



COMMENTARY TO THE RESOLUTION OF THE EUROPEAN PARLIAMENT

**FROM NOVEMBER 26TH, 2020 ON THE DE FACTO BAN
ON THE RIGHT TO ABORTION IN POLAND (2020/2876(RSP))**

ANNA KUBACKA

WARSAW 2021



Contents

I. Introduction	3
II. Main conclusions:	4
III. Commentary to the resolution	6
1. Concept of sexual and reproductive rights (SRHR)	6
2. Powers and tasks of the Constitutional Tribunal	7
3. Human rights and the doctrine of double effect.	8
3.1. Abortion vs. human rights.	8
3.2. Threat to the mother's life and health.	10
4. Conscience clause in Poland.	11
5. LGBT issues	13
5.1. 'Rights of LGBTI+ persons'	13
5.2. 'LGBT-free zones'	13
5.3. Local Government Charter of the Rights of the Family.	14
6. Abortion crime in Poland.	15
7. Ruling of the Constitutional Tribunal of October 22nd, 2020	17
7.1. Ruling K 1/20.	17
7.2. Current ruling practice.	18
7.3. The character of rulings of the Constitutional Tribunal	20
8. Aggressiveness of demonstrations after the ruling of the Constitutional Tribunal	21
9. Ordo Iuris Institute for Legal Culture	23
10. Demands of the "Women's Strike", the scale of their actual support, and the presidential bill	24
10.1. Scale of support for the "Women's Strike".	24
10.2. The presidential bill for a new "eugenic premise"	25
11. The situation around the Constitutional Tribunal.	26
12. Sex education in Poland	27
13. Poland vs. the Istanbul Convention.	28
13.1. Controversies around the Istanbul Convention	28
13.2. An ideology-free alternative for the Istanbul Convention	29
13.3. EU ratification of the Istanbul Convention	29
IV. Summary	31

I. Introduction

On November 26th, 2020, the European Parliament adopted the Resolution on the de facto ban on the right to abortion in Poland (2020/2876(RSP))¹. The draft resolution was proposed by a group of euro-deputies², and its rapporteur was Robert Biedroń, a Polish MEP.

The text of the adopted resolution poses serious objections with regard to EU's authority in regulating the law protecting life in a member state. In addition, numerous ideological references and opinions show a complete lack of comprehending both the political and legal climate in Poland.

The failure to understand the last two issues – i.e., political and legal – may be partly justified towards MEPs not connected directly with Poland. However, such MEPs as Robert Biedroń, Sylwia Spurek, Elżbieta Łukacijewska, Andrzej Halicki, and Marek Belka³, who supported the resolution both in the voting and in their personal speeches, should be aware of the deep differences between reality and the presented image of Poland in the resolution.

1 See text adopted: *European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland (2020/2876(RSP))*, https://www.europarl.europa.eu/doceo/document/TA-9-2020-0336_PL.html (access: 04.12.2020).

2 Sirpa Pietikäinen, Andrzej Halicki, Elżbieta Katarzyna Łukacijewska (on behalf of the PPE Group); Robert Biedroń, Helène Fritzon, Maria Noichl, Evelyn Regner, Lina Gálvez Muñoz, Pina Picierno, Vilija Blinkevičiūtė, Predrag Fred Matić, Maria-Manuel Leitão-Marques, Vera Tax, Monika Beňová (on behalf of the S&D Group); Samira Rafaela, Karen Melchior, Chrysoula Zacharopoulou, María Soraya Rodríguez Ramos, Hilde Vautmans, Abir Al-Sahlani, Sylvie Brunet, Radka Maxová, Susana Solís Pérez, Irène Tolleret (on behalf of the Renew Group); Sylwia Spurek, Terry Reintke, Alice Kuhnke, Saskia Bricmont, Kira Marie Peter-Hansen, Monika Vana, Gwendoline Delbos-Corfield, Ernest Urtasun (on behalf of the Verts/ALE Group); Malin Björk, Eugenia Rodríguez Palop (on behalf of the GUE/NGL Group).

3 Those MEPs spoke during the debate preceding the adoption of the resolution and opted for the adoption of its content. See debate 'The Right to Abortion in Poland', 25.11.2020, Brussels: https://www.europarl.europa.eu/doceo/document/CRE-9-2020-11-25-ITM-012_PL.html (access: 04.12.2020).

II. Main conclusions:

- The European Union does not have the authority to interfere in the health policy or family law of member states.
- The term 'sexual and reproductive rights' [SRHR] is a term that is not supported by the official language of international law. In spite of numerous attempts to introduce it to documents of binding or strategic importance, it has consistently been rejected by the international community because of its ideological nature and lack of definition.
- The term 'right to abortion' does not exist in international or Polish law. Various states frequently objected towards attempts to create such legal concepts. Abortion violates fundamental human rights, including particularly the right to life and the right to freedom from tortures and inhuman treatment, and is one of the cruellest forms of discrimination.
- The right to have conscientious objections is an integral and essential part of the freedom of conscience that is guaranteed both in the Polish Constitution and in international agreements. Questioning the right to conscientious objection is an unacceptable attack on the fundamental human right to act according to one's own conscience.
- In the doctrine of international law, no group of 'rights of LGBTI+ persons' exists. Persons identifying with the LGBT ideology have the same rights as all citizens in Poland. Alleged "LGBT-free zones" have never been established in Poland, and the Local Government Charter of the Rights of the Family adopted by some local government units is mainly a sign of support of the rights of parents set forth in the Polish Constitution (e.g., the right to raise children according to one's view) that is not discriminatory in any way.
- Research shows that Poles perform, in the worst (highest) scenario, around 14,500 illegal abortions per year. This figure correlates with data made available by organisations that specialise in "helping" to perform illegal abortions (the product of data on abortions and the number of organisations), at the same time highly differing from the caricatured number of 200,000 illegal abortions stated in the resolution of the EP.
- According to numerous polls, support for abortion in Poland is decreasing, and there are increasingly more persons supporting the protection of life. In a poll conducted in 2017,

as many as 71.6% of respondents gave a positive answer to the question “Do you support the full protection of human life from the moment of conception?”, with 40.7% choosing the answer “definitely yes”. The support for Women’s Strike alone cannot be identified with support for access to abortion.

- The ruling of the Constitutional Tribunal of October 22nd , 2020, file ref. K 1/20, restores the rule of law in Poland by removing the unconstitutional provision which validity violated not only the principle of protection of life expressed in the Constitution, but also human rights and international agreements that Poland is bound by. The decision is final and there is no measure that would call it into question. The request for non-publication of the ruling is an attack on the independence of the judiciary.
- The ruling K 1/20 maintains the other two abortion premises in force (the protection of the mother’s life and health and a criminal offence).
- The ruling K 1/20 is a logical and consistent continuation of the current ruling practice that has been pursued for over 20 years, which consists of: the judgment of the Constitutional Tribunal of May 28th, 1997 (K 26/96), the ruling of the Constitutional Tribunal of January 7th, 2004 (K 14/03) and the decision of the Constitutional Tribunal of September 30th, 2008 (K 44/07).
- The Constitutional Tribunal rules on the basis of the Constitution, and its rulings result from an in-depth substantive analysis of the applicable constitutional provisions. In this connection and in consideration of the principle of a democratic state ruled by law, there is no possibility for the issuing of decisions to be preceded by a ‘true democratic debate’, as demanded in the resolution.
- In view of the false statements violating personal rights of the Ordo Iuris Institute, the foundation is announcing the legal steps leading to the revocation of EP resolution of November 26th, 2020 by CJEU. Through the adoption of this resolution, the EP exceeded its powers, producing legal consequences towards the Institute.
- For many years, in contrast to a large number of Western and Scandinavian states, Poland has implemented an effective model of sex education, which is reflected by such rates as the number of sex offences (in 2017, the rate per 100,000 inhabitants was approximately 8 in Poland, 42 in Germany, 83 in Denmark and 189 in Sweden).
- The need for protection against violence is a problem too serious to be used for imposing radical ideology upon society. Therefore, Poland announced that it would start working on a new document as an alternative towards the Istanbul Convention that would propose effective anti-violence solutions in a non-ideological and research-based manner.
- The resolution adopted by the European Parliament on November 26th, 2020 is an example of an attempt to enforce social and legal changes based on ideological assumptions that contradict not only Polish tradition and culture, but also applicable national and international law.

III. Commentary to the resolution

1. Concept of sexual and reproductive rights (SRHR)

C. whereas the right to equal treatment and non-discrimination is a fundamental right enshrined in the Treaties and the Charter, and must be fully respected; **whereas, according to the Charter, the ECHR and the case law of the ECtHR, women's sexual and reproductive rights (SRHR) are related to multiple human rights, such as the right to life, freedom from inhuman or degrading treatment, the right to access healthcare, the right to privacy, information and education and the prohibition of discrimination;** whereas these human rights are also reflected in the Polish Constitution;

The concept of 'sexual and reproductive rights' appears for the first time in letter C of the referenced resolution. However, the use of this term gives rise to doubts both from the perspective of international and EU law.

Firstly, the term 'sexual and reproductive rights' does not function in the official language of international law. In spite of numerous attempts to introduce it in documents of binding or strategic importance, it has always been met with opposition from the international community. This results from the fact that this term is used in practice in attempts to establish or to promote, e.g., common acceptance for prenatal murders, permissive sex education, or gender ideology.

