



**Wielka Koalicja za Równością i Wyborem**  
ul. Nowolipie 13/15, 00-150 Warszawa  
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Warsaw, 19 October 2020

To: Ms Ursula von der Leyen, President of the European Commission,  
Copy to: Mr Didier Reynders, Commissioner for Justice,  
Ms Vera Jourova, Commissioner for Values and Transparency,  
Ms Helena Dalli, Commissioner for Equality,  
To: Mr Michael Clauss, Permanent Representative of the German Presidency,

**Subject: Decision of Constitutional Tribunal, marred with concerns about its independence and legitimacy, may lead to virtual ban to perform abortion in Poland**

Dear Presidents,

In collaboration with the international human rights organisations<sup>1</sup>, the Great Coalition for Equality and Choice<sup>2,3</sup> is writing to express our deep concerns and draw your attention to a worrying development in Poland, linked to breaches of independence of the judiciary and the protection of human rights. On 22 October, the Constitutional Tribunal will rule on constitutionality<sup>4</sup> of access to abortion care on the ground of “severe and irreversible foetal defect or incurable illness that threatens the foetus’ life”, as permitted under the current abortion law<sup>5</sup>. The removal of this provision would place women’s health and lives at risk and violate Poland’s international human rights obligations.

As rightly noted by the European Commission in its first Annual Report on the matter, “concerns over the independence and legitimacy of the Constitutional Tribunal, raised by the Commission under the Article 7(1) TEU procedure, have so

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<sup>1</sup> See letters of 15 October sent by CIVICUS, Human Rights Watch, IPPF EN.

<sup>2</sup> <https://www.wielkakoalicja.pl/>; <https://en.federa.org.pl/the-great-coalition-for-equality-and-choice/>

<sup>3</sup> Please see the statement of the Great Coalition for Equality and Choice calling the Polish politicians to withdraw the motion to examine the constitutionality of the provisions regulating the ground for abortion in question [https://www.wielkakoalicja.pl/wp-content/uploads/2020/10/WKRW\\_stanowisko\\_aborcja-w-TK.pdf](https://www.wielkakoalicja.pl/wp-content/uploads/2020/10/WKRW_stanowisko_aborcja-w-TK.pdf)

<sup>4</sup> Firstly, it will assess compliance of the relevant provisions with Art. 30 of the Constitution (right to dignity of a person); then with Art. 38 (protection of life), Art. 31§3 (grounds for limiting freedom), Art. 32 (prohibition of discrimination), Art. 2 (social justice) and Art. 42 (criminal liability); <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wokanda/art/11253-planowanie-rodziny-ochrona-plodu-ludzkiego-i-warunki-dopuszczalnosci-przerywania-ciazy>

<sup>5</sup> Act on Family Planning, the Protection of the Human Fetus, and the Conditions of Admissibility of Abortion of 1993 (1993 Family Planning Act), Article 4a § 1 pt. 2; <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Polish%20abortion%20act--English%20translation.pdf>



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far not been resolved”<sup>6</sup>. The Polish government’s reforms to the judiciary since 2015 have raised serious concerns regarding respect for the rule of law, and led the Commission to launch the procedure under Article 7(1) TEU in 2017, and several infringement procedures in the past years. The Venice Commission has noted that changes to procedures for judicial appointments and the operations of the Constitutional Tribunal have undermined its independence and rendered its work ineffective, including due to excessive executive and legislative control of the Tribunal’s operations<sup>7</sup>. The request to review the constitutionality of the 1993 Family Planning Act was submitted in December 2019 by conservative MPs including from the ruling PiS party. **Unresolved concerns over the independence and legitimacy of the Tribunal raise significant risks of politicization of human rights and any forthcoming decision on reproductive health and rights.**

It is apparent that breaches of the rule of law in Poland, materialised in the longstanding concerns regarding Poland’s Constitutional Tribunal, could lead to further violations of other Article 2 TEU values: human rights, human dignity, equality and non-discrimination. This latest development is a clear example of how all EU values are interdependent. We call upon you as EU leaders to stand for and defend all EU values. We urge you to address breaches of the rule of law in all EU Member States, to condemn violations of human rights including women’s human rights and access to sexual and reproductive rights everywhere in the EU, and to ensure that flawed courts cannot be used to undermine the respect for human rights and EU values. In your efforts to safeguard all EU values, we call on you to make use of, and continue to further strengthen, all the legal and political tools that are or could be at your disposal, including the new Rule of Law Cycle<sup>8</sup>, the recommendations under the Rule of Law Framework, the Article 7 proceedings and the conditionality of access to EU funds.

