employment with a great deal of job security and considerable relief for care giving, little changed within familial gender relations as women were still expected to manage the household and care for children, husbands, and elderly or sick relatives.

Poland did not experience forced secularization like elsewhere in Eastern Europe due to the powerful position of the Catholic Church in Poland. Indeed, while the Soviet regimes tended to repress Eastern Orthodox churches because they were existed structurally independently from one another and were therefore materially dependent on the state—and had no international support—they were most lenient towards the Roman Catholic Church, particularly in Poland; it enjoyed the protection of the Vatican, support in the West, and was materially independent from the state. This was a mutually beneficial situation: the state recognized that the continued visibility and importance of the Church created stability among a population faced with major political transformations, and the Church saw a secularization in the region and quickly recognized its dependence on the socialist state – and with it the need to make concessions for survival in the new system. State socialism in Poland ended as a result of both the opposition waged by Solidarity, a Catholic –nationalist trade union, and a failing economy. Solidarity was a Polish trade union federation that began in 1980. It was the first non-communist party-controlled trade union in a Warsaw Pact country (a mutual defense treaty subscribed to by eight communist states in Eastern Europe established at the initiative of the Soviet Union in 1955); it was based on an anti-bureaucratic platform that promoted workers' rights and social change through methods of civil resistance. The Catholic Church, and specifically Pope John Paul II, was a fervent supporter of the union, which propelled it to success. In *Sollicitudo Rei Socialis*, a document of Catholic social teaching, for example, the very concept of solidarity—with the poor and marginalized—is identified as a constitutive element of the Gospel and as essential for the common good.

The Church enjoyed ascending political and legal power within the post-socialist Solidarity-led Polish government, reconfiguring many institutions and tackling specific issues. As a gesture to repay the Church for supporting the Catholic-nationalist labor union, the Polish government worked to limit women's right to abortion despite the urgent need to focus on economic reforms after the fall of state socialism. While abortion had been legal upon request before 1989, the government passed the 1993 Family Planning Act, which made Poland's abortion law one of the most restrictive in the world.

Health, Social Services and Human Rights

Poland's entry into the EU in May 2004 occasioned the emigration of many Poles to western European countries like the United Kingdom and Ireland and this exodus has been relatively consistent since. One year after the 2004 EU expansion, 100,000 Poles had registered for work in the UK. Despite Poland's relative recent economic prosperity, there is still economic disparity between it and some western European countries. For example, salaries are lower, particularly for doctors and dentists. In 2004 Polish doctors

were paid an average of 29,000 zloty (\$7,500) per year; they can earn 10 times as much in countries such as Germany⁷ and England. An internet-opinion survey in May 2004 demonstrated that about one third of all Polish doctors (10,000) between 25 and 25 intended to work in western Europe. Doctors' emigration has not only been fueled by low wages, but also by the reduction of public health care resources, and the privatization of hospitals.

The departure of doctors from Poland undermines the country's health system. Currently, there are only 214 doctors per 100,000 people in Poland, which is a significantly lower number than in neighboring countries. The Czech Republic, for example, has 363 doctors per 100,000, while Slovakia has 300, and Germany has 353.⁸

The collapse of the socialist system in 1989 led to a series of political and economic transformations, including the reduction of social services. Maternity leave, for example, was cut from almost two years to less than four months. Childcare facilities were closed and privatized; many state subsidies for health care were eliminated. As of 2005 Poland had the lowest public expenditure on health in the EU, according to the World Health Organization.⁹ Subsidies of medicines dwindled from 100% before 1989 to 35% in 2004, the lowest in the EU.¹⁰

Poland has also suffered a large increase in inequality over the past three decades since 1989. The Polish Gini coefficient (a measure of the inequality of wealth distribution¹¹) went from 0.26 in the 1980s to 0.36 in 2005. Poland's Gini coefficient is second highest after Russia in the post-Soviet region¹² and Polish women suffer the brunt of this stratification. They are twice as likely to fall below the poverty line as men and they comprise the majority of the unemployed as a result of acute gender discrimination. In the face of growing female unemployment and disappearing state provisions, many of the women, especially in rural areas, are turning to traditional strategies of relying on kin networks for resources.

