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Polish court outlaws almost all abortions

Protests will be difficult to organize due to the worsening coronavirus outbreak.

By Wojciech Kość

POLITICO (22.10.2020) – <https://politi.co/3dXUedS> – A top Polish court on Thursday tightened one of the EU's toughest abortion regulations by ruling that abortions undertaken because of fetal defects are unconstitutional.

The ruling means that Polish women may have abortions only in cases of rape or incest, or if the life of the woman is endangered.

The abortion issue has been a minefield for the ruling nationalist Law and Justice (PiS) party. It's under pressure from far-right and ultra-Catholic groups to crack down even harder, but that risks outraging Polish women. A legislative effort to restrict abortions in 2016 sent hundreds of thousands of women onto the streets and prompted a quick retreat on the part of the government.

By turning to the Constitutional Tribunal, the PiS avoids setting off a legislative fight, but the opposition, women's groups and many European organizations denounced the decision.

Street protests will be difficult to organize, however, thanks to Poland's worsening coronavirus outbreak. The whole country is set to be declared a "red zone" on Friday.

"Removing the basis for almost all legal abortions in Poland amounts to a ban & violates human rights. Today's ruling of the Constitutional [Tribunal] means underground/abroad abortions for those who can afford & even greater ordeal for all others. A sad day for Women's Rights," tweeted Dunja Mijatović, the Council of Europe's commissioner for human rights.

Poland only has about 1,100 legal abortions a year, mostly carried out under the fetal abnormality clause, according the

Federation for Women and Family Planning, known as Federa, a women's rights NGO.

"I was really hoping this wouldn't happen. Women's rights to live healthy lives have just been swept aside," said Krystyna Kacpura, head of Federa.

"It doesn't mean there won't be abortions now," she added. "It means that poorer women will have abortions risking their lives and health and the better-off will pay for terminations abroad in the Czech Republic, Slovakia, Germany, or the Netherlands. Abortion clinics there must be overjoyed today."

She estimated that the true number of abortions by Polish women is between 100,000 to 150,000 a year.

The tribunal ruled on a motion, filed last year by over 100 conservative lawmakers, asking the court to find that abortion on the grounds of fetal abnormality is anti-constitutional because it violates a child's right to be free of discrimination for health reasons.

"We are asking for the right to life of everyone, no matter their sex," Bartłomiej Wróblewski, a PiS MP, told the tribunal on Thursday. "We don't think that it's correct to say that this is being done against women. This is being in part in the name of women."

Poland's conservatives rejoiced at the ruling.

Jerzy Kwaśniewski of the Catholic organization Ordo Iuris, which has campaigned intensely for the ban, called the decision “a great day.”

The ruling also risks worsening already fraught relations with Brussels, as the legality of the tribunal’s makeup remains disputed.

The court is supposed to rule on the constitutionality of laws passed by parliament. However, some of the justices were appointed by President Andrzej Duda in violation of the Polish constitution.

The tribunal’s head, Julia Przyłębska, is a personal friend of PiS leader Jarosław Kaczyński. Only two of the court’s 13 judges opposed the verdict.

The status of the court has been one in a large number of points of friction between the Polish government and the European institutions.

Photo: Activists demonstrate in support of abortion rights in Warsaw on October 22, 2020 | Wojtek Radwanski/AFP via Getty Images.

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