



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Poland
<b>Title:</b>	Constitutional Tribunal bans the abortion for embryo pathological indications
<b>Date:</b>	24 November 2020
<b>Expert:</b>	Anna Cybulko
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Restriction of reproductive rights
<b>Grounds of discrimination:</b>	Sex
<b>Field of application:</b>	Other (criminal code and abortion law)
<b>Source:</b>	Judgment of the Constitutional Tribunal of 22 October 2020, Case No. K 1/20 (further: CT)
<b>Applicable law:</b>	Law of 7 January 1993 on family planning, protection of human foetus and conditions of termination of pregnancy, JoL 1993 No. 17 Item 78 with further amendments (further: Abortion Law), Penal Code of 6 June 1997, unified text: JoL 2020 Items 1444 ,1517 (further: PC) Constitution of the Republic of Poland of 2 April 1997, JoL 1997 No. 78 Item 483 with further amendments (further: Constitution)

### Content

**Decision of the court:** In its ruling of 22 October 2020 the Constitutional Tribunal decided that the so called embryopatological indication for abortion, provided for in Article 4a section (1) point 2 of the Abortion Law, are contradictory to Article 38 (protection of life of human person), in conjunction with Article 30 (protection of human's person dignity), in conjunction with Article 31 section (3) (conditions of admissibility of introduction of restrictions on the enjoyment of constitutional rights and freedoms) of the Constitution.<sup>1</sup> The verdict was passed by the majority of votes of the entire CT's chamber, with two dissenting opinions. As a consequence, as soon as the verdict is published, the questioned provision of abortion law loses its legal force.

**Key points of analysis:** The Abortion Law provides for three indications for which termination of pregnancy does not constitute an offence under Article 152 of the Penal Code (which threatens with a punishment of up to three years' imprisonment to anyone who terminates a woman's pregnancy with her consent but in violation of the law). Legal termination of pregnancy is allowed in the following situations: 1. the pregnancy constitutes a threat to the life or health of the pregnant woman; 2. prenatal examinations or other medical reasons indicate a high probability of a serious and irreversible impairment of the fetus or an incurable disease threatening its life (in such case the abortion is allowed until the fetus is able to live independently); 3. there is a

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<sup>1</sup> <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11300-planowanie-rodziny-ochrona-plodu-ludzkiego-i-warunki-dopuszczalnosc-przerwywania-ciazy>.

reasonable suspicion that the pregnancy is a result of a forbidden act (e.g. rape, incest; abortion allowed in the first 12 weeks of pregnancy).

A group of 141 deputies (mainly from the ruling political party Law and Justice) filed a motion with the Constitutional Tribunal to declare the second indication (as seen in Article 4a section 1 point 2 of the Abortion Law) to be unconstitutional. The applicants emphasized that 'the legalization of eugenic practices in relation to the unborn child' is incompatible with the constitutional principles: of protection of human's person life and respect for human's person dignity and constitutes prohibited direct discrimination on the ground of health'. Moreover, the way in which the premise of the contested provision has been expressed, constitutes evidence of the use of undefined criteria and of the legalization of the interruption of pregnancy without sufficient justification for the protection of another value. The Constitutional Tribunal confirmed this argumentation in its verbal justification of the ruling in its entirety.<sup>2</sup> The judge rapporteur, particularly emphasized that the questioned prerequisites of admissibility are not precise enough and are excessively broadly defined. For example, the requirement of endangering the life of the fetus is only discussed in the context of an incurable disease, and not a serious, irreversible impairment of the fetus). In addition, it is not necessary to identify these abnormalities in the fetus in order to terminate the pregnancy, instead it is only sufficient to demonstrate a high probability.

#### **Internet link source:**

- <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11300-planowanie-rodziny-ochrona-plodu-ludzkiego-i-warunki-dopuszczalnosci-przerywania-ciazy>
- <https://pulsmedycyny.pl/oficjalne-dane-o-legalnej-aborcji-w-polsce-1110-zabiegow-przerwania-ciazy-w-2019-r-999603>
- <https://tvn24.pl/polska/sejm-protest-rodzicow-dzieci-niepelnosprawnych-i-list-do-prezesa-pis-ra830548-2357287>
- <https://www.rpo.gov.pl/pl/content/aborcja-oswiadczenie-rpo-narasta-dramat-kobiet>
- <https://www.rpo.gov.pl/pl/content/aborcja-oswiadczenie-rpo-narasta-dramat-kobiet>
- <https://wiadomosci.onet.pl/tylko-w-onecie/czy-polacy-popieraja-zaostrenie-prawa-aborcyjnego-analizujemy-sondaze/r78zlw>.

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<sup>2</sup> There is no written justification for the time being, and we are not waiting for this Flash to appear, as it may take even two months.