Despite being a signatory to many human rights treaties,¹³ Poland continues to be responsible for a number of human rights violations, including police misconduct; lengthy pretrial detention; laws that limit free speech; and societal discrimination against

⁷ Burgermeister J. Exodus of Polish doctors could threaten health system. *BMJ* May 2004; 328: 1280. Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC420203/>.

⁸ World Health Organization. *World Health Statistics 2011*. Geneva: World Health Organization; 2011. Available at: http://www.who.int/whosis/whostat/EN_WHS2011_Full.pdf

⁹ World Health Organization 2006.

¹⁰ Mishtal J. Understanding low fertility in Poland: Demographic consequences of gendered discrimination in employment and postsocialist neoliberal restructuring. *Demographic Research* October 27, 2009; 21: 20: 599-626.

¹¹ A value of 1 indicates perfect inequality, while a value of 0 indicates perfect equality. World Bank. *Poverty Analysis—Measuring Inequality*. Available at:

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20238991~menuPK:492138~pagePK:148956~piPK:216618~theSitePK:430367,00.html>.

¹² United National Development Fund. *Human Development Report 2009*. Available at: <http://hdrstats.undp.org/en/indicators/161.html>.

¹³ Poland is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of all Forms of Discrimination Against Women, among other treaties.

homosexuals,¹⁴ including a proposed law to censor all discussion of homosexuality in schools;¹⁵ and in the area of women's reproductive health and rights.

Reproductive Health

Poland has one of the most restrictive abortion laws in Europe and the world. Within the EU, Poland's abortion law is the third most severe – eclipsed only by Ireland's and Malta's. The procedure is regulated by the 1993 Family Planning Act and is allowed on three grounds only: 1) any stage of pregnancy only when the life or health of the woman is endangered; 2) until viability when there is a high probability of a severe and irreversible fetal impairment; and 3) when the pregnancy is a result of a crime. For this latter circumstance, abortion is only allowed during the first 12 weeks of pregnancy. Since 1956, abortions in these three circumstances have made up only 3% of all abortions performed.¹⁶

Abortion had been available upon request since 1956 under the socialist regime. The Church in principle strongly opposed the legalization of abortion, and the increased access to contraception and sex education, but did not voice its concerns so publically. In direct appeals to parishioners, the clergy spoke strongly against abortion, but they rarely attacked the policy itself.¹⁷

And in 1993, the Polish government instituted its almost total ban on abortion – the 1993 Family Planning Act. In 1996, the law was liberalized to permit abortion for social reasons, but under the influence of the Catholic Church hierarchy, this legislation was deemed unconstitutional, and in 1997 the restrictive 1993 Family Planning Act was reinstated. In July 2011 the lower house of Poland's parliament voted to support a proposed bill that would ban abortion on all grounds. It requires two more votes in the lower chamber before moving to the Senate.

While Poland's abortion law is restrictive on paper, in reality women often encounter further obstacles to obtaining abortions to which they are legally entitled. Official reports say that only 200 legal abortions occur per year in Poland – where there are 10 million women of reproductive age. According to the Polish Federation for Women and Family Planning, between 80,000 and 190, 000 abortions are actually performed per year. Factors that contribute to the regulatory framework and lack of enforcement that forces women into illegality include social factors such as the Catholic Church, the Criminal Code – under which anyone assisting a woman with an abortion faces up to three years imprisonment, though the woman herself does not – fetal personhood ideals in the Family Planning Act which gives a fetus the “right to life” without clarifying that the woman's health and life take priority over the fetus, as well as the unregulated practice of conscientious objection.

