

MONOGRAPHS OF THE ORDO IURIS



PROTECTION OF HUMAN LIFE
AT THE PRENATAL STAGE OF DEVELOPMENT
SOCIAL, MEDICAL AND LEGAL ASPECTS

ACADEMIC EDITORS

JERZY KWAŚNIEWSKI, MARCIN OLSZÓWKA



Protection of human life at the prenatal stage of development

Social, medical and legal aspects



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Academic Publishing House of the Ordo Iuris Institute for Legal Culture

Warsaw 2026

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The law is stated as at 31 December 2022

(Annex 1 – as at 31 December 2025).

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Ursines – Creative Agency. Błażej Zych

www.ursines.pl

Photographs on the title pages of each part

Lukaszczepanski / stock.adobe.com (Part I)

Jovannig / stock.adobe.com (Part II)

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Published by

Academic Publishing House of the Ordo Iuris Institute for Legal Culture

Plac Bankowy 2, 11th floor, 00-095 Warsaw, Poland,

ISBN 978-83-68888-04-1

Cataloguing in Publication – National Library of Poland

Protection of human life at the prenatal stage

of development : social, medical and legal aspects

/ academic editors Jerzy Kwaśniewski,

Marcin Olszówka ; [translation into English

Wojciech Biegański]. - Warsaw : Academic

Publishing House of the Ordo Iuris Institute

for Legal Culture, 2026

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Foreword

‘If a mother has the right to kill her own child, what can stop me from killing you, and you from killing me – there is no difference.’ This sentence was uttered by the Nobel Peace Prize laureate during her Nobel lecture in Oslo on 11 December 1979. Thus, from the acceptance of a mother’s crime against her own child, the culture and civilization of death is born. The guilt of this crime weighs on individuals, on families, on society, on the entire nation, exerting a pernicious influence on the systemic respect for the dignity of human life. Saint Mother Teresa of Calcutta perfectly grasped what human equality is all about, and what the consequences (moral, social, legal) of allowing arbitrary groups to kill freely are – since if it is permitted to kill some, it will be a matter of time before others are killed. This is why, in another passage from her lecture (which remains relevant after almost 50 years also in terms of other issues raised there), St Mother Teresa of Calcutta warns that ‘the greatest destroyer of peace today is abortion, because it is a direct war, direct killing – direct murder by the mother’. Today, and this has been so for many years, abortion remains the leading cause of death in the world.

On December 11, 1979, i.e., at a time when there was no Internet and no social media, the audience for the Nobel lecture was mainly limited to invited guests, including the elite of Norway at the time – a country where the ruling Labor Party achieved its stated goal in 1969 and brought about the legalization of abortion (for which the death penalty in that country was in force in the 18th century). This did not happen overnight. A decade earlier, the first exceptions were allowed. They resembled in some ways the Polish ‘abortion compromise’. The number of those put to death grew year by year. Finally, in 1978, the Storting (Norway’s parliament) allowed abortion

on demand. The decision was already supposed to have been made when the 1975 Abortion Act, which is still in effect today, was passed, but then – quite unexpectedly – it was decided by one vote that a special committee would decide whether to allow abortion. As an aside, it is worth mentioning that statistics have shown that the number of children killed annually was, however, not greatly affected by this obstruction.

The pattern of the course of progressive, modernist socio-legal transformations towards the civilization of death, about which St John Paul II wrote, or the culture of rejection, about which Pope Francis writes, in the countries that fall within what can be termed as Christian civilization (post-Christian, Euro-Atlantic), including the methods and treatments used to implement these transformations, are basically similar (exceptions include Argentina or Malta). One way of counteracting these negative trends, and at the same time defending the natural order, is to deepen and disseminate knowledge. It is the knowledge of human development – from genetics proving the uniqueness of life from the moment of conception, to ultrasound enabling us to see the humanity of the conceived child, to the latest trends in human rights doctrine emphasizing the universality of the protection of human dignity – that leads to the acceleration of acceptance of demands for the defense of life in politics and law. Therefore, at the Ordo Iuris Institute for Legal Culture, a decision was made to prepare an interdisciplinary monograph *Protection of human life at the prenatal stage of development. Social, medical and legal aspects constituting* a kind of comprehensive pro-life encyclopedia.

The first part – social aspects – consists of two chapters containing in-depth considerations that could also be described as ‘cultural’. This is because they do not include sociological inquiries or analyses of social attitudes toward the rights of the unborn, but instead focus on their deep-rooted pretexts and how they find contemporary expression in the social media. The first chapter by Tomasz Rowiński is thus devoted to rudimentary issues, i.e., the philosophical and anthropological causes of contemporary perceptions of humanity and the person. Never tired of repeating that ideas have consequences. After all, the relative ease of dehumanizing other people is deeply rooted in some of the metaphysical and epistemological theses of

ideas that arose in the modern and modern eras. In Chapter 2, Dr. Małgorzata Szczepkowska analyzes, in turn, the way the title issue, as well as the protagonist of this monograph, is being used in journalistic texts in Poland at the beginning of the 21st century. The conclusions, on the one hand, may fill with optimism (for it is predominant to call the *nasciturus* a child), but on the other hand, they show (confirm) the voluntarist perspective on the perception of the person.

Part two of the monograph was devoted to medical aspects. It opens with a chapter by Prof. Bogdan Chazan, which contains perhaps the most discomforting part of the monograph, that is, the description of techniques for killing unborn children, which is unfortunately necessary. Medical procedures aimed at killing a human being in the early stages of life also carry a danger to the life and health of the mother. The cases of abortion activist María del Valle González López, known as 'Clarín', who decided to 'celebrate' the legalization of abortion-on-demand in Argentina in 2021 by killing her unborn child, but also died herself as a result of post-abortion complications, or women who did not survive the 'procedure' carried out by American abortionist Kermit Gosnell (sentenced in 2013 to a triple life sentence), are obviously not statistical regularities, but such situations occur more often than the public is informed about. The consequences of abortion also include a negative impact on the health, including mental health, of the mother. As a growing number of studies show, pharmacological abortion, recently increasingly promoted by proponents of the 'right to choose' (of course, always that one 'right' choice), is becoming particularly dangerous in this regard.

In the next chapter, Dr. Małgorzata Prusak draws attention to the often silent but very important issue of the risks to human life at embryonic age (before implantation in the uterine wall) posed by the use of hormonal contraceptives, both 'after' and 'before'. Of course, the effect of killing the child does not occur in every case of contraception (a woman may be infertile as a result of hormonal contraception, or the child may survive, for example, by being born holding a contraceptive coil in its hand, as such a situation has also occurred), but the effect of killing a child is part of the spectrum of consequences of hormonal contraception and may

occur whenever a conception occurs during its use, although it is true that in the case of regular use of this method it is not the primary effect. Naturally, taking additional amounts of hormones by the mother, even before pregnancy, may not be indifferent to the health of the offspring (and the mother, obviously).

Further myths propagated by abortionists are dealt with by Dr. Calum Miller in Chapter 5. Indeed, there are no reliable sources confirming that abortion positively affects the mental health of the mother, while the opposite is true. Data from sources that cannot be termed as pro-life clearly show that abortion is associated with an increased risk of suicide and anxiety, and highly likely to lead to the abuse of alcohol and other substances.

Another piece of fake news, often cited by supporters of the right to kill babies before birth, is the slogan about abortion allegedly saving lives. The proof is to be found in statistics showing maternal mortality in countries that, as a rule, provide legal protection for the life of the *nasciturus*. Dr. Filip Furman, author of Chapter 6, shows that the manipulation consists of deliberately using certain coincidences and masking the real causes of perinatal mortality of mothers in these countries, the causes of which include a low standard of living, including poor hygienic conditions, and poor access to developed medical care. What is noteworthy, statistical data from countries with a similar level of development show that the ban on abortion tends to favor lower maternal mortality in a given group of countries with a comparable level of living standards (as exemplified in Europe by Malta, the undisputed leader in protecting life on the Old Continent, while in South America Chile can be cited as an example).

The third part of the monograph covering legal aspects is the most comprehensive and focuses mainly on domestic law. This part begins with a chapter by Agata Tarnacka and Damian Tarnacki containing a historical outline of the legal protection of life at the prenatal stage of development in Poland. It goes back to the Constitution of the Republic of Poland of March 17, 1921, which is set in academic textbooks as a model for many legal and political solutions, although an important provision of this fundamental law is usually omitted: Article 95, which in one breath provided 'complete

protection of life, liberty and property'. This provision was significantly curtailed when the legislature adopted the so-called Makarewicz Code in 1932 (after the name of its main author, associated, incidentally, with the Polish Christian Democracy Party) introducing two abortion exceptions (similar to those in force in Poland today), with the addition of a premise formulated as 'the mother's inability to raise the child due to her social situation' also being considered during the drafting process. Undoubtedly, these changes constituted a significant lowering of the legal standard for the protection of the unborn child, although practice showed that abortions were often performed earlier as well.

The legal state of affairs in Poland (theoretical and according to the canons of formal rule of law) opened up to the availability of abortion during periods of totalitarianism. This first happened under German occupation in the early 1940s, although the legislation explicitly limited the permissibility of abortion in the case of the Germanic origin of the child's father (even alleged) or the special racial value of the child. Again this was followed by adopting the Soviet model, in 1956, when, in addition to allowing abortion on criminal grounds, such as in the case of rape or incest, abortion was also permitted due to the difficult living conditions of the mother and impunity was introduced for a woman killing her unborn child.

The return to relatively better protection of the life of the conceived child came in 1993, but after just three years access to abortion was introduced due to the harsh living conditions or difficult personal situation of the mother. Such a far-reaching misappropriation of the principle of protection of human life was considered by the Constitutional Tribunal in the most important historic ruling (ref. K 26/96) as unacceptable in a democratic state of law implementing the principles of social justice and protecting maternity. This is how the so-called 1993 abortion compromise took shape – which was in fact the product of the aforementioned 1996 statutory amendments, the 1997 Constitutional Court ruling and the September 1, 1998 entry into force of the new Criminal Code – which differed in several places from the state of the law enacted in 1993 (more generally, read more broadly, formulated prerequisites permitting the killing of an unborn child, in principle higher penalties for abortion-related crimes).

The entry into force of the Polish Constitution of April 2, 1997, *expressis verbis* protecting inherent human dignity and human life and giving expression to an objective system of values (as recognized by the Constitutional Court in 1999), undoubtedly strengthened the legal protection of unborn human life. The constitutional standard for the protection of life, discussed in Chapter 8 by Drs. Bartosz Zalewski and Marcin Olszówka, has found expression in the consistent jurisprudence of the Constitutional Court, primarily in the formulation of: the principle of *in dubio pro vitae humana* (2004), the principle of symmetry of the goods sacrificed and saved, which means the prohibition of depriving life in order to save the health of others (2008), the right of the embryo to life (2018) or the prohibition of eugenic abortion (2020). Consistently, the Constitutional Court also upholds freedom of conscience, an integral element of which is conscientious objection (1991, 2015) – a separate chapter in the third part by Dr. Bartosz Zalewski is devoted to this important issue.

Interpretation of the current Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy is presented by Weronika Przebierała. It should be noted that the refinement of the constitutional standard for the protection of life, however, has not quite gone hand in hand with the practice of application and observance of the law in this regard. Three fundamental problems can be distinguished here. First, the growing interpretation of exceptions, which has led, over the course of more than 20 years, to a several-fold increase in the number of children killed before birth in Polish hospitals. Although, contrary to the original predictions, the eugenic premise in Poland proved particularly susceptible to extensive interpretation: the abuse of its use is discussed in Chapter 11 by Nikodem Bernaciak, Katarzyna Gęsiak, Gabriela Szewczuk and Damian Tarnacki, nevertheless, after the repeal of this premise in 2020, the abortion ‘eye of Sauron’ focused its attention on the potentially broadest exception, i.e., the risk to the mother’s health. Secondly, the jurisprudence of civic courts (including the Supreme Court), which *de lege lata* formulate postulates about the right to abortion, allegedly enshrined in Polish legislation. At the same time, the jurisprudence constructs various claims on this basis – the extreme in this regard

was reached by the Suwałki Regional Court in its judgment of September 13, 2012 (ref. I C 463/09), recognizing wrongful life claim (fortunately, this ruling was overturned by the Białystok Court of Appeals in a judgment dated April 24, 2013, ref. I ACa 787/12; wrongful birth claims were also dismissed). Succoring these radical excesses of judicial creation of rights is the jurisprudence of the European Court of Human Rights in Strasbourg, although the Court has never ordered any party to the Convention to recognize the right to abortion. Third, opportunism on the part of law enforcement agencies, which takes advantage of the acquiescence – or even acceptance – of a section of society and politicians to the killing of unborn children, although the personal convictions of prosecutors and judges are probably not irrelevant here. However, the jurisprudence of criminal courts, including the Supreme Court, which is unlikely to make headlines, shows that at least some perpetrators of crimes do not escape punishment (another thing is that it is usually not high, but this is a matter of the wording of the substantive provisions and the amount of the criminal sanction). The problem of abortion crime in Poland is brought closer by Kamil Smulski in Chapter 16.

The period in which the 1997 Constitution of the Republic of Poland was in effect was also a time of great activity on the part of pro-abortion circles. An analysis by Bartłomiej Baran and Jan Melon of actual bills from the period 1997–2022 – that is, bills within the meaning of Article 118 of the Polish Constitution, i.e., bills submitted to the Speaker's staff – the subject of which was the legal protection of the *nasciturus*, shows conclusively that it is these circles that more often postulate changes in the law. Out of 21 abortion-related bills, as many as 13 aimed to facilitate abortion or directly provide women with the right to kill their own children (most often up to the 12th week of life). Not counting the failed attempt to amend the Polish Constitution in 2007. (the draft concerned a clarification that human life and dignity are to be protected from conception) – the Sejm (the lower house of the Polish parliament) at the time lacked 27 votes – the first of the 8 drafts raising the standard of protection for the life of the conceived child did not appear until 2010, when apparently pro-life finally 'woke up' after the triumph that was the 1997 Constitutional Court ruling (perhaps they feared the alleged so-called pendulum effect).

This monograph also includes a chapter devoted to the legal regulation of the circulation of hormonal contraceptives, which, as its author Katarzyna Gęsiak writes and as shown in the medical section, pose a potentially lethal threat to the life of the *nasciturus*, especially postcoital ones. Although EU law allows for restrictions on the marketing of oral postcoital contraceptives, the Polish legislature does not use this possibility (the last EU country to use this possibility was Malta), and this despite the fact that the availability – even by prescription – of such means is difficult to reconcile with both the high standard of constitutional protection of life and the provisions of many laws that protect life from conception. Nevertheless, it is comforting to know that Poland is ranked as the country in Europe creating the most barriers to accessing these dangerous (also for women) preparations.

It is also worth remembering, as Anna Kubacka emphasizes in her analysis devoted to the issue of abortion in international law, that international law binding on the Republic of Poland does not include a ‘right to abortion’, but guarantees in many treaties and other international agreements the legal protection of life, never limiting this protection to people already born (which is most clearly emphasized in the text of the Convention on the Rights of the Child of November 20, 1989). The confusion stems from the long-standing and, unfortunately, increasingly intrusive cacophony of various international bodies (such as UN committees and the European Parliament) and organizations (such as the World Health Organization), which, faithful to the principle that a lie repeated a thousand times becomes the truth, always acting outside their competence, reproduce untruths about the relationship of international law to abortion (and abortion itself), which, although met with opposition and criticism, seems to be becoming less consistent over the years. In turn, the voice in defense of the existing law is rare (vide the European Parliament resolution of December 10, 2013 on reproductive and sexual health and rights; Resolution 1763 of the Parliamentary Assembly of the Council of Europe of October 7, 2010 on the right to conscientious objection in legal medical care).

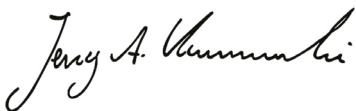
Legal protection of life also means freedom to talk about abortion. Indeed, as Przemysław Pietrzak and Kamil Smulski point out, not everywhere (and this is by no means the Democratic People’s Republic of Korea or

the People's Republic of China) do pro-life activists enjoy full freedom of speech, including the right to call a spade a spade, such as the killing of an unborn child – murder. Not only in the United States of America, but also in Canada, and more recently especially in France and the United Kingdom, legislation is being introduced to restrict the information activities of pro-life organizations and promote the legal protection of life. Legal battles of this kind are also being fought in Poland: while generally victorious, they nevertheless show how fragile current guarantees of rights and freedoms can be.

The monograph closes with a ranking of 196 countries of the world in terms of the level of legal protection of human life at the prenatal stage of development, compiled by Nikodem Bernaciak, Aniela Czelejczyk and Marcin Olszówka. The criteria for ranking relate only to the legal state of affairs (legal order) in force in a given country, so the podium is occupied by those countries whose legislation most fully protects life at this stage, while at the end are those that do not provide for such protection at all. The ranking is not affected by the issue of compliance with the law, including by public authorities (police, prosecutors, courts), the level of abortion crime, social attitudes to the rights of the born, or the actual number of abortions. Poland ranks only 85th in this ranking. Before the Constitutional Court's verdict of October 22, 2020, it was ranked 127th, which shows that the derogation of one premise caused a huge jump in the ranking (as mentioned, the actual scale and actual prosecution of abortions in Poland do not affect the place in the ranking – taking this criterion into account, moreover, would be difficult, if not impossible, to measure). Because the truth is that the number of countries protecting the life of the *nasciturus* is significant, and they are not just small archipelagos, but also large countries, such as the Philippines (6th in the ranking). It should also be noted that there are almost 50 countries with a total ban on abortion – that is, guaranteeing full protection of the life of the mother and child (the consequence of which is the ability to take action to save the life of the mother, even if it leads to the death of the child). It is therefore false to say – quite often reproduced in materials available on the Internet – that there are four such countries, just as it is false to say that a total ban on abortion means a ban on saving the life of the mother if it could harm

the child. Meanwhile, states allowing abortion on request or on frivolous grounds remain in the minority. That's why the landmark June 24, 2022 U.S. Supreme Court ruling in *Dobbs v. Jackson* allowing states to protect the life of the *nasciturus*, although it improved the situation in more than half of the states, did not significantly increase the ranking: The US rose from 192nd to 184th place, although current trends (improvements in the state of the law in subsequent states) create opportunities for a better outcome in the not too distant future.

This monograph does not address all of the issues linked to the protection of the right to life from conception, of which a sample was presented above. It is intended, however, to be an important step towards building a powerful knowledge base on the protection of human life at the prenatal stage of development. Its natural extension is the encyclopediapro-life.pl/en website, which will publish further analyses and research on the protection of life in the world. The website is intended to realize even more fully the purpose of this monograph, which was published in its Polish version in the year of the first beatification of an unborn child (whose parents were Wiktoria and Józef Ulma, who were executed by the German occupiers during WWII for hiding Jews). Its aim is to reach with reliable, scientific and properly reviewed knowledge all those concerned about the state of respect for the inherent human rights of the last of the great excluded groups – children in the prenatal period of their development.



Jerzy Kwaśniewski



Marcin Olszówka

An aerial photograph showing a massive crowd of people gathered in a city square or park. The crowd is dense and fills most of the frame. There are several green, landscaped islands in the center of the square. A road with white lane markings and a traffic light is visible on the left side. The overall scene suggests a large-scale public demonstration or event.

Part I

Social aspects



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Key terms: sources of abortion consent, ontological status of the foetus, history of ideas, utilitarian ethics, integral ethics

Chapter 1

On the non-identification of persons. A brief and reflective introduction to the anthropology of abortion, from antiquity to the present day

Starting from the zygote stage until old age, this being remains in the same relationship with the environment, that is, it takes in nutrients, oxygen, and water from the environment, and excretes metabolic products – this remains completely unchanged. During development, nothing comes into the organism from the outside that changes it qualitatively. In a computer, for example, you can install a new disk drive and thus make a qualitative change – there is complete continuity in human development. Therefore, there is no biological basis for ‘justifying’ such concepts as just ‘delayed personalization’ or pre-embryo.

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1 Moral or intellectual error?

Władysław Tatarkiewicz, on whose *Historia filozofii*,¹ better or worse, numerous generations of Polish students were formed, in his work *O bezwzględności dobra* wrote: ‘What is sometimes understood as a difference in the value of things is often a difference in their understanding.

1 W. Tatarkiewicz, *Historia filozofii*, vol. 1-3, Warszawa 1931-2009.

This explains, for example, the deviations of numerous strains from the principle of respecting human life and the prohibition of murder. In some strains it is permitted to kill a barbarian and eliminate a foetus, because neither a barbarian nor a foetus is a human being. It is necessary to burn a wife at the stake along with her husband's corpse, because a woman has no personality of her own. The father of a family is allowed to kill his son as "he is allowed to cut off a member of his own body", and a slave is allowed to be put to death in the same manner as "one is allowed to destroy his own property". In many cases the differences between ethical beliefs derive from the fact that the strain of someone is subject to superstition, that he lives not in moral but intellectual error.²

This short paragraph, the fruit of mature humanism, could also be adopted as their own by modern Catholics, treating it as a summary of the centuries-old moral tradition they have travelled together with the Church and Western culture. The words written by Tatarkiewicz – who was not a religious thinker – clearly indicate that in our civilization, in its mature forms, a philosophical and anthropological consensus has been established regarding the status of human life in the prenatal stage as life not only in the physiological sense, but also in the personal sense. Of course, there is also a tendency – one that is politically dominant today – to deny the integrity of human life as personal in all its existence. However, as Tatarkiewicz believed, this approach is erroneous. The Polish philosopher also believed that it is an intellectual error. He does not explicitly declare that this error leads to moral error, although this is how his remark should be understood – bad behaviour results from lack of knowledge and wisdom. It can be a matter of debate as to whether the exact opposite is true, and whether it is a human flaw, a moral error, a propensity to behave badly that does not reveal itself by seeking to rationalize and justify evil – in this case, the evil of abortion. However, regardless of how we resolve the question of the origin of evil and its justifications, what is important is the anthropological code itself and its practical consequences. For opposition to prenatal murder is not some unexpected modern attack on freedom – rather, it is

2 W. Tatarkiewicz, *O bezwzględności dobra*, [in:] idem, *Dobro i oczywistość. Pisma etyczne*, red. P.J. Smoczyński, Lublin 1989, p. 59.

the freedom to kill an innocent person that marks the resurgence of dark atavisms contrary to the centuries-old path of knowledge.

On the issue of eliminating the foetus and the ontological status of the human being, one can sometimes hear that the integral position – assuming the simultaneity and inseparability of human life and its personal nature, as well as the continuation of this state from conception until the natural death of the human being – is an outdated one.³ When asked why this should be so, instead of serious anthropological considerations in the public debate, we mostly hear political slogans about individual freedom, female autonomy,⁴ or liberation of society from patriarchal tradition.⁵ Of course, I do not intend to ignore either the issues of freedom or autonomy, or social injustices in the treatment of the sexes. However, these issues, rather than the answer, are in themselves multifaceted problems of our culture. Even more, they have become part of the contemporary system of social prejudices.

The essence lies elsewhere than in adjudicating on what is obsolete. It lies in the answer to the question of the validity of recognizing the personal status of the foetus and the status of the power that society has over persons. Answers that are limited to the repetition of liberal political slogans pose

3 When in the fall of 2016, the European Parliament decided to discuss Poland's ongoing attempt to introduce anti-abortion laws fully protecting life as well as the protests against this attempt, deputies from various countries commented on the situation using such expressions as 'dark ages', 'medieval times', and 'assault on women's rights' in reference to the situation in Poland. An account of the debate, following the Polish Press Agency, was reported by, for example, *Gość Niedzielny* magazine, *Oskarżenia o ciemnogrońd i średniowiecze podczas debaty PE o prawach kobiet w Polsce*, <https://www.gosc.pl/doc/3482510.Oskarzenia-o-ciemnogrod-i-średniowiecze-podczas-debaty-PE-o>, accessed 19 November 2022.

4 Such an argument was used, for example, by the Polish Society of Human Genetics and the Polish Society of Obstetricians and Gynaecologists in March 2018 in their statement against the 'Stop Abortion' bill to abolish the eugenic premise for abortion found in the Polish pro-life law. See *Polskie Towarzystwo Genetyki Człowieka, Polskie Towarzystwo Ginekologów i Położników [Polish Society of Human Genetics, Polish Society of Obstetricians and Gynaecologists], Stanowisko Polskiego Towarzystwa Genetyki Człowieka (PTGC) oraz Polskiego Towarzystwa Ginekologów i Położników [Position of the Polish Society of Human Genetics (PTGC) and the Polish Society of Gynaecologists and Obstetricians]*, https://imid.med.pl/files/imid/Aktualnosci/Aktualnosci/1-Stanowisko_PTGC_PTGP.pdf, accessed 23 November 2022.

5 This argument was used by feminist activist Kazimiera Szczuka: 'Poland is the only country in the world – apart from Nicaragua! – that has tightened regulations on abortion in the last 20 years. Reproductive rights as part of women's human rights should not be violated under any ideological circumstances. And it is ideology, preached by politicians after the hierarchs of the Catholic Church, that makes women in Poland creatures incapable of independent choices, without conscience, unable to recognize what is right and proper for them.' This quote from 2011 shows the persistent presence of such slogans in the journalism of opponents of integral anthropology. They can be found in a number of texts that surfaced during the Polish debates about the legal legitimacy of the protection of life. *TakDlaKobiet.pl, Zmienimy ustawę!*, <http://takdlakobiet.pl/publicystyka/kazimiera-szczuka-zmienimy-ustawe/#more-557>, quoted in *Quotepark.com*, Kazimiera Szczuka, „Polska to jedyny – oprócz Nikaragui!”, <https://quotepark.com/pl/cytaty/2040095-kazimiera-szczuka-polska-to-jedyny-oprocz-nikaragui>, accessed 19 November 2022.

a serious problem for the debate on what constitutes human life. Behind these slogans, unfortunately, is the simple demand to introduce into social practice a mechanism for recognizing humanity solely on the basis of the expectations that adults have of what is referred to as 'quality of life'. By adults, I mean individuals capable of effective participation in the system of social violence. The legal presence of abortion in peoples' lives is the practical effect of the determination of stronger individuals to achieve the expected level of quality of life. It is the effect of the dominance of the principle of desire resulting in the dehumanization of individuals in the prenatal phase of life. Thanks to intellectually justified dehumanization, moral evil finds a semblance of justification.⁶

This is what superstition is and the evil it creates. Superstition is a secondary justification of a certain social solution, the functioning of which is not guided by the principle of justice. Here we understand it as the rule of adequacy of the order of the human social world and the world of human nature. Superstition as a mental structure that legitimizes violence makes it possible to mask the injustice and arbitrariness of social solutions. The superstition about the impersonal nature of human life at the foetal stage acts as a justification of the act of terminating defenceless persons. However, this is not all.

The opening of the door to consent for the dehumanization of the unborn leads to further misery⁷ resulting from the violation of the anthropological code, in which it is each human life – and not the abstract, particularistic, subjective, and arbitrary categories of 'quality of life' or 'social benefit' – that is the point of reference for the action and creation of ethics and law. It is difficult not to see the affinity of proabortion ideology with other ideologies, which also pretended to reconcile reality by means of a kind of termination⁸ of representatives of various categories of 'non-persons' or 'persons of inferior quality'.⁹

6 Bernadette Waterman Ward, for example, has written about it brilliantly, using a Girardian analysis. See B. Waterman Ward, *Aborcja jako sakrament. Pragnienie mimetyczne i ofiara w polityce dotyczącej życia seksualnego*, transl. P. Chrzanowski, T. Dekert, "Christianitas" 2020, no. 79-80, pp. 55-74.

7 See, e.g., T.P. Terlikowski, *Kiedy możemy zabijać noworodki?*, "Christianitas" 2020, no. 79-80, pp. 88-93.

8 The term 'termination' in the medical sense refers to the termination of a pregnancy. Here, however, I am consciously expanding its understanding, pointing out the enduring analogy of abortion to any case of medical termination of human life.

9 The fact that today this is not just a problem for niche academic authors can be read in numerous journalistic texts. An interesting example is a conversation with Wesley J. Smith, during which he analysed cases not of abortion, but of forced euthanasia being another consequence of the same negative turn in Western culture as the widespread, legalized and financially supported by states acquiescence to abortion. W.J. Smith, P. Włoczyk, *Nadciągająca kultura śmierci*, "Do Rzeczy" 2019, no. 23, pp. 74-76.

Legal abortion is a paradox of our times. In societies so sensitive to the use of violence not only against humans, but also against animals, the boundary of humanity is increasingly defined by the strength of human vices – such as sexual promiscuity, for example – rather than by reason and the resulting knowledge of things. Reason only plays an instrumental role in this new code. It creates explanations that drown out the ethical obviousness of judging abortion. Part of the abortion paradox is that modern civilization's sensitive attitude to violence and suffering is at the same time one of the drivers of the process of belittling the foetus. This is the case, for example, when the possible inconvenience to the mother, less often the father, resulting from the birth of a child is considered an important criterion for the 'right to survive'. The centuries-old intellectual efforts to permanently and fully extract the human being from the background of nature and society, from the collection of things, are erased. Human life – its material nature – is again becoming only the object of society's decisions, and in the individual dimension the object of the influence of consciousness, for which the body is only a carrier, hardware, and for some even a prison. Consequently, as a civilization, we have reached a point where the impossibility of medically recognizing the presence of consciousness reduces human life to merely biological material, a conglomeration of cells.¹⁰

However, this raises the question of how the argument about the obsolescence of the integral position should be treated. Already the referenced comments undermine this kind of allegation. It is easier to argue for the view that it is today's morality that is in crisis. It can even be argued that from the perspective of the classical European moral tradition, consent to abortion is a symptom of a regression affecting not only human ethical habits, but also the entire system of intellectual justifications. We could easily point out to the clear differences between the archaic objectification of persons consisting in not separating them from the social background and the natural world and its postmodern form. In the latter, it is the person, losing reference to the supernatural and the truth, who once again proves to be a slave of society. At the same time, it disintegrates into consciousness

10 An interesting and accessible book for readers about, among other things, the process of modern disintegration of the subject is Jacek Dukaj's collection of essays *Po piśmie* (Kraków 2019).

as well as the body, thus becoming part of the mechanism of social utilization of matter.¹¹ Despite these differences, the practical consequences of objectification turn out to be similar, the severity of Spartan custom stands beside the utilization task of the abortion clinic.

If there is anything we can call progress in modern times, it would be the development of medicine, which, for example, makes it possible to save both mother and child during a difficult delivery, or gives the possibility of surgical interventions to restore health to a child in the foetal stage of life. Every doctor knows that he or she is then not directly saving the woman, but another human life as well, even if it is not yet conscious of itself. The convergence that is taking place between the increasingly detailed study of the generic specificity of human life and integral ethics can also be considered progress. On this path, numerous prejudices – pre-modern and modern – that dehumanize the initial phase of human existence have been discarded.

One could also ask whether the development of ethics in Western civilization (that special kind of Christian humanism, the fruit of which was the understanding of what a person is) did not provide an important impetus for the flourishing of a system of concern for human life. A system in which the human being was not just a means, a tool for the well-being of another person. How much might medicine change when we become mere bodies whose value will be determined by the spark of consciousness and arbitrarily determined utility? That radical utilitarian concepts have already become part of health care systems as evidenced by cases such as the case of the legal starvation of a Polish patient in Plymouth.¹² The termination occurred even though the patient was breathing on his own. His condition was assessed as one which would not lead to death within a foreseeable time, and there was reason to believe that he was in a state of minimal consciousness that was being enhanced. Certainly, according to

11 The modern tendency that constantly produces the danger of eliminating certain groups of people en masse, and perhaps even humanity in general is described in another essay of mine: T. Rowiński, *Czy człowiek może przeżyć nowożytność. Uwagi o apologiach postsekularyzmu*, [in:] idem, *Bękarty Dantego. Szkice o zanikaniu i odradzaniu się widzialnego chrześcijaństwa*, Kraków 2015, pp. 223-244.

12 I reported on the case even before Mr. Sławomir's death in the text *Dramat w Plymouth*. See T. Rowiński, *Dramat w Plymouth*, "Do Rzeczy" 2022, no. 4.

Polish standards, the patient was eligible for further diagnosis and, in the long run, even rehabilitation.¹³ The media reported that the motivation for such action by the hospital and the court was the possibility of obtaining organs for transplantation.

Rather, the remarks expressed thus far, lead one to believe the opposite of that expressed by Tatarkiewicz. One must conclude that in the modern era it is the human propensity for evil that anticipates intellectual errors. Such a conviction is confirmed by the usual observation of the public life of societies – a life in which the instrumental use of reason, so as to seduce and dissuade the political public from the knowledge of ethically correct behaviour that is, after all, available, is a daily occurrence. However, if we refer to the slogan of progress – presumably implicitly scientific – under which numerous ideologically-driven social projects or ethical justifications for conduct are allocated, we can also see how intellectual error reinforces the persistence of social evil. This, in turn, explains why we should not deny the validity of the conviction expressed by Tatarkiewicz either. In time, it will turn out that it is not integral ethics but the liberal framework of thinking about abortion that should be considered obsolete. The pattern of liberal thinking was formed in the mentality of pre-scientific cognition, or in the early stages of the scientific age. It was simultaneously linked to the rejection of metaphysics and Christianity, which for centuries had provided a safeguard – at least intellectually – against the normalization of dehumanization.

Early liberalism, or simply modernity – beginning with Hobbes and Grotius – tried to propose such a formula for a universal social *modus vivendi*, in which people of different Christian denominations embroiled in religious wars could live side by side. Later, this group began to expand to include people representing a variety of views and superstitions and, going even further, also those who decided to turn their vices into virtues and a reason

¹³ This was the spirit in which Dr. Filip Furman, then director of the Center for Social Sciences and Bioethics at the *Ordo Iuris* Institute, spoke about the case. A similar opinion of doctors was, moreover, conveyed to the public by the patient's sister. J. Gronczakiewicz, *Dr. F. Furman o próbie uśmiercenia chorego Polaka w Wielkiej Brytanii: Sprawa dotyczy generalnego sporu o kształt naszej cywilizacji*, <https://www.radiomaryja.pl/informacje/tylko-u-nas-dr-f-furman-o-probie-usmiercenia-chorego-polaka-w-wielkiej-brytanii-sprawa-dotyczy-generalnego-sporu-o-ksztalt-naszej-cywilizacji>, accessed 19 November 2022.

for pride.¹⁴ The principle of this new thinking was aptly captured by Paweł Milcarek: ‘When, during the Thirty Years’ War, Grotius, in the pages of *On the Law of War and Peace*, mentioned the possibility of building a system of justice on the assumption “as if God did not exist”, this was still a purely pragmatic attempt, without the ambition of authentic atheism. The withdrawal of secular legislation from the lines of the post-Reformation dispute over what God has revealed was an attempt to obtain a denomination-neutral consensus in this area, which forms the necessary basis for a society to endure rather than transform itself into a “band of evildoers”. Paradoxically, the hopes that made this project possibly came from the work of medieval theologians on the theory of the natural foundations of state law. But the pragmatically motivated axiological minimalism of these attempts from under the sign of purely philosophical elaborations of the law of nature was also their greatest illusion.’¹⁵

Modernity, which over time in our cultural circle came to mean simply liberal civilization, turned out to be a nominalist utopia and a mechanism for justifying people’s acts, as long as they agree with the principle that determining what is right and wrong is a matter of human will and instrumental reason alone,¹⁶ and thus belonging, for example, to political power and essentially devoid of essence. Consequently, liberalism, which as a political practice sought to be a pragmatic social rationalism, turned out to be an ethical anachronism,¹⁷ obsolete like many 19th-century scientific and social theories. It has even become a slave to the ignorance of the scientific ideologies of its time. He also constantly imposes this ignorance on the legal solutions of modern states and forms the morality of societies according to

14 This is not the place to present the history of liberalism, but a description of its character as a relativistic dictatorship can also be found in liberal historians of political thought. Marcin Król, when he wrote about the proto-liberal project of Thomas Hobbes, concluded: ‘In a state ruled by Leviathan, it makes no sense to consider the rightness or justice of the law or its relationship to morality. The law is what the ruler decides it is, and he has the power to use force against those who refuse to obey it.’ (M. Król, *Historia myśli politycznej od Machiavellego po czasy współczesne*, Gdańsk 2001). For more on its dynamics, see T. Rowiński, *Cywilizacja przemocy. Bardzo krótkie wprowadzenie do kultury liberalnej*, “Christianitas” 2017, no. 67-68, pp. 6-31.

15 P. Milcarek, *Omijając Heroda*, <https://teologiapolityczna.pl/pawel-milcarek-omijajac-heroda>, accessed 19 November 2022.

16 The theoretical culmination of this tendency in the revolutionary *Declaration of the Rights of Man and of the Citizen* was critically and aptly described, for example, by Jean Madiran in his essay *Two Democracies*. See J. Madiran, *Dwie demokracje*, [in:] idem, *Dwie demokracje. Wybór pism*, transl. T. Glanz et al., Dębogóra 2020, pp. 67-184.

17 See T. Rowiński, *Anachroniczność liberalizmu*, <http://christianitas.org/news/anachronicznosc-liberalizmu>, accessed November 19, 2022, and idem, *Czy liberalizm jest okrutny i bezrozumny?*, <http://frondalux.pl/tomasz-rowinski-czy-liberalizm-jest-okrutny-i-bezrozumny>, accessed 19 November 2022.

these prejudices. Secondly, in turn, it formats many areas of academic discourse, which thereby focuses on finding – and successfully so – modern intellectual formulae to shield the old fallacies.

Let's remember that even Charles Darwin, seen by many as the father of modern natural science, and researchers close to him, considered the cell as a kind of plasmatic jelly.¹⁸ They had no awareness of how complex intracellular life is, which inevitably must have led to misconceptions in anthropological conclusions as well. At the same time, the materialistic and sensual cognitive scheme of this era had already managed to strip the concept of the laws of nature of the remnants of its teleological sense – still present in Grotius – and reformulate it into a modern understanding of nature in the naturalistic sense. This is one of the decisive formative moments of the era. Liberalism began to play an increasingly important role in it.

In the scientific conceptual grid, which openly rejected metaphysics, man in the ethical sense began to disappear, replaced merely by biological reality, which can be fragmented or annihilated. We will notice another paradox here – such concepts familiar from human philosophy as intentionality have been preserved in the biological sciences, where one speaks of the intentionality of processes or organ action, while they have disappeared from postmodern ethics, making humans biomachines,¹⁹ or even “monsters”, devoid of nature understood as life having a natural and supernatural purpose.

Entangled in scientific superstition, the scheme of liberal theory – based, according to the ideal, on the principle of deliberativeness – inevitably allowed for the easy ignoring of those who did not yet resemble people that were already born, or resembled them only slightly and, above all, were unable to participate in these deliberative processes. The primitivism of science provided additional justifications. This reduction of humanity to similarities and to the observable and interactive was one of the consequences of the rejection of metaphysics by the spirit of progressive scientism.

18 See T.H. Huxley, *Biogenesis and Abiogenesis*, [in:] idem, *Collected Essays*, vol. 8, *Discourses: Biological and Geological*, New York 1968, p. 256.

19 I refer here to the famous work of an 18th century materialist J.O. de la Mettrie, *Man a Machine* [in Polish: *Człowiek-maszyna*]. See *Człowiek-maszyna*, transl. S. Rudniański, <https://wolnelektury.pl/media/book/pdf/mettrie-czlowiek-maszyna.pdf>, accessed 10 November 2022.

Echoes of the old scientific superstition about micro-life are very socially comfortable today, despite the fact that the superstition itself would no longer pass any serious intellectual verification. The superstition persists in terms that are current in the academic world, such as consciousness, to which the metaphysical form – the soul – has been reduced. This anachronism persists for civilizational reasons. Scientistic empiricism and materialism, combined with the modern expansion of the legal system – as the fruit of liberal culture and the strengthening of the state – regulating human behaviour in ever finer details, have transformed the abortion issue into one of the arenas for the struggle – as it is called today – of identity politics. As in almost all social issues, what became permissible or forbidden was not what was decided by reason in its long duration recognized as an elaborate intellectual tradition, but what was decided by the struggle of communities interested in preconceived solutions. The paradox of liberal civilization is that, by advocating deliberation, it has in fact questioned the credibility of knowledge resulting from the long tradition of cognition founded on intellectual debate, and in its place has introduced – more or less literally – a war of all against all for entitlements.²⁰

In the modern era, the view of human nature in the spirit of Christian humanism, as a realized moral aptness that places the will to reach the truth above lust and takes action only according to its criteria, has been replaced by a perspective in which nature is reduced to the instinct of self-preservation. This perspective is the foundation of individualistic culture and egoistic self-realization.²¹ In turn, the culture of egoism,²² growing in strength, has become a greedy struggle for full control of consciousness over physicality in a society of strong, aesthetic, cunning, and eloquent individuals. The voluntaristic nature of modernity has become the subsoil for the spread of various dangerous social superstitions, such as abortionism.

20 See P. Grad, *Nierozstrzygalny spór o oczywiste wartości*, <https://teologiapolityczna.pl/pawel-grad-nierozstrzygalny-spor-o-oczywiste-wartosci-1>, accessed 19 November 2022.

21 M. Podnieszński, *Dlaczego Anglosasi nie lubią katolików?*, "Christianitas" 2021, no. 83-84, pp. 113-131.

22 Pope Francis wrote much about forms of selfish culture in his 2020 encyclical *Fratelli tutti*. Francis, *Encyclical Fratelli tutti*, https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html, accessed 10 November 2022.

Despite these bad tendencies that have existed in literature for centuries, it was only in the 20th century that the issue of abortion became a subject of political struggle directly. This happened together with the progress of new thinking rejecting the successive truths on which the concept of human dignity was based. They were rejected not because there were disqualifying criteria, but because there was a political will supporting the new mentality and its prejudices. The scholars of the *Christianitas* era, theologians, and philosophers, while also lacking the conclusions of the detailed sciences and even stuck to the superstitions of the ancient writers, in practice had better anthropological knowledge – including about the beginning of human life – than the naturalists of nascent scientism, thanks to metaphysical analysis and Christian revelation. However, before the 20th century, a time of deepening intellectual gloom of post-Christianity,²³ the question of abortion was often still regulated by Christian custom. It was based on a pre-modern tradition of moral research, which was given strength by the direct and vivid cultural presence of the biblical text. Scripture is clear about God's intervention in the process of 'weaving' a human being in the womb, as well as God's protective thought, anticipating human existence.²⁴

Undoubtedly, sacred justification is not sufficient, but it functioned together with the rich intellectual apparatus of metaphysics and ethics. Before modernity, and then modernity shaded by liberal influence, took over the entire culture with its influence, the Catholic Church, but also to some extent other Christian communities, constituted the mainstay of the mature moral civilization of the West. It was also still formed by early emancipation movements, such as the suffragettes opposed to abortion.²⁵ However, it turned out that those who passed on the tradition of centuries-old philosophical recognitions – sometimes in a habitual way, as folk or sacred culture does – did not have enough political strength to oppose the revolutionary social

23 The topic of post-Christianity was interestingly and originally discussed in the issue of "Christianitas" devoted to it or in the pages of the same magazine in an earlier essay by Piotr Kaznowski. See "Christianitas" 2009, no. 78; P. Kaznowski, *Christianitas a kultura postchrześcijańska*, "Christianitas" 2009, no. 43, pp. 5-13.

24 See Psalm 139. It is worth pausing for a moment at the intuition contained in the text of the psalm, which emphasizes the separateness of the child from the mother and that God is primarily the one acting here. See *Pismo Święte Starego i Nowego Testamentu. Biblia Tysiąclecia*, 5th edition, Poznań 2000.

25 Z. Urbanek, *Alice Paul: aborcja jest ostatecznym wyzwaniem kobiet*, <https://misyjne.pl/przerwa-artykul/alice-paul-aborcja-jest-ostatecznym-wyzwaniem-kobiet>, accessed 19 November 2022.

principle of the new world, whose formula we know from the writings of Thomas Hobbes: *bellum omnium contra omnes*.²⁶

Although the act of abortion was to some extent practiced in every era of Western civilization, it was not treated as a good or an entitlement, but rather as an iniquity, a sin, a sign of moral decline, an evil, an effect of unjust social structures, some kind of necessity. This happened even in antiquity, when consent to infanticide was widespread. Even then, however, the orientation of the moral tradition against the killing of unborn children and newborns was already evident. However, the more modern anti-essentialism permeated social thinking – and changed the valuation of acts hitherto considered evil, so as to make them subject to the legitimate realization of desires and even the institutionalization of entitlements – the more the evaluation of abortion began to undergo transformations. It began to be treated not as an issue subject to rational, moral, and metaphysical recognition, but as a pragmatic problem to be resolved between individuals capable of direct social and political action. This is how the issue of abortion was placed at the centre of the liberal *modus vivendi*. This happened to the exclusion of settlements concerning the ontological and ethical status of persons in the prenatal stage of life. As we can see, they were already deprived of representation at the stage of the formation of the rules of liberal civilization and became – like things – only an object of the social contract. When religion and philosophy in the classical sense became, for modernity – for political reasons – a kind of black box in which it was allegedly impossible to distinguish truth from superstition, the clarity of the concept of the person began to blur as it lost its foundations.

The relatively long duration of the intellectual formation of liberal civilization is not at all surprising. Despite the fact that there is no simple translation between biology and metaphysics and, consequently, ethics, not ignoring the achievements of science and its coherence with integral ethics would force abortion advocates to confront the empirical description of reality underlying their notion of nature and anthropology.

26 Hobbes often returns to this theme and discusses it extensively in the 13th and 14th Chapters of *Leviathan*. T. Hobbes, *Leviathan*, transl. C. Znamierowski, Warszawa 1954.

This, at least, could be said of the classical formulations of liberalism.²⁷ It would be necessary, therefore, to recognize the physical premises and introduce some form of foetal empowerment – in establishing the principles of social *modus vivendi*²⁸ – as a developmental stage in the purposeful continuity of human life.

Today, we know with certainty, that the human nature of foetal life is not dependent on social recognition. Accepting this fact would also make it more difficult to speak of the consciousness of a mature individual facing a cellular accrual in a liberal perspective. Instead, the perspective of person-to-person relations would be brought closer. Such a shift, however, would require recognizing the superiority of elements of metaphysics over the superstitions that institutionalize social violence. It would also require taking the question of the right to life of the unborn out of the realm of the constant social struggle of adult human individuals over the shape of the social contract.

However, modernity, including liberalism – constantly secularizing the Cartesian dualism of soul and body, and in its idealism – only considers as persons those with an active consciousness. The soul, which was conceived by thinkers such as Thomas Aquinas as a form of rational life, has been reduced first to a life factor, and then precisely to consciousness. This invalidated the problem of corporeality in the discussion of personal life. Here, too, we can see that behind the modern justification for abortion there is no positive philosophical project, but a relativistic mechanism of political utility that allows people to be segregated according to arbitrary rules, to grant rights and power to cruelty or selfishness. This post-Cartesian metaphysics, which constitutes superstition, and its short-sighted utilitarian effectiveness make it relatively easy for liberals not to confront reality. This is because societies have been convinced that their well-being

27 An empirical approach to reality was advocated by utilitarians such as Bentham and both of the Mills. These themes can be found in various publications. See, e.g., M. Małek, *Liberalizm etyczny J.S. Mill'a: współczesne nawiązania i kontynuacje (analiza poglądów Johna Graya i Petera Singera)*, doctoral dissertation, University of Silesia, Faculty of Social Sciences, <https://sbc.org.pl/Content/7855/doktorat2779.pdf>, accessed 10 November 2022.

28 Besides, the gradation of abortion availability even in the legislation of liberal societies indicates the non-obviousness of extremely permissive solutions within the prejudices that constitute the legal principles of these societies.

and the well-being of individuals are best realized by formulas of instrumental antithesis. Judith Shklar, one of the classic liberal authors, wrote in her *Liberalism of Fear* about cruelty as a kind of *summum malum*,²⁹ which, in her view, both liberals and Christians could agree on. Indeed, this could make sense if we agree on what a person is. After the atrocities of dehumanizing entire nations and social classes, today the dehumanizing eclipse of minds has turned against the unborn.

The operation of the modern mechanism for justifying abortion is made possible by maintaining the belief in the vague (or merely consensual) status of the foetus. This 'black box' fideism is based primarily on the persistence of social superstition about the unknowability of the origins of human life, and more broadly on the impossibility of distinguishing between 'something' and 'someone' in an absolute way.³⁰ The dualistic dogma of liberal utilitarians looks impassable – primarily politically and psychologically. Liberals consistently seem incapable of recognizing the integral nature of the union of humanity and person, form (soul) and body; instead, they propose to arbitrarily define the actuality of humanity by means of states of consciousness. In the name of shielding the lust for emancipation of the dominant action of many adult human individuals, they propose to limit the rights of others, usually agreeing to exclude from humanity those states of human life in which a person does not have the power enshrined in the nature of his mature functioning (foetal life, old age, illness, sleep, handicap).³¹ This raises the question of whether the unity of human life is so difficult to accept, or whether it is simply unacceptable for practical reasons, and its rejection is – *nomen omen* – an instinctive rebellion.

It is worthwhile to gather the variety of ideological labels that have appeared in the discussion so far, which include modernity, liberalism,

29 J. Shklar, *Liberalizm strachu*, transl. S. Stecko, "Res Publica Nowa" 2015, no. 221, pp. 45-49. It is worth recalling in this context the words of Michał Łuczewski: 'The main principle of modernity – as defined by the philosopher Odon Marquard – is "to take away the mark of evil". At first, evil is something frightening that our mind cannot grasp. Every attempt to understand evil, however, leads us to take the horror out of it. We invent different rationales, evil becomes more, and more comprehensible, until finally we begin to justify it. At the very end there is a transformation of evil into good.' (M. Łuczewski, *Nowoczesna Zagłada. Czy aborcja to najdoskonalszy produkt naszych czasów*, "Gazeta Wyborcza" 2014, no. 201, 29 August, pp. 21-22).

30 See R. Spaemann, *Osoby. O różnicy między czymś a kimś*, transl. J. Merecki, Warszawa 2001.

31 The collection of this style of thinking can be found in: P. Singer, *Etyka praktyczna*, transl. A. Sagan, Warszawa 2007.

relativism, anti-essentialism, under the common category of utilitarianism, which is the own – and dominant – ethical tradition of modern Western culture. Adam Swift, in his *Introduction to Political Philosophy*, wrote that ‘utilitarianism is a moral theory according to which the highest value is utility or happiness, and therefore we should behave in such a way in any situation as to maximize the sum of utility or happiness’.³²

As Swift adds, Jeremy Bentham, one of the fathers of utilitarian thought, spoke of the greatest happiness of the greatest number. Elsewhere, Swift recalls the criticism that utilitarianism was subjected to by John Rawls, one of the most important liberal theorists of the 20th century: ‘Rawls criticizes utilitarianism for failing to take into account seriously the size and distinctiveness of individuals. Maximizing the sum of happiness is a misguided goal, in part because there is no collective person who can benefit from that happiness. There are only many separate individuals, and it would be wrong to make some of them unhappy in order to increase the happiness of others.’³³

Yet this mechanism is how it works. Historically, utilitarianism sought, according to its own thinking, to introduce rational and empirical calculation into ethical considerations, to objectify the principles of actions that produce positive and negative effects.³⁴ This kind of rationalism about methods was a legacy of the Enlightenment. Utilitarianism followed such rationalism also at the level of defining ends and means. That is, the entire older metaphysical and ethical tradition and its extremely extensive body of detailed distinctions arising since antiquity were rejected.

In fact, such nebulous notions as the quality of life, utility, happiness, describing the goals of utilitarian ethics, had to take on a subjective and arbitrary character compared to their earlier depictions (happiness is not a new category, after all) and become just a variation of romantic

32 A. Swift, *Wprowadzenie do filozofii politycznej*, transl. A. Krzynówek-Arndt, Kraków 2010, p. 121.

33 Ibid., p. 40.

34 T. Biesaga, *Uzasadnienia norm moralnych w bioetyce*, https://www.mp.pl/etyka/podstawy_etyki_lekarskiej/16708,uzasadnienia-norm-moralnych-w-bioetyce, accessed 19 November 2022.

emotivism.³⁵ And emotivism is first and foremost an ethic of wanting and desiring, an ethic of desirability, possession and calculating the possibility of achieving various benefits, and therefore also an ethic of domination, power, and violence.

Rawls rightly notes the danger: ultimately utilitarian in their own way, were the ethics of totalitarianisms, for which man was only an object for the realization of an arbitrarily determined historical ideal of happiness. Totalitarianism is also made utilitarian when it arbitrarily, in accordance with the stirrings of social emotions and the willingness to use violence that goes with them, for the sake of social equilibrium, defines the limits of humanity, good, and evil, etc. Utilitarianism is a way of looking at reality, in which everything that exists is just a consumable tool of the process of realizing collective utility. This, however, remains rather amorphous, dependent on the fluidity of superstition.

Rawls' suggestion to pay attention to the individual, however, is not a cure. Rather, it proves to be an additional poison, proposing no objective moral standard by which both the individual and the lawmaker are to act. Rawls reduces the principles of ethics all the more to an individualistic want, to self-realization, the limit of which is not simply the freedom of another person, as J.S. Mill defined the principle of liberal ethics, but such a person who has the will and power to put limits on this self-realization (for the sake of his own self-realization, for example).

The unborn human being does not have the capacity to resist violence, including the violence of invalidating his ontological status. An important element of utilitarian thinking is the belief that a subject can only be that which has the ability to realize force and enforce its powers.³⁶ This way of thinking stems from the naturalistic treatment not only of the world of objects and animals, but also of people. Human nature is not considered in this perspective as having its own constitution independent of states of

35 A significant part of Alasdair MacIntyre's work, *After Virtue*, is devoted to criticism of emotivism, such as Chapter 2, *The Nature of Moral Disagreement Today and the Claims of Emotivism*. See A. MacIntyre, *Dziędziectwo cnoty*, transl. by A. Chmielewski, Warszawa 1996.

36 'A foetus does not have the same claim to life as a person, [...] a newborn infant does not have it either' (P. Singer, *Etyka praktyczna*, pp. 149-150).

consciousness, its own purpose and as such constituting a unity. Nature for utilitarians is a material object of operations of consciousness, without which man turns out to be only an object of his own study, one might say – something lifeless, a piece of meat with a label.³⁷

Tadeusz Biesaga said the following about this phenomenon: ‘Utilitarians undermine the value of the lives of people affected by genetic defects and other severe diseases. Representatives of this philosophy agitate for abortion, prenatal selection, or euthanasia by various means. In their calculation, legalizing these activities will increase social welfare. The utilitarian agitation, beginning with undermining the value of the life of a seriously ill and suffering person, today goes so far as to claim that it is the moral duty of the terminally ill to end their unfavourable state of existence by euthanasia. The principle of life not worth living (*lebensunwertes Leben*), which was recognized by Nazi medicine, which conducted experiments on prisoners and euthanized the sick, in the utilitarian view takes the form of the principle of quality of life, wrongful birth, or wrongful life. In all their formulations, these principles undermine the universality of the right to life. They grant such a right only to those human beings for whom the biological state of the organism guarantees certain benefits for the human species.’³⁸

In the essay *Nowoczesna Zagłada [Modern Holocaust]*, Michał Łuczewski states: ‘The vision of a perfect order requires identifying and singling out social groups that do not fit into it. The collapse of the old communities results in the drying up of sources of moral judgment other than state law. The development of science, technology and bureaucracy leads to their automation, the liberation from ethics and the expansion of instrumental criteria to other social systems. We no longer ask whether an act is good or bad, but whether it can be justified scientifically, whether it is technically feasible and consistent with the ideology of the state. At the same time,

37 This kind of disembodiment of human self-consciousness in the context of the transhumanist idea was written about in a very engaging essay *Trzecia Wojna Światowa Umysłu z Ciałem* by J. Dukaj in his collection of essays *Po piśmie* (op. cit.).

38 T. Biesaga, *Uzasadnienia norm moralnych w bioetyce*. In the quoted passage, the author refers to: T.L. Beauchamp, J.F. Childress, *Zasady etyki medycznej*, transl. W. Jacórzyski, Warszawa 1996, p. 61; K. Bindig, *Die Freigabe der Vernichtung lebensunwerten Lebens*, Leipzig 1920; J. Bogusz et al., *Wybrane zagadnienia z etyki i deontologii lekarskiej*, ed. T. Kielanowski, Warszawa 1980, p. 75; T. Biesaga, *Pojęcie osoby a jakość życia we współczesnej bioetyce*, [in:] *Ocalić cywilizację – ocalić ludzkie życie*, ed. Z. Morawiec, Kraków 2002, pp. 53–64.

technology and bureaucracy introduce greater distance between people: we fall into a routine and begin to treat each other as objects.’³⁹

Arguments from the spectrum of scientific narratives are not decisive, but are part of the social struggle, often a simple wrong carried out in the name of abstract (in the sense of arbitrary and imaginary) concepts of the good proposed by ethicists, politicians, and the public.

The conflict between utilitarianism and integral anthropology was aptly captured by contemporary scholar of social thought Justyna Melonowska, who wrote that the availability of abortion in ‘liberal optics is to secure women’s perpetration and narrowly understood self-determination’,⁴⁰ while ‘the argument against abortion is founded on the concept of the human person as a separate person [...]; on the logical argument based on consistency of the law and – simply – on the forbiddance of killing’.⁴¹ In another passage, we read that whenever integral and ‘Catholic anthropological thought [...] makes statements about the structure of the human person and action (*actus humani*), it is able to grasp the fullness of a woman’s personal powers’.⁴²

Melonowska also notes that representatives of liberal practice and thought behave as if they do not recognize women as ‘capable of bearing the consequences of their own actions’, that is, for example, ‘unwanted pregnancies as a result of voluntary intercourse’.⁴³ However, the utilitarian person wants full power, which breaks through the limitations of the real world, because the alternative is viewed as unbearable suffering.

The instrumental and violent nature of utilitarian – ethical and political – justifications for abortion is, moreover, very evident in the language of popular publications for expectant mothers, in which unborn persons are referred to precisely as children. We do not read about embryos or foetuses as yet undeveloped impersonal and potential carriers of consciousness.

39 M. Łuczewski, *Nowoczesna Zagłada...* (op. cit.).

40 J. Melonowska, *Ordo amoris, amor ordinis. Emancypacja w konserwatyzmie*, Warszawa 2018, p. 184.

41 Ibid., p. 185.

42 Ibid.

43 Ibid.

While these terms – embryos and fetuses – are medical terms naming phases of human development, in practice they are used in journalism or even academic writing for dehumanizing and discriminatory purposes. No one in parenting monthly magazines published by liberal editorial boards mentions a cluster of cells.

The margin between ‘someone’ and ‘something’ turns out to be obvious in colloquial discourse, but it is treated as purely subjective in its political formulation. A child – in the event that a parent’s personal plan for a qualitative life fails – can quickly become a hostile foetus. Utilitarians – as we noted earlier – do not simply want to unify the situation, because the superstition from the ‘black box’ of indeterminacy corresponds to the mechanism of forming a social order based on the constant transformation of the great superstition of man. As we approach the end of these introductory considerations, we see how the intellectual error that Tatarkiewicz wrote about overlaps with moral error; how the desire to know is intertwined with the desire to do evil and the simultaneous desire not to see it or to find some apparent justification for it.

Liberal and utilitarian rhetoric in its manifestations known from public discourse moves in a dynamic of extremes, which reveals its contradictions. Sometimes you can hear the argument that opposition to abortion means forcing people to be heroic – that it is some kind of anthropological hyper-optimism. At other times, opponents of killing people in the prenatal stage are accused of anthropological pessimism – if they demand a legal ban on killing, then they do not believe in man and his moral sense.⁴⁴ These contradictions are not at all surprising, because, like the syllogistically consistent and frightening concepts of utilitarianism theorists, they are designed to create mechanisms of acquiescence to superstition in people’s minds. It is certainly constituted by the belief that it is ethically possible to get rid of the problem that may arise from the appearance of an unwanted child, functioning in a family of a sick or old person, disrupting the social balance of quality of life. It is quite clear that – in principle – utilitarian thinking is not about anthropological truths, but about the mechanics of social power.

44 J. Melonowska, *Jeszcze kilka słów w kwestii spędzania płodu*, <http://christianitas.org/news/jeszcze-kilka-slow-w-kwestii-spedzania-plodu>, accessed 19 November 2022; text also published in “Christianitas” 2020, no. 79-80, pp. 75-82.

Unfortunately, this relativistic utilitarian utopia is getting closer to realization. The slogans of feminist manifestations, such as ‘My body, my choice’ and ‘My uterus, my business’, echo superstitions that could be intellectually honest before there was an understanding of who is a person. However, the days when a slave was an object, and a son was just an offshoot of his father’s body that can be cut off are over. When in February 2019, the U.S. Senate rejected a proposal to ban postnatal abortion⁴⁵ – the obligation to save children who survive abortion – another step was taken in the moral regression in which modern human culture finds itself. The regression is all the more pronounced because both philosophical and scientific perspectives clearly affirm the only non-arbitrary, and therefore non-violent, line pointing to the beginning of personal human life – its conception.

* * *

The issues outlined in the introduction will be revisited in later portions of the text, especially when discussing issues related to modernity. However, since the various traditions of moral and anthropological considerations on the issue of abortion are mentioned from the outset, it is time for the author to deliver on the promise given by the title of this dissertation and recapitulate the important points of the formation of the history of anthropological ideas.

2 Pagan antiquity

There are numerous testimonies⁴⁶ that abortion was practiced quite extensively in ancient Greek and Roman culture.⁴⁷ Socrates speaks of ‘inducing a miscarriage’ in Theaetetus,⁴⁸ the matter is also mentioned in Euripides’

45 M. Król, *USA: nie będzie zakazu zabijania noworodków*, <https://www.vaticannews.va/pl/swiat/news/2019-02/usa-ochrona-zycia-aborcja-senat.html>, accessed 19 November 2022.

46 The main source for this part of the text is T. Kołosowski’s study, *Etyczno-antropologiczne aspekty aborcji w świetle wybranych dzieł antycznej literatury Grecji i Rzymu*, “Seminare” 2013, vol. 33, pp. 251-262. See also, e.g., M. Wojciechowski, *Starożytne głosy przeciw aborcji*, “Więź” 2003, no. 12, pp. 84-90; A. Muszala, *Embrion ludzki w starożytnej refleksji teologicznej*, Kraków 2009.

47 See K.A. Wojcieszek, *Stworzony i zrodzony... Metafizyczne wyjaśnienia biologicznego konstytuowania się człowieka w poglądach św. Tomasza z Akwinu – próba aktualizacji*, Warszawa 2000, p. 18.; J.T. Noonan Jr., *An Almost Absolute Value in History*, [in:] *The Morality of Abortion. Legal and Historical Perspectives*, ed. idem, Cambridge 1970, pp. 1-60.

48 Plato, *Theaetetus*, 149d, see T. Kołosowski, op. cit., p. 251.

Andromache.⁴⁹ During the Roman Empire, Juvenal, in one of his satires, wrote about the numerous abortions performed on children that came from Emperor Domitian.⁵⁰ This story is also corroborated to some extent by Suetonius in *Vitae Caesarum* and Pliny the Younger.⁵¹ Tacitus⁵² cites the story of Nero accusing his legitimate wife Octavia of abortion in order to get rid of her. This signals that abortion, in this case of an imperial child, could be a pretext for her husband dismissing her, and therefore that she was judged negatively under certain circumstances. A woman hiding from her husband and wanting to avoid an abortion is mentioned in one of the comedies of Plautus,⁵³ and the act of paying for the removal of a foetus is mentioned by Cicero.⁵⁴

These texts do not, of course, answer the question of how the intellectual tradition of anthropology was shaped in antiquity and how abortion was evaluated by those who were more systematically engaged in moral research. The literature only puts before us the ambiguity of opinions present at the time. And indeed, there was a noticeable difference of opinion on the subject of abortion in the culture of the Greeks and Romans.

In *Eumenides*, Aeschylus, through the mouth of Apollon Delphi, talks about the tortures and torments in the abyss that murderers, swindlers, castrators, and women terminating pregnancies will suffer.⁵⁵ Thus, one may suspect that Aeschylus represented the religious traditions of ancient Greece, which opposed abortion. The situation seems to be similar with the figure of Hippocrates, whose oath contains a firm prohibition against abortion.⁵⁶ Although Hippocrates has attained extraordinary authority in the ethics of modern medicine, it is not known to what extent his position was widely accepted in the medical community of ancient Greece. It is possible that it was of particular and local, nature, related to Hippocrates' involvement in the Pythagorean movement. Its followers considered abortion unacceptable. The selective reception of Hippocrates' achievements is easy

49 Euripides, *Andromache*, 355-360, see T. Kołosowski, op. cit., p. 251.

50 Svetonius Tranquillus, *Vitae Caesarum. Domitianus*, 22, see T. Kołosowski, op. cit., p. 252.

51 Plinius Caecilius Secundus, *Epistulae*, IV, 11, 6, see T. Kołosowski, op. cit., p. 252.

52 Tacitus, *Annales*, XIV, 63, see T. Kołosowski, op. cit., p. 252.

53 Plautus, *Truculentus*, 200-201, see T. Kołosowski, op. cit., p. 252.

54 Cicero, *Oratio pro Cluentio Avito*, 12, 34, see T. Kołosowski, op. cit., p. 252.

55 Aeschylus, *Eumenides*, 185-190, see T. Kołosowski, op. cit., p. 253.

56 A. Muszala, *Embrion ludzki...*, op. cit., pp. 36-44.

to pick up. Although similarities are noted between the embryology of the Pythagoreans and that of Aristotle,⁵⁷ who was also a medic,⁵⁸ at the same time it is known that Aristotle did not oppose the killing of human beings in the foetal period of their development. His practical resolutions on the ethical dimension of human foetal life have more in common with what his immediate master, Plato, thought on the subject than with the opinions of the Pythagoreans.

2.1 Plato

Although in the *Feast*, Plato writes about the element of immortality present in the human foetus, he condoned abortion. This is not surprising since, after all, the Athenian believed in the pre-existence of souls, metempsychosis, and the strongly accented dualism of soul and body. For him, the destruction of the body did not mean the killing of only the soul, which is essential in man, but its passage to another body, perhaps one that was better formed. Hence Plato saw no obstacle to abortion or the killing of crippled children as a tool of demographic policy. This is how Plato's anthropology was once referred to by Andrzej Muszala: '[...] since the body is a burden for the soul, and the relationship with it a humiliation – then liberation from its bonds even before birth may prove salutary for the soul. There is then the possibility that it will be freed from its arduous wandering in the material world and eventually transferred to the world of ideas.'⁵⁹

Thus, one can consider Plato – at least to some extent – as the precursor of the anthropology of abortion. Although the differences in emphasis are clear, the modern logic of justifications for abortion seems, in at least some elements, surprisingly similar to Plato's. The arguments in favour of eugenic abortions today refer – albeit in different words – to 'liberation from arduous wandering in the world' for those who would be born with certain physical defects. Platonic aversion to the body can be heard, moreover – like an echo – in other contemporary trends as well. One such example

57 R. Skrzypczak, *Antykoncepcyjne zatrucie umysłu*, [in:] M. Eberstadt, *Adam i Ewa po pigułce. Paradoxy rewolucji seksualnej*, transl. M. Samborska, Kraków 2018, p. 13.

58 K.A. Wojcieszek, op. cit., p. 18.

59 A. Muszala, *Embrion ludzki...*, op. cit., p. 102.

is the increasingly widespread phenomenon of resentment or even hostility that is contemporarily displayed toward the biological determinants of sexuality. We can see manifestations of this modern Platonism both in the revulsion – which even exists on a mass scale – to have children, the widespread existence of homosexual relations – which are, after all, infertile – and in various forms of behaviour characterized by lack of self-acceptance, especially with regard to gender.

At the same time, there is a difference between Plato and modern Platonism that is necessary to articulate. The Greek philosopher believed that his views were not simply the result of social entitlement, arbitrary gestures of the will based on an emancipated consciousness, but resulted from deep philosophical cognition. He condoned abortion, even the so-called postnatal abortion, because, as already stated, he was convinced that the essence of a human being does not perish with the death of the body, but finds a new body or eventually frees itself from it. Modern advocates of abortion, however, tend to adopt an entirely materialistic view of human life and reject any metaphysical conception of the soul. They usually consider consciousness to be the reality specifically associated with humanity. Thus, from the perspective of modern utilitarian materialism, abortion only kills tissue that is still devoid of the human element. As a result, the very act of killing is virtually devoid of an ethical realm, since it fails to recognize the dimension of harm and suffering that, according to many ethicists of our time, can only be experienced by someone who is conscious.

Plato lacked the discernment that a person is a composite of soul and body⁶⁰ – in good faith he assumed the existence of the whole person in the immortal soul alone. The superstition he adopted can be considered – in contrast to the superstition of modern believers in the ethics of abortion – as a manifestation of unintentional ignorance. The consent to killing people at the prenatal stage of life expressed by modern utilitarian materialists is of a different nature. They recognize that the absence of the presence of consciousness in the body is a sufficient condition for the termination of life, which until it acquires this consciousness or – under

60 This refers to the term *commensuratio* used by St Thomas Aquinas. See K.A. Wojcieszek, op. cit., p. 75.

other circumstances – regains it, is simply not human. However, this view, especially with the assumption of the non-existence of the soul, can be interpreted as an example of arbitrary and calculating cruelty. As the taking of the only life of a person just developing and maturing into consciousness. The pragmatic position completely ignores both the potentiality and concreteness of any human fate. Thus, it could be described as an attempt to justify harm with the argument that the harmed person does not see the evil happening to him at the moment.

Plato's view, although impossible to accept from a Christian or integral humanist perspective, contains an important intuition. Where the philosopher mentions the element of immortality – he is, after all, talking about the continuity of human life from the foetal phase. If we were to remove the extreme idealism and metempsychosis from the thinking of this ancient philosopher, we would find in his writings not only forms of abortive thinking, but also some, somewhat archaic beginnings of integral anthropology. Certainly, Plato's teaching on the soul can be considered a preliminary philosophical step beyond the principle of prejudicial violence against the yet unborn. The Platonic concept of the soul opened up the possibility to look at the human being from the perspective of the totality of his destiny, and not only point-wise and pragmatically, as is done with objects.

Meanwhile, modern materialistic Platonism, ignoring the recognition regarding the nature of man, according to which the person is the union of soul and body, also ignores the continuity of the personal aspect of the human being. In the utilitarian perspective, each day a person is someone else, and when he loses consciousness or even falls asleep, the obstacles that prohibit treating him like an object disappear. Consequently, human life – for example, in its prenatal phase – may exist in isolation from the permanent human nature that is outlined from conception until natural death. This modern intellectual anthropological regression allows various states of human life to be treated as effectively excluded from humanity. It can be expected, moreover, that the next step in the increasingly strict application of the principle of utility will be the exclusion of active consciousness from the set of arguments against killing as well. This is, after all, the direction in which the practice of euthanasia is heading.

2.2 Aristotle

An indispensable part of any review of ancient anthropological perspectives must be the philosophy of Aristotle. It has already been said that the doctrine of animisation, taken from the Pythagoreans, among others, occurring at the foetal stage may have become an argument for the protection of life for Hippocrates. At the same time, however, the intellectually arbitrary – and at least partially mythological – nature of ancient accounts of the understanding of animisation became a reason for the difficulty of fully integrating ethics and anthropology in the subsequent, already Christian, centuries of Western civilization. The issue is, of course, the long persistence of the superstition about the delayed moment of entry of the soul into the foetus compared to conception. In his book on the biological constitution of man according to St Thomas, Krzysztof Wojcieszek writes that ‘as far as practical recommendations are concerned, Aristotle does not deviate from the tradition of his contemporaries’ and ‘like Plato, he takes a “moderate” position: abortion can be a method of regulating a community that is too large in number and cannot afford to maintain new members, but he allows it without reservation only in the case of a foetus not yet animised by a sensory soul’.⁶¹

The difficulties raised by Aristotle’s term of ‘animisation’, or the transition of a foetus into an organized body, can actually be seen throughout the Middle Ages and even later. Indeed, the Athenian’s position was accepted quite widely in the mature period of the Christianitas era along with many other elements of the philosopher’s teaching. Simply put, his authority was recognized on this matter as well.

Medieval discussions on delayed animisation are often the basis for modern abortion advocates to claim that the Christians of old were not at all consistent in condemning the practice of foetal abortion. In fact, one may even encounter the opinion that they actually supported it, and that this occurred during a period that we today recognize as the spiritual, intellectual, and moral pinnacle of Christian civilization. This argument, however, mainly exploits the lack of orientation of most modern audiences to the

61 K.A. Wojcieszek, *op. cit.*, p. 19.

Aristotelian principles of St Thomas Aquinas and other Christian medieval writers. What is also usually overlooked is what the results of this lengthy debate between theologians and philosophers ultimately were. This issue requires a separate discussion, but it is already worth mentioning that animisation, which would, according to Aristotle, occur only a few dozen days after conception, was never a premise for Thomas Aquinas to condone abortion. This issue is not central to his argument. On the contrary, medieval thinkers went to great lengths to limit the impact of superstition, which, in Aristotle's own philosophy, can be considered arbitrary, poorly justified, maintained by the authority that an unverifiable oral tradition of knowledge characteristic of the pre-scientific age or merely superficial observation may have had.

However, besides this secondary issue, which unfortunately has serious practical consequences, Aristotle's philosophy came noticeably close to what can be described as the anthropological consensus of Western civilization on human life in the prenatal stage. The metaphysics of Plato's disciple in the scope of our interest here can be summarized by two pairs of categories.

The first is matter and form. As Andrzej Muszala writes: 'Matter is the building block on the basis of which it is possible to shape ("form") some concrete object. For example, a block of masonry is matter from which a sculptor can extract some shape: a statue, a column, an obelisk. According to Aristotle, however, no matter is completely unformed.'⁶²

The second pair of concepts are *possibility* and act: 'Something can be something potentially (an entity in possibility), although it is not yet that currently (i.e., it is not yet an entity in act), for example [...] a child is a potential adult, that is, it is already an adult in possibility, although it is not yet that currently.'⁶³

This is important because, according to Aristotle, the form of the human body is the soul. It is the soul that makes inanimate matter become life:

62 A. Muszala, op. cit., p. 103.

63 Ibid.

‘The soul is therefore the first activity of the natural and organic body, possessing life potentially,’ as Tadeusz Kołosowski notes when referring to the philosophy of the Athenian.⁶⁴

The decisive moment, it seems, is when Aristotle rejects the possibility that the rational soul, belonging only to humans, is merely a kind of sublime matter. In other words, although ‘Aristotle saw a close connection between reason and the activity of the human brain, he did not consider the rational soul to be some emanation of the central nervous system’.⁶⁵

Aristotle writes: ‘It is difficult to suppose that an embryo is entirely without a soul, totally devoid of all life.’⁶⁶ Even without referring to the later clarifications made by Christian metaphysicians, it is apparent that Aristotle’s belief that a living being appearing at an early stage of foetal life could not yet constitute organized human life – that is, possess human form – is arbitrary. According to the philosopher, the rational soul would enter the male body about 40 days after conception and the female body only after about 90 days. However, since today, also thanks to the detailed sciences, it is known that human life has its generic, rational biological specification from the beginning, we can assume that also Aristotle, acquainted with this knowledge, would have recognized the temporal coincidence of animisation and conception. Also, as a position more relevant to the principles of his metaphysics.

Modern research on life, descending in the recognition of human form to the level of DNA and already there discovering both the ‘adult in possibility’ and the foundations of the ‘organization of the body’, prompts us to reject the superstition of delayed animisation based on the metaphysics of Aristotle himself. This adaptability of newer research, as well as the mechanism of Aristotelianism’s critical self-cleaning, is an important argument for its validity in the field of anthropological research.