A decision to ban abortions in case of “severe and irreversible foetal defect or incurable illness that threatens the foetus’ life” would be a retrogressive measure. Poland already has one of the most restrictive abortion laws in the EU. Abortion is only permitted on limited grounds, including in cases of severe foetal defect. Over ninety percent of legal abortions performed in Poland are accessed on this ground<sup>9</sup>. Criminalizing abortion on this ground would virtually ban all legal access to abortion care in the country. **It would constitute an unprecedented threat to Polish women’s human rights including the rights to life, health, dignity, and**

<sup>6</sup> 2020 Rule of Law Report: [https://ec.europa.eu/info/sites/info/files/pl\\_rol\\_country\\_chapter.pdf](https://ec.europa.eu/info/sites/info/files/pl_rol_country_chapter.pdf)

<sup>7</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)026-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)026-e)

<sup>8</sup> The Rule of Law Mechanism should cover the full scope of Art 2 TEU values, as called for by many civil society organisations and the European Parliament:

[https://www.europarl.europa.eu/doceo/document/TA-9-2020-0251\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0251_EN.html)

<sup>9</sup> According to the most recent data in 2019 in Poland there were 1100 abortions performed, 1074 of which were carried out on the grounds of foetal impairment.



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**non-discrimination and may constitute cruel and inhumane treatment. In practice, women and adolescent girls may have their lives put at risk due to complications as a result of a lack of access to timely and safe abortion care, be forced to give birth against their will, including in cases of fatal or severe foetal impairment, or to undergo unsafe abortion procedures, especially those who cannot afford to travel abroad.** Poland would further breach numerous provisions of human rights treaties that it undertook to respect<sup>10</sup>.

This latest development takes place in a broader context of repeated attempts by the ruling party to roll back human rights, including reproductive rights, women's human rights and LGBTI rights. In July 2020, Poland announced its intention to withdraw from the Istanbul Convention<sup>11</sup>, and asked the Constitutional Tribunal to examine its constitutionality<sup>12</sup>. Poland also repeatedly infringed on LGBTI rights, which has been denounced by the European Commission<sup>13</sup> and led the Commission to withhold EU funds from certain Polish cities<sup>14</sup>.

**Considering these ongoing breaches of the rule of law and retrogressive initiatives, we call on EU institutions to respond urgently and strongly to such initiatives by Poland and any EU Member States, that would endanger the rights and lives of EU citizens and non-EU nationals living in the EU, and weaken the EU project as a whole.**

For information: Media

**Your sincerely**

**Aleksandra Magryta**

**Coordinator of the Great Coalition**

**for Equality and Choice**

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<sup>10</sup> Among many examples, Poland has already been condemned several times by the European Court of Human Rights regarding access to abortion for breaching the European Convention of Human Rights (Tysi c v. Poland; R.R. v Poland; P. and S. v Poland), judgements that are yet to be implemented for 13 years.

<sup>11</sup> Please see the EC President's Ursula von der Leyen reply to the letter sent by the Great Coalition for Equality and Choice informing about the situation relating to the Istanbul Convention <https://www.wielkakoalicja.pl/przewodniczaca-ke-krytykuje-polski-rzad/>

<sup>12</sup> <https://www.politico.eu/article/poland-court-violence-against-women-istanbul-convention>

<sup>13</sup> 2020 Rule of Law Report: [https://ec.europa.eu/info/sites/info/files/pl\\_rol\\_country\\_chapter.pdf](https://ec.europa.eu/info/sites/info/files/pl_rol_country_chapter.pdf), President von der Leyen State of the Union [Address](#).

<sup>14</sup> <https://www.euronews.com/2020/07/29/eu-funding-withheld-from-six-polish-towns-over-lgbtq-free-zones>



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**The letter has been signed by the following organizations and initiatives:**

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|----|---|----|--|
| 1  | ADDP l'Association Défense de la Démocratie en Pologne (Stowarzyszenie na rzecz obrony demokracji w Polsce) | 24 | Fundacja Edukacja - Równość - Aktywność - Dialog Era Dialogu |
| 2  | ASTRA Network   | 25 | Fundacja Feminoteka  |
| 3  | BABA Lubuskie Stowarzyszenie na Rzecz Kobiet  | 26 | Fundacja Głosuj na Kobię                                     |
| 4  | Berliński Kongres Kobiet  | 27 | Fundacja im. Izabeli Jarugi-Nowackiej                        |
| 5  | Black Brussels Balloons   | 28 | Fundacja im. Kazimierza Łyszczyńskiego                       |
| 6  | Czarny Protest Gliwice  | 29 | Fundacja Inicjatywa Kobiet Aktywnych                         |
| 7  | Democracy is OK (DOK)   | 30 | Fundacja Kobiety Zmieniają Świat                             |
| 8  | Demokratyczna Unia Kobiet   | 31 | Fundacja na Rzecz Równości i Emancypacji STER                |
| 9  | Dolnośląskie Forum Kobiet Stowarzyszeń i środowisk Kobięcych  | 32 | Fundacja Nowoczesnej Edukacji SPUNK                          |
| 10 | Dziewuchy Berlin  | 33 | Fundacja Pozytywnych Zmian                                   |
| 11 | Dziewuchy Dziewuchom Francja  | 34 | Fundacja Prawnikon   |
| 12 | Dziewuchy Londyn  | 35 | Fundacja Przestrzenie Dialogu                                |
| 13 | Dziewuchy Szczecin  | 36 | Fundacja Rodzić po ludzku                                    |
| 14 | Farsa   | 37 | Fundacja Trans-Fuzja   |
| 15 | Federacja na Rzecz Kobiet i Planowania Rodziny  | 38 | Galeria Inspiracji   |
| 16 | Federacja Polskie Lobby Kobiet  | 39 | Grupa nieformalna Równość.info                               |
| 17 | Femini Berlin Polska  | 40 | Grupa Ponton   |
| 18 | Feministyczne Stowarzyszenie Polonijne Elles sans Frontieres ASBL   | 41 | Inicjatywa Sto Lat Głosu Kobiet                              |
| 19 | Fudacja Klamra  | 42 | Koalicja KARAT   |
| 20 | Funcacja Cicha Tęcza  | 43 | Kobięty w Sieci  |
| 21 | Fundacja Centrum Praw Kobiet  | 44 | KOD Kobięty  |
| 22 | Fundacja Czas Dialogu   | 45 | Konferencja Episkopatu Polek                                 |
| 23 | Fundacja Droga Kobiet   |    |  |