¹⁴ United States Department of State. Poland. Available at: <http://www.state.gov/documents/organization/160208.pdf>.

¹⁵ Human Rights Watch. Poland: School Censorship Proposal Threatens Basic Rights. March 18, 2007. Available at: <http://www.hrw.org/news/2007/03/18/poland-school-censorship-proposal-threatens-basic-rights>.

¹⁶ Johannisson E, Kovacs L, eds. *Assessment of Research and Service needs in Reproductive Health in Eastern Europe: Concerns and Commitments: Proceedings of a workshop organized by the ICRR and the WHO collaborating center on research in human reproduction in Szeged, Hungary, 25-27 October 1993*. New York: Parthenon Publishing Group; 1997.

¹⁷ Mishtal J. “Matters of Conscience”: The Politics of Reproductive Healthcare in Poland. *Med. Anthropology Q.* 2009; 23: 161-183.

Under Polish law, doctors are permitted to practice of conscientious objection, a policy, which allows doctors to refuse to provide abortions to women who have the legal right. In 1991, the Conscience Clause, a non-legislative policy, enabled health care providers to withhold reproductive and sexual health services, including abortion (even though it was still legal at the time), prescription contraceptives, and information about family planning, by invoking conscience-based objections. The Profession of a Physician Act of 1996 also allows doctors to object to carrying out an abortion based on their conscience, but requires them then to refer the woman to another doctor who will perform the service. The rule of conscience clause does not apply to life-threatening situations.

The state's failure to regulate conscientious objection, however, makes it extremely difficult for women to access legal abortion in Poland. Enabled by the complete lack of oversight of conscientious objection, doctors often refuse to make referrals and the conscientious objection clause as it is exercised in Poland has become a significant barrier to accessing legal abortion services. There is strong pressure on doctors to object from both the Catholic hierarchy and from hospitals. This pressure influences doctors' decisions to object to performing abortions, whether or not this action aligns directly with their own beliefs.

Neither conscientious objection nor Poland's restrictive abortion law curtails the actual performing of abortion in the country. Indeed, since 1993, the number of abortions carried out in hospitals has fallen by 99%, but the private industry for abortions is flourishing; the criminalization of abortion in Poland has led to a vast and lucrative illegal private sector with no controls on price, quality of care, or accountability.¹⁸

These procedures are performed "underground" by trained doctors for very high fees; this is the "white coat underground." Clandestine abortions generate up to \$95 million a year for Polish doctors. The least privileged women suffer the most: in 2009 the cost of a surgical abortion in Poland was greater than the average monthly income of a Polish citizen –around 870€ (\$1,290.00). Groups of a lower socioeconomic level have fewer resources to protest the status quo, or the discrimination and stigma that cause it. Wealthier women can pay for these abortions, which generate millions of dollars in tax-free income for doctors.¹⁹ Poland's maternal mortality ratio is 8,²⁰ in part because maternal death as a result of illegal abortion is rare.

The opportunity for money making clearly influences the incidence of doctors refusing to perform abortion under the guise of conscientious objection. Often those who object publically are the same doctors to offer illegal abortions to women privately at a high price.

¹⁸ Since abortion became illegal in the late 1980s, the number of abortions carried out in hospitals has dropped by 90%. The private trade in abortions is robust, however; abortion providers advertize openly in newspapers. These clandestine abortions generate up to \$95 million a year for Polish doctors. Science News. Clandestine Abortions Generate Up to \$95 Million a Year for Polish Doctors as Women Use Illegal Private Sector. *ScienceDaily* 2011. Available at: <http://www.sciencedaily.com/releases/2011/05/110517091637.htm>.

¹⁹ *Ibid.* Chelstowska A. Stigmatisation and commercialization of abortion services in Poland: turning sin into gold. *Reprod Health Matters*; 2011; 12(37): 98-106. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/21555090>.