64 T. Kołosowski, *op. cit.*, p. 257. See Aristotle, *On the Soul*, 412a; A. Muszala, *op. cit.*, p. 104.

65 A. Muszala, *op. cit.*, p. 104.

66 Aristotle, *On the Birth of Animals*, II, 736b, quoted in A. Muszala, *op. cit.*, p. 107.

It is worth noting another aspect that has already been mentioned. According to the Athenian, the rational soul is non-material in nature, it is not an emanation of matter, but has a divine origin. Importantly, its presence is also manifested in the organization of bodily life. This is a significant difference from Plato's idealism. In comparison to his teacher, Aristotle seems to be even a 'physiologist' identifying human life with the biology of existence. This intellectual step is significant because it marks the breaking of the dualism of the soul and the body and the turning of philosophical thought towards an integrated anthropology. In terms of practical reflection, however, the Athenian remained a man of his time. In *Politics*, he wrote that, indeed, customs do not allow the removal of any newborn, but he himself – following his teacher Plato – would dispose of cripples. About abortion itself, on the other hand, he wrote that 'one should cause a miscarriage before sentience and life have even entered it [i.e., the child – editor's note]. For what is decent here and what is not will depend on whether the foetus is sentient and alive'.⁶⁷

However, if one were to: 1) reject the poorly substantiated view of the time-shifted moment of the embryo's assumption of human form, 2) reject the seemingly common-sense elements of social utilitarianism, which seems to have been supported mainly by Plato's authority, 3) admit, that conception itself is the beginning of human life with all the potency of its nature, which could not have been prompted by ancient medical knowledge – it is possible, with some caution, to formulate a thesis according to which, in the light of Aristotle's metaphysics alone, abortion should be rejected in general as the wicked killing of human beings.

Krzysztof Wojcieszek summarized Aristotle's theory as follows: 'The later historical Stoics even represented the view that the rational soul only appears at the moment of the first breath. Of course, the ethical implications of the two theories are in diametrical opposition: for the Stoic, abortion was nothing more than the simple removing of a foetus, whereas for Aristotle it could have been considered murder.'⁶⁸

67 Aristotle, *Politica*, 14, 10, 1335, quoted in T. Kołosowski, op. cit., p. 258.

68 K.A. Wojcieszek, op. cit., p. 21.

2.3 Stoics

The Stoics exemplify a philosophical formation that united the Greek and Roman worlds, and even to some extent the Christian world, so they cannot be omitted from the historical overview of the positions of the anthropology of abortion.⁶⁹ They allowed abortion throughout pregnancy, because they believed that animisation, or the assumption of the soul – humanization – occurs from the newborn’s inhalation of air. They reasoned that the human soul, which according to them has a material structure, was aspirated, that is, introduced into the baby’s body with the first breath.

Elements of this view have survived to some extent also in the customs of our time. To this day, we count the age of a person, despite hundreds of years of Christian culture, from the moment of birth, that is, from the first breath, not from conception. Also, it is only after birth that we receive a ‘political soul’ and can become citizens, even if legal protection is already afforded to us at earlier stages of life. The Stoic criterion of animisation was undoubtedly arbitrary and even mythological from the perspective of ancient medicine. After all, in the heyday of Stoicism, observations of the phases of foetal life were already known (given, for example, by Aristotle), based on which the time of foetal formation was determined to be well before the day of birth.⁷⁰ From this perspective, and even more so from the perspective of today’s knowledge, we must consider the Stoics’ position as a superstition, a rationalization for the evil practice of abortion.

At the same time, the Stoics placed great importance on family values, the proper material conditions in which a child was to be born and grow up. It was considered wicked to remove a pregnancy for aesthetic reasons or to cover up marital infidelity. Thus, it can be considered that Stoic concepts combined some contradictory elements. Like modern liberals and utilitarians, they adopted a kind of voluntarism limited by elements of custom in the matter of abortion. After all, if the Stoics did not consider the foetus to be a living human being, the question arises as to why they

⁶⁹ I primarily reach out to the information provided by T. Kołosowski (op. cit.).

⁷⁰ K.A. Wojcieszek, op. cit., p. 21.

found justification to consider its removal condemnable under certain circumstances. It can be presumed that there was an influence of ancient religiosity here, which, at least in some of its currents, directed to see abortion practices as a moral evil. The ancient right of a father to dispose of the life of his offspring may also have been relevant here. It is possible that this right, which also functioned in Roman times, in specific cases had a decisive influence on the evaluation of the act of abortion.⁷¹ Using modern standards, we can say that abortion, according to the Stoics, could be considered evil if the child was wanted by the father but was still killed, or if the foetus was removed to hide adultery, for example.

Stoic materialism, belief in the animisation associated with the first breath, and especially the treatment of the parent's will as a criterion for recognizing the foetus as a child are interesting examples of the seemingly common-sense approach that characterizes thinking that challenges more ethically integrated approaches. We find many elements of such stoic common sense in contemporary, especially colloquial and journalistic, justifications of prenatal murder.

2.4 Seneca and Cicero

The Romans were not a nation with as developed philosophical thought as the Greeks, rather they processed some Greek ideas according to their needs. Therefore, stoicism, which was free with regard to the issue of abortion, became their national philosophy. For this reason, the Romans' approach to abortion was characterized by a kind of pragmatism. At the same time, it is possible to notice in some Roman writers a firm – at first glance paradoxical – opposition to the murder of the unborn. Criticism of this procedure is often part of broader polemics in their texts against indecent conduct or such phenomena as, for example, vain concern for beauty. From this perspective, the negative assessment of abortion was obviously in line with Stoic ethics, since this one was a side effect of demoralization and struck at the institution of the family.

71 Ibid.

Seneca wrote about his mother this way: ‘You were never ashamed of your numerous children, as if it were an unfavourable testament to your age. Never by the custom of other women who seek glory in their shapes did you hide your pregnant womb as if it were an indecent burden, nor did you thwart the hopes of children conceived in your insides.’⁷²

The phrase ‘hope of children’ used by the famous thinker is not accidental here. Seneca remains faithful to the materialist myth adhered to by the Stoics, who tied the beginning of life to the first breath. According to him, conceived life is worth preserving because an attitude of pursuit of personal virtue, concern for the family and a father’s right to determine the fate of his progeny demands it. One will not find here metaphysical considerations characteristic of Aristotle or Plato. The issue is considered at the social level, as well as in the perspective of the ‘spiritual exercises’ important to the Stoics.⁷³

However, when Cicero justifies the justness of the death penalty for a woman who committed an abortion, we find different themes in his words than in Seneca’s: ‘It was right [that she received this sentence], because she exterminated the hope of her father, the memento of his name, the mainstay of the family, the heir of the house, the future citizen of the Republic. That woman, by raping her own body, was herself the cause of her suffering.’⁷⁴

At first impulse, one might think that Cicero is referring primarily to the issue of a father’s rights over the lives of his children in the cited passage. However, something more can be seen here, namely an echo of Aristotle’s well-known doctrine of form and possibility. Moreover, Cicero uses this doctrine more consistently than the Athenian did in his practical guidelines. The Roman thinker seems simply to draw direct conclusions from his idea of continuity – let’s say anachronistically: personal continuity – between the embryo and what it will become in the future. The justification of the position accepting the immoral nature of abortion is thus carried out by Cicero in a quite different way than by Seneca.

72 Seneca, *De consolatione ad Helviam*, 16, 3, quoted in T. Kołosowski, op. cit., p. 261.

73 See P. Hadot, *Filozofia jako ćwiczenie duchowe*, transl. P. Domański, Warszawa 2003.

74 Cicero, *Oratio pro Cluento Avito*, 11, 32, quoted in T. Kołosowski, op. cit., p. 259.

It is worth adding that in the qualities of conceived life that Cicero mentions (hope of the father, heir to his name, mainstay of the family, heir to the home, future citizen of the Republic), one hears – to some extent unexpectedly – a foreshadowing of the quite contemporary anthropological search conducted by such critics of abortion as German philosopher Robert Spaemann. Only someone, Spaemann believed, who is previously a person, can be considered a participant in social life. The German author referred to such recognition of traces of humanity as ‘identifying persons’.⁷⁵ Cicero, recapitulating the characteristics of conceived life, shows that already in the womb, even before the first breath of air, this existence is incorporated – through the expectations that parents attach to it – into the life of human society. This kind of reasoning is an important element of Spaemann’s sketched distinction between ‘something’ and ‘someone’. Thus, it turns out that Cicero, through metaphysical awareness, manages to circumvent the difficulties generated by the mythological theory of the first breath.

In Roman authors, we do not find considerations about whether an entity conceived in a woman’s womb is a child or is already human. The chosen passages from Seneca’s and Cicero’s works discussed indicate that these writers were influenced by custom on the one hand, and certain metaphysical habits of thought on the other. In Cicero’s case, one can even see the consolidation of a direction that in subsequent centuries led to the formation of an integrated anthropological perspective. For the Roman politician and thinker, it was the very potentiality of conceived life, which in utilitarian ethics would sometimes be the basis for questioning the humanity of the foetus, that proved sufficient to include them in the scope of human affairs and provide them with protection.

75 See, e.g., R. Spaemann, *Osoby...*, pp. 44-51, as well as the following passage: ‘A person who encounters another person first identifies him or herself. Before any relationship is even established between them, something that Spaemann calls “identification” occurs. A person first sees the body of another person. This serves as a preliminary identification. This is because the body is not identical with the person, but is only the biological root of the person. This corporeal vehicle, however, receives a role from the person. The person gives the body a role to play through clothing, behavior, or tone of voice. At that point, we are no longer dealing with a pre-identified biological body, but a cultural stylization emerges’ (K. Kostrzewa, *Osoby i relacje interpersonalne w filozofii Roberta Spaemanna*, “Fides et Ratio” 2015, no. 3, p. 6).

3 Christian antiquity and the biblical tradition

The topic of abortion anthropology in Christian antiquity could be summarized with a brief statement: such a phenomenon simply did not exist, since from the beginning Christians considered abortion as one of the most serious sins and sought to make this position clear. This is hardly surprising, since the texts of Scripture refer to offspring and their adoption by parents in an enthusiastic manner. The ancient Jewish tradition – the tradition of the Old Testament, which Christians accepted from the beginning – can be summed up in the words of Father Professor Jacek Salij OP: ‘In the entire set of biblical books, we will not find any allusion, no trace from which we can conclude that there was any hostility in the Chosen People’s attitudes towards conceived life. On the contrary, we will find plenty of testimonies of exuberant joy at the appearance of a child, plenty of descriptions of longing for a child. Any action to prevent the birth of an already conceived child was simply beyond the imagination of the biblical people, even temptations in this sphere were unknown to them.’⁷⁶

The topic of abortion in texts arising in the ancient church environment appears in connection with the progressive confrontation of Christians with the pagan world: Roman, Greek, as well as other cultures. Krzysztof Wojcieszek notes that the reaction of Christians was specifically directed against the right of parents to dispose of the life of their offspring.⁷⁷

In the *Epistle of Barnabas*, dating to the end of the 1st century, we read unambiguous-sounding words: ‘Do not kill the foetus, nor take the life of the newborn child.’⁷⁸ This text – addressed to Christians – indicates that pagan customs and mentality were sometimes present among Christ’s followers who came from outside the Jewish culture. There was certainly a need to strengthen an ethically integral formation among an ever-widening circle of believers, so the topic of abortion was revisited.

76 J. Salij, *Dawni chrześcijaństwo wobec zabijania płodu*, [in:] idem, *Wybieramy życie*, Poznań 2002, pp. 64-70; see also M. Wojciechowski, *Biblia o dzieciach nienarodzonych*, [in:] idem, *Wiara – cywilizacja – polityka*, Rzeszów-Rybnik 2001; S. Longosz, *Ojcowie Kościoła a przerywanie ciąży*, “Vox Patrum” 1985, no. 5, pp. 231-273.

77 K.A. Wojcieszek, op. cit., p. 21.

78 *List Barnaby*, 19, 5, [in:] *Pierwsi świadkowie. Pisma Ojców Apostolskich*, ed. M. Starowieyski, transl. A. Świderkówna, Kraków 2010, p. 197.

Around 200 CE Clement of Alexandria wrote: 'One should rather not marry at all who does not wish to have offspring, than become an infant-murderer out of immoderate desire for pleasure. Therefore, in Roman legislation, if a pregnant woman is sentenced to death, provision is made for withholding punishment until after childbirth. The law even forbids the killing of animals for sacrifice during their period of gestation, in order to put a dam to the recklessness of those who harm human offspring in advance.'⁷⁹

A second-century apocryphal, *The Apocalypse of St Peter*, foretold terrible torments of hell for women guilty of abortion: 'And blood reached down their throats. And opposite to them sat many children born before their time, and they wept. And lightning flashes of fire rained down from them and beat in the eyes of these women. These were those who, outside of marriage beginning, remove their foetus.'⁸⁰

There are numerous texts by early Christian writers in which they argue more generally against the killing of children. The context of these texts indicates that they too may be about opposition to abortion. It is not possible to cite them even narrowly here, but – it is worth noting – statements directed strictly against killing the foetus are also quite numerous. They are found not only in the treatises of individual authors, but also in the official documents of the Church of the first centuries.

In the 63rd canon of the Synod of Elvira, held in 305, we read: 'If any woman, in the absence of her husband, becomes pregnant from adultery, and after committing this crime kills the foetus, we decree until the end of her life not to give her Communion, because [instead of a child] she has given birth to a crime.'⁸¹

The Synod of Ancyra of 314 somewhat relaxed the ecclesiastical sanction, but did not change the ethical principle. Canon 21 reads: 'To women who, having committed adultery, have conceived in the womb and killed the foetus, and to those who prepare venoms that put children to death, the former provision forbade the reception of Communion until the end of

79 Clement of Alexandria, *Stromata*, lib. 2, c. 93, quoted in J. Salij, op. cit., p. 66.

80 *Apokalipsa św. Piotra*, chapter 8, quoted in J. Salij, op. cit.

81 Synod of Elvira, Canon 63, quoted in J. Salij, op. cit., p. 67.

life; and so will be done in accordance with it. And in search of more lenient measures, we have decreed that they should serve a ten-year penance, on the basis of established degrees.⁸²

In 374, St Basil, writing about killing the foetus, repeated the teaching of the Synod. St Basil also emphasized that the intention of abortion is nothing less than murder. This is a noteworthy observation – one does not kill a foetus as a part of a woman's body or formless tissue, but as someone separate. The purpose of abortion – regardless of the declaration – is therefore to prevent a new human being from continuing life. 'A woman who deliberately kills a foetus is subject to the same punishment as for murder. It is not for us to inquire into whether the foetus was already formed or still formless. For in this case, justice is demanded not only by the creature to be born, but justice must also be served against the one who wrought evil against it, since, as is often the case, women die in similar procedures. Add to this the killing of the foetus, and this is yet another murder, at least in the intention of those who are serious about such an act. However, the penance imposed on these women should not be dragged out until their death, but should be inflicted on them for ten years, while their improvement should be determined not by time, but by the manner in which they manifest remorse.'⁸³

St Basil's comments on the distinction drawn from Aristotle between a 'formed foetus' and an 'unformed foetus' are of particular significance.⁸⁴ For this Doctor of the Church, this is a secondary matter that does not affect the moral evaluation of abortion – according to him, all abortions should be treated as murder.

It is noteworthy that although Aristotle's view of late animisation, appeared, for example, in the biblical Book of Exodus – in a mistranslated passage of the Septuagint, the Greek translation, where two kinds of fetuses are mentioned (21, 22) – it was consistently rejected by many Christian writers. This would include St Gregory of Nyssa or Maximus the Confessor.⁸⁵

82 Synod of Ancyra, Canon 21, quoted in J. Salij, op. cit., p. 67.

83 St Basil, *Letter 188*, quoted in J. Salij, op. cit., pp. 67-68.

84 Aristotle, *On the Birth of Animals*, 2, 3, 736b, quoted in J. Salij, op. cit., p. 68.

85 See M. Starowieyski, *Aborcja i życie nienarodzonych w starożytności chrześcijańskiej* [in:] T. Ślipko, M. Starowieyski, A. Muszala, *Aborcja. Spojrzenie filozoficzne, teologiczne, historyczne i prawne*, Kraków 2010.

They believed that animisation occurs at the moment of conception. The unequivocal position of both synods and Christian authorities means that the efforts of modern advocates of the ethics of abortion, seeking allies among ancient Christians, remain fruitless.

The teaching on abortion – or rather, on the protection of life – took shape in the Church simultaneously with the teaching on contraception. For example, St John Chrysostom believed, in accordance with how his stance is referenced by Father Professor Robert Skrzypczak, that ‘reaching for infertility measures is tantamount to pre-birth murder, and even something worse than ordinary murder, for one does not kill something already formed, but does not even allow it to be formed’.⁸⁶ St John Chrysostom was not alone in such a view with St Jerome and St Augustine holding a similar position.

3.1 St Augustine and the alleged controversy

St Augustine’s position calls for a separate discussion, not because it in itself deviates from common Christian teaching and its anthropology, but because there have been attempts to prop up contemporary pro-abortion positions under his name. Some of Augustine’s reflections are a good example of how a mistranslation of the Exodus passage in the Septuagint confounded Catholic writers since ancient times. At the same time, thanks to St Augustine, the intellectual effort made by the Church Fathers to consistently defend an integral ethic of human life can be witnessed more clearly.

The assessment of abortion under Augustine’s pen reads unequivocally: ‘Sometimes such a degree is reached by that cruelty full of lust or, in other words, cruel lust, that he even performs poisons for sterility, and if these do not effect, he kills in some way in the bowels of the conceived foetus, choosing for his children murder (*occidi*) rather than life; and when he has already lived in the womb, murder before birth.’⁸⁷

86 St John Chrysostom, *Homily 24 to the Epistle to the Romans; Homily 28 to the Gospel of St Matthew 5*, quoted in R. Skrzypczak, op. cit., p. 16.

87 Augustine of Hippo, *De nuptiis et concupiscentia*, 419/420, 1,15, “Patrologia Latina” 44, 423n, quoted in M. Starowieyski, op. cit., p. 190.

The above quote – one of many provided in his study entitled *Aborcja i życie nienarodzonych w starożytności chrześcijańskiej* [*Abortion and the Life of the Unborn in Christian Antiquity*] by Father Professor Marek Starowieyski – is an important background for understanding the following analysis of the manipulation attempted on the ancient bishop of Hippo's thought. Augustine, like other Christian writers, did not hesitate to judge abortion negatively. Rather, the discussion that took place around this topic at the end of antiquity referred to the extent of the punishment to be inflicted on the woman and her possible helpers for aborting the foetus, such as the makers of abortifacient poisons.⁸⁸

However, St Augustine is allegedly credited with a quote intended to prove that this most important Christian thinker, next to St Thomas Aquinas, did not condemn abortion. Unfortunately, this manipulation is published as true on such sites as Quotepark, for example. At issue is the Latin phrase *Non est homicida, qui abortum procurat, antequam anima corpori sit infusa*, which is given in translation: 'She who brings a miscarriage before the soul enters the body is not an infant-killer.'⁸⁹ The site refers this phrase to a source which is supposed to confirm that Augustine is the author of such words. That source is the work of Aemilius Ludwig Richter and Just Henning Boehmer's *Corpus Juris Canonici*.⁹⁰ Both the quote and the footnote seem true, but only at first glance. A quick analysis of an Internet scan of the cited text⁹¹ make it clear that we are not dealing with a quotation from Augustine's works at all. The alleged quotation from the Bishop of Hippo appears in this text as one of the references in the history of explaining the controversial opinion. Whether the sentence is an excerpt from any of the bishop's texts is easy to verify, since all volumes of the *Patrologia Latina* have been digitized and getting to any actual quotation from ancient church writers writing in Latin is no problem at all.⁹²

88 For example, Theodoret of Cyrus writes that killing an unformed foetus is not murder, but one should be punished for such an act. Theodoret of Cyr, *Quaestiones in Exodum*, (458?), 48,1, PG 80,272n, quoted in M. Starowieyski, op. cit., p. 194.

89 Quotepark.com, Aurelius Augustine of Hippo, „Nie jest dzieciobójczynią ta, która sprowadza poronienie, zanim dusza wstąpi w ciało”, <https://quotepark.com/pl/cytaty/375238-aureliusz-augustyn-z-hippony-nie-jest-dzieciobojczynia-ta-ktora-sprawadza-poro>, accessed 10 February 2023.

90 A.L. Richter, J.H. Boehmer, *Corpus Juris Canonici*, vol. 1, Lipsiae 1839, p. 974.

91 See scan of pp. 973-974 of the work cited above, <https://books.google.pl/books?id=54tYAAAAcAAJ&hl=pl&pg=PA973#v=onepage&q&f=false>, accessed 10 February 2023.

92 The case of the attribution of the quote to St Augustine and the manipulation of its content was described by J. Salij (see idem, *Dawni chrześcijanie...*). I described the thread of justifying this manipulation by referring to the 19th century edition of the Code of Canon Law in the article *Quotations from the Lining*. See T. Rowiński, *Cytaty od podszewki*, "Do Rzeczy" 2019, no. 37, <https://dorzeczy.pl/tygodnik/113516/cytaty-od-podszewki.html>, accessed 19 November 2022.

The quotation attributed to St Augustine can indeed be found in this body of texts, but in the writings of a completely different Christian author, who lived 600 years after the Bishop of Hippo, Ivo of Chartres. However, even in this case, to consider this phrase as a justification for abortion would be a complete misunderstanding. For the phrase in question refers not to a woman, but to a man who, during a fight with another man, inadvertently caused a miscarriage in the woman trying to separate them. Ivo of Chartres describes this context in detail in the eighth book of his work *Panormia*.⁹³ Moreover, there, too, the controversial sentence is not an assertion by Ivo himself, but an invocation of a legal principle that he explains in his work. As is the case in the previously cited 19th century text.

The principle embodied in the referenced quote derives from the aforementioned ineptly translated passage from Exodus (21:22), to which the translator added 'Aristotelianism', suggesting late animisation. The phrase, however, has no direct connection to abortion, but refers to bringing an unintentional miscarriage to a woman and her child. As we already know, the ancient animistic superstition found in the Septuagint sometimes made it difficult, but not impossible, for Christian writers to argue against early abortion. On the contrary, they tried to neutralize its impact – hence the long tradition of explanations with which this famous phrase from the Septuagint version of the Exodus, which also appears in the Latin version, has been saddled. Already at this stage of the analysis, it is well apparent that the manipulation directed against Augustine has no basis in fact.

The text of Ivo of Chartres is worth looking at to understand the connection between the mistranslated sentences from Exodus and the texts of St Augustine. In his explanation, Ivo follows the thoughts contained in the bishop's work *Quaestiones in Heptateuchum*.⁹⁴ Augustine probably used the text of Scripture, which was a Latin translation of the Septuagint – which in Exodus perplexingly departs from the Hebrew text and introduces the Aristotelian distinction between the formed and unformed

93 See Yves de Chartres, *Panormia*, VIII, https://ivo-of-chartres.github.io/panormia/pan_8.pdf, accessed 10 February 2023.

94 See Augustinus, *Quaestiones in Heptateuchum*, lib. 2, c. 80, https://www.augustinus.it/latino/questioni_ettateuco/index2.htm, accessed 10 February 2023.

foetus. This Aristotelian issue was recognized by Hippo in the biblical text and clarified in the referenced work. This happened precisely because the protection of human life, including in the foetal stage, has always been an absolute issue for Christians, yet the Book of Exodus seemed inconsistent in this passage.⁹⁵

In the Latin translation of this book, Augustine reads that 'if [a woman] aborted a foetus that was not yet formed, the one who has struck her will bear the punishment that the woman's husband will impose; but if it was formed, he will give soul for soul'.⁹⁶ Augustine's conclusion on the difference in punishment is as follows: in the first case, 'it is impossible to check whether the foetus already had a soul', so the guilty party is not liable as for murder (*quia nec examinatum dici potest, si adhuc animam non habebat*),⁹⁷ in the second case, the matter is not debatable. However, it has nothing to do with condoning abortion. At most, it may mean – by analogy – that for causing the death of an unformed foetus the penalty incurred will be less.

Thus, the quote, which was supposed to be St Augustine's opinion condoning abortion, was a summary of the issue that arose from a bad translation of a passage in the 21st chapter of Exodus. Both Ivo of Chartres and Augustine tried to explain it in the perspective of an integral ethics of human life.

4 Medieval Christianity

The issue outlined above was also clarified by Saint Raymond of Penyafort (d. 1275), who lived a century and a half after Ivo of Chartres. According to him, if the foetus is not yet formed, the culprit should not be legally liable for murder, but should repent in the same manner as for murder.⁹⁸

It should be remembered that the subject under consideration by Christian writers is not the consent or non-consent to abortion, but the unintentional

95 We should add that in the Vulgate, St Jerome's Latin translation of the Scriptures from the original languages, the 'Aristotelian' additions are not present.

96 Quoted, together with the translation of a passage from the Book of Exodus, in: J. Salij, op. cit., p. 69.

97 Latin quote from St Augustine and its translation after: J. Salij, op. cit.

98 See B. Honings, *L'aborto nei Decretisti e nei Decretalisti*, "Apollinaris" 1977, no. 50, pp. 246-273.

causing of a miscarriage by a third party. Father Professor Jacek Salij OP wrote about what conclusion stems from this in the abortion issue: ‘Today we no longer have any doubt that even the killing of a barely conceived embryo is the killing of a human being. How were questions about the essence of this act answered in the past? Indeed, the answer was two-fold: If there are doubts about the nature of the crime, they should be resolved differently in the sphere of law and conscience. In the legal sphere – doubts should always be resolved in favour of the accused, but in conscience one should stick to the conclusion that was more likely certain.’⁹⁹

He continues: ‘In the same vein, doubts about these painful phenomena are resolved today. If, for example, a woman took measures against the life conceived in her, but was not absolutely certain that she was pregnant – before God she is responsible for the sin against life, but she does not suffer the excommunication which all those who undoubtedly killed a human foetus or contributed to it do. In 1974, the Holy See, keeping with the resolve that St Augustine so successfully – though, after all, unknowingly – pioneered, issued the Declaration on Miscarriage, which formulated the following teaching: “Even if there were a doubt as to whether the fruit of conception is already a person, it would be an objectively grave sin in itself to take the risk of committing homicide.”’¹⁰⁰

The entire controversy – which is falsely described as if it were a question of whether abortion is wrong or right, rather than the measure of punishment which should be imposed on someone who has caused an unintentional miscarriage through violence – is unfortunately based on a misreading of an old Latin code or, more likely, a bad faith approach. The actual source of the myth accusing St Augustine of abortionist views is not found through the study of ancient Christian writings, but the column *Piekło Kobiet [Women’s Hell]*, by Tadeusz Boy-Żeleński, an author who remains popular in circles of political radicalism.¹⁰¹

99 J. Salij, op. cit., p. 70.

100 Ibid.

101 T. Boy-Żeleński, *Piekło kobiet*, <https://wolnelektury.pl/katalog/lektura/pieklo-kobiet.html>, accessed 19 November 2022.

The lenient punishment on the issue given by Saint Raymond of Penyafort was approved by Pope Gregory IX in 1234. This fact is also sometimes used as an argument for the opinion that Christian teaching did not remain consistent on the issue of the protection of life.¹⁰² Here, too, however, it is passed over in silence that St Raymond did not consider whether abortion could be considered a righteous act, but what principle of punishment should be adopted. Manipulating the position of Christian Saints and writers has a specific purpose. It makes it possible to formulate a completely unauthorized conclusion, according to which, since the Church changed its teaching on the evaluation of abortion itself, Catholics today do not have to adhere to a consistent pro-life position. This is because, as is suggested, the Church's position is arbitrary and only serves to preserve religious power over women. The argument fails to explain, however, what political advantage the Church would have in maintaining a position so widely attacked today.

From today's perspective, it can be said that the theory of animisation maintained through the authority of Aristotle introduced confusion into the clear Christian view, but not on the question of the permissibility of abortion, a practice that was invariably treated as something extremely wicked, but in terms of the legal qualification of the act and the criminal consequences one should face for killing a child at certain stages of its foetal life.

The Catholic dispute over animisation, which is formally the moment 'identical to the equipping of a human being with a soul',¹⁰³ and not the beginning of life, was waged among the eminent authors of the era. On the one side stood, for example, Saint Basil, Saint Gregory of Nyssa or Maximus the Confessor, and on the other, many medieval scholars, such as Saint Anselm, William of Champeaux, Hugo of Saint Victor, William of Conches, Peter Lombard, Saint Albert the Great or Saint Bonaventure.¹⁰⁴ The discussion of the criminality of abortion still recurs in the debate by Catholic authors, but it concerns, as it did centuries ago, the question of the responsibility of the woman and others involved in this action, rather than the moral evaluation

102 R. Skrzypczak, *op. cit.*, p. 13.

103 *Ibid.*, pp. 13-14.

104 *Ibid.*, p. 14.

of abortion itself and its permissibility. Polish Catholic bishops are against punishing women for abortion,¹⁰⁵ while some lawyers believe that if there is a prohibition, there should also be a criminal sanction.¹⁰⁶

To understand as fully as possible the origins of the medieval problem with the identification of prenatal persons, it is necessary to go back to the 12th century. On the one hand, it is then possible to note the placement in the liturgical calendar of the feasts of the conception of Jesus and the conception of Mary nine months before the birth of each of these persons. This is the most important expression of the Christian conviction of the humanity of the foetus from conception and the unity of human life. The liturgy, as the place-event in which the mystery of faith is made present, the place-event central to the proclamation of the Word of God, the place-event that is the source and summit of Christian life, can in no way be neglected in its theological and culture-creating role.

On the other hand, however, when it comes to the formation of canon law, carried out, among other things, under the influence of the Code of Gratian, in which the distinction between a formed foetus, possessing an immortal soul, and an unformed foetus, just preparing for the act of receiving a soul, was considered binding, the matter turns out to be complex.¹⁰⁷ Abortion was undoubtedly considered a mortal sin in the Middle Ages, but in the early stages of pregnancy it was not qualified as murder. Such a position was held, for example, by Peter Lombard, the main theological didactic authority of the Christianitas era. Consequently, there were many anthropological approaches explaining the act of the union of soul and body, which emphasized the need for the body to be properly formed in order to become a dwelling for the soul. However, if one consistently follows Aristotle's metaphysics and assumes that the soul is the form of the body, the question arises whether the body could have formed in a human way without the presence of the soul from the very beginning, that is, from conception. Aristotle assumed that matter does not occur without form,

105 K. Sobczak, *Biskupi przeciwko karaniu kobiet za aborcję*, <https://www.prawo.pl/prawnicy-sady/biskupi-przeciwko-karaniu-kobiet-za-aborcje,67777.html>, accessed 15 November 2022.

106 M. Płociński, *Szef Ordo Iuris: Karanie kobiet za aborcję to światowy standard*, <https://www.rp.pl/plus-minus/art10846381-szef-ordo-iuris-karanie-kobiet-za-aborcje-to-swiatowy-standard>, accessed 15 November 2022.

107 K.A. Wojcieszek, op. cit., p. 23.

and therefore the form of the foetus from the beginning must also be human: rational, as well as personal, if the foetus is to develop into a mature individual form. Secondary concepts of a quasi-mythological nature, which were supported by the authority of the great thinkers of the ancient era, undoubtedly made it difficult for intellectuals of the Middle Ages to form a completely correct anthropological theory of the human foetus. It is all the more remarkable that these difficulties – based on evident superstition – are readily invoked by modern voices attempting to undermine the stability of the Christian pro-life position. The modern tendency to accept superstition as an argument for abortion was already mentioned in the opening chapter of this dissertation.

4.1 St Thomas Aquinas

The concept of delayed animisation, that is, the postponed fusion of the rational soul with the organism of the child developing in the womb, was also embraced by St Thomas. In spite of the previous explanations, this topic requires a separate discussion, because modern abortion advocates are taking advantage of widespread ignorance about anthropological disputes in the past to use the figure of St Thomas Aquinas, as in the case of St Augustine, to prove that the Church has not always opposed abortion, understood as the killing of persons in the prenatal period of life.¹⁰⁸

St Thomas mentions the subject of foetal death only three times in all his works.¹⁰⁹ He mentions the issue once in the case of a discussion of the now-familiar problematic passage from the Book of Exodus, which was commented on by St Augustine, Ivo of Chartres, and St Raymond, and on the basis of which Tadeusz Boy-Żeleński formed his false opinion. This is a theme that constantly recurs in the writings of Christian writers and

108 See I. Rakowski-Kłós, *Czy płód ma duszę? Krótka historia Kościoła i aborcji*, <https://wyborcza.pl/alehistoria/7,121681,25869521,czy-plod-ma-dusze-krotka-historia-kosciola-i-aborcji.html>, accessed 15 November 2022.

109 In discussing the thought of St Thomas Aquinas, I used the following text: P. Grad, *Czy św. Tomasz z Akwinu potępiał aborcję?*, "Christianitas" 2019, no. 78, pp. 146-150. An important study of the thought of St Thomas Aquinas for the topic under discussion is Krzysztof Wojcieszek's book *Stworzony i zrodzony...* (op. cit.); a recommendable position on the issue of human corporeality in Thomas Aquinas is Paweł Milcarek's book *Teoria ciała ludzkiego w pismach św. Tomasza z Akwinu* (Warszawa 1994). Paweł Grad cites as his source J. Haldane, P. Lee, *Aquinas on Human Ensoulment, Abortion and the Value of Life*, "Philosophy" 2003, vol. 78, no. 304, pp. 255-278, which I also used.

thinkers precisely because of the distorting and contrary to Christian tradition translation of the Exodus 21:22 passage as found in the Septuagint and its Latin translations and repetitions present in legal texts. Thomas sums up the matter laconically, clearly not relating it *de facto* to the abortion action: ‘The mere striking of a pregnant mother is something unlawful. And therefore, if the consequence is the death of the mother or the animised foetus (*puerperii animati*), the one who strikes will not escape the charge of murder.’¹¹⁰

The second and third references to the situation of foetal death are analogous and are found in the *Theological Summa*¹¹¹ and in Peter Lombard’s Commentary on the Sentences.¹¹² They concern whether, in a situation where the life of the foetus is at risk, the mother’s womb can be opened in order to baptize the child and save it from the fires of hell. St Thomas replies that the risk of the mother’s death during such an operation is so great that it is better not to undertake it, lest one become a murderer of the mother and risk damnation himself for such a grave sin. Aquinas cites St Paul, who wrote that one should not do evil to achieve good.¹¹³ Regardless of how we perceive the consideration of the question formulated in such a way today, it is undoubtedly clear from the accompanying argumentation that, according to Thomas, the death of a foetus is the death of a human being, and in the case of external interference – leading to this death – we are dealing with murder. Thus, by analogy, we can say without hesitation that Thomas Aquinas was a firm opponent of abortion, and of punishing it as if it were murder.

However, Thomas’ views on prenatal life must also be considered separately, for only by referring to them can one understand the charge that this most important Catholic writer would nevertheless express insufficient opposition to abortion. At issue, of course, is the question of late animisation, central in classical embryology. The problems associated with this theory have been approximated in previous parts of the text – and they did

110 S. Th. IIa-IIae, q. 64 a. 8 ad 2, quoted in P. Grad, *Czy św. Tomasz...*, p. 147.

111 IIIa, q. 68, a. 11, quoted in P. Grad, *Czy św. Tomasz...*, p. 147.

112 Lib. IV, dist. 6, q. 1, ad. 4, quoted in P. Grad, *Czy św. Tomasz...*, p. 147.

113 Romans 3:8.

not escape Aquinas either. However, even the fact that Thomas adopted Aristotle's view is not enough to consider him as condoning abortion at an early stage of foetal development. Besides, this is the only situation that can be considered in the case of this author – he considered bringing about the death of a child at a more advanced stage of pregnancy to be murder.

To attribute to Thomas a tendency to play down the wickedness of abortion, one would have to accept another premise, according to which abortion is unacceptable only if the foetus is already a human being. That is, one would have to recognize that abortion can only be condemned as murder. To be more precise, one would have to consider that Thomas believed that the natural possibility of the foetus developing into more mature forms of human individual life was an insufficient premise for its protection.

However, such an assumption would contain clear elements of arbitrariness. Dr. Paul Grad, who analysed the problem, wrote: 'For example, Elisabeth Anscombe, a twentieth-century philosopher and reader of St Thomas, shared the conviction that the human soul appears only at a certain stage of foetal development, and yet she advocated a total ban on abortion. It is true, however, that condemning abortion without recognizing the existence of a human being from the moment of conception is a much weaker position. In any case, the conclusion that St Thomas' views on prenatal life implies a position permitting abortion is highly questionable.'¹¹⁴

This stems, as Grad notes, from the metaphysical premises of Thomas' theory: 'The metaphysical premise says that in the formation of any thing, the matter of which it is composed must be suitable with respect to the form it is to take. To put it another way: not every matter can be made into every thing. This premise, in its generality, seems correct, and no strong reason can be seen for it to be more true in the time of St Thomas than it is today.'¹¹⁵

Therefore, it can be considered that the goal of forming an unformed foetus into its formed form must exist in embryo, from the very beginning of its

¹¹⁴ P. Grad, *Czy św. Tomasz...*, p. 148.

¹¹⁵ *Ibid.*

existence. Moreover, this goal is of a concrete nature, related to – existentially speaking – the further fate of the foetus as a person.

Grad points out: ‘There are even strong reasons to believe that St Thomas’ views would inevitably have led him to [completely condemn and ban abortion] had he had better knowledge of foetal development.’¹¹⁶ He also writes: ‘The readiness of matter to receive a rational soul was not understood by St Thomas to mean that the organism must have fully developed all the organs proper to a mature human being. In particular, Aquinas could not think that if a species trait of man is the use of reason, it should be possible to observe behaviour indicative of the reasonableness of the foetus around the 40th or 90th day of its development. At this stage the organs are already present, as even St Thomas notes, but as embryos (*primordia*) and are not fully formed. The adequacy between form and matter in this case – even according to St Thomas – therefore does not consist in the fact that “to the eye” matter has a form that looks like a mature human organism. It is enough that it has the seeds of vital functions, which will later be animised by the rational soul.’¹¹⁷

Thanks to the development of embryology and microbiology, it is now known that the seeds of function go back to the very origins of the organism’s existence in a chronological sense, but also in the case of the biological principle that is the DNA code. The metaphysical principle of the adequacy of matter and form retains its validity regardless of the changes that have taken place in the detailed sciences. Rather, new data lead us to believe that there is no moment of discontinuity in human development that we could call the beginning of life, other than its actual beginning at the moment when the gametes of the mother and father unite. And since this is the case, the seductive subject of medieval thinkers’ consideration of the potential humanity of the ‘inanimate foetus’ disappears. It is modern utilitarian anthropologies and ethics that will return to a view in which the presence of the soul, reduced to consciousness or brain activity, will begin to become a condition for recognizing the body as personal, animate,

¹¹⁶ Ibid.

¹¹⁷ Ibid., p. 149.

rational. The essence of humanity will again begin to be defined by arbitrarily selected sets of accidentalities.

5 Crisis of Christian civilization and modernity

Although the subject of this dissertation is not Church history, but the anthropological aspects of abortion in the history of Western civilization, it is worth noting that the modern integration of Catholic teaching on human life during the foetal period occurred in the 16th century. The reason the Magisterium of the Catholic Church spoke out then was the spread of abortion practices. The Rev. Wojciech Góralski summarized the issue as follows: 'Pope Sixtus V, in his apostolic constitution *Effraenatam* of 29 October 1588, reminds us of the punishment of excommunication for the aforementioned crime [of abortion]. He also points out that the same criminal sanctions should be applied to abortion as are provided for murder. Thus, it establishes the criminal sanction in the new wording: For both offenses there is excommunication *latae sententiae*, reserved personally to the Pope, so that no one else, even in the Jubilee Year, can grant absolution from it.'¹¹⁸

Since the time of Thomas Aquinas, there has been a painstaking process of detailed research into the biological and philosophical origins of human life. New, often erroneous conclusions were emerging from physiological observations, followed by various anthropological theories, but canon law persisted with its old, problematic distinctions. According to Krzysztof Wojcieszek, an important moment that allowed the ancient Catholic anthropology to firmly establish itself in the view that animation takes place close to conception was the research of Thomas Feyens of Louvain or, on Thomistic grounds, Paolo Zacchia dating back to the turn of the 17th and 18th centuries.¹¹⁹ The latter researcher argued that, on the grounds of Thomas' own thought, one must adopt a position that rejects Aristotle's views on animation.

118 W. Góralski, *Z problematyki teologiczno-prawnej ochrony życia nienarodzonych*, "Studia Płockie" 1977, no. 5, p. 304.

119 P. Zacchia, *Quaestiones medico-legales*, Lyons 1701, quoted in K.A. Wojcieszek, op. cit., p. 24.

Even more important than the vote of Sixtus V was the ruling of Pope Pius IX, who in his constitution *Apostolicae Sedis moderationi* of October 12, 1869, simply rejected the distinction between an animate and inanimate foetus.¹²⁰ This event is usually associated with the Catholic Church's announcement 11 years earlier of the dogma of the Immaculate Conception of the Blessed Virgin Mary. Also in the Middle Ages, some authors believing in late animisation made an exception for Mary, claiming that the Mother of Christ must have received an immediate union of soul and body. It was also clear that late animisation did not apply to Christ. In the 19th century, the issue was finally settled in favour of the unborn – also thanks to the successive overcoming of ancient naturalism.

Unfortunately, this development and clarification of Catholic teaching took place in parallel with the crisis of ethical thinking in civilization, which began to form together with the disintegration of medieval *Christianitas*. It is sometimes reported,¹²¹ that the first modern voice that started a new trend, ultimately leading to the relativization of the evil of abortion, was one of the Marquis de Sade's libertine pornographic books entitled *La philosophie dans le boudoir* of 1795, in which this author justified the necessity of destroying fetuses for social reasons and for population control. The postulate for abortion, moreover, was also consistent with the author's extreme hedonism. However, although de Sade was a radical, extreme writer, his philosophy was not entirely original. Rather, it was the culmination of a specific libertine tradition that had existed since at least the beginning of the 17th century,¹²² which was one of the fruits of the more fundamental transformations of European culture in the post-classical era. Therefore, in order to understand the profound contemporary problems of personal identification, it is necessary to look not so much at the discourse on abortion itself, but rather at the transformations in mentality taking place in the new era, the symptoms of which had already appeared at the twilight of the Middle Ages.

120 R. Skrzypczak, op. cit. p. 16.

121 K.A. Wojcieszek, op. cit. p. 24; also M. Czachorowski, *Aborcja*, [in:] *Powszechna Encyklopedia Filozofii*, Polish Society of Thomas Aquinas, <http://www.ptta.pl/pef/pdf/a/aborcja.pdf>, accessed 18 October 2022.

122 On its origins in the first half of the 17th century, see P. Milcarek, *Testament pięknych umysłów*, "Christianitas" 2019, no. 78, pp. 68-72.

5.1 Legacy of voluntarism

Leaving aside the erosion of religious unity that took place in Europe at the beginning of the 16th century, it should be said that the disintegration of *Christianitas* took place as a result of the existence of two mental currents that were born out of the mature form of Christian civilization. These are nominalism and voluntarism. They became the source of the modern scepticism that permeates everything. Benedict XVI wrote in his Regensburg Lecture: 'In contrast to the so-called intellectualism of Augustine and Thomas, voluntarism emerged with Duns Scotus, which eventually led to the claim that we can only know God's *voluntas ordinata*. Above it is the realm of God's freedom, by virtue of which He could do everything contrary to what He has actually done.'¹²³

And indeed, voluntarism relativized natural law, which was reduced to a divine decree, allowing it to be undermined as an objective norm. The rationalist, Christian account of natural law given by St Thomas indicated that this law is not a mere arbitrariness of God's will, but a universal reality given by the Creator for the sake of the objective good of this law. This is how this issue was referred to by the Thomist, Professor Artur Andrzejuk: 'The undoubted value of St Thomas' account of natural law is that it is built into the philosophical vision of all reality that he proclaims, thanks to which natural law appears as a necessary element of this vision, logically connected with the rest of its segments.'¹²⁴

These other segments are as follows: 'First and foremost, realism, i.e., the belief in the objective existence of individual entities (ontological realism) and the possibility of their cognitive apprehension (theoretical-cognitive realism), moreover, entity realism, i.e., the thesis of the existence of multiple individual entities linked by various relations, or, finally, the principle, pointing to real causes of real effects (the so-called essence system of causes)'.¹²⁵

123 Benedict XVI, *Wykład w Ratyzbonie [Regensburg Lecture]*, transl. WL, "Christianitas" 2006, no. 29-30, p. 33.

124 A. Andrzejuk, *Natural law as seen by St Thomas Aquinas*, "The Legal Culture" 2019, vol. 2, no. 1, p. 13, <https://doi.org/10.37873/legal.2019.2.1.53>.

125 Ibid.

It was this view of reality that was met with a voluntarist response, in which God's will stood firmly above reason, and all laws ultimately had the character of an omnipotent divine decision.

This kind of anti-intellectualism led voluntarists to the extreme position that natural law – since God's will is radically above reason – can only be known and deduced from Revelation, and not through the natural light of reason. Such a conclusion, in turn, provoked a reaction from early modern thinkers, giving them an argument that allowed them to adopt agnostic positions that severed the links between natural law, as something fixed, and Christian faith, which began to be treated – not explicitly at first – as an irrational experience along with the whole reality of religion.¹²⁶ After all, if religious law depends only on the will of a capricious God, the task of philosophers is to find the immutable laws needed by all people, and to stop dealing with what can – at least theoretically – change at any moment. It is in this formula that the presence of religion – in its indistinguishable multiplicity – will be perpetuated in modernity.

Grotius, already cited above, argued first of all for the perfect logicity of natural law, which was quite clearly intended to separate it from the chaos of religious doctrines of the time of the burgeoning Reformation and the resulting conflicts. In Grotius' thought, the very understanding of what natural law is shifted from the area in which it represents a kind of law of reality established by God, but at the same time recognizable by human reason and objectively good, to the area of autonomy of human reason, which, using labels and syllogisms, actually produces it. Grotius exploits generative, cognitive empiricism and fragments of older theological and philosophical traditions to reach his conclusions. This is what the nominalist shift in the understanding of natural law is all about – thinkers move away from cognition of entities, their natural purposes, their relation to the labelling of objects and giving them logical or simply mental relationships. Philosophizing becomes a search for the best possible arrangement of the world of things and their labels, without even trying to understand their

126 Ibid. See also A. MacIntyre, *Bóg, filozofia, uniwersytety. Wybrane zagadnienia z historii katolickiej tradycji filozoficznej*, transl. A. Łagodźka, Warszawa 2013, chapters 13-15; M. Borkowska, *Antyintelektualizm*, [in:] eadem, *Oślica Balaama. Apel do duchownych panów*, Kraków 2018, pp. 49-56.

teleologically conceived nature.¹²⁷ This is a watershed moment – the break with realist philosophizing results in the fact that the name of natural law begins to be called not the recognition of universal principles contained in the purposiveness of entities, but, treated by labels, the provisions of the laws of nations and their customs, which thinkers try to quasi-logically improve, creating detailed concepts of abstract laws covering every detail of human life.¹²⁸ Natural laws, good laws, become logically ordered laws.

In the modern period, the understanding of the concept of nature, including human nature, is transformed, as already indicated. Consideration of what it is ceases to be a search for a universal knowledge of who man is and what his destiny is. It becomes a description of the mechanics of how human society and the individuals within it operate, as if they were merely anthills requiring external regulation. Humans have gone from being rational entities, each with their own integral specific nature, requiring adequate treatment, to becoming, in the new view, objects of emerging social technology. The relativization, along with Christianity, of the doctrine of original sin caused both good and wicked actions to be taken as equally natural. One and the other are beginning to be treated as the building blocks of social stability to create the most perfect law possible.

Spinoza wrote at the time about people in an almost naturalistic style: if they are unenlightened, objects associated with pleasure become objects of desire for them, and since people are usually unenlightened, they need a state that will limit their unlimited pursuit of power that gives pleasure and is treated simply as a good.¹²⁹ We should add: since the state is also mostly formed by unenlightened people, so when they organize themselves into a political entity, they seek opportunities to increase the scope of their power and pleasure. For example, by restricting the right to life of those human groups that can be removed with relative impunity if they are deemed unhelpful. This pessimism seen, for example, in Spinoza, close to the Protestant view of man's definitive demise, went in the direction

127 See M. Podniesiński, op. cit., pp. 115-123.

128 These processes were described, for example, by Bogdan Szlachta in his dissertation. B. Szlachta, *Nowożytny przełom w pojmowaniu prawa naturalnego*, [in:] idem, *Wokół katolickiej myśli politycznej*, Kraków 2008, pp. 31-66.

129 See A. MacIntyre, *Krótką historia etyki. Filozofia moralności od czasów Homera do XX wieku*, transl. A. Chmielewski, Warszawa 2000, p. 192.

of the belief that the only thing that can be done with human beings is to treat them as living objects, whose propensity for evil must be subject to regulation from power to counteract the breakdown of society.

However, determining what evil is, along with the erosion of the Christian foundation, ceased to be a philosophical question, becoming just one of the pragmatic functions of how to organize life to ensure the minimization of conflict situations. Consequently, in modern social thought, it began to be indifferent whether people live in superstition or in truth. Nominalism, combined with voluntarism, insufficiently takes into account the fact that the ability to distinguish between social superstition and truth, and whether or not to attempt to order people's lives according to these criteria, has an impact on whether people lead good or bad lives, and whether societies are based on justice or injustice. Ideological systems that were built on the belief that power and justice consist in the stabilizing management of 'living things', without recognizing the dignity of individuals and natural communities that realists knew, have always led to tragedy. The civilization of abortion is no exception.

The question arises, however, why modern thinkers such as Hobbes and Grotius did not reject the concept of natural law in general, as is the case today. Probably for two reasons: it was in their time the predominant tradition of thinking about the nature of man and society, and while they often rejected Christian authority, they readily accepted the authority – understood in their own way – of classical philosophy. What's more, it is possible that they actually considered the concept of natural law adequate, and even if not, they simply recognized it as useful. This is the position we see, for example, in Hobbes, according to whom the entire political order is maintained by the will of Leviathan, wielded through the fear of death, and the social contract securing its signatories. Natural law, religion and customs are, in his conception, content to fill the minds and practice of social life. Their utility lies in the fact that they divert humanity's gaze from the cold and frightening reality of power, and a sense of constant danger. Constructs such as law or secular power-controlled religion serve to alleviate conflicts when establishing the conditions of peace between individuals, as well as to alleviate the hardships that accompany daily existence.

An important moment of departure from natural law – that Professor Bogdan Szlachta, for example, wrote about – as a path leading man to the fulfilment of his nature and his proper purpose is repeated here.¹³⁰ Instead, it becomes an extended description of the operation of power and the mechanism of the entitlement to be protected by Leviathan from death. Over time, this protective entitlement, as part of the provision of supposedly convenient living conditions, will begin to expand to the point of recognizing any identity that does not negate the pragmatic-utilitarian modern political order.

Modern societies have just reached the point where modern natural laws have already completely freed themselves from the remnants of the classical conception of these laws, from the primacy of logos contained therein. There has also been a liberation of law from Christian truths, and the myth introduced into circulation by Hobbes, according to which society is created by virtue of a contract that restrains the struggle of all against all, has taken effect instead. Today, therefore, it is law that is the main area of struggle within identity politics, because it is subjected to logical rules ‘extended description of the action of power’ that has replaced the power that wants to respect the natural order that is useful to humans. Modernity has taught people that violence exercised as part of a constant struggle for recognition is a ‘natural’ human condition, while the law – only and up to a certain degree – this violence can sublimate, not deciding the rationale, but only the framework of constant conflict. The natural order, meanwhile, is not – of course – a ready-made political system. Instead, it is a guarantee of the possibility of finding boundary principles of justice, which modernity methodically violates, if only when it adopts arbitrary, subjective criteria for identifying the identity of individuals.

The object-regulatory treatment of human beings must consequently have led to a situation in which the determination of what humanity and human dignity is will depend solely on the will of society or the dominant agents of power within it. The problem stems from the fact that the Hobbesian ‘state of nature’ has nothing natural about it, but is a myth filling the vacuum left by Christian and classical understandings of reality that remain in

130 B. Szlachta, *op. cit.*, p. 42.

close relation to what is truly natural. This myth is not at all a story about the genesis of societies, but is a generator of the modern construction of political communities. Thus, the Hobbesian myth is not a story that approximates an understanding of the world, but a narrative of man's power and will dominating over reason and nature. Consequently, the relations it produces turn out to be subordinated to causality, placing the political above the real and requiring prudence.

The Hobbesian story also inevitably shapes ethical reflection, or human self-understanding. Where power has the last word on man, for example, the body can be separated from consciousness, and humanity from biological existence. The myth of political modernity is a mobilization for a constant struggle against the teleology of human nature, against which a false fear is instilled, because it implies an acknowledgement of the existence of limits to human self-determination. As one of my interlocutors in a social media noted: 'As soon as the SS men escaped, human communities began to form in the camp [Auschwitz – author's note] and society began to be reborn.'¹³¹ Societies are reborn without contracts and the power of fear. The camps themselves, on the other hand, are one drastic example of the mechanics of radical modernity, for which human beings are obstacles to the establishment of some detached but syllogistically consistent natural law, providing a kind of *modus vivendi*, but not providing a minimum of justice. Another example is the acquiescence of many societies to mass abortions, and another is the belief that natural communities, such as the family and religion, are the main sources of social evil and their tasks will be better fulfilled by the state.¹³²

5.2 Legacy of radical doubt

It is necessary to take another look at the issue of the crisis of the modern era allowing us to understand how this empty space in culture filled first by

¹³¹ Opinion of Michał Zabdyr-Jamroz expressed in a discussion after the commemoration of the 75th anniversary of the liberation of Auschwitz, https://www.facebook.com/karol.klecza/posts/10215800327657014?comment_id=10215800920391832, accessed 19 November 2022.

¹³² An example of such socially harmful thinking is the so-called Istanbul Convention, also ratified by Poland: The Council of Europe Convention on preventing and combating violence against women and domestic violence, drawn up in Istanbul on 11 May 2011 (Journal of Laws of the Republic of Poland [hereinafter: Dz.U.] 2015, item 961).

the proto-myth of Hobbes and then by a whole series of ideological narratives was created. Consideration of this issue should also lead us to the position of the Marquis de Sade and Libertarian thought, which has been adopted by mainstream culture today.

As a starting point, let us take a voice coming from outside university circles as a Catholic reaction to the late scholastic disputes and social unrest of the twilight of the Middle Ages. This refers to the philosophical scepticism of Father Pierre Charron, who argued: 'The only matters about which we can be certain are those about which truths have been revealed by God, and that only faith in the authoritative interpretation of this revelation by the Catholic Church allows a fully trustworthy account of these truths.'¹³³

Father Charron, a friend of Michel de Montaigne, used the method of old scepticism, renewed by him, which consisted in putting forward an argument against each side of an argument in order to create the impression that there is no basis for an adequate judgment. By taking this route, Charron sought to demonstrate that only the faith contained in the Church's tradition is of a certain nature. In practice, this position was a kind of fideism, undermining the importance of reason itself, but also separating matters of faith from matters of this world, which in practice meant leaving them to those who eagerly and gladly accepted such capitulation to Catholicism as a whole. After all, both in theology, philosophy, and ethics, but also in the detailed sciences – here methodologists of science might protest – it is precisely about finding the truth about the object of inquiry, not about undermining the meaningfulness of any inquiry.

While Charron's position would certainly be worthy of a wider analysis, it should be stated here that, although his scepticism was quickly rejected by Catholic thought, historically he fulfilled the role of a kind of annihilator of the universalism and relevance of scholastic thought at the beginning of the modern era. We can judge this because the gaining wide influence in response to Charron's opinions was Descartes' thought, which attempted to transcend them.

133 A. MacIntyre, *Bóg, filozofia, uniwersytety...*, p. 157.

After Descartes' response to Montagne's and Charron's scepticism, both the question of God and laws shifted from the study of man's prejudiced reality and the purposiveness recognized in it to the study of the ideas produced by the mind. 'There is, therefore, a certain "inner" world in which the psyche dwells, which is in fact identical with it.'¹³⁴ God was needed by Descartes as a guarantee of the truthfulness of everything that belongs to the external world. 'If not for the idea of God, truth would simply refer to the nature of a set of non-objective psychological principles. Philosophy would then cease to be "the first philosophy" and become simply "psychology".'¹³⁵ It was due to the French thinker, who wanted to defend both God and philosophy, that God became for subsequent generations of thinkers only an idea of the mind,¹³⁶ and the source of reason – reason itself, not reality. This, in turn, began to be seen as a state of chaos of objects put together only by the power of the human psyche and culture, such as laws. It is possible to see a connection at this point between the purely theoretical nature of Descartes' philosophy and Grotius' concept of logical natural law, Hobbes' proto-ideological view of politics or Machiavelli's pragmatism, which, while preserving the religious custom of the age, at the same time proposed a detached concept of autonomous political causality.¹³⁷ Once again, one can see how anthropology ceases to be a philosophy of man and becomes a science of human mechanics, of the physiology of his psyche and the possibilities of influencing it.

Even more, the intellectual links between Descartes and other authors, who are not likely to be linked to him, can be seen in the idea he developed of a provisional morality, which must be adopted by a man who radically doubts everything until he develops a new certain morality. Ultimately, if one takes Descartes' doubt seriously, nothing is left of existing knowledge. Of course, it is easy to accuse the philosopher of saying that if the criterion of knowledge is to be certainty, then no reality, given proper verification procedures, will be able to meet it, which is the usual situation of analysing mental

134 L.P. Hemming, *Kult jako objawienie. Przeszłość, teraźniejszość i przyszłość katolickiej liturgii*, transl. L. Bigaj, Kraków 2019, p. 60. Although the subject of the cited book deviates from the topic of this article, at the same time the author interestingly examines in it the intellectual changes that occurred in Christian culture at the dawn of modern times.

135 Ibid., p. 61.

136 A. MacIntyre, *Bóg, filozofia, uniwersytety...*, p. 160.

137 I analyzed Machiavelli's religiosity in the text: T. Rowiński, *Witajcie w nowożytności albo religijność Machiavellego*, "Frona" 2012, no. 64, pp. 202-215.

states. This objection, by the way, is crucial – scepticism and suspicion are becoming the modern ‘philosophy first’. ‘The reason for accepting this [provisional – author’s note] morality is not the conviction of its truthfulness, but the conviction of its functional necessity,’ writes Paweł Grad, summarising Descartes’ intellectual choice, in his study of the concept of tradition.¹³⁸

This is a situation analogous to the social model adopted by *Hobbes in Leviathan* – deceptively similar to the model of Christian civilization, yet only similar. In reality, it is a pragmatic model of social authority, recognized only for as long as the sovereign does not develop an alternative model or impose a new provisional arrangement. For if God is only an idea and not a real fulcrum of the visible and invisible world, its rejection depends only on the will of man. Descartes and his contemporaries, in fact, by rejecting the theological and philosophical tradition and closing philosophy within reason alone, lost the ability to recognize what is true and what is false. Everything in their perspective had to be considered provisional and dependent on human will. Inevitably, this situation resulted in a much more serious temptation to affirm superstition than that which people of the classical era succumbed to.

The logic of superstition was developed by Pascal in his theory of automatism, trying to confront Descartes’ achievements. He believed that, yes, reason must be persuaded – for example, to religion – but more important is the automatism of custom. To yield to it, however, the human will is again needed first and foremost. However, there is also the possibility that the will leans in a different direction than Pascal saw. Faced with the reduction of reason to an instrumental tool in such a situation, helplessness remained. In the perspective of the further evolution of culture, the main thing that has survived from Pascal’s theory is the belief in the malleable nature of automatisms to which both the human body and the social body can be subjected, which reason willingly follows in order to justify accepted behaviour. Since the era of the intellectual breakthroughs outlined here, the human body has become an object, an object of action of the soul, or – in atheistic culture – of personal will, consciousness and social will.

138 P. Grad, *O pojęciu tradycji. Studium krytyczne kultury pamięci*, Warszawa 2017, p. 43.

The movement of ideas between Charron and Pascal opens up two tendencies. First, morality devoid of fundamental rationality becomes only a useful (and changeable) algorithm for the functioning of culture, its rationalization. Second, the body becomes a bio machine with which one can do anything according to the will of consciousness – internal, but also external, cultural – and through which consciousness can be shaped, appropriately programming the mechanism of culture towards the body¹³⁹ – for example, stimulating sensual desires in the broadest sense. The mechanism for justifying abortion in this new dualism and objectification of the body can be seen in an almost intrusive way.

5.3 Beautiful minds

Let us now return to de Sade, or rather to his spiritual fathers. Descartes and other authors were not lonely islands. Already in this early era, circles began to form to develop a new kind of culture. Besides, its leaven can be seen in the years preceding Descartes (1596-1650), in humanists such as Siger of Brabant and Marsilius of Padua.

In 1623, Jesuit Father Francis Garasse published a book in Paris under the long title *The Strange Science of the Beautiful Minds of the Present Time, or those who claim to be such, containing numerous maxims dangerous to religion, the state and good morals*.¹⁴⁰ He referred to the beautiful minds as people who were the first generation of libertines, such as the poet Théophile de Viau, of whom Father Garasse was, incidentally, the trial prosecutor. Although the Jesuit's book does not have a good reputation among scholars of the subject, the summary of libertine principles contained in it is considered accurate. Here's what they look like: 'Beautiful minds believe in God only by courtesy and by reason'; 'There is no other divinity than NATURE, which must be satisfied in all things, without denying our bodies or our senses anything of what they desire from us in the exercise of natural

139 Ibid., pp. 50-51; see B. Pascal, *Mysli*, transl. T. Zeleniński, Warszawa 1989, p. 242.

140 See F. Garasse, *La doctrine curieuse des beaux esprits de ce temps ou prétendus tels contenant plusieurs maximes pernicieuses à la religion, à l'Estat, et aux bonnes moeurs*, Paris 1623. See P. Milcarek, *Testament...* (op. cit.). More extensively on libertinism: idem, *Epikureizm i neoepikureizm: Od apolityczności do „polityki hedonizmu”*, "Kronos" 2020, no. 55, pp. 130-156.

powers and faculties',¹⁴¹ etc. The doctrine of libertinism was formulated in extreme laconic terms by Gui Patin – a Parisian physician – associated with the Collège de France and the Sorbonne's medical faculty. This doctrine expresses directly what can be considered a maxim permeating the ethical mentality of our era: 'Inside as one wishes, and outside according to custom.'¹⁴² Only a single step separated such a claim from the desire to change both behaviour and custom according to what one wants on the inside.

The framework of the emerging libertine subculture is not far from a social anthropology in which, in order to get out of the world of objects, one needs a will and consciousness capable of resisting the domination of the will of others – acting according to what they feel. And they may, after all, feel that they don't want anything to interfere with their satisfaction in all things. It is these themes that, over time, have contributed to the formation of a world organized in the key of identity politics and exclusion of the weak. The elements of thinking we saw in Hobbes, Grotius, or Descartes intersect in this inner want, a want that today can only be resisted by another sufficient want, sometimes the state. Modernity, therefore, has ignored the knowledge of man's natural purposes, and based the *modus vivendi* on human dark inclinations. However, as we can see, in the case of abortion, in a great many cases, the states too have accepted a revolution of violence based on a constant struggle for recognition and on the constant struggle of all identities to achieve their desired satisfaction.

In the manner outlined above, also on the part of Catholic thinkers (Charron, Descartes, and Pascal were believing Catholics, unlike Spinoza, Hobbes or Grotius) God and natural law became mere ideas of the mind, syllogisms, mechanics, automatisms, provisional descriptions of reality. Consequently, man too became such an idea, shaped according to various impressions and expectations of the will, which replaced metaphysical knowledge of who he really is. How influential Cartesian dualism proved to be, tearing man into soul and body and objectifying the latter, can be seen by looking at excerpts from 20th century discussions. One thing is clear: the broad

141 Exception with a list of libertine theses quoted in: *Les libertins au XVII siècle*, compiled by Antoine Adam, Paris 1964, p. 41n. Their translation after the article: P. Milcarek, *Testament...*, pp. 69-70.

142 G. Patin, *Les libertins au XVII siècle*, p. 157, quoted in P. Milcarek, *Testament...*, pp. 69-70.

current of shifting thinking, together with the disintegration of the intellectual fabric of Christian culture – sometimes really lasting only already in the form of a certain ethical automaton – opened wide the possibilities for plausible justification of prenatal infanticide, or even simply genocide in its various mass forms.

Such a deconstructed culture proved to be fertile ground for radical scientific theories such as social Darwinism, racism, communism, *gender* ideology or, finally, the pro-abortion movement, as well as the pro-euthanasia movement, which are further syllogistic compositions of anthropological and, consequently, social ideas. The fundamental modern change was that humanity itself, man himself, began to be treated as a thing – an object of study and action. This is one of the fundamental consequences of the upheaval of natural science, to which the dynamics outlined above led. Made again in the 20th century, the discovery of the problem of the personal view of man is not a simple sign of development. On the contrary, it is a reaction to the depersonalization of human existence in the thought and practice of man himself.

With the development of modern thought, the Christian ethos of natural law has been replaced by ‘rationalist mechanicalism’, which will evolve over time into utilitarianism, already approximated in part. A utilitarian society has no nature, only a contract, outside of which there is no truth about man either. He is what individuals will agree on, and we agree on what identities capable of forging political representation will win. Society is supposed to run smoothly and not formulate philosophical doubts. This rationalist mechanicalism is nothing more than modern ideologies. In turn, the break with tradition and religion and the basing of human thinking on individualistic reason has led, through liberal theories of feeling, to modern forms of emotivism, to which all moral judgments have been reduced. Everyone is entitled to all moral judgments if they respect the current version of the contract, the shape of which is the result of the constantly ongoing social identity wars. In turn, the identities themselves are constantly constructed as patchworks of feelings and their labels, in increasing detachment from deeper cognition. Nor can they be judged as long as they – formally and legally – do not threaten the freedom of others. However, as it becomes increasingly difficult to provide satisfaction and distance to the proliferation of identities, it becomes easier

to narrow the definition of personal life and exclude from it those who do not find themselves in the ever-newly constructed labels of humanity.

5.4 Kant

The ideas and legacy of the philosopher from Königsberg cannot be ignored in the analysis carried out herein. The reasons for this are twofold – firstly, the moral formulae proposed by Kant had a significant impact on ethical reflection in modern times, and secondly, the analysis of the genealogy of Kantian thought allows us to understand why the rationalist philosophy of the Enlightenment became a vehicle for the problems growing out of the crisis of *Christianitas* and the formation of new times. Kant, like other thinkers of the era, failed to overcome them, and even exacerbated them. Although Kantian deontology itself may have offered some hope of achieving integral resolutions in both ethics and anthropology, at the same time, the formal nature of the categorical imperative proposed by the philosopher, and the consequent opening of the intellectual road for modern subjectivism, essentially doomed them.

In the 17th and 18th centuries, the displacement of the Christian tradition and its realism into the realm of irrational superstition by representatives of mainstream European modern philosophical thought led to attempts to refine research ‘within reason itself’. Kant’s philosophy was the result of this process. The erosion of the natural law tradition, which proceeded together with the dominance of the empirical and naturalistic conception of nature and the growing sense of confusion among the intellectuals of the time in epistemological relativism, prompted subsequent thinkers to search for some fixed formulas that could be considered rational and autonomous at the same time. The search undertaken by Kant found expression in his conception of the category of intellect, which, analogous to other modern approaches, could not overcome the difficulty of understanding the relationship between the world and man, whom it reduced to the mind alone.

The central category of Kant’s ethical position – in his view the only one valuable from the perspective of reason – is good will. This is because all other goods can turn evil. Good will should be understood as acting

under the influence of ethical necessity, duty. The assumptions outlined above reveal two pessimisms of Kantian anthropology. An epistemological one – the world cannot be known in such a way as to extract from it the principles and order of goodness and good action, which was obvious to the thinkers of the classical era, even if they argued about specific resolutions. And the second, essentially religious, with Protestant features – the world is a reality completely tainted by the fall of human nature, which was caused by original sin, and there is inevitable moral chaos. Only the human will can impose a social order on the world that keeps it from falling apart. This issue was taken up by Kant in his political treatise entitled *On Eternal Peace*,¹⁴³ in which he assumed, by analogy with another Protestant, Thomas Hobbes, that the state of nature is the state of struggle. It is only the effort of people through a change of consciousness, social and political reform that enables peaceful coexistence to occur.

Władysław Tatarkiewicz, in his *History of Philosophy*, briefly and synthetically grasped the problem of Kantian ethics, which, while retaining some elements of religious thinking, tried to point to non-religious sources of right conduct: 'And when is the will good? When it attempts to fulfil a duty. There is no good will where the natural inclination leads to goodness – thus, for Kant, acts performed under the influence of inclination were not "moral"; only acts performed out of duty were.'¹⁴⁴

According to Tatarkiewicz, 'in the concept of duty [Kant – author's note] saw nothing personal; on the contrary, he saw its essence in submission to the law. [...] Apart from the principle of subordination to the universal law, he found nothing else that practical reason commands. It commands submission to the law, but does not determine its content; any material determination of the moral law is already heteronomous to reason. Its injunction is thus purely formal, and therefore all ethics cannot be other than formal. The only unconditional imperative (*categorischer Imperativ*) is: "Act according to such a principle which you could simultaneously wish to make it a universal law."¹⁴⁵

143 I. Kant, *O wiecznym pokoju. Zarys filozoficzny*, transl. F. Przybylak, Wrocław 1995.

144 W. Tatarkiewicz, *Historia filozofii*, vol. 2, Warszawa 1999, p. 178.

145 Ibid.

According to Kant, therefore, since people cannot agree on a single principle of natural law, as proven by the multitude of modern conceptions of it, what remains in practice is obedience to law, and to state law, a legislated, provisional law, as in Descartes' provisional morality. And since no 'material determinations' can be placed on this law, what remains is obedience to the sovereign and the impermanent order established by him. For better is an imperfect law for man than the disintegration of society. It was in this completely relativistic direction that Hans Kelsen (1881-1973) went in the 20th century, putting forward his theory developed in his book *The Pure Theory of Law*,¹⁴⁶ according to which, as reported by Andrzej Muszala: 'Law provides a procedure through which it creates itself. Therefore, it is impossible to speak of some prior human rights, since the person is subordinated to a larger social organism. In such a model, there is no longer room for philosophical reflection on individual legal norms; they must be obeyed because they are norms and because they are identified with a higher authority (the state), and not because they result from some rational reflection based on an analysis of human nature.'¹⁴⁷

From the point of view of the subject of this dissertation, it is significant that Kant attempted to discover the permanent foundation of morality. His categorical imperative, which, if it had retained its roots in the Christian tradition, could indeed be regarded as an answer to the subjectivism of modern theories of natural law, led ethical thought, probably contrary to the author's own intentions, towards further dissipation and individualism. Kant's thought not only failed to provide a metaphysical basis for the protection of human life, but also proved to be a tool against the freedom of righteous individual consciences. The classical imperative to seek what is just and act according to the principle of justice was replaced by the imperative to obey duty and law, regardless of its 'material terms'. Although to this day many authors defend the Kantian position, in the end it does not provide sufficient intellectual tools either for the construction of ethically good law or for resistance to wicked law.

146 H. Kelsen, *Czysta teoria prawa*, transl. R. Szubert, ed. A. Bosiacki, Warszawa 2014.

147 A. Muszala, „Filozofia, głupcze!” *Czyli na czym oparta jest etyka lekarska?*, „Medycyna Praktyczna” 2009, no. 6, p. 2.

Therefore, it will not be an exaggeration to say that the main principles of Kantian ethics, devoid of a solid metaphysical basis, can in practice serve as a justification for the dehumanization of various categories of people and be a justification for even the most extreme voluntarism of power. Both goodwill and the categorical imperative tell us nothing about the rules of right conduct. The realization of these potentials is shown to us by history. The quasi-Christian social model described by Hobbes in *Leviathan* has evolved (or actually degenerated) over the centuries into 20th-century modern totalitarian ideologies with their monarchy. The mystique of mechanical obedience – and Kant's submissiveness to duty undoubtedly mystified it – became one of the tools of National Socialism's influence on German society. After the solstice that turned out to be World War II, the model of mono-power dissipated into a structure of liberal rule, whose operating principle became modern democracy, or the perpetual agon of diverse identities. Identities fighting for the most favourable conditions for themselves within the framework of the social contract. However, the principle of obedience to the sovereign, who is also the lawmaker, has also survived in liberalism. The sovereign demanding obedience ceased to be an arbitrary despot, but his place was replaced by the arbitrary opinion of the people, ready to decide, as they pleased, on the life and death of others.

Kant's social anthropology must be considered one of the intellectual foundations of liberal anthropology, which, like communist anthropology, for example, lacked a considered metaphysical basis from the beginning. The consequence of its influence became a further regression of the understanding within Western culture of who a person and a human being are. Inevitably, this also meant a civilizational regression of human self-understanding. Integral reflection, in the schemes of ideology, was replaced by nominalist labels reducing humanity to a selection of arbitrarily adventurous qualities. This is not unlike Kant, whose concepts such as subjectivity and autonomy bear the marks of numerous reductions.

The next historical stages of the disintegration of the understanding of a person's identity turned out to be the quasi-scientifically justified exclusions of Jews or the possessing class. These groups were, as a rule,

deprived of human qualities in ideological narratives. In a world dominated by ideologies, a new kind of segregation also emerged, manifested in consent to systemic abortion or euthanasia. Liberal and democratic modernity adopted this kind of exclusion as a regulatory element of the systemic *modus vivendi*, also adding to it its own quasi-scientific prejudices. So, too, in the case of liberal democracy – which likes to invoke Kant – in the end, the main ostensible ethical principle of the decisions adopted turns out to be the arbitrary violence at the disposal of the sovereign – the demos. For where ethics does not have its material terms and metaphysical framework, the one who has the ability to operate coercion, if only in the form of the ability to influence the law, reigns supreme. This is a tool of great influence in societies formed – according to the Kantian tradition – to obey the law and recognize it as a measure of right conduct, whether it is decent or not. The abstract formula ‘Follow only such principles as you may at the same time wish to see become universal law’, instead of suppressing the heteronomy of ethical perspectives, turned out to be the starting point for an even more bitter struggle of all against all, a struggle of subjective positions, each claiming the right to be universal law.

Kant – while abandoning realist metaphysics – also failed to effectively oppose the socially destructive empiricism, which regards all theories and ideas, including ethics itself, as well as religion before that, as secondary realities to man’s animalistic desires. Consequently, the philosopher from Königsberg taught Westerners that instead of obeying what is truly right and just, and can be discovered through rational intellectual investigation, they should primarily obey the authority that will decide what is good for them. The doctrine, however, went even further: the categorical imperative indicated to societies that the best course of action is the one they want and which seems best for everyone. The anthropological pessimism of Protestant modernity meant that the determination of what was supposedly best for all was placed first in the hands of reformers and ideologues, and then – faced with the failure of first one, then the other – came under the authority of democratic emotivist relativism. In this way, the explicitly strict teachings of Kant the reformer and legislator unleashed the mechanism of modern ethics, which can be reduced to the principle of ‘what pleases someone, if he gains recognition for it’.

It does not seem that one can escape the problems outlined above by means of a principle that says that a subject is obliged to comply with ethical necessity not for some external reason, but because of his will. For the Kantian category of autonomy does not answer the question of who is an autonomous subject, but only states that everyone has a 'full and inalienable right to himself'. The question of who is an autonomous subject cannot be answered without restoring the metaphysical tradition that would describe to us the difference that occurs between 'something' and 'someone'. This difference can be resolved in the right way by reason-tradition or in the wrong way by authority guided by ad hoc considerations. Kant declares ethical agnosticism and puts ethics in the hands of authority.

At the same time, a conclusion can be drawn from Kantianism itself, according to which the boundary between subject and object is determined by the ability to use reason, which unborn children (and not only them, after all), due to their condition, do not have. And since they do not have it, they cannot be an end in themselves and can therefore be instrumentalized. This is also how pro-abortion Kantists will argue, pointing out that in the situation of pregnancy, only the woman is really the subject.¹⁴⁸ The problem with this type of reasoning is that Kantists, like other idealists, arbitrarily reduce human life – human subjectivity – to the manifestation of active consciousness combined with the expression of will. They do not consider foetal human life outside the 'perimeter of reason itself'. Kantian subjectivity thus turns out to be a denominator that opens the field to empiricists and utilitarians, usurping the right to arbitrarily formulate seemingly metaphysical conclusions. It is therefore necessary, as it were, to repeat the earlier conclusion. After Kant, the limits of humanity can be defined by whoever obtains the ability to influence the centre of power, shaping public opinion or legal order. In turn, these boundaries can take basically any form.

