

K 1/20 (OTK ZU A / 2021)

{ Google translation Nov 5 2021: from Constitutional Court of Poland website)

## **Press release:**

Family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy K 1/20

On October 22, 2020, the Constitutional Tribunal examined the motion of a group of deputies to examine the compliance of Art. 4a paragraph. 1 point 2 and art. 4a paragraph. 2, first sentence of the Act of 7 January 1993 on family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy with the Constitution of the Republic of Poland.

The Constitutional Tribunal ruled that Art. 4a paragraph. 1 point 2 of the Act of 7 January 1993 on family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy is inconsistent with Art. 38 in connection with Art. 30 in connection with Art. 31 sec. 3 of the Constitution of the Republic of Poland. The decision was made by a majority of votes.

A dissenting opinion was submitted by judge Leon Kieres and judge Piotr Pszczółkowski. In the present case, two editorial units of the Act of January 7, 1993 on family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy (hereinafter referred to as the AA), i.e. Art. 4a paragraph. 1 point 2 of the Act, according to which the termination of pregnancy may be performed only by a doctor, if "prenatal tests or other medical indications indicate a high probability of severe and irreversible impairment of the fetus or an incurable life-threatening disease", as well as Art. 4a paragraph. 2 of the AJDP, clarifying that in these circumstances, "termination of pregnancy is allowed until the fetus is able to live independently outside the body of a pregnant woman".

The Tribunal noted that the applicant's constitutional doubts can be reduced to the fundamental issue concerning the constitutional guarantees for the child's life in the prenatal period in the event of a collision of goods. The nature of the constitutional problem defined in such a way enabled the Tribunal to reconstruct the main allegation of the applicant, which was the incompatibility of the challenged provisions with Art. 38 in connection with Art. 30 in connection with Art. 31 sec. 3 of the Constitution.

At the same time, the Tribunal reconstructed the subject of the audit, limiting it to Art. 4a paragraph. 1 point 2 of the law, because the essence of the present case was to determine whether, in accordance with the Constitution, termination of pregnancy may be performed when prenatal tests or other medical conditions indicate a high probability of severe and irreversible impairment of the fetus or an incurable disease that threatens its life, while it was irrelevant the

question of the temporal limits of permissibility of termination of pregnancy. The resolution of the constitutional problem pending before the Tribunal required analyzing two issues.

Firstly, establishing the legal status of a child in the prenatal phase of life and its subjectivity. Secondly, the admissibility and limits of termination of pregnancy, i.e. actions in the event of a conflict of values, weighing goods. The Tribunal, analyzing Art. 38 in connection with Art. 30 of the Constitution, upheld his earlier position, expressed in the judgment of May 28, 1997, file ref. Act K 26/96, according to which human life is a value at every stage of development and, as a value the source of which are constitutional provisions, it should be protected by the legislator. The Tribunal also stated that the unborn child, as a human being who is entitled to inherent and inalienable dignity, is a subject having the right to life, and the legal system must guarantee due protection for this central good, without which this subjectivity would be canceled.

On the basis of these findings, the Tribunal found that it is possible that one of the constitutional interests in the conflict lies with the child in the period of his life before birth. At the same time, if a pregnancy is terminated, the child is deprived of his life. While this child is not denied the right to life, its legal protection is limited. Therefore, the Tribunal assessed Art. 4a paragraph. 1 point 2 of the Act based on expressed in art. 31 sec. 3 of the Constitution, the principle of proportionality in the broad sense.

The Tribunal also recalled, referring to the judgment of 30 September 2008, ref. No. K 44/07, that the evaluation methodology developed pursuant to Art. 31 sec. 3 of the Constitution, with regard to solutions limiting the legal protection of life, is applicable with two important reservations. First, every case of limitation of the legal protection of human life must be "absolutely necessary", treated as an ultima ratio measure. Secondly, given the fundamental nature of the right to life, not each of the goods indicated in Art. 31 sec. 3 of the Constitution may justify solutions prejudicial to them. What is required is the symmetry of goods: sacrificed and saved.