As a result of international arrangements, which were also recently confirmed during the adoption of Sustainable Development Goals, terms used in documents being the subject of consent of all states are 'reproductive rights' and 'reproductive health' ('reproductive health and rights') and 'sexual and reproductive health' within the meaning set forth in the provisions of the Report of the UN International Conference on Population and Development in Cairo in 1994⁴. It is worth noting that the aforementioned Report contains a provision according to which abortion should not be promoted as a family planning method under any circumstances and states are obliged

4 Report of the UN International Conference on Population and Development in Cairo in 1994, pp. 186-205.

to counteract against it, and where abortion is not against the law, such abortion should be safe⁵. The Report clearly states that abortion cannot be interpreted as one of human rights, and governments of states, international institutions and non-governmental organisations should aim at the minimisation of the number of abortions.⁶ Many states participating in the Conference adopted conference documents with reservations, rejecting 'reproductive health' and other similar terms. At the same time, the concept of 'sexual rights' was entirely rejected because of its ideological nature.

It must be stressed that this term does not appear in the Charter of Fundamental Rights or in the European Convention on Human Rights. It can be found in the case law of the European Court of Human Rights, however, it must be noted that the ECHR does not have law-making power, relies only on currently applicable laws, and is known for its ideologically biased judgments. The use of the phrase 'sexual and reproductive rights' by the ECHR in its judgments or by other EU bodies in their documents (e.g., EU4Health program) should be treated, in the broadest extent, as the use of a slogan having no binding definition.

Secondly, it must be stressed that the European Union does not have the authority to interfere in the health policy of the Member States. According to Articles 6 and 168 of the Treaty on the Functioning of the European Union⁷, issues of sexual and reproductive health fall within the scope of the health policy of states towards which the EU has only supporting powers and cannot aim at the harmonisation of this law in Member States. It is questionable whether the EU is even competent to speak or express opinions on these matters.

2. Powers and tasks of the Constitutional Tribunal

E. whereas the **Constitutional Tribunal was established as one of the central elements to ensure the checks and balances of constitutional democracy and the rule of law in Poland;**

According to Article 188 of the Constitution of the Republic of Poland⁸, the Constitutional Tribunal (hereinafter "the CT") shall adjudicate regarding the conformity of statutes and international agreements to the Constitution, the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute, the conformity of legal provisions issued by central state organs to the Constitution, ratified international agreements and statutes, the conformity to the Constitution of the purposes or activities of political parties, complaints

5 Ibidem, Point 8.25: 'in no case should abortion be promoted as a method of family planning. All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family-planning services. Prevention of unwanted pregnancies must always be given the highest priority and every attempt should be made to eliminate the need for abortion.'

6 Ibidem, Point 7.24: 'Governments should take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning, and in all cases provide for the humane treatment and counselling of women who have had recourse to abortion.'

7 Treaty on the Functioning of the European Union (OJ C 202, 7 June 2016, p. 47), hereinafter: TFEU.

8 The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483; of 2001, No. 28, item 319; of 2006, No. 200, item 1471; of 2009, No. 114, item 946), further as: the Constitution of the RP.

concerning constitutional infringements, as specified in Article 79, para. 1. The Tribunal settles also competence disputes between central constitutional state authorities (Article 189 of the Constitution). At the same time, Article 1 of the Act of November 30th, 2016 on the Organisation and Method of Proceedings before the Constitutional Tribunal⁹ specifies that the CT is 'a judicial authority established for the purpose of exercising the powers set forth in the Constitution and legal acts'. None of these legal acts indicates that the Tribunal has been established 'as one of the main mechanisms for the control and balance of constitutional democracy and the rule of law in Poland' (cf. letter E of the resolution). It must be stressed that, even on the grounds of the previous Act on the Constitutional Tribunal, the CT is 'a judicial authority established to examine the conformity of normative acts and international agreements with the Constitution and the performance of other tasks specified in the Constitution'¹⁰.

Obviously, the powers granted to the Tribunal by the Constitution result, to a certain extent, in upholding the rule of law – the Tribunal performs this task by adjudicating on the conformity of various legal acts with the contents of the applicable Constitutional provisions being a benchmark for what is legal and what is not. The control of democratic mechanisms could be present in the power to examine electoral protests, to ascertain the validity of elections to the Sejm and Senate of the Republic of Poland, the election of the President of the Republic of Poland, the validity of the nationwide referendum, the constitutional referendum, as well as to examine electoral protests submitted to the European Parliament. The point is that these powers have never laid with the Constitutional Tribunal – they are a prerogative of the Supreme Court¹¹. Making false suggestions in the resolution about the abstract upholding of democracy as the alleged aim of establishing the Constitutional Tribunal seems to be aimed only at the reinforcement of false accusations stated in further points of the resolution.

3. Human rights and the doctrine of double effect

3.1. Abortion vs. human rights

1. Strongly condemns the Constitutional Tribunal's ruling and the setback to women's SRHR in Poland; affirms that the ruling puts women's health and lives at risk; recalls that it has strongly criticised any legislative proposals or restrictions that aim to further prohibit and limit access to safe and legal abortion in Poland, which come close to banning access to abortion care in Poland, as most legal abortions are performed on the grounds of a severe and irreversible foetal defect or an incurable illness that threatens the foetus's life; recalls that **universal access to healthcare and SRHR are fundamental human rights**;

⁹ Act of 30 November 2016 on the Organisation and Method of Proceedings before the Constitutional Tribunal (i.e., Journal of Laws of 2019, item 2393).

¹⁰ Article 1 of the Constitutional Tribunal Act of 1 August 1997 (Journal of Laws of 1997, No. 102, item 643 – the act has become invalid).

¹¹ Article 1 of the Supreme Court Act of 8 December 2017 (i.e., Journal of Laws of 2019, item 825; of 2020, item 190).

6. Strongly urges the Polish Parliament and authorities to refrain from any further attempts to restrict SRHR, as such measures are contrary to the principle of non-retrogression under international human rights law; strongly affirms that the denial of SRHR is a form of gender-based violence; calls on the Polish authorities to take measures to fully implement the judgments handed down by the ECtHR in cases against Poland, which has ruled that restrictive abortion laws violate the human rights of women; stresses that **unhindered and timely access to reproductive health services and respect for women's reproductive autonomy and decision-making is critical to protecting women's human rights and gender equality;**

The concept of 'the right to abortion' does not exist in international law, and various states have often expressed their opposition towards attempts to create such legal concepts. It must be kept in mind that abortion violates fundamental human rights, in particular the right to life¹² and the freedom from tortures and inhuman treatment¹³. Abortion is also one of the cruellest forms of discrimination based on sex, colour, disability or simply the fact of 'being unwanted' and stands in contradiction to the rule of protection against discrimination guaranteed by international law¹⁴.

On the level of national legislation, the concept of 'the right to abortion' does not function in Polish law, either¹⁵.

It is worth noticing that several states (including some states belonging to the EU) directly opposed attempts to perceive abortion as a human right by signing the Geneva Declaration¹⁶. The statement made in the resolution about abortion as a human right creates the impression that states whose legal order protects life break international law. The authors of the document must be reminded of the fact that regulations concerning both abortion and legal protection of an unborn child's life fall within the exclusive competence of member states of the EU. Any attempt to exert any kind of influence on the wording of these regulations, let alone an attempt to question them, is unacceptable. The European Commission frequently confirmed that ruling on that subject is the exclusive and sovereign decision of all member states of the EU¹⁷.

12 The right to life is guaranteed, among others, in the Universal Declaration of Human Rights (Article 3), the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 2), the International Covenant on Civil and Political Rights (Article 6), the Convention on the Rights of the Child (Article 6 and Preamble, which refers straightforwardly to conceived life).

13 The right to freedom from torture and inhuman treatment is guaranteed, among others, in the Universal Declaration of Human Rights (Article 5), the European Convention on Human Rights (Article 3) and the International Covenant on Civil and Political Rights (Article 7).

14 Cf. the Convention on the Rights of Persons with Disabilities adopted by the United Nations General Assembly in 2006. The European Union is a party to this convention, and Poland ratified the convention in 2012. The convention contains, e.g., the ban on the discrimination of disabled persons, the guarantee of freedom from tortures or cruel, inhuman or degrading treatment or punishment and the ban on submission to medical or scientific experiments without free consent.

15 Cf. W. Borysiak, *Glosa do wyroku Sądu Najwyższego z dnia 13 października 2005 roku, IV CK 161/05* [Commentary to the sentence of the Supreme Court of 13 October 2005, IV CK 161/05], "Państwo i Prawo" 7 (2006), p. 118. See also: M. Chajda, *Nasciturus i jego ochrona...* [Nasciturus and its protection...], p. 61.

16 See: Geneva Consensus Declaration On Promoting Women's Health and Strengthening the Family, <https://www.hhs.gov/sites/default/files/geneva-consensus-declaration-english.pdf> (access: 04.12.2020).

17 See: 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).

3.2. Threat to the mother's life and health

F. whereas the Committee on the Elimination of all Forms of Discrimination against Women and the UN Committee on the Rights of Persons with Disabilities issued a joint statement in August 2018 emphasising that **access to safe and legal abortion, as well as to related services and information, is an essential aspect of women's reproductive health, and urging countries to put an end to restrictions on the SRHR of women and girls, as this threatens their health and lives; whereas access to abortion constitutes a human right**, while the delaying and denying thereof constitute forms of gender-based violence and may amount to torture and/or cruel, inhuman and degrading treatment; whereas SRHR are targets under UN SDG 3, and whereas gender-based violence and harmful practices are targets under SDG 5;

Serious doubts are also raised by the statement contained in letter F of the resolution - that the restriction of access to abortion poses a threat to the life and health of women. Until now, Polish legal regulations have permitted abortion if the mother's life and health are threatened¹⁸. This means that, in the case of a threat to her life or health, the mother has the right to decide on what will be rescued: her legally protected goods (life and health) or the child's good (life). It is worth noting that the premise of allowing the killing of an unborn child because of a threat to the mother's health is controversial due to a collision of two unequal, legally protected goods: life (of the child) and health (of the mother). In its ruling of September 30th, 2008 (file ref. K 44/07), the Constitutional Tribunal stressed that 'it would be definitely unacceptable, in a democratic state of law implementing the rules of social justice and protecting the life and inalienable dignity of the human being, to restrict the legal protection of human life for the purpose of protecting goods situated on a lower level in the constitutional hierarchy, e.g., property and other material rights, public morality, environment protection or even the **health** (boldface by the author) of other people'¹⁹. Incidentally, it is worth emphasising that this decision was issued when Professor Andrzej Rzepliński, more recently known for his political bias in expressing legal opinions, was the chairman of the Constitutional Tribunal.