Kant's thought is often presented in an encyclopaedic manner, like pure philosophy detached from any genealogy and context. Meanwhile, Kant, like any author, is a figure of his era, and therefore adopts certain

148 See S. Feldman, *From Occupied Bodies to Pregnant Persons: How Kantian Ethics Should Treat Pregnancy and Abortion*, [in:] *Autonomy and Community: Readings in Contemporary Kantian Social Philosophy*, eds. J. Kneller, S. Axinn, New York 1998, pp. 265-282.

established ideas, and also passes on certain ideas. Kant's ethics is undoubtedly influenced by the Lutheran concept of sanctification, in which it is the utterly fallen and incapable of goodness that man needs to be raised by God's grace. Lutheran pietism emphasized the close connection between the work of the Holy Spirit – that is, grace itself – and the observance of the Ten Commandments law. It seems that decisive for the formation of the Kantian ethics of duty was Kant's Lutheran aversion to human fallen nature, whose inclinations, even if they happened to seem good, must be treated with suspicion. If thinkers of the classical era believed that it was possible for a person to develop moral virtues, Kant's Protestantism led him to believe that it was necessary for every individual, against personal inclinations, to submit to the influence of strong authority and laws. Protestant culture's bad opinion of human nature was gaining additional credence at the dawn of modernity through the process of erosion of the classical, Catholic, teleological and optimistic view of nature, in favour of a naturalistic perspective, reducing man to his drives and physiological aspects of existence.

This breakthrough in the view of human nature will increasingly embroil modern civilization in dialectical contradictions. On the one hand, nature reduced to its corporeal aspects will reveal itself as a source of torment – the culmination of this thought will become not only gender ideology, but also abortionism – on the other hand, a libertine approach will be reinforced, treating the body as a great receptor of satisfaction – of salvation by making life more pleasant. In this view, too, human fertility will prove to be an obstacle. Both tendencies will form a peculiarly modern, object-oriented, mechanical, and functionalist treatment of human physicality, which will become a kind of framework for modern ethics. It was thanks to Kant that a particular fusion of ethical individualism came about, stemming from the formal character of the categorical imperative and volition.

The consequences of Kant's ethical thinking turned out to be counterproductive to his intentions, as he built an ethics whose individual justification was a vague mystique of the sublime. He replaced fidelity to the commandments with an asceticism of obedience to formal ethical principle, and the presence of grace with a specific, as Alain Besançon wrote, moral

narcissism,¹⁴⁹ sublimity, or a kind of higher pleasure derived from ethical satisfaction. From this perspective, Kant became one of the earliest developers of self-development techniques of the mind, which took the place of rational contemplation directed toward the knowledge of truth. He removed the link between ethical exercises and truth and merged them with duty. Analogous changes occurred in Kantian political ethics, as well as ideas about how to build social order. Everything that was characteristic of the philosophy and spiritual life of the classical era, especially at its medieval apogee, disappears with Kant.

The goal of moral conduct for the philosopher from Königsberg is no longer to do God's will or to live a virtuous, so-called good life, but to experience a pleasurable sublimity. The sublime, in turn, is close to romantic ecstasy striving for detachment from morality. Romantic experience, in German culture, especially through Goethe, is associated with the search for new rules of right conduct, a new national ethic, freed from Christianity or even, more broadly, a new understanding of man. Kant's man forgets himself, makes – as he thinks – a sacrifice of his will to submit to law and duty. The sublime is revealed in this experience as an emotional substitute for grace, the possibility of detachment from fallen nature towards the heights of ethical self-denial. Here one can see a narrow transition between the Lutheran mystique of submission to commandments and the mystical acceptance of an abstract imperative, the material expression of which can already be chosen according to the principle of maximizing sublime pleasure. The perspective begins to blur, and it is uncertain whether the law is meant to prevent people from pursuing pleasurable inclinations, or even to serve ethically justified pleasure.

The social embodiment of this kind of mystique of the sublime was seen by history during the triumphs of mass ideologies of the 20th century, for which the experience of quasi-religious ecstasy was extremely important. The Germans committed the greatest crimes in the name of the 'sublime rights of their people' to 'living space' and 'dominion over other races'.

149 See A. Besançon, *O wzniosłości chrześcijańskiej*, transl. H. Woźniakowski, [in:] Idem, *Świadek wieku. Wybór publicystyki z pierwszego i drugiego obiegu*, ed. F. Memches, vol. 2, Warszawa 2006, pp. 163-168.

However, Kant's post-religious 'self-denial' is not limited to the past history of Nazi ideology. It will become the source of modern thinking and action in the perspective of other lofty goals like freedom, emancipation, women's rights, which people will feel obliged to pursue and which they would like to see become universal law, since the achievement of each undermines the social institutions associated with 'evil human nature'. Since what is natural, and therefore derived from human inclinations and goals, must be evil, it must also be changed and subjected to social reform. This perverse ethic of duty will form a new superstition, well recognized in discussions about abortion, which can be described by the phrase 'I am against abortion, but at the same time I believe that the law cannot prohibit it for others, because each belongs to himself'.

Many tropes converge in Kant's philosophy, which formed the modern soul, marked by solipsism, which is content with 'sentimental impulse and vague but elevated contemplation' as justification for its own ill-considered actions. This soul, closed in on itself and its imaginations, in our time is already proving incapable of identifying or un-identifying persons in any other way than through sentience or appealing to the judgments of the centres of social power. Kant's locking of integral metaphysics and anthropology in a 'black box' with the label 'religion' has resulted in a serious anthropological and moral regression in modern times. It has opened wide the door for arbitrary thinking, ready to dehumanize and exclude from society, but also from life, any categories of people disrupting the unproblematic maximization of higher and lower pleasures.

6 Modernity

The term 'modernity' here does not mean an epoch put into a simple chronological framework. Rather, the difference between the early modern period and modernity should be described as a change of mental phase in intellectual history. It is for this reason that Thomas Robert Malthus, an author who lived almost at the same time as Immanuel Kant, is classified differently from the Prussian philosopher in this dissertation. The early modern period is a phase in which intellectuals sought to formulate new principles in the belief that

previous ones had grown old or failed to deliver the expected solutions. From the perspective of the study conducted here in the field of the history of ideas, we can say that the early modern period is a stage of the formation, dissemination, and petrification of a new kind of superstition, which became the basis of the modern tendency to dehumanize various categories of people, especially those in the prenatal stage of life. These superstitions later developed into large scale intellectual justifications for moral errors already entrenched in the culture. In turn, 'modern' authors should be considered those who are no longer engaged in the search for principles for a new era, no longer discussing the past, nor thinking of a remedy for past crises, but who appear on the pages of the history of thought as having been fused with the mentality of a new culture. From the beginning, they seem to regard the world view that arose in the modern period as appropriate. In fact, they treat similarly the intellectual tools produced by this era and intended to reform the life of societies.

6.1 Mill

Although the characteristics of the modern legacy of utilitarianism were outlined in the introductory part of this study, John Stuart Mill, considered one of the fathers of the utilitarian approach, needs to have several separate paragraphs devoted to him. Mill's ideas constitute a kind of ever-present synthesis of modern thinking, which remains the matrix of modern political and ethical anthropology. An important element of it is invariably the justifications it gives for, among other things, radical abortionism.

Mill, in developing his concepts, wanted to oppose the dominant tendency of his era to do philosophy of an irrational nature, namely intuitionism. He himself sought a rational basis in his own view for reforming social reality, which inclined him toward empiricism. At the same time, like many other intellectuals in the 19th century, especially Anglo-Saxon ones, he considered metaphysical thinking to be not far from irrationalism. This rather typical superstition was largely due to ignorance of the actual content of the research that medieval metaphysicians conducted, including on human nature. A lack of understanding of the rationalist tradition of realist philosophy caused Mill, like other important modern and contemporary authors, to make abstract assumptions about human anthropology. Ignorance

regarding the intellectually rich experience of the classical era, in turn, was largely due to a prejudice against Catholic religiosity, which projected negatively onto the whole idea of scholastic intellectual achievement. It was, in general, perceived as useless and merely a substructure of religion, which authors in the age of faith in progress considered a socially and intellectually overcome reality, and above all unworthy of attention.¹⁵⁰ Mill formulated his stance on religion quite explicitly: 'There are objects unattainable by our cognitive faculties, and therefore it is all the more necessary to direct one's mental efforts towards action that justifies and expands such sources of happiness and nobility, the ascertainment of which does not require belief in supernatural sanctions and indications.'¹⁵¹

Consequently, however, instead of adopting the realistic conception of human nature that had been developed over the centuries, Mill adopted an abstract definition of it. This must have meant a serious inadequacy of the anthropological judgments he formulated. The abstractness of his assumptions consisted, among other things, in the rejection of the notion that differences between people are innate. Mill assumed that those that do exist, however, can be removed by means of rationally arranged social reforms. From this perspective, Mill can undoubtedly be considered one of the initiators of the intellectual movement that led to the emergence, now increasingly radical, of emancipatory and equality trends. In this, by the way, he was very successful socially, since the spirit of reformist utilitarianism has long since extended not only to the sphere of civic lobbying, but also to state policies. Certainly, Mill's role in the process of revolutionizing the mentality of Western civilization is no less important than that of Karl Marx. For since any inequality can be redressed with social reforms, a certain kind of inequality between men and women – concerning productivity and reproduction – can be abolished or reduced with the freedom to conduct an abortion.

Dorota Probuscka, a researcher from the Institute of Philosophy and Sociology at the Pedagogical University of Cracow, implicitly shows that the legacy of

¹⁵⁰ An example of disagreement with classical writers can be found in J.S. Mill's essay *On Nature* (see J.S. Mill, *O naturze*, transl. M. Warchala, Warszawa 2008).

¹⁵¹ J.S. Mill, *Three Essays on Religion*, New York 1969, p. 404, quoted in D. Probuscka, *Utylitaryzm*, Kraków 2013, p. 11.

anthropological findings of past centuries was reduced by J.S. Mill to a religious – in his view – irrational matrix, which made him unable to perceive the universalism contained in the achievements of classical anthropology, which, passing through the Greek, Roman, and then Christian phases, increasingly ennobled the knowledge of man in particular. Probuska characterized this author's thinking as follows: 'Religion cannot provide a basis for morality primarily because it is impossible for an ethics that postulates the moral autonomy of the subject to accept transcendence as a moral lawgiver who determines good and evil by his decision. The utilitarian glorification of human autonomy means that no system of values (resp. way of life) is worthy of replication if it does not gain the approval of the individual. Striving to show the absurdity of customary morality manifested in the schematization of actions and fearfully bypassing all thought activity is an essential feature of utilitarian theory. Either society is a collection of conscious subjects creating, to the extent of human capabilities, a moral reality, or it consists of "automatons" formed in the process of indoctrination, acting in accordance with the spirit of external rigorism proclaiming that certain types of actions must always be fulfilled, and certain principles should never be deviated from.'¹⁵²

Relativism and an anti-metaphysical attitude in anthropology meant that where Mill saw an opportunity to discuss a rational society of equal persons, the possibility of thinking about optimizing social life through various forms of segregation actually opened up. In the first place, it would have to be subjected to all those who should be considered an obstacle to the realization of the plan of 'equality in utility', or those whose subjective rights are easy to ignore. It is through the combination of the abstractly framed demands of equality – here gender – and utility that the issue of abortion availability has become an inviolable liberal dogma over time. This is because liberalism has lost the ability to recognize the natural differences and predispositions associated with each gender. The lack of this ability meant that both the aspirations and expectations of each person now had to be equal – at least in theory – to utility. The gender difference associated with carrying a conceived child, giving birth and caring for it proved to be one of the most important obstacles in the way of the political ideal.

¹⁵² D. Probuska, *op. cit.*, pp. 11-12.

However, liberals rarely realize that the anthropological foundation of the justifications for abortion is not at all an affirmation of individual autonomy, but the principle of utility. One of the main formative features of the utilitarian idea invariably remains its prejudicial, rather than autonomizing, relation to humanity. Humanity for the model utilitarian is a great social anthill, which should be subject to constant optimization – cultivation – over which reformers toil. One of the necessary elements of utilitarian reform is to shape the prejudices that make up the mentality of societies in such a way that individuals interpret laws and actions through the lens of self-realization or duty to a higher social good, rather than in terms of right and wrong. Sown by sceptics well before the 19th century, the belief in the provisional nature of all morality reaped a ripe harvest in the thought of modern authors like Mill, which translated into tragic consequences in the lives of societies and the unborn. All this in the name of maximizing the abstractly understood temporal happiness of supposedly conscious subjects.

In Mill's thought, as earlier in Kant's philosophy, various modern and modern mental threads converge. In a general sense, Mill's anthropology echoes modern reductions in the understanding of what a person or otherwise subject is. If individual consciousnesses 'creating [...] moral reality' are considered subjects, it means that it is to consciousness in Mill's anthropology that humanity is reduced. For the British thinker, in his own way, developed Post-Cartesian dualism, only that in a non-metaphysical formula. The soul was replaced by consciousness, and whoever does not have it or is conscious to a limited degree can be counted among the world of objects. In this way, the modern reduced notion of the soul without much trouble becomes a tool of social engineering in the hands of reformers – such as Mill himself. This does not mean, of course, that the human soul is really limited to consciousness, and that man lives confined to the mind alone.

This kind of reduction is primarily to be believed by societies. The reformers are not interested – unlike the authors of the classical era – in the truth about man, but in the possibility of creating a social equilibrium based on the soothing social tensions of superstition and the moderate hedonism of people capable of disposing of their consciousness. In modern society, where mass information helps to constantly optimize human utility through

the creation of superstitions, consciousness – *de facto* – has also been objectified, and autonomy has become a phenomenon on the verge of illusion. As Probucka wrote, Mill's utilitarianism 'will be reflected in the desire to create a unified system, and thus a unified image of the world, to create a moral theory beyond sociological and cultural differences, whose programmatically universalist character would be based on what is common to all'.¹⁵³

Unfortunately, in the anti-metaphysical view, what is common must have the character of empirical abstraction and arbitrariness, which either reduces human beings to a certain set of animal accidentalities, or turns out to be a representation of the unstable moods of a society defining on an ongoing basis the useful shape of the limits of humanity. Consequently, belonging to humanity is no longer determined by any objectifying measures, but precisely by arbitrarily constructed abstractions dissected from the naturalistic view by the consciousness of the reformer. However, since the reformer himself here is a figure taken from modern myth rather than reality, so whether someone will be considered human or not is forged in the endless chain of social violence,¹⁵⁴ the war of all against all, which characterizes the liberal world and its debates. On the other hand, it is worth noting that we can quite easily point out today the figures and institutions of the liberal world that aspire to be great reformers in the spirit of utilitarian optimization of the human anthill.

It would be hard to find a more glaring founding act for the modern civilization of arbitrariness than the intersection of the principle of utility with radical social reformism that we find in Mill. This act, combined additionally with the romantic spirit of egotistical sublimity that germinated in Kant, led – obviously in a rather long process – to the formation of a culture in which human corporeality is treated like meat or clothing. In the utilitarian world, man, deprived of consciousness, becomes a mere thing – even if animate, unformed, like a foetus before animation in Aristotle's concept of prenatal life. Probably Mill never dreamed what his intellectual project to repair the world could lead to. Perhaps he would have even vehemently

153 D. Probucka, *op. cit.*, p. 12.

154 J. Melonowska, *Walka*, [in:] eadem, *Pisma Machabejskie. Religia i walka*, Warszawa 2020, pp. 27-56.

opposed many of the consequences that resulted from it. However, the kind of anthropology he proposed – prejudicial on the one hand and narcissistic on the other – by straight lines can be linked to both the growing volume of abortions and the oscillating on the verge of insanity ethics of authors such as Peter Singer, for whom the life of a child surrounded by foetal waters is worth no more than that of a chicken.

6.2 Malthus, Darwin, Spencer

An important figure in the modern take, in which humanity is treated like a giant anthill or a huge, production-optimized chicken farm, was the Anglican clergyman and economist Thomas Robert Malthus. He was a practitioner who responded to the misjudged threat of world overpopulation and put forward a proposal for programmatic selection of humanity. 'In this optic, the destruction of life, whether brought about by natural selection or guided selection, is inevitable, an unwanted, perhaps, but necessary part of the growth of civilisation,' Michał Chaberek OP wrote¹⁵⁵ about Malthus' concept. Malthus was probably the first author to introduce into intellectual and then wide circulation the notion that the uncontrolled reproduction of the human species is a danger.¹⁵⁶ This theory received reinforcement together with the rise in popularity of the theory of evolution widely propagated by the circles associated with Charles Darwin. Darwin transferred the proposal for solving the problems of the human world proposed by Malthus to his theory of the animal world, and this returned with additional impetus to philosophy and the social sciences in the writings of, for example, Francis Galton and Herbert Spencer.¹⁵⁷ Besides, in Darwin's work *On the Origin of Species*,¹⁵⁸ and later even more in his treatise *On the Origin of Man*¹⁵⁹ we find a formulated,

155 M. Chaberek, T. Rowiński, *Stworzenie czy ewolucja? Dylemat katolika*, Warszawa 2013, p. 206.

156 See T.R. Malthus, *Prawo ludności*, transl. K. Stein, Warszawa 2007.

157 The development and history of Social Darwinism was described quite extensively, for example, by J. Szacki in his *Historia myśli socjologicznej* (Warszawa 1983, pp. 296-349).

158 'Since in each species far more individuals are born than can survive, and since a struggle for existence arises between them as a result, the individual which, under the influence of complex and sometimes variable conditions, changes slightly but in a manner favourable to itself, will have more prospects of remaining alive and will thus succumb to the action of "natural selection". In turn, by the powerful law of heredity, each such selected variety will tend to pass on to its offspring the altered form' (K. Darwin, *O powstawaniu gatunków drogą doboru naturalnego, czyli o utrzymaniu się doskonalszych ras w walce o byt*, [in:] idem, *Dzieła wybrane*, transl. S. Dickstein and J. Nusbaum, vol. 2, Warszawa 1959, pp. 15-16).

159 K. Darwin, *O pochodzeniu człowieka*, [in:] idem, *Dzieła wybrane*, transl. S. Panek, ed. E. Stołyhwo, vol. 4, Warszawa 1959.

explicit justification for social violence as a utilitarian tool to improve the so-called quality of life of society. It is this notion of quality of life that is today one of the main criteria of ethical reflection dominated by utilitarians, as well as a criterion of state policies for the segregation and selection of people optimizing the process of service to societies. The goal of this process is easy to see – it is to maintain the state of satisfaction of these conscious subjects, whose quality of life can influence political processes.

Darwin wrote about segregation in this way, giving expression to a specific superstition, which, to some extent at least, has also remained the superstition of our era: 'Among the savages, individuals who are physically or mentally weak are quickly eliminated, while the individuals who survive show perfect health. In contrast, we civilized people try by all means to halt this process of elimination, building institutions for the mentally retarded, for cripples and the sick. We make separate laws for the poor, and our doctors exert all their skill to preserve the life of each of us for as long as possible. We have every reason to believe that smallpox vaccination has saved thousands of people who, due to their weak constitution, would have died of the disease. Thanks to this, weak members of civilized societies have the opportunity to leave behind offspring. Anyone who has been interested in domestic animal husbandry will come to the conclusion that this phenomenon is highly detrimental to the human race. It is downright astonishing how quickly the lack of proper care or improper care leads to the degeneration of domestic breeds of animals. Thus – except in the case of man himself – it is difficult to suppose that one would find anyone sensible enough to allow his least valuable animals to reproduce.'¹⁶⁰

This familiar passage, transferred to social concepts, turns out to be morally analogous to the vision of society that Thomas Hobbes left us. In Hobbes, we find themes of the struggle for survival in the state of nature, but also the potential for the selection of the unfit, which can be carried out by the sovereign against those who violate the social contract in any way or do not meet the criterion of being able to take part in it. Darwin adds to this the conviction of mature scientism, according to which moral progress,

¹⁶⁰ K. Darwin, *O pochodzeniu...*, p. 130.

as well as the well-being of societies, will proceed together with biological selection.¹⁶¹ The proper development of mankind, according to Darwin, would be determined by man's adaptation to the laws of nature or, what he considered even better, assisting them. From Hobbes, the new social sciences took the conviction of the need for political will, from Mill the zeal for reform, and from Kant the sense of duty. These three forces created a mental lull in the culture that gave birth to the belief in the need for guided selection within human societies. Although 19th century biologism was alien to Hobbes, it is worth recalling here a well-known passage from *Leviathan* treating the equality of men, in which this author expounds his anthropology and defines the humanity of persons through the relations of force and the ability to apply it. This opened up one avenue of dehumanizing thinking, and consequently gave societies leaven to abortion with impunity: 'Nature has made all men so equal as regards bodily and spiritual powers that although one will sometimes find a man who is clearly stronger in body or sharper in mind than another, yet, when all is taken into account, the difference between man and man is not so great that on this basis one man can have a claim to an advantage to which another could not have an equal claim. As far as bodily strength is concerned, the weakest man has enough strength to kill the strongest man either by secret machinations or by joining with other men who are in the same danger as he is.'¹⁶²

Thus, only a being with the potential to kill the strongest can be considered human. These words do not necessarily have to be taken literally, but they certainly limit humanity to some kind of vitality meaning the ability to exert social pressure.

Herbert Spencer should be considered the main synthesizer of naturalistic anthropology. His thought – and that of other social evolutionists – crowns the process of disintegration of reflection on natural law. Spencer uses a formula that at first we might consider classical or modern in an earlier sense. He writes that moral action and natural action are one and the same.

161 It is worth noting that Darwin took the term 'natural selection' from Herbert Spencer, so it was not his original concept. See B. Wiker, *Dziesięć księzek, które zepsuły świat. Ponadto pięć innych, które temu допомogły*, transl. Z. Dunian, Warszawa 2012, p. 124.

162 T. Hobbes, op. cit., p. 107.

Only that in his outlook there is no longer anything from the realistic view of nature of the classical era, nor from the rationalism of jurists such as Grotius. Yes, there remains a residual purposiveness of nature in his thought, but it is to follow the law of nature, which for him is a new natural law. Nature, for Spencer and many intellectuals of his era, is simply a concept of natural science. Consequently, man's natural goal is not spiritual or moral goods, but self-preservation and, by extension, pleasure.

As a Cartesian echo, one can consider Spencer's belief in the provisional nature of morality. A conviction that has only strengthened and spread to the present day. In the ethical aspect, Spencer approached the hedonism of the libertines, while in the cognitive aspect – rejecting the categories of good and evil – he approached the hedonism of the utilitarians. Spencer's reduction of ethics to the pleasure principle means that in his thought we can find on the one hand, a summary of the process of transformation of modern thinking, and on the other hand, a starting point for modern ethical approaches, in which morality is reduced to judgments of an aesthetic or emotional nature, or simply to total arbitrariness. Spencerian amoralism was fundamental to the maturation of modern anthropology. Both aesthetic, emotivist, and naturalistic approaches to the problem of humanity had to not only open the floodgates, but widely open the gates of almost total theoretical arbitrariness in ethics and anthropology. One of the consequences of the modern anthropological breakthrough turned out to be a shake-up of the political will of states, which until the 20th century had accepted the juridical-natural order as the non-provisional reference point of political reason. There were various symptoms of this crisis, but one of them became the process of legalizing abortion.

Social Darwinism – as a social-intellectual movement – brought out from Spencer's thought primarily the scientific aspect and the conviction that man can streamline in societies what chaotic biology – according to evolutionists – takes a very long time to do. At the same time, it should be noted that Spencer himself did not formulate political demands relating to natural selection. The mental, but also institutional change that took place in the 19th century was fundamental. The force of the new instrumental rationality reforming humanity was to become scientists, experts, and the state. Theologians or philosophers seemed superfluous, as the

belief emerged that science had finally answered the questions: 'What is man?' and 'Who is man?' Under such circumstances, a specific kind of scientific insensitivity that is one of the foundations of the death industry was born. Darwin himself wrote that kindness is 'an incidental symptom of the action of the instinct of sympathy; acquired originally, as one of the social instincts'.¹⁶³ This is how the position of the ideological precursor of eugenics Francis Galton, a cousin of Charles Darwin, and the perspective of people of his generation and environment was referred to by Father Michał Chaberek: 'Natural selection serves the development of more perfect forms of animals, including humans. Of course, we care about the development of a better humanity. Evolution has endowed us with the ability to think and direct natural selection. Therefore, in order to accelerate and perfect the evolutionary process of society, we must make guided selection, that is, allow only the best individuals to reproduce.'¹⁶⁴ It is Galton who can be described as the father of the 20th century abortion movement.

6.3 Margaret Sanger and totalitarianism

The writings of Charles Darwin, as well as those of his sympathetic contemporaries and their successors, undoubtedly had a significant impact on the formation of the eugenics movement, which was considered scientific for a long time. Today, its legacy can be seen in the utilitarian ethic that dominates the anthropological basis of research at many universities or the actions of numerous states and organizations. Some of the criteria have changed, but the principle of segregation and elimination of arbitrarily selected categories of people has not lost its relevance. In this regard, an emblematic figure for liberal segregationism was Margaret Sanger, founder of the Planned Parenthood corporation, the largest organization in existence today, whose main goal is to perform as many abortions as possible. Sanger's intellectual manifesto is her – unpublished – book *The Pivot of Civilization*.¹⁶⁵ In this work, Sanger presents a Darwinian point of view on the condition of humanity. It is worth pointing out Sanger's intellectual dependence on Darwin, who wrote: 'It seems likely to me that

163 K. Darwin, *O pochodzeniu...*, p. 130.

164 M. Chaberek, T. Rowiński, op. cit., p. 207.

165 M. Sanger, *The Pivot of Civilization*, Lenox 2006.

noble inclinations are more or less fixed hereditarily [...]. If bad inclinations are transmitted hereditarily, it is likely that good ones are also transmitted. Only by recognizing the principle of the transmission of moral inclinations to offspring will we be able to understand the differences which we believe exist in this respect between the different human races.¹⁶⁶

A further conclusion follows: 'Very poor and reckless people, often burdened with addictions, mostly marry early, while the preventive and thrifty, usually valuable in other respects as well, marry at a later age, when they can provide for themselves and their children with adequate prosperity.'¹⁶⁷

Margaret Sanger answered this directly in her book: 'The greatest danger to [...] civilization today [is] the imbalance between [socially] undesirable and desirable births, a danger arising from the fact of fertility of the mentally handicapped and mentally ill, [as well as] of the poor. [...] The most pressing contemporary problem is the need to limit and discourage reproduction of mentally and physically handicapped people.'¹⁶⁸

This is why Sanger believed that birth control is the *pivot of civilization*. In her book, the author calculated all possible arbitrary parameters to confirm the rules of selection, such as the size of skulls or the height of IQ. This is because Sanger associated a high level of intelligence with being a good person, and vice versa – a low IQ meant a moral handicap. She also wrote that 'birth control has been accepted by the most enlightened and deep-thinking proponents of eugenics as the most constructive and necessary means for the preservation of a healthy race'.¹⁶⁹ Although the language with which abortion is defended by its utilitarian proponents today has changed, the goals and even the anthropology of abortion as presented by the American author remain very contemporary. At the same time, it is easy to see that what Sanger writes is a kind of practical development of Spencer's philosophy. What matters is the well-being of those who survive the pre-selection of being wanted and expected in this world, as well as –

166 K. Darwin, *O pochodzeniu...*, p. 78.

167 Ibid., p. 134.

168 M. Sanger, op. cit., p. 17.

169 Ibid., p. 75.

what is Sanger's libertine addition – possibly unlimited access to sexual satisfaction. The justifications of pro-abortion UN experts or academic ethicists fit perfectly into her anti-human hermeneutics.

Today, Planned Parenthood distances itself from the thoughts of its founder. One can neither purchase Sanger's book-manifesto on the company's website, nor learn more about her views. The deadly practice, however, continues. Benjamin Wiker, in his analysis of the *Pivot of Civilization*, quotes the contents of the organization's U.S. site as it appeared in 2008: 'Sanger [...] presents some ideas popular in its time that are not in line with our thinking today.'¹⁷⁰ The camouflaging of Sanger's legacy is not surprising, since today there is an attempt to attribute justifications for abortion that go beyond eugenics and alleged societal purification. However, it should be remembered that it was in the milieu of Social Darwinism that the demands of abortion were translated into social practice. Today, abortion is supposed to reduce the level of women's suffering in the face of unplanned conceptions and improve their social situation, which suffers from motherhood. Thus, we have a justification of abortion that is on the one hand Libertarian – abortion is supposed to give sexual liberation – and on the other a Marxist, in which the two sexes are struggling classes for recognition in an ongoing agony of identity.¹⁷¹ In these depictions, the unborn are completely objectified – they don't count, they are a 'cluster of cells'.

Let us recall one more passage from Wiker's analysis: '[...] eugenics became infamous only after World War II, however, the unmistakable truth is that Sanger, as a soldier of the eugenics movement, did not simply entertain the preaching of some of the popular ideas of her time. She was one of the most important leaders of the international cause, and the connections between the leaders of eugenic aspirations in pre-war America and Germany are a matter of indisputable fact. In addition, it is logical that Sanger did not propagate the idea of birth control without being a supporter of eugenics, as if these were two unrelated passions. She saw eugenics as the source and inspiration for all her efforts to infuse the issue of birth control into the public consciousness.'¹⁷²

170 B. Wiker, op. cit., p. 179.

171 See B. Waterman Ward, *Aborcja jako sakrament...*

172 B. Wiker, op. cit., p. 180.

The main thrust of Sanger's argument is against those she considers handicapped, with the main issue being the arbitrarily determined level of intelligence, determined by Binet-Simon IQ tests. Today it is hard to imagine that these could become the basis for segregation of any kind. Margaret Sanger, writing to her contemporaries, stated precisely: 'In such a reckless and thoughtless distinction between "bad" and "good" mentally retarded people, we find yet another proof of the typical middle-class prejudices also found among some eugenicists. We are not against mentally retarded people just because they lead to immorality and crime; we cannot approve of such people even if their retardation is expressed in decency, docility, and obedience. We resist because both these bad people and good people are a burden and a threat to the intelligence level of society. In fact, there is sufficient evidence to lead us to believe that the so-called "borderline cases" are an even greater threat than the cases of completely "crippled criminals" who can be supervised, controlled and protected from the procreation with similar individuals.'

¹⁷³

Elsewhere, Sanger relates her comments directly to the workings of the political system: 'The danger of recruiting our numbers from the most "fertile stocks" is further emphasized when we recall that in a democracy like that of the United States every man and woman is permitted a vote in the government, and that it is the representatives of this grade of intelligence who may destroy our liberties, and who may thus be the most far-reaching peril to the future of civilization. [...] Equality of political power has thus been bestowed upon the lowest elements of our population. We must not be surprised, therefore, at the spectacle of political scandal and graft, of the notorious and universally ridiculed low level of intelligence and flagrant stupidity exhibited by our legislative bodies. *The Congressional Record* mirrors our political imbecility.'

¹⁷⁴

If anyone thought that everything Margaret Sanger writes would cause appallment in modern people, they would be wrong. Certain remarks on general principles have not changed at all and could just as well be taken

¹⁷³ M. Sanger, op. cit., p. 41.

¹⁷⁴ Ibid., p. 87.

from a document of any UN agency. 'Unless sexual science is incorporated as an integral part of world-statesmanship and the pivotal importance of birth control is recognized in any program of reconstruction, all efforts to create a new world and a new civilization are foredoomed to failure.'¹⁷⁵

The change is that the direct stigmatization of groups that could easily be made the object of social concern in the early 20th century, in a climate of scientific enthusiasm, was abandoned without asking their representatives for their opinion. In the decades that followed World War II, when individualism took the upper hand in the Western mentality and abortion was combined with ideas of self-realization, women's rights and hedonism, it became apparent that there was no need to sustain ideas related to direct coercion regarding sterilization or abortion of people defined as defective. The liberal-democratic model of abortionism has made people burdened with trisomy, for example, almost completely disappear from Western civilization. They are simply eliminated by their parents at the level of foetal life.¹⁷⁶ Sanger's pansexual ideas in the 1960s, in a manner purged of direct references to segregation and eugenics, were taken up by such thinkers as Herbert Marcuse.¹⁷⁷ Again, let's quote *The Pivot of Civilization*, which did not have great intellectual potential, but as it turned out, contained great potential to initiate social change: 'The moment civilization is wise enough to remove the constraints and prohibitions which now hinder the release of inner energies, most of the larger evils of society will perish of inanition and malnutrition. Remove the moral taboos that now bind the human body and spirit, free the individual from the slavery of tradition, remove the chains of fear from men and women, above all answer their unceasing cries for knowledge that would make possible their self-direction and salvation, and in so doing, you best serve the interests of society at large.'¹⁷⁸

175 Ibid., p. 58.

176 See E. Rycerz, *W Islandii nie ma dzieci z zespołem Downa. Dlaczego?*, <https://zdrowie.parenting.pl/w-islandii-nie-ma-dzieci-z-zespolem-downa-dlaczego>, accessed 10 February 2023.

177 His best-known book should be recalled here, of course: *Eros and Civilization* (see H. Marcuse, *Eros i cywilizacja*, transl. H. Jankowska, A. Pawelski, Warszawa 1998). The crisis of thinking, which shaped modern relativism and emotivism, was described by Alasdair MacIntyre in the opening chapters of *The Legacy of Virtue* (op. cit.), while Epicureanism or so-called political hedonism was presented by P. Milcarek in his study *Epikureizm i ne-epikureizm: Od apolityczności do „polityki hedonizmu”*, (op. cit.).

178 M. Sanger, op. cit.

The awakening of sexual and material desires, combined with secularization gaining momentum in the 1960s, shortening the perspective of human life to temporality only, unleashed an unprecedented dose of the instinct for violence directed at defenceless individuals, perceived at the same time as a threat to the hedonistic principle of self-determination. Together with the deepening democratization of societies and the rejection of moral knowledge developed in the past, members of the peoples of the Western world came to understand that they, as sovereigns, could shape the rules for the use of violence and the rules of social life. Violence was therefore oriented in such a way as to facilitate the life of a mature human individual with the ability to consciously participate in the system of violence.

The modern perspective on human anthill management, however, has not disappeared. It has merely undergone a transformation. Already 30 years ago, philosopher Michel Schooyans wrote about an 'international mandarinat' interested in promoting such practices as euthanasia and abortion. According to him, the policies of the UN, the European Union, or the Democratic Party in the United States are far ahead of public sentiment and work to break down moral resistance. The pro-life opposition is ignored, which shows that the position of the supposed reformers on this issue is not a simple representation of public sentiment, but that this sentiment is formed through the shaping of legal and institutional systems, which are primarily influenced by elites.¹⁷⁹

It is also impossible to ignore the contribution of totalitarian systems to the spread and massification of abortion. It was in this context that a kind of taboo was developed on the killing of people in the foetal stage of life – it was reduced to a medical procedure and service. Both totalitarianisms of the 20th century largely adopted the utilitarian ideas contained, for example, in the writings of Spencer, as did the disregard for the fate of the individual contained in Marxist currents. In liberal civilization, these elements have not disappeared at all, but have been organized by the imperialism of free choice, which in many spheres of culture has become part of a new unveiling of legitimized violence. Undoubtedly, in the 20th century, the superstitions leading to the phenomenon of non-identification of different categories of

179 M. Schooyans, *Aborcja a politka*, transl. K. Deryło, Lublin 1991, pp. 181-182.

people became massified. This is a paradoxical phenomenon in a situation where not only metaphysics, but also the detailed sciences increasingly understand the unity of human life from conception to natural death.

7 Crumbs of contemporary disputes

It is, of course, impossible to recount the broad contemporary discussions on abortion that are taking place both in academic discourse and in journalism. This debate is unfortunately developing in the shadow of the increasing availability of this practice in many countries of the world. On the one hand, there is a constant public dispute between defenders of the unborn and supporters of the freedom to kill them, while on the other hand, an academic discussion abounds with an increasing number of ever more far-reaching justifications for abortion – not only prenatal, by the way, but also postnatal – appearing especially among utilitarian ethicists finding an audience with numerous public health experts or politicians.

This makes it all the more worthwhile to show the clear continuity between the ideas that developed in the modern era and contemporary opinions. These opinions are often presented as 'rational' and 'progressive', but on the basis of what has been said so far, one can doubt the veracity of both of these slogans. Utilitarians do not delve into specific human destinies but look at statistics showing an increase in global wealth, a decrease in the mortality rate of children already born, a lower percentage of births to disabled people. These statistics, of course, do not capture those unborn yet already killed. Their forced deaths are the real cost of utilitarian progress. It is clear that the millions of abortions performed in the world would spoil any of the United Nations statistics designed to prove the material and moral development of humanity.¹⁸⁰ Statistics are one

180 As a very vivid example of modern thinking in terms of utilitarianism and social Darwinism, Hans Rosling's book *Factfulness. Dlaczego świat jest lepszy, niż myślimy, czyli jak stereotypy zastąpić realną wiedzę* [*Factfulness: Ten Reasons We're Wrong About the World – and Why Things Are Better Than You Think*]. The author recognises as one of the factors of social progress the elements of depopulation policy – low fertility and abortion. However, he especially does not devote any moral reflection to the latter issue. Moreover, he manipulates the reader when he mentions that Swedes traveled to 'Catholic Poland' to have abortions, which is presumably meant to show how insignificant and hypocritical religion is. He fails to add that this was not Catholic Poland, but Poland under Communist rule. H. Rosling, O. Rosling, A. Rosling Rönnlund, *Factfulness. Dlaczego świat jest lepszy, niż myślimy, czyli jak stereotypy zastąpić realną wiedzę*, transl. M. Popławska, Poznań 2018.

of the superstitions obscuring the ethical regression taking place within the civilization of liberal utilitarianism.

7.1 Spaemann vs. Rüpke

For the purposes of this dissertation, a polemical 1974 article by the prominent German philosopher Robert Spaemann entitled *Do the Unborn Have a Right to Life*¹⁸¹ can be used as an example of the discussions taking place in the 20th century on the issue of abortion. The context in which the text was written was the then ongoing debate in Germany over the provision in that country's constitution protecting the right to life.¹⁸² However, the analysis of the context is not as important here as the reconstruction of the anthropological principles put forward at the time by the pro-abortion lawyer Giseler Rüpke, as well as their criticism by Spaemann. The voices of both authors can be considered representative of the debate both in the twentieth century and, in some respects, in modern times on the life of the unborn. Spaemann accurately describes Rüpke's position in this way (where quotation marks appear in the text, Spaemann directly quotes his opponent): 'The bottom line of Rüpke's thesis is this: the right to life [...] does not refer to "human life in the sense of the natural sciences", but to an ideal object that is constituted only by "social momentousness, expectations and valuations". Symbolically mediated interaction and communication are constitutive of human life as a legal good. If it is nevertheless forbidden to kill children in the first year of life, even though they do not participate in this interaction, it is only because of "the fullness of symbolic meaning that the other members of society give to the child in the form of expectations, relations of love, personal, medical and economic assistance".'¹⁸³

Rüpke draws the conclusion from his argument that 'without the child-directed involvement of the mother, no socially momentous criterion for

181 R. Spaemann, *Czy nienarodzeni mają prawo do życia*, [in:] idem, *Granice. O etycznym wymiarze działania*, transl. J. Merecki, Warszawa 2006, pp. 500-508.

182 The discussion concerned Article 2(2) of the Constitution, which reads: 'Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.'

183 R. Spaemann, *Czy nienarodzeni mają...*, p. 500; G. Rüpke, *Personlichkeitsrecht und Schwangerschaftsunterbrechung*, "Zeitschrift für Rechtspolitik" 1974, 7. Jg., Heft 4.

acceptance into the legal community is directly imposed'.¹⁸⁴ What we get in this argumentation is a consistent proposal for the realization of ideas whose shape has been outlined by generations of early modern and modern intellectuals. The modern recognition of the humanity of a conceived person is not done on the basis of the fundamental assumption that the foetus exists, not even on the basis of philosophical distinctions that would postpone the humanization of the foetus to some later time than conception. This recognition is ceded to the mother, to whom the power to use radical violence against the little human being is delegated. At the same time, her arbitrary desire, often previously conditioned not only by the emotions associated with the state of pregnancy, but also by the utilitarian, social formation shaping the modern mentality, is taken as a sufficient criterion for the decision. The devaluation of the importance of both the state and science as a source supporting moral decisions, and the exclusion of philosophy and religion from the decision-making process, as it were, forces the legislator to place responsibility on the weakest part of society, namely the individual, who in an atomized society easily becomes a slave to selfish blackmail or fears about the stability of life.

Rüpke's thinking is not accidental – one cannot help but recognize a whole mixture of early modern and modern assumptions. He does not treat the human being according to the older recognitions, in which the soul was considered a form of the body and human life. He also goes further than the old dualism of body and soul, which, conventionally speaking, from Descartes onward, marked itself as an intellectual regression from classical understandings. The intellectual situation in Rüpke's article is much worse, because in it the idealism of modernity has been directly replaced by the materialist theory of socialization, in which the body, like an object, is only a carrier of consciousness (soul), while the consciousness-soul, in turn, is entirely a creation of society. Spaemann sees in Rüpke's reasoning the conclusion that since the soul is only a creation of social relations, it completely belongs to and depends on society. We should add, which Spaemann does not formulate explicitly – although the soul itself in this vision is already something completely different from the integral view, it retains

184 R. Spaemann, *Czy nienarodzeni mają...*, p. 501.

the importance of essence in the process of understanding the humanity of persons. However, the soul – according to Rüpke – consists of more than just consciousness. In the case of unborn persons, it is also the will of other persons. It is other people – the mother, for example – who determine its presence. Rüpke, separating this secularized vision of the soul from the body, makes the body merely meat that can be disposed of as something meaningless.¹⁸⁵ Spaemann, pointing to the objectification of human life by authors representing the mentality of societies in the 20th century, concludes as follows: ‘Rüpke conceives of the individual solely as a product of society. The rights of the individual then become rules of protection concerning the “carriers of social meaning”, similar to the protection of monuments, which is also not about the rights of monuments, but about the rights of those for whom monuments have “momentous” meaning.’¹⁸⁶

Rüpke’s argument is simply based on Kant’s formal ethics, the practical realization of which is filled by the subjective content of sublimity or momentousness. Spaemann adds firmly that this position is no different from the practical justifications operating in Nazi Germany, which are easier to forget than Nietzschean hopes for the formation of a superman. Undoubtedly, however, a certain kind of cult of the strong that Nietzsche proposed is still present today in the attitude of the educated, athletic, devoid of ‘vague sentimental fantasies’ (Margaret Sanger) of modern man. In the Nazi state, life also had no meaning or value other than ‘momentousness’. ‘If Rüpke thinks he can reject the string of associations “abortion – euthanasia – National Socialism” because National Socialism evaluated abortion quite differently, he is mistaken. If the National Socialists preserved the criminalization of abortion in Germany, the justification was only population policy. In occupied Poland, abortion was fully permissible. For the National Socialists, the right to life of the unborn had as little importance as the right to life of those already born. They considered only the criterion of social importance.’¹⁸⁷

185 How much this disintegrated way of thinking has permeated societies was reminded by a statement made by the wife of Tomasz Mackiewicz, who died in the Himalayas. During a conversation about death, he was said to have told his wife that the body is just a shell, a husk, therefore something meaningless.

186 R. Spaemann, *Czy nienarodzeni mają...*, p. 501.

187 Ibid.

Every idealism is particularism striving for totality, the total power of the ideals of a minority – their ideas – over the whole. In its extreme form, this aspiration leads all the way to the killing of those people who do not fit the ideal. Sometimes because of their actions, but more often because of who they are – beings easily eliminated. Breaking down particularism must be done by breaking down selfishness. For those who would consider this argument a mere rhetorical ploy in the intra-German debate, Spaemann provides other arguments as well.

He notes that each of us feels an identity with his 'biological substrate', including from that phase of life when he did not yet possess consciousness. At the same time, the development of consciousness is not possible outside the biological nature of life, because it is the human body – on Spaemann's reading – that is prepared for consciousness to develop from it. The conclusion is simple: the soul, the human form, precedes socialization. None of us, says the philosopher, would grow into a healthy human being if we were treated as objects to be moulded into 'someone' (the effect of creation). 'The mother – as we will say today, in a spontaneous regression – treats the child as a communication partner. She talks to it, smiles at it, etc. and in this way leads to the appearance of a partner. Caring for the child has the character of recognizing a "subject" from the beginning, and it is only in this way – and not as a "creature" of its parents – that what is in itself can become "for itself", that is, become a subject.'¹⁸⁸

To put it simply – no socialization will lead to a situation in which an animal biological substrate develops into a person. Spaemann correctly notes that Rüpke's position contradicts the data of social science. It should also be emphasized that in the pro-abortion position we are not dealing with scientific justification, but with a certain conception of political philosophy and, more broadly, a model of culture. That is, the modern model of the liberal state is not just a consequence of the anachronism of a certain pre-scientific political theory that cannot cope with the findings of the detailed sciences. It represents a great para-religious system of justification

188 Ibid., p. 503.

of moral evil taking place at various levels of social life.¹⁸⁹ Anyway, Rüpke, a representative of modern thinking, speaks almost directly about justification in the religious sense when he argues that the legal change Germany discussed in 1974 was to remove the issue of abortion from the realm of a woman's conscience, so that abortion would not be an alleged psychological barrier. Thus, the change at the time was not at all 'about doing justice to social reality – as he says elsewhere – but about influencing and changing it'¹⁹⁰ – a spiritual and formative action.

The violence of abortion is revealed very clearly in the characteristics of the modern, including liberal, social system. A person becomes only the one whom society so determines. The purpose of such established regulations is to increase the utility of the objectified human world, and thus to maximize the pleasure of those who are able to guarantee the right to protect their own existence from the centres of power and disposers of violence. Modernity is simply interested in those who are able to institutionalize violence for their own protection and satisfaction. These mechanisms follow directly from the Hobbesian myth of the war of all against all, which is only somewhat masked by the social contract.

Legally mandated consent to abortion has at least one more purpose. It is a simple procedure to limit the revolutionary and democratic nature of any birth. This aspect was pointed out by Margaret Sanger. The point of the modern political system – to use Kant's language – is to strive for 'eternal peace' against the imperfection, complexity and diversity of the human condition. The need to stabilize the human community and its bloated desires prompts the modern sovereign to exclude individuals who disrupt the desired stability, especially if they lack the tools of opposition. In the words of an important Hobbesian principle: the sovereign has the right to exclude from the community anyone who brings chaos or civil war.¹⁹¹ This principle should be regarded as socially paramount in the political order.

189 I wrote about how the modern state enters the role of God, promising false justifications for moral evil, in my book *Bękarty Dantego. Szkice o zanikaniu i odradzaniu się widzialnego chrześcijaństwa* (Kraków 2015, Chapter *Zaadaptowane teologie sekularyzmu*, pp. 245-266).

190 R. Spaemann, *Czy nienarodzeni mają...*, p. 505.

191 See T. Hobbes, op. cit.

The emergence of numerous new generations – and sometimes new generations in general – is undoubtedly an anarchic element for the social contract. As, moreover, is the claim of the elderly to care in an era after the breakdown of the multigenerational family.

Beneath the rationalizations of utilitarian ethics lies the voluntarism of herd violence. However, this dynamic of modern societies is not a direct result of the nature of man – as modern people believe and fight against – but of the formative influence of the myth of man's sinister nature, which only a relativistic social contract can tame. Although arbitrary violence was a common phenomenon in the past, in no other era did violence become such a systemic phenomenon as in modernity. In no other era has such a fundamental war been waged against the solidaristic foundation of human nature. Thanks to it, the rebirth of societies has always occurred through the formation of new families and the birth of new generations.

Rüpke's article contains an important theme of 'emancipation from natural conditions'. It is increasingly present in Western culture, including in the anthropology of abortion. One aspect of the secularizing dualism of soul and body is the increasing prevalence of the belief that the soul is simply consciousness. The impact of this concept is increasing along with the flushing out of Christian faith from the culture and finds expression in the desire for emancipation from the body seen as a source of suffering and – ultimately – the cause of human death.

Fully effective emancipation, Spaemann writes, is suicide, the transhumanist dream, or the removal of those who interfere with optimal life self-realization. It is also a theoretical possibility to transform nature in such a way that it is completely obedient to man. Spaemann asked as early as the 1970s whether 'transformation' – the total subjection of the world to the will of man – instead of leading to liberation, does not lead to the increasing destruction of nature, of which we are a part. If modernity is at war with nature, the evil consequences of this struggle can be seen throughout the human ecosystem. Spaemann even points out the danger of the collective suicide of a humanity memorized in the rule of emancipation. The mass abortion system established by the world's

wealthy countries in cooperation with the UN seems to be part of this phenomenon described by the German philosopher.

Modern socialization theories show societies a false light, as if we become part of humanity by co-optation, as if our bodies are a burden requiring a better carrier in the future – so transhumanists would like to see – while for each of us physicality is a source of freedom. If conceiving and giving birth ceases on earth and we all become consciousnesses embedded on integrated circuits or other carriers, it will quickly become clear that the real power over us will be held by the creator of those circuits. And the One who created the bodies has no interest in us other than to bestow goodness itself. This means that the ‘independent carrier’ is something priceless to humans. ‘Dominion over nature implies man’s dominion over man. For man himself is part of nature. To consider him a subject only where he is no longer nature is to put things on their head.’¹⁹²

Since the body is not a product, but a matter of God and human nature, it may just remain one of the guarantors of freedom. The rationalizations of abortion are thus part of a radical war to objectify – and perhaps annihilate – human beings. Emancipation makes sense only insofar as it is a process of seeking justice and harmonizing societies. However, it easily becomes a destructive representation of the particular will of the powerful.

7.2 From abortion to infanticide

Despite the criticism of authors such as Robert Spaemann, but also many others, utilitarianism remains the dominant voice in academic ethical disputes, and thus also increasingly influences the practice of law making in many states. In the fall of 2019, for example, the last of the Australian states, New South Wales, allowed unrestricted abortion up to 22 weeks, also permitting this date to be pushed back further with medical approval.¹⁹³ The discussion in Germany, which took place in the mid-1970s, was

¹⁹² R. Spaemann, *Czy nienarodzeni mają...*, p. 506.

¹⁹³ Polskie Radio 24, *Australia: aborcja zalegalizowana w całym kraju. Zmieniono przepisy sprzed 119 lat*, <https://www.polskieradio24.pl/5/1223/Artykul/2373509,Australia-aborcja-zalegalizowana-w-calym-kraju-Zmieniono-przepisy-sprzed-119-lat>, accessed 19 November 2022.

not an exception, but rather part of a broader wave of domination of abortion ideology in its liberal version in states' public policies, expert thinking and academia. This ideology, founded on utilitarianism and contractualism detached from the data of human nature, became the new face of social Darwinism and a camouflaged revival of eugenic traditions. As early as 1975, a year after Spaemann's polemic, Michael Tooley's article *Abortion and Infanticide* was published¹⁹⁴ suggesting the possibility of killing handicapped children at birth.

Tooley argued that such babies cannot be tortured or martyred, but this does not mean that they have a right to life: 'An individual cannot have a specific right [...] unless he has or can have some interest in the prolongation of which he will be interested.'¹⁹⁵ Thus, newborns may have an interest in not feeling pain, but as beings devoid of awareness of their own existence, they have no interest in its continuation. By force, we can only talk about interests when they are expressed. In the case of infants, therefore, we should speak of no other than sentient objects. The idea that the human body is merely a biological substrate devoid of human form, which Tooley links not only to the possession of consciousness but also to human recognition of individual interest, consistently leads to the denial of personal rights to successive groups of human individuals. This ethics can be seen as a continuation of the idea of natural law understood as a set of logically consistent syllogisms based on completely abstract, arbitrary and particularistic premises, which can be shaped according to the expectations of conscious subjects of the social contract. This surprising similarity is due to the transformation of natural law, based on rationally recognized natural goals of human existence, into a system of justifications and regulations that form a social mechanism for optimizing satisfaction (the so-called quality of life).

In 1985, Peter Singer together with Helga Kuhse published a book entitled *Should the Baby Live? The Problem of Handicapped Infants*.¹⁹⁶ In it, they justified the possibility of infanticide with the argument that a handicapped

194 M. Tooley, *Abortion and Infanticide*, "Philosophy & Public Affairs" 1972, vol. 2, no. 1, pp. 37-65.

195 The quoted sentence translated by T.P. Terlikowski after the author's book *Faktura na zabijanie. Współczesny przemysł śmierci* (op. cit., pp. 119-120).

196 H. Kuhse, P. Singer, *Should the Baby Live? The Problem of Handicapped Infants*, Oxford 1985.

child creates a handicapped family: 'When having a handicapped child, parents often decide to stop further reproduction; if the child is lost, parents often want to have another one, and it (in all likelihood) will be normal.'

One of the important arguments given by the authors is the belief that the cost to the family and society of treating such children is a waste of resources. Similar claims have been used by proponents of eugenics in the past as well. Also in Nazi Germany, where leaflets supporting the state's population policy could read that 'in Germany alone more than 700 million marks have to be spent on such unfortunate beings'.¹⁹⁷ So killing is allowed because it lowers the cost of servicing the so-called human anthill. The foundation of this thinking is the consistent denial of the qualities of a person to children, which has the character of a historically formed and established superstition. And today we are not just dealing with academic considerations.

A similar logic was used by the influential UN public health expert Hans Rosling, known for his popular science books.¹⁹⁸ A continuation of the themes undertaken by Margaret Sanger can be seen here. Benjamin Wiker, in his analysis of Sanger's ideas, summarised the gist of utilitarianism as follows: 'the rationalisation here will be quite simple and truly eugenic: any reduction in "quality of life" is bad from a eugenics point of view, and there is only one way out for vulnerable people.'¹⁹⁹

In *Practical Ethics*, his main book, Peter Singer wrote: 'A foetus does not have the same claim to life as a person, [...] neither does a newborn infant.'²⁰⁰ And in his book *On Life and Death*, he completed the issue as follows: 'Birth is a moment that is significant insofar as the mother and child begin to share a bond different from that between her and the foetus, and other people relate to the child differently than before. However, this is not yet a reason why a foetus that has hitherto had no right to life should at this very moment suddenly acquire the same rights as all other people.'²⁰¹

197 T. Terlikowski, *Faktura na zabijanie...*, p. 121.

198 H. Rosling, O. Rosling, A. Rosling Rönnlund, op. cit.

199 B. Wiker, op. cit., p. 202.

200 P. Singer, *Etyka...*, p. 149.

201 P. Singer, *Life and Death. The Collapse of Our Traditional Ethics*, New York 1995, p. 130.

Singer rejects arguments about the innocence and vulnerability of children, nor is he convinced that they evoke feelings. And one could agree with the Australian author on scepticism about such a line of argumentation. Only one would have to draw a different conclusion. The fact that a human person does not always correspond in appearance to the images our mind suggests when we think of a human being does not mean that we can deny their humanity. A foetus, a handicapped human being, a human being ravaged by disease, or an old man may cause resentment in people, but that is why ethical and anthropological research is being conducted, to break down the superstitious illusions suggested to us by sensory cognition.

To show the level of escalation and radicalization of abortion demands, to which the uncritical use of utilitarian dogma leads, it is worth zooming in on another text dating from 2012, which provoked widespread reactions in English-speaking countries. Alberto Giubilini and Francesca Minerva published a text in the *Journal of Medical Ethics* proposing that the killing of newborns should not be called infanticide, but 'post-birth abortion'. In their justification, the authors wrote as following: 'The moral status of the individual being killed is comparable to that of a foetus. Furthermore, we maintain that the killing of a newborn can be morally permissible in all situations in which abortion is permitted. These circumstances also include situations in which the newborn has the potential to lead [...] a satisfying life, but its existence jeopardizes the welfare of the family. So, the second terminological clarification is that we call this practice "post-birth abortion" rather than "euthanasia", because unlike in the case of euthanasia here, the best interest of the one who is to die is not necessarily key in the decision to go forward with the procedure.'²⁰²

The above quote implicitly proposes the violent principle of ignoring the interest of the individual in favour of the abstractly and arbitrarily determined interest of the larger whole. Elsewhere in the text, the authors expound on their anthropology as a justification for a family's right to kill one of its

202 A. Giubilini, F. Minerva, *After-birth abortion: why should the baby live?*, "Journal of Medical Ethics" 2013, vol. 39, no. 5, pp. 261-263, <http://dx.doi.org/10.1136/medethics-2011-100411>.

members if he or she has not yet acquired the characteristics of consciousness. 'If a potential person has not become an actual person, as you or we have, there is neither an actual nor a future person who could be harmed, and that means there is no harm either. Thus, if you were to ask us whether we would have been harmed if our parents had decided to kill us when we were foetuses or newborns, we would answer "no", because they would have harmed someone who did not exist [...]. And if there was no victim, then there is no harm either.'²⁰³

It is worth transferring this pattern of reasoning to a slightly different area. By analogy, there is no reason not to put to death sleeping persons or those who have lost consciousness in supposedly justified cases, because while sleeping, being in a coma or even simple fainting, they are not, according to the cited authors, persons. Since they have no consciousness, there is no one to harm. This trail of thought even provokes the imagination to project a horror dystopian picture of the world, in which such principles would shape culture and legislation. The authors even acknowledge that infanticide may be better than handing over an unwanted child for adoption, since the latter decision does not allow the parents to completely dissociate themselves from the past and from the definitiveness of the child's departure. Simply put, the interests of 'actual persons' – defined arbitrarily, in an almost inhumane way – are always more important than those of 'potential persons'.²⁰⁴

We can give a practical answer to such an argument by showing the fulfilment of many families who have gone through some kind of parenting crisis in the face of an unplanned pregnancy or the conception of a sick child.²⁰⁵ Such examples undermine the supposedly rational, mechanistic discourse of utilitarians, revealing a fuller picture of human nature. We can also give philosophical arguments. Firstly, it is necessary to reject – as arbitrary – the division into soul and body, consciousness, and biological substrate treated as if they were completely separate realities. As Robert Spaemann

203 Ibid.

204 Ibid.

205 A poignant picture of the experience of giving birth to a child with trisomy was given in Polish literature quite recently by Andrzej Horubała in his book *Wdowa smoleńska albo niefart* (Warszawa 2021).

wrote in his essay *Persons*: ‘There are no potential persons. Persons have capacities, potencies. Persons can develop. But “something” cannot become a person. “Something” will not become a “person”. If being a person were a state, it could arise gradually. But if a person is someone who is in different states, it means that these states always precede. It is not the result of transformation, but of such emergence as the emergence of substance according to Aristotle. A person is a substance because it is the way a person is. It does not begin to exist later than man, and it does not cease to exist earlier.’²⁰⁶

Spaemann’s words can be considered the best summary of this chapter, as they provide a retort to most of the core contemporary arguments that undermine the humanity of the *nasciturus*.

8 Conclusion

This overview is an attempt to capture some of the mechanisms of intellectual change that have brought the modern civilization of the Western world to its present state of contempt for life. Its purpose was to show that abortion cannot be taken out of the broader context of the culture’s intellectual structure. Abortion, in vitro procedures, euthanasia, gender, and sexuality manipulation find a common factor in the utilitarian principle of optimizing the ‘quality of life’ of human consciousnesses and training these consciousnesses for a completely hedonistic and egoistic formation aimed at individualistic self-realization. Let us add that this is a false formation and consciousness, already causing the death of millions of human lives every year. Just as in the 20th century people were murdered on an industrial scale because of superstitions about human races, the belief in the even substantive division of societies into classes, the substantive division of the human race on the basis of intelligence, so today the area of justified killing based on equally arbitrary categories of quality of life or consciousness is expanding. The supposedly bad quality of life in the future may turn out to be the disappointment of parents that their child

206 R. Spaemann, *Osoby...*, p. 302.

does not meet expected genetic standards or performs inadequately, in their opinion, in education. This raises the question of whether the solution would then be to take the lives of such individuals at bedtime. Research shows that the increasingly far-reaching ideas of optimizing identity from the perspective of quality of life do not improve the condition of human consciousnesses themselves at all.²⁰⁷ Perhaps this is because they destroy human nature instead of repairing it.

The path that Western civilization has travelled in the 20th and 21st centuries is a rapid moral regression indicating a dramatic crisis of cognitive methods in anthropology and their reduction to narrow natural science resulting in the systemic objectification of human life. In the last century, modern civilization went from a path where abortion was anxiously permitted only in extreme circumstances, to full access to prenatal infanticide on demand. Observing the path of utilitarian ethicists, one can now expect a stage of infanticide only in extreme circumstances. This raises the question of what comes next. Everything is in the philosophical writings, which are not just an example of the moral confusion of the authors, but a resonance box of the quasi-ripe fruits of the current culture. The trafficking of aborted children's organs, as Planned Parenthood employees were caught doing, is just one of many examples of the life of a culture in which human beings have become objects of their own instrumentalities. It's not hard to imagine that technological developments could lead to the breeding of children for organs – because they are seen only as bodies, meat, not persons. It is equally easy to imagine parents returning 'failed' children to the state – with no regrets, since they are merely bodies devoid of educated consciousness that can be recycled, in a word, non-humans. At this point, the question arises whether history is not repeating itself, and whether the belief that having overcome totalitarian regimes we have overcome the worst principles of modernity was not merely an illusion.

207 This includes so-called transgenderism and surgeries designed to give those suffering from gender identity disorders a better 'quality of life'. See A. van Mol et al., *Correction: Transgender Surgery Provides No Mental Health Benefit*, <https://www.thepublicdiscourse.com/2020/09/71296>, accessed November 19, 2022.

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Abstract

This chapter raises two issues. In the opening part, it focuses on a theoretical problem and an attempt to answer the question whether the consent to abortion in contemporary Western civilization is the result of an intellectual error of a cognitive nature, or whether we are dealing with a moral error that has been subjected to secondary intellectual rationalization. The concept considered in this part of the chapter is superstition, understood as a misconception about reality, which, however, is kept in social circulation due to its usefulness. Superstition, because it is a misconception of reality, besides being useful, is also a vehicle of violence. In the case of abortion, of course, it is a superstition that falsifies the concept of humanity in relation to people in the prenatal phase of life.

The second, more extensive part of the chapter is a study in the field of history and ideas, as well as anthropological thought. On the one hand, it illustrates how the European intellectual tradition freed itself from the superstitions about foetal life that were characteristic of the era of pagan antiquity. The development of this tradition has its various phases, e.g., the struggle of Christian thinkers with the ambiguity of the Platonic and Aristotelian heritage, which on the one hand supported consent to the killing of people in the prenatal phase of life, and on the other hand – in its metaphysical principles – opened space for the construction of an ethics of an integral nature.

On the other hand, this part of the chapter illustrates the dynamics of the modern anthropological crisis. However, research conducted in the modern era is also ambiguous since it was in this intellectual period that comprehensively grounded principles of integral ethics were developed, while at the same time it witnessed an intellectual and legal revolt against the inviolability of human life from its conception.

The analysis in the field of the history of thought is therefore illustrative source material for the first, more theoretical part of the chapter, and allows the reader to form an opinion on the sources of contemporary utilitarian and integral ethical beliefs.

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Key terms: abortion, abortion-related vocabulary, abortion discourse, media discourse, foetus vs. child

Chapter 2

The linguistic image of abortion and the *foetus–child* opposition. A lexical analysis of Polish press texts in electronic media in the first two decades of the 21st century (2000-2018)¹

1 Introduction

In the bioethical realm, no topic triggers as many emotions nor is so vividly discussed by all social strata, professions, and occupations as the dispute over abortion. It is not only NGOs, whose missions have evolved into making efforts to change the existing law in this area. Lawyers, doctors, philosophers, ethicists, artists and, last but not least, clergymen of various denominations also argue about its moral assessment and related regulations. Although the dispute in its current form – i.e., pertaining to the Act of 7 January 1993 on family planning, the protection of the human foetus and the conditions for the permissibility of interruption of pregnancy² (hereinafter: the 1993 Act) – has been going on in Poland for three decades, successive attempts to either soften or tighten

1 Since the analysis concerns the Polish language, the individual expressions under examination have been translated as literally as possible in order to reflect the meanings of the original Polish lexemes. As a result, the translations of some lexemes may sound unnatural or be uncommon in English; however, the goal was to capture the semantic differences found in the Polish language.

2 Act of 7 January 1993 on family planning, the protection of the human foetus, and the conditions for the permissibility of interruption of pregnancy (Dz.U. No. 17, item 78) – in this chapter, by way of exception, the title of this Act is rendered using the term *interruption*. In other chapters, the title is rendered as: Act on family planning, the protection of the human foetus, and the conditions for the permissibility of termination of pregnancy – editor's note.

the existing legislation have mobilised an increasing part of Polish society to take sides and defend their position.

This advocacy is, of course, carried out by means of language, which is used to express attitudes, formulate arguments, or demands, and is a tool to persuade others to share a given view. The importance of the influence of language on the perception of reality seems to be intuitively felt by many of its ordinary users – not only specialists – although the sheer extent of this influence is sometimes the subject of dispute in semiotics, linguistics, philosophy, and other areas of academic discourse.³

An examination of the abortion discourse clearly shows that it is built on the key opposition *foetus–child*. Taking the side of one of the camps has far-reaching linguistic consequences and implies a way of talking about the prenatal stage of human development, resulting in the construction of two distinct lexical repertoires concerning the same phenomenon.

The aim of the study was not only to thoroughly analyse both of these linguistic repertoires in the electronic press between 2000 and 2018, but also to investigate the *foetus–child* opposition itself. The aim was to see whether it also occurs in contexts other than abortion (for example, in texts about pregnancy and miscarriage) and what ontic status of the developing organism can be determined from it. The conclusions of the study made it possible to enter into a polemic with the findings of other researchers, *inter alia*, with regard to the usus or justification of the use of the word *foetus* as allegedly more appropriate than the lexeme *child*.

2 Research status and methodology

Roma Łobodzińska considers the beginning of the Polish discussion on abortion, which led to the enactment of the 1993 Act, to be September 1988, when the Commission for Social Policy, Health, and Physical

3 Cf. e.g. the discussion around the Sapir-Whorf concept of linguistic relativism, e.g. E. Sapir, *Kultura, język, osobowość*, Warszawa 1978; B.L. Whorf, *Język, myślenie i rzeczywistość*, Warszawa 2002; A. Klimczuk, *Hipoteza Sapira–Whorfa. Przegląd argumentów zwolenników i przeciwników*, "Kultura – Społeczeństwo – Edukacja" 2013, no. 1, pp. 165-181.

Culture of the Sejm (the lower house of the Polish parliament), with the participation of, among others, representatives of the episcopate, the medical community and the legal community, held a meeting during which the implementation of the Act of 27 April 1956 on the conditions for the permissibility of interruption of pregnancy (hereinafter: the Act of 1956)⁴ was discussed.

This does not mean, of course, that there was no discussion about abortion before. From the Polish perspective, the dispute goes back decades, and in the general human perspective almost to the dawn of history. For example, already the classical Greek legislators such as Lycurgus, the founder of Sparta (9th/18th century B.C.), and Solon, the reformer of Athens (7th/21st century B.C.), as well as the Roman thinkers, speakers, i.e., Cicero (2nd/1st century B.C.) as well as Gaius Musonius Rufus (1st century) considered abortion a crime, and its condemnation was also expressed by ancient writers in their works: the tragedies *Eumenides* by Aeschylus and *Andromache* by Euripides, the comedy *Truculentus* by Plautus, the satires of Juvenalis or the writings of Seneca and the poems of Ovid.⁵

In Poland, this was an issue debated especially in ecclesiastical circles from the interwar period until present day. In the post-war period, attempts to amend the Act of 1956 were mainly made by representatives of the episcopate and lay Catholics. There were several between 1952 and 1990,⁶ including, among others, in 1977, when the Polish Committee for the Defence of Life, the Family and the Nation collected signatures under a petition to the Sejm of the People's Republic of Poland demanding the repeal of abortion legislation, or in 1982, when an anti-abortion bill was presented, which could not be popularised due to martial law.⁷

4 Act of 27 April 1956 on the conditions for the permissibility of interruption of pregnancy (Dz.U. No. 12, item 61). See R. Łobodzińska, *Językowe ujęcie problemu aborcji w świetle deklaracji programowych i wypowiedzi przedstawicieli Zjednoczenia Chrześcijańsko-Narodowego*, [in:] *Język a kultura*, vol. 11, *Język polityki a współczesna kultura polityczna*, eds. J. Anusiewicz, B. Siciński, Wrocław 1994, p. 125-132.

5 M. Wojciechowski, *Starożytne głosy przeciw aborcji*, "Więź" 2013, no. 12, pp. 84-90.

6 See J. Buxakowski, *O nowe spojrzenie na problemy ludnościowe w ustawodawstwie. Przedłożenie wobec Senackich Komisji Zdrowia i Polityki Społecznej oraz Inicjatyw i Prac Ustawodawczych*. Warszawa – 11 kwietnia 1990, "Ethos" 1990, no. 11/12, pp. 407-418.

7 See, *inter alia*, N. Bernaciak, *Kompromitująca cisza wokół obrony życia. Tak jak 30 lat temu! [opinia]*, <https://pch24.pl/kompromitujaca-cisza-wokol-obrony-zycia-tak-jak-30-lat-temu-opinia>, accessed 7 March 2022.

Although the abortion debate is the fiercest bioethical dispute of recent years, the related phenomena of a strictly linguistic nature have so far not been the subject of a description that captures the issue in a comprehensive and exhaustive manner.

This is by no means to say that the subject has not occupied researchers – the language used in public discourse in relation to this issue over the past twenty-five years has been described from the late 1980s and early 1990s, when the Act of 1956 was brought into the focus of the Parliamentary Committee on Social Policy, Health and Physical Culture, through the 1990s, when the Act of 1993 was passed, and all the years that followed, when – so far unsuccessful – attempts were made to make changes tightening or liberalising the current regulations. However, most of these studies focus on the language of the individual representatives of the two camps and do not describe the discourse in a broader perspective that takes into account the language of both sides of the argument holistically.

The publications that have been produced on this topic over the past twenty-five years have described, among other things: the linguistic framing of the abortion issue in parliamentary debates and statements by representatives of individual political parties,⁸ ways of labelling supporters and opponents of abortion or methods of exerting influence through language on abortion.⁹

8 The linguistic approach to the topic of abortion was presented, among others, in several articles in volume 11 of the *Język a kultura* [Language and Culture] series from 1994. Three researchers: R. Łobodzińska, I. Seiffert and A. Dąbrowska present the ways of talking about abortion in the language of politicians of three political parties influencing social life in Poland at that time and the passing of the 1993 Act [three chapters are devoted to the statements of politicians, in turn, of the Christian National Union, the Democratic Union and the Social Democracy of the Republic of Poland]. The same volume also contains an article by T. Wydra, who describes lexical exponents of the impressive function of speech in parliamentary speeches of the 10th term of the Sejm. See A. Dąbrowska, *Językowe ujęcie problemu aborcji w świetle deklaracji programowych i wypowiedzi przedstawicieli Socjaldemokracji Rzeczypospolitej Polskiej*, [in:] *Język a kultura*, vol. 11..., pp. 151-162; R. Łobodzińska, op. cit., pp. 125-131; I. Seiffert, *Językowe ujęcie problemu aborcji w wypowiedziach polityków Unii Demokratycznej*, [in:] *Język a kultura*, vol. 11..., pp. 133-150; T. Wydra, *Leksykalne wykładniki impresyjnej funkcji mowy*, [in:] *Język a kultura*, vol. 11..., pp. 97-106.

9 See, *inter alia*: P. Piotrowska, *Etykietowanie w sporze o aborcję. Autoidentyfikacja i identyfikacja oponentów w prasie*, Siemianowice Śląskie 2018; L. Polkowska, *Język prawicy*, Warszawa 2015; T. Hołowska, *O aborcji sine ira et studio*, "Etyka" 2010, no. 43, pp. 143-150, <https://doi.org/10.14394/etyka.541>; T. Hołowska, *Zasady dyskusji racjonalnej*, [in:] *Etyka międzyludzkiej komunikacji*, ed. J. Puzynina, Warszawa 1993, pp. 24-26; G. Wiktorowski, *Sposoby mówienia o aborcji. Implikacje ideowe dyskursu naukowego i światopoglądowego*, [in:] *Problemy zdrowia reprodukcyjnego kobiet*, vol. 1, *Wstęp do badań*, ed. A. Szlagowska, Wrocław 2016, pp. 36-64; M. Kozub-Karkut, *Religia w dyskursie polityki – polski spór o aborcję*, "Annales Universitatis Mariae Curie-Skłodowska, sectio K – Politologia" 2017, vol. 24, no. 2, pp. 237-255, <https://dx.doi.org/10.17951/k.2017.24.2.237>; T. Ślipko, *Za czy przeciw życiu. Pokłosie dyskusji*, Kraków-Warszawa 1992; A. Matuchniak-Krasuska, *Kategorie i reguły polskiego dyskursu o aborcji*, [in:] *Cudze problemy. O ważności tego, co nieważne. Analiza dyskursu publicznego w Polsce*, eds. M. Czyżewski, K. Dunin, A. Piotrowski, Warszawa 1991; E. Wejbert-Wąsiewicz, *Aborcja w dyskursie publicznym. Monografia zjawiska*, Łódź 2012.

Notes on the language of the two sides of the dispute also appear in texts from other fields – mainly sociology, but also ethics, political science, and other disciplines.¹⁰ In the studies that treat the topic more broadly than just signalling the problem, a qualitative type of analysis predominates.

It is not uncommon for studies to include attempts at evaluation, unfortunately also with a high degree of subjectivity.¹¹ I am discussing this lack of objectivity in linguistic research more extensively in a subsection *Polemics*, and individual findings from other works and concerning specific linguistic phenomena when analysing the relevant lexemes.

The paper aspires to fill a certain gap that has developed in the description of language concerning abortion. It is an attempt to characterise the lexical layer in the speaking on the subject of abortion by both its supporters and its opponents, a division which has become clear, confirming the findings made by other researchers.¹²

The material subjected to lexical analysis with occasional comments relating to morphology (mainly vocabulary) was extracted from 260 randomly selected articles – both of a news and journalistic nature – published in the electronic media between 2000 and 2018. For obvious reasons related to the development of this type of media, the majority of the texts studied came from the years 2010-2018, most often from those periods when the media space reacted most intensively to current events in the country.

10 From the perspective of the philosophy of language, this language of dispute has been described, among others, by J. Gula who, on the basis of the analysis of the sequence of designators, convinces that it is possible to call a human being (it is a meaningless word, although it can undoubtedly be used to designate objects of a certain class) a human being in the stage of a fertilised egg cell. J. Gula, *Lingwistyczny aspekt problemu naciągania*, [in:] *W imieniu dziecka poczętego*, eds. J.W. Gałkowski, J. Gula, Rzym-Lublin 1988, pp. 21-22.

11 U. Wysocka assesses the language of the editors of the Fronda.pl portal negatively – specifically, ethically dishonest – considering it as 'hate speech'. However, the researcher does not shy away from comments of a subjective nature or of a high degree of generality, without reference to specific facts. As an example, the way the described portal is presented in the introduction of the work: 'Frona.pl has an extreme right-wing and conservative approach. It praises everything that is traditional and connected to the Catholic faith. It criticises everything that is different, non-Catholic, non-traditional, new. Journalists working with the portal very often try to convince people of their views by using insulting and degrading words. This usually involves condemnation rather than trying to change other people's beliefs. Even among Catholic circles, fronda.pl arouses controversy due to its absurd argumentation and its adherence to Christian principles usually only in theory. Moreover, people presented by the portal as moral authorities are not always such authorities – sometimes we learn about their unethical behaviour' (p. 144). See U. Wysocka, *Cel uświęca środki? Nadużycia etyczne w posługiwaniu się słowem w sporze Frondy.pl z liberalizmem światopoglądowym*, [in:] P. Trzaskowski, U. Wysocka, *Narracje o narodowcach i walce z aborcją z perspektywy etyki słowa*, Warszawa 2016, pp. 141-262.

12 See, *inter alia*, P. Piotrowska, op. cit. p. 9.

These were either attempts to tighten or relax abortion regulations or high-profile media cases, such as the so-called Agata case in 2008 or the controversy surrounding the dismissal of Professor Bogdan Chazan from his position as director of the Holy Family Hospital in Warsaw in 2014, among others.

The collected texts have been grouped into seven collections:

- a) Group A consists of 50 press articles on abortion selected from online media or from electronic editions of the traditional press which, for the purposes of this paper, can be described as left-liberal in terms of their attitude to abortion. In this group, the largest number of articles comes from *Gazeta.pl* (and other thematic websites owned by Agora, such as *WysokieObcasy.pl*), with the remainder coming from such websites as *NaTemat.pl*, *Polityka.pl*, *Newsweek.pl*, *Oko.press*, and *Onet.pl*.
- b) Group B included 50 press texts from media described as Catholic. These include: *Gosc.pl*, *PCh24.pl*, *Niedziela.pl*, *NaszDziennik.pl*, *Frona.pl*.
- c) Group C consists of 20 texts posted on the websites of feminist organizations involved in efforts to legalise abortion. The examples were excerpted from the following websites: *CodziennikFeministyczny.pl*, *Federa.org.pl*, *Manifa.org*, *KrytykaPolityczna.pl*, *Feminoteka.pl*, and *KongresKobiet.pl*.
- d) Identical in terms of the number of texts as group C are the texts of group D placed on the websites of non-governmental pro-life organizations. Examples of the use of particular lexical units were quoted from the following websites: *Pro-life.pl*, *StopAborcji.pl*, *ZycieRodzina.pl*, *Federacjazycia.pl*.
- e) Group E included 50 press articles on pregnancy and miscarriage. Most of them come from thematic websites of the *Gazeta.pl* portal (apart from the main *Gazeta.pl* address, these also include *Kobieta.gazeta.pl* or *Zdrowie.gazeta.pl*), and the remainder from the *NaTemat.pl* portal and electronic editions of the *Polityka* and *Newsweek* weeklies.

