

## WOMEN'S RIGHT TO ABORTION – RISE OR DECLINE?

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**Research Question:** Women's right to abortion has recently been disputed after the judgment of the Polish Constitutional Tribunal of 22nd October 2020 and the judgment of the Supreme Court of the United States of 24th June 2022. These two decisions are regarded as restricting the right to abortion with the aim to protect the right to life of a foetus. Especially the Polish judgment resulted in massive protests in Poland, however in 2022 there was another attempt to limit women right to abortion by making it equal to murder. Therefore it needs to be analysed what the current status of the women's right to abortion actually is.

**Purpose:** The purpose of the research is to verify the actual impact of the above mentioned judicial decisions on the women's right to abortion. The examination will permit to present a solution to the legal conflict of the right to abortion and the right to life and to indicate, why women right to abortion prevails over foetus' right to life. The main goal of the presentation is raising the awareness, that the women's right to abortion is in fact a corollary of different human rights. The subsidiary aim will be a comprehensive analysis of the so called conscience clause that permits gynaecologists to refuse abortion to pregnant women as well as pharmacist to sell contraceptives, including female emergency contraceptives.

**Method:** The goal of the research has been achieved by the application of methods relevant to legal studies. These were the formal-dogmatic method, the theoretic method and above all the comparative method. The deliberations will be based on different national standards and case-law, as well as standards depicted in the case law of the ECtHR, the IACtHR and the UN HRC.

**Results:** The women's right to abortion forms part of human rights like the freedom from inhuman and degrading treatment, the right to life and the principle of non-discrimination. It is widely accepted (except for selected States with the dominant Catholic religion) that a foetus has right to life, but it is conditional and limited by rights of a woman. Also the men's right to privacy and family life might be restricted by the bundle of women's rights. It will be also possible to explain, why the female patients' right to achieve available medical treatment, which is part of patients' right to life and to physical integrity, prevails over another person's (doctor, nurse, pharmacist) right to freedom of religion. It can be concluded that despite some decline of the women's right to abortion in some jurisdictions, it is in rise globally.

**Organization:** The research can have impact on international and national laws and case-law but also on practice of hospitals and pharmacies regarding available medical treatment and

admissibility of the conscience clause for their employees.

**Society:** The research permits to understand the very essence of the women's right to abortion. It is not some newly discovered right, dependent on the will of legislators, but a part of the most basic human rights, especially the freedom from inhuman and degrading treatment, which is ius-cogens norm of international law.

**Originality:** The research analyses the new developments regarding the women's right to abortion and it strongly concentrates on the most recent case law of 2020 and 2022 and its impact on global understanding of basic human rights.

**Limitations / further research:** The status of the women's right to abortion changes regionally and locally. The decision of the SCOTUS might have opened a Pandora's box in the United States, as now each State will decide separately on the scope of this right. There is also an immense pressure of the international community on Poland and some states in Latin America to mitigate their strict anti-abortion laws.

**Keywords:** abortion, woman, foetus, right to life, freedom from inhuman and degrading treatment, conscience clause.

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