²⁰ UNFPA, State of the World Population 2010. Available at: http://www.unfpa.org/webdav/site/global/shared/swp/2010/swop_2010_eng.pdf.

More affluent women can enjoy the benefits of a new EU international health directive as well, which seemingly will enable women with legal claims – and means – to abortion pursuant to Polish law to circumvent conscientious objection and travel abroad to obtain high quality services. Although the directive stipulates that these women would be reimbursed in Poland, only women with readily available money would truly have the ability to take advantage of this new directive.²¹ Further, wealthier Polish women are able to seek safe, legal abortions abroad in countries such as the United Kingdom, the Netherlands, Czech Republic, and Germany.

Since the practice of conscientious objection is not regulated at all, often women—particularly poorer women—are left bereft of all medical care. There are also no effective appeal procedures for patients who are deprived of any protection; they are not guided to another physician or another medical institution; they are not provided with the statement of reasons,²² and sometimes the very fact is not included in their medical file. There is no recourse even when a woman finds herself in a situation with severe health risks.

In 1952 the Polish state legalized abortion and introduced sex education in schools. The state heavily subsidized the development of a nationwide network of family planning clinics and educators—the Association for Conscious Motherhood (TSM)—but it kept the 1932 ban on voluntary sterilization, which remains in place to this day.

Beginning in 1959, TSM became a member of International Planned Parenthood Federation (IPPF) and worked closely with IPPF to design family planning programs. TSM also worked directly with the Ministries of Health and Education.

Throughout the last 30 years, however, the state has also restricted access to contraceptives and family planning information. Indeed, the Ministry of Education abolished sex education from schools and withdrew funding for TSM, Poland's sole national family planning organization. In 1999, it withdrew five types of birth control pills from the list of refunded prescription medications; in 2002, it eliminated all health insurance coverage of hormonal contraceptives. Now such contraceptive methods are available for high prices and therefore even more inaccessible.

In the case of *Z. v. Poland*,²³ a pregnant woman died as a result of being denied access to comprehensive medical care because her doctors were afraid of harming the fetus.

²¹ Information regarding this EU international healthcare directive is available at: <http://europeanprochoicenetwordpress.com/2011/05/28/poland-cross-border-healthcare-directive-and-access-to-abortion/>.

²² Nowicka W. Ethical Considerations on Anti-Abortion Law: *Poland*. Available at: <http://www.rodicovstvo.sk/nowicka.htm>.

²³ *Z v. Poland*, App. No. 46123/08, Eur. Ct. H.R. (2008).

The case: Z. v. Poland

*The facts*²⁴

Ignoring human rights and medical standards, doctors refused to give Z's, the applicant's, daughter the care she needed to treat ulcerative colitis (UC) because they were afraid doing so might harm her fetus. Ultimately, after eight hospital admissions over a five-month period during which doctors focused on Z's daughter's pregnancy and not on her disease, this led to a miscarriage and to her preventable death.