- f) Group F comprises 20 texts on pregnancy and miscarriage published in the Catholic press. The reduced number of texts in relation to the articles in group E is due to the fact that health problems of pregnant women are not a frequent topic in this type of media. The texts collected in collection E deal primarily with miscarriage.
- g) Group G is made up of 50 texts on pregnancy posted on websites dedicated to motherhood, pregnancy, health: BabyBoom.pl, Mamotoja.pl (former Babyonline.pl), Mjakmama24.pl, and Parenting.pl.

While the first four groups constitute strictly research material, the next two were necessary for a comparative analysis to determine whether the way of talking about the beginnings of human life, i.e., among other things the use of the words *foetus* and *child*, changes according to the different contexts – abortion on the one hand and expected pregnancy on the other.

The comparison was reinforced by an analysis of texts posted on pregnancy and maternity portals (group G). The latter analysis also served to establish linguistic usus and was one piece of evidence in polemical argumentation against the findings of other researchers.

In order not to artificially increase the occurrences of the word *child*, articles on childbirth were not included in collections E and G. Neither were the occurrences of this lexeme counted in the other texts, where it referred to a child coming into the world. The increased number of examples in this way would then only confirm the assumption, often promoted by these media, that one can only talk about the child after it has been born. However, the aim of the study was to find out whether the authors of the articles use the words *foetus* or *child* to the same extent when writing about abortion as they do when referring to the course of a pregnancy, the health of the pregnant woman or miscarriage.

To avoid artificially increasing the frequency of words used by both sides of the argument, the counting of occurrences in quotations (in reported as well as direct speech) from the opposing side of the argument was also abandoned. Thus, if a quotation with a term specific to the language

of abortion supporters appeared in a text of abortion opponents, it was not included in the quantitative analysis. Also omitted were speeches by individuals in statements made in public, for example during debate in parliament, and included were those made for a specific press title, for example in an interview or commentary given to the media.

A similar method was also applied to other lexical units. For example, words and word combinations such as *foetus* or *interruption of pregnancy* were not included if they appeared as part of or referred to the name of the Act on family planning, the protection of the human foetus and the conditions for the permissibility of interruption of Pregnancy. Words derived from quotations from other sources were also not included.

3 Lexical analysis

A total of 260 news and journalistic texts of varying volumes were subjected to lexical analysis.

3.1 Two lexical repertoires based on the foetus–child opposition

As already mentioned, the dispute over abortion in the public space flared up on a larger scale in the 1980s, when the bill for the protection of conceived life was announced. It was also then that the process of polarisation of society according to the criterion of attitude to abortion began, which was simultaneously reflected in language.

The primary semantic opposition that forms the centre of the antagonism and conditions the choice of linguistic means by those discussing abortion is the foetus–child opposition. This is where the axis of the dispute runs and this opposition is primary to the attitude towards abortion.

The current dichotomy of positions is clear and no one should find it difficult to draw the dividing line. Opponents of abortion place *the unborn child* at the centre and derive all other judgements and choice of vocabulary from this assumption. The optics of this side of the argument – at least from

a linguistic perspective – are well reflected by Janusz Gula: ‘We think that a necessary and at the same time sufficient condition for the use of the term “human being” is the fact of being conceived by human parents. For this fact applies not only to the embryo or the newborn, but also to the mature human being, to the mentally ill and to the physically deformed. After all, we are all conceived by human parents. Being conceived by human parents implies, in turn, that each of us possesses a human biological structure (encoded in our genes). This in turn conditions, if not currently, then at least potentially, the human way of life, although the way in which a human being exists is determined above all by human socio-cultural relations.’¹³

Pro-abortion discourse, on the other hand, as Marzena Makuchowska notes, gives a central position to the woman and her ‘right to life characterised by values such as freedom of choice, health security, economic security, social security, the right to self-realisation, and other such arguments’;¹⁴ and either completely ignores the existence of the conceived being or undermines the thesis of its humanity.

When examining attempts to establish the status of a human being by means of language, Makuchowska points out that the very fact of the existence of embryological terms such as *zygote*, *embryo*, *foetus* may be evidence for two different theses.¹⁵ One is that they name something that is not yet human, since the fact that separate names exist implies the existence of separate entities. And since they do not apply the names *human* or *child* to them, she explains, this means that they are neither a human nor a child.

The second thesis claims the opposite, namely – that these are the names of successive life stages of the same organism distinguished on the basis of anatomical-physiological criteria according to the same principle as the later stages, i.e., newborn, infant, child, girl and boy, woman and man, old woman and old man. This assumption also corresponds to the thesis that since there is no name common to all pre-birth stages (i.e., *zygote*, *embryo*,

13 J. Gula, op. cit., p. 17.

14 M. Makuchowska, *Płód czy dziecko? O językowym ustanawianiu statusu człowieka*, “Poradnik Językowy” 2014, no. 1, p. 54.

15 Ibid., p. 55.

foetus), it means that linguistically there was no need for such a name, since they are simply successive phases of human life, indistinguishable in essence from the following ones, i.e., newborn, infant, and other terms used. The principle of 'separate name—separate entity' does not apply here either, since the terms mentioned do not speak of several ontically different entities being something other than a *child* (a *human*), but of one such entity.¹⁶

Janusz Gula also refers to natural language in his reflections on the subject. Wondering why highly developed languages lack a term that collectively defines all phases of prenatal development (zygote, embryo, and foetus), he concludes that this is a manifestation of 'the peculiar logic of colloquial language, which does not artificially create names where they cannot be created'. He further explains: 'For if there were any general name to describe a being brought into existence by human parents from the moment of its conception until the moment of birth, it would be different from the name "human". And then the proponents of the linguistic delimitation of the temporal boundaries of human existence would have a strong argument in favour of granting human status only to a being born. However, such a name does not exist, and the term "human being" must be applied to both the human embryo and the human newborn [...].'¹⁷

Nevertheless, in the discourse on abortion, the difference between these two perspectives on the recognition or non-recognition of humanity and the linguistic means associated with them is so strongly marked that it is felt not only by linguists, philosophers, or journalists, but also by ordinary users of Polish, non-specialists.

Aware of the fact that the words used are loaded with meanings that place the sender of the message on one side or the other of the argument, those users who are particularly concerned with impartiality try to use neutral vocabulary. This includes researchers, although many of them use as neutral the lexeme *foetus*,¹⁸ which – as I prove further on in this paper – in the

¹⁶ Ibid., pp. 55–56.

¹⁷ J. Gula, op. cit., p. 23.

¹⁸ An example of an attempt at objectivity, which, however, unfortunately has to be considered not only artificial but also inaccurate and highly unfortunate, is the definition of the word *birth* as a concept used by the Central Statistical Office in public statistics. According to this definition, *birth* is 'the complete expulsion or extraction

discourse on abortion, like the *child*, in most cases nevertheless becomes a clear signal of a particular worldview.

To remain impartial, some researchers use terms such as *conceptus* (among others Grzegorz Wiktorowski),¹⁹ while others – such as Urszula Wysocka – reach for descriptive terms such as *conceived organism of the species Homo sapiens*, explaining straight away that ‘this wording sounds artificial, but it is only thanks to such a term that I can remain impartial’.²⁰ However, she is also inconsistent in that she uses the word *foetus*.²¹

Like Marzena Makuchowska and Janusz Gula, I have chosen the Latin term *nasciturus* – ‘one who is about to be born’ – which is not widely known, although it is listed, for example, by the online edition of the general dictionary.²² Admittedly, it sounds artificial and alien, but as a relatively neutral term unencumbered by connotations²³ of the same force as the words *child* or *foetus*, it is best suited to recount distinct linguistic positions and repertoires. I will use it as a metatext and replace it – for stylistic reasons – with such expressions that I consider to be equally unencumbered axiologically as *human*, *being*, *organism*.

I followed a similar principle with regard to the use of other lexemes related to the issue under investigation. Thus, I avoided such equivalents of the expression *do an abortion as interrupt a pregnancy, remove a pregnancy*,

of the product of conception regardless of the duration of pregnancy’. Leaving aside the unfortunate term ‘product of conception’, this definition is extremely imprecise – as it refers to the birth of a newborn as well as to abortion or the removal of a chorionic gland. See Główny Urząd Statystyczny [Central Statistical Office], *Słownik pojęć – pojęcia stosowane w statystyce publicznej*, www.stat.gov.pl/metainformacje/sownik-pojec, accessed 7 February 2019.

19 G. Wiktorowski, op. cit., p. 38.

20 U. Wysocka, op. cit., p. 150.

21 I wrote about other methodological objections to the work of U. Wysocka in a subsection of *Polemika*.

22 *Nasciturus* [pronounced nasc-iturus]: ‘a child not yet born, who under the law may acquire legal capacity on condition that he or she is born alive’ (*Słownik języka polskiego PWN*, <https://sjp.pwn.pl/sjp/nasciturus;2568804.html>, accessed 4 November 2022; hereinafter: the PWN Polish Dictionary). Neither *Słownik języka polskiego*, ed. M. Szymczak, Warszawa 1995 (hereinafter: Szymczak’s Polish Dictionary), nor *Słownik języka polskiego*, ed. W. Doroszewski, Warszawa 1996-1997 (hereinafter: Doroszewski’s Polish Dictionary), nor *The Great Dictionary of the Polish Language* (compiled on an ongoing basis by linguists from the Institute of Polish Language of the Polish Academy of Sciences, <https://www.wsjp.pl>, accessed 1 February 2022; hereinafter: The Great Dictionary of the Polish Language) mention the term.

23 In A. Matuchniak-Krasuska’s work, the term was classified as part of the vocabulary introduced by opponents of abortion. However, even if it was the work of the pro-life side to popularise this Latin term, today, after almost three decades since the publication of the study, it is clear that the word has not penetrated the language used by either side – it did not occur even once in the material studied. See A. Matuchniak-Krasuska, op. cit., p. 101.

because – as I prove in this work – they are not considered by both sides to be completely neutral either. I discuss this issue more extensively when describing individual lexemes.

As far as attitudes to abortion are concerned, the only relatively neutral terms for both sides of the argument *are supporters* and *opponents of abortion*, although these, too, are not without their reservations, particularly from those individuals who consider the current Polish legal regulations appropriate but do not identify themselves as *supporters of abortion*. However, this generalisation is so insignificant (after all, supporters of the current solutions are supporters of the so-called abortion exceptions, so they are *de facto* supporters of abortion in these three cases regulated by the law) that it cannot hinder or even paralyse the description. The same is true of the expressions *pro-life* and *pro-choice*, which I will use for stylistic reasons.

The study identifies 180 lexical units. The largest set consists of terms used to describe abortion (82 lexemes) and the nasciturus (31); the others concern, among other things, attitudes to abortion or vocabulary related to the health of the *nasciturus*.

The listed lexemes usually belong to one of the two groups designated by the key opposition. Vocabulary spillovers between groups do occur, but not for all words. Those most clearly reflecting attitudes to abortion – such as *killing* or *infanticide* on the one hand, while *clot* or *expel the foetus* on the other – never make it into the language of opponents. The phenomenon is described in detail in the tables at the end of each subsection.

The most popular words identified in the work, such as *abortion*, *interruption of a pregnancy*, *child*, *foetus*, are described in more detail (they open the individual lists), while the others are described in less detail.

3.2 Terms used to describe abortion

The lexical analysis must begin with by far the most popular word in the discourse, the lexeme *abortion*, before moving on to discuss the also very frequent expression *interrupt a pregnancy*.

ABORTION

The term is a relatively young one, used only since the 1990s, but has made quite a remarkable career in the Polish language. Prior to 1989, the most common term was the descriptive structure *interruption of a pregnancy* and the now strongly negatively characterised colloquial word *skroban-ka* [*scraping*],²⁴ as well as the expression *spędzić płód* – Polish phrase reflecting the meaning of remove the foetus, which today can already be considered outdated.²⁵

The fate of the lexeme *abortion* in Polish is presented by Mirosława Mycawka.²⁶ In her article from the early 1990s entitled *Dlaczego używamy wyrazu aborcja?* [*Why do we use the word abortion?*] the researcher points out that although the word is not listed in the Polish language dictionaries of the time,²⁷ nor in Polish medical dictionaries, it spread rapidly both in public debate and in informal private conversations, as well as in artistic activity.

In considering the origin of the term, Mycawka points to two potential sources of linguistic borrowing. One possibility is the Latin feminine noun *abortio(-onis)*, whose Polish equivalent is miscarriage. The researcher explains that the Latin term *abortio* (or *aborcio*) was already known to medieval Latin in Poland; it is also recorded in the Church Latin-Polish Dictionary, but it was not included in either general dictionaries, dictionaries of foreign words or Polish medical terminology. Only the term *abort(us)* has penetrated the latter, which means ‘miscarriage’ but also ‘to cause a miscarriage’.²⁸ However, Mycawka concludes that since for so many centuries, when the influence of Latin on Polish was so strong, the Latin word *abortio* did not penetrate the general language, it is doubtful that this has happened recently.

24 See B. Dunaj, M. Mycawka, *O potrzebnych i niepotrzebnych zapożyczeniach z języka angielskiego*, “Studia Linguistica” 2017, no. 12, p. 75.

25 Szymczak’s Polish Dictionary and Doroszewski’s Polish Dictionary note the term *removing the foetus* without the qualifier, while the term is noted as obsolete by The Great Dictionary of the Polish Language.

26 M. Mycawka, *Dlaczego używamy wyrazu aborcja?*, “Język Polski” 1992, LXXII/4-5, pp. 297-301.

27 M. Mycawka (op. cit.) notes: ‘the term *abortion* is not found in Słownik języka polskiego by G. Knapski and M.A. Trotz, nor in *Podręczny słownik języka polskiego* by M. Arct from 1939, nor in the 1979 edition of *Słownik języka polskiego* edited by M. Szymczak (the 1995 edition already mentions this lexeme – author’s note).’ *Słownik wyrazów obcych i zwrotów obcojęzycznych* [Dictionary of Words and Phrases of Foreign Origin] by W. Kopaliński mentions only the lexeme *abort* (see footnote no. 29).

28 *Słownik łacińsko-polski*, ed. M. Plezia, Warszawa 1959, p. 12, quoted by M. Mycawka, op. cit., p. 298.

Therefore, in her opinion, the hypothesis of the English direction of borrowings is more likely. The Anglicism *abortion* taken over by the Polish language corresponds to the meaning range of the Latinism *abort*, which in this form in the Polish language occurred mainly in the medical vocabulary.²⁹

The neologism *abortion* quickly made a startling career and is the most frequently used today. As I show in my work, it is the only neutral term, i.e., impartial and mutually recognized by both sides of the argument, to describe this phenomenon. In the material studied therein, however, uses of this term appear jointly with the preceding metatextual expression *so-called*, which seems to be intended to express the speaker's distance related to her disapproval of the euphemism, but they are sporadic.³⁰

The term owes its popularity to several sources. In addition to its axiological neutrality, linguistic economy is important, making users more willing to use single-word, precise terms rather than descriptive structures, which are often also axiologically hampered (*interrupting a pregnancy, removing a foetus* and other terms used).

Mycawka argues that the lexeme in question, as a word that speaks implicitly about the phenomenon it names, has become a euphemism for Polish terms.³¹ She argues that by using it 'we avoid getting into the problem of subjectivity or non-subjectivity of the foetus; we also cut ourselves off from indicating the presence of the performer of this act. [...] The word *abortion* situates the phenomenon in question as if outside the sphere of human activity, as an objectively existing phenomenon in the external world; it is not associated with such moral issues as responsibility, culpability, etc. It is a euphemism of the same kind as extermination

29 The lexeme *abort* is qualified by the qualifier 'medical' in Doroszewski's Polish Dictionary, and by the qualifier 'bookish' in The Great Dictionary of the Polish Language (the former gives Latin as its source, the latter English). The Latin root is also indicated by W. Kopaliński's *Słownik wyrazów obcych i zwrotów obcojęzycznych* [Dictionary of Foreign Words and Foreign Expressions] (Warszawa 1980), which defines it as 'miscarriage, interruption of pregnancy, scraping'. The word *abort* was also recorded in the language of Poles living in Soviet Ukraine in the 1920s and 1930s, but there it was borrowed from the Ukrainian or Russian *абор.* See M. Szczepkowska, *Polskojęzyczna prasa dla dzieci i młodzieży w początkach sowietyzacji Ukrainy (lata 20., 30.) – studium lingwistyczne*, typescript of a doctoral dissertation, Institute of Polish Language, Polish Academy of Sciences, Kraków 2014, p. 295.

30 Two examples are provided in the subsection *Quotation marks and metatextual expressions as a function of distance expression*.

31 Researchers consider the expression *termination of a pregnancy* [in Polish: *terminacja ciąży*] to be an even more recent euphemism. See B. Dunaj, M. Mycawka, op. cit., p. 75.

in relation to such terms as *obliteration, eradication of a population, annihilation, genocide*'.³²

It is worth recalling that the article in question dates from the early 1990s. Today, the word has become even more widespread and has de facto dominated the discourse on *abortion*. In the texts I examined, the noun *abortion* occurred a total of 1,612 times (in group A – 738 times, in group B – 501 times, in group C – 206 times and in group D – 167 times). If the term *abortion-related* and the prefix derivatives *pro-abortion, anti-abortion* were also included, this number would be even several times higher.

The noun in question combines with the verbs I describe below.

DO AN ABORTION³³

” Around 200,000 **abortions are done** each year in UK. D2³⁴

HAVE AN ABORTION

” It is true that some of them **had an abortion** themselves, but after all, their situation was different from the others. A9

UNDERGO (AN) ABORTION

” ‘I thought I didn’t deserve to live,’ says Grażyna, a mother of two who **has undergone abortion** four times, sobbing. A19

COMMIT AN ABORTION

This is the only lexeme among the verbs naming the action of abortion, which carries clearly negative connotations, as in general Polish it is usually

32 M. Mycałka, op. cit., p. 301.

33 In the case of verbs, both aspectual forms [the Polish verbal system distinguishes two aspects: perfective and imperfective – editor’s note] – where a given verb has two aspects – have been included in the scope of the analysis of the given lexeme, as well as deverbal nouns.

34 For technical reasons, all cited articles are marked with an abbreviation of the following construction: A, B, C, D, E, F, G – from the name of the group to which the article is classified, 1-50 – the number denoting the position in the list of sources compiled for this study.

combined with such nouns as *crime*, *error*, *felony*, *offence*, etc. In the texts it occurred twice – only in group B. It occurred 2 times in the texts – only in group B.

” It is responsible for around 90 per cent of the several hundred **abortions committed** each year in the majesty of the law. **B3**

EXPERIENCE AN ABORTION

” Irene believes that women who **have experienced abortions** ‘sweep it under the carpet’. **A48**

PERFORM AN ABORTION

” Firstly – **performing abortions** at home with abortifacients is legal. **C3**

GET AN ABORTION

” And yet 96 % of women **get an abortion** for personal reasons, not due to health or rape. Let’s stop hiding it. **A29**

CONDUCT AN ABORTION

” The woman describes on her blog that the law in the state where she lives – Michigan – is ‘repressive’ because a woman must wait 24 hours after reporting her decision to have an abortion before it can be conducted. **B27**

The noun *abortion* also occurs with terms that indicate its type.

PHARMACOLOGICAL ABORTION

The term *pharmacological abortion* as a type of alternative method to surgical abortion has gained popularity in recent years, along with the increasing importance of the method itself. It occurred a total of 75 times in the texts

surveyed. By far the most frequent in the texts of the liberal press (in group A – 54 times, in group B – 2 times, in group C – 15 times, in group D – 4 times).

” Dr Południewski warns that ignorance and shady solutions endanger the safety and even the lives of women and, above all, have nothing to do with modern **pharmacological abortion**, advocated by the UN and the WHO (World Health Organization). A26

MECHANICAL ABORTION

The term mechanical abortion in the context of distinguishing it from pharmacological abortion appeared only once in the material studied.

” He offered an abortion pill for £180 and, if that didn't work, a **mechanical abortion** procedure for £350. A25

MEDICAL ABORTION

The term *medical abortion* is defined by pro-abortion circles as synonymous with pharmacological abortion, which in turn is an increasingly widespread alternative to surgical abortion.³⁵ However, the adjective *medical* has a stabilised meaning in the Polish language as referring to ‘the science of diseases and ways of treating them’ and ‘a field of study covering research in this field’ (the PWN Polish Dictionary), so for the average user of Polish language the synonymous relationship between these units is unclear. The explanation should be sought in the English language, from which the Polish language borrows – where *medical abortion* means abortion with the use of medicine (pharmaceutical drugs).

There were seven occurrences of this combination in the material studied (six in one article from group A and one in group C).

35 K. Domagalska, *Aborcja farmakologiczna jest w Polsce tematem tabu. „My jesteśmy dla kobiet, które podejmują decyzję. To ich decyzja”*, <https://www.wysokieobcasy.pl/wysokie-obcasy/7,163229,23013188,aborcy-jny-dream-team-aborcja-farmakologiczna-to-rewolucja.html?disableRedirects=true>, accessed 21 November 2022.



Pharmacological abortion, also known as **medical abortion**, is a silent topic in Poland. **A29**

SELECTIVE ABORTION

The term selective abortion, which describes subjecting the *nasciturus* to abortion depending on the disclosure of undesirable characteristics such as gender or health status,³⁶ appeared 2 times in the surveyed text – in groups B and D.



As boys are particularly valued in China, so **selective abortion** has developed incredibly, resulting in more than 90 % of abortion victims being girls. **B16**

ABORTION ON REQUEST AND 'ON REQUEST'

The expression abortion *on request*, like *abortion on demand*, functions as a term for abortion on grounds other than those defined by the current law.

Interestingly, the use of both expressions in the guidance produced by the Federation for Women and Family Planning is described as inadvisable because 'the term *on request* suggests pleasure/carelessness and *on demand* suggests aggressively insisting on something'.³⁷

There were a total of 19 occurrences of the term *abortion on request* (in group A – 4 times, in group B – 10 times, in group C – 2, in group D – 3 times). There are entries with inverted commas, but it is not clear in all cases whether this is intended to distance the writer from the content or rather from the colloquial characterisation of the expression.



In Belarus, there is a right to free **abortion 'on request'** up to the 12th week of pregnancy without giving a reason. **B31**

³⁶ The expression is not noted in other meanings (e.g. abortion of one child or more in the case of multiple pregnancies).

³⁷ Federacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Jak mówić/pisać o aborcji? Poradnik*, https://federa.org.pl/wp-content/uploads/2018/09/jak-m.wi-c-pisac-o-aborcji_poradnik.pdf, accessed 1 March 2022.

ABORTION ON DEMAND

Fewer occurrences, 7 in total (in group A – 1, in group B – 1, in group C – 1, in group D – 4 times), were recorded for the expression *abortion on demand*.

77 In Germany, a woman who wishes to have **an abortion on demand** (i.e., not due to rape or medical reasons) must undergo a psychological consultation. **A29**

INTERRUPT A PREGNANCY [IN POLISH: PRZERWAĆ CIĄŻĘ]

The second very frequently used expression, both in the texts studied and in the entire discourse on abortion, is *interrupt (interrupting) a pregnancy* [a calque of Polish *przerwać ciążę*³⁸]. For years, it has been considered a semantically neutral expression, and this neutrality is to be confirmed, among other things, by its presence in the name of the Act on family planning, the protection of the human foetus and the conditions of the permissibility of interruption of pregnancy or its use in dictionaries of the Polish language. The expression can be found not only in the works of doctors, lawyers, linguists, and other researchers,³⁹ but even in Polish translations of encyclicals⁴⁰ and other Church documents.⁴¹

In recent years, however, one can observe a tendency for opponents of abortion to refrain from using this expression, as they have recognized that the deliberate and conscious use of this phrase fits in with the opposing side's discourse that the *nasciturus* does not belong to the category of 'human'.

38 In standard English translation, *terminate a pregnancy* would normally be used. However, given that this is a lexical analysis of the Polish language, as noted in footnote 1, the phrase *interrupt a pregnancy* has been adopted in order to reflect the meaning of the Polish verb *przerwać* [interrupt]. In the remaining chapters of the publication, the expression *przerwać ciążę* is usually translated as *terminate a pregnancy* – editor's note.

39 It is used by linguists and other researchers. See, e.g., M. Mycawka, op. cit.; T. Ślipko, op. cit.

40 In the Polish translation of Pope John Paul II's encyclical *Evangelium vitae*, the phrase *interrupt a pregnancy* [in Polish: *przerwać ciążę*] occurs more than 50 times. John Paul II, Encyclical *Evangelium vitae*, https://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html, accessed 8 February 2022.

41 See, e.g., Sacred Congregation for the Doctrine of the Faith, *Declaration on procured abortion* [in Polish: *Deklaracja o przerywaniu ciąży*, literally translated as: *Declaration on Pregnancy Interruption*], https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html, Polish version: https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_pl.html, accessed 8 February 2022.

Marzena Makuchowska explains these semantic consequences of the use of the expression *interruption of a pregnancy* in the following way: 'Pregnancy, therefore, is first and foremost a state of the woman, and the *nasciturus* appears here as a causative factor of this state and a factor determining its duration. The fact is that the existence of the *nasciturus* co-creates the semantic structure of the term pregnancy. It is possible to present pregnancy as a period of development of the zygote, the embryo, and the foetus (examples include books, but also online publications, which – day by day – show the successive stages of the child's development). However, the word pregnancy is easily profiled in such a way that it can focus attention exclusively on the condition of the woman, which is evidenced, for example, by its phraseological association with the noun woman (e.g. advice for pregnant women, nutrition for pregnant women [...]). Consequently, with equal ease, *removal/interruption of a pregnancy* can mean "removal, interruption of a particular state of woman". The object at which the action is directed, i.e., the object subject to annihilation as a result of this action, is therefore the abstract and impersonal concept of "state of being", while the fact that the annihilation of this state of being is accomplished by the removal of its causation, can be passed over.'⁴²

On the other hand, the reasoning of the opponents of abortion towards the use of the expression *interrupt a pregnancy* can be tried to explain as follows: it is not wrong, because there is indeed an interruption of the state of pregnancy, but this is secondary to the fate that therefore befalls the *naciturus*, and therefore should not be emphasised. An analogy illustrating this way of thinking is the difference in the sentences: 'A man received a shot to the head' (there is no information about the fatal nature of the injury) and 'A man died from a shot to the head' (the emphasis is on the effect of receiving a shot to the head).

The tendency for abortion opponents to refrain from using the term is perfectly reflected by the disproportion as to usage in the material studied. While in the vocabulary of abortion supporters this term appeared a total

42 M. Makuchowska, op. cit., p. 56.

of 224 times (186 times in group A and 38 times in group C), on the pro-life side it was used only 16 times (14 in group B and 2 times in group D).⁴³

” In Poland, one in four, or even one in three, women have **interrupted a pregnancy**. A9

” In Poland, **pregnancy** can, in fact, be **interrupted** only in situations that can be described as dramatic. B1

INTERRUPT LIFE [IN POLISH: PRZERWAĆ ŻYCIE]

It seems that the expression *interrupt life* [a calque based on the Polish verb *przerwać*] is a kind of response by opponents of abortion to the term *interrupt a pregnancy*, which shifts the focus from the state of pregnancy to the *nasciturus*. The use of such expressions shows the great importance that the author of the text attaches to the vocabulary used and is a clear signal of a high sense of awareness of the fact that the vision of reality is mediated by the language used. This type of combination was used 3 times in the texts surveyed, only in texts from group B.

” Sometimes the reminder that the child's **life has been interrupted** becomes an even more painful and strongly experienced drama. B24

ARTIFICIALLY INTERRUPT LIFE [IN POLISH: SZTUCZNIE PRZERWAĆ ŻYCIE]

The term *artificially interrupt life* [also based on Polish verb *przerwać*] also appears once.

” The basis of this therapy is the extraction and use of tissue from human embryos and fetuses whose **lives** are **artificially interrupted** at various stages of pregnancy (usually from 15 to 22 weeks). D4

43 Both verbs in their aspectual pair (*przerwać* – *przerwać ciążę*) and their participial forms, as well as deverbal nouns (*przerwanie* – *przerwanie ciąży*), were counted.

ARTIFICIAL INTERRUPTION OF PREGNANCY

[IN POLISH: SZTUCZNE PRZERWANIE ŻYCIA]

The term *artificial interruption of pregnancy* [also based on Polish verb *przerwać*] is derived from the expression *artificial miscarriage*; however, it lacks the meaning conveyed by its original counterpart, since the expression *interrupt a pregnancy* is not used in general Polish to denote spontaneous miscarriage. Since it appeared only once in the material studied, it is not excluded, that it is the result of an unintentional and unfortunate contamination indicative of linguistic awkwardness resulting from either a lack of attention or a deliberate action aimed at expressing the author's distance from the term *interruption of pregnancy*.

” And we know with certainty that performing an abortion, that is, **an artificial interruption of pregnancy**, leads to the child being forced to leave the uterine cavity in a violent manner, and that the child's nervous system at this stage has sufficient nerve connections for the child to feel pain and suffering. **B41**

ABORT [IN POLISH: ABORTOWAĆ]

In the case of the relatively new verb *abortować* [*abort*] in the Polish language, it is difficult to determine the word-formative base – whether it was the noun *aborcja* [*abortion*], adopted earlier from the English language, which with the increase in popularity began to build its own word-formative family, or was it a direct borrowing of the English verb *abort* as a tautological derivative adapted to the Polish morphological system (i.e., a formation with unchanged meaning and the same syntactic function, whose differentiating feature is the formal shape of the derivative) through paradigmatic derivation – with the help of the paradigmatic formant *-ować*.⁴⁴

The verb *abort* appeared in the texts studied mainly in the Catholic press and on anti-abortion websites. It appeared 24 times in the analysed material (in group A – 1 time, in group B – 19 times, in group D – 4 times).

44 Modes of derivation due to formant structure are presented in my paper in the sense in which they are presented by the authors in the morphological volume of *Gramatyka współczesnego języka polskiego*. See R. Grzegorzczkova, R. Laskowski, H. Wróbel, *Gramatyka współczesnego języka polskiego*. Morfologia, vol. 2, Warszawa 1999.

” ‘Abortion also causes us **to abort** the Holy Spirit,’ she [Manuela Gretkowska – author’s note] ironized. **A32**

” Then there is a comparison between the **aborted** child and the one to be born. **B24**

BARBARITY

Once in the texts surveyed, abortion was called *barbarity*.

” Once again, the public has become aware of **the barbarity** being carried out in China. **B16**

BE ALL OVER

In the material studied, the euphemism *be all over* appeared as a term for abortion 3 times (once in group A, twice in group B), which allows the difficult content to be hidden without being named.

” Within 40 minutes **it will be all over**, ‘counting from entering the office to leaving it unaided’. **A40**

” Because many women, when it **is ‘all over’**, suffer from the so-called post-abortion syndrome. **B13**

INFANTICIDE

In the analysed material, abortion is referred to as *infanticide* twice. This expression, like verbs such as kill or murder, results from perceiving the *nasciturus* as a child.

” Meanwhile, the Minsk authorities do not even plan to create a law to stop the plague of **abortion related infanticide** in the country. **B31**

EXTERMINATION 'ON REQUEST'

Even more powerful is the word *extermination*, which presupposes the mass scale of the crime and, by historical association, is strongly emotive and expressive.⁴⁵ Its juxtaposition with the term *on request*, indicating the justification of *extermination* with a trivial reason, is intended to heighten the dimension of the cruelty of abortion.

” This is according to official figures – but it turns out that there are more victims, and that abortionists have found a method to allow **the extermination of** unborn children ‘**on request**’, through the back door. **D9**

ELIMINATION OF CHILDREN

The term *elimination of children* appeared 2 times in group B texts. The Great Dictionary of the Polish Language emphasises the high emotional charge of this word, defining it as follows: ‘expressively: the killing of a human or animal’.

” **Eliminating children** with defects, denying them their right to life, is the most blatant discrimination possible, says Malina Świć. **B3**

PERISH

Perish is another of the verbs naming the death of the *nasciturus* used in the Catholic press and on anti-abortion websites. It occurred 13 times in the material studied, exclusively in group B.

” Hundreds of babies **perish** each year in Polish hospitals as a result of legally permitted abortions due to a suspected disease. **B3**

⁴⁵ According to L. Polkowska, who also discusses this lexeme in her work on the language of the parliamentary right, it is the most emotionally and expressively charged cacophymism among the vocabulary she collected, being a manifestation of ‘extreme hyperbolisation’. See L. Polkowska, op. cit. p. 95.

INTERRUPTION [IN POLISH: INTERRUPCJA, A MEDICAL TERM]

Once in the texts surveyed, the medical – and therefore more widely unknown – term for abortion was labelled as *interruption*. The word is not noted by general dictionaries. As evidenced by research conducted by the staff of the Medical University of Białystok, health professionals use this term in medical records.⁴⁶

” Determining how many percent of women who have had an **interruption** have PAS is very difficult in practice. **A38**

GENOCIDE, PRENATAL GENOCIDE

The description of abortion as *genocide* or *prenatal* genocide appeared 5 times (4 times in group B and 1 time in group D) in the texts surveyed.

” China is the world leader in **prenatal genocide**. **B16**

DESTROY

In group B texts, abortion was specified 2 times using the personal and impersonal forms of the verb *destroy*.

” In the lecture, however, I learned about the whole drama of abortion. It was then that I realised that the embryo **I was destroying** was in fact a human being. **B25**

DIE BACK [IN POLISH: OBUMRZEĆ]

Abortion advocates sometimes use the expression *die back* to describe the condition of the *nasciturus*. The choice of this lexeme is significant – as it refers to the end of some living organism or tissue, or even a plant,⁴⁷

46 See A. Smerdka, K.B. Głodowska, *Terminacja ciąży a aborcja –terminologia medyczna używana w placówkach opieki zdrowotnej*, [in:] *W drodze do brzegu życia*, vol. 11, eds. E. Krajewska-Kułak et al., Białystok 2013, p. 84.

47 E.g. The Great Dictionary of the Polish Language defines the verb *obumrzeć* [*die back*] as ‘to become dead’, while Doroszewski’s Polish Dictionary defines it as ‘about living organisms, tissues: to cease to function, to become dead’. Doroszewski’s Polish Dictionary gives the following example of the use of this verb: *On the branches [of the mistletoe] that had fallen, pathological growths form, the bark withers and dies back, and the branches themselves languish.*

but in most cases it is not used to refer to humans. In the material studied, it occurred 2 times in the same text in group C.

” A few hours later, both foetuses **died back**, and Valentina died of septicaemia the following day. **C1**

OPERATION

Abortion is also sometimes referred to, albeit very occasionally, as an operation. In the material studied, this term appeared only 2 times, exclusively in newspaper articles from group A. The meaning of the word does not include pharmacological abortion, only surgical abortion, and it can be assumed that this aspect was one of the main reasons for the word not becoming as widespread as the word surgery. A second reason for the peculiar predominance of one term over the other may lie in the associations that the two lexemes carry with them. For although surgery is more strongly associated than *procedure* with a medical action that is considered necessary, indispensable, and urgent, it is perceived as an action with a more serious course and such health consequences. This, in turn, contradicts the thesis pushed by abortion advocates of its unproblematic nature and lack of life and health consequences.

” The number of mothers who choose abortion for foetal reasons is increasing year on year, with 82 such **operations** performed in 2002, according to official figures. **A16**

MISCARRIAGE

As the difference between the meanings of the words *miscarriage* (spontaneous termination of the life of the *nasciturus*) and abortion (deliberate termination of the life of the *nasciturus*) is relatively clear to language users, one may suspect that their use as synonyms is due to deliberate action rather than linguistic awkwardness. Most often, the noun appears as a component of the conjunction cause [in Polish: *wywołać*] a *miscarriage*.

As a stand-alone synonym for abortion, the noun *miscarriage* occurred 6 times in the surveyed material (groups A and C).

” If you’re taking **miscarriage** pills, it’s better to clean the house than to lie down. Walking or ironing is best. **A29**

” After such a dose, **miscarriage** may start after about 1.5 hours. **C3**

In other cases, the noun *miscarriage* was combined with parts of speech that signalled a difference in meaning to natural miscarriage.

PHARMACOLOGICAL MISCARRIAGE

There were 2 occurrences of the term *pharmacological miscarriage* (both in group A). Although the average user of Polish does not associate this expression with abortion, it seems that it can serve as a synonym for *pharmacological abortion*. While in the first of the examples cited below synonymy with *abortion* may be debatable, the second is unlikely to raise doubts about the meaning of the statement used.

” ‘Until the invention of the antiprogestogen and prostaglandins, i.e., until the development of methods of effective **pharmacological miscarriage**, obstetrics had a huge problem with dead pregnancies; it was very difficult to induce such pregnancies to term, which resulted in such radical procedures that such damaged fetuses were actually taken out,’ Dr Południewski explains. **A38**

” The clinical picture after spontaneous and **pharmacological miscarriage** is the same. **A26**

ARTIFICIAL MISCARRIAGE

The term appeared 2 times (once each in group A and B).

” Suffering from Down’s syndrome, [the baby – author’s note] survived the **artificial miscarriage**. In response to media reports, the hospital director confirmed that the baby was alive. **B35**

INDUCE A MISCARRIAGE [IN POLISH: INDUKOWAĆ PORONIENIE]

Once in a group A article, the non-personal form of the verb *induce* appeared in the form of the past participle of an adjective.

” Usually, however, **a miscarriage induced** by the right drugs does not require any medical intervention, and can take place at home, in a homestead, in a field, etc. **A26**

CAUSE A MISCARRIAGE [IN POLISH: WYWOŁAĆ PORONIENIE]

The difference between abortion and natural miscarriage by indicating an intentional action in the case of the former is also to be emphasised by the verb *cause*. The conjunction *cause a miscarriage* occurred 11 times in the material studied – only in groups A and C.

” Women **caused miscarriage** using a crochet hook or chisel. **A17**

DEPRIVE OF LIFE

In the texts examined, the expression *deprive (the child) of life* appeared 3 times – in groups B and D.

” She decided that she would describe step by step how **she deprived** this child **of its life**. **B27**

” It is therefore unknown how many healthy children **have been deprived of their lives** so far. **D5**

GET RID OF A PREGNANCY

The verb *get rid* also appeared several times in the texts, which is combined with the nouns *pregnancy* (1 occurrence each in groups A and B), or *child* (in group B – 3 occurrences).

” There was an even two weeks between the time she found out she was pregnant and the day she **got rid of it**. A40

” You cannot **get rid of a pregnancy**, put your own child to death, without suffering the consequences. B25

GET RID OF A CHILD

There have been 3 occurrences of the term *get rid of a child*.

” Poland pays compensation because the mother couldn't **get rid of it**. B3

” Blackmore took the abortion pill to **get rid of the child**. B27

PRACTICE [IN POLISH: PROCEDER]

The term abortion as a *practice*, i.e., ‘an action considered immoral, reprehensible or unlawful’ (The Great Dictionary of the Polish Language) appeared 8 times in the material studied, only in group B.

” This **practice**, which complies with the abortion law, takes place in state hospitals at the expense of citizens. B3

Once was further reinforced with the adjective *criminal*.

” To mark the 40th anniversary of the legalisation of this **criminal practice** in the US, the media giant asked women to share their experiences and send in personal accounts of what they experienced when they made the decision to have an abortion. B49

SLAUGHTER OF INNOCENTS [IN POLISH: RZEŻ NIEWINIĄTEK]

Once in the texts examined, the expression *slaughter of innocents* appeared as a reference to the mass murder of infants described in the Bible and carried out on Herod's orders.

” Common sense suggests that, despite everything, very little has been done to prevent **the slaughter of innocents**, as abortion has not been banned. **B29**

SELECTION

Abortion is also combined with the noun *selection*, which in this sense carries negative connotations, associating it in a narrower sense with selection on the ramp in German concentration camps or with callous eugenics in the Third Reich, and in a broader sense with a sense of acute injustice, barbarism, and so on.

” The very **selection** of people on the basis of karyotype is something truly barbaric. **B46**

END LIFE

The expression *end life* also appeared in the material studied. This verb is sometimes used in the context of death (*end oneself, one's life has ended*), it does not generally occur in the conjunction someone *has ended the life of someone*. This is also confirmed by the fact that this expression was used only once in the surveyed material.

” The late George Tiller, a Kansas abortionist, set up his own crematorium where he personally burned the bodies of babies whose **lives he ended**. **D13**

SCRAPE (ONESELF) [IN POLISH: SKROBAĆ (SIĘ)]

The colloquial description of abortion by means of the verb *scrape (oneself)* or the noun *scraping* [in Polish: *skrobanka*], once very widespread, is nowadays – as it is strongly negatively characterised – used sporadically. Apart from one use in material supposition in the material studied, it did not occur even once in the language of magazine editors or text writers, and only twice as a component of a quotation: in the first example in the statement of an anonymous Polish woman in an

article on abortion abroad, in the second – in an anonymous statement by a doctor.

” – What do you mean? – That you get a haircut from a Polish hairdresser, go to a Polish dentist and **scrape yourself** in Polish too. **A25**

” I also recall a shocking conversation with a doctor who referred treatments to other specialists, while admitting: ‘So what if I don’t do it myself? I’m making the referral. It’s the same as if I were the one **scraping**.’ **B2**

SHORTEN A LIFE

In one article, the deverbal noun *shortening*, *shortening of a child’s life*, appeared 3 times.

” None of us is entitled to make the decision to shorten its life because it is ill. **B41**

REMOVE A FEOTUS [IN POLISH: SPĘDZIĆ PŁÓD]

Nowadays, the expression *spędzić płód* [meaning *remove a foetus*] is already perceived as obsolete by Polish speakers and, therefore, it is used less and less frequently. This observation is confirmed by The Great Dictionary of the Polish Language, which qualifies this phrase with the qualifier ‘obsolete’. In the material studied, it appeared only 4 times (in group A – 3 occurrences in the same article, in group D – 1 occurrence).

” The woman faced up to three years in jail for illegally **removing the foetus**, her aides up to five or up to 10 years in prison. **A39**

” Recently, the authorities authorise the sale of a new such agent, the French Ella pill, which, as its duration of action is 72 hours after fertilisation, is intended to be used for individual **foetal removal**. **D19**

LOSE A PREGNANCY

Although the expression *lose a pregnancy* in Polish has an established meaning as a synonym for miscarriage, isolated examples have been found showing that it is used in the liberal press in the context of abortion.

” During the first visit [to the abortion clinic – author’s note], the woman fills in questionnaires, undergoes tests necessary for the full anaesthesia that awaits her the following day and – in theory – discusses a possible abortion. [...] The second visit – the one during which **she lost the pregnancy** – lasted less than an hour. **A25**

LOSE ONE’S LIFE

Only once did the phrase *lose one’s life* appear to describe abortion.

” During this time, millions of people **lost their lives** before they were even born, and this means that a significant proportion of our nation may be living with survivor syndrome today. **B11**

TERMINATE A PREGNANCY, TERMINATION OF PREGNANCY

[IN POLISH: TERMINOWAĆ CIAŻĘ, TERMINACJA CIAŻY]

This relatively new borrowing (from English *termination of pregnancy*) is regarded by researchers – like the word *abortion* – as a euphemism.⁴⁸ The expression is not recorded in this sense by general dictionaries, and the *PWN Polish Language Corpus*⁴⁹ only contains uses of units belonging to specialist vocabulary associated with life sciences in the field of biochemistry. It can be assumed that it was the sound reminiscent of a specialist language that made the word gain acceptance and it was used by both groups in the texts studied.

48 B. Dunaj, M. Mycałka, op. cit., p. 75.

49 *Korpus języka polskiego PWN*, <https://www.sjp.pwn.pl/korpus>, accessed 11 February 2022.

The midwives interviewed in a study carried out by the Medical University of Białystok admitted that the term *termination of pregnancy* is used most frequently in medical records to describe abortion (more than twice as often as, for example, *interruption* [in Polish: *interrupcja* – medical term, or *abortion*).⁵⁰

In the material studied, the lexeme in question appeared a total of 25 times (in group A – 6 times, in group B – 16 times, including 14 times in one article; in group C – 3 times).

” He drives around Warsaw in a car covered with posters. They depict bloodied fetuses after **pregnancy terminations**. **A1**

” Doctors were afraid to **terminate pregnancies** because it is difficult to prove post factum that a woman’s life was in danger. **C1**

EXECUTE [IN POLISH: TRACIĆ DZIECI]

Once in the material studied, the verb *execute* appeared to describe abortion. The Great Dictionary of the Polish Language defines the verb *execute* as ‘to deprive of life as a result of execution’, and Doroszewski’s Polish Dictionary defines it as ‘to carry out a death sentence on someone, to deprive someone of life’.

” The stigma of war losses was complemented by the sanctioned and veiled **executing of children**. **B11**

CARRY OUT A SENTENCE, PASS A SENTENCE

The metaphors associated with judgment and court are referred to by two expressions whose isolated occurrences were recorded in the material studied.

” **The sentence was carried out by** ‘doctors’ from Oldenburg, who administered a contraceptive to a mother who was 25 weeks pregnant. **B20**

50 See A. Smerdka, K. Głodowska, op. cit., p. 84.

” How do you prove it to an environment that **passes a sentence** on the lives of defenceless Poles? – Let me just give an example of spinal muscular atrophy. **B42**

EXECUTION

Also linked to the above metaphor is the noun *execution*, which as a term for abortion appeared 2 times in the material studied (in the same article in group B).

” Confessions of abortionists: We’re conducting **executions** [title] **B36**

” And unfortunately it fell to us to carry out the **execution**. **B36**

FINISH LIFE⁵¹ [IN POLISH: UKOŃCZYĆ ŻYCIE]

In one text, the expression *finish life* was encountered, but the choice of this verb in this context seems to be the result of some linguistic awkwardness rather than a deliberate intention.

” This is all the more so because the parents in such a situation are in a great state of shock, which may in some way encourage an overly hasty decision to **finish** that child’s **life** prematurely. **B41**

DIE

The lexeme *die* in the context of abortion appeared 10 times in the material studied, only in group B.

” Even in the sixth month of pregnancy, an early labour is induced, during which the baby is supposed to **die**. If **it does not die**, the procedure tells it to be left unassisted until **it dies**. **B3**

51 The phrase chosen here is deliberately unnatural and unidiomatic in English, given that the Polish phrase *ukończyć życie*, which also seems to be a linguistic awkwardness, is being discussed here – editor’s note.

ANNIHILATE

The verb *annihilate* occurred 2 times in the collected material (only in group B).

” **Annihilating** a person’s life is compared to, for example, an appendectomy. By saying ‘and that’s all the trouble’, ‘it was unnecessary deadwood. All will be well now’, one attempts to negate the truth [...]. **B24**

DEAL WITH IT

There are times – especially in the quoted statements of women who have had abortions and speak of their own experiences – that the pronoun *it* comes to the rescue, which allows for anonymity and undefinition – both of the act and of the *nasciturus*.

” Some people choose to swallow a pill and **deal with** it at home. Me, I wanted to go in and out of the clinic, leaving it all behind. **A2**

SERVICE, MEDICAL SERVICE

Once in group C, abortion was included as was classified as a category of *medical services* and referred to as a *service*.

” States must recognize and guarantee women’s right to **medical services** covering sexuality and reproduction. These services must be financially and medically affordable. **C11**

REMOVE A PREGNANCY [IN POLISH: USUNAĆ CIAŻĘ]

The term *remove a pregnancy* can be treated analogously to the expression *interrupt a pregnancy* and the detailed considerations presented above can largely be repeated. The situation of these lexical units is virtually identical both in terms of meaning and the issue of semantic neutrality, so there is no need to repeat the argumentation.

The differences lie only in the number of occurrences of both expressions in the material studied (*interrupt a pregnancy* is 2 times more frequent) and the connectivity of both words.

Like the synonym *interrupt a pregnancy*, this expression also appeared in all groups of texts except group D, and here, too, we can speak of a huge disproportion between the number of occurrences in groups A and C in relation to group B, since out of a total of 108 occurrences of the verb *remove a pregnancy* and the noun *removal of a pregnancy*, as many as 98 were recorded in groups A and C (94 and 4 respectively), and only 10 in group B.

It is worth noting that the verb *remove* gives greater freedom in terms of replacing the noun *pregnancy* with other nouns (*foetus, child*), while the verb *interrupt* when confronted with such a necessity requires the addition of a nominal group (e.g., *interrupt the life of a child*). The authors of the surveyed texts in the Catholic media make use of both possibilities.

” Last month in Buenos Aires, thirty-four-year-old Elizabeth, a mother of two, died after inserting parsley into her cervix in a desperate attempt to **remove** her **pregnancy**. C11

REMOVE A CHILD

In group B texts, the verb *remove* was sometimes combined with the noun *child* and with other parts of speech indicating the personal status of the *nasciturus*, for example with the 1st person of the verb or with the pronoun *I* (*remove me*). A total of 9 such examples were found, all in group B.

” The way in which these **removed children** were treated was often gruesome. B25

” I felt that I had to justify my existence, that I had to prove to the world that **I should not have been removed** at all and that my life had value. B21

REMOVE CELLS

In group C, the phrase *remove cells* also appeared once.

” Some people take special pills or have surgery to **remove** these **cells** before they become a child. C4

REMOVE A FOETUS

Occasionally, the verb *remove* in the material studied was also combined with the noun *foetus*.

” Ninety-two foetuses **were removed** due to Turner syndrome, genetic syndromes with **foetal** swelling or other genetic defects. A4

REMOVE AN EMBRYO

One occurrence of the connection to *remove an embryo* was also found.

” I remember at one point, after one pregnancy was removed, the nurse took the container with **the removed embryo** and handed it to the usher to dispose of it in the toilet. B25

REMOVE A ZYGOTE

One combination of the lexeme removing with the noun *zygote* was found, but it must be considered incidental and serves more to build up the *zygote*–*child* opposition than to describe the phenomenon.

” In those days no one told us that **removing** a **zygote** was murdering children. A47

PUT TO DEATH

In The Great Dictionary of the Polish Language, the verb *put to death* occurred a total of 14 times (11 times in group B and 3 times in group D).

” I **put** about a thousand children **to death**. It took a few years before I saw it as killing. **B13**

EXPEL A FOETUS, EXPEL FOETAL REMAINS

[IN POLISH: WYDALIĆ PŁÓD, WYDALIĆ SZCZĄTKI PŁODOWE]

Three occurrences of the verb *expel*, which is associated with physiological activities, were recorded in the study material. The Great Polish Language Dictionary and the PWN Polish Dictionary define *expel* as ‘to remove unnecessary or harmful substances from the body’, and Doroszewski’s Polish Dictionary as ‘to remove unnecessary final products of metabolism’. The term was used 3 times in the study material – in all cases in group A.

” When **you expel the foetus**, the pain subsides. **A29**

” **The foetus** and placenta **are expelled** and bleeding occurs, which can last from a few days to as long as a few tens of days. **A29**

THROW OUT A FOETUS [IN POLISH: WYRZUCIĆ PŁÓD]

The term throw out a foetus was also reported once.

” Bleeding does not start until after the body **throws out the foetus**. **A29**

KILL

The use of the verb *kill* to describe abortion is a logical consequence of adopting the optic that the *nasciturus* is a human being. This assumption leads opponents of abortion to use this verb more frequently than, for example, the expression *remove a pregnancy* or *interrupt a pregnancy*, which distributes the accents differently. This is because they see the termination of the pregnancy itself as less important than the associated fate of the *nasciturus*.

This term for abortion was recorded a total of 162 times, with this figure comprising: occurrences of the verb *zabić* and its aspectual pair *zabijać*, the deverbal

nouns *zabicie* and *zabijanie*, as well as the participial forms of this verb (primarily passive adjectival participles: *zabity*, *zabijany*). In group A, it appeared 3 times (in 2 cases as quotations: from a psychologist and a patient in the context of post-abortion syndrome, once in combination with the noun *foetus* – see below), in group B – 126 times, in group C – 2 times, in group D – 31 times).

Interestingly, 2 examples of the use of the word were noted in an article in *Krytyka Polityczna* (I quote them below as C17).

” And something bad is happening: the hospital **is killing** sick children rather than helping to accommodate them. **B6**

” Irish people backed **the killing of** unborn babies [title] **C17**

” But in Poland we still prefer to debate the holocaust of the unborn and the depopulation sponsored by the illuminati and the leftists who want **to kill** their children, instead of considering what tangible effects the current law has on citizens. **C17**

KILLING ON REQUEST

There were two examples (both in group D) of conjunctions created similarly to the expression *abortion on request*, in which the first segment was replaced. However, as the combination *abortion on request* has stabilised in the Polish language, there is little doubt that it was a deliberate move on the part of the authors of the messages, in line with the intention to reinforce the expressed content and a kind of correction of the insufficiently precise – in the opinion of the authors of the sentences – expression *abortion*.

” Among supporters of **killing on request**, one sometimes hears the demand for abortion to be legal until the end of the first trimester. **D8**

KILLING

The noun *killing* occurred a total of 25 times (in group B – 22 times, in group D – 3 times).

” And even less a ‘restrictive’ (as it is often said) law, because what kind of restrictiveness is it to protect babies from **the killing** of children. **B5**

KILLING OF A FOETUS

In one article in group A, the combination of *killing of a foetus* appeared.

” One of the first states to introduce a law punishing **the killing of a foetus** was South Carolina. **A45**

PROCEDURE

The *noun procedure* [in Polish: *zabieg*] is one of the most popular terms for abortion, and it occurs both alone and in combination with another noun (*abortion procedure*, *pregnancy interruption procedure*) analogous to such combinations as, e.g., *tonsillectomy procedure – removal of tonsils*. The position of the lexeme as a synonym for the word *abortion* has become so established in the Polish language that some dictionaries note it, providing its separate meaning.⁵²

In the material studied, the noun occurred in all groups, but definitely more frequently in the vocabulary of abortion supporters. A total of 285 occurrences of the lexeme were recorded, with it appearing as many as 219 times in group A, 42 times in group B, 23 times in group C and once in group D.

” Vilar resents women who advocate the pro-choice movement (for a woman’s right to choose to give birth or not) for not speaking out about **the procedures** they have undergone. **A48**

” And already an absolute taboo subject is the suffering after **the procedures** performed. **B2**

52 For example, the PWN Polish Dictionary gives the following three meanings of the lexeme *procedure* [in Polish: *zabieg*]: ‘1) an action taken for a specific purpose, 2) a medical or cosmetic action intended to remedy something, 3) interruption of pregnancy.’ Doroszewski’s Polish Dictionary and Szymczak’s Polish Dictionary do not record this meaning as separate. The Great Dictionary of the Polish Language gives the conjunction *pregnancy interruption procedure* [in Polish: *zabieg przerywania ciąży*] in collocations.

MEDICAL PROCEDURE

The conjunction *medical procedure* also appeared several times in the material studied, but here the adjective *medical* carries a different meaning than in the case of *medical abortion*. In this context, it is rather intended to emphasise the understanding of abortion as one of the medical services, indistinguishable from other treatments or operations.

” Interestingly, the abortion procedure is, according to Vilar, the most commonly performed **medical procedure** in the UK. A48

END A PREGNANCY

In the same way as *interrupt a pregnancy or remove a pregnancy* is constructed the expression *end a pregnancy*, which occurred 4 times in the material studied (in group A – 3 times, and in group B – 1 time). The opposite expression, *continue a pregnancy*, was encountered more often, which is interesting insofar as it *de facto* means the decision not to have an abortion (however, it was not taken into account in the vocabulary analysis, as it does not describe abortion).

” At the second visit, after reviewing the tests and confirming your wish to **end the pregnancy**, the doctor or midwife will set a date for the procedure. A29

MURDER [A VERB]

It is generally felt that the verb *murder* [in Polish: *mordować*] carries even stronger negative connotations than *kill* [in Polish: *zabijać*], but many dictionaries do not differentiate between the strength of the emotional impact of the two lexemes. The Great Dictionary of the Polish Language only indicates that the verb *murder* refers to the deliberate deprivation of human or animal life, while the verb *kill* omits the adverb which indicates the intentionality of the perpetrator's action ('cause someone's death'). Such a distinction is given in Doroszewski's Polish Dictionary. According

to this dictionary, murder is: ‘to criminally kill people, to needlessly kill animals; to kill cruelly, to kill tormentingly’, while *kill* is: ‘to deprive someone or something of life in a violent manner, to inflict death on someone, to put to death’.

In the material studied, the verb *murder* (as well as in the participle forms *murdered*, etc.) occurred 17 times – in group A – once (in the psychologist’s statement quoted by the author of the text), in group B – 13 times, and in group D – 3 times.

” They also need to forgive these **murdered** children, which is why mothers write letters to them too. **A19**

” Termination is just **murdering** children and I don’t want to work like that. **B6**

MURDER [A NOUN]

In addition to the verb, the noun *murder* also appears in the texts studied – it appeared in the texts studied 14 times (in group A – 2 times, but only as a citation of the mindset of opponents of abortion, in group B – 12 times).

” After this case, politicians, both on the right and the left, began promising to regulate so-called late-term abortions – i.e., **murders** carried out on children who lived more than 24 weeks in the womb and could theoretically survive outside the mother’s body as well. **B20**

SLAUGHTER [IN POLISH: MORD]

The term *slaughter* appears once.

” For example, in the state of Mississippi, after the tightening of the abortion law, there is only one clinic left whose employees carry out **slaughter** of innocent children. **B29**

PREMEDITATED MURDER, PREMEDITATED KILLING

In two cases, the lexemes **murder** and **killing** are reinforced with the expression premeditated to emphasise the calculating and ruthlessness of the act.

” We are not talking about an embryo, a foetus, an embryo, but about a child, a human being. We are not talking about abortion, a procedure, but the crime of murder, **premeditated murder**. B26

” Whether we call it an abortion, a scraping, a procedure or a termination of pregnancy, it is all **premeditated killing**, he stresses. B37

CRIME

In groups B and D, for which the *nasciturus* is a human being, abortion is also sometimes referred to as a crime. According to dictionaries, this noun denotes ‘a serious offense against another human being or a group of people’ (The Great Dictionary of the Polish Language) or ‘a serious violation against social and ethical norms, such as murder, abuse of someone; an intentional crime punishable by imprisonment for more than 5 years, life imprisonment or the death penalty’ (Doroszewski’s Polish Dictionary). It appeared a total of 23 times in the texts studied (in group B – 20 times, in group D – 3 times).

” The effect of **the crime** is that in Russia alone, 280 million children have been murdered before birth from 1920 to the present day – the equivalent of killing more than half of all the citizens of the 500-million-strong European Union. B18

MEGACRIME

In one case, the negatively-stressed noun *crime* was further strengthened with the prefix *mega-*.

” The world media generally give little coverage to the anti-people standards of the authorities in Beijing. However, it is becoming increasingly difficult to overlook **the megacrimes**. B16

WIPE OUT

Wipe out [in Polish: *zgałdzić*] is another of the lexemes that occurred only once in the material studied.

” If a mother who has had one or more abortions survives and recalls, for example, the date of birth of a child or children who are no longer there, in the case of a doctor, you can imagine how much heartache he feels when he counts how many lives he has **wiped out**. B25

The table below lists 82 expressions used to describe abortion in the surveyed texts. The collected material was divided into 3 groups: in one there was vocabulary used exclusively by opponents of abortion,⁵³ in the second – by its supporters, and in the third – terms common to both groups. Terms contained in the common set were additionally marked with arrows indicating in which of the other two sets they occurred more frequently. The absence of an arrow means that they appeared in both groups with similar frequency.

Of the 82 abortion terms, the word *abortion itself* can be considered the most neutral, which was used equally often by both sides of the argument. Apart from it, 22 more lexical units appeared in the common set, but in most of these cases one can speak of a clear preference for either side. Only in the texts of the pro-life side did 36 lexical units appear that did not occur in the other collections. Terms referring to the cruel death of the *nasciturus*

53 I have considered terms that appeared only in a particular set as being appropriate to that set, although this method can be accused of a certain flaw. It consists in the fact that some lexemes evidently belonging to the vocabulary of a given camp were included in a second or common set. This was the case, for example, with the caressing term *baby*, which appeared only once in one of the group A texts. According to the methodology adopted, it was classified exclusively in the pro-choice group, even though in this group of texts it was certainly an incidental occurrence (it came from the speech of the person quoted).

predominate. Such lexemes as *infanticide*, *crime*, *premeditated murder*, *killing on request* or *remove a child* have not penetrated the language of abortion supporters. They, on the other hand, completely disregard the fate that befalls the *nasciturus* and, focusing on the termination of the pregnancy, choosing terms reminiscent of physiological states (*get rid of a pregnancy*, *die back*, *lose a pregnancy*, *expel a foetus*, etc.). 21 lexical units specific only to the lexis of the pro-choice side were noted.

<i>Pro-life</i>	<i>Joint</i>	<i>Pro-choice</i>
selective abortion	abortion (do, have, undergo, experience, perform, get, conduct)	mechanical abortion
barbarity	← abortion on demand	medical abortion
infanticide (abortion-related)	← abortion on request	induce a miscarriage
execution	pharmacological abortion →	interruption
extermination on demand, elimination of children	← abort	die back
perish	be all over →	operation
(prenatal) genocide	get rid of a pregnancy →	miscarriage
megacrime	interrupt a pregnancy →	pharmacological miscarriage
slaughter	scrape	get rid of a pregnancy
murder [a noun]	remove the foetus [in Polish: spędzić płód]	lose a pregnancy
premeditated murder	artificial miscarriage	medical service
destroy	terminate a pregnancy, termination of pregnancy	deal with it
commit an abortion	remove a pregnancy →	deal with it
deprive of life	procedure	remove cells
get rid of a child	← kill	remove a foetus
practice	end a pregnancy →	remove a zygote
interrupt life	← murder [a verb]	expel a foetus
slaughter of innocents		throw out a foetus
selection		cause a miscarriage
end life		medical procedure
shorten life		

<i>Pro-life</i>	<i>Joint</i>	<i>Pro-choice</i>
lose life		
artificially interrupt a pregnancy		
artificially interrupt life		
execute		
finish life		
die		
annihilate		
remove the child		
remove the embryo		
put to death		
carry out a sentence		
pass a sentence		
killing on request killing		
premeditated killing		
wipe out		
exterminate		

3.3 Terms of the *nasciturus*

The analysis of the lexical units used to describe *nasciturus* should start with the two most important lexemes, namely *foetus* and *child*.

FOETUS

The *foetus*–*child* opposition is central to the whole discourse on abortion and delineates the two directions in which the term is discussed. The quantitative analysis confirmed the intuitive opinion of the majority of people dealing with the issue of linguistic differences in the two discourses – both linguists and ordinary users of Polish language, non-specialists – that the lexeme *foetus* is used much more frequently or even exclusively by the supporters of abortion. In the material studied we can find many texts in which the word *child* does not appear even once. A similar phenomenon can be observed in the

opposite situation – that is, the authors of many texts published in Catholic media or on anti-abortion websites do not use the word *foetus* even once.

It is very often the case that those Polish speakers who use the lexeme *foetus* feel that it is neutral in meaning and professional because, as they argue, it is taken from medical terminology.⁵⁴

However, this is not entirely true. The lexeme *foetus* [in Polish: *plód*] has a Proto-Slavic root (*plodb*) and in this sense it is mentioned even in dictionaries of the Polish language from over 200 years ago (among others in Linde's,⁵⁵ in the Vilnius Dictionary,⁵⁶ and the Warsaw Dictionary⁵⁷) to contemporary lexicographic studies. As an example of its long presence in the general Polish language, one can cite, for example, a passage from Adam Mickiewicz's *Dziady* [*Forefathers' Eve*] quoted by Doroszewski's Polish Dictionary: 'I feel all the suffering of the nation as a mother feels the pains of her foetus in the womb.'

Moreover, the qualitative and quantitative analysis confirmed that even if it is considered to be a lexeme from medical terminology, in this case we can speak of an extension of the meaning of a commonly functioning word in relation to the semantic scope of a term from the field of embryology. For while in embryology the name foetus corresponds to a specific period in the development of the *nasciturus*, in general language it functions as a term referring to the entire prenatal period, from conception to birth (or miscarriage or abortion).

As Erich Blechschmidt, one of the most eminent German embryologists, points out, the earliest period of human life is conventionally divided into: the earliest developmental stage (referred to by him as *der Keim*) – the stage from the the zygote (fertilised ovum) to the end of the 3rd week

54 As an example, here is a quote from one of the Liberal press articles: 'Yes, I think we lack the right vocabulary. Foetus or embryo is a medical term. Yes, I believe it is necessary to find an appropriate name for a miscarried foetus. The lack of an appropriate word forces the use of those available. I suggest using the term "narodek" [a word that does not exist in Polish, a noun derived from the verb 'to be born' – editor's note].' (A5)

55 *Słownik języka polskiego*, ed. S.B. Linde, Warszawa 1807-1814.

56 *Słownik języka polskiego*, eds. A. Zdanowicz et al., Wilno 1861 (hereinafter: Dictionary of Vilnius).

57 *Słownik języka polskiego*, eds. A.A. Kryński, W. Niedźwiedzki, Warszawa 1900-1927.

of gestation, the embryo – the stage from the end of the 3rd week to the end of the 12th week, and the foetus – from the 13th week until birth.⁵⁸ If, therefore, users of the word foetus wished to use it in a medical sense identical to that which it has in embryology, they should refer to the *nasciturus* at the stage from the 13th week of pregnancy.

However, examples that this is not the case can be found in abundance. The word foetus is used both in press texts and in abortion forums to refer to the entire prenatal period, and its relation to terms such as *zygote* or *embryo* is a synonymous relation.⁵⁹

This phenomenon is also noted by Marzena Makuchowska, who writes: 'This discourse also does not respect scientific terminology and uses the term *foetus* also as a name covering the entire prenatal period (in embryology such a comprehensive concept is lacking).'⁶⁰

In the context of these considerations, it seems important to check whether the dictionary explanation coincides with the commonly functioning extended meaning or with this narrower meaning from medical terminology.

A difficult-to-interpret explanation of the word *foetus* is provided in the online version of the PWN Polish Dictionary: 'a human or animal zygote developing in the mother's body from the moment the embryonic process is completed'. It is evident that the dictionary definition corresponds to the boundaries set by embryology ('from the moment of completion of the embryonic process'), but at the same time broadens the meaning of the term *embryo* to include the entire prenatal period. The lexemes *zygote* and *embryo* are in turn defined as 'a human or animal organism developing from a fertilised egg'.

The earlier dictionaries – Doroszewski's Polish Dictionary and Szymczak's Polish Dictionary – as well as The Great Dictionary of the Polish Language

58 E. Blechschmidt, *Vom Ei zum Embryo*, Stuttgart 1868; idem, *Wie beginnt das menschliche Leben*, Stein am Rhein 1976; see idem, *Human Being from the Very First*, [in:] *New Perspectives on Human Abortion*, eds. T.W. Hilgers, D.J. Horan, D. Mall, Frederick 1981, pp. 6-28, quoted in J. Gula, op. cit., pp. 20-21.

59 However, J. Gula notes in an excusatory tone that also embryologists themselves do not respect the distinctions they have made. J. Gula, op. cit., p. 19.

60 M. Makuchowska, op. cit., pp. 55-56.

show an effort to clarify this ‘end of the embryonic period’. In Doroszewski’s definition, this period is supposed to fall – unlike, for example, Blechschmidt’s – in the fifth week of pregnancy, while in Szymczak’s it is defined as follows: ‘a human or animal embryo at a later stage of development – from the moment when the morphological characteristics of the species can be recognized (in humans from the third month of gestation onwards)’. In turn, *embryo* itself is defined in Szymczak’s Polish Dictionary similarly to the PWN Polish Dictionary, but in a slightly broader way: ‘a human or animal organism developing from a fertilised egg (in some lower animals from an unfertilised egg) during the period until hatching from the egg or birth’. Here too, therefore, we are dealing with an expansion of the meaning of the noun *embryo* in relation to its definition in embryology.

A similar definition of *foetus* can be found in the dictionary edited by B. Dunaj⁶¹: ‘a human or animal embryo developing in the mother’s body at the stage from the third month of pregnancy to birth’. A conspicuous flaw in the latter definition is that there is no indication that it is a human being – after all, for example, pregnancy in a cat lasts about nine weeks and in a mouse about three weeks.

The Great Dictionary of the Polish Language provides a more precise and more in keeping with the boundaries set by embryology, the meaning of the word *foetus* is given by: ‘a human or animal organism developing from an embryo until birth or hatching from an egg’.

In the secular and Catholic press, as well as on the websites of foundations and associations of abortion supporters and opponents (groups A, B, C, and D), the term *nasciturus* as a *foetus* occurred a total of 212 times. The vast majority of occurrences were found in groups A and C – respectively: 141 and 52 (193 in total) – noticeably fewer in the other collections: in group B – 17 occurrences, in group D – 2 occurrences (19 in total). The 193:19 disproportion shows that authors of texts on portals such as Gazeta.pl, Newsweek.pl, Oko.press, or NaTemat.pl and feminist websites were over 10 times more likely to use the noun *foetus* than authors of texts from the other

61 Słownik współczesnego języka polskiego, ed. B. Dunaj, Warszawa 1996.

groups. The division is so clear that it unquestionably confirms the existence of a strong opposition between these words. A similar disproportion – but in the opposite direction – was found in the case of the lexeme *child*.

A comparison in terms of the number of speeches with the rest of the material (groups E, F, and G) is developed in a separate chapter.⁶²

The semantic shifts discussed above, as well as the fact that the word *foetus* is used in specific contexts (abortion) and not by all users, makes it not as meaning-neutral as abortion advocates want to see it. In the remainder of the text, I seek to demonstrate the relationship between the use of the word and the context (wanted pregnancy – lexeme *child*, unwanted pregnancy, or potentially unwanted pregnancy – lexeme *foetus*).

The following examples clearly show that the precision of the division of successive phases of the prenatal period, which embryology distinguishes, is not respected, and the lexeme *foetus* is used according to its meaning in general Polish.

” In March, a woman was charged with murder and attempted murder of **a foetus**. **A45**

” I was afraid of bleeding, as most women are, and the truth is that bleeding only starts after the body ejects **the foetus** [about the *nasciturus* before the ninth week of pregnancy – author’s note]. **A29**

” Sensitivity to the stimulus – moving away from its source with the whole body – has been reported in **foetuses** at 7.5 weeks of age. **B33**

” **The foetus** cannot be more than 12 weeks old, but she did not check this. **A40**

62 See subsection *The unwanted foetus – nasciturus*.

” They want, through a state referendum or vote, to broaden the constitutional definition of a human being, which, according to their proposal, would be **a foetus** from the day of conception. **A45**

CHILD

A detailed comparison of the use of the words *child* and *foetus* in the studied material based on *usus* is included in the subsection of the work entitled *Foetus – unwanted nasciturus*. At this point, it would be appropriate to indicate in which groups the noun occurs most frequently and what assumption underlies the given linguistic choices.

A total of as many as 621 occurrences of the lexeme *child* in relation to *nasciturus* were recorded in the material studied.

In the conservative media and on anti-abortion websites, the *nasciturus* is always a child. It was called this way 472 times in group B and 91 times in group D.

Even when the word *foetus* is used in these groups (a total of only 19 occurrences were recorded), this is mainly for stylistic reasons – it appears as a synonym to avoid repetition or, for example, in the statements of doctors or midwives, who are more likely to use terms found in the medical vocabulary. However, the ontic status of the *nasciturus* as a pre-birth stage of human life is unambiguous. For this reason, it is not surprising that the vast majority of occurrences of the lexeme *child* come precisely from groups B and D.

The situation is different in the texts of abortion advocates, who recognize the *nasciturus* as a human being only at birth.⁶³ Even when the lexeme

63 On the basis of a linguistic analysis of the texts, it is possible to distinguish two criteria for considering a *nasciturus* to be either a child (as a little human being) or a foetus (an entity that is not a child and therefore not a human being). These criteria overlap to some extent with the two positions vis-à-vis the legal prohibition of abortion: a complete abolition of the prohibition implying a complete authorisation of abortion up to the moment of birth, or the authorisation of abortion only in certain cases (as in the current law). The criteria could be summarised as follows: the *nasciturus* becomes a human being at birth, so it is not subject to any legal protection until then, or the *nasciturus* becomes a human being at birth but is previously subject to legal protection to an incomplete extent after a certain period of time (12 weeks, 24 weeks, etc.).

child is used there, it is in the vast majority of cases precisely in a context related to birth, for example:

” I am waiting for a list of pro-life MPs who adopt a child with Down syndrome. We will immediately fight for these **children** to be born. A34

In group A, the noun *child* appeared 57 times, and in group C only once.⁶⁴ In total, this is almost 10 times less than in the group B and D texts.

” The same organization proposes to amend the Family Planning Act and delete the provision that allows the removal of a pregnancy if it is the result of rape or there is a likelihood of irreversible foetal disability or incurable disease of **the child**. A23

” Anyway, it's not about money. It's a pity about **the child**. It could have been born. Just what am I supposed to, say, do with him here? I share a flat with three people. A25

” [...] she hopes her story will help dissuade other women from intending to kill their **child**. D8

UNBORN CHILD

The term unborn (*child*) serves to distinguish the prenatal phase from the period after birth. In the material studied, it appeared in all four groups of texts; however, as it typically functions attributively with the noun *child*, it is by far more frequent in texts from groups B and D.

A total of 104 occurrences were recorded,⁶⁵ the vast majority of which came from texts in group B (68 examples) and D (24 examples). In group A the term occurred only 8 times and in group C it occurred 4 times.

64 It will be recalled that those speeches that can be considered as referring to a child born or borne have been omitted; examples such as: “[...] it will force women to continue pregnancies that endanger their lives, to give birth to children with genetic defects, to children who are sick, unable to live independently” (C20).

65 Both the adjective *unborn* and the noun *unborn* are included together.

” Faced with a referendum in which the government asked citizens whether the Eighth Amendment, which equates the rights of the mother and **the unborn child**, should be thrown out of the Constitution, bridges, pubs, and monuments disappeared under a layer of ‘abortion aesthetics’. C15

CONCEIVED CHILD

A synonym for *unborn child* is *conceived child*. In the analysed material, this complementary term appeared a total of 45 times (in group A – 6 times, in group B – 35 times, in group D – 4 times).

” There are simple answers to what to do with **children conceived**. A41

TERMS DENOTING THE STAGE OF DEVELOPMENT

It is not uncommon for the pre-natal developmental stage of the *nasciturus* to be clarified with more elaborate terms such as *prenatal period of development*, *prenatal stage of development* or *prenatal period*, as well as *early stage of development* or *first stage of development*.

” As long as a human being **at the prenatal stage of development** is not considered a human person, it can be argued that it is moral to kill them. D14

” What diseases of children **during the prenatal period** do you most commonly encounter? B39

” Subsequently, the meaning of the word ‘foetus’ itself began to change: it ceased to be a human being **in the first stage of development** and began to be an impersonal creature – certainly not a human being, at most some form of humanoid. B30

BLASTOCYST

Once in the material examined, the medical term *blastocyst* appeared.

” Unborn life, conceived life, brainless zygote, and **blastocyst**. C18

BOY

One example was found in which a *nasciturus* was called a boy.

” Grażyna very often goes for a walk there, squats under a tree and talks to her **little boy**. A19

DAUGHTER

Referring to a *nasciturus* as a *daughter*, like referring to it as a *girl* or a *boy*, is rare. In the material studied, it was used in this sense only three times – all occurrences related to the same group A article.

” The story of another hospice charge, Mr. and Mrs. Słabiak, was similar. Their **daughter** had HLHS syndrome (single ventricle heart). Initially the parents wanted to follow the doctors' suggestion [for an abortion – author's note], but later changed their mind. A16

HUMAN

Although at the centre of the abortion dispute is the *de facto* question of the humanity of the *nasciturus*, the noun human itself is used relatively rarely in the texts examined.

In the material analysed, this term appeared 19 times, almost exclusively in texts by opponents of abortion (in group A – once, in group B – 15 times, in group D – 3).