In the case of a threat to the mother's life, there is a collision of two equal legally protected goods: the mother's life and the child's life. Then it is up to the mother whether the legal protection of one of these lives is annulled. The case of the mother undertaking a therapy that may or even certainly will result in the death of an unborn child is a classic example of an operation of the doctrine of double effect. According to this principle, an action that has positive (intentional) and negative (unintentional) results may be morally acceptable, for example, if there are no other ways of achieving a good result (in this case, saving the mother's life)²⁰. This concept also serves

18 Article 4a par. 1 pt 1 of the Act on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion of 7 January 1993 (Journal of Laws of 1993, No. 17, item 78; of 1995, No. 66, item 334; of 1996, No. 139, item 646; of 1997, No. 141, item 943, No. 157, item 1040; of 1999, No. 5, item 32; of 2001, No. 154, item 1792), further as: AFP.

19 Ruling of the Constitutional Tribunal of 30 September 2008, file ref. K 44/07.

20 For more about the doctrine of double effect, see: T. Biesaga, *Elementy etyki lekarskiej [Elements of Medical Ethics]*, Kraków, 2006; K. Szewczyk, *Bioetyka, t. 1: Medycyna na granicach życia, [Bioethics, Vol. 1: Medicine on the Borders of Life]*, Warszawa, 2009.

as a basis for Polish law, which allows for the annulment of the protection of one of them in the case of a collision of two equal goods. Therefore, the premise which allows rescuing the mother's life at the expense of the conceived child's life is certainly not and cannot be considered to contradict the law protecting life from the moment of conception, even if all currently known premises directly allowing for the termination of pregnancy disappear from the Polish legal order. This is also confirmed by the referenced judgement of the Constitutional Tribunal with file ref. K 44/07²¹.

4. Conscience clause in Poland

I. whereas there are many differences in access to abortion across the Member States; whereas Poland has one of the lowest scores in the European Union in the 2020 European Contraception Atlas, having one of the most restrictive policies regarding access to contraceptive supplies, family planning, counselling and the provision of online information; whereas Poland is one of the few countries that requires a prescription for **emergency contraception, which is often denied by doctors on the grounds of personal beliefs;**

The right to conscientious objection is an integral and essential part of the freedom of conscience that is guaranteed both in the Polish Constitution and in international agreements, particularly the International Pact of Civil and Political Rights (Article 18) and the Convention on the Protection of Human Rights and Fundamental Freedoms (Article 9). Even the fact of negation of this law by the European Union (e.g., in letter I and point 10 of the resolution) is blameworthy and inconsistent with the referenced acts of international law. Thus, it is particularly true that a legal obligation of representatives of medical professions to act contrary to their conscience formulated in letter J of the resolution remains in complete contradiction to this law.

J. whereas since the Constitutional Tribunal ruling of 2015 regarding the Act of 5 December 1996 on doctors' and dentists' professions, neither healthcare practitioners nor healthcare facilities **are legally obliged to provide names of alternative facilities or practitioners if they deny a patient sexual and reproductive health services due to personal beliefs;** whereas the final version of the Act as amended in July 2020 did not include the referral obligation, as was initially proposed; whereas such an omission shows complete disregard for the recommendation of the Committee of Ministers of the Council of Europe as regards the execution of the ECtHR judgments against Poland in the field of SRHR;

21 For a broad coverage of the premise of life and health, see: J. Haberko, *Cywilnoprawna ochrona dziecka poczętego a stosowanie procedur medycznych* [Civil Law Protection of the Conceived Child vs. the Use of Medical Procedures], Warszawa 2010, p. 362 et seq.

In the ruling of October 7th, 2015 quoted in the resolution, the Polish Constitutional Tribunal pointed out that in a democratic state of law 'the freedom of conscience does not mean only the right to represent a specific world-view, but primarily the right to act according to one's own conscience, to freedom from compulsion to act contrary to one's own conscience'²². This last element is protected by the conscience clause, which upholds 'not only the freedom of conscience, but also the dignity of the human person, which is an inborn and inalienable right'²³. Consequently, the freedom of conscience must 'manifest itself also in the possibility of refusal to perform an obligation imposed according to the law, with reference to scientific, religious or moral beliefs'²⁴. The right to conscience objection concerns not only the refusal to act directly, but also to perform such actions as: assisting, help, informing, preparing, accepting and intermediating (e.g., in the abortion of a child or the issue of a prescription for medications with a potential "morning-after" effect that the EP defines as 'contraceptives' in the resolution)²⁵. 'The constitutional guarantee of the freedom of conscience protects the individual not only from the compulsion of making a direct attempt on the protected good, but also from such procedures which are inconsistent with individual conscience such that they indirectly lead to an ethically unacceptable result, particularly due to the compulsion of co-operation in the attainment of an ethically contemptible result'²⁶.

In the judgment from 2015, the Constitutional Tribunal stated that legal norm ordering a doctor claiming the right to conscientious objection to suggest real possibilities of 'obtaining this statement from another doctor or in a medicinal enterprise' is unconstitutional. Moreover, the Tribunal found the prohibition to refer to conscientious objection in 'other urgent cases' to be inconsistent with Article 53 par. 1 of the Constitution ('The right of conscience and religion is ensured to everyone').

In light of the above, the legal solutions that are currently in force in Poland accurately implement the freedom of conscience guaranteed by the Constitution of the Republic of Poland and binding international agreements. Questioning the right to conscientious objection is an unacceptable attack on the fundamental human right to act according to his/her own conscience.

22 Ruling of the Constitutional Tribunal of 7 October 2015, K 12/14; similarly in earlier rulings: the judgment of the Constitutional Tribunal of 15 January 1991, U 8/90, and the decision of the Constitutional Tribunal of 7 October 1992, U 1/92.

23 Op. cit., K 12/14, point III.4.4.1.

24 Ibidem.

25 O. Nawrot stresses that 'the narrow interpretation of the freedom of conscience and the conscience clause that serves its external attainment contradicts the axiology of human rights and the democratic rule of law and even with the very essence of the democratic society and the rule of law' (O. Nawrot, *Głosa do wyroku Trybunału Konstytucyjnego z dnia 7 października 2015 r. (sygn. akt K 12/14)*, [Commentary to the ruling of the Constitutional Tribunal of 7 October 2015 (file ref. K 12/14)], "Przegląd Sejmowy" 2016, vol. 4, p. 141).

26 Op. cit., K 12/14, point III.6.2.1.

5. LGBT issues

5.1. 'Rights of LGBTI+ persons'

M. whereas access to gynaecological care in Poland is highly restricted and in some regions almost impossible, resulting in a high number of unwanted pregnancies, poor reproductive health, a high prevalence of cervical cancer and insufficient access to contraception; **whereas access to sexual and reproductive healthcare and the rights of LGBTI+ people are highly restricted**; whereas trans and non-binary people requiring gynaecological care face discrimination in medical settings and are often denied access to care;

In the doctrine of international law, contrary to statements included in letter M, **no group of 'rights of LGBTI+ persons' exists**. There is no catalogue of rights based on a different version of the above abbreviation (LGBT, LGBTQ, LGBTQI, etc.). Some countries provide specific rights to persons in relationships other than marriage of a woman and a man, with legal privileges reserved for marriages, but there are no grounds for treating them as fundamental human rights. Imposing the compulsion of acceptance of a largely undefined catalogue of 'rights of LGBTI persons' upon other states is not permitted, either.

5.2. 'LGBT-free zones'

N. whereas since the beginning of 2019, over **80 regions, counties or municipalities in Poland have passed anti-LGBTI+ resolutions declaring themselves free from so-called 'LGBT ideology', or have adopted all or part of the 'Regional Charters of Family Rights', discriminating in particular against single parents and LGBTI+ parents and people**, and de facto limiting the freedom of movement of these EU citizens;

Contrary to a somewhat popular belief, it must be stressed that no local government unit in Poland has declared itself as a 'LGBT-free zone'. Furthermore, the fact that this topic has been the subject of multiple accusations against Poland before the European Parliament is particularly absurd. Some Polish communes, counties and provinces implemented legally non-binding positions 'on objection against attempts to introduce «LGBT» ideology to local self-government communities and the promotion of this ideology in public life'. On that occasion, local councillors asserted very firmly that these documents concern not persons with homosexual tendencies, but the LGBT political movement. It was the organisations comprising this movement, not individual persons or communities created by them, that were specified as LGBT "ideology" or "sub-culture" in resolutions. The term "LGBT-free zone" does not appear in any position of local governments, either. Resolutions of local government units 'against LGBT ideology' are consistent with Polish law. By the decision

of September 30th, 2019, the Provincial Administrative Court in Kielce²⁷ rejected the complaint of a lawyer from Poznań directed against the position adopted by councillors of the Świętokrzyskie Province. The conformity of resolutions with the Polish legal order was also the subject of a separate analysis by the Ordo Iuris Institute²⁸.

Documents expressing objection to LGBT ideology are a decisive response to the “LGBT+ declaration” published on February 18th, 2019 by the Mayor of Warsaw, Rafał Trzaskowski, and inspired by the most radical organisations of the LGBT movement. Importantly, this declaration was negatively assessed by the city’s Equal Treatment Committee on February 25th, 2019, because it introduces privileges for certain social groups instead of equal treatment: ‘the situation in which one of the minority groups is protected more strongly than others raises the question as to the actual equal treatment and non-discrimination of inhabitants of [Warsaw] by the local authorities. [...] **Instead of protecting and guaranteeing equal treatment, this document effectively divides persons experiencing discrimination into the more and less protected groups.** It introduces the gradation of the sense of harm and injustice, depending on the premise that causes discrimination. Thus, it actually introduces discrimination.’

