

**EMBARGOED UNTIL 16 OCTOBER**

Press release - 16 October 2020

## **Serious breaches of rule of law in Poland pave way for extensive abuse of human rights**

On 22 October, Poland's Constitutional Tribunal will rule on the constitutionality of the country's abortion law<sup>i</sup>. IPPF European Network is deeply concerned that this ruling will be the first concrete manifestation of the serious threat to Polish citizens' lives that is posed by the collapse of the rule of law in their country<sup>ii</sup>. Specifically, the forthcoming ruling concerns the possibility for women to access abortion care on the ground of severe foetal impairment. The Tribunal is expected to rule in line with the ruling party PiS, and declare the provision unconstitutional.

IPPF EN fears that due to the deliberate politicisation of Poland's Constitutional Tribunal, the ruling on 22 October may be just the first in a series of possible extensive human rights violations. On this occasion, the Tribunal will target women's health and safety<sup>iii</sup>. Shortly afterwards, it will decide over the fate of survivors of domestic violence when it assesses the constitutionality of the Istanbul Convention. After that, the systemic erosion of the rule of law means that there is nothing to stop it attacking the human rights of other vulnerable groups, including LGBTI people and migrants.<sup>iv</sup>

The European Commission has bravely tried to put a stop to the Polish government's attacks against the basic democratic principle of separation of executive and judicial powers. Unfortunately, it has not so far been successful in halting this erosion. Fundamental EU values of human rights, human dignity, equality and non-discrimination are at stake. Developments in Poland set a terrible precedent that may encourage other illiberal governments to take similar steps.

IPPF EN's Irene Donadio said: *"We cannot allow this to happen on our watch. The ruling on 22 October poses a great danger, not only for desperate women in Poland in need of protection and care when facing a tragic private health crisis, but for society as a whole. This ruling is the first step in a long dark march towards the oppression of ordinary people. We call on EU leaders and citizens to protest and support the European Commission's efforts to defend the rule of law in Poland."*

Press contact: Irene Donadio - +32 (0)491 719 390

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<sup>i</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>). The Constitutional Tribunal 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>ii</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

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several infringement procedures in the past years. As rightly noted by the European Commission in its first Annual Report on the matter ([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)), “concerns over the independence and legitimacy of the Constitutional Tribunal, raised by the Commission under the Article 7(1) TEU procedure, have so far not been resolved.” 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 ([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)).

Almost all judges sitting on the Constitutional Tribunal now have strong links with the ruling party PiS and were nominated purely for political purposes, while legitimate Constitutional judges that would not conform have been removed. The assessment requested for the ruling on October 22 was submitted by a group of Members of Parliament in December 2019, including from PiS, the ruling party and was only placed on the agenda of the Tribunal after it was approved by the government. Such a takeover of a Constitutional Tribunal is unprecedented in Europe.

<sup>iii</sup> Poland already has one of the most restrictive abortion laws in the EU. Abortion is only permitted on very limited grounds, including in cases of “severe and irreversible foetal defect or incurable illness that threatens the foetus’s life”. The removal of this ground would virtually ban all access to abortion care, violating Polish women’s human rights to life, health, and dignity, and causing immense suffering to women and their families. In practice, if the Constitutional Tribunal rules that this ground is unconstitutional, women will either be forced to give birth against their will, in a country that offers very little care and support to family and people with disabilities, or to undergo unsafe or illegal abortion procedures, especially for those who cannot afford to travel abroad. By removing this ground, Poland would further breach numerous commitments it has made to uphold and protect human rights.

<sup>iv</sup> The forthcoming ruling takes place in a broader context of repeated, retrogressive attempts by Poland’s ruling party to roll back on reproductive rights, women’s human rights and LGBTI rights. In July 2020, Poland announced its intention to withdraw from the Istanbul Convention, and asked the Constitutional Tribunal to rule on its constitutionality (<https://www.politico.eu/article/poland-court-violence-against-women-istanbul-convention/>). Poland has also repeatedly infringed on LGBTI rights, which has been denounced by the European Commission and led to the withholding of EU funds from certain Polish cities (Annual 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); European Commission President von der Leyen State of the Union Address: [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655); <https://www.euronews.com/2020/07/29/eu-funding-withheld-from-six-polish-towns-over-lgbtq-free-zones>).