” The annihilation of **human** life is compared to, for example, the excision of the appendix. B24

In one case, the surprising appendage *conscious* was added to the lexeme *human*. However, this seems to be an expression of a certain linguistic awkwardness rather than a deliberate procedure – it is difficult to imagine anyone recognising a *nasciturus*, or even a newborn baby, as a conscious human being.

” And I think the only ones who suffer are those who let themselves be told that the foetus is already **a conscious human**. **A47**

Once the noun in question occurred in the plural *humans*.

” In her view, the abortion law in Poland undermines the humanity of people like her child, as hundreds of **humans** with Down syndrome are legally killed every year. **B12**

BABY [IN POLISH: DZIECINKA]

The fondling term *baby* appeared only once – in a letter quoted in a 2003 article by the Opole branch of *Gazeta Wyborcza*⁶⁶ on the difficult feelings accompanying a woman after an abortion.

” ‘[...] But I lacked the strength to protect you. In my heart from your death a grave has risen. I place on it the burden of guilt, suffering, tears, longing and I ask for forgiveness, my **baby...**’ – wrote Maria in a letter to her unborn child. **A19**

GIRL

In the material analysed, we also found 3 examples in which *nasciturus* was described as a girl, but only in the case of the text from group B do we have a completely clear situation of deliberate and unambiguous use of the

66 An analysis of the texts in the pages of *Gazeta Wyborcza* over the last two decades would require a more detailed study in terms of the changes that have taken place in this journal with regard to the vocabulary related to abortion. However, even a cursory reading of the texts from the beginning of the new millennium compared to those from the last few years indicates a certain sharpening of the language used to talk about abortion in the pages of this magazine, in a direction converging with the vocabulary used by feminist circles. It is worth comparing, for example, articles on post-abortion syndrome, which are 15 years apart: the text entitled *Jak żyć po aborcji* (*How to live after an abortion*) of 18 April 2003 from the *Gazeta Wyborcza* (Opole edition) and the article *Czy istnieje syndrom poaborcyjny* [*Is there a post-abortion syndrome*] of 15 April 2011 published in *Wysokie Obcasy*.

word. In the article from group A, on the other hand, the noun refers to an unborn child, but one that was eventually born after all.

” Among those who benefited from his help were Mr and Mrs Sułkowscy, whose daughter had Ebstein syndrome (a serious heart defect) and Down syndrome. Although it was known from the 22nd week of pregnancy that **the girl**, if she survived to delivery, would die shortly afterwards, the parents decided to continue the pregnancy. **A16**

” Where are these people when unborn **girls** are killed? **B47**

” Let us remember that at least half of the victims of abortion are women – **girls** in the prenatal period of their development. **B7**

EMBRYO [IN POLISH: EMBRION⁶⁷]

In the material studied, the lexeme *embryo* was used occasionally, although looking at the dependence of nomenclature on the gestation period proposed by embryologists including Blechschmidt, it seems that in many uses it would be more appropriate than the more readily used lexemes *foetus* or *embryo* referring to other stages of the *nasciturus*' development.

Only 6 occurrences of this lexeme were recorded (in group A – 1, in group B – 3, in group C – 0, and in group D – 2).

It is difficult to explain unequivocally why there are so few uses of this lexeme. Perhaps the key is the feeling that the word belongs to a specialist language – Doroszewski's Polish Dictionary, Szymczak's Polish Dictionary, and The Great Dictionary of the Polish Language, among others, mark the word in question with the qualifier 'biology', although, on the other hand, the word has been known to the general Polish community for a long time (as

67 In Polish, two lexemes are distinguished: *embrion* (from Greek *émbryon*) and *zarodek* (derived from the old prefixed verb *zarodzić* (*się*), meaning, among other things, 'to begin to live'), both of which are translated into English as *embryo*. In the original publication, they were discussed separately; here, however, they are presented side by side, with an indication in square brackets specifying which Polish lexeme is being referred to – editor's note.

a synonym of the lexeme *zarodek* [translated into English also as an embryo⁶⁸], originating from Greek, it is mentioned in the Vilnius Dictionary of 1861).

A hypothesis worth investigating separately would be to see how often this lexeme is used in discourse on *in vitro* fertilisation and genetics – it would be necessary to compare the number of times it is used in, for example, press texts devoted to these topics. Perhaps it would turn out that the number of uses increases depending on the diversity of topics within these issues. A sign that this could be the case is provided by the collocations indicated in the context of this word by The Great Dictionary of the Polish Language, which states that statistically the word is most frequently combined with such terms as: *human, animal, six-month-old, one-week-old, early, supernumerary (embryo); cloned, frozen (embryos); storage, using (of embryos)*. The same is true, by the way, of the lexeme *zarodek [embryo]*, which, as shown above, is also a rarely used term for *nasciturus*. The Grand Dictionary of the Polish Language gives the following connections: *frozen embryo, human embryo, chicken embryo; human embryo, donor embryo; embryo development; cell of the embryo; culturing, cloning, obtaining, freezing an embryo; clone an embryo; develop into an embryo*. However, making such a comparison is not relevant to the study of abortion discourse and is beyond the accepted scope of this thesis.

” There is no doubt that, from the point of view of biology, the human **embryo** is of the species *Homo sapiens*. **D10**

EMBRYO [IN POLISH: ZARODEK]

The terms *zarodek* and *embrion* [both translated into English as embryo – editor’s note] raise similar concerns regarding semantic precision as in the case of the lexeme *foetus*. In this case, one can observe a tendency to extend the meaning adopted in embryology to much later phases of the life of the *nasciturus* than the first weeks.

This corresponds to the meaning in general Polish. The online version of the PWN Polish Dictionary treats the lexemes *zarodek* and *embrion* as synonyms

68 See the preceeding footnote.

and refers to the definition of the word *embryo*, Doroszewski's Polish Dictionary provides the following explanation of the meaning: 'in humans and animals: a new organism arising from a fertilised egg cell or parthenogenetically developing outside or inside the mother's body'. The Great Dictionary of the Polish Language, on the other hand, emphasises in its entry that it refers to an early stage of life, defining the lexeme as: 'a human or animal organism developing from a fertilised egg in the mother's body – at an early stage of development'.

In the material studied, the noun occurred only 12 times, mainly in the groups of abortion supporters (in group A – 8 times, in group B – once, in group C – 3 times).

Polish speakers are aware of the fact that the term *zarodek [embryo]* refers to the earliest period of prenatal life and they usually use it precisely to emphasise this early stage of development, even if in fact it already refers to the later phases of the life of the *nasciturus*. Sometimes they juxtapose, for example, the noun *zarodek [embryo]* with the noun pre-schooler for exaggerated effect, as in the example below:

” If she had not chosen to abort, she would not have been able to support her two sons, she put the welfare of her two pre-schoolers before the life of **the embryo**. **A13**

” They are now calling for foetuses and **embryos** to be given patient rights and treated as equal 'full recipients [sic] of medical services'. **C10**

HUMAN LIVES [IN POLISH: ISTNIENIA LUDZKIE]

The term *human lives* was used 2 times in the group B texts.

” If a mother who has had one or more abortions survives and recalls, for example, the date of birth of a child or children who are no longer there, in the case of a doctor, you can imagine how much heartache he feels when he counts how many **human lives** he has put to death. **B25**

BEING [IN POLISH: ISTOTA]

Dictionaries define being as follows: ‘living organism – human or animal’ (The Great Dictionary of the Polish Language), ‘living organism, person, creature’ (Doroszewski’s Polish Dictionary, Szymczak’s Polish Dictionary). The lexeme appeared in the analysed texts only 2 times (one each in groups A and D).

” For abortion supporters, any argument, however stupid, will be good to justify the murder of an innocent **being**. D15

The second usage may indicate that users treat the word as neutral in the sense that it does not resolve whether or not we are dealing with a human being.

” As Irmina Kotiuk wrote in *Oko.press*, ‘the legal consequence of this kind of doubt is, in a state of law, to leave the addressees, in this case women, a margin of freedom to choose how to deal with **beings** whose status is philosophically unresolved [...]’ A43

HUMAN BEING [IN POLISH: ISTOTA LUDZKA]

There were 2 occurrences (in one article) of the phraseology⁶⁹ *human being*.

” In the lecture, however, I learned about the whole drama of abortion. It was then that I realised that the embryo I was destroying was in fact **a human being**. B25

FOETAL EGG

Once in the text examined, the biological term *foetal egg* appears to describe a *nasciturus* undergoing abortion.

” **The foetal egg** is removed entirely with the mucosa, there are no complications. A26

69 It is noted as a phraseology by Doroszewski’s Polish Dictionary and gives the definition ‘human’.

EGG CELL WITH SPERM

The earliest phase of the prenatal period, the fusion of the gametes, is referred to by the term *nasciturus* as an *egg cell with a sperm*. It appears only once in the material studied.

” The Church’s way of thinking has been imposed on us. I understand that for someone an **egg cell with a sperm** is life. And he is absolutely entitled to that. On the other hand, it is violence to impose religious law on people who think scientifically or are atheists. **A32**

CELLS, GROUP OF CELLS

The *nasciturus* was referred to 2 times, albeit in the same article in group C, as *cells* or a *group of cells*, even though, as the context of the second sentence quoted shows, the term was used for the *nasciturus* at least at the 11th week of gestation, when the first of the prenatal tests that can show abnormalities in its development are performed.

” Some people take special pills or have surgery to remove these **cells** before they become a child. **C4**

” Or it may be that this **group of cells** is developing badly, and doctors and physicians through a special test can see this. **C4**

BALL, PIECE OF LIVER

Incidentally, in texts describing pharmacological abortion, there have been terms describing *the nasciturus* as a ball the size of a tangerine or a shape resembling a *piece of liver*.

” Bleeding occurred when a foetus fell out of her, **a ball** the size of a small tangerine, like **a piece of liver**. **A29**

LITTLE ONE [IN POLISH: MALEŃSTWO]

There were also 3 occurrences of another term of endearment – *little one* (one each in groups A, B and D), with the group A article quoting a woman who had not consented to an abortion.

” ‘Over those few days my perception of the world changed dramatically. I think I fell in love with this **little one** already at that first ultrasound. I found that what is meant to be is meant to be,’ she related. **A16**

” And even less a ‘restrictive’ (as it is often said) law, because what kind of restrictiveness is it to protect **little ones** from being killed. **B5**

TINY ONE [IN POLISH: MALUSZEK]

Once in a group B article, the caressing word *tiny one* appears.

” It is clear from our bill that a mother of a conceived child who acts unintentionally and thus causes the death of **the tiny one** is not liable to punishment at all. **B9**

VICTIM

Both sides sometimes use the lexeme *victim* to emphasise the harm suffered either by the *nasciturus* (opponents of abortion) or by a woman, for example, living in a country where abortion is totally or partially prohibited (supporters of abortion). In the material studied, this term was used 8 times in the former context (5 in group B, 3 in group D), and 2 times in the latter (only in group A).

” The real **victims** of the restrictive laws are precisely those women who consider themselves right-wing and religious. **A12**

” Let us remember that at least half of the **victims** of abortion are women – girls in the prenatal period of their development. **B7**

SHE/IT [A PERSONAL PRONOUN]

In the material studied, the *nasciturus* is also referred to using personal pronouns. Although it would seem that this type of usage only occurs in the language of abortion opponents who recognize the *nasciturus* as a human being, it was recorded 2 times only in the article from group A. Interestingly, in the same sentence, both the noun *foetus* (neuter; in Polish *plód* – masculine) and the pronoun *she* (feminine) refer to the *nasciturus*. This is the case in both sentences, which attests to the intentionality of using such forms. The very content of the quoted sentences, especially the second one, indicates the position taken on the status of the *nasciturus*.⁷⁰

” It saved me from needlessly prolonging my suffering, watching the foetus grow in my womb and guessing that every day it was more and more likely that **she** would suffer too. **A5**

PERSON

In the texts surveyed, the *nasciturus* is also referred to as a person (2 occurrences – one each in groups B and D) or, for an even stronger emphasis on the ontological status of human beings, as a *human person* (only 1 occurrence).

” During this time, millions of **persons** lost their lives before they were even born, and this means that a significant proportion of our nation may be living with survivor syndrome today. **B11**

” As long as a human being at the prenatal stage of development is not considered a **human person**, it can be argued that it is moral to kill them. **D14**

70 In this situation, however, it is ambiguous to determine the noun replaced by the pronoun *she*, as neither the term *daughter* nor *girl* appears throughout the passage. The pronoun here is replaced by the *de facto* masculine [in Polish – editor's note] noun *foetus*.

CLOT

Although the term *nasciturus* as a *clot* appears 2 times in the material studied, one of these occurrences is a quote taken from an online forum, so was not taken into account in the study. The following example is an excerpt from a statement quoted in one of the articles in group A.

” At one point I felt that we were probably done, a **clot** of one and a half centimetres fell out of me. We raised a toast. **A29**

BODILY REMAINS

In group D, the term *remains* appears 2 times in the same article as a synonym for *corpse*, a *dead body*.

” For the next 2 years, **the remains** of these babies were kept in the medical office as material evidence in the case. **D13**

In the same article, the word *body* also appears within the meaning of a ‘corpse’.

” This year Life Action News took some stock of recent years in the US and some other countries, bulleting the gruesome ways abortion clinics dispose of the **bodies** of millions of babies they kill. **D13**

FOETAL REMAINS

Once in the material examined, the term foetal remains appeared in relation to the abortion of the *nasciturus*.

” Those of us who are pregnant have just started their abortion and after 24 hours will be able to take misoprostol, the second drug for pharmacological abortion, which will cause the uterus to contract and expel **the foetal remains** out. **A49**

IT [A DEMONSTRATIVE PRONOUN]

One example was also found in which the pronoun *it* was used to refer to the *nasciturus*, but this is from the speech of the person quoted in the article.

” When you wake up the next day, you’ll feel like you’ve had your period. You know, **it’s** going to look like this kind of jelly... I don’t think I need to explain it to you? **A25**

FERTILISED EGG CELL

This term for *nasciturus* appears 2 times, but only in the same article and only as a component of a blunt metaphor in Prof. Romuald Dębski’s statement.

” According to the Conservatives, the mother is supposed to be the birth sac for **the fertilised egg cell**. **A34**

CONTENTS OF THE UTERUS

It might seem that the expression *empty the contents of the uterus*, which appeared only once in the material studied, should be considered an ephemera, but the frequent occurrence of the expression *contents of the uterus* with other verbs, for example *suck out*, *remove*, in texts other than the ones in question⁷¹ contradicts its incidental nature.

” The doctor then inserted a thin tube into my uterus – which felt like a pinch – and then **emptied the contents** of my **uterus**. **A2**

ZYGOTE

Taken from the biological vocabulary, the lexeme *zygote*⁷² was used only twice by abortion advocates in the material studied and was intended to

71 See, e.g., ‘The doctor dilates the cervix and then removes the contents of the uterus using a curette (a metal loop placed at the end of a long handle) and forceps’ – J. Puzewicz-Barska, M. Tarasiewicz, *Nasze ciała, nasze życie*, Gdańsk 2004, p. 388.

72 It is qualified as ‘biology’ by, among others, Doroszewski’s Polish Dictionary, The Great Dictionary of the Polish Language and Szymczak’s Polish Dictionary.

exaggerate the contrast between the earliest stage of foetal life and the born child. In the material studied, it occurred only in groups A and C.

” In those days, no one told us that removing a **zygote** was murdering children. There was no abortion underground, women did not feel like criminals. **A47**

A total of 31 terms of *nasciturus* were identified in the material studied. The vast majority of them (16 lexical units) belong to the vocabulary of abortion advocates. They usually choose to denote the successive phases of prenatal development (*egg cell with sperm, fertilised egg cell, zygote*), although they not infrequently use them in an extended sense to that which these nouns have in embryology or biology. However, the imperfect method of this juxtaposition has also resulted in the inclusion of terms that can in no way be considered representative of the vocabulary of groups A and C (*for example, baby, daughter, boy*). They usually come from the statements of people quoted in the articles who cannot be identified with the authors of the texts. Moreover, they are isolated occurrences. On the other hand, their occurrence in this collection testifies to the fact that the perception of the *nasciturus* taking away its humanity is not always consistent and the penetration of opposite optics happens. On the other hand, the set of lexemes used exclusively in the vocabulary of the pro-life side included five terms, each of which refers to the personal status of the *nasciturus*.

In addition to the nouns *foetus* and *child*, the common set includes such lexemes as embryo [in Polish: *zarodek, embrion*] as well as human or *being*.

Pro-life	Joint	Pro-choice
human lives	← human	blastocyst
human being	← child	boy
tiny one	← unborn child	daughter
victim [referring to a child]	← conceived child	baby
person	girl	foetal egg
	embryo [in Polish: <i>embrion</i>]	egg cell with sperm

Pro-life	Joint	Pro-choice
	being	ball, piece of liver
	little one	cells, group of cells
	foetus →	she
	embryo [in Polish: zarodek →	it [as a demonstrative pronoun]
		clot
		bodily remains
		foetal remains
		fertilised egg cell
		contents of the uterus
		zygote

3.4 Attitudes to abortion and the us vs. them opposition

The demands of the two sides of the argument are so radically disconnected from each other, and at the same time the determination to achieve them so great, that a binary-valued us-them quickly developed in the discourse. Such an opposition, often based on the figure of the enemy, is one of the basic features of persuasive texts in general. In the material studied, it was constructed by both sides of the argument, but in terms of the number and nature of the labels used to describe the opponent, it was the pro-abortionists who led the way, describing their opponents as, among other things, *fundamentalists*, *Catho-right* (*Catholic right*), *fanatics*, *anti-choice*, and other such terms with a derogatory connotation, while the opponents of abortion mainly used terms which are also used in the language of pro-abortionists (*feminists*, *abortionists*). The term tormentor appeared once.⁷³

Self-identifying and labelling terms are noted below; the expression abortion compromise is also discussed.

DEFENDERS OF LIFE

This term is an oft-used self-identifying label that refers to life as a supreme value. As Patrycja Piotrowska notes, it presupposes the existence of a threat

73 The terms chosen by proponents of abortion are discussed separately.

to life, so the label in question is concerned with 'simultaneously the positive self-identification of the partisan and the identification of the adversaries as partisan with a negative attitude towards an essential value'.⁷⁴

However, it seems that language users do not always analyse the thesis contained in the name in depth and sometimes reach for it unknowingly, since, like pro-life, it has become widespread as the name of a party. On the other hand, the occurrence of uses with spacer inverted commas in the surveyed texts, which I describe later in the paper, confirms that it is not perceived as completely neutral.

In the material studied, the term appeared 23 times (in group A – 5 times, in group B – 13 times, in group D – 5 times).

” During the march, left-wing activists provocatively approached **defenders of life** to make the comparison of dead babies to jam clear and unambiguous. B19

” We are creating an army of **defenders of life** that is changing Poland. D6

DEFENDER OF LIFE (IN REFERENCE TO A FEMALE)

The female equivalent of the lexeme *defender of life* [English does not reflect this distinction], also appears 2 times in group B.

” Mary Wagner, a Canadian **defender of life** of unborn children who spent a total of six years in prison for standing with a white rose in abortion clinics where she prayed for women seeking abortions, was a guest at the Motherhood of the Blessed Virgin Mary parish in Wrocław yesterday. B43

74 P. Piotrowska, op. cit., p. 70.

DEFENDERS OF CONCEIVED LIFE

Two occurrences of the expression *defenders of conceived life* were also noted. While in the first of the quoted sentences it can be assumed that the term *conceived* is intended to emphasise the difference between *conceived life* and *born life*, referred to later in the sentence, and the negative attitude of the writer towards this party is expressed in the use of the adjective *fanatical*, the second leaves no doubt that the authors of the texts want to clearly separate *conceived life* from *life* in general and thus express their disapproval of the term *defenders of life* (additionally, the distance of the writer towards this term has been emphasised with inverted commas).

” For we have a plethora of fanatical **defenders of conceived life** completely out of touch with born life. **A17**

” French opponents of abortion were as violent and vicious as Polish **defenders of ‘conceived life’**. **A17**

DEFENDERS OF HUMAN LIFE

In one of the group B articles, the term *defenders of human life* also appeared. As it seems, the aim is to indicate precisely whose life the opponents of abortion want to defend.

” It is not the radicalism of **the defenders of human life that** ‘works against the effective protection of unborn life’. **B5**

PRO-LIFE

The main question concerning this term,⁷⁵ which has already become widespread in Polish, although not to the extent that all general dictionaries of the Polish language note it, concerns the extent to which it is considered a neutral lexeme.

⁷⁵ I zoom in on its history when describing the lexeme *pro-choice*.

Patrycja Piotrowska's research shows that the term *pro-life* is also frequently used in outlets such as *Gazeta Wyborcza* and *Polityka*, as due to the fact that this term comes from a wider expression in the English language, the use of the elided segment (*for the life of children, for the life of a foetus*) and for this reason it is probably less felt as evaluative. This, in turn, causes the editors of these journals to consider it neutral enough to be used without the threat of giving their opponents an advantage in the discussion.⁷⁶

A reading of the material I have collected partially supports these conclusions. Indeed – this borrowing appears in both group A, group B and group D – a total of 41 occurrences were recorded. Interestingly, group A had the most uses (group A – 26 examples, group B – 8, group C – 0, group D – 7).

The predominant use of the word in the texts surveyed is as a constituent of nominal groups such as *pro-life community*, *pro-life activist*, *pro-life movement*, but predicates also occur, for example *be pro-life*.

77 **Pro-life** activists describe that van der Wende was conceived as a result of rape and was brutally raped when she was a young girl. **A20**

In spite of the conclusions from the quantitative analysis, it is noticeable that this lexeme is not infrequently included in the group of banned words as belonging to the vocabulary of one side of the dispute. For example, activists from the Federation for Women and Family Planning, criticising Urszula Wysocka, co-author of the study discussed by me elsewhere in this paper, *Narracje o narodowcach i walce z aborcją z perspektywy etyki słowa* [*Narratives on nationalists and the fight against abortion from the perspective of word ethics*], also reproach her for using the term in her academic work as non-neutral.⁷⁷

76 P. Piotrowska, op. cit., p. 51.

77 Feminists instruct the author of the book as follows: 'In a scientific publication it is inadvisable to use the ideologically charged terminology "pro-life" and "pro-choice". Such a division is not neutral and objective; a better option was the distinction "opponents and supporters of abortion".' See Federacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Federacja na debacie o narracjach wokół aborcji*, <https://federa.org.pl/federacja-na-debacie-o-narracjach-wokol-aborcji>, accessed 11 January 2022.

Also in the Federation's guide on vocabulary on abortion, which feminists believe should be used or avoided, one finds the recommendation to choose *anti-abortion/anti-choice* rather than *pro-life* or *pro-life*. Representatives of the feminist organization argue this step as follows: 'Pro-life suggests that pro-choice and pro-safe abortion advocates are against life, meanwhile they are the ones who care about women's lives both in the sense of physically protecting them and respecting the constitutional right to decide on their personal lives.'⁷⁸

A similar thought can be found in the summary of one of the group C articles on the death of women as a result of legally prohibited abortion:

” We are the **pro-life** ones, we are the ones who are for life. C1

Abortion advocates try to reverse the meaning of the expression *defender of life* and relate it to themselves. This is served, among other things, by the slogan 'Abortion in defence of life!', the meaning of which is explained as follows:

” The slogan may seem absurd, but its rationale is very simple: it is the right to abortion that protects life – the lives of women and children. C6

PRO-LIFER [IN POLISH ALSO WITH POLONISED FORMS: PROLIFER, PROLAJFER]

In Piotrowska's opinion, the status of the label *pro-lifer*, which is not always perceived as neutral by the editors of outlets in the texts she examined in *Gazeta Wyborcza* or *Polityka*, looks different than in the case of the lexeme *pro-life*.⁷⁹

In the material I examined, both word-forming hybrids occur, but they are rare. The noun *pro-lifer* occurred only 5 times: in group A – only once, and 2 times each in groups B and D (no example was found in group C).

78 Federacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Jak mówić/pisać o aborcji?*...

79 P. Piotrowska, op. cit., p. 51.

” There was only one **pro-lifer** inside, Leandro Aletti; he asked how one can strive for a culture of ‘openness’ to migrants while not even accepting one’s own children. **B32**

” And this is what **pro-lifers** are trying to express by picketing, trying to show the truth about this practice. **B24**

PRO-LIFE’OWY, PRO-LIFERSKI [POLONISED FORMS OF PRO-LIFE]

Two examples of derivatives formed from the base *pro-life* using two different suffixes, *-owy* and *-ski*, were also identified.

” Regardless of how many leafleters the pro-life Save the 8th campaign sent into action, how many doors campaigners knocked on with the slogan ‘Love Both’, on the streets of Dublin, for every person displaying ‘No’ insignia, there were 20–30 Together for Yes stickers, Tá badges, and REPEAL sweatshirts. **C15**

” [...] the founder of the pro-life organization Kaleb, Walter Schrader, told the Fronda.pl portal. **B20**

PRO-CHOICE

The Polish term *pro-choice*, a direct borrowing from English, is one formed analogously to *pro-life*, which has also already become established in Polish, although to a lesser extent. As in the case of *pro-life*, in the texts studied it is found mainly as a component of nominal groups, much less frequently as part of the predicate *be pro-choice*.

However, unlike the expression *pro-life*, which, as already mentioned, is also used by editors representing titles far from a position condemning abortion, the term *pro-choice* is never used by opponents of abortion in the texts surveyed. Only one occurrence in group B was noted, but it was accompanied by inverted commas. This label as a means of self-identification appears only in texts from groups A (11 occurrences) and C (12 occurrences). The polonised, pronunciation-consistent form *proczojs* appears once.

Perhaps this is because it was created not only secondarily to the term *pro-life*, but even in response to it. The word *pro-life* as a synonym for opposition to abortion was first used in an article in the Chicago Tribune on 16 September 1971 concerning a group of students opposed to abortion and the Vietnam War (before that, the term was completely unrelated to the phenomenon, but was used by some thinkers to criticise mainstream culture),⁸⁰ and then – after the famous 1973 US Supreme Court decision in *Roe v. Wade*,⁸¹ which introduced universal access to abortion, was deliberately chosen by its opponents as most accurately reflecting their position. The *pro-choice* label, on the other hand, was modelled on and opposed to *pro-life*, although it never matched the original in terms of the strength of its message.⁸² From the mid-1970s, abortion advocates began to use it to avoid being labelled *pro-death* or *anti-life*, and so *pro-choice* was created in reaction to *pro-life*.⁸³

It is noteworthy that both terms are constructed in such a way that they define the adherents of a given worldview in a very positive way, while at the same time allowing the opponent to be portrayed in a negative light extremely easily (the inference to which these words lead could be summarised as follows: he who is not *pro-life* is *pro-death*, and he who is not *pro-free choice* is a supporter of coercion).

” I have been **pro-choice** since I knew about abortion, and I felt comfortable with my decision. **A2**

” Vilar resents women who advocate the **pro-choice** movement (for a woman's right to choose to give birth or not) for not speaking out about the treatments they have undergone. **A48**

80 According to the *Oxford English Dictionary*, the term *pro-life* itself was first used in 1960 by A.S. Neil in his book *Summerhill: A Radical Approach to Childrearing*, who expressed himself thus: 'No pro-life citizen would tolerate our penal code, our hangingism, our punishments of homosexuals, our attitude towards bastardy' (quoted in A. Merelli, *A brief history of a marketing masterpiece: branding the anti-abortion movement 'pro-life'*, <https://qz.com/896566/where-does-the-term-pro-life-come-from>, accessed 19 February 2022). However, as a name for the movement, the term began to be used by anti-abortion groups from 1973 and the *Roe v. Wade* judgment.

81 Judgement of the United States Supreme Court decision of 22 January 1973, 410 U.S. 113, *Roe v. Wade*.

82 See A. Merelli, op. cit.; J. Pennington, [answer to the question] *Abortion: How did the terms pro-choice and pro-life originate?*, <https://www.quora.com/Abortion-How-did-the-terms-pro-choice-and-pro-life-originate>, accessed 19 February 2022.

83 See J. Kimmey, *Right to Choose Memorandum*, [in:] *Before Roe v. Wade. Voices that shaped the abortion debate before the Supreme Court's ruling*, eds. L. Greenhouse, R.B. Siegel, New York 2010, pp. 33-34.

” I don’t want a **pro-choice** [in Polish: polonised, pronunciation-consistent form *proczojs*] that treats women objectively and reaches for their personal dramas to win a round of the political game. C2

” This is the cruel truth about the ‘**pro-choice**’ position. It hurts and is despicable. B21

PRO-CHOICE’OWY [POLONISED FORM OF PRO-CHOICE]

Only one text in group A features a polonized form of the adjective *pro-choice*, created with the suffix *-owy*.

” My best friend – intelligent, tolerant, and knowing me inside out – asks what I think about some ‘pro-choice’ campaign [in Polish: ‘pro-choice’owej] kampanii], then looks at me intently and cautiously adds: ‘You know why I’m asking you, right?’ A30

ANTI-CHOICE

The antonym of *pro-choice* is the term *anti-choice*, also written in the polonised version *anty-choice*. This label explicitly – and not just through the presupposition contained in the term *pro-choice* – places opponents in the position of those who do not want freedom of choice and prohibit it.

In the material studied, abortion supporters referred to their opponents in this way 15 times (in group A – 9 times, in group C – 6 times). However, some of the examples indicate that the authors of the texts are concerned about their readers’ misunderstanding of the term, so they sometimes add an explanation.

” A court in Rzeszów sentenced an **anti-choice** (or pro-life) activist to a fine, with the justification stating that ‘the circumstances of the act and the defendant’s guilt are not in doubt’. A27

” Your child may already have his or her own opinion on abortion, may have already come across banners of **anti-choice** groups, may have seen ‘The Silent Scream’. **C4**

” **Anti-choice** communities exacerbate this problem by manipulatively portraying prenatal screening as a cause of abortion. **C7**

ABORTIONIST

In the case of the noun *abortionist* [in Polish: *aborcjonista*] we are dealing with a similar situation to that of the verb *to abort* [in Polish: *abortować*], although it seems that in both examples their presence in the Polish language is more a consequence of a natural tendency to expand the word family of the word *abortion* [in Polish: *aborcja*] with a suffix (-ista), rather than a borrowing from the English *abortionist* – especially since the Polish language also contains the noun *aborter*.

The PWN Polish Dictionary differentiates the meanings of these two nouns, stating that the term *abortionist* means ‘a supporter of abortion’, while *aborter* means ‘a person who performs an abortion’. On the other hand, The Great Dictionary of the Polish Language gives both meanings for the noun *abortionist*, i.e., both ‘a supporter’ and ‘a practitioner’, and for the term *aborter* – only the latter (it is worth adding that the entry is marked with the qualifier ‘bookish’).

In the material studied, the word *abortionist* appears in both meanings quoted by the Grand Dictionary of the Polish Language. In total, the noun *abortionist* appeared in the material 25 times (in group A – once, in group B – 18 times, in group D – 6 times). The disproportion indicates that the word is hardly used in the liberal press, nor is it used on a self-identifying basis by feminists and others involved in the argument on the side of abortion supporters.

” Only a group of a few dozen **abortionists** arrived at their destination, the Washington roundabout, with a group of more than a hundred pro-life advocates waiting. **B19**

” The Holy Father was to speak to **an abortionist** to encourage her to continue her work to welcome refugees in Europe. **B32**

” This refers to losses caused by negligence on the part of the medical **abortionist**. **B48**

” US representatives of the pro-life movement are considering filing a lawsuit against **an abortionist** whose failed ‘procedure’ led to a woman’s death. **B50**

ANTI-ABORTION RADICAL

On one occasion, opponents of abortion were referred to as *anti-abortion radicals*. The term *radical* evokes a negative connotation, especially for those who consider themselves to represent balanced views on abortion and who see radicalism and extreme positions as incorrect and dangerous positions.

” Compared to our January 2018 survey, the number of **anti-abortion radicals** has decreased slightly (by 4 percentage points). **A33**

GALS [IN POLISH: DZIEWUCHY]

As Patrycja Piotrowska notes, the lexeme *gals* in the discourse on abortion should be treated as a neo-semanticism meaning ‘women who cut themselves off from the orders imposed by society’,⁸⁴ which in turn can be broken down into several meanings: 1) ‘independent women, fighting for their rights’; 2) ‘protesters regardless of gender’; 3) ‘supporters of liberalising anti-abortion laws’.⁸⁵ The author of the paper on labelling in the abortion dispute notes the following: ‘giving one’s own party the name of *gals* makes the negative connotation blurred, as it is replaced by positive associations such as openness or non-violence.’⁸⁶

84 P. Piotrowska, op. cit., p. 32.

85 Ibid., p. 34.

86 Ibid., p. 33.

Although the lexeme belongs to self-identifying words and one would expect it in groups A or C, its only occurrence was recorded in texts from group D. Interestingly, it was not accompanied by inverted commas or any other signal of distance.

” The **gals** community is melting away as many do not support the ideas of abortion on demand or out of convenience. **D15**

FANATIC, FANATICAL

The label *fanatic* with a very strong negative emotional charge appeared only once in the surveyed material and that in the statement of the person quoted. The adjective *fanatic* was also used once to describe *defenders of unborn life*.

Patrycja Piotrowska classifies such terms as insulting names in the function of an ad personam argument, i.e., ‘names arbitrarily pointing out negative features of opponents and discrediting them’.⁸⁷ The use of this label is intended to accentuate the lack of rationality of the actions and thinking of the adversaries, who in their behaviour are guided, as the author herself points out, by ‘religious and ideological’ motives, and not – by implication – by science, facts, etc.

” For we have plenty of **fanatical** defenders of unborn life who, by the way, are completely insensitive to the lives of those already born. **A17**

” ‘Or is it dominated by religious and ideological **fanatics**, using their advantage to humiliate patients and deprive them of their dignity?’ wonders Marta Lempart of the All-Poland Women’s Strike. **A20**

FEMINISTS

Appearing in the texts, the use of the noun *feminists* can be considered relatively neutral, although sometimes the context influenced its polemical

⁸⁷ Ibid., p. 63.

overtones. In the texts from the surveyed groups, it was used as a synonym for *pro-abortionists* (it is worth noting that the Catholic press does not use the term *pro-choice* at all). In the material studied, the noun appeared relatively rarely – 20 occurrences were recorded (in group A – once, in group B – 16 times, in group C – 0, in group D – 3 times).

” Then **the feminists** began their dismal black march. **D15**

FUNDAMENTALISTS

The label *fundamentalist*, *fundamentalists* (often with the adjective *Catholic*) is also used by abortion supporters to describe their opponents in the material studied. Patrycja Piotrowska points out that the purpose of using this label is to discredit the opponent by pointing out the irrationality of their behaviour.⁸⁸

This designation of opponents of the dispute appears 4 times in the texts surveyed (2 times each in groups A and C).

” One in four or even one in three women in Poland has had a pregnancy abortion. However, due to the campaign of **Catholic fundamentalists** and the anti-abortion law, women do not tell their friends, sisters, and daughters that they have had the procedure. **A9**

” What is still missing to complete the happiness of right-wingers and **Catholic fundamentalists** is an absolute ban on contraception. **C18**

The adjective *fundamentalist* also appears once in group C:

” The Catholic Church will actively support and also involve its institutions in collecting signatures for **the fundamentalist** project to tighten the already draconian anti-abortion law in Poland. **C12**

88 Ibid., p. 48.

CATHO-RIGHT (CATHOLIC RIGHT) [IN POLISH: KATOPRAWICA]

Abortion supporters also refer to their opponents by the label *Catho-right*. It seems that this neologism, built on the model of Russian compound abbreviations, i.e., derivatives that include part of the defining word and the whole word being defined, is currently still perceived as a very strongly emotionally charged term and is therefore rarely used by journalists. In the material studied, it appeared only twice in one of the articles in group A – in the title of the text and its contents (in the latter case it was put in inverted commas, perhaps as a signal of the author's awareness of the stylistic characterisation of the word).

” Meanwhile, it is the broader **‘Catho-right’** that needs education, not tighter regulations. **A12**

” Checkmate, **Catho-right**. It is in your families that pregnancies are removed. Feminists are also fighting for the rights of conservative women [title] **A12**

‘COMPROMISE’, SO-CALLED COMPROMISE, ALLEGED COMPROMISE ROTTEN ‘COMPROMISE’

Indirectly, the attitude to abortion is labelled by the term *compromise*, which is used to describe the law which was established in Poland from 1993.

The term *compromise* (usually preceded by the adjective *abortion*, although it has a well-established position in general Polish), relatively rarely occurs in the studied material without such signs of distance as inverted commas or without being preceded by the metatextual expression *so called*, as well as *alleged*, etc. Interestingly, these means to denote disapproval, or at least distance from the term, are used equally by both sides of the argument. This is because both groups – albeit for different reasons – are quite critical of this legal solution. Abortion supporters consider it too restrictive, opponents too liberal. On the one hand, both sides want to clearly mark their negative attitude towards the current regulation and its inadequate name and, on the other hand, nevertheless make use of a recognisable and relatively handy term.

It is possible that this is because the groups of texts surveyed reflect a bipolar division of positions (for abortion – A and C, against abortion – B and D) who do not like the shape of the current law in this area, and the so-called middle position, i.e., those in favour of this compromise, is not represented to the same extent.

While the noun *compromise* appeared in the surveyed material a total of 8 times (in group A – 4 times, in groups B and C – 2 times each), it was used in inverted commas 12 times (in group A – 5 times, in groups B and C – 3 times each, and in group D – once), and as a *so-called compromise* – 3 times (in group A – 2 times, in group B – once). To this should be added terms such as *alleged*, *rotten*, etc. also indicative of the sender's attitude towards the term.

” Sometimes they will squirm when they hear about cottage abortions with bleach or a stick. But for a career in politics or other spheres of public life, they will support the lie of **compromise**, even though the public tried to stop the bishops and MPs from banning it for the first time in 1993, and Polish women are interrupting unwanted pregnancies on a massive scale, only illegally. **A9**

” The number of victims of the ‘**abortion compromise**’ grows year by year. **B3**

” The government majority opts for a tightening of today's abortion law, **the so-called abortion compromise**, even though this one is one of the most restrictive in Europe anyway. **A5**

” If one advocates any kind of ban on abortion, no matter whether one upholds **the alleged compromise** or advocates a tightening of the law, one must realise that this ban is in fact an injunction. **A13**

” Such a progressive stance on reproductive rights is welcome, especially at a time of constant threats to these rights in Poland and a public awakening to actively demand them at a European level after so many years of being held in the clutches of **the rotten ‘abortion compromise’**. **A44**

TORMENTOR

This is the only emotionally charged term for the opposing side in *pro-life* lexis. However, it is difficult to indicate to whom exactly it is addressed whether it is intended by the author of the text to refer to those performing abortions, as the meaning of the lexeme would suggest, or to the makers of pro-abortion posters, as the sentence structure suggests.

” They should finally say which side they are on – the children being killed or their **tormentors** who are mocking the victims’ bodies with comparisons to strawberry jam. B19

A total of 21 lexical units describing attitudes to abortion were extracted.

Pro-life	Joint	Pro-choice
gals	← abortionist	anti-choice
defender of life (in reference to a female)	← feminists	anti-abortion radical
defenders of human life	← compromise, ‘compromise’, so-called compromise, alleged compromise, rotten ‘compromise’	fanatic, fanatical
tormentor	← pro-life	fundamentalists
	pro-choice →	Catho-right (Catholic right)
	embryo [in Polish: embrion]	defenders of conceived life
	← pro-life’owy/pro-liferski [polonised forms of pro-life]	pro-choice’owy [polonised form of pro-choice]
	← pro-lifer	proczojs [polonised, pronunciation-consistent form of pro-choice]
	← defenders of life	alleged compromise
		rotten compromise

3.5 Lexicon describing the grounds permitting abortion

The adoption of a particular optic towards the *foetus*–*child* opposition in many cases also determines the way in which the condition of the *foetosis* spoken

of in relation to situations in which abortion is permissible. While abortion opponents who consider the *nasciturus* to be a child are more likely to use words such as *illness*, *ill*, *disabled* to describe the condition of a *nasciturus* diagnosed with developmental abnormalities or genetic or structural disorders at the stage of prenatal testing, abortion supporters are most likely to use the lexeme *defects* (*foetal defects*, *anatomical defects*, *genetic defects*).

ILL (CHILD, FOETUS), ILLNESS (OF A CHILD, FOETUS)

The adjective *ill* (*foetus*, *child*), less frequently the noun *illness*, was used 49 times in the study material (in group A – 8 times, in group B – 35 times, in group C – once, in group D – 5 times). This is the most frequently used term.

” Abortion without restriction is only allowed by the law if the handicap or **illness** prevents **the foetus** from living independently, i.e., the child will die immediately after birth. **A27**

FOETAL DEFECT [IN POLISH: DEFECT PŁODU]

Foetal defect was also noted among the incidental terms used in the material studied regarding the health of the *nasciturus*. The expression appeared 2 times, but only in one article from group A.

” In yellow [colour – author’s note]: illegal except in the case of risk to health (including mental health) or life of the mother and **foetal defects**. **A22**

DEFECTS IN CHILDREN [IN POLISH: WADY DZIECI]

The expression occurred 12 times, but only in texts taken from the Catholic press (group B).

” In this case, an illness, a severe **defect in the child**, as I mentioned above, not caused by the child itself or the parents, does not justify killing that child in the womb, because the child will die naturally anyway – either intrauterine or after birth. **B41**

FOETAL DEFECTS [IN POLISH: WADA PŁODU]

Foetal defects or – less frequently – in the singular, *foetal defect* is a general term for any health abnormality of the *nasciturus*. It can be assumed that behind the relatively frequent choice of this combination is its low precision of meaning, encompassing virtually all possible foetal disorders – both genetic and structural.

In the material studied, this phrase occurred a total of 22 times, but only in the left-wing press and on feminist websites (in group A – 17 times, in group C – 5 times).

” Some feel they are too young for motherhood, but some – usually older – have been diagnosed with **a foetal defect**. ‘In Poland, they are blocked from having such procedures,’ she states. **A11**

ANATOMICAL DEFECTS

The term *anatomical defects* appeared only 2 times and in the same text.

” The first child was born with Down syndrome. And he was healthy, with no heart or **anatomical defects** (40 per cent of children with DS have such defects). **A38**

GENETIC DEFECTS

This term appeared a total of 15 times (in group A – 7 times, in group B – 6 times, in group C – 2 times).

” **The genetic defect** in your son was detected during prenatal testing? **B46**

LETHAL DEFECTS

The adjective **lethal** in the context of incurable, fatal disorders of the *nasciturus* appears only 3 times and only in group A texts.

” It is only possible to change such a decision if this woman, these parents, are convinced that they can cope with raising a child with a disability or endure the suffering of watching the child die slowly, in the case of **lethal defects**. **A6**

DEVELOPMENTAL DEFECTS (IN A CHILD, FOETUS)

Almost as often as for *foetal defects*, the authors of the texts reached for the expression *developmental defects*. A total of 20 ascensions were recorded, 10 each in groups A and B (there were none in C and D).

” Even today, in the name of ideology or social pressure, we encounter situations where doctors conceal from parents **developmental defects in a child** detected at the prenatal stage. **A6**

SOMATIC DEFECTS

The rare term *somatic defects* was used only 3 times – once in group A and twice in group C (in the same text).

” The remaining cases (36%) involve **somatic defects** of one system or multiple systems. 25% of abortions were performed due to Down syndrome without the diagnosis of concurrent **somatic defects**. **C7**

DISABLED, DISABILITY

It is not uncommon for opponents of abortion to describe the health condition of the *nasciturus* as a *disability*, referring to the widespread sympathy and concern it arouses in society. There were 14 occurrences of such terms (in group B only).

” Why can't a man have a say in the future of his conceived, **disabled** or seriously ill child? **B1**

” A draft civic legislative initiative will soon be submitted to the Sejm ‘Stop abortion’, prohibiting the killing of children conceived with a suspected **disability** or disease. **B33**

EUGENIC GROUND/ABORTION, EUGENICS

A few years ago, the phrase eugenic ground also appeared in the surveyed discourse to describe an exception in Polish law that allows for abortion due to the health condition of the *nasciturus*. The expression has its root in the word eugenics, by the way also used in the material studied, which in this sense has very negative connotations, as it can evoke associations with selection, elimination of weak and sick individuals in order to improve the species, as well as disregard for the lives of people affected by disability or illness. For many, associations with Nazi Germany’s methods towards the handicapped and mentally ill will inevitably arise.

There were 48 occurrences of the phrases *eugenic ground* or *eugenic abortion* and the lexeme *eugenics* (all in group B).

” Currently, only **eugenic abortions** – legal – are performed in the hospital. **B2**

EMBRYOPATHOLOGICAL GROUND/REASON

In the 70 texts from groups A and C, the term *eugenic ground* did not appear even once. It can therefore be concluded that abortion advocates are unlikely to use this expression to describe abortion exceptions. However, as a counterbalance, there seems to be a recent increase in the use of the term *embryopathological ground (reason)*. In the material studied, this term appeared 5 times (2 times in group A, 3 times in group C). General dictionaries of the Polish language do not record such a lexeme.

” Especially since the removal of **the embryopathological ground** was advocated by the legislative committee of the Sejm and the Attorney General Zbigniew Ziobro. **A36**

” The permissibility of pregnancy interruption due to foetal defects (the so-called **embryopathological ground**) does not discriminate against persons with disabilities. **A44**

” 1061 abortions were performed in Polish hospitals in 2017, including 1039 for **embryopathological reasons**. **C7**

TERMINAL FOETAL DEFECTS, TERMINALLY ILL FOETUS

In one group C article, terms accompanied by the word *terminal* appear 2 times.

” Both women, while in advanced pregnancy, learned of a **terminal foetal defect**. **C2**

” Let’s talk about births including those of **terminally ill foetuses**, about newborns dying in delivery rooms. **C2**

FOETAL IMPAIRMENT, IMPAIRED CHILD

There are also sporadic occurrences of the terms *foetal impairment* and *impaired child*. In the material studied, there were 4 occurrences of the former term (in texts from group A – 3 times, from group C – once), and 4 combinations with the noun *child* (all in group D).

” The same organization proposes to amend the Family Planning Act and delete the provision that allows the removal of a pregnancy if it is the result of rape or there is a likelihood of irreversible **foetal impairment**. **A23**

” In Poland, more than 1,000 children are legally killed by abortion every year. Most because they are suspected of having a disease or **impairment**. **D6**

DAMAGED FOETUS

The term *damaged* with respect to the foetus was used in the texts studied in two meanings. There was a predominance of participle occurrences denoting the developmental defects of the *nasciturus* in this way, but two uses (verb and noun) related to physically causing harm to it were also found.

In the first sense, the lexeme was used 22 times, only in groups A and C (21 times in group A and once in group C).

The difference in meaning is conveyed by the following examples:

” The vast majority of legal abortions in Poland are performed because of **damage to the foetus** or a threat to the woman’s health, not because the pregnancy is the result of a crime. **A5**

” They bought ‘morning after’ pills online which **damaged** their **foetus**. **A11**

” Doctors are concerned that **foetal damage** may occur during such an examination. **A18**

AT-RISK FOETUS

In group A, terms of *nasciturus* health such as *at-risk foetus* or *risk to the foetus* also appear 2 times. These are very vague, one can at best presume that they are misused elided constructions in which the elided component could be developed as *a foetus at risk (due to the disease)* or *a foetus at risk of losing life*.

” Although the number of abortions of **at-risk foetuses** in Poland is increasing year by year, there are still few centres helping parents who do not choose to interrupt such pregnancies. **A16**

” Procedures are allowed up to and including the 24th week, and the reason for the procedure may be, in addition to **the risk to the foetus**, harm to the ‘physical or mental health of the mother’. **A25**

A total of 17 lexemes were found that were directly or indirectly related to legal grounds permitting abortion. One can see a clear disproportion between the number of terms used exclusively in one of the two sets – there are 2 times more terms for the health condition of the *nasciturus* in the vocabulary of abortion supporters.

<i>Pro-life</i>	<i>Joint</i>	<i>Pro-choice</i>
disabled, disability	← ill (child, foetus), illness (of a child, foetus)	foetal defect [in Polish: defekt płodu]
eugenic ground/abortion	genetic defects	embryopathological ground/reason
eugenics	developmental defects (in a child, foetus)	terminal foetal defects, terminally ill foetus
child impairment		foetal impairment, impaired child
defects in children [in Polish: wady dzieci]		damaged foetus
		anatomical defects
		lethal defects
		foetal defects [in Polish: wady płodu]
		somatic defects
		at-risk foetus

3.6 Consequences of abortion

The texts examined also address the issue of the consequences of having an abortion. To describe these effects nouns such as *trauma*, *syndrome* or *condition* are used, often modified by prefixes indicating timing, such as post- (e.g., *post-abortion*) or adjectives like abortion-related.

POST-ABORTION SYNDROME⁸⁹, ABORTION-RELATED SYNDROME

The description of the psychological effects of abortion as *post-abortion syndrome* (less often *abortion-related syndrome*) appears in the material

89 In Polish, there are two distinct terms: *postaborcyjny* and *poaborcyjny*; English does not distinguish between them, so both have been rendered as *post-abortion*.

studied more often in texts from groups B and D than in A (it does not appear at all in C). This is understandable, since the groups advocating for the relaxation of the abortion law – at least in the last few years – maintain that such psychological effects are a myth and either do not occur at all or only affect a small proportion of women.

The expression *post-abortion syndrome* occurred 37 times (in group A – 18 times, in group B – 19 times), and *abortion-related syndrome* – 3 times (only in group B). In total, these 3 expressions referring to the syndrome appeared 40 times (in group A – 18 times, in group B – 22 times).

” I recalled the films about abortion shown in religion classes and the stories about **post-abortion syndrome**. A35

” This shows that **post-abortion syndrome** can affect young and old, but is most common in women during menopause. B17

TRAUMA

The identification of the effects of abortion as a *trauma* was recorded a total of 10 times (in group A – once, in group B – 8 times, in group D – once).

” Firstly, the patient relives **the trauma** of the experience over and over again. Intrusive memories come back, dreams, the sight of a pregnant woman makes the mental sensations associated with the abortion intense. A19

” For abortion is the greatest **trauma** a woman experiences. B16

” Even those women who have made a free choice often suffer from post-abortion **trauma**. D10

There was also one occurrence of the word *trauma* used by abortion advocates to name the prevention of abortion.

” Apart from the obvious physical problems, she primarily suffers from psychological issues caused by **the trauma** imposed on her, and has already attempted suicide several times. **C1**

POST-ABORTION STRESS [IN POLISH: ZESPÓŁ POABORCYJNY]

This expression appeared 6 times (in group A – 2 times, in group B – 4 times).

” Although the medical classification does not distinguish **post-abortion** stress, disregarding scientific classifications, it is included in the so-called post-traumatic stress spectrum that occurs when a person is confronted with the experience of death, which induces feelings of fear and horror. **A19**

In total, only 3 lexical units describing the effects of abortion were found. All occurred in the vocabulary of both sides of the argument, but more frequently in articles from groups B and D.

<i>Pro-life</i>	Joint	<i>Pro-choice</i>
–	← post-abortion syndrome	–
	← trauma	
	← post-abortion stress	

3.7 Abortion providers

Only 7 lexical units were included in the subgroup of terms of abortion providers. Almost all of them were used in groups B and C.

ABORTER

Authors of texts in the Catholic press do not use such stigmatising terms for doctors performing abortions as *killer* or *murderer*. Most often they use the noun *aborter*, formed from the word base *abortion* with the suffix *-er*. Although, for example, The Great Dictionary of the Polish Language defines

this lexeme as follows: ‘a person who performs a procedure for pregnancy interruption’, and provides it only with the qualifier ‘bookish’, this noun does not appear in the texts in groups A and C or in group B. Only in group D were 3 occurrences found.

” In Poland, only **aborters** are punished for killing an unborn child, not the women who did it. **D9**

” The well-known Warsaw **aborter**, Prof. Mirosław Wielgoś, has co-authored an article which clearly states that ‘modern medicine treats the human foetus as a separate patient’. **D14**

GRAVEDIGGER

Once in the material examined – in a statement by a person quoted in the article – there was a comparison of an abortion attendant to **a gravedigger**.

” And the hospital forces us to be the gravediggers of these children. I am a nurse, I don’t want to be **a gravedigger**. **B6**

‘DOCTORS’

In the example found, quotation marks express the author’s negative sentiments towards the attitude of doctors performing abortions.

” The sentence was carried out by **‘doctors’** from Oldenburg, who administered a contraceptive to a mother who was 25 weeks pregnant. **B20**

TERRORISTS

Once, doctors performing abortions were labelled *terrorists*.

” In Europe, as you can see, the real terrorists killing hundreds of thousands per year have become doctors and abortion promoters. **B44**

KILLER (OF A FOETUS)

In this case, we are faced with a curious situation. Indeed, the linguistic consequence of seeing the *nasciturus* as a human being at the earliest stage of development is that abortion must be described as the deliberate deprivation of life, i.e., *killing*, and the person who performs it as someone who takes life (*a killer*). However, such a noun does not appear either in the Catholic press or on pro-life advocacy websites. As the case is identical with the noun *murderer* (with the simultaneous occurrence of the lexemes *murder* [a noun], *murder* [a verb], *murderous*), it must be assumed that such terms for persons performing abortions are not used intentionally and deliberately by opponents of abortion.

The only time the lexeme *killer* appears in the material studied is in the liberal press in combination with the noun *foetus*.

” Harsh penalties for **foetus killers**. A45

CRIMINAL

On one occasion the word *criminal* was recorded – it was uttered by a nun whose vision is quoted in the article.

” I saw the souls of doctors who contributed to these crimes
[i.e., abortions – author’s note] and were themselves **criminals**.
I saw those who did these procedures for profit. B22

A total of 6 lexical units were identified in this subgroup, of which 5 occurred exclusively in the vocabulary of abortion opponents.

Pro-life	Joint	Pro-choice
aborter	-	killer (of a foetus)
gravedigger		
‘doctors’		
terrorists		
criminal		

3.8 Vocabulary related to anti-abortion posters

The *foetus–child* opposition is also evident in the ways in which posters at anti-abortion exhibitions displayed outside hospitals and in city centres are talked about. Opponents of abortion refer to the *nasciturus* depicted on them as a *victim of abortion*,⁹⁰ while supporters reach for adjectives emphasising the bluntness of the pictures presented – *torn, bloody fetuses, drastic pictures of terminated fetuses*.

TORN FOETUSES

” They see pictures of **torn fetuses** being rolled out by pro-life activists. **A34**

DISMEMBERED FOETUSES

” In fact, the pictures of **dismembered fetuses** appearing at pro-life demonstrations are from procedures carried out in the 1960s and 1970s, for cases of larger and moribund fetuses. **A38**

LACERATED FOETUSES

” What’s more, the courts are already coming round to the idea that installations which used **lacerated fetuses** are illegal. **A27**

TERMINATED FOETUSES

” The pro-life community, while epitomising the public with drastic photographs of **terminated fetuses**, most of which are mere manipulation that has nothing to do with reality, in contrast had to encounter photographs of children born with the most severe developmental defects. **A6**

90 The term *abortion victim* is discussed in more detail when referring to *nasciturus*.

BLOODY FOETUSES/BABIES

- ” He drives around Warsaw in a car covered with posters. They depict **bloody foetuses** after pregnancy terminations. **A1**
- ” Instead of abortion victims, i.e., **bloody** dead **babies**, the women posted pictures of strawberry jam. **B19**

MASSACRED BODIES

- ” The Polish majority does not comment on the exhibition of photographs of **massacred late** foetal **bodies** set up in busy streets mixed with photographs of war victims and old people, presumably potential victims of euthanasia, which is supposedly a vote for a total ban on abortion. **A41**

MASSACRED CHILDREN

- ” The exhibition consisted of photographs of **massacred children** juxtaposed with genocide photos from Rwanda and the former Yugoslavia, as well as dead whales or gutted monkeys. **A46**

A total of 7 lexical units were identified in this subgroup, of which 6 occurred exclusively in the vocabulary of abortion supporters.

<i>Pro-life</i>	<i>Joint</i>	<i>Pro-choice</i>
massacred children	-	torn foetuses
		dismembered foetuses
		lacerated foetuses
		terminated foetuses
		bloody foetuses/babies
		massacred bodies

3.9 Other terms

It also lists 13 lexemes that appear in the discourse on abortion, which cannot be categorised in any of the identified groups.

ABORTION DOULA

The term *doula*, meaning a woman experienced in her own motherhood who supports women in labour during childbirth and the postpartum period, has been in use in the general Polish language for several years. However, one of the texts surveyed contained the expression *abortion doula*, intended to denote analogous services to women undergoing abortion.

” In the United States, there is a profession of **abortion doula**. Midwives in Poland can also perform such a function. Toruń has shown us that there are midwives who want to know how to help a woman through an induced miscarriage. **A29**

ABORTION MAFIA

On one occasion, the expression abortion mafia was used, which, both in the example provided and in texts outside the material studied, occurs in the context of the sale of drugs for pharmacological abortion.

” ‘A human foetus in the sewage system. Shocking discovery in a pumping station in Sworawa’; ‘Złotów: A human foetus in the sewers’ – these are newspaper headlines from this year, presumably concerning victims of **the abortion mafia**. **D6S**

ABORTION MIGRATION/EMIGRATION

Twice, but in one article, the lexemes *migration* and *emigration*⁹¹ appear to describe trips of Polish women abroad to perform abortions. These are equivalents of the expression abortion tourism, but they have not caught on in Polish.

91 The expression *abortion emigration* occurred only in the mid-title of the Newsweek article (A40).

” A citizens’ hearing on women’s **abortion migration** was held in the Sejm last year. **A40**

ABORTION UNDERGROUND, ABORTION TOURISM

Phrases such as *abortion underground* to describe the performance of abortions in cases not permitted by law and *abortion tourism* to refer to the performance of abortions in countries where abortion is permitted have also become part of the abortion discourse.

Both terms are more commonly used in the language of abortion advocates, although, for example, in its handbook, the Federation for Women and Family Planning cautions against using the latter term, as ‘*tourism* (which evokes positive connotations) does not correspond to the reality in which repressive laws force women to travel to obtain needed health services, burdening them with financial and emotional costs’.⁹²

In the material studied, the expression *abortion underground* appeared a total of 36 times (in group A – 32 times, in group B – once, in group C – 2 times, in group D – once) and abortion tourism – 13 times (in group A – 12 times and in group C – once).

” Between 900 and 1,800 women a year are allowed to have a legal procedure. As a result, the **abortion underground** is thriving. **A5**

” Slovakia is a particularly popular destination for **abortion tourism**. **A11**

ABORTION INDUSTRY

It is not uncommon for opponents of abortion to emphasise the scale of the abortion phenomenon worldwide, in individual countries and over a given

92 Federacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Jak mówić/pisać o aborcji?*...

period of time, including by highlighting its numbers (*hundreds of thousands, millions*) and by using the expression *abortion industry*. This term is also intended to highlight the callousness of the abortions performed, to show them as an immoral business activity. In the material studied, it appeared 2 times in group D.

” It is a merciless diagnosis of the abortion industry as a smoothly run business. **D1**

3.10 Incidental uses

From the material studied, a group of expressions was also identified whose uses can be considered incidental, singular, and unlikely to become a permanent part of the discourse on abortion. However, they were considered interesting enough to be noted for several reasons, not least because of the crossing of certain boundaries that is done through them. Usually, these combinations are unusual enough to be controversial in the popular perception.

Individual speeches cannot, of course, determine the shape of a given discourse, but – especially if they are coherent with its other components – they can illuminate how certain phenomena are understood and what attitudes they lead to.

Some of the most unusual expressions used in abortion texts are listed below.

ALL-INCLUSIVE ABORTION

” **An all-inclusive abortion** for PLN 1,600. It only takes a few minutes to find a foreign clinic with Polish staff [title] **A11**

ABORTION REMORSE

” ‘Oldenburg Baby’ – **abortion remorse** celebrates 13th birthday [title] **B20**

ABORTION COMING OUT

- ” Czubaszek on abortion: like pulling a tooth.
Two voices on an **abortion coming out** [title] **A15**

APOSTLE OF ABORTION

- ” **Apostles of abortion.** How personal
confessions influence society [title] **A14**

ENTHUSIAST (OF ABORTION)

- ” Since I’ve been an adult, I’ve been a supporter of
access to abortion. But having had the procedure
myself, I am even more **enthusiast of it.** **A2**

HOBBY

- ” I can say with a clear conscience that
abortion is my biggest **hobby.** **A29**

ABORTION ADVOCATES

- ” Leaders of *pro-life* organizations stress that the study
ignores obvious facts and is nothing more than an attempt
to deceive the public by **abortion advocates.** **D18**

TERMINATION HORROR

- ” To tell it all, she threw **the termination horror** out of her. **B6**

COMPLEX METAPHORS

On several occasions, more complex metaphors geared towards re-inforcing the message also appear in the texts examined (mainly in group B).

- ” We are now in the final stage of this revolution, in which hordes of childbearing mothers, consciously or not, are sacrificing their unborn children to the Prince of Darkness. B30
- ” The ‘harvest of death’ from abortion is even higher in Russia, where 30.4 % of pregnancies end in the killing of the child. B31
- ” 200,000 abortions a year, 550 people a day, wiped out just like that, with a deadly pill or a gynaecological instrument. B44

The distribution of lexemes from the above two groups is shown in the table below.

Pro-life	Joint	Pro-choice
abortion remorse	abortion underground →	all-inclusive abortion
advocates of abortion		abortion coming out
abortion mafia		apostle of abortion
abortion industry		abortion doula
termination horror		enthusiast (of abortion)
		hobby (about abortion)
		abortion migration/ emigration
		abortion tourism

3.11 Quotation marks and metatextual expressions as a function of distance expression

The use of inverted commas and metatextual expressions to emphasise the distance of the sender of the message also needs to be discussed.

3.11.1 Quotation marks

In the texts studied, the so-called distance inverted commas used to show a certain reserve of the writer towards the word used are so frequent that

they can be considered a special feature of the material analysed. Some of these are discussed in the context of specific headwords – for example *the abortion compromise* – others are singled out in this subsection.

The authors of the texts use this punctuation mark of distance mainly to emphasise the fact that they have taken the expression from the adversaries' lexis. At the same time, it serves to emphasise disapproval or disagreement with the word itself. As the discourse on abortion is highly polarised and even for an ordinary user it is not a problem to distinguish to which of the two camps a given lexeme belongs, it can be assumed that the authors' intentions related to the use of inverted commas will be accurately interpreted by the recipients.

The most prominent example of this punctuation procedure is the excerpt from the group B article, which uses as many as four distance marks in one sentence.

” Belarus' overbearing law on **so-called 'abortion'** is causing **so-called 'abortion tourism'** to develop there, which is also resulting in the deaths of Polish children. **B31**

Other examples include:

” **'Defenders of life'** treated the meeting as a solicitation for abortion and notified the public prosecutor's office. **A42**

” John (19) tells us that he cannot watch his mother suffer after every **'procedure'** she has to take part in. **B6**

” Beata Domańska's daughter could be doubly condemned because, in addition to Down Syndrome, she also has a serious heart defect. Either **'defect'** qualifies for abortion. **B12**

” French opponents of abortion were as violent and vicious as Polish defenders of **'conceived life'**. **A17**

3.11.2 The metatextual expression: so called

The metatextual expression *so-called* can also be used to signal distance from the word used as either coming from the language of the opposing side of the argument or as stylistically incompatible with the rest of the text. There are situations where the inverted commas are further reinforced with such an expression so that the recipient is in no doubt as to the attitude of the sender.

” As one can learn from media reports, since the beginning of the year, the ombudsman has opened four investigations into cases involving the **so-called termination of pregnancy**, in other words the killing of a child in the prenatal period. **D14**

” But it should also be remembered that a woman who has killed her own child, and the man who participated in it (persuaded, gave money), as well as the doctor performing the **so-called procedure** are, as it were, automatically covered by excommunication, i.e., exclusion from the community of the Church. **B13**

3.12 Metalinguistic sentences

Awareness of the power of language to influence reality in the case of the abortion discourse is very high among all those involved. Speakers of Polish – whether linguists, philosophers, ethicists, journalists or ordinary users of the Polish language – are aware of two regularities. Firstly, the choice of vocabulary they use to discuss abortion is determined by their attitude to the phenomenon, and secondly, certain lexical means have a greater or lesser persuasive effect, which in further consequence may lead to a change in the perception of the problem within society and changes in the legal order.

This considerable degree of awareness of the users of Polish language on this subject is confirmed not only by the existence of a set of words specific only to one of the opposing groups of supporters or opponents of abortion,

which never penetrate the language of the other side, but also by a number of examples of sentences of a metalinguistic nature.

From the collected material, I have extracted a dozen examples of sentences whose authors touch upon the issue of the very vocabulary used in the abortion discourse. All the statements are united by a critical attitude to the lexis chosen by the other side of the argument. Opponents of abortion accuse its supporters of using words that separate the state of pregnancy from the *nasciturus*, omitting the latter or dehumanising it. Abortion supporters, on the other hand, negate the language of their opponents as humanising the *nasciturus*, which, in their view, does not correspond to its ontic status as a being that is not yet a human.

Both sides stigmatise the incorrect nomenclature of the opposing side as resulting either from ignorance or misconceptions, or even from deliberate manipulation calculated to gain specific advantages on various levels. Among other things, the opponents of abortion criticise the use of euphemisms by abortion supporters to distort reality by softening expressions that are drastic but which, in their view, convey the essence of the matter (such as *removing a pregnancy* instead of *killing*), while the other side of the dispute negatively assesses the use of cacophemisms, for which it considers words such as *murder* to refer to abortion.

Here are some examples of sentences in which awareness of the differences in language concerning abortion and its consequences reveals itself most strongly.

” And on top of this we have a radical blockade of any debate on abortion. For ever since the term ‘unborn child’ began to be used instead of neutral terms like ‘embryo’ and ‘foetus’, anyone who is in favour of abortion is in favour of ‘killing’ and anyone who has had an abortion is a ‘baby killer’. This nonsense has become an axiom. In France, in spite of the huge emotions that the abortion issue aroused, less manipulative language was used. And that is why the ‘Manifesto 343’ and later the abortion liberalisation law advocated by Veil were possible. A17

- ” When the killing of the unborn was first encouraged on a large scale, it was euphemistically referred to as ‘removing of pregnancy’. B30
- ” Subsequently, the meaning of the word ‘foetus’ itself began to change: it ceased to be a human in the first stage of development and began to be an impersonal creature – certainly not a human, at most some form of humanoid. B30
- ” ‘Whether we call it an “abortion”, a “scraping”, a “procedure” or a “termination” of pregnancy, it is all premeditated murder’, he stresses. B37
- ” Terms such as ‘interruption of a pregnancy’ appear, so that it does not reach the conscience that this destructive act is the killing of a human. B39

To sum up the analysis, it is worth pointing out that out of all 180 lexical units, the most frequent lexeme is the word *abortion*, which appears with more or less the same frequency in all groups of texts, which allows it to be considered the term with the highest degree of neutrality among the studied lexemes. This is despite the – by the way – very few objections to the precision of this term put forward by the pro-life side.⁹³ The quantitative analysis clearly shows that this lexeme is used almost equally often by both supporters and opponents of the phenomenon itself.

Some users of Polish would like to attribute a similar neutrality to the expression to interrupt a *pregnancy*, but as it is increasingly and unequivocally challenged by the anti-abortion side as unacceptably inadequate and falsifying reality, it is impossible to judge it in the same way as the noun *abortion*.

93 These were signalled, *inter alia*, by the use of the metatextual expression *so-called abortion*. See “The centre houses women with children rescued from so-called abortion” (B45).

The lexis contained in the four groups of texts reflects the two sides of the argument. The similarity between the lexis used in group A, i.e., in texts in the media presenting a left-liberal approach to abortion, and the vocabulary in group C, i.e., the language of texts from feminist circles with a radical pro-abortion stance, is evident. The similarity between the language used in the Catholic press (group B) and the lexis used by anti-abortion organizations (D) is analogous. Interestingly, in most cases the language of groups C and D is not more blunt than the vocabulary in groups A and B.

It must be acknowledged, however, that the terms most strongly expressing negativity in both groups of texts usually do not come from the author of the article in question but are a fragment of a statement by a person quoted in the text (for example, *gravedigger*, *criminal* to describe a person performing an abortion, *scraping* as a synonym for abortion, or *clot* or *ball* to describe a *nasciturus*).

4 Foetus – the unwanted *nasciturus*

In the previous chapter it was shown that the dividing line in the discourse on abortion is determined by the speaker's attitude towards the *nasciturus*. The recognition or non-recognition of it as a child largely determines both the view of abortion and the way it is talked about. For opponents of abortion, the *nasciturus* is a human being at any, even the earliest, stage of life, whereas for its supporters it becomes one at birth. This position is well illustrated by the following examples:

” As long as the foetus cannot live without me, it is in me, it is me. **A5**

” He does not mention that there was only one such case [of unsuccessful abortion – author's note] in Poland. The child lived for 22 minutes as a result of the unsuccessful abortion; the Warsaw prosecutor's office opened an investigation into the case. **A1**

Although in the opinion of journalists of the left-liberal press, supported by some researchers, birth is the only correct and unquestionable criterion

for determining the beginning of human life,⁹⁴ it happens that, from a linguistic perspective, the designation of the moment of birth as the end of the foetal phase and the beginning of the child's life gives rise to many inconsistencies. The terminological impasse can be seen, among others, in the following example, in which the term foetus is already referred to the moment after birth.

” A drug is administered to induce labour. The cervix dilates and **a foetus** incapable of independent life **is born**. Most often, **the foetus dies as a result of this birth**. Nobody tears it to pieces. **It is a normally born child** – as if the mother had spontaneously miscarried during this period of pregnancy. **A34**

This is even less clear in the following example (extracted from an article instructing parents how to talk to their children about abortion):

” Stefan was clearly interested and asked what **a foetus** was, Karolina again very calmly replied that a foetus is something **that becomes a child during pregnancy and grows in the uterus**. **C4**

The above examples contradict the thesis that accepting the assumption that until birth the *nasciturus* is a foetus (and not a human being), and at birth it is a child (and therefore a human being), does not give rise to any ambiguities. Language itself – often involuntarily – gives expression to their existence.

Attempts to establish the linguistic status of the *nasciturus* and to adjudicate between the two sides of the argument are not easy. From a number of linguistic or sociological considerations, a guiding idea emerges, which can be summarised as follows: the discourse on abortion is so strongly polarised and the arguments so disconnected from each other that it presents no common feature and, therefore, language cannot bring us any closer to reaching the objective truth about human life and, therefore, the moral evaluation of abortion.

94 See, e.g., T. Hołówka, *O aborcji...*, pp. 146-147.

Particularly noteworthy is the statement from Teresa Hołowka's repeatedly cited article: 'The abortion dispute sometimes gives the impression of a purely semantic dispute in which the parties use a certain key term in different ways, accusing each other of being wrong in their use of it: "One is a human being from the moment of conception" – "But how can one speak of a 'human being' in the case of a few cells"; "One is a human being from the moment of birth" – "But on what basis to deny the title of 'human being' to a six-month-old foetus; what exactly does it lack?" However, this dispute cannot be resolved by invoking colloquial usages – from the point of view of ordinary linguistic customs, the objections of each side are equally pertinent. For it is not the colloquial *usus* that is at stake here either.'

⁹⁵

A somewhat broader reflection on the linguistic custom relating to abortion is provided by Grzegorz Wiktorowski. He notes: 'In non-medical discourses, including especially colloquial and ideologically committed discourses, the term *child* is used. It is used quite often by people who share a conservative vision of the world.'

⁹⁶

The second group that uses the term *child*, as well as diminutives and cordial adjectives such as *baby*, *little one*, *tiny one*, *angel* (in the case of miscarriage), etc., are, in his view, people who do not necessarily identify with conservative views, but who have an emotional and relational relationship to the *nasciturus*. Wiktorowski concludes: 'However, and this should be forcefully emphasised, what is different is the language of a woman who has had a miscarriage, is having an abortion or is unable to have children as a result of fertility problems, and what is different is the language of politicians and various kinds of doctrinaires or moralists, who as a rule do not speak based on their own experience.'

⁹⁷

Hołowka argues that the dispute over the status of the *nasciturus* as a person or non-person cannot be resolved by recourse to *usus*. Wiktorowski seeks to pit public language against private language, arbitrarily granting

⁹⁵ Ibid., p. 143

⁹⁶ G. Wiktorowski, op. cit., p. 49.

⁹⁷ Ibid.

the right to call a *nasciturus* a child to parents currently expecting or experiencing the loss of a child and denying it to the rest of society (politicians, publicists, etc., even if they are also parents).

Other advocates of abortion outside a narrow scope mainly limited to private situations also consider the use of the term child to refer to *nasciturus* to be unauthorised and erroneous, as evidenced by such an example of a metalinguistic statement:

” No matter what I would think of the child that would be born, however, the correct term at this stage of pregnancy is ‘embryo’. Only a pregnant woman has the right to call her embryo as a ‘baby’, ‘bean’, ‘toddler’. It is simply an expression of emotion. **A13**

Therefore, it seems crucial in this discussion precisely to examine the linguistic habit of a broader scope than the discourse on abortion, which at the same time concerns the same subject, the *nasciturus*. In short, it is a matter of examining whether it is spoken of in the same way when the subject concerns abortion as when it discusses issues of, for example, maternity care or miscarriage. Such a comparison makes it possible to determine how the status of *nasciturus* is generally defined in general Polish.

This is done by comparing the material collected in groups A, B, C and D with an additional three groups: E, F, and G. The juxtaposition is intended to give an answer to the question of whether we use a different vocabulary when talking about *nasciturus* in the context of abortion and a different one in the other contexts.

Three additional groups of texts were used for the comparative analysis: 50 articles on pregnancy and miscarriage from analogous sources as in group A, i.e., thematic websites owned by Agora and the Gazeta.pl portal, as well as Polityka.pl, Newsweek.pl, NaTemat.pl (group E), 20 texts on pregnancy and miscarriage in the Catholic press (group F), and 50 articles on pregnancy on websites dedicated to motherhood, pregnancy, health: BabyBoom.pl, MamoToJa.pl (formerly BabyOnline.pl), MjakMama24.pl and Parenting.pl.

The considerations concerning the opposition *foetus*–*child* from the previous chapter should be supplemented here with a dictionary definition of the lexeme *child*. General dictionaries of the Polish language emphasise in their definitions the meaning of this noun as a being already born. Szymczak's Polish Dictionary provides two explanations in the basic definition: 'a human being from birth to adolescence; any offspring regardless of age in relation to parents, a son, a daughter', and, only in the vocative, 'a confidential, cordial expression to an adult', but already among the examples it gives connections referring to the prenatal period of development: *conceive*, *beget a child*.

Also, The Great Dictionary of the Polish Language omits the prenatal phase from the basic definition ('a person in the period from birth to adolescence') but includes it in the definitions of such expressions as, for example, to *carry a child*, to make children, to expect a child, and so on.

Both normative sources thus capture the meaning of the lexeme *child* as *nasciturus*, although – obviously – they point to the meaning of the child already born as the main one.

The table below provides the key data for these considerations. This is because it shows the frequency of use of the lexemes *foetus* and *child* in texts on abortion (groups A, B, C, and D) and in texts on pregnancy, miscarriage, etc.

Group	Foetus	Child
Group A 50 texts on abortion from Gazeta.pl, NaTemat.pl, Newsweek.pl, Okopress.pl, Polityka.pl	141	57
Group B 50 texts on abortion from Gosc.pl, PCh24.pl, Niedziela.pl, NaszDzien- nik.pl, Fronda.pl	17	472
Group C 20 texts on abortion from CodziennikFeministyczny.pl, Federa.org, Manifa.org, KrytykaPolityczna.pl, Feminoteka.pl, KongresKobiet.pl	52	1
Group D 20 texts on abortion from Prolife.pl, StopAborcji.pl, ZycieRodzina.pl, Federacjazycia.pl	2	91

Group	Foetus	Child
Group E 50 texts on pregnancy and miscarriage from thematic sections on Gazeta.pl, NaTemat.pl, Polityka.pl, Newsweek.pl	↔↗↖	278
Group F 20 texts on pregnancy and miscarriage from Gość.pl, PCh24.pl, Niedziela.pl, NaszDziennik.pl, Fronda.pl	10	176
Group G 50 texts on pregnancy from BabyBoom.pl, Mamotoja.pl, Mjakmama.pl and Parenting.pl	81	313
Total	431	1388

The study showed that while in texts on abortion in the liberal-left press (group A), the use of the lexeme *foetus* clearly predominates over the word *child* (this ratio was 141:57), this disproportion is completely reversed in texts devoted to pregnancy or miscarriage. The term *foetus* appeared in such contexts in outlets such as Gazeta.pl and in the liberal press, 128 times with 278 occurrences of the lexeme *child*. This is more than twice as many as the word *foetus*.