5.3. Local Government Charter of the Rights of the Family

In letter N of the resolution, euro-deputies expressed a critical opinion on the adoption of the Local Government Charter of the Rights of the Family (further as: LGCRF) by some local government entities in Poland, regarding it as an act that allegedly discriminates persons identifying as LGBT. In fact, however, the adoption of the LGCRF is aimed at reinforcing the family as a fundamental social community and guaranteeing its protection against the influence of ideologies negating its autonomy and identity. The Card serves primarily as a sign of support for parents’ rights set forth in the Constitution of the Republic of Poland (e.g., the right to raise children according to their own views) and a declaration of the will to pursue pro-family policy in the local government unit concerned, e.g., by creating family-friendly legislation. It is also fully consistent with binding international law. Family is defined as a fundamental unit of society formed by a woman and a man on the basis of a voluntary relationship in the Universal Declaration of Human Rights (Article 16) and the International Pact of Civil and Political Rights (Article 23). The natural and fundamental character of the family is also indicated by the International Pact of Economic, Social and Cultural Rights (Article 10), constitutions and legal systems of a large number of countries in the world²⁹.

27 Decision of the Provincial Administrative Court in Kielce of 30 September 2019 (file ref. II SA/Ke 650/19).

28 R. Dorosiński, N. Bernaciak, *Uwagi do przyjmowanych przez organy władzy publicznej deklaracji „przeciwko ideologii LGBT” oraz zapowiedzi ich zaskarżenia przez Rzecznika Praw Obywatelskich* [Comments to public declarations “against LGBT ideology” adopted by public authorities and announcements of the challenge of such declarations by the Ombudsman], <https://ordoiuris.pl/rodzina-i-malzenstwo/uwagi-do-przyjmowanych-przez-organy-wladzy-publicznej-deklaracji-przeciw> (access: 28.11.2019).

29 An example of the calculation, along with reference to the content of relevant provisions, can be found, e.g., here: <http://worldfamilydeclaration.org/WFD#fn1>, access: 19 May 2020.

6. Abortion crime in Poland

O. whereas it is estimated that up to **200,000 women terminate pregnancies each year in Poland and are forced to undergo clandestine abortions**, relying mostly on medical abortion pills without the necessary professional medical supervision and advice; whereas up to 30,000 women are estimated to be forced to travel abroad each year from Poland to receive the healthcare that they need and seek an abortion; whereas access to such measures is linked to payment for services, meaning that they are not equally accessible to all women, especially socio-economically disadvantaged women and migrant women in irregular situations; whereas this means that safe abortion is only accessible to a limited group of women in Poland;

2. Notes that **restricting or banning the right to abortion by no means eliminates abortion, but merely pushes it underground**, leading to an increase in unlawful, unsafe, clandestine and life-threatening abortions; insists that the performance of an abortion should not be included in the criminal code, as this has a chilling effect on doctors who refrain from providing SRHR services out of fear of criminal sanctions;

11. Is deeply concerned that **thousands of women** have to travel to access a health service as essential as abortion; emphasises that cross-border abortion services are not a viable option for the most vulnerable and marginalised people; is disturbed by the fact that travelling abroad puts women's health and well-being at risk as they are often alone; stresses the importance of post-abortion care, especially for women who experience complications from an incomplete or unsafe abortion;

The estimated number of 200,000 illegal abortions performed by Poles every year, referenced in letter O of the resolution, is not confirmed by any reliable source. Research and data that can be estimated on the basis of available sources show completely different figures. In 2015, 199 preparatory proceedings regarding the performance of an abortion in violation of the provisions of the act with the woman's consent were instigated. However, measurable and reliable information can be found in the research of the National Health Fund from 1997, when the amendment of the Act on Family Planning³⁰ allowing for abortion "on demand" was valid for almost one year. 3,047 abortions were registered at that time, with 2,524 of them carried out because of 'severe living conditions and the difficult personal situation of a pregnant woman'. The topic of abortion as a crime, commonly called the 'abortion underground', has a strong impact on social moods, and pro-abortion circles often use it to create a favourable social attitude towards the legalisation

³⁰ The Act of 30th August 1996 entered into force on 4th January 1997 and became invalid on 23rd December 1997 on the day of publication of the ruling of the Constitutional Tribunal ascertaining its inconsistency with the Constitution of the RP.

of abortion and often exaggerate the estimated outcome of research data. Even organisations which openly declare that the axis of their activity is to help in making illegal abortion more accessible reference much lower figures than those suggested in the resolution. The Abortion Without Borders organisation states that 5,237 persons reported to it during the year, 265 of which were interested in performing an abortion abroad³¹. Even in consideration of the fact that there are at least a few more organisations with a similar business profile, the total number of women who reported to them will still be disproportionately smaller than the abstract number suggested by the EP.

According to estimates, Poles perform 7,000–14,000 illegal abortions every year. These figures come from indicators elaborated by sociologists and demographers, which show the ratio of the number of legal abortions to the number of illegal terminations of pregnancy in conditions of the full legality of the abortion. Such indicators were stated, e.g., by Professor Janina Józwiak, Ph.D., and Jan Paradysz, Ph.D., who estimated this ratio between 1:2.2 and 1:4.7 in the paper 'The demographic dimension of abortion. Demographic Studies of the Polish Academy of Sciences'. On the other hand, Marek Okólski, Ph.D., said that this ratio amounts to approx. 1:3³². Even assuming the highest of the presented indicators, we receive an estimated number of 14,321 illegal abortions per year.

These estimates are, in a way, confirmed by a survey conducted by the Public Opinion Research Centre (further as: CBOS) in 2013. In the report 'Abortion experiences of Polish women', an attempt was made to estimate the number of adult Polish women who have terminated a pregnancy at least once in their life. According to results, not fewer than every fourth and not more than every third adult Pole has performed an abortion. However, it is worth noting that the share of women terminating a pregnancy is higher in older age groups. Women below 35, i.e., those who reached the age of reproduction shortly before the introduction of the act ensuring a broader protection of the life of a conceived child, declared having performed an abortion almost three times more rarely than women who are at least 35. This phenomenon seems to be correlated with the introduction of the act providing a broader protection of human life. Polls carried out by CBOS in 1997 and 2016 show that support for the possibility of performing an abortion because of social conditions ("abortion on demand") dropped from 71.4% to 12.5%. According to the CBOS data for 2016, a vast majority of Poles believe that abortion should not be permitted in cases when the woman is in a poor financial situation or a difficult personal situation (respectively, 81% and 80%).

31 *Wiemy ile Polek chciało w tym roku usunąć ciążę [We know how many Polish women wanted an abortion this year]*, <https://www.ofeminin.pl/swiat-kobiet/prawa-kobiet/ile-aborcji-w-polsce-przeprowadza-sie-rocznie-ile-to-kosztuje-aborcja/wbw1jle> (access: 21.12.2020).

32 M. Okólski, *Zapobieganie i przerywanie ciąży w Polsce [The prevention and termination of pregnancy in Poland]*, "Studia Demograficzne PAN", no. 2 (76) 1984; K. Meissner, *Częstość poronień [The frequency of miscarriages]*, *Słowo Powszechne*, XVI (1991), 85-86; 12-13-14 IV; J. Józwiak, J. Paradysz, *Demograficzny wymiar aborcji [The demographic dimension of abortion]*, "Studia Demograficzne PAN", no. 1 (111) 1993, p. 37.

7. Ruling of the Constitutional Tribunal of October 22nd, 2020

7.1. Ruling K 1/20

P. whereas, in response to the motion of 119 Members of the Polish Parliament with the support of the so-called 'pro-life' movements, on 22 October 2020 the Polish Constitutional Tribunal ruled unconstitutional the provision of the 1993 Act on Family Planning, Protection of the Human Foetus and Conditions for Termination of Pregnancy that allows for abortion in cases where a prenatal test or other medical considerations indicate a high probability of a severe and irreversible foetal defect or an incurable illness that threatens the foetus's life;

R. whereas the ruling will become applicable upon its publication, which pursuant to Polish law is mandatory, and once published will result in an almost complete ban on the right to abortion in Poland, criminalising abortion and leading to the expansion of clandestine, unsafe abortion and abortion tourism, which is only accessible to some, thus undermining women's health and rights and putting their lives at risk; whereas despite the ruling not having been published, many pregnant women who have been informed that there is a high probability of the foetus having a severe and irreversible abnormality or an incurable disease have had their access to legal abortion restricted;

Under the ruling from October 22nd, 2020 issued in the case K 1/20, the Constitutional Tribunal adjudicated that Article 4a par. 1 pt 2 of AFP is inconsistent with Article 38 (the right to life) in conjunction with Article 30 (the principle of inherent dignity) in conjunction with Article 31 par. 3 (restrictions of constitutional freedoms and rights must not violate the essence of these freedoms and law) of the Constitution of the RP. The provision which was considered unconstitutional concerned the admissibility of the abortion of a child in situations when prenatal tests or other medical considerations suggest a high likelihood of a severe and irreversible disability or an incurable illness endangering the child's life. According to the law, this judgment will come into force and become generally valid as of the day of its publication in the Journal of Laws. This means that abortion for eugenic reasons will be prohibited in Poland, which effectively puts an end to the long-lasting practice of discrimination due to poor health. According to Article 190 par. 1 of the Constitution of the Republic of Poland, this ruling is final. There is no procedure under Polish law that could question this ruling, which helps to fulfil the guarantee of legal certainty, one of the most fundamental principles of law. In light of the above, we should be seriously concerned about the demand of the European Parliament to refrain from publishing the ruling (cf. letter Z of the resolution) and the announcement of the EP's attempt to question it (cf. point 15 of the resolution), which constitutes a direct attack on the independence of the judiciary in Poland.