On May 5, 2004, Y, Z's daughter, a Polish woman in her twenties, was, at four to five weeks gestation, informed she was pregnant. Prior to, or during her early pregnancy, Y had developed UC, an inflammatory bowel disease that causes inflammation and sores, called ulcers, in the lining of the rectum and colon.²⁵ Symptoms of UC include nausea, abdominal pains, vomiting and diarrhea and Y began to experience them to her pain and discomfort. Y went to 12 or so hospitals and clinics for treatment, but initially her symptoms were interpreted as characteristic of the beginning stages of a pregnancy. Yet, her symptoms rapidly worsened and became so severe that she was admitted to a hospital from mid. May to early June. During her stay, basic tests were performed and UC was diagnosed. She received treatment with steroids and was sent home. A few days later, the condition of Z's daughter again worsened, requiring another hospitalization. Her treating doctors failed to carry out further diagnostic tests, such as a full endoscope, to determine the extent and location of her UC, and to decide on the proper course of treatment. Z's daughter's condition deteriorated and four stays, totaling six weeks in four different hospitals, followed in the months of July and August. While she developed abscesses that had to be surgically removed, more extensive testing and aggressive treatment were denied. One doctor told Z that her daughter was "too interested in her own ass instead of being interested in something else," the "something else" being her pregnancy. Although abortion is not generally a consideration in giving proper treatment in her situation, other doctors told Y they could not treat her because their "conscience did not allow" them. None of Y's doctors registered their conscientious objection as is required, however; they also failed to refer her to a doctor that would give her the treatment she needed. The refusal to be treated effectively while she was in great pain put her life at further risk. In early September 2004, Z's daughter was again hospitalized, this time with sepsis and symptoms of organ dysfunction. Doctors also diagnosed that her fetus was dead. Despite many surgeries, the sepsis became more severe and her kidneys failed. After months of extreme pain received at the hands of her doctors, who had been urged to "commence any necessary treatment, irrespective of the consequences for the life of the fetus, to save Y's life" by her husband and her mother, Y died on September 29, 2004, of septic shock, a condition that could have been controlled with proper and timely treatment.

²⁴ Information regarding the case before the European Court of Human Rights is available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=852028&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> and <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=852028&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

²⁵ Information about Ulcerative Colitis is available at: <http://digestive.niddk.nih.gov/ddiseases/pubs/colitis/>.

Reproductive Health Interest Groups/Stakeholders in Poland

1. Ministry of Health

Mission: To ensure the efficient and effective functioning of the health system in Poland and to promote good health, prevent the spread of disease, and ensure equitable access to quality health care and education. The fundamental legal act of the Republic of Poland - the Constitution ensures special protection by the State over pregnant women. Article 68(3) states that "[p]ublic authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age." But as the Ministry is politically aligned with the right-leaning agenda of the state, this health care is restricted in nature. In April 2011, one under secretary of state clarified before the United Nations that "any reference to sexual and reproductive rights and services included in the texts of the above mentioned statements does not constitute an encouragement to the promotion of abortion."²⁶

Chief programmatic areas: HIV and other sexually transmitted diseases, Maternal and Infant Health, Population policy. Further, Adam Fronczak, an under secretary of state for the Ministry of Health said, before the United Nations, that "the process of developing a health policy should focus on the protection of human rights, on the respect of human dignity of persons living with [HIV] and on the support of particularly vulnerable populations, such as women, children, adolescents, migrants and marginalised persons, in order to minimise negative consequences of the epidemics."²⁷

Funding range: Since the 1950s, the Polish State had provided universal access to health services. Health sector reforms in the 1990s have sought to maintain this commitment. There are three funding sources for the health care system: state budget, self-government budgets, and the National Health Fund. In 2004, the National Health Fund was found unconstitutional and Poland passed a law on health benefits financed from public means. This law defines the responsibilities of individual and public bodies cooperating with the State for citizens' health care.

Health Service Coverage:

- i) Total expenditure on health as % of gross domestic product: 7.0%
- ii) General government expenditure on health as % of total expenditure on health: 67.4%
- iii) Private expenditure on health of % of total expenditure on health: 26.0%
- iv) General government expenditure on health as % of total government expenditure: 10.9%
- v) External resources for health as % of total expenditure on health: 0

Constituency: Under the Law of Universal Health Insurance all citizens are legally obliged to participate in the public health insurance system.

Political influence: One of the largest public institutions in the country, funded by the government, and some international grants.

History: Historically, the Ministry has been politically aligned with the right-leaning agenda of the state, making health care services is restricted in nature. Adam Fronczak clarified that "any reference to sexual and reproductive rights and services included in the texts of the above mentioned statements does not constitute an

²⁶ Information regarding the Polish Ministry of Health is available at:
<http://www.un.org/esa/population/cpd/cpd2011/countrystatements/agendaitem4/poland.pdf>.