This difference is even more pronounced in group G, i.e., 50 texts about pregnancy and miscarriage on websites dedicated exclusively to motherhood and pregnancy. The lexeme *child* was used 313 times there, while the lexeme *foetus* was used 81 times.

It is worth noting that in all these groups, the number of occurrences of lexemes indicating that *nasciturus* has the status of a human being would be higher if such hypocoristics and diminutives as *little one*, *little human*, or *tiny human* on the one hand, and *embryo* on the other, were also counted. The proportions would then be as follows: (respectively *foetus* – *child*) in group E – 143:293 (2 times more often *child*), in group F – 11:187 (17 times more often *child*), in group G – 83:386 (more than 4.5 times more often *child*).

All the numbers would increase significantly if, in the context of future births, the presence of the lexeme *child* in relation to *nasciturus* was included as well.

Several conclusions emerge from these detailed breakdowns, namely:

- a) The choice between the lexemes *foetus* and *child* in the left-wing press depends on the subject matter of the article. In texts about abortion, the term *foetus* appears twice as often, but in texts related to pregnancy and miscarriage the proportions are reversed – the authors of articles use the word *child* more than twice as often as *foetus*.
- b) The above distinction is unknown to the Catholic press and opponents of abortion – regardless of the context concerning abortion, miscarriage, or pregnancy, the lexeme *child* definitely prevails.
- c) The criterion for the choice of lexeme in groups A and C could be formulated as follows: a *foetus* is a *nasciturus*, to whose continued existence the speaker has either a neutral attitude (for example, in a doctor's statement about a medical condition) or a negative one (for example, in a statement by a mother who decides to have an abortion). The latter aspect could be put as *nasciturus* unwanted (in a specific abortion situation) or potentially unwanted (in a discussion about abortion).
- d) The existence of such clear disproportions as to the number of lexemes depending on the context confirms the intuitive observation, articulated mainly by the anti-abortion side, that pro-abortion discourse dehumanises the *nasciturus*. This linguistic procedure, used meticulously and vigilantly, avoids the linguistic consequences associated with naming the end of its existence with terms such as *killing*, *murder*, making them morally indifferent or even desirable (from the woman's perspective). The juxtaposition of the terms *foetus* or *embryo* with a woman will always be less dramatic than the opposition of a *mother* and a *child*. One could even risk saying that the possibility of linguistic differentiation, even against the grain of usage, makes it possible to advocate abortion. For if only the lexeme *child* existed to describe the *nasciturus*, consent to abortion would mean consent to the *death of children*.

It is still worth examining the question of *usus*. Although abortion advocates consider the noun *foetus* to be the most adequate term for the *nasciturus*,

and the lexeme *child* to be either an expression of emotion permitted only in private situations or an unauthorised misuse calculated to have a persuasive effect and consequently to strike at the freedom of choice, it is the latter word that predominates not only in colloquial speech, which by its nature is more intuitive and less controlling in its choice of words, but also in the texts studied.

Adding up the uses of these words in the seven groups, i.e., in 260 articles, showed that in total the lexeme *child* occurred 1388 times, while the lexeme *foetus* occurred 431 times. This is 3 times more frequent, and it is worth noting that the left-wing press is represented by a more numerous set of texts (outnumbering the other group by as many as 30 articles). This means that it is the lexeme *child* that is the main name used to refer to *nasciturus*.

Interestingly, even authors who are very careful to refer to the *nasciturus* only as a *foetus* sometimes unintentionally use vocabulary that shows that the concept of the status of the conceived being as a human being is not entirely alien to them and, despite increased scrutiny, becomes unintentionally apparent in the language they use.

This is evidenced, for example, by the use of the word *mother*. In accordance with the rigidly defined *foetus–child* opposition, the vast majority of texts on abortion in group A and all those in group C refer to a *pregnant woman* or *a woman who is pregnant*, whereas the Catholic press and the anti-abortion websites emphasise the woman's role as *mother*, which she becomes not at the birth of the child but already at the conception of the *nasciturus*.

The difference between the nouns *pregnant woman* and *mother* is strongly emphasised by, among others, the Federation for Women and Family Planning [in Polish: Federacja na rzecz Kobiet i Planowania Rodziny], which, in the guidance already cited, recommends replacing the word *mother* with the terms *pregnant woman* or *pregnant person*, reasoning that 'the term *mother* applies to a person who has given birth to a child (not before)'.⁹⁸

98 Federacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Jak mówić/pisać o aborcji?*...

In spite of these recommendations and the fact that the combination *mother*–*foetus* sounds unnatural and does not conform to linguistic practice, there are – probably unintentional and undesirable – deviations from these guidelines in the texts studied, which nevertheless reveal to some extent a different view of the relationship between the woman and the *nasciturus*, and thus of its ontic status as expressed by language, than the declared one. For even if one uses the word *foetus* as evidence of fidelity to the thesis of its lack of humanity or the potential humanity it will acquire with birth, by simultaneously using the word *mother* on a linguistic level, one is granting the *nasciturus* the status of a child and therefore of a person.⁹⁹

” The law in India prohibits abortion because **the foetus** there has the same rights as **the mother**. A3

” Indeed, if **the mother** aborts **the foetus**, she has no right to burial. A16

” No one who has not carried **a foetus** in the womb and has not felt nascent **maternal** feelings has the right to speak on my behalf and impose their solutions on me! A5

A less pronounced but significant dissonance can be observed in the use of the personal pronoun *she* to refer to *nasciturus*, which, after all, does not agree in terms of grammatical genus with the noun *foetus*. It therefore replaces another, undetermined lexeme (the noun *daughter?*), which the author of the words – as the context shows – is deliberately and intentionally trying not to use. This example is all the more telling because the personal pronoun *she* appears in a sentence which deals precisely with the status of the *nasciturus* as a separate being.

” As long as **the foetus** cannot live without me, it is in me, it is me. Yes, I have made the decision that is best for **her** and for me. A5

99 Polish language dictionaries define *mother* in relation to child.

”

It saved me from needlessly prolonging my suffering, watching **the foetus** grow in my womb and guessing that every day it was more and more likely that **she** would suffer too. **A5**

To conclude these considerations, it is worth noting that the overwhelming predominance of the use of the lexeme *child* over the word *foetus* should not come as a surprise – outside the context of abortion, it is the use of the word *child* that is intuitive and replacing it with the term *foetus* in example sentences such as those arranged below would be considered inappropriate or at least unnatural.

- Have you thought about a name for your foetus yet?
- My foetus will be born on June 8th.
- Your foetus is already large enough to be born earlier than necessary.
- She caressed her belly, addressing the foetus with warm words.
- By speaking to the mom's belly, the father establishes a bond with his foetus.
- She was carrying a foetus under her heart.
- The foetus in the abdomen likes classical music, such as Mozart.
- When did you first feel your foetus kicking?
- She was overcome with emotion when she heard the heartbeat of her foetus for the first time.
- What sex is your foetus?
- Oh, you're pregnant! Is it a male foetus? Or a female one?
- Although she hated him, she carried his foetus.

A great example of this can also be found in an article from Group E on the website *Kobieta.gazeta.pl* with the telling title *'What are you roaring about? Did you lose your dog? Because it certainly wasn't a baby yet!'* *Polish women tell us about miscarriages*.¹⁰⁰ The author gathers the accounts of women who did not receive the support they needed from doctors after they miscarried. Among the objections that the patients raise against them are comments about the language used by the doctors.

5 Polemics

The findings made in the course of the above research concerning, among other things, the linguistic usus or the frequency of occurrence of particular lexemes in the context of abortion and beyond, as well as some other insights into the discourse on abortion, make it possible to enter into a polemic with some of the debatable theses contained in earlier works on the vocabulary related to this issue.

At the outset, it is worth noting that some researchers, including linguists, either sidestep the question of the ontic status of the *nasciturus* or (not always directly) concede the side of the argument that sees it as a non-human entity until birth or other very arbitrarily delimited boundaries.

An example of such unclear boundaries can be found in the 'silent majority' position described by Teresa Hołówka, according to which 'the human organism becomes a member of the moral community when its central nervous system takes up its functions, i.e., around the twelfth week of pregnancy'.¹⁰¹ The statement that the central nervous system does not 'develop its functions' until the 12th week is particularly surprising, but the article does not provide sources confirming such a pattern of *nasciturus* development. In this situation, it is difficult to decide how to understand the above statements regarding the intrauterine period of central nervous

100 N. Harbuz, „Czego pani tak ryczy? Psa pani straciła? Bo to na pewno jeszcze nie było dziecko!”, <https://kobieta.gazeta.pl/woman/56,107881,23639790,czego-pani-tak-ryczy-psa-pani-stracila-bo-to-na-pewno-jeszcze.html>, accessed 22 March 2022.

101 T. Hołówka, *O aborcji...*, p. 143.

system (CNS) development. Although later in the article Hołówka explains that ‘it is when the central nervous system begins to function in it, i.e., after the twelfth week of pregnancy, since there can be no appearance of sensation, consciousness or memory before then’, this only adds to the ambiguity – after all, after the twelfth week, neither ‘consciousness nor memory’ appears either; moreover, they are still forming a very long time after birth. It is also difficult to assess how these beliefs about the developmental phases of the CNS relate to, for example, such quotes from the literature as: ‘The development of the central nervous system (CNS), which consists of the simultaneous processes of neurogenesis, myelination, synaptogenesis, and differentiation and migration of nerve cells, begins at the beginning of the 3rd week of pregnancy and continues into childhood.’¹⁰² Nonetheless, one searches in vain in the text for any challenge to this ‘silent majority’ position.

Hołówka’s article is referred to by Urszula Wysocka, who in her work is highly critical of the language of the editors of the Fronda.pl portal as unethical, because, in her opinion, it does not comply with the principles of linguistic precision and does not shy away from abuses, which, in her view, include the extent of the use of the lexeme *child*.¹⁰³ Wysocka cites an excerpt from a Fronda article as an example of such abuse: ‘To consider him [Nelson Mandela – author’s note] as an icon of the struggle for black rights is merely ridiculous and insulting to the one million black children who lost their lives because of him.’ The researcher comments on this passage, while giving her subjective assessment of Nelson Mandela’s activities, as follows: “A million black children who lost their lives” is not a semantically accurate formulation, as it does not refer the reader to the meaning of the word *abortion*, but to the thinking of the killings of children that Mandela was, by definition, trying to protect.”¹⁰⁴

102 A. Roztocka, G.H. Bręborowicz, *Ocena ośrodkowego układu nerwowego płodu*, “Perinatologia, Neonatologia i Ginekologia” 2013, vol. 6, no. 4, p. 192.

103 U. Wysocka, *op. cit.*, p. 153.

104 She also accuses the *pro-life* side of a lack of precision in earlier sections of the paper, writing, for example: ‘The language of PL [pro-life – author’s note] supporters is language that very often does not refer to a specific meaning. It is circumlocutory language in the sense that without being aware of the context, we do not have associations with abortion, and the vocabulary introduces false information. “The mother murdered her three-month-old baby” is a sentence that, without a wider context, is not perceived as equivalent to the sentence “The woman had an abortion in the third month of her pregnancy”. In this sense, one can speak of the circumlocutory of PL language. What we have here is misinformation, a semantic shift of a nature that values the woman as a murderer.’ See U. Wysocka, *op. cit.*, p. 151.

In her reflections, the researcher tries to support herself with arguments from the work of Hołowska.¹⁰⁵

However, Wysocka overlooks two issues in her judgement. Firstly, there is the natural linguistic consequence, already mentioned several times, of regarding the *nasciturus* as a child (which, as shown in the previous considerations, is justified by its stable anchoring in linguistic practice). In short, by calling the *nasciturus* a child, the deliberate deprivation of life can hardly be described as anything other than *killing, murder, causing death*, etc.

Secondly, the researcher's way of evaluating the quoted passage is most surprising. It is as follows: Wysocka, by her own admission, takes one sentence, which is part of a larger whole – an argument of a journalistic (not informative) nature – out of context, and then accuses it of a lack of precision consisting in the ambiguity that it may – as out of context – evoke. It completely ignores the fact that the text referred to clearly states that it is about abortion and unborn children. It is difficult to expect any columnist or author to obstinately bend the rules of style by repeating the same words over and over again and specifying that it is about *unborn children*, just so that each sentence out of context expresses its meaning more unambiguously.

It is worth noting on this occasion that in all the texts discussed in my work in which *nasciturus* is referred to as a child, the context makes it clear that it is the prenatal period that is meant (this is achieved through formulations such as, for example: *at the earliest stage of development, in the mother's womb, at the first stage of development, at the prenatal stage of life*, but also *put to death through abortion, perish as a result of abortion*, since the noun abortion refers to the prenatal stage of life and is not used to refer to born children).

105 However, the thesis in Hołowska's text reads somewhat differently. The difference is admittedly subtle, but it can be discerned. Now, writing about the fact that, when it comes to deciding on the status of a *nasciturus* as a person or non-person, it is pragmatically best to consider the moment of birth as the terminus a quo (because this is where 'the general consensus stops'; because it is 'a proposal well rooted in the existing tradition and established linguistic customs: we always calculated our own and other people's ages according to the date of birth, we did not hold funeral ceremonies for foetuses, and we did not call what happened to them "death" but "miscarriage"', and so on) Hołowska notes that the linguistic proposals of the opponents of abortion 'do not arouse enthusiasm'. She argues that if they were to be adopted, one would have to use a 'bizarre language' according to which, for example, a sentence like 'Hundreds of people die in women's wombs every day' would refer to both the number of abortions and miscarriages often unbeknownst to the women themselves. See T. Hołowska, *O aborcji...*, pp. 146-147.

In essence, therefore, Wysocka – just like Hołówka or Wiktorowski – not only considers the term *foetus* as the only appropriate and acceptable term in the opposition under discussion, but also stigmatises as unethical the conception of the *nasciturus* as a child with all its consequences, including linguistic ones.

Wysocka's work also raises a number of other objections. Particular objections are caused, for example, by conclusions such as the following: 'In the discourse on abortion, it can be seen that the pro-life side does not evaluate the human act from the perspective of motivation, of circumstances, but only in the context of the act performed, which, no matter what, is always an evil and unjustifiable act. Theological ethics seems to emphasise that the performance of the same act by different persons, under different circumstances, cannot be judged in the same way. This also ties in with the Church's teaching that God, at the Last Judgement, will take into account "mitigating factors" such as, for example, remorse, repentance.'¹⁰⁶

It seems that such observations go too far beyond considerations of language and present the teachings of the Catholic Church in an oversimplification that refers not so much to the relevant sources (the lack of footnotes is a clearly visible shortcoming), but rather to a rather colloquial, unscientific, and vague religious consciousness.

The author does not shy away from a more moralistic tone that befits journalistic rather than scientific texts. She admonishes, for example: 'Calling someone Herod, Hitler, Dr Mengele, even if we are not dealing with a direct comparison, is unethical and illegal. In speaking of "abortion supporters" in texts written by the pro-life side, we thus notice something that should not occur in Christianity. By definition, one should not condemn others. "He who is blameless, let him be the first to cast a stone", Christ says when the crowd comes to him to tell them what they should do with the openly sinning woman [...].'¹⁰⁷

¹⁰⁶ U. Wysocka, op. cit., p. 167.

¹⁰⁷ Ibid., p. 182.

In another example, she assesses: '[...] the authors invoke absurd arguments. They provoke ridicule in some readers and resentment in others towards Catholics as stupid representatives of the "dark ages".'¹⁰⁸

The publication also encounters, among other things, such unsupported and even illogical conclusions as, for example: 'pro-life supporters treat every interruption of pregnancy in the same way (murder) and consider every woman who does so as evil (murderer)'.¹⁰⁹ Meanwhile, it suffices to cite even the article by Tomasz Terlikowski, discussed in Wysocka's work, entitled *Nawrócona aborterka*¹¹⁰ [*Converted aborter*], to see that the presented inference is false.

There is also no shortage of factual errors. Wysocka argues, for example, that 'The pro-life voluntarists very often cite information about unethical and inhumane ways of treating a removed foetus [...]. A child born prematurely is condemned to a slow death. Late-term abortions are illegal in our country, so if they happen, it is not related to the existing law'.¹¹¹ The researcher does not seem to understand what is meant by the term 'late abortion', which, after all, according to Polish law can also be performed after the 12th week of pregnancy. According to the jurisprudence, the upper limit allowed by law is usually set at the 20th-24th week.¹¹²

In other studies – both linguistic and, for example, sociological – there are also claims which could certainly be debated, but a polemic with all the arguments would be too extensive for this work.¹¹³

6 Summary

The lexical analysis allowed several conclusions to be drawn about the abortion discourse.

108 Ibid., p. 261.

109 Ibid., p. 167.

110 T. Terlikowski, *Nawrócona aborterka*, www.fronda.pl/a/terlikowski-nawrocona-aborterka,25461.html, accessed 3 February 2022.

111 U. Wysocka, op. cit., p. 197.

112 See, e.g., the judgment of the Supreme Court of 13 October 2005, ref. IV CK 161/05.

113 For example, A. Matuchniak-Krasuska claims that it is due to the efforts of *pro-life* activists that terms such as *nasciturus*, *child in the womb*, etc., have entered the language, while at the same time 'eliminating neutral terms', which she considers to be such lexemes as *foetus* or *embryo*. However, the research presented in this thesis shows that the perception of the *nasciturus* precisely as a child dominates the language. See A. Matuchniak-Krasuska, op. cit., Warszawa 1991.

- 1) The foundation of the dispute on which the discussion around abortion is set is the *foetus*–*child* opposition. Its constitutive feature is the status of the *nasciturus* as human or not. The fact that the two sides of the dispute disagree on the opposition gives rise to far-reaching linguistic consequences and results in the construction of two distinct lexical repertoires concerning the same phenomenon.
- 2) These linguistic repertoires are very extensive. A total of 180 lexemes were analysed in the study. The largest set consists of terms for abortion (82 lexical units) and the *nasciturus* (31), followed by lexemes related in turn to: attitudes to abortion (21), terms for the health status of the *nasciturus* in the context of abortion grounds (17), anti-abortion posters (7), abortion providers (6), and the effects of abortion (3). There were also 13 lexemes found that were not included in any of the above groups and included in the other collection.
- 3) The textual research shows that in the discourse on abortion, apart from the lexeme *abortion itself*, which can be considered the term with the highest degree of neutrality among the lexical units studied, there is a lack of neutral vocabulary in the sense that it is extremely difficult to speak in a discussion about abortion in such a way that the language does not position the speaker on one side of the argument. For example, the use of the word *child* in the context of abortion is likely to be perceived as favouring the demands of the pro-life side, even though in analogous discussions about pregnancy or miscarriage the use of this lexeme would go unnoticed. Contrary to the view of the pro-abortion camp, also using only the term *foetus* is likely to be perceived as taking a stand in the discussion. The discourse is so polarised that the only solution to express impartiality seems to be the use of artificial sounding terms, alien to the general language or everyday speech, such as *nasciturus*, or the interchangeable use of the terms *foetus* and *child*.
- 4) An analysis of the lexis of both camps allows general conclusions to be drawn about the vision of reality. The vocabulary of abortion supporters is dominated by verbs that either ignore the question of the existence of the *nasciturus*, for example by focusing on the issue of pregnancy (for

example: *interrupt a pregnancy, remove a pregnancy, procedure, interruption, get rid of a pregnancy*), or reduce it to the sphere of physiology (*expel a foetus, empty the contents of the uterus, remove cells*). This reduction and selection of words as little associated with human life as possible also applies to the terms of the *nasciturus* itself – starting with the consistent use of the lexeme *foetus* and ending with names such as, for example: *clot, egg cells with sperm, blastocyst, foetal egg, or it*.

The pro-life side, on the other hand, emphasises the personal status of the *nasciturus*, using names such as, for example, *child, human, human being, human lives*, and verbs such as *kill, murder, wipe out, remove a child* or nouns such as *execution, genocide, crime, barbarity*.

- 5) The most important findings from the point of view of the linguistic status of the *nasciturus* were made during the analysis of the words with which it is defined. Pointing to the Proto-Slavic root of the lexeme *ptód* [foetus] and its long-established presence in the Polish language (confirmed in old dictionaries of the Polish language, among others Linde's dictionary¹¹⁴), it has been shown that both lexemes (*child* and *foetus*) occur in general Polish on the same basis and there is no justification for considering the lexeme *foetus* as more appropriate as allegedly originating from medical terminology. Moreover, it has been proven that in general language it is usually used in a broader sense than the one it has in embryology, since outside medical terminology it is usually used to denote the entire prenatal period, even with reference to its earliest phases. These remarks on the etymology and presence of the lexeme in old dictionaries of the Polish language confirm that there is also no justification for treating the lexeme *foetus* as coming from the professional, specialist vocabulary, which usually enjoys greater prestige among ordinary users of Polish.
- 6) Important findings relate to the linguistic foundation of the whole argument. In the course of the research it became apparent that, while in texts dealing with abortion it is possible to speak of a clearly delineated

114 *Słownik języka polskiego*, ed. S.B. Linde, op. cit.

opposition between *foetus* (in the left-liberal press and on feminist websites) and *child* (in the Catholic press and on the websites of pro-life organizations), this opposition is blurred in the case of texts dealing with other topics, such as those dealing with pregnancy and miscarriage, since in the vast majority of these texts the *nasciturus* is referred to as a *child*.

- 7) As it turns out, the linguistic status of the *nasciturus* as a person or non-person depends on the context in which it is spoken about – whether it is a wanted and expected being (texts about pregnancy and miscarriage) or an unwanted one (texts about specific cases of abortion) or a potentially unwanted one (texts about abortion in general). It turns out that it is the context of the utterance, and not, for example, the fact of prenatal development, that determines the linguistic attribution of human status or its withdrawal.

This is the most significant conclusion, as it casts doubt on the commonly used argument of abortion advocates, who insist that the *foetus* is not intrinsically a *child* and that calling it this way constitutes linguistic abuse. Research has shown that in texts dealing with the prenatal period of development in various aspects (abortion, pregnancy, miscarriage), the *nasciturus* is referred to as a *child* more than three times as often as a *foetus* (in total, the lexeme *child* occurred 1,388 times, while the lexeme *foetus* occurred 431 times). This disproportion may be additionally surprising because the left-liberal press was represented by a more numerous set of articles in the research. This means that it is the lexeme *child* that is the mainly used to describe the *nasciturus*.

- 8) The clear disproportion in the number of lexemes *foetus* and *child* depending on the context confirms the intuitive observation of abortion opponents that pro-abortion discourse dehumanises the *nasciturus*, which in other contexts is far more often a *child* than a *foetus*. By consistently using a vocabulary that focuses attention not on the *nasciturus*, but on the pregnancy or impersonal foetus itself, one can avoid the linguistic consequences of regarding it as a human being, which in turn would naturally and logically entail naming the end of its existence with

terms such as *killing*, *murder*. Linguistic treatments that dehumanise the *nasciturus* allow abortion to be seen as a morally indifferent or even desirable act (from the woman's perspective). Placing the *foetus* or *embryo* in opposition to a woman will always be less dramatic than the opposition *mother* to *child*. One could even risk saying that the possibility of linguistic differentiation, even against the grain of usage, makes it possible to advocate abortion. For if the term *nasciturus* could only be used to describe a child, consent to abortion would mean consent to the death of *children*.

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Abstract

The subject of this chapter is a qualitative and quantitative analysis of abortion vocabulary excerpted from news and journalistic articles published in the electronic media in the first two decades of the 21st century.

The study showed that in the discourse on abortion, there is a clear foetus–child opposition, which results from granting or not granting the nasciturus the status of a human being. On the basis of this opposition, two separate linguistic repertoires are built, and using them places the speaker on one side of the ideological dispute. The article also argues with the findings of other researchers dealing with the subject of abortion-related vocabulary.

The key conclusion from the analysis concerns the linguistic image of the nasciturus and may be surprising in connection with the theses of pro-abortionists, according to whom it is erroneous to talk about the nasciturus as a child. A comparison of articles on abortion with articles dealing with the subject of pregnancy, motherhood or miscarriage shows that in all texts concerning the prenatal stage of human development, the nasciturus is called a ‘child’ more than three times more often than it’s called a ‘foetus’. This means that ‘child’ is the preferred name for an unborn human being, while the linguistic status of the nasciturus as a person or a non-person, even in the leftist-liberal press, depends on the context in which it is spoken of (a child in texts about pregnancy or miscarriage, a foetus in texts about abortion).



Part II

Medical aspects

1:1.5

2DG

77

DR

60

5♦

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0♦

1:1.5

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5♦

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Key terms: pharmacological abortion, eugenic abortion, home-based pharmacological abortion, mifepristone, methotrexate, misoprostol, complications after abortion

Chapter 3

Pharmacological abortion

1 Abortion – definition and techniques

Abortion is the termination of a pregnancy, induced either spontaneously or artificially, before the foetus has reached viability outside the mother's body. This is the definition most commonly found in gynaecology and obstetrics textbooks.¹ An induced abortion is a medically (pharmacologically) or surgically induced termination of pregnancy (TOP). The definition therefore does not refer to the child, whose presence in the mother's uterus is omitted from the body of the definition. It refers to pregnancy, which is a physiological state of the woman's organism that is necessary for the survival and normal development of the child before birth. This is a deliberate distortion of the definition of abortion, because regardless of the type of abortion, the action of pharmacological agents or the use of surgical instruments is directed against the child and not against the mechanisms associated with pregnancy.

The same sources distinguish two types of abortion according to their cause: so-called therapeutic abortion and elective abortion. The following are cited as reasons for therapeutic abortion: the mother's illness, which can be aggravated by the condition of the pregnancy, a congenital illness of the child or a malformation of the child, as well as the situation when the pregnancy occurred as a result of a crime. Elective abortion is referred to when it occurs at the request of the mother and none of the referenced circumstances exist. In Poland, the law provides for the possibility to perform

¹ See, e.g., *Abortion*, Chapter 9, [in:] F.G. Cunningham et al., *Williams Obstetrics*, 22nd edition, New York 2005, pp. 231-252.

therapeutic abortion (although the term itself is not used, as pregnancy is not a disease requiring medical treatment) according to the legal status after the verdict of the Constitutional Tribunal of 22 October 2020² in the case of two of the three aforementioned premises: i.e., in the case of a threat to the life or deterioration of the health of the mother and when there is a justified suspicion that the pregnancy occurred as a result of a criminal act. In 2020, 1076 legal abortions were performed in Poland.³ In the same year, the number of abortions performed in the United States was more than 620,000,⁴ which is roughly a quarter of the number of live births.

Abortion is a specific medical procedure. Its purpose is to kill the child, but it is nevertheless ordered to be performed by medical professionals, in contradiction with their professional ethics and vocation. Abortions are most often performed on healthy women, and the effects of this procedure are very important for the ethical evaluation of its side effects on the mother's body. They include various medical problems, but the legal, social, and ethical consequences should also be pointed out. Their assessment remains hampered by the fact that the frequency of abortion is underestimated in scientific studies. This in turn leads to an under-recording of the incidence of the various consequences of abortion. Furthermore, it should be mentioned that many women experiencing stress after abortion refuse to participate in research studies.⁵

Abortion is performed using surgical techniques, pharmacological preparations, or a combination of both.⁶ Surgical techniques include dilation of the cervix and removal of the entire contents of the uterine cavity by curettage or suction, or a combination of these methods. Surgical techniques are used to dilate the cervix or prostaglandins are administered into the posterior

2 Judgment of the Constitutional Court of 22 October 2020, ref. K 1/20, OTK-A 2021/4.

3 Report of the Council of Ministers on the implementation and effects of the application in 2020 of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/3743A1931AB10684C12588400056B25F/-24File/2261.pdf>, accessed 31 January 2023.

4 K. Kortsmitt et al., *Abortion Surveillance – United States, 2020*, "MMWR Surveillance Summaries" 2022, 71(SS-10), 1-27, <http://dx.doi.org/10.15585/mmwr.ss7110a1>.

5 G. Pike, *Abortion and Women's Health. An evidence-based review for medical professionals of the impact of abortion on women's physical and mental health*, https://www.spuc.org.uk/Portals/0/Repository/Abortion%20and%20Womens%20Health_April%202017.pdf, publication date 2017, accessed 17 November 2022.

6 L. Sanchez-Ramos, I. Delke, *Induction of Labor and Pregnancy Termination for Fetal Abnormality*, Chapter 68, [in:] D.K. James et al., *High Risk Pregnancy: Management Options*, Philadelphia 2006, pp. 1392-1425.

vaginal vault. Suctioning is performed using a mechanical or hand pump. In advanced pregnancy, extraction of the foetal body in its entirety is impossible. It is therefore dissected and extracted externally in parts, after which their completeness is checked. Curettage of the uterine cavity is then performed to remove trophoblast or placental tissues. In some countries, it is legal in advanced pregnancy to carry out a procedure called *partial birth abortion*, in which the brain tissue is extracted after the birth of the baby's trunk so that the baby's head can be brought out. Surgical abortion is usually preceded by general anaesthesia of the patient. In Poland, cervical dilation and curettage is used as a surgical abortion procedure before the 12th week of pregnancy.

2 Pharmacological abortion in the first trimester of pregnancy

Pharmacological abortion in early pregnancy can be induced by administering medical preparations: an antiprogesterone called mifepristone (RU 486) or an antimetabolite called methotrexate and a synthetic prostaglandin called misoprostol. According to the American Society of Obstetricians and Gynecologists, pharmacological abortion is an acceptable alternative to surgical abortion in selected cases before the 49th day of pregnancy.⁷ The agents indicated above lead to abortion by inducing uterine contractions (in the case of mifepristone and methotrexate, this is done by inhibiting the antispasmodic action of the natural progesterone present in the mother's body).

Mifepristone blocks the effects of natural progesterone, among other things within the mother's uterus, by blocking progesterone receptors on cell membranes. As a result, the trophoblast ceases to function properly, leading to separation of the foetus from the trophoblast, inhibition of its delivery of oxygen and nutrients to the foetus, and subsequent death of the baby as a result of malnutrition and hypoxia. In addition, mifepristone causes the mother's cervix to become soft and its canal to dilate, the uterine

7 The American College of Obstetricians and Gynecologists, *Medical management of abortion*, "ACOG Practice Bulletin" 2001, 26.

muscle begins to contract and its sensitivity to prostaglandins increases.⁸ This preparation has been registered in 57 countries worldwide, first in France in 1988, then, in 1991, in the United Kingdom, in 2000 in the United States and, in 2015, in Canada., More than 60% of abortions in Europe and about 54% in the United States are currently induced using this method

Misoprostol is used for the prevention and treatment of gastric ulcers, and is registered in Poland for such indications (as a preparation called Cyto-tec, containing the active substance misoprostol). When administered to a pregnant woman who has previously taken mifepristone, it induces uterine contractions and the complete or incomplete expulsion of the dead embryo and trophoblast. If, as a result of the uterine contractions, the uterus is not completely emptied of the embryo or trophoblast tissues, a procedure of curettage of the uterine cavity is performed with the help of ultrasound, once this has been established. The manufacturer warns against the use of misoprostol outside of gastrointestinal indications, due to the possibility of side effects and complications.

The medical preparation containing methotrexate has an antimetabolic effect, inhibits cell division, and is used primarily in the treatment of cancer. Like mifepristone, it is a teratogen and can cause foetal malformations. Therefore, a woman who has not had a miscarriage despite the administration of one or both of these agents, even though she carries a pregnancy, should take into account the possibility of malformations in the child.

2.1 Methods of performing and clinical course of pharmacological abortion

For abortion, mifepristone or methotrexate is usually administered first, followed by misoprostol after some time. Most commonly, mifepristone is administered. First at a dose of 100-600 mg orally and then, after 6-72 hours, misoprostol at a dosage of 400 µg orally or 800 µg vaginally. In some countries, both preparations are available as a single oral tablet (Mifegymiso).

8 E. Johannisson et al., *Vascular changes in the human endometrium following the administration of the progesterone antagonist RU 486*, "Contraception" 1989, 39(1), pp. 103-107, [https://doi.org/10.1016/0010-7824\(89\)90019-X](https://doi.org/10.1016/0010-7824(89)90019-X).

Allergies, severe anaemia, blood clotting disorders, abnormal bleeding, severe liver or cardiovascular disease, chronic adrenal insufficiency, congenital porphyria, the presence of an IUD in the uterus, and diseases treated with glucocorticoids are indicated as contraindications to pharmacological abortion.

The U.S. Food and Drug Administration (FDA) initially recommended that both agents be administered by medical personnel. Then, if a miscarriage occurred within four hours, the patient was examined before being discharged from the medical facility. If a miscarriage did not occur, the patient was invited to be re-examined after a week or two with the recommendation to report sooner if there was heavy bleeding.

In 2021, when there were some problems with the functioning of medical care due to the COVID-19 pandemic, it was decided to facilitate women's access to pharmacological abortion. It was recommended to switch to the practice of telemedicine, providing abortion drugs via post, and dispensing with mandatory pre-medical consultations and ultrasounds prior to the administration of abortion-inducing agents.

Currently, the FDA recommends that, for a pharmacological abortion, the woman swallows a Mifeprex tablet containing 200 mg of mifepristone. Then, 24 to 48 hours later, two tablets containing 200 µg of misoprostol should be placed between the teeth and cheek on either side of the mouth for 30 minutes and then swallowed.⁹ The indicated treatment protocol applies to pregnancies before the 70th day from the first day of the last menstrual period. Usually, 1 to 4 hours after taking a misoprostol-containing formula, crampy abdominal pain and vaginal bleeding occur, which may include blood clots and tissue fragments. The symptoms are similar to those of a spontaneous miscarriage. The entire procedure takes place at the woman's home and therefore without medical assistance or psychological support.

The pharmacological method of abortion is frequently used in the West. Almost 43% of abortions performed in the US by Planned Parenthood in

9 U.S. Food & Drug Administration (FDA), *Mifeprex Medication Guide*, <https://www.fda.gov/media/72923/download>, updated March 2016, accessed 17 November 2022.

2014 were performed using this method. In the same year, pharmacological abortions accounted for 31% of all outpatient abortions performed in the US; by 2020, this percentage will rise to 53%.¹⁰ Abortion performed in early pregnancy is expected to be effective in 90-98% of cases.¹¹ In approximately 5% of cases, there is a need for a surgical procedure due to an incomplete miscarriage.

2.2 Complications of pharmacological abortion performed in the first trimester of pregnancy

A study published in 2016 found that complications after pharmacological abortion can include: heavy bleeding, severe abdominal pain, infection, diarrhoea, and missed miscarriage requiring surgical intervention. These complications occur four times more frequently than after surgical abortion.¹² A study in Sweden (where pharmacological abortions account for 88% of all abortions) shows that the complication rate after pharmacological abortion, mainly infections and missed miscarriages, increased from 4.2% in 2008 to 8.2% in 2015.¹³

Also, a 2015 opinion by the organization of Catholic gynaecologists Mater-Care International (MCI) highlighted that pharmacological abortion causes side effects in 23% of women: nausea, vomiting, diarrhoea, abdominal pain, headaches, and fever. The whole procedure is the cause of frequent visits to the doctor, sometimes hospitalisation. The mother's observation of profuse vaginal bleeding, sometimes containing fragments of embryo and trophoblast, often causes high levels of stress. Deaths most often occur in young mothers due to profuse haemorrhage, infection and unrecognized ectopic pregnancy: the mother may treat the symptoms of ectopic pregnancy as a consequence of the induced abortion, not realising the

10 According to the Centers for Disease Control and Prevention (CDC) and the Guttmacher Institute. For: J. Diamant and B. Mohamed, *What the data says about abortion in the U.S.*, <https://www.pewresearch.org/fact-tank/2023/01/11/what-the-data-says-about-abortion-in-the-u-s-2>, accessed 31 January 2023.

11 R. Hausknecht, *Mifepristone and misoprostol for early medical abortion: 18 months experience in the United States*, "Contraception" 2003, 67(6), pp. 463-470, [https://doi.org/10.1016/S0010-7824\(03\)00049-0](https://doi.org/10.1016/S0010-7824(03)00049-0).

12 U.D. Upadhyay et al., *Incidence of emergency department visits and complications after abortion*, "Obstetrics & Gynecology" 2015, 125(1), pp. 175-183, <https://doi.org/10.1097/AOG.0000000000000603>.

13 I. Carlsson, K. Breiding, P.-G. Larsson, *Complications related to induced abortion: a combined retrospective and longitudinal follow-up study*, "BMC Woman's Health" 2018, 18(1), article number: 158, <https://doi.org/10.1186/s12905-018-0645-6>.

danger of internal haemorrhage. According to the opinion of MCI specialists, pharmacological abortion has been introduced in Canada with the aim of mass exterminating unborn babies in early pregnancy. According to this organization, this will result in a whole series of adverse consequences for the people of this country, among which are: irresponsible sexual behaviour, increased incidence of sexually transmitted diseases, followed by infertility, as well as the direct health implications of mass abortion (depression, drug addiction, suicide, premature births, breast cancer). Consequently, adverse effects on women's reproductive health and families' mental health are to be expected. Early, easy access to abortion contributes to reducing the time for parents to think about their decision and consider alternatives.¹⁴

It should be noted that the overall maternal death rate after pharmacological abortion is more than ten times higher compared to early surgical abortion.¹⁵ Infections occur so frequently because both agents used in the pharmacological abortion procedure weaken the immune response in the woman's body.¹⁶

Pharmacological abortion is also dangerous in the context of being used if an ectopic pregnancy is not diagnosed. An ectopic pregnancy occurs when an embryo is formed outside the uterine cavity, for example in a fallopian tube. Differentiating the symptoms of an ectopic pregnancy from those of a pregnancy located in the uterus is difficult, as similar symptoms (abdominal pain, bleeding) occur in both situations. If a woman with an embryo implanted outside the uterine cavity is given mifepristone, the risk of rupture of the fallopian tube and internal bleeding is very high. If a pregnant woman is given mifepristone and an ectopic pregnancy has not previously been ruled out, she is at great risk. This is all the greater when the abortion is carried out at home and there is no possibility of rapid medical follow-up.

14 MaterCare International statement on the decision by Health Canada to approve medical abortion pill, <https://www.fiamc.org/bioethics/statement-on-medical-abortion-pill-in-canada>, publication date 21 August 2015, accessed 17 November 2022.

15 M. Green, *Fatal infections associated with mifepristone-induced abortion*, "The New England Journal of Medicine" 2005, 353(22), pp. 2317-2318, <https://doi.org/10.1056/NEJMp058260>.

16 R.P. Miech, *Pathophysiology of mifepristone-induced septic shock due to Clostridium sordellii*, "The Annals of Pharmacotherapy" 2005, 39(9), pp. 1483-1488, <https://doi.org/10.1345/aph.1G189>.

The FDA reports that as at the end of 2018, more than 4,000 women in the United States had suffered side effects from the use of mifepristone to terminate pregnancy. Among them were 24 deaths, 1,042 hospitalisations, 599 blood transfusions, and 412 infections, including 69 severe ones.¹⁷ It is likely that the true number of complications is much higher because doctors are not required to report them and the quality of the information collection process is not adequate.¹⁸ Patients admitted to hospitals due to complications often did not report the abortion they had attempted. The miscarriage was therefore qualified as spontaneous. Organizations promoting abortion sometimes urged women seeking medical help due to complications after abortion not to inform the medical staff that they had taken abortion-inducing pills.¹⁹

2.3 Pharmacological and surgical abortion in early pregnancy

As mentioned above, the incidence of complications after a pharmacological abortion is higher than after a surgical abortion performed in early pregnancy. Both techniques were invented to kill unborn babies, but for the mother, pharmacological abortion is statistically more dangerous than surgical abortion – it can lead to death. A study performed in Finland between 2000 and 2006 on a group of almost 50,000 women who had an abortion before the 63rd day of pregnancy showed that early complications after pharmacological abortion were four times more common than after surgical abortion. Haemorrhage occurred after pharmacological abortion in 15.6% of women (compared to 2.1% for surgical abortion), leaving foetal tissue in the uterus in 6.7% of women (compared to 1.6% for surgical abortion).²⁰ Other studies also indicate that after pharmacological abortion, haemorrhage, infection, retention of tissue in the mother's uterus are more common, and pregnancy is also more likely to continue.²¹ Surgical control of the uterine cavity caused by tissue retention is performed six times more often after

17 U.S. Food & Drug Administration (FDA), *Mifepristone U.S. Postmarketing Adverse Events Summary Through 12/31/2018*, <https://www.fda.gov/media/112118/download>, accessed 17 November 2022.

18 M.M. Gary, D.J. Harrison, *Analysis of severe adverse events related to the use of Mifepristone as an abortifacient*, "The Annals of Pharmacotherapy" 2006, 40(2), pp. 1, <https://doi.org/10.1345/aph.1G481>.

19 Women help Women, *Will a doctor be able to tell you if you've taken an abortion pill*, <https://womenhelp.org/en/page/1093/will-a-doctor-be-able-to-tell-if-you-ve-taken-abortion-pills>, accessed 8 May 2022, September 2019.

20 M. Niinimäki et al., *Immediate complications after medical compared with surgical termination of pregnancy*, "Obstetrics & Gynecology" 2009, 114(4), pp. 795-804, <https://doi.org/10.1097/AOG.0b013e3181b5ccf9>.

21 U.D. Upadhyay et al., op. cit.

pharmacological abortion. This surgical control procedure, usually performed as an emergency procedure, requires the availability of medical resources and facilities, transport, operating theatres, staff, and their time, which increases the cost to the patient or the health system.²²

The so-called product information (PI) for the MS-2 Step product containing mifepristone and misoprostol points out the need for appropriate care after a pharmacological abortion. It recommends that, after taking the abortifacient, 'the woman should remain in close proximity to a medical facility where she can receive appropriate care at any time in the event of severe, protracted bleeding'.²³ The Association of American Obstetricians and Gynecologists, in its 2014 newsletter, states that 'compared to surgical abortion, pharmacological abortions take longer to perform, require more active cooperation from the patient and are associated with a higher incidence of pain and bleeding'.²⁴ The requirement to administer misoprostol between 24 and 48 hours after taking mifepristone results in the woman having to be admitted to hospital or checked into a medical centre twice.

2.4 Pharmacological abortion at home

However, medical organizations in some Western countries (for example, the British Association of Obstetricians and Gynaecologists) or, the FDA, are promoting pharmacological abortion as a method that enables safe termination of pregnancy at home, which is supposed to be particularly important for those living far from urban centres. It is supposed to safeguard against the delays associated with having an abortion procedure performed in a medical centre and to 'save' the working time of these centres for other medical procedures. The possibility of preserving the patient's privacy, better support from the family or planning the time and place of the abortion to minimise time away from work or organize childcare are also cited as rationales in favour of abortion at home; the possibility of avoiding troublesome

22 *Pregnancy Outcome in South Australia*, <https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/resources/pregnancy+outcome+in+south+australie+2016>, accessed 8 May 2020.

23 Australian product information: MS-2-STEP (Mifepristone and Misoprostol) Tablets, <https://www.ebs.tga.gov.au/ebs/picmi/picmirepository.nsf/pdf?OpenAgent&id=CP-2014-PI-01965-1&d=202004151016933pg19>, accessed 8 May 2022.

24 The American College of Obstetricians and Gynecologists, Practice Bulletin, *Medical management of first trimester abortion*, "ACOG Practice Bulletin" 2014, 143.

bleeding during the journey from hospital to home is also highlighted along with ways of handling aborted tissues (embryo and trophoblast).²⁵

Supporters of medical abortion argue that this method is less likely to cause women stress and is preferred by women compared to surgical abortion. However, it appears that this type of abortion, especially when performed at home, is associated with an increased depressive response and guilt for the mother caused by the fact that the entire abortion procedure, which lasts several hours, is performed by her personally, in isolation and stress, without the involvement of medical personnel, and requires her to handle the aborted baby's tissues herself.

The issue of the safety of pharmacological abortion performed at home was raised in connection with emerging demands that doctors during the COVID-19 pandemic, when access to doctors' offices remained difficult, should prescribe pharmacological abortion agents for self-administration through telemedicine advice. This *modus operandi* was officially supposed to be dictated by the desire to protect pregnant women from exposure to infection in a doctor's clinic. In reality, it was more about the financial gains that were at stake during the pandemic.

Home pharmacological abortion is now being promoted in those North American states where access to abortion is difficult following recent changes in the law. Being able to obtain abortifacients by mail eliminates the need to travel to another state with liberal abortion laws.²⁶ This exposes a large number of mothers to the risk of serious health complications.

Remotely ordering a pharmacological abortion at home deprives the woman of the opportunity to obtain pre-abortion counselling, as well as post-procedure follow-up. In order to establish the risks in a given individual case, it is necessary to talk to the doctor, for him to take a look at the medical history, to inform about the risks, the possibility of complications, and

25 J. Lord et al., *Early medical abortion: best practice now lawful in Scotland and Wales but not available to women in England*, "BMJ Sexual & Reproductive Health Care" 2018, 44, pp. 155-158, <https://doi.org/10.1136/bmjshr-2018-200134>.

26 P. Belluck, *F.D.A. will permanently allow abortion pills by mail*, "New York Times" 2021, 16 December, <https://www.nytimes.com/2021/12/16/health/abortion-pills-fda.html>, accessed 31 January 2023.

to carry out a physical examination. It is necessary to detect conditions that constitute a contraindication to pharmacological abortion. A gynaecological examination should be performed to rule out the presence of tumours or infection in the small pelvis, as well as an ultrasound examination to, among other things, determine the age of the pregnancy and exclude the presence of ectopic pregnancy. During the conversation with the patient, pressure or coercion exerted on the woman to have an abortion can be detected. These conversations should take place even before a possible procedure is arranged, to allow time for reflection. Meanwhile, during the COVID-19 pandemic, it was recommended that these rules be abandoned – and still are. As a rule, serological conflict prophylaxis is also not performed in RD negative women undergoing a ‘do-it-yourself’ abortion.

Early detection of post-abortion complications, including psychological ones, and taking appropriate action without delay is also difficult without maintaining contact with the doctor. A woman in such a situation remains alone and vulnerable at home. The unreflective acceptance of pharmacological abortion performed via telemedicine trivialises the seriousness of the decision-making process and the responsibility of the doctor and weakens the relationship between patient and doctor.²⁷

At the time of the COVID-19 epidemic, telemedicine was developing in various specialities. However, it seems that it is one thing to have a remotely conducted consultation or to prescribe medication remotely for a chronic disease, and another to initiate an abortion procedure. It is definitely a different burden to order remotely a medical procedure that is dangerous to the health and even the life of the mother, the purpose of which is to kill an embryo – a human being in an early stage of life.

2.5 Reversing the effects of early pharmacological abortion

Sometimes a woman regrets her act soon after taking the abortion pill and wishes to reverse its effects. A pharmacological abortion performed

27 D. Grossman et al., *Effectiveness and acceptability of medical abortion provided through telemedicine*, "Obstetrics & Gynecology" 2011, 118(2 Part 1), pp. 296-303, <https://doi.org/10.1097/AOG.0b013e318224d110>.

with mifepristone, but before the administration of misoprostol, is potentially reversible with progesterone. Mifepristone is a progesterone antagonist, so increasing the concentration of progesterone in the pregnant woman's blood may reduce its abortifacient effect. Having been proven effective in terms of its ability to reverse the abortive effect of mifepristone in animal studies, this procedure has been proven effective in humans in a percentage of cases. This procedure is referred to as APR (*abortion pill reversal*). After its application, several ultrasound checks are necessary to exclude the presence of an ectopic pregnancy. In a study of 547 patients who were given progesterone as soon as possible after the previous application of mifepristone and who continued the therapy until the end of the first trimester of pregnancy, pregnancy preservation was achieved in 48% of cases. The percentage of congenital malformations in the children was not higher than in the general population. The procedure proved to be effective and safe.²⁸ Some countries have so-called telephone hotlines where interested women can receive information about the APR procedure.

3 Pharmacological abortion in the second trimester of pregnancy on eugenic grounds

In the procedure of abortion performed in the second trimester of pregnancy (before the 24th week) due to congenital malformations or illness of the child, a pharmacological method was applied consisting of the administration of mifepristone together with the oral or vaginal application of misoprostol, as well as oxytocin by intravenous infusion and only possibly performing cervical dilation (using a Foley catheter). The method described thus replaced the method of mechanical dilation of the cervix and evacuation of the baby's body parts with surgical instruments. This procedure was legal in Poland within the framework of so-called eugenic abortion until the child reached the capacity to live outside the mother's organism. After the verdict of the Constitutional Tribunal of 22 October

28 G. Delgado et al., *A case series detailing the successful reversal of the effects of mifepristone using progesterone*, "Issues in Law and Medicine" 2018, 33(1), pp. 1-14.

2020, it is not performed in Poland. In more than 90% of cases of this type of abortion, the abortion occurs before 24 hours from the start of the procedure and the average time between the induction of the abortion and the birth of the child is six hours.

The child is usually born whole, which makes it possible to examine its body and verify the accuracy of the diagnosis of a disease or malformation made in prenatal diagnosis. This possibility was not used in Poland, as there was no obligation to verify the diagnosis on the basis of a post-mortem examination of the foetus. The possibility for the parents to see the child and bury its body was supposed to be a factor in alleviating the guilt and psychological experiences associated with abortion and was also supposed to be an argument for eugenic pharmacological abortion. A baby after an abortion performed in the second trimester of pregnancy by surgery is usually extracted in parts, which would not be accepted by the parents.²⁹

In about 5-10% of pharmacological abortions performed in the second trimester of pregnancy for eugenic reasons, the baby is born alive. It should then be resuscitated and its subsequent death, if it occurred after the 22nd week of pregnancy, should be recorded as a perinatal death in the ward records. To avoid this awkward situation giving rise to medical, ethical, and legal dilemmas, in countries where the eugenic abortion procedure is legal, in some clinics a solution of potassium chloride or digoxin is injected (under ultrasound guidance) into the foetal heart through the abdominal wall of the mother before the abortion is performed.³⁰

3.1 Early complications of abortion performed in the second trimester of pregnancy

Eugenic abortion performed by pharmacological means in the second trimester of pregnancy is considered a relatively safe procedure.

29 C.R. Geerinck-Vercammen, H.H.H. Kanhai, *Coping with termination of pregnancy for fetal abnormality in a supportive environment*, "Prenatal Diagnosis" 2003, 23(7), pp. 543-548, <https://doi.org/10.1002/pd.636>.

30 A. Elimian, U. Verma, N. Tejani, *Effect of causing fetal cardiac asystole on second trimester abortion*, "Obstetrics & Gynecology" 1999, 94(1), pp. 139-141, [https://doi.org/10.1016/S0029-7844\(99\)00273-2](https://doi.org/10.1016/S0029-7844(99)00273-2).

Prostaglandin (misoprostol) is a common cause of nausea, vomiting and diarrhoea (in about 30% of cases), and similar side effects can occur with oxytocin. The most common complications in this type of abortion are: placental remnants left in the uterus, infection, uterine rupture, haemorrhage, uterine puncture and damage to the cervix. The birth of a live baby is also considered an adverse consequence of pharmacological eugenic abortion.

Abortion, regardless of the method performed, carries the risk of severe acute complications. These include amniotic fluid embolism, shock, acute bronchospasm, and cardiac arrest. Maternal deaths occur at a rate of 0.7 per 100,000 procedures. The risk of death increases with the stage of the aborted pregnancy – twice for every two consecutive weeks of pregnancy over eight weeks.³¹

Leftover placental tissue in the uterus (about 22% of cases of pharmacological abortions performed in the second trimester of pregnancy) can cause haemorrhage or infection and requires a procedure to curettage the uterine cavity. Less frequently (between 0.4 and 2% of cases), infection occurs after abortion. Its occurrence is favoured by the mother's young age or first pregnancy. Heavy haemorrhage is even rarer (0.15% of cases). This complication can be expected after an abortion performed in an advanced pregnancy, in an older multiparous woman or after a caesarean section in a previous pregnancy. Haemorrhage is also sometimes a consequence of mechanical damage to the uterus, an adherent placenta, or a blood clotting disorder. Rupture or puncture of the uterus is an indication for immediate surgery.³² Damage to the cervix, which occurs less frequently after pharmacological abortion than after surgical abortion, sometimes requires suturing in the second trimester of pregnancy. It is often the cause of subsequent premature births.³³

31 M. Gissler et al., *Pregnancy associated mortality after birth, spontaneous abortion or induced abortion in Finland, 1987-2000*, "American Journal of Obstetrics & Gynecology" 2004, 190(2), pp. 422-430, <https://doi.org/10.1016/j.ajog.2003.08.044>.

32 B.R. Pridmore, D.G. Chambers, *Uterine perforation during surgical abortion. A review of diagnosis, management and prevention*, "The Australian and New Zealand Journal of Obstetrics and Gynaecology" 1999, 39, pp. 349-353, <https://doi.org/10.1111/j.1479-828X.1999.tb03413.x>.

33 R.B. Kalish et al., *Impact of midtrimester dilation and evacuation on subsequent pregnancy outcome*, "American Journal of Obstetrics & Gynecology" 2001, 187(4), pp. 882-885, <https://doi.org/10.1067/mob.2002.127139>.

In a study published in 2021 on complications after pharmacological abortion performed after the 13th week of pregnancy through the use of telemedicine services, 29% of women were found to have heavy bleeding or fever; 43% of these women sought medical help for complications.³⁴

3.2 The aftermath of abortion

The distant sequelae of abortion are most often the subject of observational studies; confounding factors and so-called bias can distort the accuracy of their results.

Infections following abortion may be a cause of later fertility problems and a higher frequency of ectopic pregnancies. Uterine curettage may favour the occurrence of placental complications in subsequent pregnancies. Studies on the effect of abortion on the development of breast cancer have yielded heterogeneous results. However, the controversy does not concern the fact that the delivery of the first pregnancy has a protective effect. This means that the risk of developing breast cancer is higher in a woman who has an abortion of her first pregnancy compared to a woman who has her first child.³⁵ Between 1982 and 2005, the incidence of breast cancer in women was found to have almost doubled in India. The age of peak incidence of women with the disease is 10 years earlier than in other countries. These phenomena have been linked to the high incidence of early abortions performed in the country due to female child sex.³⁶

The link between abortion and premature births in subsequent pregnancies is also the subject of scientific research. It appears that while surgical abortion may increase the likelihood of premature termination of a subsequent pregnancy, pharmacological abortion has no such effect.³⁷

34 N. Kapp et al., *Medical abortion at 13 or more weeks gestation provided through telemedicine: A retrospective review of services*, "Contraception: X" 2021, Vol. 3, 100057, <https://doi.org/10.1016/j.conx.2021.100057>.

35 I.H. Russo, J. Russo, *Pregnancy-induced changes in breast cancer risk*, "Journal of Mammary Gland Biology and Neoplasia" 2011, 16(3), pp. 221-233, <https://doi.org/10.1007/s10911-011-9228-y>.

36 S. Malvia et al., *Epidemiology of Breast cancer in Indian women*, "The Asia-Pacific Journal of Clinical Oncology" 2017, 13(4), pp. 1-11, <https://doi.org/10.1111/ajco.12661>.

37 M. Malosso et al., *US trends in abortion and preterm birth*, "Journal of Maternal-Fetal & Neonatal Medicine" 2017, 31(18), pp. 1-5, <https://doi.org/10.1080/14767058.2017.1344963>.

It is a well-known and scientifically recognized fact that abortion leads to emotional disorders, depression, or post-traumatic stress disorder.

In an observational study by Support After Abortion, 24% of women undergoing early pharmacological abortion were found to have depression, anxiety, and to suffer from substance abuse.³⁸

The pro-abortion organization Women on Web has published the accounts of women who have undergone pharmacological abortions. Many of them have suffered from chronic emotional pain.³⁹

A pooled analysis of 22 published papers on the subject, based on studies of more than 800,000 women, showed that abortion results in an 81% increased risk of psychological problems, 37% increased risk of major depressive sequelae, 110% increased risk of alcohol abuse and 155% increased risk of suicide attempts.⁴⁰ The above consequences are particularly common in the case of eugenic abortion performed due to defects and congenital diseases in children.

Pharmacological abortion is seen as a less invasive method than a surgical procedure, involving less suffering for the child. However, this turns out not to be the case. An abortion of this kind performed in the first trimester of pregnancy is more dangerous for the mother than a surgical abortion, and one performed in the second trimester usually leads to immense suffering for the child suffocating in the mother's birth canal for eugenic reasons.

Pharmacological abortion, which is used increasingly often in the world, including in Poland, is the leading cause of death of vast numbers of children. It is also responsible for serious, life-threatening health complications in mothers and interferes with the subsequent procreative health and

38 E. Smith Dallabrida, *Study shows long-term negative impact of medication abortion (White Paper, October 2022)*, <https://supportafterabortion.com/wp-content/uploads/2022/10/Study-Shows-Long-Term-Negative-Impact-of-Medication-Abortion.pdf>, accessed 31 January 2023.

39 Women on Web, *I had an abortion*, <https://www.womenonweb.org/en/page/488/i-had-an-abortion>, accessed 31 January 2023.

40 P.K. Coleman, *Abortion and mental health: quantitative synthesis and analysis of research published 1995-2009*, "The British Journal of Psychiatry" 2011, 199(3), pp. 180-186, <https://doi.org/10.1192/bjp.bp.110.077230>.

psychological well-being of women. Disregarding this, under the pretext of the COVID-19 pandemic, it has been decided that mothers themselves, without medical supervision and adequate psychological support, should take preparations that are lethal to the child and harmful to their health at home. This is in the interests of the abortion business.

Meanwhile, the number of serious complications following pharmacological abortion is increasing.⁴¹ It is therefore very important to provide reliable information to healthcare professionals and the public at large.

41 R.K. O'Bannon, *Data from British Hospitals Show At-Home Chemical Abortions Considerably Less Safe, Effective than Advertised*, <https://www.nationalrighttolifenews.org/2021/12/data-from-british-hospitals-show-at-home-chemical-abortions-considerably-less-safe-effective-than-advertised>, accessed 31 January 2023.

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Abstract

In the definitions of abortion, the child is omitted. Meanwhile, the purpose of an artificially induced termination of pregnancy is to deprive it of its life. It is therefore appropriate to define abortion as the deliberate killing of a child before it is born. Methods of abortion can be divided into medical and surgical. The medical method consists of administering to the mother (orally, intravenously, intravaginally) agents that cause the death of the child, and the induced contractions of the uterus lead to the expulsion of the baby's body from the mother's reproductive tract. In the case of an abortion carried out in the second trimester of pregnancy due to the presence of foetal malformations (eugenic abortion), the baby may be born alive.

Medical abortion in the first trimester of pregnancy is becoming the most common method of prenatal homicide worldwide. The law in Poland does not allow medical abortions, including for eugenic reasons.

Contrary to popular opinion, medical abortion is more dangerous for the mother than surgical abortion. It can cause various ailments (vomiting, abdominal pain, fever) and sometimes serious complications (haemorrhage, infection, thromboembolism) and even death. The long-term effects of this procedure include chronic pelvic pain, infertility, preterm delivery in the next pregnancy, breast cancer, as well as depression, guilt, post-traumatic stress disorder, substance abuse, and suicide attempts.

In recent years in the West, medical abortion at home without the involvement of medical personnel has been recommended. This results in additional serious threats to the health and life of women related to the inability to diagnose, prior to a woman's use of abortifacients, factors constituting a contraindication to the use of these drugs, for example, ectopic pregnancy. Recent studies show that the incidence of complications after medical abortion has increased exponentially.

There are reports indicating the chances of reversing the effects of early medical abortion if the mother immediately changes her mind after taking abortion pills and decides instead to save the child.

Medical abortion, which is being performed more and more often globally, including in Poland, is the cause of death of a huge number of children, leads to serious health and life-threatening complications in mothers, and interferes with the subsequent reproductive health and mental well-being of women. The risks associated with medical abortion need to be more widely publicized.

Małgorzata Prusak

Key terms: hormonal contraception, hormonal pills, IUDs, morning-after pill, anti-gestational effect, ovarian activity, effect on conception

Chapter 4

Does the use of contraceptives endanger the life of the conceived child?

1 Introduction

Currently, there are many types of hormonal contraceptives in various pharmaceutical forms available on the market (pills, patches, IUDs, injectables, and implants). It is estimated that around 150 million women worldwide use hormonal pills and around 160 million use IUDs.¹ In European countries, roughly 35% of women aged 15 to 49 use hormonal contraceptives (23%) and IUDs (12%).² Between 1999 and 2015, the ‘morning-after pill’, or levonorgestrel, was used at least 400 million times.³ There are significant differences in the frequency of its use between European countries. In some countries such as Sweden, Norway, and France, based on data from 2015, the morning-after pill was used by more than 11% of women aged between 15 and 49, while in Poland, it was used by 2.9%. The frequency of its use depends on availability: where the morning-after pill is sold on the basis of a doctor’s prescription, the use of the product is several times lower than in countries where its sale is limited only by the age of women (girls).⁴ The available data show that IUDs, contraceptive

1 United Nations, Department of Economic and Social Affairs, Population Division (2019), *Contraceptive Use by Method 2019: Data Booklet* (ST/ESA/SER.A/435), https://www.un.org/development/desa/pd/sites/www.un.org/development/desa/pd/files/files/documents/2020/Jan/un_2019_contraceptiveusebymethod_databooklet.pdf, accessed 26 August 2022.

2 United Nations, Department of Economic and Social Affairs, Population Division (2015), *Trends in Contraceptive Use Worldwide 2015* (ST/ESA/SER.A/349), https://www.un.org/development/desa/pd/sites/www.un.org/development/desa/pd/files/undesa_pd_report_2015_trends_contraceptive_use.pdf, accessed 8 May 2022.

3 According to the manufacturer at: <http://postinorpill.com/global-postinor/what-is-morning-after-pill/morning-after-pill-worldwide>, accessed 8 May 2022.

4 See M. Kiechle, M. Neuenfeldt, *Experience with oral emergency contraception since the OTC switch in Germany*, “Archives of Gynecology and Obstetrics” 2017, 295(3), pp. 651-660, <https://doi.org/10.1007/s00404-016-4253-0>.

pills, as well as the morning-after pill are widely used. Thus, it seems all the more necessary to examine whether these measures affect the life of the conceived child. However, before we undertake an analysis of the impact of contraceptives on the life of a human being at an early stage of development, it is important to consider how likely it is to conceive⁵ a child while taking hormonal contraceptives. If the conception of a child is not only likely, but realistically happens, we can indeed further investigate to what extent the use of contraceptives affects the development of the conceived child. In this study, we will mainly address hormonal drugs, including the morning-after pill, as well as IUDs.

2 Does conception occur despite contraceptive use?

The results of studies on contraceptive failure indicate that children are conceived during contraceptive use. The medical literature generally reports that statistically 8-9 women per 100 become pregnant during the first year of hormonal use.⁶ (see Table 1). The results of a study involving a large group of women (52,664) show that as many as 7.3% of the respondents became pregnant during the year of use of the two-component contraceptive pill.⁷ However, it is difficult to determine the number of times fertilisation had occurred, because we are unable to estimate the number of embryos lost before and at the beginning of the implantation process in the uterus, whether as a result of natural miscarriages or unfavourable conditions in the woman's reproductive system as a result of hormonal drugs (the embryo reaches the uterus within four or five days after fertilisation). Since current techniques (determination of the presence of chorionic gonadotropin and its beta subunit β hCG) make it possible to establish the existence

5 The author assumes that conception of a child marks the beginning of the life of a new human being, taking place through the process of fertilisation, in which a male reproductive cell (the sperm) and a female reproductive cell (the ovum) unite to form a single cell called a zygote.

6 See D.A. Grimes, *Commentary. Forgettable contraception*, "Contraception" 2009, 80(6), pp. 497-499, <https://doi.org/10.1016/j.contraception.2009.06.005>; J. Trussell, *Contraceptive failure in the United States*, "Contraception" 2011, 83(5), pp. 397-404, <https://doi.org/10.1016/j.contraception.2011.01.021>.

7 This refers to the traditional contraceptive pill regimen, which consists of taking placebo pills for seven days and hormone pills for 21 days. In the regimen of 4 days of placebo followed by 24 days of hormone pills, 6.9% of the women tested became pregnant during the year of use of these agents, and in the regimen of 7 days of placebo and 84 days of hormone pills, 4.4% of the women. See B. Howard et al., *Comparison of pregnancy rates in users of extended and cyclic combined oral contraceptive (COC) regimens in the United States: a brief report*, "Contraception" 2014, 89(1), pp. 25-27, <https://doi.org/10.1016/j.contraception.2013.09.007>.

of a new human being no sooner than on the 7th day after fertilisation, it should be assumed that the aforementioned 7.3 % does not represent the number of actual conceptions, but the number of successful implantations of the embryo in the uterus.

Table 1. Number of women per 100 becoming pregnant during a year of restrictive (ideal) and typical (usual) contraceptive use

Type of contraceptive	Usual use <i>Typical use</i>	Ideal application <i>Perfect use (Pearl index)⁸</i>
Spermicides	28	18
Condoms and spermicides	12	6
Male condoms	21	5
Hormone tablets	9	0.3
Hormone patches	9	0.3
IUD with hormone	9	0.3
Hormone injections	6	0.2
IUDs with hormone	0.2	0.2
Copper IUDs	0.8	0.6
IUDs with hormone	0.2	0.2
Copper IUDs	0.8	0.6

Source: own compilation based on J. Trussell, op. cit. pp. 397-404.

A woman is more likely to conceive (and ovulate) while taking contraceptives if she skips or delays taking the pill (for example by a day or two), if she has other irregularities in her menstrual cycle or if she has gastrointestinal problems that interfere with the absorption of the hormones contained in the pill. Also, drug interactions (for example with antibiotics, substances containing St John's wort, or laxatives) can reduce the effectiveness of some contraceptives.⁹ It is reported that non-compliance with medical

⁸ The Pearl Index represents the number of pregnancies that occur in 100 women using a particular method for one year in an ideal manner.

⁹ See G.G. Zhanel et al., *Antibiotic and oral contraceptive drug interactions: Is there a need for concern?* "Canadian Journal of Infectious Diseases" 1999, 10(6), pp. 429-433, <https://doi.org/10.1155/1999/539376>; S.D. Hall et al., *The interaction between St John's wort and an oral contraceptive*, "Clinical Pharmacology & Therapeutics" 2003, 74(6), pp. 525-535, <https://doi.org/10.1016/j.cpt.2003.08.009>.

advice on how to use hormonal drugs can affect 52% of women¹⁰ (and even between 2.5% and 71%¹¹). In addition, it should be mentioned that manufacturers of contraceptive pills, when a woman misses one or two pills (which should be taken at a fixed time), do not guarantee the effectiveness of the contraceptive action and recommend the use of an additional contraceptive method, such as a condom. This means that the hormone content of contraceptive products (due to their harmful effects on the female body) is very low and even borderline. Furthermore, it is pointed out that the efficacy of these products is the resultant of the functioning of all their mechanisms of action. Indeed, hormonal drugs are characterised by complex mechanisms of action: they inhibit ovulation in an incomplete manner (impeding fertilisation), cause changes in the endometrium (impeding embryo implantation), affect the physical and chemical properties of the cervical mucus (impeding fertilisation) and impair the function of the fallopian tubes (affecting embryo transport and the implantation process).¹² Thus, with such a small level of hormones, other post-fertilisation mechanisms may contribute more significantly to the effectiveness of contraceptive drugs than is generally reported. Therefore, although the risk of ovulation (incomplete inhibition of ovarian function) cannot be accurately estimated, it must be acknowledged on the basis of statistical studies and observations that ovulation does occur if such a high proportion of women become pregnant while using contraceptives.

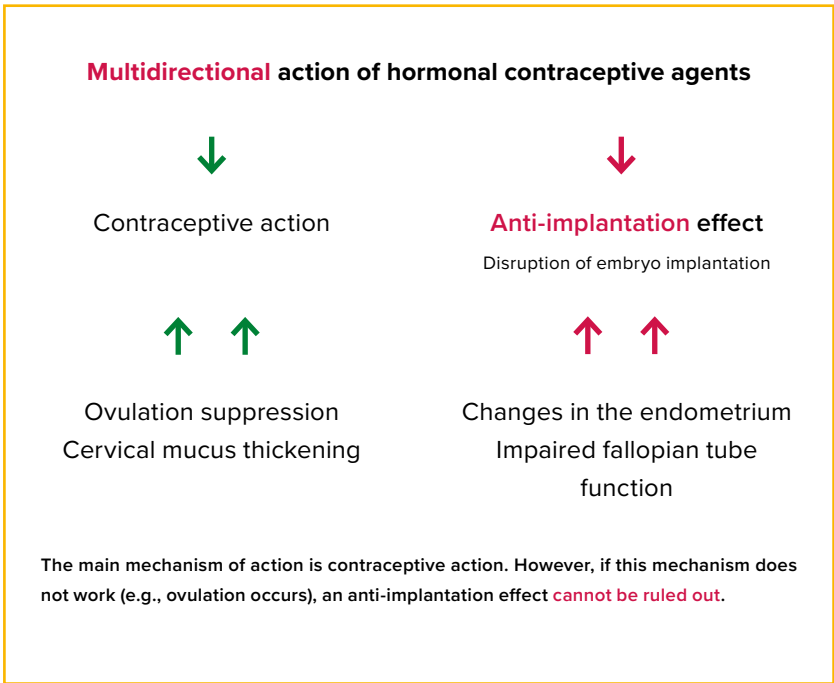
10 See T. Martínez-Astorquiza-Ortiz de Zarate et al., *Evaluation of factors associated with non-compliance in users of combined hormonal contraceptive methods: a cross-sectional study: results from the MIA study*, "BMC Women's Health" 2013, 13, pp. 13-38, <https://doi.org/10.1186/1472-6874-13-38>.

11 See I. Lete et al., *Self-described impact of non-compliance among users of a combined hormonal contraceptive method*, "Contraception" 2008, 77(4), pp. 276-282, <https://doi.org/10.1016/j.contraception.2007.11.009>.

12 The contraceptive effect is determined by the gestagen component (progesterone equivalent), which primarily reduces the 'ejection' of the luteinising hormone (LH) in the middle of the cycle, thus inhibiting ovulation. It also impairs the luteal phase of a woman's monthly cycle, causing changes in the endometrium, a reduction in the number of progesterone receptors, and atrophy (atrophy) of the endometrial glands. In addition, the gestagen component increases the density of cervical mucus, thereby reducing its permeability to sperm. The progesterone counterpart also affects the peristalsis and function of the fallopian tubes (contractility and cilia movement). In contrast, the estrogen counterpart inhibits the selection and growth of the dominant follicle (suppression of the folliculotropic hormone FSH), contributes to changes in the endometrium (incomplete secretory transformation) and enhances progestational actions. See A. Danysz, *Kompedium farmakologii i farmakoterapii*, Wrocław 1995, pp. 679-685; J. Guillebaud, *Antykoncepcja – pytania i odpowiedzi*, Kraków 2005; M. Obara, Z. Słomko, *Metody planowania rodziny*, [in:] *Ginekologia*, ed. Z. Słomko, Warszawa 2008, vol. 2, pp. 589-616; L. Pawelczyk, B. Banaszewska, *Regulacja urodzeń*, [in:] *Położnictwo i ginekologia*, ed. G.H. Bręborowicz, Warszawa 2005, pp. 951-960; W.L. Larimore, J.B. Stanford, *Postfertilization effects of oral contraceptives and their relationship to informed consent*, "Archives of Family Medicines" 2000, 9(2), pp. 126-133, <https://doi.org/10.1001/archfam.9.2.126>; P.A. Redigior, *The clinical relevance of progestogens in hormonal contraception: Present status and future development*, "Oncotarget" 2018, 9(77), pp. 34628-34638, <https://doi.org/10.18632/oncotarget.26015>.

According to a report published in 2014 by the British Pregnancy Advisory Service, the majority of women (67%) having abortions admitted to conceiving a child while using contraceptives (40% of whom used the contraceptive pill and 35% of whom used condoms).¹³ These data conclusively prove that children are conceived while using the contraceptive pill. However, before going on to analyse the impact of the contraceptives taken on the development and life of the conceived child, it is worth pausing to consider the fact that ovulation is incompletely inhibited, as it is often stated in information materials for women that ovulation does not occur while taking hormonal contraceptives.

Figure 1. Multidirectional effects of hormonal contraceptives



Source: own study.

¹³ See British Pregnancy Advisory Service, *Women trying hard to avoid unwanted pregnancy, research shows*, <https://www.bpas.org/about-our-charity/press-office/press-releases/women-trying-hard-to-avoid-unwanted-pregnancy-res>, publication date 4 February 2014, accessed 9 May 2022.

3 Ovarian activity during contraceptive use

Based on an analysis of the available studies, it can be concluded that during the use of hormonal contraceptives, ovarian function is not completely inhibited and that the risk of ovulation is not as low as commonly thought. In one analysis, the occurrence of ovulation during the use of hormonal contraceptive pills containing 0.02-0.04 mg of oestrogen and various combinations of progestogens was detected in 10 out of 29 studies.¹⁴ It is also worth pointing to a compilation of studies by Ian Milson and Tjeerder Korver. Ovulation incidence of 1.9-30% was reported in as many as 22 studies out of 66 analysed.¹⁵ In contrast, a study by Roger Pierson's team, which aimed to compare the efficacy of the hormonal patch and the contraceptive pill, observed an incidence of ovulation of 12-28% when the levonorgestrel contraceptive pill was taken correctly. We also find studies in which ovulation occurred at a level of 2-8% with the use of disogestrel-containing binary pills.¹⁶ On the basis of the indicated studies, it can be assumed that ovarian activity (recruitment and development of ovarian follicles) is not completely inhibited during the use of the two-component hormonal pills, which is confirmed by the results of subsequent studies. Follicle growth above 8 mm was observed in 61% of cycles with the contraceptive pill and above 18 mm in 18%, whereas the ovulatory follicle in natural cycles reaches a diameter of 15-20 mm.¹⁷ In this context, it is worth pausing to consider the results of the study carried out by Angela Baerwald's team. By observing natural cycles and those with contraceptive pills, as well as cycles during hormonal stimulation during an IVF procedure, the researchers found that the rate of follicle growth during contraceptive pills (1.36 mm per day) was comparable to natural

14 See A.R. Baerwald, R.A. Pierson, *Ovarian follicular development during the use of oral contraception: A review*, "Journal of Obstetrics and Gynaecology Canada" 2004, 26(1), pp. 19-24, [https://doi.org/10.1016/S1701-2163\(16\)30692-2](https://doi.org/10.1016/S1701-2163(16)30692-2).

15 The studies collated can be interpreted in different ways. The aim here is only to signal the fact of ovulation reporting without going into methodological details. See I. Milson, T. Korver, *Ovulation incidence with oral contraceptives: a literature review*, "Journal of Family Planning and Reproductive Health Care" 2008, no. 34(4), pp. 237-246, <https://doi.org/10.1783/147118908786000451>.

16 See C. Klipping et al., *Suppression of ovarian activity with a drospirenone-containing oral contraceptive in a 24/4 regimen*, "Contraception" 2008, 78(1), pp. 16-25, <https://doi.org/10.1016/j.contraception.2008.02.019>.

17 See C.L. Westhoff et al., *Pharmacokinetics of a combined oral contraceptive in obese and normal-weight women*, "Contraception" 2010, 81(6), pp. 474-480, <https://doi.org/10.1016/j.contraception.2010.01.016>; K.A. Petrie, A.H. Torgal, C.L. Westhoff, *Matched-pairs Analysis of Ovarian Suppression During Oral vs. Vaginal Hormonal Contraceptive Use*, "Contraception" 2011, 84(5), pp. e1-e4, <https://doi.org/10.1016/j.contraception.2011.05.003>.

cycles (1.42 mm per day). It should be noted that in the study in question, out of 96 cycles with the contraceptive pill, ovulation was observed in as many as 29.¹⁸ Similarly, ovarian function is not inhibited during the use of single-ingredient pills with a low dose of progestogens, as textbooks for medical students state that ovulation can occur in 18-84% of cycles with these agents.¹⁹ There is little source literature on the inhibition of ovulation during the use of contraceptives in the form of the patch, IUDs, and injections. It is only reported that ovarian folliculogenesis is not completely inhibited during their use either, although these forms are believed to be more effective than the pill.²⁰ It is indicated that hormone-containing IUDs inhibit ovulation at a level of 10-50% of cycles,²¹ and with copper are unlikely to inhibit ovulation.²²

A review of scientific articles reporting the occurrence of ovulation while taking contraceptives (see Table 2) allows us to conclude that their use does not completely inhibit ovulation. This means that there is a likelihood of conception during this time.