S. whereas **the ruling is a new attack on the rule of law and fundamental rights and an additional attempt to limit SRHR in Poland**, among the many made in recent years; whereas these attempts were initially halted in 2016, 2018 and 2020 as a result of mass opposition from Polish citizens, as expressed in the 'Black Friday' marches, which were strongly supported by Members of the European Parliament from different political groups;

In view of the allegations contained in letter S of the resolution, it is necessary to indicate that the judgment of the Constitutional Tribunal is not an attack on the rule of law; on the contrary, by annulling the unconstitutional provision of the AFP that infringes the right to life (protected both by national and international law), it restores the state of respect for and compliance with the law set forth in the Constitution. The allegation that this judgment constitutes an attack on human rights is not justified. As has already been broadly shown in point 3 of this commentary, the concept of 'the right to abortion' does not exist in international law, let alone the Polish legal order. Both in Poland and on the international level, protection applies to the right to life, which is commonly regarded as the highest-ranked good in the hierarchy of goods covered by law and, therefore, cannot be annulled in favour of the protection of another, lower good (cf. ruling of 30th September 2008 with file ref. K 44/07 quoted in point 3 of the commentary). In addition, a broad scope of legal protection covers such human rights as the freedom from tortures and inhuman treatment and the principle of fight against the discrimination of disabled persons (see point 3 of this commentary). It must be further stressed that the concept of 'sexual and reproductive health and rights' does not have a legal definition and is not a part of any international agreement binding Poland, which has been broadly covered in point 1.

7.2. Current ruling practice

5. Notes that the unjustified excess of restrictions on access to abortion resulting from the aforementioned ruling of the Constitutional Tribunal fails to protect the inherent and inalienable dignity of women, as it breaches the Charter, the ECHR, the case law of the ECtHR, numerous international conventions to which Poland is a signatory, as well as the Constitution of the Republic of Poland;

It must be emphasised that the ruling in question is a logical and consistent continuation of the current judicial practice of the Constitutional Tribunal, which had expressed its stance on the protection of life and its scope stipulated in the Polish Constitution on many occasions since 1997 (i.e., the year in which the currently applicable Constitution entered into force). In the context of allegations being made about the political character of the ruling of October 22nd, 2020, it is significant to note that the bench of the Constitutional Tribunal was composed of a very pluralised body of judges. Nevertheless, this has not affected the uniformity of the ruling on the admissibility of abortion.

In the justification of the ruling of May 28th, 1997 (file ref. K 26/96), the Constitutional Tribunal extracted the concept of constitutional protection of human life from the principle of a democratic

state of law, stating, e.g., that ‘the value of human life, as a constitutionally protected legal good, including life developing in the prenatal phase, cannot be differentiated. There are no criteria which would be sufficiently precise or justified to allow us to make such a differentiation depending on the developmental phase of human life. Thus, human life becomes a constitutionally protected good from the beginning of its existence. This refers to the prenatal phase as well³³. In the same judgment, the Tribunal also indicated that: ‘the constitutional protection of this phase of human life is ... confirmed by the Convention on the Rights of the Child ratified by the Republic of Poland on September 30th, 1991, the preamble to which declares in the tenth paragraph, referring to the Declaration of Rights of the Child, that every child, due to its physical and mental immaturity, requires special care and custody, with particular regard to adequate legal protection, both before and after birth. The inclusion of this rule in the preamble to the Convention must lead to the conclusion that guarantees contained in the Convention refer also to the prenatal phase of human life.’ The adjudicating bench in this matter was presided over by Professor Andrzej Zoll.

In the justification of the ruling of January 7th, 2004 (file ref. K 14/03), the adjudicating bench presided over by Professor Marek Safjan stated that “a specific consequence of Article 30 is Article 38 of the Constitution, according to which the Republic of Poland provides the legal protection of life to each human being”. It is an article of special importance and, as such, has specific consequences for the positive legislator. “The doctrine emphasises that what is unquestionable, refers to life protection interpreted as the protection of the biological existence of the human being. Apart from that, we deal here with the primary legislation towards the state, which means that the state cannot grant such a right to a human being – it can only emphasise its existence and significance by establishing the special protection of this right”³⁴. In the further part of the judgment, a rule of interpretation has been formulated, according to which “all possible doubts concerning the protection of human life should be considered in favour of this protection (*in dubio pro vita humana*)”. Looking at the formulation of this rule, we notice not only its moral foundation, but also – to an even stronger extent – its protective mechanism. Resolving doubts in favour of protecting life helps to avoid irreversible consequences of that stem from the refusal to protect the life of a conceived child. This ruling also indicates the inseparable bond between the defence of human dignity and the defence of human life: “we cannot speak of the protection of human dignity if no sufficient grounds for the protection of life have been created”. The judge-rapporteur in this case was Professor Marian Zdyb, who was decorated in 2010 with the Officer’s Cross of the Order of Polonia Restituta, one of the highest orders awarded by the Polish state, by former President Bronisław Komorowski, e.g., ‘for his outstanding contribution to the development of the constitutional ruling practice’.

In the ruling of September 30th, 2008 (file ref. K 44/07), the Tribunal, chaired by Professor Andrzej Rzepliński, ruled that, “[in] a democratic state of law, which is axiologically based on the inviolable and inalienable dignity of every human being, it is not permissible for public administration bodies to be equipped with the right to decide on the deliberate death of innocent persons for the protection of the common good, state security or even the life of other persons. This obviously violates

33 Judgment of the Constitutional Tribunal of 28 May 1997, file ref. K 26/96.

34 Ruling of the Constitutional Tribunal of 7 January 2004, file ref. K 14/03.

the principle of absolute protection of human dignity, leading to a discrepancy between Article 122a of the Aviation Law and Article 30 of the Constitution.” The judgment also states that „human life is a value of the highest rank in our civilisation and legal culture. The value of human life as a legal good is not subject to differentiation on the grounds of the Constitution. The Polish and foreign constitutional ruling practice emphasises the importance of law for the legal protection of life as a fundamental individual right, as a pre-requisite for the possession and implementation of all other rights and freedoms and then confirms the protection of human life from its beginning derived from the rule of a democratic state of law in the ruling K 26/96, quoting: ‘If the contents of the rule of law are a set of basic directives derived from the essence of democratically established law and guaranteeing its minimum justice, the first such of directives must be respect for values in the state of law without which all legal personality, i.e., of human life from the beginning of its existence, is excluded’.

In view of the above, it must be stated that the ruling in the case K 1/20 is a continuation of the firm ruling practice of the Constitutional Tribunal that was established over a 20 year period.

7.3. The character of rulings of the Constitutional Tribunal

T. whereas the ruling took place at a time when, owing to the second wave of the COVID-19 pandemic, public-health-based restrictions were in place in all EU Member States, including Poland, severely impeding **any proper democratic debate and due process, which is crucial when it comes to fundamental rights issues;**

Letter T of the resolution expresses an opinion that a ‘real democratic debate’ should be held in Poland before the issuing of the Constitutional Tribunal ruling in the matter of eugenic abortion. In view of the fact that the Constitutional Tribunal adjudicates on the basis of the Constitution, and its judgments are not private opinions of judges issued on the basis of their world-view or religious views, but the result of an in-depth substantive analysis of applicable constitutional provisions, the demand expressed in the aforementioned letter of the resolution can be interpreted only as a testimony to the misconduct, ignorance or incomprehension of the foundations of functioning of judicial power in Poland.

With regard to the above consideration, it is worth noting that the **European Parliament in the resolution adopted in 2016** ‘in the matter of the situation in Poland’ **stated** in point 5 that ‘... the **Polish Constitution and European and international norms and standards require that judgments of the Constitutional Tribunal be complied with**’³⁵. The last amendment to the Polish Constitution took place in 2009, which means that the EP, when calling for its compliance in 2016, referred to the exact same legal act (in the same wording) that is being criticised today after the issue of the judgment confirming that it protects life irrespective of health.

35 European Parliament resolution of 13 April 2016 on the situation in Poland (2015/3031(RSP)), text adopted: https://www.europarl.europa.eu/doceo/document/TA-8-2016-0123_PL.html?redirect (access: 06.12.2020).

8. Aggressiveness of demonstrations after the ruling of the Constitutional Tribunal

U. whereas despite the sanitary restrictions and risks, unprecedented protests have taken place across Poland, and around the world; whereas thousands of demonstrators continue to protest against serious restrictions that undermine their fundamental SRHR; whereas the riot police and the military gendarmerie were deployed to control the protests and law enforcement officials have used excessive force and physical violence **against peaceful protesters**, including Members of the Polish Parliament and Polish Members of the European Parliament; whereas these actions are contrary to the Polish Government's obligations under international human rights law, including the Charter, which guarantees the right to peaceful assembly, and guidelines from the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, which state that as a general rule, the military should not be used to police assemblies;

13. Strongly condemns the excessive and disproportionate use of force and violence against protesters, including activists and women's rights organisations, by law enforcement authorities and non-state actors such as far-right nationalistic groups; calls on the Polish authorities to ensure that those who attack protesters are held accountable;

It is also necessary to deny the EP's conviction of the peaceful nature of demonstrations (cf. letter U of the resolution) that took place in Poland in October and November of 2020. In reality, there was a series of devastations of public property on an unprecedented scale, the profanation of sacred buildings, and physical attacks on offices of church hierarchs and politicians, including arson attempts³⁶. Irrespective of the motivations of persons who committed these acts, they can only be characterised as aggressive and dangerous. All of these actions undoubtedly constitute a violation of the law, including Article 195 § 1 of the Criminal Code, which states that, "Whoever maliciously disturbs the public performance of a religious act of a church or any other religious organisation with a settled legal position, may be subject to a fine, the restriction of freedom, or up to 2 years of imprisonment"³⁷.