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| 46 | Kongres Kobiet Północnej Wielkopolski (Stowarzyszenie „Metropolia Wielkopolska”) | 69 | OSK Gryfino  |
| 47 | Kongres Kobiet w Tomaszowie  | 70 | OSK Lublin   |
| 48 | Kongres Kobiet Województwa Śląskiego   | 71 | OSK Puławy   |
| 49 | Kongres Świeckości   | 72 | OSK Sanok  |
| 50 | Koszalińskie Stowarzyszenie Aktywności Lokalnej Era Kobiet                       | 74 | Plakaciary   |
| 51 | Lambda Warszawa  | 75 | Polskie Towarzystwo Genderowe                                    |
| 52 | Lubelska Koalicja na Rzecz Kobiet  | 76 | Polskie Towarzystwo Prawa Antydyskryminacyjnego                  |
| 53 | Łódzki Szlak Kobiet  | 77 | Protest kobiet   |
| 54 | Manifa Bydgoska  | 78 | Ratujmy Kobiety  |
| 55 | Manifa Lublin  | 79 | Ratujmy Kobiety Tarnów   |
| 56 | Manifa Łódź  | 80 | Różowa skrzyneczka   |
| 57 | Manifa Rzeszów   | 81 | Stowarzyszenie Aktywne Kobiety                                   |
| 58 | Manifa Toruńska  | 82 | Stowarzyszenie Dolnośląski Kongres Kobiet                        |
| 59 | Manifest Wolnej Polki  | 83 | Stowarzyszenie im. Stanisława Brzozowskiego - Krytyka Polityczna |
| 60 | Mapa kościelnej pedofilli  | 84 | Stowarzyszenie Inicjatyw Kobięcych                               |
| 61 | Marsz Godności   | 85 | Stowarzyszenie Klucz Stop Społecznym Wykluczeniom                |
| 62 | Medical Students For Choice Poland   | 86 | Stowarzyszenie Kobięcy Słupsk                                    |
| 63 | Międzynarodowy Strajk Kobiet   | 87 | Stowarzyszenie Kobięta na PLUS                                   |
| 64 | Nic o nas bez nas. Ruch kobięcy Gliwice i Pyskowice                              | 88 | Stowarzyszenie Kobięcy Piaseczno                                 |
| 65 | Nieformalna Grupa Czarny Protest   | 89 | Stowarzyszenie Kongres Kobiet                                    |
| 66 | Nieformalna Grupa Inicjatywna z Bydgoszczy                                       | 90 | Stowarzyszenie Koniński Kongres Kobiet                           |
| 67 | Obywatelskie Stowarzyszenie "Możemy"   | 91 | Stowarzyszenie Łódzkie Dziewuchy Dziewuchom                      |
| 68 | Ogólnopolski Strajk Kobiet   | 92 | Stowarzyszenie Nasz Bocian                                       |



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- 93 Stowarzyszenie ON/OFF
- 94 Stowarzyszenie Poprawy Spraw Alimentacyjnych – Dla Naszych Dzieci
- 95 Stowarzyszenie Pro Femina
- 96 Stowarzyszenie Prowincja Równości
- 97 Stowarzyszenie Stan Równości
- 98 Stowarzyszenie Stop Stereotypom
- 99 Stowarzyszenie Szlakiem Kobiet
- 100 Stowarzyszenie Wszechnicy Oświeceniowo-Racjonalistycznej
- 101 Tęczowy Tarnów
- 102 Toruńskie Dziewuchy
- 103 Trójmiejska Akcja Kobieta
- 73 Warszawski Strajk Kobiet
- 104 Warszawskie Dziewuchy
- 105 Wielkopolski Kongres Kobiet