In the opinion of the Tribunal, the assessment of the admissibility of termination of pregnancy, when prenatal tests or other medical conditions indicate a high probability of severe and irreversible impairment of the fetus or an incurable disease that threatens its life, and therefore the possibility of sacrificing a good lying on the part of the child, requires the indication of a similar good on the part of other people. . By virtue of termination of pregnancy, this analogous good can only be found in the child's mother. Although a high probability of a severe and irreversible impairment of the fetus or an incurable life-threatening disease may also be associated with a threat to the life and health of the mother, Art. 4a paragraph. 1 point 2 of the Act does not refer to such a situation, the more so as the circumstance of such a conflict has been indicated as a separate premise for the admissibility of termination of pregnancy in Art. 4a paragraph. 1 point 1 of the Act

Moreover, the Tribunal stated that the mere fact of a handicapped or incurable disease of a child in the prenatal phase, connected with eugenic reasons and with possible discomfort in the life of a sick child, cannot independently decide about the admissibility of termination of pregnancy. The Tribunal, assessing Art. 4a paragraph. 1 point 2 of the Act, he stated that the legalization of the abortion procedure, if prenatal tests or other medical conditions indicate a high probability of severe and irreversible impairment of the fetus or an incurable life-threatening disease, has no constitutional justification.

While discussing the effects of the ruling, the Tribunal stated that the legislator has the right and the obligation to adjust the legal status to the ruling, including to analyze whether the applicable legal solutions within the scope of Art. 71 sec. 2 of the Constitution, the mother's rights before and after childbirth to special assistance by public authorities are sufficient in the case where Art. 4a paragraph. 1 point 2 of the Act was eliminated from the legal system. Pursuant to Art. 1 of the Constitution, the Republic of Poland, as the common good of all citizens, should be a means for the development of individual people and the communities they create, especially the family. The legislator may not shift the burden of bringing up a severely and irreversibly handicapped or terminally ill child only to the mother, because it is mainly the public authorities and the whole society who are responsible for taking care of people in the most difficult situations.

The Constitutional Tribunal examined the case as a full bench. The chairman of the adjudicating bench was the president of the Constitutional Tribunal, Julia Przyłębska, the rapporteur - Judge Justyn Piskorski.

## OFFICIAL SUMMARY

Google translation from Constitutional Court of Poland website

<https://trybunal.gov.pl/s/k-1-20>

Constitutional Court of Poland ruling

Family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy

K 1/20

Entity initiating the proceedings: A group of deputies to the Sejm

Application for "a declaration that Article 4a (1) (2) and Article 4a (2), first sentence, of the Act of 7 January 1993 on family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy (Journal of Laws of 1993, No. 17, item 78; 1995 No. 66, item 334; 1996 No. 139, item 646; 1997 No. 141, item 943; No. 157, item 1040; Of 1999, No. 5, item 32; of 2001, No. 154, item 1792) are inconsistent with Article 30 of the Constitution of the Republic of Poland by legalizing eugenic practices in relation to a child not yet born, thus refusing to respect him and protection of human dignity.

-a in the event of failure to comply with the above, to rule that:

art. 4a section 1 point 2 and art. 4a paragraph. 2 first sentence of the Act of January 7, 1993 on family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy (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 ) are inconsistent with Art. 38 in connection with joke. 30 and 31 section 3 and Art. 38 in connection with Art. 32 (1) and (2) of the Polish Constitution by legalizing eugenic practices in the field of the right to life of an unborn child and making the protection of the right to life of an unborn child dependent on his or her health condition, which constitutes forbidden direct discrimination.

and a ruling that:

art. 4a paragraph. 1 point 2 and art. 4a paragraph. 2 first sentence of the Act of January 7, 1993 on family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy (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 ) are inconsistent with Art. 38 in connection with joke. 31 sec. 3 and in connection with joke. 2 and art. 42 of the Constitution of the Republic of Poland by legalizing the termination of pregnancy without sufficient justification by the need to protect another value, right or constitutional freedom, and use undefined criteria for this legalization, thus violating the constitutional guarantees for human life " .

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