Among buildings attacked by participants in demonstrations, there were, e.g., Branicki Palace in Białystok³⁸, the Piarists' Secondary School in Kraków³⁹, the monument to the 15th Regiment

36 *Przebite opony, próba podpalenia i wulgarne napisy. Atak na działacza PiS [Punctured tyres, attempted arson and vulgar inscriptions. An attack on a PiS activist]*, <https://www.polskieradio24.pl/5/1222/Artykul/2533732,Przebite-opony-proba-podpalenia-i-wulgarne-napisy-Atak-na-dzialacza-PiS> (access: 07.12.2020).

37 Article 195 § 1 of the Criminal Code Act of 6 June 1997 (i.e., Journal of Laws of 2020, item 1444, 1517).

38 *Proaborcyjni wandale zniszczyli mur Pałacu Branickich? [Pro-abortion vandals destroyed the wall of Branicki Palace?]*, <https://podlaskie24.pl/artykul/wydarzenia/67621/> (access: 07.12.2020).

39 *Popisane mury i chodniki [Walls and pavements daubed with inscriptions]*, <https://krakow.wyborcza.pl/krakow/7,44425,26438230,popisane-mury-i-chodniki.html> (access: 07.12.2020).

of Poznań Uhlans in Poznań⁴⁰, a mural commemorating General Rozwadowski in Szczecin⁴¹, and the monument to the Home Army and the Polish Underground State in Warsaw⁴². The protesting persons also directed their aggression against churches. The marchers disturbed Holy Masses, devastated façades, walls, and other architectural elements belonging to the parish by attacking, e.g., the Church of the Divine Providence in Warsaw, the Church of the Holy Family in Gdynia, the Church of St. Mary Magdalene in Wawrzyszew, the Church of St. James in Warsaw⁴³, the Church of St. Nicholas in Hrubieszów⁴⁴, the Church of St. Jan Kanty in Kraków⁴⁵, the Church of St. Otto in Słupsk⁴⁶, and many others. The Holy Mass was disturbed, e.g., by a Member of the Parliament, Joanna Scheuring-Wielgus, who decided to demonstrate her support for abortion during a Holy Mass celebrated in the Church of St. James in Toruń⁴⁷. It must be stressed that the Women's Strike encouraged documenting all activities similar to those described above and showing them off on social media. The organisers of protests themselves published images presenting, e.g., a burning church on their social media⁴⁸.

In view of the events described above, it cannot be surprising that Poles – not only Catholics, but primarily those who adhere to traditional values – decided to take up self-defence activities in response to physical attacks directed against churches, not only in order to express their protest against these attacks, but also to prevent harm and destruction.

40 W Poznaniu zdewastowano pomnik 15. Pułku Ułanów Poznańskich [The monument of the 15th Regiment of Poznań Uhlans devastated in Poznań] <https://www.portalsamorzadowy.pl/polityka-i-spoleczenstwo/w-poznaniu-zdewastowano-pomnik-15-pulku-ulanow-poznanskich,224708.html> (access: 07.12.2020).

41 Zniszczono mural generała Rozwadowskiego w Szczecinie [General Rozwadowski's mural destroyed in Szczecin], <https://szczecin.naszemiasto.pl/zniszczono-mural-generala-rozwadowskiego-w-szczecinie/ar/c1-7969213> (access: 07.12.2020).

42 Strajk kobiet. Kolejny dzień protestów. Pomnik Armii Krajowej zdewastowany [Women's Strike. Another day of protests. The monument of the Home Army is devastated], <https://wiadomosci.wp.pl/strajk-kobiet-kolejny-dzien-protestow-monumentalny-pomnik-z-napisami-6569578929572640a> (access: 07.12.2020).

43 Posłanka Lewicy zakłóciła Mszę Świętą [Left-Wing MP disturbs Holy Mass], <https://www.stefczyk.info/2020/10/25/poslanka-lewicy-zaklocila-msze-swiate/> (access: 07.12.2020).

44 Pastoral announcements of 1st November 2020: <http://www.hrubieszow.parafla.info.pl/?p=main&what=57> (access: 07.12.2020).

45 Dewastacje świątyń, zakłócenia nabożeństw i próby linczowania duchownych po wyroku TK [Devastations of temples, disturbances of church services and attempts to lynch priests after the decision of the Constitutional Tribunal], <https://www.zachod.pl/232625/dewastacje-swiatyn-zaklocenia-nabozenstw-i-proby-linczowania-duchownych-po-wyroku-tk/> (access: 07.12.2020).

46 Atak na siostry Klaryski w Słupsku. Zniszczono zabytkowy witraż w kościele p.w. św. Ottona [Poor Clare Nuns attacked in Słupsk. The historic stained-glass window in the Church of St. Otto is destroyed], <https://gp24.pl/atak-na-siostry-klaryski-w-slupsku-zniszczono-zabytkowy-witraz-w-kościele-pw-swotona-zdjecia/ar/c1-15144760> (access: 07.12.2020).

47 J. Scheuring-Wielgus, Twitter: 'Today we have left #SłowoNaNiedzielę in St. James's Church in Toruń ...': https://twitter.com/JoankaSW/status/1320319700866355200?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1320319700866355200%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.stefczyk.info%2F2020%2F10%2F25%2Fposlanka-lewicy-zaklocila-msze-swiatea%2F (access: 07.12.2020).

48 Nawołują do podpalania kościołów? Posłanka PO: To nie żadna przemoc [They provoke setting fire on churches? PO's MP: It's not violence at all], <https://www.tvp.info/51143795/strajk-kobiet-i-grafiki-plonacych-koosciolow-czy-dochodzi-do-lamania-prawa> (access: 07.12.2020).

9. Ordo Iuris Institute for Legal Culture

W. whereas on 28 October 2020, Deputy Prime Minister Jarosław Kaczyński encouraged people to defend traditional Polish values and protect churches 'at all costs', which led to acts of aggression against protesters by nationalistic hooligans; whereas **cultural and religious values in Poland** are thus being abused as reasons to impede the full realisation of women's rights, equality for women and their right to make decisions about their own bodies; whereas **a fundamentalist organisation, Ordo Iuris, which is closely linked to the ruling coalition, has been a driving force behind campaigns aiming to undermine human rights and gender equality in Poland, including attempts to ban abortion, calls for Poland's withdrawal from the Istanbul Convention and calls for the creation of 'LGBTI-free zones'**;

In view of the allegations and false statements contained in letter W of the EP resolution with regard to the Ordo Iuris Institute, it must be stressed that the subject-matter of the Foundation's statutory activity for the Ordo Iuris Foundation for Legal Culture is activity for the affirmation of human dignity, which was constitutionally attested as a supra-positive source of inherent, inalienable, and inviolable freedoms and human rights (Article 30 of the Constitution of the Republic of Poland). In its activities, the Institute observes and upholds all rights and freedoms guaranteed by the Basic Law, including the right to life.

The notion that a European entity active in the field of human rights, fulfilling its statutory goals, and acting according to the law undermines human rights is a violation of its good name and reputation and, therefore, a violation of personal rights. Similarly, the false statement about the support for 'the creation of LGBTI-free zones' by the Ordo Iuris Institute is a lie that infringes personal rights and the reputation of the Institute.

As indicated in point 5 of this commentary, "zones" of this kind have never been created in Poland, and the attribution of its alleged creation to an entity that defends human dignity and stands up for human rights is a direct attack on the reputation of this entity.

The right of each citizen to a legal path is an element of the rule of law. According to Article 263 of TFUE, the Court of Justice of the European Union (further as: CJEU) reviews the legality of "acts of the European Parliament ... intended to produce legal effects vis-à-vis third parties" and "Any natural or legal person may ... institute proceedings against an act addressed to that person or which is of direct and individual concern to them". By formulating utterly false allegations that infringe personal rights of the Ordo Iuris Institute, the European Parliament committed a tort resulting in claims on the part of the Foundation, i.e., legal effects mentioned in Article 263 of TFEU. Furthermore, pursuant to Article 264 of TFEU, "If the action is well founded, the Court of Justice of the European Union shall declare the act concerned to be void". This means that it is possible for the Ordo Iuris Institute to use this procedure for the ascertainment of the invalidity of the resolution in question and its removal from legal trade. It is worth noting that the elimination of the resolution will result in its removal from all EU mass media and will constitute an irrefutable proof that the EU exceeded its powers granted to it under treaties.

10. Demands of the “Women’s Strike”, the scale of their actual support, and the presidential bill

X. whereas according to recent polls, the **majority of people in Poland support the right to access to abortion on request up to the 12th week**; whereas the demonstrators are also asking for the resignation of the government, owing to its repeated attacks on the rule of law; whereas the protests have mostly been organised and coordinated by women-led organisations, activists and civil society organisations, with the support of the Polish political opposition; whereas **the Polish President’s proposal for abortion legislation following the protests is unsatisfactory**;

12. Expresses its support and solidarity for thousands of Polish citizens, in particular for Polish women and LGBTI+ persons, who, despite the sanitary risks, took to the streets to protest against grave restrictions on their fundamental freedoms and rights; **notes that the protesters’ demands include not only the annulment of the Constitutional Tribunal’s ruling, but also the denouncement of the so-called ‘abortion compromise’, the liberalisation of the right to abortion law and respect for bodily autonomy**; recalls that freedom of assembly and freedom of association define the European Union, even during a pandemic;

10.1. Scale of support for the “Women’s Strike”

According to the poll conducted by IBRIS upon the request of the Ordo Iuris Institute in February 2019⁴⁹, in response to the question: “Do you support the full protection of human life from the moment of its conception?”, as many as 60.4% of all respondents declared their support, and a large minority of respondents (29.4%) were against this view. Moreover, the invariably biggest share of persons wanting the introduction of full legal protection of life from the moment of conception is among the youngest age group (18–29 years) and exceeds 70% every year. In the 2019 poll, this result was equally high, and support for pro-life demands reached 75.2%. Similar results confirming these trends were achieved in surveys conducted by other agencies, including CBOS and IPSOS, between 2016–2018. According to surveys conducted by IPSOS⁵⁰ from May 2016 till February 2017, the level of support for protection of life did not decrease and remained high. In 2017, over 60% of respondents supported the full protection of life (as compared to 59% in 2016). Among women, the level of support for the full protection of life in the prenatal period was 63.3% (as compared to 61% in 2016). In another poll conducted by CBOS⁵¹ from March 30th till April 6th, 2017, **71.6% respondents gave an affirmative answer to the question “Do you support the full protection of human life from the moment of its conception?”, and 40.7% chose the answer ‘definitely yes’.**

49 The IBRIS poll for the Ordo Iuris Institute for Legal Culture conducted on 7th–8th February 2019. The survey was carried out using the standardised computer-assisted telephone interviewing (CATI) method on a sample of 1,100 persons.