Table 2. Observed ovulation rate in women taking certain types of contraceptives (EE – ethylenestradiol, LNG – levonorgestrel)

Type of contraceptive	Test/chemical composition	Observed number of ovulations
Two-component hormonal pills	Pierson et al., 2003 ²³ 20 µg EE, 100 µg LNG	21% (21 ovulations / 100 cycles)
	Baerwald et al., 2004 ²⁴ 20-40 µg EE	Ovulation occurred in 10 out of 29 tests

18 See A.R. Baerwald, R.A. Walker, R.A. Pierson, *Growth rates of ovarian follicles during natural menstrual cycles, oral contraception cycles, and ovarian stimulation cycles*, "Fertility and Sterility" 2009, 91(2), pp. 440-449, <https://doi.org/10.1016/j.fertnstert.2007.11.054>.

19 See M. Obara, Z. Słomko, op. cit., pp. 589-616.

20 See *ibid*; R.A. Pierson et al., *Ortho Evra/Evra versus Oral Contraceptives: Follicular Development and Ovulation in Normal Cycles and after an Intentional Dosing Error*, "Fertility and Sterility" 2003, 80(1), pp. 34-42, [https://doi.org/10.1016/S00150282\(03\)00556-9](https://doi.org/10.1016/S00150282(03)00556-9); K.A. Petrie, A.H. Torgal, C.L. Westhoff, op. cit., pp. e1-e4.

21 See R.T. Burkman, K.L. Dardano, P.E. Bailey-Sarnell, *Antykoncepcja*, [in:] *Ginekologia kliniczna*, vol., 3, ed. R. Dębski, Kraków 2009, pp. 863-874.

22 See A. Brown, *Long-term Contraceptives*, "Best Practice & Research Clinical Obstetrics and Gynaecology" 2010, no. 24(5), pp. 617-631, <https://doi.org/10.1016/j.bpobgyn.2010.04.005>.

23 See R.A. Pierson et al., op. cit., pp. 34-42.

24 See A.R. Baerwald, R.A. Pierson, op. cit., pp. 19-24.

Type of contraceptive	Test/chemical composition	Observed number of ovulations
	Milson et al., 2008 ²⁵	
	30-35 µg EE	1.8% (22 ovulations / 1227 cycles)
	15-20 µg EE	3.9% (32 ovulations / 826 cycles)
	Phased	4.8% (26 ovulations / 540 cycles)
	Baerwald et al., 2009 ²⁶	
	20-40 µg EE	30.2% (29 ovulations / 96 cycles)
	Klipping et al., 2008 ²⁷	
	20 µg EE/3mg drospirenel	4.8% (5 ovulations / 105 cycles)
Single-ingredient hormonal pills	Milson et al., 2008 ²⁸	
	Norethisterone	34.9% (30 ovulations / 86 cycles)
	Levonogestrel	36.3% (70 ovulations / 193 cycles)
	Desogestrel	1.5% (5 ovulations / 331 cycles)
	Obara et al., 2008 ²⁹	18-84%
Hormone patches	Pierson et al., 2003 ³⁰	
	20 µg EE, 150 µg orelgestromin	1.1% (2 ovulations / 188 cycles)
Implants	Barbasa et al., 2006 ³¹	
	55 mg nomegestrol	20%
IUDs	Lahteenmaki et al., 2000 ³²	
	20 µg LNG/24h	up to 85%
	Stanford et al., 2002 ³³	
	Copper	up to 100%

Source: own compilation based on the research given in the table.

As has already been pointed out, neither the use of hormonal contraceptives nor the use of IUDs guarantees the complete suppression of ovarian activity: ovulation not only can occur, but actually does occur, so that also

25 See I. Milson, T. Korver, op. cit., pp. 237-246.

26 See A.R. Baerwald, R.A. Walker, R.A. Pierson, op. cit., pp. 440-449.

27 See C. Klipping et al., op. cit., pp. 16-25.

28 See I. Milson, T. Korver, op. cit., pp. 237-246.

29 M. Obara, Z. Słomko, op. cit., pp. 589-616.

30 See R.A. Pierson et al., op. cit., pp. 34-42.

31 See I.C. Barbosa et al., *Effect of single silastic contraceptive implant containing nomegestrol acetate (Uniplant) on endometrial morphology and ovarian function for 1 year*, "Contraception" 2006, 74(6), pp. 492-497, <https://doi.org/10.1016/j.contraception.2006.07.013>.

32 See P. Lähteenmäki, I. Rauramo, T. Backman, *The levonorgestrel intrauterine system in contraception*, "Steroids" 2000, 65(10-11), pp. 693-697, [https://doi.org/10.1016/S0039-128X\(00\)00176-8](https://doi.org/10.1016/S0039-128X(00)00176-8).

33 See J.B. Stanford, R.T. Mikołajczyk, *Mechanism of action of intrauterine devices update and estimation of postfertilisation effects*, "American Journal of Obstetrics and Gynecology" 2002, 187(6), pp. 1699-1708, <https://doi.org/10.1067/mob.2002.128091>.

during the use of contraceptives it is possible for an ovum to be fertilised and for a new human being to emerge. This raises the question: to what extent do physical and chemical changes in the cervical mucus have the effect of restricting fertilisation? This leads to another question: are these changes sufficient to prevent fertilisation under these conditions? There are no studies stating that cervical mucus after hormonal drugs would be completely impermeable to sperm. It appears that some sperm overcome mucus of abnormal quality without losing their ability to fertilise.³⁴ In that case, this mechanism, like the inhibition of ovulation, is unreliable because it does not completely prevent fertilisation. In the event that ovulation does occur, it can only hinder conception, not prevent it, as evidenced by the fact that women who take contraceptives become pregnant (see Table 1). It should be noted that the frequency of ovulation observed (see Table 2) is greater than the Pearl Index (see Table 1) for the method. This implies that, in addition to ovulation inhibition, other mechanisms of action, such as changes in cervical mucus, changes in fallopian tube function and morphological and functional changes in the endometrium, contribute to the contraceptive and anti-gestational (early abortion) effects.³⁵

4 The impact of contraceptives on human life

4.1 Cytotoxic effects on the zygote

Cytotoxic effects on the zygote and the embryo can occur during the use of both hormonal and copper-containing IUDs. All IUDs induce inflammation of the female reproductive organs (uterus and fallopian tubes), with

34 See M.C. Chang, D.M. Hunt, Effects of various progestins and estrogen on the gamete transport and fertilization in the Rabbit, "Fertility and Sterility" 1970, 21(9), pp. 683-686, [https://doi.org/10.1016/S0015-0282\(16\)37745-7](https://doi.org/10.1016/S0015-0282(16)37745-7); W.S. Yeung et al., *The effects of levonorgestrel on various sperm functions*, "Contraception" 2002, 66(6), pp. 453-457, [https://doi.org/10.1016/S00107824\(02\)00408-0](https://doi.org/10.1016/S00107824(02)00408-0); R. Steward et al., *Comparison of cervical mucus of 24/4 vs 21/7 combined oral contraceptives*, "Contraception" 2012, 86(6), pp. 710-715, <https://doi.org/10.1016/j.contraception.2012.05.004>.

35 Often the anti-embryonic action is incorrectly referred to as a contraceptive action. This is due to an erroneous definition of the beginning of human life, in which it is assumed that human life does not begin at the moment of fertilisation, but after the completion of the process of implantation of the embryo in the uterus, which occurs around day 12-14 after fertilisation. Consequently, the change in the definition of the beginning of life (and its promotion) entails a change in the definition of pregnancy, miscarriage, abortion action and abortion measures. Adopting the definition that human life begins after the implantation of the embryo in the uterus is complete makes it possible to claim that anti-embryonic agents (IUDs, the 'morning-after pill', and hormonal contraceptives) do not have an abortifacient effect, although a conceived child may die as a result of their use in the first days of its life.

the effect believed to be stronger with copper-containing IUDs. In addition, the expelled copper ions contribute to creating an environment that is toxic to the sperm, egg, and embryo, which can lead to their damage or destruction.³⁶ It is difficult to assess how many lost embryos this results in, as there are few studies on the effect of IUDs after fertilisation. Nevertheless, there is evidence that IUDs contribute to the destruction of embryos created during their use.³⁷

4.2 Disruption of embryo transport in the fallopian tube

The zygote divides into progeny cells – blastomeres – to form a two-cell stage, a four-cell stage and an eight-cell stage. These divisions occur while the embryo is in the oviduct. The continuous divisions of the blastomeres result in the formation of a morula consisting of – depending on the sources – 8 to 16³⁸ or 12 to 32 cells.³⁹ The morula reaches the uterine cavity in about two to four days after fertilisation, then transforms into a blastocyst. The speed of this transport depends on the width of the fallopian tube lumen, the number of mucosal folds, the degree of contractility and the contribution of the cilia to the flow of the fallopian tube fluid. The quality of the fallopian tube fluid, which carries the embryo and contains the metabolites necessary for its development, is also of great importance.⁴⁰ It is mentioned that during the use of hormonal pills there is a decrease in fallopian tube peristalsis, contractility, and cilia movement.⁴¹ Changes in fluid secretion in the fallopian tubes have been observed during the use of IUDs, and it is also indicated that fallopian tube transport is impaired (it may be accelerated or slowed down).⁴²

36 See The ESHRE Capri Workshop Group, *Intrauterine Devices and Intrauterine Systems*, "Human Reproduction Update" 2008, 14(3), pp. 197-208, <https://doi.org/10.1093/humupd/dmn003>; J.B. Stanford, R.T. Mikołajczyk, op. cit., pp. 1699-1708.

37 See C. Buskmiller et al., *Systematic Review of Postfertilisation Effects and Potential for Embryo Formation and Loss during the Use of Intrauterine Devices*, "Linacre Quarterly" 2020, 87(1), pp. 60-77, <https://doi.org/10.1177/0024363919854289>.

38 See L. Pawełczyk, M. Serdyńska, *Ciąża o przebiegu normalnym*, [in:] *Położnictwo i ginekologia*, ed. G.H. Bręborowicz, Warszawa 2008, p. 6.

39 See K.L. Moore, T.V.N. Persaud, K. Shiota, *Colorant atlas of clinical embryology*, Philadelphia 1994.

40 See J. Skrzypczak, J. Kornacki, *Ciąża o przebiegu nieprawidłowym*, [in:] *Położnictwo. Podręcznik dla położnych i pielęgniarek*, ed. G.H. Bręborowicz, Warszawa 2002, p. 60.

41 See M. Obara, Z. Słomko, op. cit., pp. 589-616.

42 See The ESHRE, op. cit., pp. 197-208; J.B. Stanford, R.T. Mikołajczyk, op. cit., pp. 1699-1708.

Slowing down the motility of the fallopian tubes can result in the embryo being ready to implant in the fallopian tube rather than in the uterus. The result can be:

- embryo necrosis and spontaneous abortion,
- implantation in the mucosa of the fallopian tube and the development of an ectopic (ectopic) pregnancy.

There is an increased risk of ectopic pregnancy with both hormonal two-ingredient pills⁴³ and single-ingredient pills,⁴⁴ with the risk being greater with single-ingredient pills. A review of studies by Gervaise's team concludes that the risk of ectopic pregnancy during use of single-ingredient pills compared to a control group of pregnant women increases by up to 80 times.⁴⁵ The number of ectopic pregnancies is also higher in women using IUDs (1 in 6-8) than in women not using them (1 in 20). Some explain this by the fact that IUDs protect against pregnancy more effectively when implantation occurs in the uterus than when it would occur in the fallopian tubes, which would mean that some embryos reach the uterine cavity but cannot implant.⁴⁶ Other authors argue that this assumption may be flawed, as IUD-induced inflammation can also extend to the fallopian tubes (especially when using copper IUDs) and thus impede embryo implantation in both the fallopian tube and the uterus, with the concomitant potential for embryo destruction.⁴⁷ It is claimed that IUDs with levonorgestrel interfere more with the transport of the embryo in the fallopian tubes than IUDs with copper, which in turn have a direct toxic effect on the embryo.⁴⁸

43 See J. Coste et al., *Risk factors for ectopic pregnancy: a case-control study in France, with special focus on infections factors*, "American Journal of Epidemiology" 1991, 133(9), pp. 838-849, <https://doi.org/10.1093/oxfordjournals.aje.a115964>; J. Thorburn et al., *Background factors of ectopic pregnancy. Frequency distribution in a case-control study*, "European Journal of Obstetrics & Gynecology and Reproductive Biology" 1986, 23(5-6), pp. 321-331, [https://doi.org/10.1016/0028-2243\(86\)90167-x](https://doi.org/10.1016/0028-2243(86)90167-x).

44 See P. Liukko, R. Eekola, L. Laakso, *Ectopic pregnancies during use of low-dose progestogens for oral contraception*, "Contraception" 1977, 16(6), pp. 575-580, [https://doi.org/10.1016/0010-7824\(77\)90058-0](https://doi.org/10.1016/0010-7824(77)90058-0).

45 See A. Gervaise, H. Fernandez, *Prise en charge diagnostique et thérapeutique des grossesses extra-utérines*, "Journal de Gynécologie Obstétrique et Biologie de la Reproduction" 2010, 39(3 Supplement), pp. F17-F24, <https://doi.org/10.1016/j.jgyn.2010.02.013>.

46 See The ESHRE, op. cit., pp. 197-208.

47 J.B. Stanford, R.T. Mikołajczyk, op. cit., pp. 1699-1708.

48 Ibid.

4.3 Embryo implantation disorder

Nesting (implantation) of the embryo usually occurs in the upper part of the uterus, most commonly on the back wall of the uterus. Generally, implantation begins on the sixth day after fertilisation.⁴⁹ At the time of interaction with the endometrium, the embryo (blastocyst) consists of 100-250 cells.⁵⁰ The process of implantation of a human blastocyst in the endometrium is complex and divided into multiple stages.⁵¹ It requires a morphologically and functionally well-prepared endometrium, whose only function is to ensure the correct implantation of the blastocyst and thus to allow its further development – until birth. The process described also involves the ‘tolerance’ of two genetically partly identical, but antigenically foreign tissues. Such ‘tolerance’ is possible due to the synthesis of special protein substances by the endometrium and the formation of specialised surface structures with immunosuppressive effects. These factors create unique properties of the endometrium during the so-called implantation window, in which it is capable of ‘accepting’ the embryo.⁵² This capacity is also referred to as endometrial receptivity, which can be stronger or weaker. The changes that prepare the endometrium for implantation take place under the influence of female hormones (estrogen and progesterone) mainly in the post-ovulatory secretory phase of the cycle.⁵³ The process of implantation of the embryo in the uterus depends on the interaction between the embryo and the endometrium⁵⁴ and ends on the 12th day after fertilisation.⁵⁵ Thus, the successful implantation of the embryo is influenced by the state of the endometrium morphologically (development) and functionally (hormone secretion, gene activation, protein production). Abnormalities in endometrial development in women taking binary contraceptive pills have

49 See K.L. Moore, T.V.N. Persaud, *The Developing Human. Clinically oriented embryology*, Philadelphia 2008; H. Bartel, *Embriologia medyczna*, Warszawa 2009.

50 See *Implantation, embryogenesis and placental development*, [in:] *Williams obstetrics*, ed. F.G. Cunningham, USA 2005, p. 52.

51 See E. Cheng, V.L. Katz, *Fertilisation and embryogenesis*, [in:] *Comprehensive Gynecology*, V.L. Katz, Philadelphia 2007, p. 8; A. Halbersztadt et al., *Implantation and the antigenicity of the human endometrium*, “Advances in Hygiene of Experimental Medicine” 2006, no. 60, pp. 71-77.

52 See A. Halbersztadt et al., op. cit., pp. 71-77.

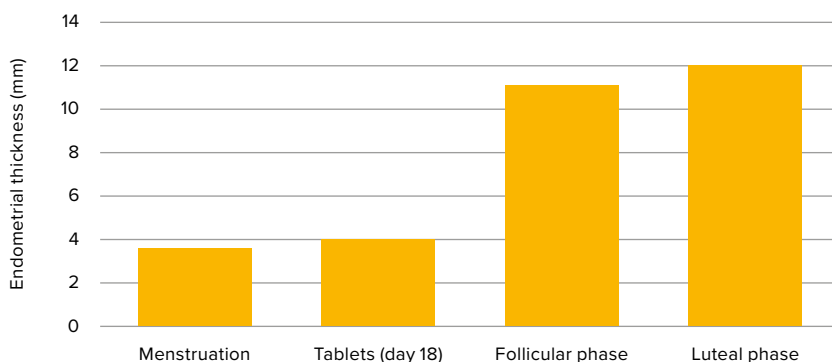
53 See *Implantation, embryogenesis...*, p. 52; H. Lashen, Normal conception, [in:] D. Luesley, P. Baker, *Obstetrics and gynaecology*, London 2004.

54 See H. Bartel, op. cit.

55 See L. Pawelczyk, M. Serdyńska, op. cit., p. 6; H. Bartel, op. cit.

been well recognized and described in the literature. In all cycles studied taking place with these pharmacological agents, there is a significant reduction in the thickness of the endometrium: up to 3-5 mm, whereas in natural cycles the endometrial thickness is 11 mm (± 3 mm).⁵⁶

Figure 2. Inhibition of endometrial growth with binary hormonal pills



Source: own elaboration based on D.R. Grow, K. Iromloo, *Oral contraceptives Maritain a very thin endometrium before operative hysteroscopy*, 'Fertility and Sterility' 2006 (85), pp. 204-207.

The thickness of the endometrium (which is a determinant of its receptivity) is of great importance during embryo implantation. The thicker the endometrium, the more implantations are successful, for example with a thickness of 7 mm, 13.6% and with 10 mm, 50% of successful implantations are observed during the IVF procedure.⁵⁷ Studies show that the use of binary pills leads to a reduction in the number of uterine glands, a decrease in the number of progesterone receptors and atrophy of the mucosa. In contrast, varying endometrial developmental abnormalities are noted during the use of single-component pills with a low dose of progestogens. Sometimes the proper functions of the endometrium are preserved, but there are also disorders of secretion and complete atrophy of the endometrium.⁵⁸ Like

56 See D.R. Grow, K. Iromloo, *Oral contraceptives maintain a very thin endometrium before operative hysteroscopy*, 'Fertility and Sterility' 2006, 85(1), pp. 204-207, <https://doi.org/10.1016/j.fertnstert.2005.06.044>.

57 See K. Bugge et al., *Pregnancy rates following in vitro fertilization are reduced with a thin endometrium, but are unrelated to endometrial thickness above 10 millimeters*, 'Fertility and Sterility' 2004, 82 (2 Supplement), p. S199, <https://doi.org/10.1016/j.fertnstert.2004.07.525>.

58 See R. Rivera, I. Yacobson, D. Grimes, *The mechanism of action of hormonal contraceptives and intrauterine contraceptive devices*, 'American Journal of Obstetrics and Gynecology' 1999, no. 181(5), pp. 1263-1269, [https://doi.org/10.1016/S0002-9378\(99\)70120-1](https://doi.org/10.1016/S0002-9378(99)70120-1).

the two-component pill, other hormonal solutions such as patches, IUDs, and injectables significantly inhibit the development of the endometrium.⁵⁹ Impaired endometrial development – up to and including atrophy – and atrophy of the endometrial glands have been recorded in women using IUDs (both containing hormone and copper ions).⁶⁰

In the light of the data cited, it is conceivable that if ovulation and fertilisation occur, significant changes in the endometrium may impede implantation of the embryo in the uterus, which may lead to its destruction.

5 Using the morning-after pill after intercourse

5.1 The morning-after pill with levonorgestrel

Among the mechanisms of action of the levonorgestrel-containing pill (used up to three days after sexual intercourse, which may have been fertile) are the inhibition or delay of ovulation and the effect on the development and function of the endometrium. The literature also points to changes in the function of the corpus luteum, changes in the structure of cervical mucus and effects on peristalsis of the fallopian tubes.⁶¹ The delay or inhibition of ovulation is the most frequently indicated main mechanism of action of these pills, while the effect on the implantation process is considered negligible. However, the results of some studies cast doubt on this statement. One study observed that the morning-after pill did not inhibit or delay ovulation in women who had intercourse on fertile days. Ovulation occurred in the majority of the women studied (86%), but none of them were pregnant.⁶² In women who took the levonorgestrel tablet between one and five days before ovulation, no pregnancy was reported out of 16 expected pregnancies, meaning that no anticipated implantation was successful (no embryos survived). In contrast,

59 See *ibid.*

60 See M. Obara, Z. Słomko, *op. cit.*, pp. 589-616.

61 See M. Prusak, *Informacje o mechanizmach działania hormonalnych tabletek antykoncepcyjnych przedstawione w ulotkach dla pacjentek*, [in:] *Szkodliwość doustnej antykoncepcji hormonalnej*, ed. D.Ł. Jarczewska, Kraków 2015, pp. 37-43.

62 See G. Noé et al., *Contraceptive efficacy of emergency contraception with levonorgestrel given before or after ovulation*, "Contraception" 2011, 84(5), pp. 436-492, <https://doi.org/10.1016/j.contraception.2011.03.006>.

when this pill was administered on the day of ovulation or later, 8 pregnancies out of 8.7 expected pregnancies were registered.⁶³ Thus, according to a study carried out by Gabriela Noé's team, in the majority of women (80-92%), taking the morning-after pill during the fertile period and before the LH peak (the highest concentration of LH – the luteinising hormone) does not inhibit or delay ovulation and therefore does not have a contraceptive effect in the sense of preventing conception.⁶⁴ What is puzzling, however, is that even though the morning-after pill with levonorgestrel has no contraceptive effect, pregnancy does not occur. According to some authors, it can be assumed that it has an early abortifacient effect, as it contributes to the destruction of any embryos that are formed. Here, Rebecca Peck and Juan Vélez point to the following mechanisms of action: slowing down of embryo transport in the fallopian tubes and disruption of the luteal phase (effect on LH and progesterone concentrations) resulting in insufficient development of the endometrium for proper embryo implantation, as well as a shortening of the luteal phase. They also claim that there is no safe period (for example, before ovulation) in which the administration of this product would not be fraught with the risk of an early abortifacient effect, provided fertilisation has occurred. Meanwhile, administration of the pill on the day of ovulation or later does not impede implantation of the embryo in the uterus.⁶⁵

The results of a study carried out by Martha Durand's team also show that the administration of the 'morning-after pill' containing levonorgestrel two days before the LH ejection does not inhibit ovulation completely, as 20 out of 30 women ovulated in this situation in a way that did not deviate from the norm. In the same study, a shortening of the luteal phase (by two days) and significant changes in the concentration of glycodeine A, which plays an important role in fertilisation and implantation, were observed in ovulating women.⁶⁶ Other studies also indicate a shortening of the luteal

63 See *ibid.*

64 The authors of this study conclude that the morning-after pill containing levonorgestrel given during the pre-ovulatory period is 100% effective. They explain the high efficacy by changes in the cervical mucus, as a result of which the migration of sperm is impeded. This argumentation seems problematic, as sperm reach the fallopian tubes within minutes to hours after intercourse.

65 See R. Peck, J.R. Vélez, *The Postovulatory Mechanism of Action of Plan B. A Review of the Scientific Literature*, "The National Catholic Bioethics Quarterly" 2013, 13(4), pp. 677-716, <https://doi.org/10.5840/ncbq201313410>.

66 See M. Durand et al., *Hormonal evaluation and midcycle detection of intrauterine glycodein in women treated with levonorgestrel as in emergency contraception*, "Contraception" 2010, 82(6), pp. 526-533, <https://doi.org/10.1016/j.contraception.2010.05.015>.

phase (by 25-30%), a shortening of the cycle and a decrease in LH and progesterone levels.⁶⁷ Undoubtedly, the changes observed may be the cause of insufficient development of the endometrium and affect its functioning and, consequently, the implantation of the embryo.

According to some authors, the claim that the morning-after pill with levonorgestrel acts mainly by inhibiting or delaying ovulation seems unjustified, but it would have to be assumed that its early-abortive effect can occur not only occasionally but often if given before ovulation.⁶⁸

5.2 The morning-after pill with ulipristal

The dossier available on the website of the European Medicines Agency for morning-after pills containing ulipristal (used up to five days after intercourse that may have been fertile) states the following mechanisms of action: blocking of progesterone receptors, inhibition or delay of ovulation, and changes in the endometrium that may impair embryo implantation.⁶⁹ The leaflet accompanying these drugs only informs women that the pills work 'by delaying ovulation'. However, nothing is mentioned about how these agents work if taken after ovulation and eventual conception (in the period between fertilisation and the end of the implantation process). In contrast, women in the United States find information in the leaflet of an identical product (ellaOne) about its possible effect on embryo implantation in the uterus. The leaflet states that ellaOne works primarily by stopping or delaying the release of an egg from the ovary, but also notes that it may prevent embryo implantation in the uterus ('ellaOne is thought to work for emergency contraception primarily by stopping or delaying the release of an egg from the ovary. It is possible that ella may also work by preventing attachment "implantation" to the uterus').⁷⁰ A study by Vivian Brache and a team of researchers showed that after administration of 30 mg of ulipristal,

67 See R. Peck, J.R. Vélez, op. cit., pp. 677-716.

68 See C. Kahlenborn, R. Peck, W.B. Severs, *Mechanism of action of levonorgestrel emergency contraception*, "The Linacre Quarterly" 2015, 82(1), pp. 18-33, <https://doi.org/10.1179/2050854914Y.0000000002>.

69 CHMP Assessment Report for ellaOne, Doc.Ref: EMEA/261787/2009, https://www.ema.europa.eu/en/documents/assessment-report/ellaone-epar-public-assessment-report_en.pdf, accessed 21 May 2022.

70 US Food and Drug (FDA), *Highlights of prescribing information*, https://www.accessdata.fda.gov/drugsatfda_docs/label/2010/022474s0001bl.pdf, accessed 21 May 2022.

ovulation was not inhibited, but delayed by 5 days in only 58.8% of cycles (average calculated for all cycles studied, regardless of the phase of the cycle in which ulipristal was given). This leaves 41.2% of cycles in which ovulation was neither delayed nor inhibited.⁷¹ Further, the same researchers indicate that administration of ulipristal in a single dose of 30 mg before the luteinising hormone (LH) ejection delayed ovulation by about five days in 100% of cases, and that after the ejection, but before reaching its highest concentration (the LH peak), a delay in ovulation of at least five days was observed in 79% of cases. In contrast, administration of the pill on the day of the LH peak (i.e., a day or two before ovulation and on the day of ovulation) does not generally delay ovulation: in studies, it was observed to delay ovulation in only 8% of cases.⁷² This begs the question: what mechanism of action affects the high efficacy (98%) of the ulipristal tablet when given on or just before the day of ovulation? It is also puzzling how the pill works when given up to 5 days after intercourse, which may have been fertile, and therefore after fertilisation. Ulipristal inhibits progesterone, which plays a key role in preparing the endometrium for implantation and in the embryo implantation process itself. This is also indicated by a 2017 study, which found that there was an association between the use of 30 mg ehaveal and significant changes in the expression of genes that are important for the proper functioning of the endometrium and that determine its susceptibility to implantation. This means that the administration of ulipristal is associated with a high probability of impeding (or even preventing) embryo implantation, which is a prerequisite for the further development of the child.⁷³ It should also be emphasised at this point that successful embryo implantation depends on the synchronisation of embryo and endometrial development. The blockade of progesterone receptors (exclusion of progesterone) certainly disrupts this synchronisation, especially as ulipristal binds strongly to proteins and remains in the woman's body for a long time.

71 See *ibid.*

72 In contrast, the following results were obtained with the use of levonorgestrel: before LH ejection, 25%; after ejection, but before the LH peak, 14%; after the LH peak, 9%, thus a weaker inhibition of ovulation. See V. Brache et al., *Ulipristal acetate prevents ovulation more effectively than levonorgestrel: analysis of pooled data from three randomised trials of emergency contraception regimens*, "Contraception" 2013, 88(5), pp. 611-618, <https://doi.org/10.1016/j.contraception.2013.05.010>.

73 See S. Lira-Albarrán et al., *Ulipristal acetate administration at mid-cycle changes gene expression profiling of endometrial biopsies taken during the receptive period of the human menstrual cycle*, "Molecular and Cellular Endocrinology" 2017, 447, pp. 1-11, <https://doi.org/10.1016/j.mce.2017.02.024>.

Its half-life (the time after which the ulipristal concentration in the blood decreases to half of its initial value) is 32.4 hours $\pm$ 6 hours.⁷⁴ Thus, the high efficacy of the ulipristal-containing morning-after pill may also be related to its early-abortive effect (disruption of the implantation process), especially when given 1 to 2 days before ovulation or later.

6 Health risks to offspring

In 2017, Yaanlin Zou of the Central China University of Science and Technology showed that prenatal exposure to levonorgestrel or to a levonorgestrel/ethylenestradiol combination induces autism-like behaviour in the offspring (especially the male sex). This occurs through suppression of the $Er\beta$ receptor (suppression of the oestrogen receptor β) and its target genes in the amygdala, the part of the limbic system of the brain that is responsible for information processing in the sphere of interpersonal contacts, as well as the formation of negative and positive emotions.⁷⁵ This and other studies have indicated that prenatal exposure to progestogens is a strong risk factor for autism-like behaviour in offspring. Oral contraceptive pills containing progestogens, progestogen-contaminated drinking water or seafood, may be risk factors for autism spectrum symptoms in offspring. It is undeniable that some women become pregnant despite taking hormonal contraception or shortly after stopping it – in these cases, their children are exposed to progestogens in early prenatal life.

7 Summary

There is no doubt that the preventive (anti-conception) effect of modern hormonal contraceptives is due to the inhibitory effect on ovulation and the effect on sperm transport, sperm quality, and sperm motility. Other mechanisms, such as effects on the transport of the embryo in the fallopian tubes

74 European Medicines Agency, Summary of product characteristics of ellaOne 30 mg tablet, https://www.ema.europa.eu/en/documents/product-information/ellaone-epar-product-information_en.pdf, accessed 21 May 2022.

75 See Y. Zou et al., *Prenatal levonorgestrel exposure induces autism-like behaviour in offspring through $ER\beta$ suppression in the amygdala*, "Molecular Autism" 2017, 8, article number 46.

and on the action of the corpus luteum (progesterone production, indirect action on the endometrium), or effects on the development and function of the endometrium, as well as a reduction in progesterone production, may contribute to the inhibition or obstruction of embryo implantation and thus to an early abortifacient effect. Such aneuhavet will be more likely during the use of low dose gestagen medications and IUDs, which do not inhibit ovulation completely. It is worth noting that in the case of binary solutions this effect cannot be excluded either. With regard to the morning-after pill, it should be stated, taking into account the review of the available studies, that the administration of these pills also before ovulation does not guarantee that an embryo-destroying effect will not occur, and in the case of pills containing levonorgestrel this is even more likely than hitherto thought. 'After-pills' with ulipristal given just before ovulation, and thereafter, are very likely to result in an early abortifacient effect if fertilisation has occurred (or will occur). Thus, in the light of the data cited, the use of hormonal contraceptives and IUDs may endanger the life of the child conceived in early development, mainly by preventing implantation of the embryo in the endometrium. In addition, it is worth adding that the use of hormonal drugs can jeopardise the health of both the offspring and the mother.

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Abstract

Available studies indicate that both hormonal contraceptives and the intra-uterine devices currently used do not completely inhibit the activity of the ovaries, which means that ovulation can occur, and it is possible to conceive a child while using these devices. This is also evidenced by the statistics showing the percentage of women getting pregnant despite the use of contraceptives (even up to 7% of women taking combined pills).

Incomplete inhibition of ovulation results, among others, from the low content of hormones in contraceptive preparations, reduced to borderline values due to the harmful effect of hormones on the woman's body. In addition, it should be emphasized that these preparations have a multidimensional effect, and their effectiveness depends on the proper functioning of all their ingredients. In addition to their contraceptive (anti-conception) effect, these agents may also have anti-implantation (early-abortioning) effects.

The contraceptive effect is due to the inhibition of ovulation and the effect of these agents on the quality and motility of sperm. On the other hand, such mechanisms as influence on the movement of the embryo in the fallopian tubes, influence on the functioning of the corpus luteum (progesterone production, an indirect effect on the endometrium), influence on the development and functioning of the endometrium, and decrease in the production of progesterone may inhibit or hinder the process of implantation of the embryo in the uterus. Effects that hinder the implantation of the embryo in the uterus may manifest themselves during the use of hormonal preparations (as well as intrauterine devices) that do not completely inhibit ovulation and, at the same time, cause such changes in the endometrium and/or the functioning of the fallopian tubes that the process of embryo implantation in the uterus will be difficult or even impossible. Impairing implantation of the embryo in the uterus will be more likely to occur with low-dose gestagens and intrauterine devices that inhibit ovulation to a lesser extent.

Regarding 'morning-after' pills, it should be noted that the administration of these pills before ovulation does not guarantee that the embryo will be destroyed, and in the case of pills containing levonorgestrel, this is even

more likely than previously thought. Pills with ulipristal given just before (and after) ovulation are likely to have an early abortion effect if conception has occurred or will occur. Hormonal contraceptives and intrauterine devices may contribute directly or indirectly to early miscarriages, and those considering their use should be fully informed about this.

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Keywords: consequences of abortion, mental disorders, mental health, life protection

Chapter 5

The mental health complications of abortion¹

1 The basic evidence

It is common for advocates of abortion to claim that legally protecting the unborn exerts an unbearable toll on the mental health of women who are not able to end the lives of their children in the womb. Protecting those children, it is claimed, puts their mothers at risk of intolerable stress, or even clinical conditions like depression. This is particularly important since in many countries, ‘mental health’ is the reason most commonly cited for abortion – 98% of abortions in the UK, for example.²

Unfortunately, this is an outdated view of the medical evidence. The latest evidence³ now clearly shows associations between abortion and mental health conditions⁴ which persist even after other factors, like previous mental health, are taken into account.⁵ In this article I will primarily discuss evidence from the two major recent reviews on the topic – that of the National Collaborating Centre for Mental Health (NCCMH) (2011)⁶ and Fergusson

1 The text originally published as: C. Miller, *The mental health complications of abortion*, “Knisja Elfejn”, vol. XXXIII, no. 135, January-March 2021: Favur il-Hajja fil-Ġuf, pp. 77–87, <https://laikosblog.org/wp-content/uploads/2021/03/Knisja-2000-nru.135.pdf>, accessed 19 January 2023.

2 Department of Health & Social Care, *Abortion Statistics, England and Wales: 2019*, London 2019.

3 The chapter refers to data available at the time of publication of the original version.

4 Compared to women continuing an unwanted/unplanned pregnancy. This is widely agreed to be the best comparison group.

5 Hence the usual response of abortion advocates, that these associations are a result of women with poorer mental health seeking abortion more often, does not work. Even when this is adjusted for, the associations remain.

6 National Collaborating Centre for Mental Health, *A systematic review of the mental health outcomes of induced abortion including their prevalence and associated factors*, developed for the Academy of Medical Royal Colleges, London 2011, https://www.aomrc.org.uk/wp-content/uploads/2024/06/Induced_Abortion_Mental_Health_1211.pdf, accessed 19 January 2022.

(2013)⁷ – neither of which were written by pro-life authors. The NCCMH review is the basis for most contemporary recommendations.

Just over a decade ago, the psychiatric community was moving towards a consensus that abortion was harmful for one's mental health. The editor of the *British Journal of Psychiatry* wrote in 2008 that the harmful mental consequences of abortion were on their way to becoming an 'established fact'.⁸ This was in response to a paper by the pro-choice Professor of Psychology, David Fergusson, in the same journal.⁹ This study found that abortion was associated with a 30% increase in the rate of mental disorder, and that 1.5-5.5% of all mental disorders may be attributable to abortion. Fergusson and his colleagues gave six further arguments that the link was causal. Their work is widely agreed to be top quality, even by those reviews which have been interpreted as denying a link between abortion and mental health problems.¹⁰ The NCCMH review explicitly said that Fergusson's 2008 study was the single best quality study on the topic. Yet Fergusson was asked by the New Zealand government not to publish his results because of the potential political implications.¹¹ This goes a long way towards explaining why so many continue to deny an association.

So why is it frequently claimed that there is no link between abortion and mental health? This short article will try to answer this question.

I will start with what the latest good quality evidence shows. In 2013, Fergusson himself undertook a meta-analysis¹² of the best quality studies on abortion and mental health, and found a clear trend. Abortion was associated

7 D.M. Fergusson, L.J. Horwood, J.M. Boden, *Does abortion reduce the mental health risks of unwanted or unintended pregnancy? A re-appraisal of the evidence*, "Australian & New Zealand Journal of Psychiatry" 2013, 47(9), pp. 819-827.

8 P. Tyrer, *From the editor's desk*, "British Journal of Psychiatry" 2008, 193(6), p. 524, <https://doi.org/10.1192/bjp.193.6.524>.

9 D.M. Fergusson, L.J. Horwood, J.M. Boden, *Abortion and mental health disorders: evidence from a 30-year longitudinal study*, "British Journal of Psychiatry" 2008, 193(6), pp. 444-451, <https://doi.org/10.1192/bjp.bp.108.056499>.

10 E.g., National Collaborating Centre for Medical Health, op. cit.; American Psychological Association, *Report of the APA Task Force on Mental Health and Abortion*, Washington, DC 2008, <http://www.apa.org/pi/wpo/mental-health-abortion-report.pdf>, accessed 24 February 2022

11 R.Hill, *Abortion researcher confounded by study*, "New Zealand Herald" 2006, 4 January, https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10362476, accessed 15 May 2022.

12 D.M. Fergusson, L.J. Horwood, J.M. Boden, *Does abortion reduce....*, pp. 819-827.

with increases of 28% for anxiety, 13% for depression, 69% for suicidal behaviour, 134% for alcohol misuse and 291% for drug misuse. The results generally persisted even when only the widely agreed best studies were used.

The link between abortion and suicidal behaviour is particularly important, not just because of the severity of another tragic loss of life, but because suicide has for a long time been the leading cause of maternal deaths in many developed countries, such as the UK.¹³ Pregnancy and childbearing are known to be major protective factors against suicide,¹⁴ so the causal explanation is perfectly plausible.

This increased risk of suicide is partly responsible for the fact that the mortality rate a year after abortion is triple the mortality rate a year after continuing a pregnancy.¹⁵ Even from physical causes alone, the mortality rate after abortion is higher than the mortality rate after pregnancy when all causes are counted.¹⁶

The evidence is also uncontroversial that some women suffer post-traumatic stress disorder symptoms after abortion, with abortion-specific symptoms. Studies differ widely on the frequency of this (between 1.3%¹⁷ and 14.3%¹⁸), but studies by pro-choice authors still concede that this occurs in some cases.¹⁹

Likewise, studies show that most women feel a range of negative emotions following abortion. Fergusson's work in New Zealand – where abortion stigma is

13 M. Oates, *Suicide: the leading cause of maternal death*, "British Journal of Psychiatry" 2003, 183(4), <https://doi.org/10.1192/bjp.183.4.279>, pp. 279-281.

14 S. Tanaka et al., *Female reproductive factors and risk of external causes of death among women: The Japan Public Health Center-based Prospective Study (JPHC Study)*, "Scientific Reports" 2019, 9, article number 14329, <https://doi.org/10.1038/s41598-019-50890-x>; C. Yang, *Association between parity and risk of suicide among parous women*, "Canadian Medical Association Journal" 2010, 182(6), pp. 569-572, <https://doi.org/10.1111/1471-0528.14484>.

15 E. Karalis et al., *Decreasing mortality during pregnancy and for a year after while mortality after termination of pregnancy remains high: a population-based register study of pregnancy-associated deaths in Finland 2001-2012*, "British Journal of Obstetrics and Gynaecology" 2017, 124(7), pp. 1115-1121, <https://doi.org/10.1111/1471-0528.14484>.

16 Cf. *ibid.*, pp. 1115-1121. It is important not to overstate this claim: the study does not control for pre-existing factors like prior mental health and prior health. Probably, abortion does not triple a woman's mortality risk, and is not responsible for all the increased risk of suicide. But it is responsible for a significant part of that increase.

17 B. Major et al., *Psychological responses of women after first-trimester abortion*, "Archives of General Psychiatry" 2007, 57(8), pp. 777-784, <https://doi.org/10.1001/archpsyc.57.8.777>.

18 V.M. Rue et al., *Induced abortion and traumatic stress: A preliminary comparison of American and Russian women*, "Medical Science Monitor" 2004, 10(10), pp. SR5-16.

19 B. Major et al., *op. cit.*, pp. 777-784.

minimal – found that 71.1% of women felt sadness, 34.6% very much so 63.5% felt guilt, 33.7% very much so. 60.6% felt no satisfaction at all.²⁰ These are for the most part long term feelings, since each woman took the survey at age 30.

There is also evidence showing that women feel worse about their abortions as time goes on – so some studies may not capture the full psychiatric consequences of abortion if they have only a short follow-up period. One of the leading pro-abortion researchers, Brenda Major, found that as time went on, negative emotions about the abortion increased, while positive emotions and decision satisfaction decreased.²¹

2 Objections

Given that there is clear evidence of a relationship between abortion and poorer mental health, how is this evidence typically denied? Here I will address the main objections:

Objection 1: The increased incidence of mental health problems after abortion is because women having abortions have worse mental health to begin with.

Response: This is not true. While it is true that women having abortions have worse mental health prior to the abortion on average, the good quality studies on which our conclusions are based take into account prior mental health. They find that even when prior mental health is taken into account and like compared with like, abortion is still associated with poorer psychiatric outcomes.

Objection 2: The large majority of women feel they made the right decision after abortion.

Response: This is true, but it is misleading. This claim usually comes from the Turnaway study, a study comparing women obtaining abortions near

20 D.M. Fergusson, L.J. Horwood, J.M. Boden, *Reactions to abortion and subsequent mental health*, "British Journal of Psychiatry" 2009, 195(5), pp. 420–426, <https://doi.org/10.1192/bjp.bp.109.066068>.

21 B. Major et al., op. cit., pp. 777–784.

the gestation limit and women denied an abortion because they were over the gestation limit. The Turnaway study found that 95% of women thought they made the right decision to abort.²² This is likely an overestimate for reasons explained below (see objection 6), but other studies of much higher quality have found that 90% of women feel they made the right decision.²³ What is often not mentioned, however, is that the Turnaway study also found that 96% of women who were denied an abortion and subsequently had the baby did not still wish they had received the abortion.²⁴ That is, 96% of women who were ‘forced’ to have the baby ended up not regretting their circumstances. What all this tells us is simply that humans are good at coming to terms with their situations and feeling that the right decisions were made. It tells us nothing about the objective psychiatric conditions resulting from abortion or pregnancy.

Nor does this prove that abortion regret is made up. A substantial minority of women feel they made the wrong decision, and most women say they would never have an abortion again.²⁵ Around a third of women feel the emotion of regret, even though many of these feel they made the right decision.²⁶ Feelings of regret regarding abortion are complex phenomena and cannot simply be reduced to feeling one might the right decision.

Objection 3: The overall rate of mental disorders is the same for abortion and pregnancy because the risks balance out.

Response: This is the approach that the NCCMH review took. The authors conceded that abortion was associated with an increased risk of self-harm, but noted that it was associated with a reduced risk of psychosis. But this is again misleading. Firstly, the meta-analysis performed did find an overall increased rate of mental disorders (though this didn’t reach statistical

22 C.H. Rocca et al., *Emotions and decision rightness over five years following an abortion: an examination of decision difficulty and abortion stigma*, “Social Science & Medicine” 2020, 248, p. 112704, <https://doi.org/10.1016/j.socscimed.2019.112704>.

23 D.M. Fergusson, L.J. Horwood, J.M. Boden, *Reactions to abortion...*, pp. 420-426.

24 D.G. Foster, *The Turnaway Study*, New York 2020.

25 H. Söderberg et al., *Emotional distress following induced abortion: A study of its incidence and determinants among abortees in Malmö, Sweden*, “European Journal of Obstetrics & Gynecology and Reproductive Biology” 1988, 79(2), pp. 173-178, [https://doi.org/10.1016/S0301-2115\(98\)00084-0](https://doi.org/10.1016/S0301-2115(98)00084-0).

26 D.M. Fergusson, L.J. Horwood, J.M. Boden, *Reactions to abortion...*, pp. 420-426.

significance). Secondly, the results for suicidality are genuine, whereas the results for psychosis are spurious. The study from which the psychosis results come explicitly noted that many of the cases were not true psychosis, and that when a more reliable measure was used, there was no difference in psychosis between the abortion and continued pregnancy groups.²⁷

Objection 4: The results suggesting a link are not statistically significant.

Response: This objection is misleading. Firstly, some of the results are straightforwardly statistically significant (e.g. between abortion and suicide, between multiple abortions and anxiety; and also for alcohol and drug misuse in Fergusson's meta-analysis). Secondly, a non-statistically significant result does not mean that there is no association. It means that the sample size is too small to judge with very high confidence whether the demonstrated association is genuine or due to chance. Moreover, the threshold for 'statistical significance' is essentially arbitrary – studies can be very close to statistical significance (in which case the results are likely genuine) or very far from it (in which case they may well be due to chance). Given this, it is important that in both major recent meta-analyses, the association between a single abortion and anxiety was very close to statistical significance.²⁸

Hence, in summary, there are a substantial number of statistically significant associations between abortion and various mental disorders, and a few more associations which are very close to statistical significance.

Objection 5: The link between abortion and suicide disappears when unwanted pregnancies are studied, as opposed to unplanned pregnancies.

Response: This is another move made by the NCCMH review, which says that there is a link between abortion of unplanned pregnancies and suicidal behaviour, but no link between abortion of unwanted pregnancies and suicidal behaviour. Again, this is misleading for several reasons.

27 A.C. Gilchrist et al., *Termination of pregnancy and psychiatric morbidity*, "British Journal of Psychiatry" 1995, 167(2), pp. 243-248, <https://doi.org/10.1192/bjp.167.2.243>.

28 The relationship between multiple abortions and anxiety was uncontroversially statistically significant.

Firstly, the best quality study on unwanted pregnancies, Fergusson (2008), showed an increased suicidal behaviour rate among women having abortions. This was cancelled out by a lower quality study, Gilchrist (1995), which found a slightly lower self-harm rate for women having abortions compared with women denied abortions. They gave the same weight to both studies when the first was considered to be higher quality. Secondly, self-harm rates in Gilchrist (1995) were only lower after abortion for women with no prior psychiatric history. For women with prior psychiatric history (who are in fact at most risk), self-harm rates were nearly double after abortion compared with being denied an abortion. Thirdly, the data used for Gilchrist (1995) are from the UK in the 1970s, when refusal of abortion still occurred not too infrequently. There is evidence that in the early stages of legal abortion in the UK, those with inadequate emotional support were significantly more likely to be refused an abortion than those with adequate emotional support.²⁹ This would mean those refused abortion are likely at higher risk of poorer outcomes independently. Finally, by the late 1970s, abortion was widespread in the UK and access to it may have been expected by women. Some of the negative outcomes from being refused an abortion may have instead been due to disappointed expectations and would not apply in a country where abortion is not expected to be available.

Objection 6: More recent studies have contradicted these findings.

Response: While there is no space to cover these in detail here, it is worth briefly commenting on why more recent studies do not overturn the results.

- 1) The Turnaway study³⁰ compared women who received abortions with women who were denied abortions because they were over the gestation limit. While it has received a lot of media attention in recent years, has significant methodological weaknesses.

29 M. Clark et al., *Sequels of unwanted pregnancy. A follow-up of patients referred for psychiatric opinion*, "The Lancet" 1968, 292(7566), pp. 501-503, [https://doi.org/10.1016/S0140-6736\(68\)90662-4](https://doi.org/10.1016/S0140-6736(68)90662-4).

30 M.A. Biggs et al., *Women's mental health and well-being 5 years after receiving or being denied an abortion: a prospective, longitudinal cohort study*, "JAMA Psychiatry" 2017, 74(2), pp. 169-178, <https://doi.org/10.1001/jamapsychiatry.2016.3478>.

Firstly, it had a very low response rate and a very high attrition rate. By the end of the study, only 17% of those invited to the study remained (and the large majority refused to even join the study). Since women who have negative reactions to abortion are more likely to drop out³¹ (as the Turnaway study themselves found³²), this very depleted sample cannot be relied upon for conclusions about mental health. Secondly, the sample was not chosen randomly but seemingly chosen at the discretion of researchers. Only 58% of eligible women were approached for the study, with no explanation of why the others were not included. Thirdly, the worse mental health outcomes among those denied an abortion were short term, and most importantly, only occurred among those who went to obtain an abortion elsewhere. Those women denied abortions who kept their babies had no worse mental health outcomes at any point. Fourthly, it has been reported that the authors of the Turnaway studies have refused to publish the questionnaire used, raising concerns about the selective publication and omission of important results.³³ Fifthly, the study provides minimal information about the support given to women who were refused abortion, so it is unclear whether these women were given the kind of support endorsed by pro-lifers or the kind of support which would be available in Malta. Finally, the measures of anxiety and depression used were extremely limited, consisting of only 6 questions each. In sum, the Turnaway study is of significantly lower quality than other studies on this topic and does not provide any reason at all to doubt our conclusions.³⁴

- 2) A paper was recently published in *The Lancet*³⁵ on suicide, specifically, which is sometimes thought to overturn the fairly well-established link

31 H. Söderberg et al., *Selection bias in a study on how women experienced induced abortion*, "European Journal of Obstetrics, Gynecology, and Reproductive Biology" 1998, 77(1), pp. 67–70, [https://doi.org/10.1016/S0301-2115\(97\)00223-6](https://doi.org/10.1016/S0301-2115(97)00223-6). For more discussion on this point, see N.E. Adler, *Sample attrition in studies of psychosocial sequelae of abortion: how great a problem?*, "Journal of Applied Social Psychology" 1976, 6(3), pp. 240–259, <https://doi.org/10.1111/j.1559-1816.1976.tb01329.x>; D.C. Reardon, *The embrace of the pro-abortion Turnaway study: wishful thinking? Or willful deceptions?*, "Linacre Quarterly" 2018, 85(3), pp. 204–212, <https://doi.org/10.1177/0024363918782156>.

32 C.H. Rocca et al., *Decision rightness and emotional responses to abortion in the United States: a longitudinal study*, "PLoS One" 2015, 10(7), <https://doi.org/10.1371/journal.pone.0128832>.

33 D.C. Reardon, op. cit., pp. 204–212.

34 An extended critique is given by Reardon (2018).

35 J.R. Steinberg et al., *The association between first abortion and first-time non-fatal suicide attempt: a longitudinal cohort study of Danish population registries*, "Lancet Psychiatry" 2019, 6(12), pp. 1031–1038, [https://doi.org/10.1016/S2215-0366\(19\)30400-6](https://doi.org/10.1016/S2215-0366(19)30400-6).

between abortion and suicidal behaviour. The authors argued that since the risk of committing suicide appeared to be the same before and after the abortion, abortion is not the causal factor involved in the higher risk of suicide for women having abortions.

This does not follow, however. There are a number of problems with the study. Firstly, it is not very representative of women having abortions. It excludes women who have had previous abortions, women who have had previous suicide attempts, women having abortions after the first trimester, women having abortions at private clinics, and children. Thus it excludes many women with the highest risk of mental disorders following abortion. Secondly, the study does not control for pregnancy intention (i.e., whether the pregnancy was wanted or intended or not), which affects mental health outcomes significantly. Thirdly, and perhaps most importantly, the study does not have an appropriate control group of women with unplanned or unwanted pregnancies at all. This is almost universally agreed to be a key indicator of study quality;³⁶ on these grounds alone, the study would be considered poor quality according to the major reviews (it would likely be rejected entirely from the NCCMH review). Fourthly, since pregnancy and childbearing are protective against suicide,³⁷ the relevant comparison is with women continuing a pregnancy. This comparison is never made. In fact, the study gives subtle evidence that abortion does increase the risk of suicide relative to pregnancy. In the month before the abortion, during which many women were aware they were pregnant, the suicide rate falls dramatically and seemingly anomalously. By contrast, after the abortion, the suicide risk goes immediately back up to baseline. This confirms the now well-established fact that abortion eliminates the protection that pregnancy offers against suicide. The study also confirms that women having given birth to a child had a significantly lower suicide risk than women who had not. Finally, the discussion in the paper makes straightforwardly false claims about

36 Even the lead author of the study elsewhere recommends this control group. She previously criticised one of Fergusson's earlier papers precisely on the grounds that 'it did not have an appropriate comparison group of women who delivered an unintended pregnancy'. Steinberg's criticism applies *a fortiori* to her own study, which did not even have a comparison group of women delivering a pregnancy, let alone controlling for pregnancy intention.

37 S. Tanaka et al., op. cit., p. 1432; C. Yang, op. cit., pp. 569-572.

previous studies, claiming that ‘other research has not found significant associations between abortion and suicidal ideation’. As we have seen, this is simply untrue.

For all these reasons, the recent studies are of relatively poor quality and do not overturn the evidence previously described.

3 Conclusions

There is much more that could be said on this topic. Most studies are severely limited in scope: for example, many only look at adult women having single abortions of unwanted pregnancies in the trimester. But many abortions are performed on children, many are performed after the first trimester, many are for wanted pregnancies, and most are one of multiple, at least in countries with high abortion rates such as the UK. All of these kinds of abortion are associated with worse outcomes,³⁸ and yet are generally omitted in studies.

In summary, the best available evidence – and evidence not from pro-life sources – clearly demonstrates that abortion is associated with increased risks of suicide and anxiety, and very likely alcohol and substance misuse as well. The single best study estimated that 1.5-5.5% of all mental disorders among the group studied were attributable to abortion. These associations remain even after controlling for prior mental health and other relevant factors. Hence, the argument that abortion is needed to preserve women’s mental health has no basis in the relevant evidence. Moreover, the evidence suggests that the compassionate response to an unplanned pregnancy is to support mothers as much as possible to continue their pregnancies, rather than exposing them to the considerable risks of abortion. Malta has one of the lowest maternal mortality rates in the world – lower than many countries in Western Europe³⁹ – no doubt in part because of the protection it offers to both mother and child.

38 National Collaborating Centre for Mental Health, op. cit.

39 World Bank, *Maternal mortality ratio*, <https://data.worldbank.org/indicator/SH.STA.MMRT>, accessed 24 February 2022.

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Abstract

In many countries, mental health is the reason most commonly cited for abortion. Pro-abortion advocates argue that legally protecting the unborn exerts an unbearable toll on the mental health of women who are not able to end the lives of their children in the womb. Protecting these children, according to pro-abortionists, exposes their mothers to excessive stress and even clinical conditions such as depression. However, the evidence discussed in this chapter clearly shows associations between abortion and mental health conditions which persist even after adjusting for other factors, such as pre-existing mental health. The chapter analyses evidence from the two major recent reviews on the topic – that of the National Collaborating Centre for Mental Health (NCCMH) (2011) and Fergusson (2013) – neither of which was written by pro-life authors. What is more, the chapter provides answers to the main objections that are raised against the recognition of the link between abortion and a worse mental state.

The analysis of the research cited in the chapter allows one to conclude that abortion is associated with increased risks of suicide and anxiety, and very likely alcohol and substance abuse as well. The most reliable study estimated that 1.5-5.5% of all mental disorders among the group studied were attributable to abortion. These associations remain even after accounting for prior mental health and other relevant factors. Hence, the argument that abortion is needed to preserve women's mental health has no basis in the relevant evidence. Moreover, the evidence suggests that the compassionate response to an unplanned pregnancy is to support mothers as much as possible to continue their pregnancies rather than exposing them to the considerable risks of abortion.

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Key terms: abortion, perinatal mortality rate, reproductive health, women's rights, human rights

Chapter 6

Abortion and maternal mortality¹

1 Introduction

In the discourse by international expert bodies, there is a claim, often repeated by some politicians and opinion leaders, that abortion could be the answer to the problem of high perinatal mortality rates occurring in under – and semi – developed countries. The United Nations brochure *Reproductive Health Policies 2017* states that ‘unsafe abortion is one of the leading causes of maternal mortality’.² It also points out that countries in less developed regions, such as Africa and Oceania, could prevent many maternal deaths ‘through better access to sex education, contraceptive information and contraceptives, and safe abortion services and post-abortion care [...]’.³

The present study aims to examine the relationship between the number of abortions performed and maternal mortality in 175 countries around the world, based on an analysis of data available in World Bank and World Health Organization (WHO) databases.

1 Text originally published on 10 March 2020 at: https://ordoiuris.pl/sites/default/files/inline-files/Aborcja_a_smiertelnosc_okoloporodowa_matek_0.pdf, accessed 9 January 2023. The chapter refers to data available at the time of publication of the original version.

2 United Nations, Department of Economic and Social Affairs, Population Division (2017), *Reproductive Health Policies 2017: Data Booklet* (ST/ESA/SER.A/396), https://www.un.org/en/development/desa/population/publications/pdf/policy/reproductive_health_policies_2017_data_booklet.pdf, p. 9, accessed 2 January 2022.

3 Ibid.

2 Maternal mortality – definition and methodological limitations

The World Health Organization defines maternal mortality as ‘the death of a woman during pregnancy or up to the 42nd day after termination of pregnancy, irrespective of the duration and location of the pregnancy, from any cause related to or aggravated by the pregnancy or its progress, but not from accident or accidental causes’.⁴ Thus, the accepted definition of maternal mortality results in mortality during or as a result of abortion being included in the mortality rate. If this is the case, then attempts to export abortion to underdeveloped countries as a prescription for improving the maternal mortality rate is a mephistophelian exercise. Increasing access to inpatient abortion may indeed reduce the statistic that bears the name ‘maternal mortality rate’. However, this does not mean that there will be a reduction in maternal mortality and perinatal mortality, which, although the authors of said indicator do not seem to recognize this, is not the same thing. The lack of distinction in the collection of statistics results in misleading policy makers and, further, the public. However, it is an indicator that exists in international statistics covering most countries of the world, so for practical reasons, it must be considered sufficient.

It should also be noted that a total ban on abortion is in fact in force in almost 50 countries around the world,⁵ but is not so classified by the UN due to the fact that these countries allow the life of the mother to be saved, even if the procedure would risk the death of her unborn child. Such cases are often described as allowing abortion on the grounds that the woman’s life is at risk. However, this description does not seem to be correct, as the admissibility of saving the woman’s life does not imply consent to procedures essentially aiming at killing the child, but only to undertake therapeutic measures aimed at saving the woman’s health, even if they may at the same time lead to bodily harm or disorder of the conceived child. Such actions can be varied and include, for example, caesarean sections in premature births, the performance of which takes into account the mother’s health

4 World Health Organization, <https://www.who.int/healthinfo/statistics/indmaternalmortality/en>, accessed 2 January 2020.

5 *Ranking of countries in terms of the level of legal protection of human life at the prenatal stage of development*, eds. M. Olszówka, N. Bernaciak, A. Czelejczyk, Appendix no. 1 to this monograph.

condition.⁶ ‘The act of sacrificing one legally protected good in order to save another such good, provided that the good being saved represents an obviously superior or equal value to the good being sacrificed (proportionality of protected goods)’⁷ does not imply the permissibility of abortion.

Another fallacy, or rather a sophistical procedure used by promoters of abortion as a factor to reduce maternal mortality, lies in the promotion of correlations that are in fact non-existent. This procedure occurs in situations in which conclusions are drawn on the basis of the co-occurrence of two variables about one variable stemming from the other, ignoring the possible influence of a third variable that affects both the first and the second variable and is the real cause of the observed phenomenon. In other words, the variables have a common cause but do not result from one another. For example: ‘the bigger the fire, the more firefighters present’, ergo ‘an increase in the number of firefighters causes a greater fire’ or, better still, ‘firefighters cause fires’. This type of reasoning is, of course, illogical. Not every example is as obvious as the one indicated above. However, the same is true of abortion. Indeed, from the statistics available for the world as a whole, a picture emerges whereby the countries with the highest maternal mortality rates are those with more restrictive abortion laws. However, this does not necessarily mean that restrictions on access to abortion are the cause of the increase in this rate. Very often in this type of case, there are other variables that are the real reason for this relationship. In the case of maternal mortality, this could be the general access to medical services, their quality, the standard of living of the population and other factors.

The analysis presented below seeks to answer the question of whether the restrictiveness of the abortion law affects maternal mortality. If so, to what

6 See R. Poręba et al., *Wskazania do cięcia cesarskiego*, “Perinatologia, Neonatologia i Ginekologia” 2008, vol. 1, issue 1, pp. 11-18; R. Czajka et al., *Analiza wskazań do cięcia cesarskiego w porodzie przedwczesnym*, “Kliniczna Perinatologia i Ginekologia” 2007, vol. 43, issue 4, pp. 53-55.

7 K. Jusińska et al., *Równa ochrona prawna dla każdego dziecka. Zarówno przed, jak i po urodzeniu*, Instytut na rzecz Kultury Prawnej Ordo Iuris, 2016, https://ordoiuris.pl/sites/default/files/pliki/OI%20broshura%20Stop%20aborcji_final_rozkładowki.pdf, accessed 21 February 2022. See also the footnotes provided by the authors: article 26 § 1 of the Polish Criminal Code (Act of 6 June 1997 – Criminal Code, Dz.U. No. 88, item 553, as amended; hereinafter: CC) – state of overriding necessity excluding the unlawfulness of the committed act and Article 26 § 2 of the CC – state of superior necessity excluding guilt, as well as: P. Daniluk, Commentary to Article 26, [in:] *Kodeks karny. Komentarz*, ed. R.A. Stefański, accessed: LEX and: Commentary to Article 26, [in:] J. Giezek (ed.), N. Kłaczynska, G. Łabuda, *Kodeks karny. Część ogólna. Komentarz*, accessed: LEX; A. Zoll, Commentary to Article 26, [in:] A. Zoll (ed.), G. Bogdan, Z. Cwiakalski, P. Kardas, J. Majewski, J. Raglewski, M. Szewczyk, W. Wróbel, *Kodeks karny. Część ogólna. Tom 1. Komentarz do art. 1-116 k.k.*, 2nd edition, Kraków 2004, accessed: LEX.

extent and what is the direction of this impact. If not, what other factors might influence the differences in maternal mortality rates between countries.

3 Data sources and methods of analysis

The analysis carried out used data that was already available. Data on maternal mortality, health expenditure as a percentage of gross domestic product (GDP), per capita health expenditure, and life expectancy at birth were taken from the World Bank and World Health Organization databases. The data that was most current at the time was from 2017.

The data on access with respect to abortion was taken from the United Nations guide *World Abortion Policies 2013*.⁸ This source is evidently limited by its potential partial obsolescence. The second limitation is the rather large simplification of the reasons why abortion is legally permissible in different countries (although for such a comprehensive compilation, this kind of simplification is understandable). However, to the best of the author's knowledge, this guide still remains the most recent source of institutionally verified data that would present legal provisions for most countries in the world in an aggregated manner.⁹

The following factors were used in the analysis carried out:

- 1) maternal *mortality ratio* (MMR) per 100 000 live births;
- 2) Health expenditure as a percentage of a country's GDP;
- 3) Health expenditure per capita expressed in USD;

8 United Nations, Department of Economic and Social Affairs, Population Division (2013), *World Abortion Policies 2013*, (ST/ESA/SER.A/329), https://www.un.org/en/development/desa/population/publications/pdf/policy/WorldAbortionPolicies2013/WorldAbortionPolicies2013_WallChart.pdf, accessed 2 January 2022.

9 It is also worth mentioning at this point, the very extensive ranking of countries of the world in terms of the level of legal protection of human life at the prenatal stage of development (see M. Olszówka, N. Bernaciak, A. Czelejczyk, Annex No. 1 to this monograph). This compilation is based on the source legal acts of all the countries of the world, so it is the most faithful and the most extensive document presenting in one place the world legislation regulating the protection of conceived life. For the sake of consistency with commonly known compilations and with the terminology used in them (although often inappropriate, as explained earlier), this analysis uses UN data.

- 4) life expectancy at birth;
- 5) geographic region;
- 6) availability of abortion.

The so-called UN geoscheme, used in United Nations statistics to divide the world into regions and sub-regions was used to assign countries into particular groups.¹⁰ The subregions included the following 22 groups: North Africa, Central Africa, Southern Africa, East Africa, West Africa, North America, Central America, Caribbean, South America, Central Asia, South Asia, Southeast Asia, East Asia, West Asia, Northern Europe, Southern Europe, Eastern Europe, Western Europe, Australia and New Zealand, Melanesia, Polynesia, Micronesia.

The availability of abortion was defined analogously to the definition proposed in the UN document *Abortion Law in the World 2013*. In this document, the availability of abortion was presented through seven categories that were binary in nature. Abortion in a given category was either permitted or not permitted in a particular country. These categories were as follows (expressing the availability of abortion due to a particular factor): woman's life in danger, woman's physical health in danger, woman's mental health in danger, pregnancy as a result of rape or incest, impairment of the foetus, economic and social considerations, and abortion on request.

The data analysis that was carried out used methods of classical descriptive statistics and elements of inductive statistics (statistical tests for examining relationships between variables and differences between groups).

Of the descriptive statistics methods, these were:

- 1) single-variable graph;
- 2) cross tables (three-variable).

¹⁰ United Nations, Statistical Division, *Methodology. Standard country or area codes for statistical use (M49)*, <https://unstats.un.org/unsd/methodology/m49>, accessed 2 January 2022.

Of the inductive statistics methods, these were:

- 1) one-way analysis of variance – ANOVA;
- 2) R-square coefficient of determination.

The data analysis was conducted using the IBM SPSS Statistics programme.

4 Results

4.1 Maternal mortality and abortion availability – comparison to other factors

A two-step hierarchical linear regression analysis was conducted to examine the association between the availability of abortion (examined through the legal permissibility of this procedure) with maternal mortality (see Table 1). In order to determine whether the availability of abortion is one of the decisive factors influencing maternal mortality, it was compared with other indicators related to population health: life expectancy at birth, health expenditure as a percentage of GDP and health expenditure expressed in absolute value – the amount in US\$ per capita.

Table 1. Predictors of perinatal mortality: results of hierarchical regression analysis

Variables	Step 1			Step 2		
	B	SE	P	B	SE	p
Life expectancy at birth	-29.44	1.50	<0.001	-27.98	1.57	<0.001
Health expenditures as % of GDP	9.27	4.35	<0.05	11.09	4.42	<0.05
Health expenditures per capita in USD	0.02	0.01	<0.01	0.03	0.01	<0.01

	Step 1			Step 2		
Variables	B	SE	P	B	SE	p
Permissibility of killing the child as a result of saving the life of the mother				34.09	63.92	0.59
Abortion permitted on grounds of the mother's physical health				-35.99	49.65	0.47
Abortion permitted on grounds of the mother's mental health				34.25	48.24	0.48
Abortion permitted on grounds of rape or incest				26.87	35.16	0.45
Abortion permitted on grounds of foetal damage				-34.36	37.39	0.36
Abortion permitted on economic and social grounds				-29.91	50.84	0.56
Abortion permitted on request				-31.35	49.92	0.53
F	157.28		< 0.001	48.98		< 0.001
R2	0.74			0.75		

Source: own study.

In the first stage of the analysis carried out, the following variables were introduced: life expectancy at birth, health expenditure as a percentage of GDP, and health expenditure *per capita* in USD. In the second stage, the acceptability of abortion was added due to the seven cases highlighted in the UN statement: 1) threat to the life of the mother, 2) threat

to the physical health of the mother, 3) threat to the mental health of the mother, 4) pregnancy resulting from rape or incest, 5) impairment of the foetus, 6) economic and social reasons, and 6) abortion on request.

The best predictor of maternal mortality, among those studied, was life expectancy at birth – a strong negative association between these variables was shown.

The R-square coefficient of determination was 0.74 in the first stage and 0.75 in the second stage. This means that the introduction of variables describing the acceptability of abortion improved the accuracy of the model (already very high) by only 0.01. Moreover, in both the first and second stages, the significance of the results obtained for life expectancy at birth, health expenditures as a percentage of GDP and health expenditures per capita in USD reached very good levels – depending on the variable from <0.05 to even <0.001. In contrast, the variables describing the acceptability of abortion proved statistically insignificant in each case.

4.2 Maternal mortality and abortion availability – a cross-country comparison

The acceptability of abortion on request was analysed separately. A comparison of the averages for countries allowing and not allowing abortion on request shows that maternal mortality in countries allowing abortion on request is many times lower than in countries not allowing abortion procedures under this premise (see Table 2).

Table 2. Maternal mortality and the acceptability of abortion on request: a comparison of global averages

Variables	M	SD
Permissibility of abortion on request: yes	29.00	51.42
Permissibility of abortion on request: no	232.09	259.01

Source: own study.

However, comparing maternal mortality between countries from different cultural backgrounds with very different levels of development is very methodologically questionable. In order to verify the observed trend, an analogous analysis was also carried out for European countries only (see Table 3).

Table 3. Maternal mortality and acceptability of abortion on request: comparison of averages in Europe

Variables	M	SD
Permissibility of abortion on request: yes	7.88	5.22
Permissibility of abortion on request: no	4.50	2.38

Source: own study.

The results of the analysis of maternal mortality versus the permissibility of abortion on request in Europe show a trend opposite to the general global trend – the average for the maternal mortality ratio (MMR) is lower in European countries that do not allow abortion on request in their legislation than in countries that do allow the procedure.

When analysing maternal mortality by country, it should be further noted that a comparison of maternal mortality with life expectancy and health expenditures as a percentage of a country’s GDP reveals that life expectancy (which is also one of the best indicators of a country’s overall standard of living) is clearly negatively correlated with MMR – as life expectancy increases, the maternal mortality rate decreases (see Chart 1¹¹). Such a clear correlation does not exist for health expenditure as a percentage of a country’s GDP.

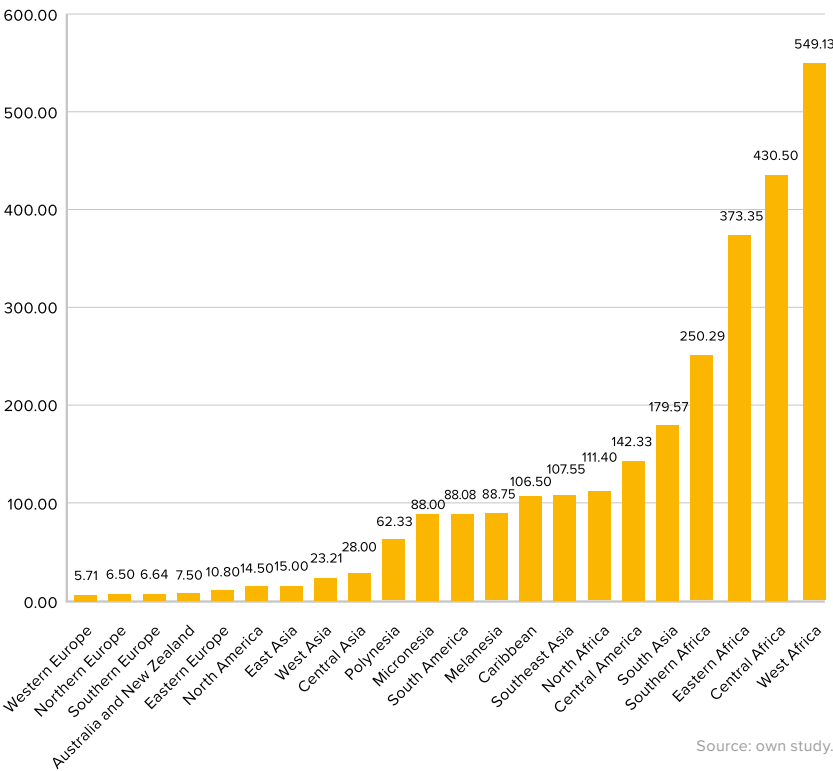
11 Chart 1 available in: F. Furman, *Aborcja a śmiertelność okołoporodowa matek*, Warszawa 2020, https://ordoi-uris.pl/sites/default/files/inline-files/Aborcja_a_smiertelnosc_okoloporodowa_matek_0.pdf, p. 8, accessed 9 January 2023.

4.3 Maternal mortality and abortion availability – regional variation

The rate of maternal mortality varies significantly between regions of the world (see Chart 2). Arranged from lowest to highest maternal mortality rates, the available data form a continuum that, in simple terms, could be described as: ‘old world and Western culture’, ‘new world and Atlantic basin’, ‘Pacific basin’, ‘Africa’.

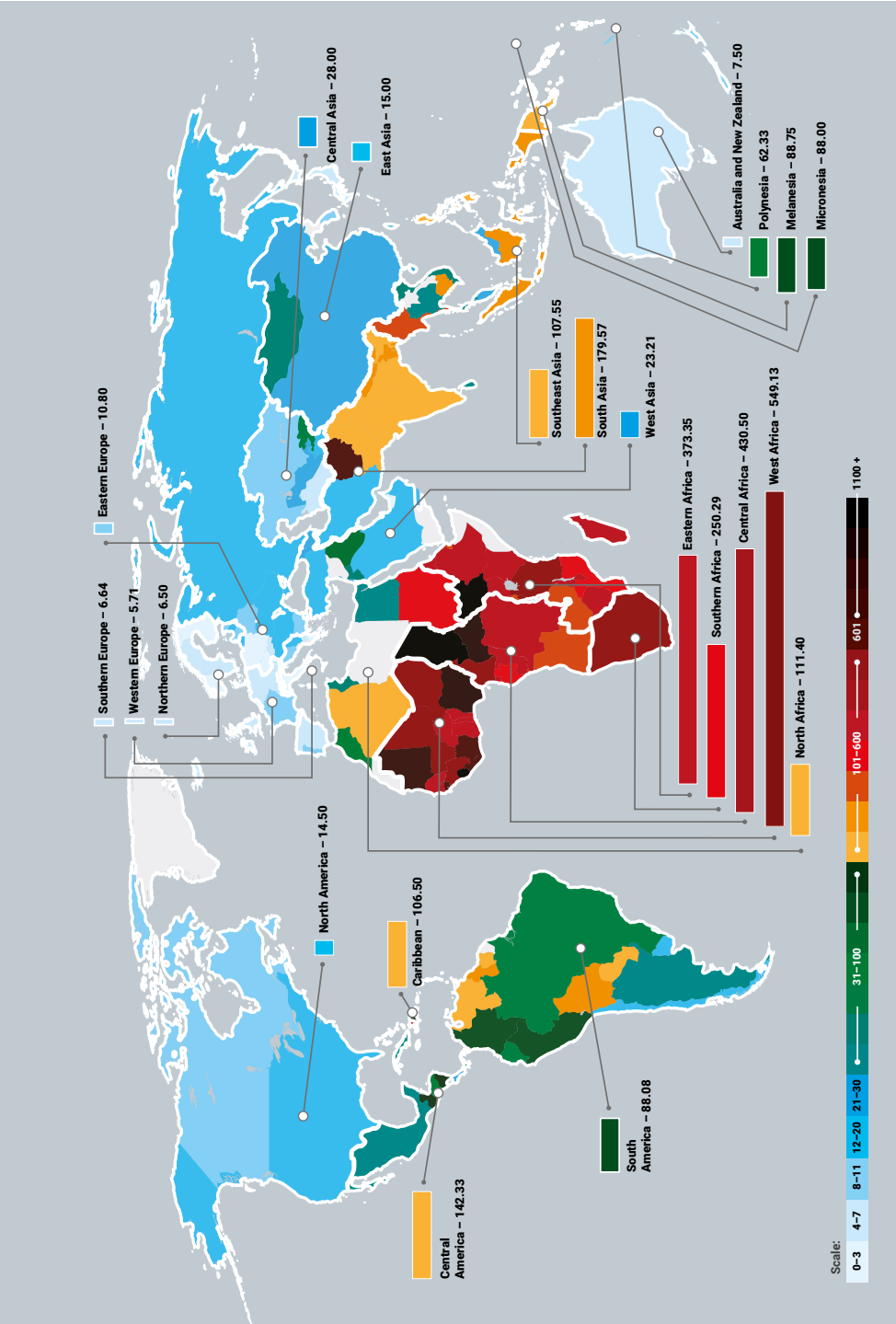
The observed regional disparity is very large on a global scale. It is necessary to note the gap between Europe and Africa in general, and especially between Western Europe (mean MMR = 5.71) and West Africa (mean MMR = 549.13) – the difference in maternal mortality between these regions is almost a hundredfold!

