



Warsaw, December 8th, 2020

Memorandum in response to the In-Depth Analysis publication, "Access to abortion services for women in the EU"

The European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, at the request of the FEMM Committee, commissioned an in-depth analysis titled "Access to abortion services for women in the EU". The paper contains a lot of false information, in particular describing political events that did not happen and presenting data that is not supported by any reliable source. The Ordo Iuris Institute would like to present a number of general remarks on the ground of abortion law and protecting of life on Polish and international law level and emphasize the most controversial parts of the paper:

1. First of all, the paper includes wordage which has never been accepted by the international community. The term „sexual and reproductive health and rights” (SRHR) does not appear in any binding treaty. In recent years, numerous states have consequently raised objections towards this term, while it continues to exist without a clear definition. It can be observed that „sexual and reproductive health and rights”, in unauthorized manner, introduce demands including i.a. common acceptance for prenatal murders, vulgar sexual education, or promotion of the „gender” theory. The term’s usage in non-binding final documents of conferences in Cairo (1994), Beijing (1995), and Sustainable Development Goals (2015) does not include any reference to the separate category of „sexual rights”. There is also no binding international legal act which would in any way refer not only to „sexual and reproductive rights” but even to sexual and reproductive health and rights.
2. On page 8, the authors state that "access to abortion is central to human rights", whereas the final document of the International Conference on Population and Development, held in Cairo in 1994 (ICPD), clearly states that abortion may not be promoted as a method of family planning and that states should take actions to limit the number of abortions (point 8.25 ICPD PoA). Furthermore, the concept of “the right to abortion” does not exist in the international law and many states have repeatedly expressed their objection towards attempts to create such law. It should be remembered that abortion violates fundamental human rights, especially the right to life¹ and the right to be free from tortures and inhuman treatment². Abortion is also one of the most cruel forms of discrimination due to sex, color of skin, disability, or merely the fact of “being unwanted”. At the level of Member State legislation, Poland does not recognize

¹ See: Universal Declaration of Human Rights (art. 3), Convention for the Protection of Human Rights and Fundamental Freedoms (art. 2), International Convention of Civil and Political Rights (art. 6).

² See: Convention for the Protection of Human Rights and Fundamental Freedoms (art. 3), International Convention of Civil and Political Rights (art. 7).

the concept of a “right to abortion”³. It is worth noting that recently, several dozen countries (including some belonging to the EU) have directly opposed attempts to perceive abortion as a human right by signing the Geneva Consensus Declaration⁴.

3. It should be recalled and strongly emphasized that **legal regulations concerning the matters related to killing an unborn child fall within the sole competence and discretion of the Member States of the EU**. This has been confirmed by the European Commission on numerous occasions⁵. The content of this in-depth analysis, where fully legal and constitutional regulations are defined as “one of the most restrictive abortion regimes in the EU”, seems to be an attempt to put pressure on the Member States and their sovereign prerogatives to change their national legislation in order to satisfy foreign regimes, which is unacceptable.
4. It is completely inappropriate to describe the judgment of the Polish Constitutional Tribunal (of October 22nd, 2020), which ruled that eugenic abortion is unacceptable under the current constitutional provisions, as “negative steps” (page 8). This is an unprecedented attempt to completely and unlawfully undermine the Polish Constitution and Polish sovereignty. The judgment of the Polish Constitutional Tribunal was issued strictly on the basis of the provisions of the Polish Constitution, which explicitly state that:
 - “The Republic of Poland shall ensure the legal protection of the life of every human being” (Art. 38);
 - “The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities” (Art. 30);
 - “Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights” (Art. 31 Sec. 3).
5. Over the years, many civic initiatives were submitted to the Polish Parliament to provide statutory legal protection for unborn children. These initiatives were unsuccessful. This year, in accordance with the procedure provided for in the Constitution, at the request of a group of deputies, the Constitutional Tribunal examined whether the provisions allowing for eugenic

³ See: W. Borysiak, Glosa do wyroku Sądu Najwyższego z dnia 13 października 2005 roku, IV CK 161/05, „Państwo i Prawo” 7 (2006), p. 118. Also: M. Chajda, Nasciturus i jego ochrona..., p. 61.

⁴ See: <https://www.hhs.gov/sites/default/files/geneva-consensus-declaration-english.pdf> (access: 04.12.2020).

⁵ More: [Joint answer given by Mr Andriukaitis on behalf of the Commission, Written questions :E-006285/14 , E-007476/14](#), 28 November 2014, https://www.europarl.europa.eu/doceo/document/E-8-2014-006285-ASW_EN.html (access: 16.03.2020).

abortion, which were in force at the time, are consistent with the Constitution. The Tribunal issued a judgment on the basis of the current provisions of the Constitution and ruled that the lives of terminally ill children, as well as those with incurable diseases, are fully protected under the law. The authors of the paper in question – contrary to the facts – describe this event as a "citizens' initiative launched by a Catholic group", which, *nota bene*, gives the impression that the denomination of citizens has an impact on the effectiveness of using the democratic tools available to all. Considering the above, this analysis cannot be perceived as a source of reliable information for the members of the European Parliament, as it completely misrepresents the situation in Poland.

6. It should be emphasized once again that the judgment of the Constitutional Tribunal is fully compliant with the Polish Constitution and international law. Both protect human lives from the moment of conception (see Art. 6 and the Preamble of the Convention on the Rights of the Child) and prohibit discrimination on the basis of disability.
7. The provisions of the Polish Constitution are also in full compliance with applicable international law (including the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and the Charter of Fundamental Rights), which indicate that the right to life of every human being should be protected. The Convention on the Rights of the Child in the preamble also directly refers to the prenatal period.
8. For these reasons, the creation of any form of pressure by the EU institutions on the Member States with regard to the protection of life and abortion should be considered as unauthorized. It is inconsistent with the EU Treaties, secondary law stemming therefrom, and the indicated provisions of international law. The in-depth analysis paper should therefore be corrected immediately.