50 Porównawcza prezentacja badań opinii publicznej zrealizowanych przez IPSOS na zlecenie Instytutu Ordo Iuris w maju 2016 r. i w lutym 2017 r. [A comparative presentation of public opinion polls carried out by IPSOS upon the order of the Ordo Iuris Institute in May 2016 and in February 2017], <https://ordoiuris.pl/ochrona-zycia/czy-strajk-feministek-jest-protestem-kobiet> (access: 06.12.2020).

51 Prezentacja badań CBOS na zlecenie Instytutu Ordo Iuris [Presentation of CBOS surveys ordered by the Ordo Iuris Institute], <https://ordoiuris.pl/ochrona-zycia/kolejny-sondaz-potwierdza-zdecydowana-wiekszosc-polakow-za-pelna-ochrona-zycia> (access: 06.12.2020).

As we can see, the Poles' support for the protection of life has been visible for years and still grows. The results of the surveys are in full contradiction to the statement made in the resolution that "the majority of people in Poland support the right of access to abortion up to the 12th week of pregnancy without limitation" (see letter X of the resolution). It is quite the opposite – most people in Poland opt for the full protection of life from the moment of conception.

In connection with the above, it is justified to say that the scale of protests and the number of protesters who appeared on the streets of Polish cities after the adoption of the judgment of the Constitutional Tribunal of October 22nd, 2020 is not tantamount to support for the radical demands of the "Women's Strike". As rightly indicated in letter X of the resolution in question, Poles demonstrated their dissatisfaction during the October and November protests not only because of the contents of the CT judgment, but as a result of numerous decisions and events that have taken place over the last few months in connection with the legal, social, and economic restrictions caused by the COVID-19 pandemic.

10.2. The presidential bill for a new "eugenic premise"

In the EP's views, "the draft law on abortion ... submitted by the Polish president is unsatisfactory" (cf. letter X of the resolution). It must be stressed again that the EU has no powers in the scope of regulating the legal standards concerning the protection of life in a member state. All the more, considering the implemented mechanisms protection as ineffective is out of the question. Referring to the bill of President Andrzej Duda⁵², it is necessary to indicate in the first place that, because of the admission of eugenic abortion, it is inconsistent with the judgment of the Constitutional Tribunal file ref. K 1/20 that was adopted on October 22nd, 2020 and, therefore, inconsistent with the Polish Constitution. The lack of publication of the ruling, although resulting in the postponement of its effective date, does not deprive this ruling of its final and unquestionable effect, as specified in Article 190 par. 1 of the Polish Constitution. Moreover, the bill contains a legislative error: the use of mutually exclusive terms. In Article 1 par. 1 of the bill, we read that the abortion will be possible in the case of a 'high probability' of a fatal defect that would 'lead inevitably and directly' to the child's death. However, if there is no certainty with respect to the occurrence of the defect ('high probability'), then that certainty can never really occur until the child's inevitable death. Apart from that, the bill does not specify the time limit for the admissibility of termination of a pregnancy on the basis of a eugenic premise, which results in the affirmation of the current criterion, i.e., the child's ability to survive outside the mother's body on its own. In fact, this criterion would mean that late abortion could be performed even on the day of childbirth, due to the fact that a child burdened with a lethal defect cannot gain such an ability. Taking the above into account, we must agree with the opinion expressed in the resolution that the presidential bill is 'unsatisfactory'.

52 Prezydencki projekt ustawy o zmianie ustawy o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży [The presidential bill on the amendment of the Act on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion], <https://www.prezydent.pl/prawo/ustawy/zgloszone/art,37,prezydencki-projekt-zmiany-ustawy-o-planowaniu-rodziny.html> (access: 06.12.2020).

11. The situation around the Constitutional Tribunal

Z. whereas the aforementioned ruling was pronounced by **judges elected by and totally dependent on politicians from the PiS (Law and Justice)-led coalition**; whereas the **Marshal of the Polish Senate considered the ruling inexistent and called on the government not to publish it**, notably because **it violates Poland's human rights obligations** and is not in line with the previous legislation on the Polish Constitution, and because of the **unlawful appointments of three judges and the President of the Constitutional Tribunal**;

15. **Calls on the Commission to carry out a thorough assessment of the composition of the Constitutional Tribunal, the unlawfulness of which constitutes grounds for challenging its rulings** and thus its ability to uphold the Polish Constitution; underlines that the aforementioned ruling is yet another example of the political takeover of the judiciary and the systemic collapse of the rule of law in Poland;

22. **Calls on the Commission to confirm the application of Directive 2004/113/EC to SRHR goods and services and recognise that limits on and barriers to accessing SRHR goods and services constitute gender-based discrimination, as they disproportionately affect one gender (women) or vulnerable groups (e.g. trans and non-binary persons); condemns the Polish Government's abuse of the judiciary and its legislative powers to instrumentalise and politicise the lives and health of women and LGBTI+ persons**, leading to their discrimination in this regard;

With regard to letter Z of the resolution, neither the Speaker of the Polish Senate nor any other person or body are competent to recognise the Constitutional Tribunal ruling as invalid. According to Article 190 par. 1 of the Constitution of the Republic of Poland, this ruling is final. Moreover, as indicated in point 7 of this commentary, Polish law does not have any procedure that would allow to question the judgement, which helps to fulfil the guarantee of legal certainty. Also in the context of the alleged infringement of Poland's obligations regarding human rights that would result from the CT judgment of October 22nd, 2020, it must be stated again that the right to life is the highest good in the hierarchy of goods protected by law, and the 'right to abortion' has never been acknowledged as a human right (cf. point 1 and 3 of the commentary).

As indicated above, the Polish Constitution does not provide for the possibility of non-publication of a CT judgment, let alone the possibility of questioning it. Therefore, the EP's appeal concerning non-publication of the CT ruling and the announcement of the EP's attempt to question it constitute an attempt of interference with the independence of the judicial power in Poland. It is also worth noting that in Commission Recommendation (EU) 2017/146 of December 21st, 2016 regarding Poland, the Commission indicated as follows: **'Compliance with final judgments is an essential requirement inherent in the rule of law. The refusal to publish a binding and final judgment denies**

the latter's automatic legal and operational effect and breaches the principles of legality and separation of powers⁵³.

In addressing the allegations about the unlawful appointment of three judges and the president of the Constitutional Tribunal, it must be noticed that the CT rulings are passed by a majority of votes (Article 190 par. 5 of the Polish Constitution). The Tribunal consists of 15 judges (Article 194 of the Polish Constitution), and the matter of eugenic abortion was considered by the Tribunal in a full bench. This means that if the Tribunal had adjudicated without judges raising objections in connection with the procedure and circumstances of their appointment, and in consideration of the fact that two judges (Professor Leon Kieres and Piotr Pszczółkowski) submitted separate opinions, the judgment on eugenic abortion would have been adopted in an unchanged wording due to the fact that the majority of voices "for" the judgment would have been maintained.

12. Sex education in Poland

7. Emphasises the need to **provide comprehensive, evidence-based, non-discriminatory and age-appropriate sexuality education** and information to all, as a lack of information and education about sex and sexuality results in higher rates of unintended pregnancies;

Sex education has been taught as a separate subject in Polish schools for many years. It has the form of non-compulsory classes, but is accessible to any pupil whose parents will not submit a declaration of withdrawal from the child's participation in these classes. These lessons are held under the name 'Introduction to Life in the Family' (hereinafter "ILF") and implement Type A sex education. This means that the contents presented within the scope of ILF concern physiological aspects of human sexuality and are not less exhaustive than the contents included in other, frequently controversial sex education programs, e.g., in sex education standards of the World Health Organisation (hereinafter "the WHO"). Type A classes held in Poland are based on the presentation of the relational character of human sexuality and are aimed at raising children and adolescents in an environment of love and responsibility. On the other hand, Type C sex education programs proposed by WHO promote a different, extremely permissive vision of this sphere of human life.

According to the report prepared by experts from the Ordo Iuris Institute⁵⁴, Type C sex education is much less effective than Type A education that is currently in effect in Poland. Such assumptions of the sex education program as the prevention of pregnancies among teenagers, the limitation of the incidence of sexually transmitted diseases, delaying the age of sexual

⁵³ Commission Recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Recommendation (EU) 2016/1374, Sec. 3 par. 18: <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:32017H0146&from=EN> (access: 10.12.2020).