²⁷ *Ibid.*

encouragement to the promotion of abortion.”²⁸ One former socialist Minister of Health, Mr. Marek Balicki, attempted to improve the functioning of the Conscientious Clause by the adoption of executive provisions that obligated medical institutions to have standing arrangement with individual doctors or other medical institutions under which patients could be safely and conveniently referred to alternative facilities. The National Health Fund was also entitled under the said regulation to withdraw from the medical service contract with a medical institution breaching this rule. The aim of the regulation was to avoid a situation in which patients are deprived of their rights to medical treatment on ground of conscientious objection. The present Health Minister, Ms. Ewa Kopacz, MD, revoked this regulation.

Leadership: the Minister of Health directs The Ministry of Health. In a management role under the Minister, is one secretary of state, four undersecretaries of state, and a general director. The current Minister of Health is Ewa Kopacz; she has been the Minister since November 2007. She was a doctor and a director of a healthcare institution prior to going into politics. Pro-life activists in Poland called for her excommunication in 2008 after she was involved in arranging an abortion for a 14-year-old girl²⁹ in the Agata case.³⁰

2. Ministry of Education and Sport

The education system in Poland is supervised by The Ministry of Education and Sport. The Ministry is responsible for educational policies at the national level, coordinating other governing bodies and controlling higher education institutions. It is therefore a stakeholder when it comes to health, reproductive health, and sexual health education, as well as religious education. The Ministry prerogatives do not include higher education.

3. Catholic Church

89.8% of Poland’s population identifies as Catholic; however, only 51% of Poles self-described as “regularly practicing Catholics.”³¹ The Catholic Church enjoys a political influential role in Poland, in part because of its support of the Solidarity movement, which ended the socialist state. The leaders of Solidarity signed the Concordat of 1993 to show their commitment and appreciation for the Church. This Concordat de facto reified the union of Church and state, undermining the autonomy of the Polish government. The Church, thus, has played a vociferous and influential role in severely restricting access to legal abortion; even women who are entitled to a legal abortion are very often denied the procedure. Though Polish law requires that abortions be performed in public hospitals in three circumstances, hospital administrators and doctors routinely turn women who have a legal right to an abortion away from their facilities in part because of pressure from the Church. In some cases, the same doctors who refuse to perform abortions in public facilities will do so illegally in their private offices at a substantial financial cost; an abortion performed privately can cost more than the average monthly income in Poland.

²⁸ *Ibid.*

²⁹ Poland Pro-Life Groups Call for Health Minister’s Excommunication After Abortion Involvement. *Lifesitenews.com*. Available at: <http://www.lifesitenews.com/news/archive/ldn/2008/jun/08062401>.

³⁰ More information on this case is available at: <http://reproductiverights.org/en/press-room/for-teen-girl-in-poland-even-a-legal-abortion-is-hard-to-get>.

³¹ CBOS statistical data, 8/2005. “Values and Norms in the Lives of Poles.” See website: <http://www.cbos.pl/PL/Raporty/r2005.shtml>.

The Catechism of the Catholic Church lays out its policy regarding abortion:
http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a5.htm.

4. Federation for Women and Family Planning

Mission: To ensure women's basic human right to choose and decide freely if, when, how many and how to have children. Without this right, women are denied full and equal participation in the life of society and personal development. The Federation defends the right to legal and safe abortion, to full accessibility of all medically accepted family planning methods and to modern gender-sensitive sex education. The Federation advocates for better reproductive health and rights standards and practices towards women within the healthcare system. And it provides education and counseling services for women and youth with respect to family planning, sexually transmitted diseases including HIV/AIDS and other related issues.

Chief programmatic areas: Reproductive health and rights and gender equality

Funding range:

Constituency: Women of all ages and walks of life

Political influence: Has Special Consultative Status with the Economic and Social Council of the United Nations. Though the Federation does not have individual memberships, it does have around 4,000 supporters throughout the country.

History: The Federation was established in 1992 by five organizations – the Pro Femina Association, the Polish Feminist Association, the League of Polish Women, Neutrum, and the Society for Family Development – in order to defend women's right to choose. It currently has nine member groups: the founding five, plus Polish YWCA – Young Women Christian Association, Democratic Union of Women, Association "Assistance Center for Families," and Family Development Association.

Website: <http://www.federa.org.pl/>

5. ASTRA Central and Eastern European Women's Network for Sexual and Reproductive Health and Rights

Mission: ASTRA strives to increase awareness about SRHR issues and to ensure that the specific reality of women's sexual and reproductive rights and health in Central and Eastern Europe receive the highest priority on international, regional and national agendas, in particular at the EU and UN.

Chief programmatic areas: Monitoring international commitments, maintaining European standards for women's health and rights, giving young people a voice, partnering with the medical community, advocating for policies and programs that recognize women's and young people's health needs, and improving the quality of safe abortion services.

Funding range:

Constituency: Women of all ages and walks of life, has 21 membership organizations throughout the region.

Political influence:

History: Linking 23 organizations from 15 different countries, ASTRA is the only network focused on sexual and reproductive health and rights in Central and Eastern Europe.

Website: <http://www.astra.org.pl/>

6. Center for Reproductive Rights

The Center for Reproductive Rights is global nongovernmental legal organization that uses constitutional, international law, and advocacy to defend and promote reproductive freedom as a fundamental human rights that all government are legally obligated to protect, respect, and fulfill. <http://reproductiverights.org/en/about-us>

7. International Planned Parenthood Federation – Towarzystwo Rozwoju Rodziny (TRR)

Mission: With its ten branches, TRR organizes medical counseling, as well as regular information and educations courses for young people, teachers, parents, and professionals

on different aspects of sexual health and human reproduction. In addition to medically oriented clinics, TRR also runs counseling centers for young people and families in Poland. The services offered are an alternative to the state healthcare system, as well as a model in terms of respecting clients' rights and the latest diagnostic and treatment methods.

Chief programmatic areas: Medical clinics and counseling centers. TRR is running 4 medical centers and providing yearly services for around 48,000 women. 63% of its clients are young people below 25 years old.

Funding range:

Constituency:

Political influence:

History:

Website: <http://www.ippf.org/en/About/>

8. PRO Foundation

The PRO Foundation has organized a grassroots campaign to lobby MPs to support the legislation and the nation's Catholic bishops have also played an integral role in advancing the legislation.

9. Catholics for Free Choice

Catholics for Choice (CFC) was founded in 1973 to serve as a voice for Catholics who believe that the Catholic tradition supports a woman's moral and legal right to follow her conscience in matters of sexuality and reproductive health. Its headquarters are in Washington, DC, but it works with sister organizations throughout Latin America, and maintains a presence in the European parliament and throughout Europe, working closely with Catholic and reproductive health colleagues there. CFC has an annual budget of \$3,000,000.

10. Global Doctors for Choice

Global Doctors for Choice (GDC) aims to contribute the powerful voice of physicians to advocacy efforts to establish access to high quality reproductive health services around the world. Doctors contribute scientific authority, firsthand familiarity with the dire consequences of unsafe abortion and the dearth of reproductive health services to deliberations about health. GDC strives to facilitate communication between doctors globally to support one another and strategically translate different approaches from one

country to another; GDC aims to bridge these gaps by creating a global network of physicians trained to advocate for safe abortion and reproductive health. GDC currently works with local advisory committees to train physicians in advocacy skills in Latin America and Sub Saharan Africa.

Advocacy Strategy

Y's mother sought redress and Wanda Nowicka of the Polish Federation for Women and Family Planning agreed to help. Based on Nowicka's previous experiences in Poland, she decided to seek redress for Z's daughter outside of the country. Together with the Warsaw University Law Clinic and the Center for Reproductive Rights (CRR), they filed a lawsuit against Poland before the European Court of Human Rights (ECHR) in September 2008. The ECHR's decisions are binding for any Council of Europe member state that chooses to accept this Court's optional jurisdiction.