⁵⁴ F. Furman, G. Szewczuk, *Konsekwencje edukacji seksualnej. Analiza skuteczności edukacji seksualnej w Europie Zachodniej i państwach skandynawskich [Consequences of Sex Education. An Analysis of Effectiveness of Sex Education in Western Europe and Scandinavian States]*, Warszawa 2020, https://ordoiuris.pl/sites/default/files/inline-files/Konsekwencje_edukacji_seksualnej.pdf (access: 07.12.2020).

initiation or reducing the number of sex offences are not fulfilled in countries that have adopted the Type 3 sex education model. According to the report⁵⁵, the average age of sexual initiation in Poland is almost two years higher than in Germany or Sweden. In 2014, the rate of new hepatitis C infections detected per 100,000 inhabitants amounted to 9.3 in Poland and to 18.5 in Sweden. With regard to sex offences, it must be indicated that the rate of sex offences, including rape, per 100,000 inhabitants in 2017 was approximately 8 in Poland, 42 in Germany, 83 in Denmark, and 189 in Sweden.

In consideration of the above, it must be stated that the demand included in point 7 of the resolution really calls for introduction in a large part of Western and Scandinavian states, and Poland can serve as a positive example of how Type A sex education brings positive consequences in the aforementioned areas.

13. Poland vs. the Istanbul Convention

8. Strongly condemns the recent decision by the Polish Minister of Justice **to officially start Poland's withdrawal from the Istanbul Convention, which would be a serious setback with regard to gender equality, women's rights and the fight against gender-based violence**; urges Polish authorities to ensure the effective and practical application of that Convention, including the provision of a sufficient number of quality shelters for women who are victims of violence and their children, taking into account the escalation of gender-based violence during the COVID-19 pandemic, as well as access to essential support and health services, including sexual and reproductive healthcare;

13.1. Controversies around the Istanbul Convention

The Council of Europe's Convention on preventing and combating violence against women and domestic violence (hereinafter "the Istanbul Convention") is based on controversial assumptions according to which violence against women is determined by the social structure and is a consequence of unequal relations of power between women and men that are dependent on the attribution of specific gender roles. It also undermines the existence of objective biological differences between women and men, regarding human sexuality as a social construct. For these reasons, among others, the Istanbul Convention is the subject of many controversies on the international arena, and many states explicitly objected to its ideological character. Until today, 13 states of the Council of Europe (Hungary, Armenia, Bulgaria, Czech Republic, Latvia, Liechtenstein, Lithuania, Moldova, Russia, Slovakia, Ukraine and Great Britain – altogether accounting for 43% of the CE's population) have not decided to adopt the Convention⁵⁶. Hungary

⁵⁵ Ibidem, p. 14 et seq.

⁵⁶ More about the Istanbul Convention, see: K. Pawłowska, T. Zych (ed.), *Dlaczego Polska powinna wypowiedzieć Konwencję stambulską?* [Why should Poland withdraw from the Istanbul Convention?], Warszawa 2020.

and Slovakia issued a declaration putting their governments under an obligation to withdraw from the ratification of the Convention due to its ideological vision of femininity and masculinity⁵⁷, and the Bulgarian Constitutional Tribunal ruled that the Istanbul Convention is inconsistent with the Bulgarian constitution and violates the principle of a democratic state of law⁵⁸.

Aside from the ideological assumptions of the Convention, it must be regarded primarily as an ineffective document to say the least. Rates of violence against women are the highest in states who have adopted philosophical foundations of the Istanbul Convention to the deepest extent in their policy (Denmark – 52%, Finland – 47%, Sweden – 46%); at the same time, this share is the lowest in Poland from among all EU countries (Poland – 19%)⁵⁹.

13.2. An ideology-free alternative for the Istanbul Convention

Undoubtedly, the need for protection against violence is a problem too serious to be used for imposing radical ideology upon society. Therefore, Poland announced that it would start working on a new document as an alternative that would propose effective anti-violence solutions in a non-ideological and research-based manner. One of the more significant projects is the Convention on Rights of the Family (CRF), which contains guarantees anchored in the effective system of human rights and constitutions of a majority of states of the world. The solutions contained in the Convention, including those concerning the fight against domestic violence, are based on scientific knowledge and the proper identification of the reasons for violence⁶⁰. In light of the above, it is surprising that the EP accuses Poland in point 8 of “regress ... in fighting against violence”, at the same time suggesting that the Istanbul Convention would be the only means of protection against violence, in spite of the fact that the draft Convention on Rights of the Family was presented, e.g., in the EP in Brussels.

13.3. EU ratification of the Istanbul Convention

24. Calls on the Council to urgently conclude the EU ratification of the Istanbul Convention; strongly condemns the attempts in some Member States to revoke measures already taken in implementing the Convention and in combating gender-based violence; calls on the Commission to submit a proposal to add gender-based violence to the list of EU crimes pursuant to Article 83 TFEU;

In point 24 of the resolution, the EP made an appeal ‘to urgently conclude the EU ratification of the Istanbul Convention’. With regard to the request for an opinion addressed to CJEU (Opinion

57 *Węgry: Parlament odrzucił w deklaracji politycznej konwencję stambulską* [Hungary: Parliament rejected the Istanbul Convention in its political declaration], <https://www.gazetaprawna.pl/wiadomosci/artykuly/1474532,wegry-parlament-odrzucl-w-deklaracji-politycznej-konwencji-stambulskiej.html> (access: 21.12.2020); *Brawo Słowacja! Parlament odrzucił genderową Konwencję Stambulską* [Well done Slovakia! Parliament rejected the gender-based Istanbul Convention], <https://www.pch24.pl/brawo-slowacja--parlament-odrzucl-genderowa-konwencje-stambulskiej.74222.i.html?nom=1> (access: 21.12.2020).

58 Ruling no. 13, Sofia, 27 July 2018, https://ordoiuris.pl/sites/default/files/inline-files/Wyrok_bulgarskiego_TK.pdf (access: 21.12.2020).

59 Fundamental Rights Agency, Violence against women: an EU-wide survey, Results at a glance, 2014, p. 18.

60 See: K. Pawłowska, T. Zych (ed.), *op.cit.*, pp. 125-132.

1/19) in which the EP asked whether the relevant legal basis for the conclusion of the Istanbul Convention by the EU is Article 82 par. 2 and Article 84 of TFEU, or Article 78 par. 2, Article 82 par. 2 and Article 83 par. 1 of TFEU, it must be indicated that the analysis of the aforementioned articles shows that none of the provisions contained in the EU's request for an opinion as a proposed basis for the conclusion of the Istanbul Convention by the EU is an adequate basis for such an action⁶¹. Irrespective of the above circumstances prejudging the impossibility of the EU's effective accession to the Istanbul Convention, the decision on such an accession would require the unanimity of the Council of the European Union in each case. **This means that the EU cannot accede to the Istanbul Convention without Poland's consent.**

⁶¹ Stanowisko Instytutu Ordo Iuris w sprawie wniosku o opinię przedstawionego przez PE w trybie art. 218 ust. 11 TFUE (Opinia 1/19) [Position of the Ordo Iuris Institute on the request for an opinion submitted by the European Parliament under Article 218(11) TFEU (Opinion 1/19)], <https://ordoiuris.pl/rodzina-i-malzenstwo/stanowisko-instytutu-ordo-iuris-w-sprawie-wniosku-o-opinie-przedstawionego> (access: 07.12.2020).

IV. Summary

Taking all of the above considerations into account, it must be stated that the resolution adopted by the European Parliament on 26th November 2020 is an example of an attempt to enforce social and legal changes based on ideological assumptions that contradict not only Polish tradition and culture, but also applicable national and international law. Moreover, the content of the resolution shows explicitly that it was prepared in a hasty and unreliable manner, which shows that the EU's action was not dictated by a specific sense of concern for Poland. Most importantly, however, because of the EU's lack of competence to interfere in the law protecting life in a member state, it goes extremely beyond the scope of powers granted to the EU by treaties. The resolution should meet with firm protest from Poland.

Ordo Iuris Institute for Legal Culture

Established to defend individuals and groups threatened with social marginalisation or ostracised due to their belief in natural social order and traditional values secured in the Constitution of the Republic of Poland. We act for the legal protection of the human being at every stage of life, the identity of marriage as a relationship between a woman and a man, family autonomy, religious freedom and the right to run business activity according to one's conscience.

Experts of the Ordo Iuris Centre for the Legislative Studies:

- Analyse and review bills;
- Put legal arguments across to Polish and EU politicians;
- Take part in the work of parliamentary committees;
- Present their opinion in courts (as the so-called amicus curiae);
- Monitor the activities of public administration.

Lawyers from the Ordo Iuris Litigation Centre:

- Act in defence of families verging on breakdown due to unjustified interference by the state;
- Speak for representatives of medical and other occupations experiencing difficulties in professional practice in accordance with their conscience;
- Act as spokespersons, in particular on behalf of defenders of life;
- Take part in proceedings in the Constitutional Tribunal for the sake of consistency of law and Polish constitutional order.

The Ordo Iuris Institute is a foundation and our involvement strongly depends on the funds that we receive for our statutory activities. We value independence, that is why we do not use any public funds or subsidies, whose acquisition could hinder us. We operate solely thanks to the generosity of our Donors, in particular those who support us on a regular monthly basis as the Circle of Friends (for more, go to www.przyjaciele.ordoiuris.pl).

TOGETHER WE CAN MAKE A REAL DIFFERENCE!

How can you donate?

By making a donation to our account number:

32 1160 2202 0000 0002 4778 1296

Fundacja Instytut na rzecz Kultury Prawnej Ordo Iuris

ul. Zielna 39, 00-108 Warszawa

Bank account number for donations in **USD: PL 92 1160 2202 0000 0002 5104 0774**

Bank account number for donations in **EUR: PL 86 1160 2202 0000 0002 5104 0591**

Bank Millennium S.A, BIC: **BIGBPLPW**

Please specify in the title of the bank transfer „Donation for the statutory activity of Ordo Iuris”

or via internet payment systems: Tpay and PayPal (for details, go to <http://en.ordoiuris.pl/support-us>)