The petition argues breaches of constitutional and international law, and argues that care that ignores the health of the pregnant woman in favor of her fetus violates the pregnant woman's rights to life, freedom from non-discrimination, as well as from inhumane and degrading treatment. The Z. case specifically challenges the way in which the Polish law governing conscientious objection is regulated since physicians' refusal of care denied Y timely and proper care that could have saved her life. The plaintiff argues that Polish law must regulate doctors' right to refuse care and ensure that there are healthcare workers willing to provide all legal services, and that patients receive referrals to these workers. The case also asks the Court to proscribe the invocation of conscientious objection by institutions, such as hospitals, or in cases where emergency care is needed.

The collaborating legal groups sought the expertise of medical and public health experts in preparing the petition. They also asked various legal, human rights, clinical medicine and public health organizations to submit amicus briefs assessing the facts of the case from their respective perspectives and frameworks of expertise in order to provide a comprehensive examination of the implications of the case.

Another tactic was to advocate before the Parliamentary Assembly of the Council of Europe (PACE). This entity is responsible for electing the judges for the ECHR, as well as the Commissioner of Human Rights, whose position has three main duties: 1) to promote human rights education and awareness of human rights; 2) to identify areas of laws that fail to recognize human rights to a full extent and human rights laws that are not fully implemented; and 3) to promote a respect for and enjoyment of human rights in Council of Europe member states. Since Poland is a Council of Europe member state, the group considered advocacy before PACE to be integral to changing the status quo of reproductive health and rights for women in Poland.

Please view the following videos to hear from two individuals involved in the case:

- Christina Zampas, a lawyer from the Center for Reproductive Rights
- Joanna Mishtal, a medical anthropologist

Update on the case and on advocacy before PACE:

A decision from the ECHR is pending in this case and expected in Spring 2012. Prior to 2010, advocacy before PACE regarding regulating conscientious refusal of care had made some progress. CRR's Christina Zampas helped draft a report on unregulated use of conscientious objection, which was presented to PACE³² and led to a vote on a Council of Europe resolution: *Women's access to lawful medical care: the problem of unregulated use of conscientious objection*. The European Parliament Platform for Secularism in Politics even dedicated its September 2010 meeting to discussing conscientious objection. In October 2010, however, anti-choice members re-scheduled the vote for the last possible moment after many supporters had left and thus PACE adopted a resolution that had been "diluted by a number of harmful anti-abortion amendments."³³

The supporters of the original resolution have decided to wait before re-introducing it. On October 10, 2011, Poland's population voted for incumbent Polish Prime Minister, Donald Tusk, to remain in office. The party to amass the third most votes -10%- was Palikot's Movement, a new socially progressive party that opposes the church's influence in political life. Wanda Nowicka ran for a parliamentary seat on this party ticket and won.

Assignment: Z. v. Poland

- 1. Critique the message strategy. Your answer should include, but not limited to the following:**
 - a. What do you think worked particularly well, and what might you have done differently?
 - b. Would you have changed or expanded the message?

- 2. Given the status of this case in 2011, what should be the next steps be for:**
 - a. Christina Zampas and CRR
 - b. Joanna Mishtal

- 3. Can you see yourself in Joanna's role?**
 - a. What would be difficult: message, collaboration with organization or with lawyers, clarity of message, opposition, fallout for family?
 - b. What would be gratifying?

³² Rapporteur Ms. Christina McCafferty, United Kingdom, Socialist Group, Social, Health and Family Affairs Committee, Report, *Women's access to lawful medical care: the problem of unregulated use of conscientious objection*.

³³ <http://reproductiverights.org/en/press-room/abortion-opponents-undercut-council-of-europe-resolution-on-conscientious-objection>.