Chart 2. Maternal mortality ratio (MMR) values for each sub-region of the world according to the UN statistical classification



Source: own study.

Figure 1. Maternal mortality ratio (MMR) values for each sub-region of the world according to the UN statistical classification



5 Discussion of results, summary and conclusions

In the regression analysis conducted for the variables 'life expectancy at birth' and 'maternal mortality', the B coefficient was -29.44. This indicates a strong negative relationship between life expectancy at birth and maternal mortality rates. This result means that the more life expectancy at birth decreases, the more maternal mortality increases. This confirms the intuitive assumption of a relationship between overall life expectancy (which consists of a great many variables resulting in increased life expectancy) and maternal mortality.

At the same time, for the correlation of maternal mortality with health expenditure as a percentage of GDP, the B-factor was 9.27. Thus, an increase in maternal mortality is correlated with an increase in the proportion of health expenditures to a country's GDP. This type of observation may seem surprising at first glance. However, it only means that health expenditures are a much greater burden for poorer countries than for rich countries, despite the difference in the quality and availability of health services. In no way should this ratio be interpreted as an argument for reducing health spending.

Just as the correlation between health expenditure with maternal mortality should not be interpreted as an argument for reducing health expenditure, the correlation between abortion acceptability with the MMR rate should not be interpreted as an argument for increasing access to this procedure. Looking at the results of the analysis of the correlation between maternal mortality with the permissibility of abortion in all the cases highlighted in the United Nations compilation, on the surface it would appear that the maternal mortality rate increases with some cases where abortion is permissible and decreases with others. However, these results are subject to a very large error: the permissibility of abortion due to a threat to the woman's life correlated positively with MMR ($B = 34.09$; $SE = 63.92$), due to a threat to the mother's physical health negatively ($B = -35.99$; $SE = 49.65$), due to a threat to the mother's mental health positively ($B = 34.25$; $SE = 48.24$), when the pregnancy is the result of rape or incest – positively ($B = 26.87$; $SE = 35.16$), due to foetal damage – negatively ($B = -34.36$; $SE = 37.39$), for economic and social reasons – negatively ($B = -29.91$; $SE = 50.84$), on request – negatively ($B = -31.35$; $SE = 49.92$). Thus, none of these correlations

were statistically significant. In addition, the coefficient of determination R-square was 0.74 in the first step of the analysis, i.e., not including the permissibility of abortion, and 0.75 in the second step. This means that the introduction of variables describing the permissibility of abortion improved the accuracy of the model by only 0.01. The results of the study therefore support the thesis that there is no relationship between the permissibility of abortion and maternal mortality.

However, a comparison of the average perinatal mortality in countries allowing abortion on request ($M = 29.00$) and not allowing such abortion ($M = 232.09$) could, despite the absence of the connection shown in the previous stage, serve as a rhetorical argument for the necessity of legally allowing abortion on request. However, if we look at the average maternal mortality only in the region of the world where the standard of living and the quality and accessibility of health care is all together the highest in the world, i.e., Europe, the opposite trend is observed. In countries allowing abortion on demand, the average maternal mortality is 7.88, while in countries not allowing it, it is 4.50. Furthermore, if we look at the countries with the strictest abortion laws, which in principle do not allow this procedure, regardless of the rationale, the average maternal mortality rate is lower both in Europe and worldwide in countries with a total ban on abortion than in the rest. Of course, this does not directly prove that abortion should not be allowed. However, it shows that the link between abortion and maternal mortality is tenuous. Maternal mortality and the permissibility of abortion are related in a way similar to two flowers in one garden. They grow in the same soil and absorb the same rainwater. When a drought comes, both plants may die, but that does not mean that if we nurture only one of them, the other will also flourish. There is no cause-and-effect relationship between the two alone.

In many cases, performing an abortion on a ill woman can damage her health even further.¹² As indicated by the results of a Danish study based on population-based registry data between 1980-2002, the risk of death after an abortion performed before the 12th week of pregnancy is associated

12 D.C. Reardon, P.K. Coleman, *Short and Long Term Mortality Rates Associated with First Pregnancy Outcome. Population Register Based Study for Denmark 1980-2002*, "Medical Science Monitor" 2012, 18(9), pp. 71-76, <https://doi.org/10.12659/MSM.883338>.

with almost twice the risk of maternal death compared to giving birth. The risk from abortion performed in a later pregnancy was found to be even higher, while the risk after spontaneous abortion was found to be lower.¹³

By dividing countries into regions, according to the scheme of world sub-regions used in UN statistics, and then ranking the regions according to their maternal mortality ratio, it becomes clear that there is still a huge gap between the so-called 'old world' and the 'new' and 'third' worlds. The difference in maternal mortality between the region with the lowest MMR, Western Europe, and the highest, West Africa, is almost a hundred-fold! Poland and Europe can therefore be called the privileged regions of the world. In order to extend this privilege to poorer countries, resources should not be wasted on promoting and performing abortions in these countries, but rather adequate resources should be allocated to help their female inhabitants so that they too can give birth safely and with dignity.

In summary, the results of the analysis carried out point to the conclusions listed below.

- 1) Maternal mortality varies widely between countries around the world; this variation coincides with cultural and geographical diversity.
- 2) In order to improve (i.e., reduce) the maternal mortality rate, raising the overall standard of living in a country is indeed more important than increasing direct spending on health.
- 3) Increasing access to abortion cannot be seen as a means to reduce maternal mortality.
- 4) The use of statistical indicators without being grounded in qualitative knowledge of the cultural and economic context of the region concerned, without being supported by medical research, is of little methodological value and should not be the basis for international agendas to shape the benchmarks against which countries would construct their laws.

13 Ibid.

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Abstract

The objective of this chapter was to answer the question of whether the restrictiveness of abortion law affects maternal mortality, which varies greatly on a global scale due to cultural and geographical diversity. To improve (reduce) the maternal mortality rate, it is much more important to raise the overall standard of living in a country than to spend more on healthcare. Increasing access to abortion cannot be considered as a means of reducing maternal mortality. The use of statistical indicators not connected with qualitative knowledge of the cultural and economic context of a given region, without the support of medical research, has little methodological value and should not be the basis for international agencies to shape models according to which countries construct their law.



Part III

Legal aspects



Agata Tarnacka

Damian Tarnacki

Key terms: abortion law in Poland, interwar period, Nazi occupation, communist period, pro-choice bills, pro-life bills, road to the so-called abortion compromise

Chapter 7

Historical outline of Polish legislation on abortion (from the interwar period to 1997)

Interwar period (1918-1939)

- Act of 17 March 1921 – Constitution of the Republic of Poland¹ (March Constitution), Article 95;
- Regulation of the President of the Republic of 11 July 1932 – Criminal Code (Makarewicz Code);
- Constitutional Act of 23 April 1935 (April Constitution).

Nazi occupation period (1939-1945)

- Decision of the Minister of Justice of the German Reich of 9 March 1943 on decriminalising the termination of pregnancy;
- Secret document dated 6 June 1943 of the Reich Commissioner for the Consolidation of Germany;
- Regulation of the Reichsführer SS Heinrich Himmler of 27 July 1943 on the treatment of pregnant foreign female workers and children born of such workers.

¹ Information on the publication of a given act is provided below, in the discussion of individual laws and regulations.

Communist period

- Act of 28 October 1950 on the medical profession;
- Instruction of the Minister of Health of 27 July 1954 on determining the necessity of terminating a pregnancy due to the health of the pregnant woman;
- Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy;
- Regulation of the Minister of Health of 19 December 1959 on the termination of pregnancy;
- Act of 19 April 1969 – Criminal Code;
- 9th term of office of the Parliament of the People's Republic of Poland, 1989 (pro-life project).

Third Polish Republic (1990-1997 period)

- Regulation of the Minister of Health and Social Welfare of 30 April 1990 on the professional qualifications to be possessed by doctors carrying out a termination of pregnancy and the procedure for issuing medical certificates of admissibility of such a procedure;
- Code of Medical Ethics of 14 December 1991;
- Bills concerning the termination of pregnancy:
 - 10th term of office of the Parliament of the People's Republic of Poland, 1990 (pro-life project);
 - 10th term of office of the Parliament of the People's Republic of Poland, 1991 (pro-choice project);
 - 1st term of office of the Polish Parliament, 1992 (pro-choice project);

- 
- 1st term of office of the Polish Parliament, 1992 (the path from the pro-life project to the so-called compromise project, which was adopted in the form of the act of 7 January 1993);
 - Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy;
 - Act of 30 August 1996 amending the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and amending certain other acts;
 - Ruling of the Constitutional Court of 27 May 1997.

1 Introduction

‘**T**he issue of the protection of the *nasciturus* under civil law has been a matter of debate by jurists for thousands of years, and at a time when the right to life of the conceived child was unquestionable, it formed the core of interpretations, analyses, and sometimes proposals for future legislation. The concept of the right to abortion is of relatively recent provenance, although the procedure itself is age-old.² In the past, when the infant mortality rate was high (for example, in 1928 it was around 17-18%),³ the burying of offspring by parents was almost an everyday occurrence in small communities. It should be noted, however, that the reason for such a high infant mortality rate was usually not related to the actions of others (although these also occurred), but was due to illnesses or complications occurring during pregnancy, which, in the era of underdeveloped medicine, often ended tragically. Poverty was also a factor, the consequences of which became apparent in every aspect and at every stage of family life. Today, thanks to the vast development of medicine, the possibilities of saving human lives, including those of the conceived, have increased significantly. Thus, it is a paradox that abortion

2 J. Mazurkiewicz, *Czas ruszyć z miejsca! Stare i nowe propozycje rozszerzenia prawnej ochrony dziecka poczętego*, "Forum Prawnicze" 2019, no. 1(51), p. 4, <https://doi.org/10.32082/tp.v1i51.171>.

3 K. Karaffa-Korbut, *Stosunki zdrowotne*, [in:] *Wielka ilustrowana encyklopedia powszechna wydawnictwa „Gutenberga”*, vol. XIII, Polska, reprint, Warszawa 1994, p. 97.

is the primary cause of death on a global scale: in 2022, 44 million abortions were performed worldwide, which means 40% of deaths were caused by abortion.⁴ In Poland in 2021, the number of legal abortions was 107;⁵ by comparison, in 1965 it was 158 001,⁶ in 1980 – 137 950,⁷ in 1992 – 11,640,⁸ in 2010 – 641,⁹ in 2020 – 1076.¹⁰ The statistics of legal abortions reflect, among others, legal changes and socio-economic transformations. The subject of this study is to present, within the framework of a historical outline, how the legal regulations on abortion have evolved in Poland between 1918-1996.

2 The inter-war period (1918-1939)

The regulation of abortion in Poland dates back to the interwar period, when there was a heated debate on the shape of the Criminal Code.¹¹ Although the concept of abortion was already known earlier, during the interwar period the term ‘foetal abortion’ was commonly used. According to the definition, it meant ‘any action aimed at preventing the birth of a child, any action preventing the normal development of the foetus and its transformation into a child’.¹² The term referred only to abortion, it did not apply to contraception. Its definition assumed that a foetus at an early stage of its development (or even just before birth, at the final stage of prenatal life) is not yet a child. According to Juliusz Makarewicz: ‘to abort a foetus is not only to cause the exit of an undelivered foetus, which is not a child, from the mother’s womb but also to cause the death of the foetus in the mother’s womb, making it necessary to remove it from the mother’s womb by surgery.’¹³

4 Vatican News, *44 mln aborcji w 2022 r. – aborcja pierwszą przyczyną zgonów*, <https://www.vaticannews.va/pl/swiat/news/2023-01/44-mln-aborcji-w-2020-r-aborcja-pierwsza-przyczyna-zgonow.html>, accessed 2 February 2023.

5 Report of the Council of Ministers on the implementation and effects of the application in 2021 of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended).

6 L. Ossowski, *Próba symulacji liczby aborcji w Polsce na podstawie danych w wybranych krajach europejskich*, “Studia Demograficzne” 2008, no. 1-2(153-154), p. 113.

7 A. Zięba, *Podziemie aborcyjne w Polsce*, <http://archiwalna.pro-life.pl/wp-content/uploads/2014/01/Podziemie-aborcyjne-w-Polsce.doc>, accessed 2 February 2023.

8 Ibid.

9 Report of the Council of Ministers on the implementation and effects of the application in 2021 of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy, cited above.

10 Ibid.

11 R. Tokarczyk, *Prawa narodzin, życia i śmierci. Podstawy biojursprudencji*, Warszawa 2012, p. 216.

12 J. Makarewicz, *Kodeks karny z komentarzem*, Lwów 1932, p. 330.

13 Ibid.

2.1 Act of 17 March 1921 – Constitution of the Republic of Poland (March Constitution)

The first regulations of constitutional rank on the territory of the Republic of Poland concerning the protection of life were included in the Constitution of 17 March 1921.¹⁴ It is worth noting that, next to the Constitution of Finland of 1919,¹⁵ and the Constitution of the Czechoslovak Republic of 1920,¹⁶ this was one of the first regulations of this matter in Europe. Thus, by promulgating this legislation, Poland began to set new standards, just as it did when women were granted the right to vote in 1918.

The Constitution of the Republic of 17 March 1921, known as the March Constitution, provided for the protection of life in Article 95 of Chapter V, entitled *General Duties and Rights of Citizens*. It reads: 'The Republic of Poland shall ensure complete protection of life, liberty, and property within its territory to all without distinction of origin, nationality, language, race, or religion. Foreigners shall enjoy, on condition of reciprocity, equal rights with citizens of the Polish State, and shall have equal obligations with them, unless Polish citizenship is expressly required by law.'¹⁷ This provision was of declarative nature, as it did not receive its clarification in specific provisions. Moreover, it is worth noting that although, according to the cited regulation, the state guaranteed 'complete protection of life', at the same time it allowed for the existence of provisions on the death penalty.¹⁸ Today, such a juxtaposition is sometimes considered contradictory, although a century ago it was not seen this way.

2.2 Regulation of the President of the Republic of 11 July 1932 – Criminal Code (Makarewicz Code)

It should be noted that in the early days of the Second Polish Republic abortion was banned completely. All the criminal codes of the partitioning states qualified aborting a foetus as a crime – regardless of the circumstances.

14 R. Grabowski, *Ochrona życia w polskich przepisach konstytucyjnych w latach 1921–1939*, "Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji" 2008, vol. LXXVII, no. 3052, p. 87.

15 Constitution of Finland of 17 July 1919, [in:] *Nowe konstytucje*, ed. J. Makowski, Warszawa 1925.

16 Constitution of the Czechoslovak Republic of 29 February 1920, [in:] *Nowe konstytucje*, ed. J. Makowski, Warszawa 1925.

17 Act of 17 March 1921 – Constitution of the Republic of Poland (Dz.U. No. 44, item 267).

18 Act of 30 January 1920 on the responsibility of officials for offences committed for the purpose of profit (Dz.U. No. 11, item 60). Act of 18 March 1921 on combating offences for profit committed by officials (Dz.U. No. 30, item 177).

The general principle of criminalisation of abortion performed by a woman or with her consent was also found in the new Criminal Code, known as the Makarewicz Code, introduced by a regulation of the President of the Republic of Poland on 11 July 11 1932. The penalties for illegal abortion of a foetus were set out in the articles contained in Chapter XXXV of the Criminal Code, entitled *Offences against Life and Health*. According to Article 231, a woman who performs an abortion or who submits to its performance by another person was liable to imprisonment for up to 3 years. Article 232 reads that a person assisting a woman in an abortion or performing an abortion with the woman's consent was liable to imprisonment for up to 5 years, while if this was done without the woman's consent, the penalty was imprisonment for up to 10 years (Article 234). However, the Makarewicz Code introduced exceptions to the general rule. These were found in Article 233: a woman and a person performing an abortion in the manner described in Articles 231 and 232 did not commit an offence if the procedure was performed by a doctor and when:

- a) it was necessary for the pregnant woman's health,
- b) the pregnancy was caused by an offence under Articles 203, 204, 205, or 206.¹⁹

At the legislative stage, it was proposed that it should not be considered an offence if:

- a) the health or life of the pregnant woman was in danger,
- b) the pregnancy was caused by a criminal offence,
- c) the social situation of the mother hindered her from raising the child.²⁰

However, the third premise, i.e., the 'social premise', was not included in the final version of the legislation. It should be noted that – despite the omission

¹⁹ The second premise concerned an act of fornication with a person under 15 years of age or with a mental handicap or committed by violence, unlawful threat, deception, by abusing a relationship of dependence or by exploiting a critical position.

²⁰ Regulation of the President of the Republic of Poland of 11 July 1932 – Criminal Code (Dz.U. No. 60, item 571).

of this condition – the pretence of fulfilling the elements of the first condition did not constitute a significant obstacle for women wishing to have an abortion, especially those with connections, education, and wealth.

Although only a doctor could determine that the conditions of the medical premise were met, in the absence of specific criteria, the decision could be made on a discretionary basis. However, it should be noted that there was a requirement that it be confirmed by two other doctors. In the case of a pregnancy resulting from a criminal offense, a certificate from the public prosecutor was required, which unfortunately created room for abuse.²¹ It was the prosecutor who initially determined whether a pregnancy could be terminated.

Regardless of the changes introduced by the Makarewicz Code, the number of induced abortions did not decrease. In 1922, they amounted to 256 313,²² in 1926 – 320 052, in 1932 – 403 677 and in 1937 – a record-breaking 513 237. In the following year (1938), the number remained at a similar level – 497 937. Therefore, based on these statistics, one can concur that at that time, abortions in Poland were carried out on a mass scale, regardless of whether they were legal or whether the law provided for some kind of restriction.

2.3 Constitutional Act of 23 April 1935 (April Constitution)

Another piece of legislation that should be mentioned is the Constitutional Act of 23 April 1935, known as the April Constitution.²³ It was introduced four years before World War II and, unlike the March Constitution, did not contain any catalogue of civil rights and freedoms. In the new constitution, these issues were regulated by some articles of Chapter V that were transferred from the previous constitution. The most crucial of them – Article 95 – was not among them. During the drafting of the new constitution, it was decided that the entire catalogue of rights from Chapter V should be incorporated. However, due to the individualistic

21 J. Makarewicz, op. cit., pp. 331-332.

22 Statistics in this and the following sentence given after: T. Brzeziński, *Etyka lekarska*, Warszawa 2012, pp. 159-162.

23 Constitutional Act of 9 April 1935 (Dz.U. No. 30, item 227).

conception of individual rights, which the new legislation rejected, it was finally limited to the inclusion of articles 99, 109-118, and 120 only.²⁴ On this basis, it can be concluded that the April Constitution represented a backsliding of legislation in the sphere of human rights and thus the protection of life. In practice, however, not much changed, as the norm of Article 95 in the March Constitution was of declaratory nature.

3 Legal status during the Nazi occupation (1939-1945)

The German attack in 1939 constituted a huge blow to the Polish state, which had been reborn after a long and arduous period of partitions. After twenty years of relative peace, the Republic of Poland had to face two invaders – less than three weeks after the aggression from the west, Soviet Russia attacked from the east. Years of fighting in increasingly devastated areas took a bloody toll. The demographic situation was not improved by the occupying forces' legislation, including in the area of the protection of life. Adolf Hitler set himself the goal of destroying the Polish nation. He carried this out not only in German concentration camps set up on the territory of the occupied Polish state (in the General Government or on territories annexed directly by the Third Reich), but also undertook actions in the legislative field aimed at hindering the rebirth of both the Republic of Poland and its citizens.

3.1 Decision of the Minister of Justice of the German Reich of 9 March 9 1943, on Abolishing the Criminalisation of the Termination of Pregnancy

On 22 July 22 1942, Hitler uttered the telling words: 'In view of the large families of the native population, it is very beneficial for us if girls and women have as many abortions as possible.'²⁵ Less than a year later, on 9 March 9 1943, a decision of the Minister of Justice of the German Reich abolished the criminalisation of terminations of pregnancy by 'workers from

24 R. Grabowski, *op. cit.*, p. 103.

25 See William Brennan, *The abortion holocaust. Today's final solution*, Cambridge 1983, p. 34.

the East'. Two days later, the official in charge of health issued an order that abortions were to be performed when requested by a pregnant 'Eastern worker'. Such requests were unfortunately often enforced, for example by the real threat of exile to a concentration camp.²⁶

3.2 Secret document dated 6 June 6 1943, of the Reich Commissioner for the Consolidation of Germany

One cannot omit a very important secret document of 6 June 1943 issued due to the population losses from the war by the Reich Commissioner for the Consolidation of Germany. Bearing in mind the possibility, and above all the need, to Germanise non-Aryans, it placed certain restrictions on abortion:

- a) 'the killing of a foetus is subject to the consent of the Commissioner for Strengthening Germanness,
- b) consent is deemed to be given in advance in cases where the father of the child is a person of non-Germanic origin,
- c) consent of the Reich Commissioner for the Consolidation of the Germanic Republic is required in all cases where it has been established or is likely that the father of the child is a person of Germanic origin,
- d) after notifying the Reich Commissioner for Strengthening Germanness of the cases mentioned under letter c., the Office of Race and Settlement will carry out a racial examination of the pregnant mother and father,
- e) in the event that it is determined that the child to be born may be of racial value, permission to kill the foetus should be denied.²⁷

These provisions are nothing less than a racist and discriminatory differentiation of the value of human life. It should be noted that different legal

26 M. Sierocińska, *Eksterminacja „niewartościowych rasowo” dzieci polskich robotnic przymusowych na terenie III Rzeszy w świetle postępowań prowadzonych przez Oddziałową Komisję Ścigania Zbrodni przeciwko Narodowi Polskiemu w Poznaniu*, <https://ipn.gov.pl/pl/aktualnosci/587,Eksterminacja-niewartosciowych-rasowodzieci-polskich-robotnic-przymusowych-na-t.html>, accessed 16 July 2022.

27 Ibid.

regulations were in force in the German territories, where abortions were severely punished by imprisonment and, from 1943, even by death in the case of an Aryan abortion (due to the classification of the act as a crime against both the body and the state), which had a significant impact on the decline in the performance of abortions.²⁸

3.3 Regulation of Reichsführer Ss Heinrich Himmler of 27 July 1943 on the treatment of pregnant foreign female workers and children born of such workers

Finally, the question of regulating the birth of children in occupied Poland was normalised by a regulation of the Reichsführer SS and Chief of Police Heinrich Himmler of 27 July 1943 on the Treatment of Pregnant Foreign Female Workers and Children Born of Such Workers. From then on, all pregnancies were to be registered, the women were to give birth only in the infirmary wards set up in the camps for them, and the children – if they were born – were to be taken away. In accordance with Himmler's order, it was established that:

- a) 'racially worthless children born to female workers will be sent to "child care centres for foreigners",
- b) workplaces report all pregnant women to the youth offices (*Jugendamt*) via the employment offices (*Arbeitsamt*),
- c) the youth offices carry out paternity investigations and report the results to the higher SS and police commanders, for racial examination by the General Office of Race and Settlement and the health offices,
- d) in the event that the parents are classified as racially valuable, the children born of them come under the care of the National Socialist Party

28 See P. Roland, *Nazistki. Okrutne – wyrachowane – uległe*, Warszawa 2016, p. 71. The great determination to exterminate the 'inferior race' (which, for the Nazis, included Poles, among others) with which the democratically elected dictator Hitler acted is evidenced by his forceful words: 'I will personally shoot the idiot who wants to introduce legislation prohibiting abortion in the eastern occupied territories', quoted in Interia.pl, *9 marca 1943 r. Hitler wprowadza aborcję na terenach Polski*, <https://historia.interia.pl/kartka-z-kalendarza/news-9-marca-1943-r-hitler-wprowadza-aborcje-na-terenach-polski,nld,2159191>, accessed 9 July 2022.

welfare authorities (NSV), which places them in institutions for racially valuable children (*Kinderheime für gutrassige Kinder*), or in German families,

- e) pregnant women of particular racial value will be handed over to the care of the Lebensborn,
- f) it is forbidden to inform expectant mothers of the objectives of this order,
- g) mothers of racially valuable children who would like to return with these children to their home countries should be kept in the Reich,
- h) unfit mothers, together with their racially unworthy children, should be removed (*abgeschoben*).²⁹

Thus, in letter h., there is an explicit injunction to kill both the mother and her already born child, unless the child has previously undergone an abortion on the basis of the provisions discussed above.

Overall, during the German occupation, abortion was virtually available on demand to Polish women, something that has never happened before or later in history. On the other hand, when the child was fortunate enough to be born, its continued right to life was not guaranteed. The indicated provisions remained in force until the end of German occupation.

4 Communist period

Poland's post-war dependence on the Soviet Union was inevitably reflected in legislation and therefore in the protection of life. Like the Germans, the Soviets did not care about the welfare of the Polish people. As soon as Poland fell within the USSR's sphere of influence, it automatically began to adopt the eastern legislature. What may seem strange, initially in Stalin's Russia, as in Hitler's Germany, there was a total ban on abortion. It should be noted, however, that it was previously Russia which, in 1920, was the

29 M. Sierocińska, op. cit.

first country in Europe to introduce the legal possibility of abortion, which was only withdrawn in 1936 due to the unsatisfactory birth rate.³⁰

It is worth noting that during the period of the Polish People's Republic, when abortion was permitted in Poland, the jurisprudence of the Supreme Court and the Supreme Administrative Court sided with the rights of the *nasciturus*. In the jurisprudence of both the Supreme Court and common courts, the protection of the rights of the unborn was ensured, despite the extraordinarily broad and *de facto* unlimited possibilities of aborting children at the time.³¹

30 B. Pomerantz, *Aborcja to nie temat zastępczy. Hitler, Mussolini, Franco – wszyscy byli przeciw aborcji w imię swoich urojonych celów*, <https://oko.press/aborcja-temat-zastepczy-hitler-mussolini-franco-wszyscy-byli-przeciw-aborcji-imie-swoich-urojonych-celow>, accessed 9 July 2022.

31 See J. Mazurkiewicz, op. cit., pp. 4-6 (in the quoted passage, footnotes relating to case law from the quoted source are given in square brackets and italicised – to distinguish them from the main text – editor's note): "[...] On 8 October 1952, this Court [the Supreme Court – editor's note], protecting the rights of the *nasciturus*, stated that "the correct interpretation of Article 162 § 1 of the Civil Code. [...] leads one to consider that the conceived child must be assimilated to the born child and that it is equally entitled to a pension by virtue of the cited provision. It should be borne in mind that it follows from the circumstances [...] that a conceived child, if born before the father's death, would undoubtedly be dependent on him" [*Judgment of the Supreme Court of 8 October 1952, C 756/51, "Nowe Prawo" 1953, no. 5, p. 71*]. In a judgment of 8 January 1965, the Supreme Court was faced with an unusual event. In spite of a legally carried out "termination of pregnancy", the child was born, suffering nevertheless damage to his health. The court recognized the legitimacy of compensation from the state hospital for the doctor's error (considered at the time to be a state official) in causing "disability and disfigurement". The judges supported their argument by pointing out that the attempt to deny the *nasciturus* the right to the protection of its rights "cannot be reconciled with systemic principles and objectives of the people's state [...]" [*Judgment of the Supreme Court of 8 January 1965, II CR 2/65, "Państwo i Prawo" 1967, vol. 10, pp. 633-634*]. Shortly thereafter, in a judgment of 4 April 1966, the Supreme Court indicated that "in determining the amount of compensation for a child who, at the time of the father's death, had already been conceived and was subsequently born alive, analogous criteria should be applied to the award of compensation for children who were of pre-school age at the time of the father's death" [*Judgment of the Supreme Court of 4 April 1966, II PR 139/66, "Orzecznictwo Sądów Polskich i Komisji Arbitrażowych" 1966, no. 12, item 279*]. Less than a year later, on 11 January 1967, the Supreme Court again held that a child born after the death of a father who died in a work accident at the employer's fault was entitled to a pension [*Judgment of the Supreme Court of 11 January 1967, I PR 510/66, "Orzecznictwo Sądu Najwyższego Izby Cywilnej, Pracy i Ubezpieczeń Społecznych" 1967, no. 7-8, item 141*]. In the same year, on 3 May, this court indicated that a tort "against a pregnant woman, which caused changes in the normal development of the foetus and consequent disability of the child, is a tort caused to the child if the child is born alive. In such a case, the child is entitled to claim compensation from the person responsible for the consequences of the tort. This is because the child cannot be in a worse position than a child who was harmed during or immediately after childbirth" [*Judgment of the Supreme Court of 3 May 1967, II PR 120/67, "Nowe Prawo" 1968, no. 1, p. 118*]. Two years later, on 3 June 1969, the Supreme Court ruled on the right to a pension for a child who had suffered bone marrow damage before birth due to the poisoning of his pregnant mother whose job consisted in "contact with toxic substances of benzenes and its homologues [...]" [*Judgment of the Supreme Court of 3 June 1969, III PRN 34/69, "Orzecznictwo Sądów Polskich i Komisji Arbitrażowych" 1970, no. 2, item 35*]. In a judgment of 7 October 1971, the Supreme Court indicated that the designation of a beneficiary under § 3 of the general conditions of personal accident insurance "need not consist in a named designation. A designation in such a way as to ensure identification, such as the designation of children, is sufficient. No considerations here also exclude children already conceived at the time of the insured's accident" [*Judgment of the Supreme Court of 7 October 1971, III CRN 255/71, "Orzecznictwo Sądu Najwyższego" 1972, no. 3, item 59*]. In a resolution of 18 December 1979, the Supreme Court held that a child of a father who is a joint holder of a farm and who is born after his death caused by an accident at work performed as part of "neighbourly help" on a neighbour's farm is entitled to the one-off benefit provided for in Article 27(1) of the Act of 27 April 1977 on old-age pension provision and other benefits for farmers and their families [*Resolution of the Supreme Court of 18 December 1979, III UZP 9/79, "Orzecznictwo Sądu Najwyższego Izby Cywilnej, Pracy i Ubezpieczeń Społecznych" 1980, no. 9, item 156*]. The court justified this position – requiring,

4.1 Instruction of the Minister of Health of 27 July 1954 on determining the necessity of terminating a pregnancy due to the health of the pregnant woman

In the two years prior to the enactment of the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy, these issues were regulated by the Instruction of the Minister of Health of 27 July 1954 on determining the necessity of terminating a pregnancy due to the health of the pregnant woman. It indicated the requirement for medical committees operating at hospitals to decide on the legitimacy of the procedure. They could be composed of two to three persons, including a gynaecologist or a surgeon, as well as a specialist in the suspected disease. The doctor who referred the woman to the hospital could not be a member of the committee.³²

4.2 Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy

On 8 May 1956, due to a change in legislation in the USSR, the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy³³ came into force. Pursuant to Article 6, paragraph 2, the previously discussed provisions of the Makarewicz Code relating to the abortion of the foetus, i.e., Article 231, Article 232, Article 233, and Article 234, were removed. The new catalogue of offences did not include the counterpart of the referenced Article 231 of the Criminal Code, and thus abolished the criminal liability of

in fact, a *contra legem* interpretation – on the grounds that “different treatment of children living at the date of the farmer’s death and those born after that event would not be socially justified and consistent with the assumptions of the law as to the equal treatment of all children”. On the other hand, the Supreme Administrative Court, in a judgment of 28 November 1985, confirmed that a donation “to a child conceived but not yet born, with the aim of safeguarding his future interests, is permissible and therefore affects the assessment of a donation duty” [Judgment of the Supreme Administrative Court of 28 November 1985, III SA 1183/85, “Orzecznictwo Sądów Polskich i Komisji Arbitrażowych” 1987, no. 2, item 28]. This judgment, which referred to this form of donation for the first time in post-war jurisprudence, was made in special circumstances, when reaching out for prenatal adoption was an antidote to the very distressing tax consequences of gifting to a pregnant, unrelated, and unmarried woman. The resolution of the full panel of the Chamber of Labour and Social Insurance of the Supreme Court of 30 November 1987 ruled that a child “conceived and not yet born at the time of the death of its father caused by an accident at work or occupational disease, if born alive, acquires the right to a one-off compensation under Article 12(2)(2) of the Act of 12 June 1975 on benefits for accidents at work and occupational diseases [...]” [Resolution of the Labour and Insurance Chamber of the Supreme Court of 30 November 1987, III PZP 36/87, “Orzecznictwo Sądu Najwyższego. Izba Cywilna” 1988, no. 2-3, item 23].

32 Instruction by the Minister of Health of 27 July 1954 on determining the necessity to terminate a pregnancy due to the health of the pregnant woman [Official Journal of the Republic of Poland [hereinafter: M.P.] No. 75, item 906].

33 Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy (Dz.U. No. 12, item 61, hereinafter: the 1956 Act).

a pregnant woman for unlawfully performing an abortion on her own. In addition, the new law introduced the possibility to terminate a pregnancy in certain cases. According to Article 1 of the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy, abortion was possible in the following circumstances:

- 1) when medical factors indicated that the abortion was necessary,
- 2) due to the difficult living conditions of the pregnant woman,
- 3) where there was a reasonable suspicion that the pregnancy resulted from a criminal act.³⁴

Due to the highly discretionary nature of the law, and in particular the 'social condition', legal abortion once again became widely available. It is worth noting that, according to Article 2 of this law, both the medical indication and the difficult living conditions of the woman were to be determined by a medical certificate, while the public prosecutor was to establish the existence of a reasonable suspicion that the pregnancy was the result of a prohibited act. If a woman was coerced into having an abortion, this was punishable by imprisonment of up to five years, while abortions carried out in violation of Article 1, but with the woman's consent, were punishable by imprisonment of up to three years. The law in question had only seven articles.

The legislator's goal was to modify human attitudes and behaviour,³⁵ motivated on the one hand by ideology,³⁶ and on the other by pragmatism aimed at eliminating specific social problems.³⁷

Furthermore, it is worth noting that the 1956 law was in force for a long time in parallel with the 1964 Civil Code, according to which 'a child already

³⁴ Ibid.

³⁵ See B. Dobek-Ostrowska, R. Wiszniowski, *Teoria komunikowania publicznego i politycznego. Wprowadzenie*, Wrocław 2002, p. 88.

³⁶ It suffices to recall in this regard the statement of Lenin, who as early as 1913 demanded "the unconditional abolition of all laws prosecuting artificial abortions" (W.I. Lenin, *Dzieła*, vol. 19, Warszawa 1950, p. 321).

³⁷ P. Zamelski, *Ochrona prawa dziecka do życia – wybrane zagadnienia*, [in:] *Propedeutyka praw człowieka. Prawa dziecka w rodzinie i oświacie*, ed. S.L. Stadniczeńko, Opole 2012, p. 97.

conceived at the time of the opening of the will may be an heir if born alive' (Article 927 § 2). It has been argued in the literature relating to legal issues that the above circumstance could be considered a certain inconsistency, that is, guaranteeing the right to inheritance without effectively guaranteeing the right to life³⁸ – a similar situation in the current state of the law.

4.3 Regulation of the Minister of Health of 19 December 1959 on the termination of pregnancy

The above provisions were modified with the promulgation of the Regulation of the Minister of Health of 19 December 1959 on the termination of pregnancy. It introduced an important change – from that moment on, the pronouncement of the admissibility of abortion and the procedure itself could be performed by the same doctor.

In the context of the premise concerning the woman's living conditions, it is important to note the simplified procedure of the doctor's decision on the admissibility of the termination of pregnancy. In fact, only a declaration by the woman stating that such conditions existed was required,³⁹ while an appeal in that respect only involved an administrative procedure.

As practice later showed, these regulations *de facto* introduced abortion 'on demand'. It was the pregnant woman, qualifying her life conditions as not allowing her to give birth and then raise a child, who decided on the abortion.⁴⁰

4.4 Act of 19 April 1969 – Criminal Code

Through the Act of 19 April 1969 – Provisions Introducing the Criminal Code⁴¹ – Articles 3-5 of the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy were repealed. These provisions

38 Ibid., p. 97.

39 § 1(3) of the Regulation of the Minister of Health of 11 May 1956 on the termination of pregnancy (Dz.U. No. 13, item 68); § 1(2) of the Regulation of the Minister of Health of 19 December 1959 on the termination of pregnancy (Dz.U. 1960 No. 2, item 15, as amended).

40 P. Matej, *Prawna regulacja przerywania ciąży w Polsce*, "Studenckie Zeszyty Naukowe" 2001, vol. 4, no. 5, p. 38.

41 Act of 19 April 1969 – provisions introducing the Criminal Code (Dz.U. No. 13, item 95).

dealt with punishment for forcing a woman to undergo a termination of pregnancy (imprisonment for up to five years), for performing a termination of pregnancy with the pregnant woman's consent but contrary to the provisions of Article 1 (imprisonment for up to three years), for assisting a pregnant woman to perform a termination of pregnancy contrary to the provisions of Article 1 (imprisonment for up to three years). In the 1969 Criminal Code, these were replaced by two articles increasing the penalties for forcing an abortion: Article 153 of the Criminal Code and Article 154 of the Criminal Code. According to the provisions of Article 153 of the Criminal Code, inducing the termination of pregnancy against the will of the woman was punishable by six months to eight years' imprisonment. Pursuant to Article 154 of the Criminal Code, performing an abortion with the consent of a pregnant woman or assisting a pregnant woman in this procedure, contrary to the provisions of the law, resulted in a penalty of up to three years' imprisonment, so in this case, the dimension of the penalty did not change. In view of the above, the enactment of the 1969 Criminal Code changed the standard of criminal protection to the extent that performing an abortion without a woman's consent was punishable by a higher penalty.

4.5 Deputies' bill on the legal protection of the conceived child (1989) – 9th term of office of the Parliament of the People's Republic of Poland (bill raising the standard of protection of human life in the prenatal stage, so-called pro-life)

During the ninth term of the Sejm of the People's Republic of Poland, on 28 February 1989, a deputies' bill⁴² on the legal protection of the conceived child⁴³ was submitted – the first one which proposed the outlawing of abortion. According to Article 7 of the bill, the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy was to lose its binding force, since, as indicated in the justification, the proposed norms excluded the possibility of its continuation. Reference was made to the Declaration of the Rights of the Child of 20 November 1959 as a document

42 It was brought by 74 MPs.

43 Own archive.

advocating the protection of the conceived child. The MP authorised to represent the drafters was Marian Szatybełko (Polish Catholic Social Union).

The proposed law aimed to obligate the state to take special care of the conceived child and its mother. The first two articles of the bill dealt with the broad protection of pregnant women, and the subsequent articles introduced amendments to the Civil Code of 1964 (hereinafter: the Civil Code), the Family and Guardianship Code of 1964 (hereinafter: the Family Code) and the Criminal Code of 1969 (hereinafter: the Criminal Code). The postulated provisions were intended to safeguard human life from the outset and to guarantee a change in the level of protection granted to the conceived child in the sphere of private law.

Particularly significant among the proposed amendments was Article 8 of the Civil Code, which was to read: 'Every human being has legal capacity from the moment of conception.' In the justification of the project, it was pointed out that this change was intended to aim at the complete empowerment of the conceived child; it was emphasised that a human being comes into existence as a living being at the moment of conception and not only at birth. As it was raised, according to the case law of the Supreme Court, in any case indicating the need to protect the interest of the conceived child, the child should be granted legal capacity. It was also stressed that the legal system of the time corresponds to the Roman principle *nasciturus pro iam nato habetur quotiens de commodis eius agitur* (the conceived child is treated as already born whenever its benefit is at stake). It was further pointed out that there is a consensus in judicial case law that a child is entitled to compensation for damage suffered during the period before birth. It was therefore proposed to add Article 4461 to the Civil Code, which reads: 'Upon birth, the child may claim compensation for damage suffered in the period before birth.'⁴⁴ As a consequence of the introduction of Article 8 of the Civil Code indicated above, a proposed amendment to Article 92 of the Civil Code was considered, which was to read: 'The child remains under parental authority from the moment of

44 An amendment with similar content was introduced by the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy.

conception until the age of majority.’ In addition, § 2 was to be added to Article 96 of the Family Code, which read: ‘The parents are obligated to care for the life and health of the child from the moment of conception, regardless of whether they have parental authority.’

The project’s explanatory memorandum also emphasised the need for amendments to the Criminal Code, pointing out that regardless of the stage of development, human life is the most valuable good and the bearer of human dignity. In that regard, it was envisaged to add Article 149a to the Criminal Code, which in § 1 was to introduce a penalty of imprisonment of up to five years for causing the death of a conceived child, and to add Article 156a, according to which a penalty of restriction of liberty of up to two years is imposed on anyone who causes bodily harm to a conceived child or health disorder endangering its life. It was pointed out that no periods of development of the child are introduced as grounds for differential punishment, as ‘criminal law punishes the attack on a conceived child and does not protect against the artificial termination of a pregnancy.’ Article 149a proposed the addition of § 2, which introduced the criminalisation of the use of violence, unlawful threats, and deception against the mother in order to commit the offence of causing the death of the conceived child. This act was punishable by imprisonment for up to five years.

The proposed amendments to the Criminal Code introduced the criminalisation of any attack on the life or health of a conceived child regardless of who the perpetrator is, which meant that criminal responsibility in the form of imprisonment for up to three years was also extended to the child’s mother (149a § 1 of the Criminal Code). Article 149a § 3 of the Criminal Code provides for the possibility for the court to waive punishment in particularly justified cases. The proposal of amendments to the Criminal Code provoked opposition from secular-liberal circles, deeply reluctant to such changes.⁴⁵ In introducing regulations protecting the conceived child, it was assumed that the provisions of Article 153 of the Criminal Code (concerning the termination of pregnancy without the woman’s consent)

45 J. Kolarzowski, *Polski spór o aborcję. Część 1: Pierwszy okres kontrowersji i nowa faza sporów 1989–1990*, http://otokoclub.pl/temat_,300,polski-spor-oaborcje-czesc-1-pierwszy-okres-kontrowersji-i-nowa-faza-sporow-1989-1990,2.html, accessed 13 April 2016.

and Article 154 of the Criminal Code (relating to assisting in the termination of pregnancy or doing so with the woman's consent but contrary to the provisions of the Act) would be repealed, as their disposition was already included in the new proposed criminal provisions. In 1990, the ongoing discussion led to an order issued by the Minister of Health obligating women wishing to undergo an abortion in a public hospital due to difficult living conditions to present a certificate from two gynaecologists, a physician, as well as a psychologist (see subsection 5.1.). The regulation also contained a provision that a doctor may refrain from issuing a statement on the admissibility of an abortion or performing it, as long as the woman's life would not be directly in danger if the abortion was not performed (see § 14).⁴⁶ In the end, however, the proposed law was not passed.

5 The Third Polish Republic: the period 1990-1997

Significant changes in access to abortion took place after the announcement of the fall of communism with the enactment of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy,⁴⁷ which took place during the tenure of Prime Minister Hanna Suchocka. This section will focus on the path that led to the enactment of this law.

5.1 Regulation of the Minister of Health and Social Welfare of 30 April 1990 on the professional qualifications to be possessed by doctors carrying out a termination of pregnancy and the procedure for issuing medical certificates of admissibility of such a procedure

The entry into force of the Regulation of the Minister of Health and Social Welfare of 30 April 1990 on the professional qualifications to be possessed by doctors carrying out a termination of pregnancy and the

46 See also T. Ślipko, M. Starowieyski, A. Muszala, *Aborcja – spojrzenie filozoficzne, teologiczne, historyczne i prawne*, Kraków 2010, pp. 11-17.

47 Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. 1993, No. 17, item 78).

procedure for issuing medical certificates of admissibility of such a procedure⁴⁸ resulted, as already noted above, in the introduction of stricter rules regarding the possibility of terminating a pregnancy due to difficult life conditions than those that had been in force since the late 1950s. According to Section 4 of this regulation, it became the doctor's duty, among other things, to inform the woman 'of the health risks involved in aborting a pregnancy, especially a first one, and the possible complications following the procedure', to carefully consider and discuss the woman's motives for terminating the pregnancy, and to try to dissuade the woman from this intention. If, after discussion with the doctor, the woman maintained her intention and the circumstances presented by the woman were 'in favour of a ruling on the admissibility of the termination of pregnancy', the doctor was obligated to consult a second doctor to exclude medical contraindications to the termination of pregnancy, and 'ask the woman to submit a certificate confirming that the intention, circumstances, and motives for terminating the pregnancy due to difficult life circumstances were consulted with a psychologist'.⁴⁹

5.2 Code of Medical Ethics of 14 December 1991

On 14 December 1991, the Second Extraordinary National Congress of Physicians enacted the Code of Medical Ethics,⁵⁰ the second sentence of Article 38 of which stated: 'The determination of the existence of a developmental disorder or a hereditary disease of the foetus does not authorise the termination of pregnancy', while Article 37 read: 'Medical actions that carry a risk or involve a risk of loss of life of the foetus are permitted only to save the life and health of the mother and in cases where the pregnancy is the result of a crime.' Thus, the Code of Medical Ethics contained a provision prohibiting abortion except in cases where the pregnancy endangers

48 Regulation of the Minister of Health and Social Welfare of 30 April 1990 on the professional qualifications to be possessed by doctors carrying out a termination of pregnancy and the procedure for issuing medical certificates of admissibility of such a procedure (Dz.U. No. 29, item 178).

49 § 4 of the Regulation of the Minister of Health and Social Welfare of 30 April 1990 on the professional qualifications to be possessed by doctors carrying out a termination of pregnancy and the procedure for issuing medical certificates of admissibility of such a procedure (Dz.U. No. 29, item 178); paragraph taken from: P. Zamelski, *op. cit.*, p. 97.

50 Resolution of the Extraordinary Second National Congress of Physicians of 14 December 1991 on the Code of Medical Ethics, <https://sip.lex.pl/akty-prawne/akty-korporacyjne/kodeks-etyki-lekarskiej-286454095>, accessed 25 August 2022.

the life and health of the woman or is the result of a criminal offence. In view of the above, the Ombudsman for Civil Rights Ewa Łętowska applied to the Constitutional Tribunal on 7 January 1992 to determine whether Article 37 of the Code of Medical Ethics was compatible with Article 90 of the Constitution of the Republic of Poland, in connection with Article 1, paragraph 1 of the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy.⁵¹ The Constitutional Tribunal, in its decision of 7 October 1992,⁵² ruled that 'the object of assessment of the Constitutional Tribunal cannot be the ethical norm itself, but only the legal norm, which the ethical norm focalizes'.⁵³

51 The content of all the questions contained in the application of the Ombudsman for Civil Rights: '1) whether Article 37 of the Code of Medical Ethics is compatible with Article 90 of the Constitution of the Republic of Poland in conjunction with Article 1(1) of the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy; 2) whether Article 76 of the Code of Medical Ethics is compatible with Article 110(2) of the Executive Criminal Code; 3) whether Art. 26 of the Code of Medical Ethics is compatible with Article 14 of the Act of 28 October 1950 on the medical profession; 4) whether Article 46 in conjunction with Article 48 of the Code of Medical Ethics is compatible with Article 23a of the Criminal Code', quoted in the decision of the Constitutional Court of 7 October 1992, ref. U 1/92.

52 Decision of the Constitutional Court of 7 October 1992, ref. U 1/92.

53 The explanatory memorandum referring to Article 37 of the Code of Medical Ethics: 'In examining the relationship of the norm from Articles 15(1), 41 and 42(1) of the Act on chambers of physicians as defined by Article 37 of the Code of Medical Ethics to the norm arising from Article 1(1) of the Act on the conditions or the permissibility of termination of pregnancy, the Constitutional Court determined the following:

The conduct to which both standards apply may consist either in the doctor's refraining from carrying out the abortion procedure or in carrying out such a procedure. In the latter case, it is necessary to examine the indications for performing the procedure.

If a doctor refuses to carry out a termination of pregnancy, then, with the exception of the case specified in Article 12 of the Act on the medical profession, his or her conduct cannot be considered unlawful under the provisions of the Act on medical chambers as defined by the norms of the Code of Medical Ethics. Nor can such conduct be considered unlawful in the light of the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy. This is because this Act does not impose an obligation to perform the procedure, but only statutes the exclusion of criminal liability for performing it under the conditions specified in the Act. The doctor may evade a ruling on the admissibility of the termination of pregnancy and the performance of the procedure itself. This right of the doctor, which derives from his fundamental freedoms to act in accordance with his conscience, is expressly confirmed in the Regulation of the Minister of Health and Social Welfare of 30 April 1990 (§ 14). The constitutionality of the indicated norm of this ordinance was established by the Constitutional Court in its ruling ref. U. 8/90. Therefore, it should be concluded that with regard to the failure to carry out the abortion procedure, there is no inconsistency between the norms of the two laws in question.

The Act on the conditions for the permissibility of termination of pregnancy considers it permissible, and therefore legal, for a doctor to terminate a pregnancy when the following are in favour of the termination: medical indications or difficult living conditions of the pregnant woman, and if there is a reasonable suspicion that the pregnancy is the result of a crime. The procedure is only legal provided that there are no medical contraindications to the procedure. Article 15(1) of the Act on chambers of physicians, as further defined by Article 37 of the Code of Medical Ethics, considers the termination of pregnancy permissible only to save the life and health of the mother and in cases where the pregnancy is the result of a crime. On the basis of the standard thus defined, the termination of a pregnancy due to the difficult living conditions of the pregnant woman is treated as unlawful and sanctioned under Articles 41 and 42(1) of the Act on medical chambers. The same conduct of the doctor (termination of pregnancy due to difficult living conditions of the pregnant woman) is at the same time expressly deemed permissible and therefore lawful by one law and unlawful and subject to legal sanctions by the other law. There is therefore a contradiction between the two laws, which can only be removed by the legislator.'

5.3 Bills on the termination of pregnancy (with the exception of the 1992 pro-life bill)⁵⁴

In the period covering 1990-1993, the Sejm considered a new bill each year containing regulations on the permissibility of abortion.⁵⁵

5.3.1 Senate bill on the legal protection of the conceived child (1990) – Sejm Paper No. 533, 10th term of office of the Parliament of the People's Republic of Poland⁵⁶ (bill raising the standard of protection of human life in the prenatal stage, so-called pro-life)

During the 10th term of the Sejm of the People's Republic of Poland, on 4 October 1990, a Senate bill on the legal protection of the conceived child was proposed⁵⁷ – another bill following the 1989 bill, which aimed to outlaw the termination of pregnancy. Authorised to represent the senators in the work on the bill was Walerian Piotrowski (Christian National Union).

The project introduced the legal principle of absolute protection of conceived life. According to the drafters, there was an 'internal rift' between the granting of legal capacity and protection to the conceived child by civil law and judicial jurisprudence, based on the Roman principle of *nasciturus pro iam nato habetur quotiens de commodis eius agitur*, and the content of the 1956 law then in force, and according to Article 7 of the draft, this was to lose its binding force. In addition, the Declaration of the Rights of the Child of 20 November 1959 was identified as the basis for the legislation being introduced to protect life from conception.

According to the preamble of the bill, safeguarding human life as the highest good is the responsibility of the state, while protecting motherhood and the child is the responsibility of the state and society. The draft was to introduce

54 The pro-life project of 1992, as it started the path leading to the adoption of the so-called compromise project in the form of the 1993 Act on family planning, protection of the human foetus and the conditions for the permissibility of termination pregnancy, is described in subsection 5.4.

55 There were many projects themselves, but most were not considered.

56 This was the so-called Contract Sejm – the Sejm of the People's Republic of Poland elected on 4 and 18 June 1989 as a result of the Round Table political agreements, dissolved together with the Senate on 26 October 1991.

57 Own archive. See Senate bill on the legal protection of the conceived child (Sejm Paper No. 533; referred to committee on 25 January 1991), <http://orka.sejm.gov.pl/procx.nsf/opisy/553.htm>, accessed 25 August 2022.

provisions that statute the right to life and its protection from the moment of conception, and to activate the state's efforts to provide pregnant women with social, medical and legal care by governmental and local authorities. In addition, like the previous draft, it provided for the amendment of Article 8 of the Civil Code and the introduction of Article 4461 of the Civil Code. Article 8 of the Civil Code was to read in § 2: 'The conceived child also has legal capacity; however, he or she acquires property rights and obligations on the condition that he or she is born alive',⁵⁸ while Article 4461 of the Civil Code stated: 'From the moment of birth, the child may claim compensation for damage suffered during the period before birth.'⁵⁹ As highlighted in the explanatory memorandum, the amendment of Article 8 resulting in the granting of conditional legal capacity to the conceived child was necessary with the recognition of the right to life and its protection for every human being from conception. Article 5 of the draft proposes the deletion of Article 15(2)(4) permitting abortions to be carried out outside a medical facility.

In addition, the bill provided for amendments to the Criminal Code. As indicated in the explanatory memorandum, 'the legal protection of such an important human good as life cannot be realised without legal sanction'. Like the previous draft, the bill introduced the criminalisation (with imprisonment of up to two years) of attacks on the life or health of the conceived child, but with the exclusion of the child's mother from criminalisation. The harmfulness of the procedure to her physical and mental health, the social conditions of the decision, and the widespread lack of sufficient awareness of the nature of the termination of pregnancy were taken into account, recognising that these circumstances constitute the rationale for exempting the mother from criminal sanctions. The draft allowed abortion in cases where the mother's life was endangered and where the pregnancy was the result of a criminal offence. In addition, it was proposed to add Article 149b of the Criminal Code, which was to introduce the criminalisation of the use

58 This amendment was introduced later, by the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy. Subsequently, by the Act of 30 August 1996 amending the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and amending certain other acts (Dz.U. No. 139, item 646), it was withdrawn, abrogating the added § 2 in Article 8 of the Civil Code. Currently, Article 8 § 1 of the Civil Code reads: "Every human being has legal capacity from the moment of birth."

59 This amendment was introduced by the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy.

of violence, unlawful threats, and deception against the mother in order to commit the crime of causing the death of the conceived child. This act was punishable by imprisonment for up to five years.

As noted at the end of the explanatory memorandum, the draft did not address the problem of the collision of the two goods – life of the mother and life of the child – as it was assumed that this problem could be resolved on the basis of other provisions of the general section of the Criminal Code (such as, for example, the condition of superior necessity).

The proposed law was not enacted, the draft was submitted to the Sejm again on 25 January 1991. However, the work was suspended by a resolution of the Sejm of 17 May 1991.⁶⁰

5.3.2 Deputies' bill on the right to parenthood, protection of conceived human life and the conditions for permissibility of termination of pregnancy (1991) – Sejm Paper No. 798, 10th term of office of the Parliament of the People's Republic of Poland (bill lowering the standard of protection of human life in the prenatal stage, so-called pro-choice)

Another bill regulating the permissibility of abortion was submitted during the 10th term of the Sejm of the People's Republic of Poland; it was referred to work in a committee on 5 April 1991. It was a parliamentary bill⁶¹ on the right to parenthood, protection of conceived human life and the conditions for permissibility of termination of pregnancy.⁶² Anna Kwietniewska (Democratic Left Alliance) was authorised to represent MPs in the work on the project.

The explanatory memorandum of the draft argued that it was in line with global trends, citing, *inter alia*, the 1990 Council of Europe Resolution, which stated that woman's right to terminate pregnancy should be guaranteed.⁶³

60 See Resolution of the Sejm of the Republic of Poland of 17 May 1991 (M.P. 1991, No. 18, item 120).

61 Submitted by 90 MPs.

62 Deputies' bill on the right to parenthood, protection of conceived human life and the conditions for permissibility of termination of pregnancy (Sejm Paper No. 798; referred to committee on 5 April 1991), <http://orka.sejm.gov.pl/procx.nsf/0/607784F33BE70F0BC12574640020C957?OpenDocument>, accessed 23 December 2022.

63 The explanatory memorandum of the draft in question mistakenly refers to the 1990 Council of Europe Resolution instead of the 1990 European Parliament Resolution.

It also pointed out that public opinion polls in Poland indicated that 'a growing majority of this opinion is against a return to the pre-1956 legal status quo', i.e., before the law allowing abortion came into force. According to the justification of the draft, it introduced the overriding principle of the protection of conceived life, the guarantee of its respect and protection (Article 2) within the limits set by the principles of rational legislation, while treating the possibility to decide on the termination of pregnancy as an exception exercised within the limits of legislation and the rights of persons already born, in particular women (Article 3).

In Chapter I of the proposed law, Article 1 appeared the guarantee of the right to make an informed and responsible decision about having children and about the intervals between their births, as well as the right of access to information, education, and counselling to enable the exercise of the said right to decide. Education was to include the transmission of knowledge about the value of the family, the principles of informed and responsible parenthood, sexual life and methods and means of regulating conception (Article 6). In the justification of the project, it was indicated that due to the lack of guarantees of access to the indicated means and methods, 'abortion has become in Poland one of the main means of regulating fertility'. Therefore, Article 8 emphasised that abortion was not considered a method of family planning and was allowed only under the conditions and to the extent provided for in the law. Article 11 was to guarantee free medical care to the pregnant woman and 'to the conceived child, who is a subject of medical care in its own right'. This was linked to the possibility of voluntary perinatal care (Article 12).

According to the drafters, the 1956 law contained two fundamental flaws. First, it did not regulate the procedure for issuing medical decisions on the admissibility of abortions with sufficient precision, thus allowing for very different interpretations of the procedure. Second, it did not formulate any broader objectives in the sphere of protecting the procreative functions of the family, nor did it oblige the state to create conditions conducive to the realisation of these functions, 'contenting itself with opening up the right to legal abortion'.

The draft regulated the conditions for the permissibility of abortion in detail, enumerating five circumstances in which it was to be possible.

As emphasised in the justification of the draft, these conditions resulted from the protection of life and health of the woman, the health of the conceived child, who – in the case of a threat of severe disability – was to have the ‘right not to be born’, the woman’s right to non-instrumental treatment (when the pregnancy was the result of rape) and the human right to make independent moral decisions in accordance with her convictions. According to Article 18 of the draft, the termination of pregnancy was to be permissible: ‘(1) if a medical commission decides that the continuation of the pregnancy or childbirth seriously endangers the life or health of the woman; (2) when a doctor, on the basis of a prenatal examination or other indications, determines that there is a high risk of severe and irreversible impairment of the foetus or an incurable disease threatening its life; 3) when there is probable evidence that the pregnancy is the result of a prohibited act; 4) in the case of documented and particularly difficult material and living conditions of the pregnant woman or her family; 5) for exceptionally important personal reasons stated in the woman’s written declaration.’

These conditions were an expansion of the grounds from the 1956 Act,⁶⁴ except that access to abortion was restricted based on the stage of pregnancy. As emphasised in the explanatory memorandum of the draft, the procedure indicated therein is aimed at ‘intervening in the termination of pregnancy – if necessary – at the earliest possible stage of foetal development’. According to the drafted Article 18(2): ‘the termination of pregnancy should be carried out at the earliest possible stage of pregnancy’ – in the case of grounds two and three no later than the end of the 17th week of pregnancy, and in the case of grounds four and five no later than the end of the 10th week of pregnancy. The additional conditions for the termination of pregnancy were also defined in more detail than in the 1956 law,⁶⁵ which were to be: ‘(1) a certificate of consultation at a prenatal clinic; (2) a written request by the pregnant woman, meeting the requirements

64 According to Section 1 of the 1956 Act, an abortion procedure may only be performed by a doctor if:

1. the following conditions are in favour of termination of pregnancy:
 - a. medical indications or
 - b. difficult living conditions of the pregnant woman,
2. there is a reasonable suspicion that the pregnancy is the result of a criminal offence.

65 According to Section 2 of the 1956 Act, the existence of circumstances permitting an abortion was established by a medical certificate or a prosecutor’s certificate.

of free and informed consent, based on full information on the indications and contraindications to the termination of pregnancy; (3) the maintenance of an interval of three days between the consultation and the performance of the termination of pregnancy; (4) the performance of the intervention by a gynaecologist-obstetrician, other than the one providing the consultation, under appropriate sanitary and medical conditions' (Article 19). As noted in the explanatory memorandum, this procedure was intended to objectivise and rationalise the woman's decision through mandatory consultation and mandatory reflection time.

The proposed law also included amendments to the Civil Code, the Family and Guardianship Code and the Criminal Code. In the Civil Code, the same change was proposed as in the projects aimed at improving the standard of protection of the life of the nasciturus, that is, the introduction of paragraph 2 in Article 8 of the Civil Code, which reads as follows: 'The conceived child also has legal capacity; however, he or she acquires property rights and obligations on the condition that he or she is born alive.' In the Criminal Code, amendments have been proposed to Articles 153, 154, and 157 to introduce sanctions for the termination of pregnancy under conditions other than those permitted by the proposed law. According to Article 153 of the Criminal Code, termination of pregnancy without the woman's consent or inducing her to give such consent by violence, unlawful threat, or deception was to be punishable by imprisonment from six months to eight years. The same punishment was to apply to the act of aborting a pregnancy with the woman's consent, or inducing or assisting her to do so. Should any of the above offences lead to the death of a foetus capable of independent life, the perpetrator would also be subject to a punishment of imprisonment from six months to eight years (Article 157 § 3 of the Criminal Code).

In addition, the draft provided for the possibility of imposing a sanction in the form of restricting liberty for up to one year on a pregnant woman who would cause death or harm to a foetus capable of independent life developing in her body (Article 156a § 2 of the Criminal Code). The proposed law also included regulations relating to infertility treatment. Pursuant to Article 27, the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy was to cease to be in force.

The above proposed legislation was, according to the drafters, intended to create the conditions for responsible parenthood.

Work on the deputies' bill on the right to parenthood, protection of conceived human life and conditions for permissibility of termination of pregnancy, submitted on 5 April 1991, and on the referenced Senate bill on the legal protection of the conceived child, submitted on 4 October 1990, were suspended by virtue of the same decision, that is, the resolution of the Sejm of 17 May 1991.⁶⁶ The resolution indicated that the Sejm decides not to consider both bills. At the same time, the deputies agreed with the direction of changes in the law aimed at improving the standard of protection of human life at the prenatal stage, pointing out that 'one of the social disasters of today is the phenomenon of abortion, which has a mass range in Poland'. They also declared the need to repeal the Act of 1956 as soon as possible. However, they emphasised that 'the draft laws "on the legal protection of the conceived child" and "on the right to parenthood, the protection of conceived human life and the conditions of permissibility of abortion" were drafted in an atmosphere of great tensions and ideological disputes, without sufficient concern for the legal implications', so that 'the numerous mutually contradictory minority proposals create the risk of passing an internally contradictory law. In this situation, the final outcome of the votes may result in a law that satisfies no one and whose consequences are impossible to predict'.

The resolution considered it necessary to take multidirectional measures for an effective social policy by:

- 1) strengthening the activity of the executive to establish an action plan that will increase the degree of effective maternal, child and family care;
- 2) developing a programme of sex education and family preparation;
- 3) consideration by the Constitutional Commission of a draft new provision that was to include legal protection for conceived human life;

66 Resolution of the Sejm of the Republic of Poland of 17 May 1991, op. cit.

- 4) amendment to the Medical Profession Act of 1950,⁶⁷ which in Article 15(2)(4) allowed abortions to be performed in private practices.

Less than two months after the issue of the parliamentary resolution, on 10 July 1991, Democratic Union MPs brought in a bill to repeal the Act on the conditions for the permissibility of termination of pregnancy and the related amendment of the Criminal Code and the Act on the medical profession. However, this bill was withdrawn by them.⁶⁸

5.3.3 Deputies' bill on the right to parenthood, protection of the human foetus and the conditions for the permissibility of termination of pregnancy (1992) – Sejm Paper No. 195, 1st term of office of the Polish Parliament (bill lowering the standard of protection of human life in the prenatal phase, so-called pro-choice)

On 30 March 1992, during the first term of the Polish Parliament, another attempt was made to amend the legislation on the permissibility of abortion. A deputies' bill on the right to parenthood, protection of the human foetus and the conditions for the permissibility of termination of pregnancy was then brought forward.⁶⁹ Marek Balicki (Democratic Union) was authorised to represent MPs in the works concerning the preparation of the bill.

This bill largely replicated the provisions advocated by the Democratic Left Alliance in 1991. The explanatory memorandum of the bill pointed out three (rather than two, unlike the earlier bill) fundamental flaws in the 1956 Act. In addition to its emphasis on the lack of precise regulation of the procedure for issuing medical decisions on the permissibility of abortions (which gave rise to the possibility of very different interpretations of the procedure) and the allegation that it did not formulate any broader objectives in the sphere of the protection of the procreative functions of the family and did not obligate the state to create conditions conducive to the realisation of

⁶⁷ Act of 28 October 1950 on the medical profession (Dz.U. No. 50, item 458).

⁶⁸ See bill to repeal the Act on the conditions for the permissibility of termination of pregnancy and the related amendment of the Criminal Code and the Act on the medical profession (Sejm Paper No. 977; date of receipt of the bill: 10 July 1991), <http://orka.sejm.gov.pl/procx.nsf/0/7E99A9A46CF090F5C12574640020CACB?OpenDocument>, accessed 25 August 2022.

⁶⁹ It was submitted by 91 MPs.

these functions ('contenting itself with opening up the possibility of legal abortions') pointed out that the law did not formulate 'obligations of the State to counteract the causes of unwanted pregnancies and abortions and measures favouring informed parenthood and family planning'.

According to the authors, the draft was intended to be a proposal aiming to exclude socially dangerous phenomena such as illegal abortions, infanticide, infant abandonment, and abortion tourism. It was emphasised that the regulations proposed in the law are mainly aimed at removing the causes of abortion.

The 1992 draft no longer included provisions for the guarantee of respect and protection of conceived life within the limits set by the principles of rational legislation and the rights of those already born. Furthermore, the provisions concerning free medical care refer to the pregnant woman and the 'foetus' (Article 8) and not, as in the previous draft, the 'conceived child, who is the subject of medical care in its own right'. Consequently, there are also no regulations relating to the possibility of voluntary perinatal care. The most significant difference was the abandonment of the provision concerning the possibility of terminating a pregnancy for exceptionally important personal reasons stated in the woman's written declaration – the explanatory memorandum emphasised that the conditions for the permissibility of termination of pregnancy are based on the protection of the life and health of the woman and the 'future' child. Another important change was the introduction of different periods for performing a legal abortion than previously. According to the drafted Article 18(2), the termination of pregnancy 'should be carried out at the earliest possible stage of pregnancy', but the time frame in which abortion was permitted was significantly expanded compared to the earlier draft: in the case of the premise contained in Article 15(1)(a) and (c) (if the medical committee decides that the continuation of pregnancy or childbirth seriously endangers the woman's life or health and if the medical committee decides that there is a reasonable suspicion that the pregnancy has resulted from a prohibited act), it was to cover the period up to the end of the 20th week of pregnancy; in the case of the premise contained in Article 15(1)(b) (if the medical committee declares that prenatal tests or other indications indicate that there is a high risk of severe and irreversible impairment of the foetus or an incurable disease

threatening its life) – until the end of the 24th week of pregnancy, in the case of the premise contained in Article 15(1)(d) (if the medical committee declares that there are documented and particularly difficult material and living conditions of the pregnant woman) – until the end of the 12th week of pregnancy.

Pointing out further differences between the 1991 bill and the 1992 bill, it should be noted that the latter did not provide for amendments to Article 8 of the Civil Code in the form of granting conditional legal capacity to the conceived child. The proposed amendments to the Criminal Code in both drafts concerning the regulations relating to the criminal act of termination of pregnancy outside the circumstances permitted by the proposed law were similar. The difference existed only in terms of criminal sanctions, which were lower in the 1992 draft. According to the proposed Article 153 of the Criminal Code, termination of pregnancy without the woman's consent or inducing her to give such consent by violence, unlawful threat or deception was to be punishable by imprisonment of six months to five years (in the earlier draft: six months to eight years). According to the wording of the proposed Article 154 of the Criminal Code, a term of imprisonment of up to three years (in the earlier draft: from six months to eight years) would be imposed for terminating a pregnancy with the woman's consent, inducing her to do so, or providing assistance in doing so. If any of the above offences led to the death of a foetus capable of independent life, the perpetrator would also be subject to imprisonment for up to eight years (in the earlier draft: from six months to eight years – Article 157 § 3 of the Criminal Code).

The bill was rejected by the Sejm on 24 July 1992.⁷⁰

5.4 Attempts to hold a referendum on the permissibility of abortion

In 1992, there were also attempts to hold a national referendum on the permissibility of abortion. Signatures for the motion to organize it were collected by social committees (the so-called Bujak committees).

⁷⁰ See deputies' bill on the right to parenthood, protection of the human foetus and the conditions for the permissibility of termination of pregnancy (Sejm Paper No. 195 of 30 March 1992), <http://orka.sejm.gov.pl/proc1.nsf/0/99DCF23651B388B5C125745F003141D9?OpenDocument>, accessed 23 December 2022.

Their spokespersons included Barbara Labuda (Democratic Union) and Zbigniew Bujak (Democratic Social Movement). On 30 March 1992, a deputies' draft resolution on holding a nationwide referendum on the permissibility of abortion was submitted to the Sejm. It was rejected on 24 July 1992.⁷¹ Another attempt came on 10 December 1992: Democratic Union deputies submitted a draft resolution on holding a nationwide referendum on the permissibility of abortion. It was rejected on 7 January 1993.⁷² It should be noted at this point that nowadays both MPs of the right and the left take the position that human rights are not subject to assessment in referendums. Holding a referendum on this matter is not permissible.

5.5 First term of office of the Polish Parliament. Deputies' bill on the legal protection of the conceived child (1992) – Sejm Paper No. 190; Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (1993)

Another bill regulating the admissibility of abortion was submitted during the first term of the Polish Sejm, on 25 March 1992. It was a deputies' bill⁷³ on the legal protection of the conceived child.⁷⁴ Halina Nowina-Konopka (Christian National Union) was authorised to represent MPs in the work on the project.

This bill provided for the granting of the inherent right to life to every human being from the moment of conception (Article 1). It imposed an obligation on public administration bodies to provide social, medical, and legal care to pregnant women as well as to cooperate with and provide assistance to institutions that work in this field (Articles 2 and 3). Article 4 stipulated the inclusion in the school curriculum of topics related to 'respect for human life from the moment of conception' and 'education for family life and responsible parenthood'.

71 See deputies' draft resolution on holding a nationwide referendum on the permissibility of abortion (Sejm Paper No. 194 of 30 March 1992), <http://orka.sejm.gov.pl/proc1.nsf/0/281C3B2C3F13706AC125745F003141D4?OpenDocument>, accessed 25 August 2022.

72 See deputies' draft resolution on holding a nationwide referendum on the permissibility of abortion (Sejm Paper No. 578 of 6 November 1992; Sejm Paper No. 578-A of 25 November 1992; Sejm Paper No. 578-B of 10 December 1992), <http://orka.sejm.gov.pl/proc1.nsf/0/727CD71EBBFD8827C125745F0031471F?OpenDocument>, accessed 25 August 2022.

73 Submitted by 171 MPs.

74 Deputies' bill on the legal protection of the conceived child (Sejm Paper No. 190 of 25 March 1992), <http://orka.sejm.gov.pl/proc1.nsf/opisy/190.htm>, accessed 25 August 2022.

The bill also introduced amendments to existing laws. It provided for the repeal of Article 15(2)(4) of the Act on the medical profession of 1950, which had allowed pregnancy terminations to be performed in private practices. In addition, it provided for amendments to the Civil Code and the Criminal Code. It proposed the same amendment to Article 8 of the Civil Code as the 1990 and 1991 drafts – it consisted of the addition of paragraph 2 to Article 8 of the Civil Code, which read as follows: ‘A conceived child also has legal capacity; however, it acquires property rights and obligations on the condition that it is born alive.’⁷⁵ The draft in question also envisaged – as did the drafts proposed in 1990 and 1991 – the introduction of Article 4461 of the Civil Code, except in a more elaborate form, comprising two paragraphs: ‘§ 1. From the moment of birth, the child may claim compensation for damage suffered during the pre-birth period’⁷⁶ and ‘§ 2. The child may claim compensation for damage, related to loss of health, arising also during the preconception period’.

The Criminal Code provided for the addition of Articles 149a and 149b – the changes were similar to those proposed in the 1990 draft, but included several significant differences. These included a more severe sanction for the use of violence, unlawful threats, and deception against the mother to commit the offence of causing the death of the conceived child. This act was to be punishable by imprisonment ranging from six months and eight years. In addition, this sanction was also applicable in cases of violence against a pregnant woman resulting in the death of the conceived child and causing the death of the conceived child ‘in another manner without the consent of the pregnant woman’ (Article 149b of the Criminal Code).

It was also proposed to add Article 156a of the Criminal Code, which exempted a doctor from punishment for causing bodily injury or a health disorder to the conceived child as a consequence of therapeutic actions

75 As mentioned in the previously described drafts concerning the same amendment: this provision was introduced later, by the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy. Subsequently, through the Act of 30 August 1996 amending the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and amending certain other acts, it was withdrawn, abrogating the added § 2 of Article 8 of the Civil Code. Currently, Article 8 of the Civil Code reads: ‘Every human being has legal capacity from the moment of birth.’

76 This amendment was introduced into the Civil Code by the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy.

necessary to avert threats to the health and life of the pregnant woman or the conceived child. In earlier drafts raising the standard for the protection of life in the prenatal phase, this exclusion was mentioned only in cases leading to the death of the conceived child.

A new proposed solution in the draft under discussion (modelled on the provisions that appeared in the 1991 and 1992 drafts) was also an amendment to Article 157 of the Criminal Code. The project envisaged the addition of paragraph 2 in Article 157 of the Criminal Code⁷⁷ introducing a punishment in the form of imprisonment from one to ten years for the acts listed in Article 149a § 1 of the Criminal Code, Article 149b of the Criminal Code, and Article 156 § 1 of the Criminal Code,⁷⁸ 'if the result of the act is the death of the mother of the conceived child'.

In addition, abortion was not permitted by the proposed law when the pregnancy was the result of a criminal offence, which was the most significant difference between the draft under discussion and the earlier 1991 draft. Clearly, as the regulations of the proposed law were irreconcilable with the 1956 Act, the draft envisaged its repeal.

At the first reading on 24 July 1992, the Sejm referred the bill in question to an extraordinary committee for consideration. Its sittings were held on: 4 and 24 September, 8 and 22 October, and 12 and 19 November 1992. On 19 November 1992, a report was drawn up on the work in the committee, which requested that the bill be passed and, in accordance with Rule 40(3) of the Rules of Procedure of the Sejm, presented 12 minority motions at the request of the proposers. As numerous amendments had been tabled during the second reading, on 30 December 1992 the Sejm referred the bill again to work in an extraordinary committee. The committee considered the proposed amendments at its meeting on 6 January 1993 and decided to reject the vast majority of them. In its report of the meeting, the committee reported to the Sejm the results of the vote on twelve amendments, 11 of which it decided to reject and one to accept. The one that was accepted

77 The former Article 157 § 2 of the Criminal Code was to become Article 157 § 3 of the Criminal Code.

78 Bodily injury or disorder to a person.

was the deletion of paragraph 2 in proposed Article 446,1 which reads: 'The child may claim compensation for damages, related to loss of health, arising also during the pre-conception period.'

A number of new amendments were adopted at the third reading. Firstly, the title of the bill 'on the legal protection of the conceived child' was changed to a bill 'on family planning, protection of the human foetus and the conditions of permissibility of abortion'. Amendments concerning Article 4, Article 7 and Article 8 of the draft were voted. In Article 4, which made it compulsory to include issues concerning procreation in the curricula, the subject matter proposed in the original bill was changed: instead of 'respect for human life from the moment of conception', topics including 'knowledge of human sexual life, the principles of conscious and responsible parenthood, the value of the family, conceived life and methods and means of conscious procreation' were to appear. Article 7(1) of the draft, where the proposed amendments to the Criminal Code are located, expanded Article 23b, which was to be added to the Code. The original version of the provision prohibiting actions on the conceived child other than those for the protection of life and health was replaced by a provision allowing examinations carried out before birth that do not clearly increase the risk of miscarriage if one of the following circumstances existed:

- 1) the child conceived belonged to a genetically burdened family;
- 2) there was a suspected genetic disease that could be treated, cured or reduced in the foetal period;
- 3) there was suspicion of severe foetal damage.

The most significant change made during the voting on the amendments concerned Article 7(2), where the suggested amendment to Article 149a of the Criminal Code was included. The proposed § 3 of this provision, which regulates the absence of punishment in the case where 'the death of the conceived child occurred as a result of taking measures necessary to avert a danger threatening the life of the pregnant woman', received new wording. It included four prerequisites for the permissibility of abortion, which concerned situations where:

- 1) the pregnancy posed a threat to life or a serious risk to the health of the mother;
- 2) the death of the conceived child occurred as a result of measures taken to save the life of the mother or to prevent serious harm to the health of the mother;
- 3) prenatal tests indicated severe and irreversible damage to the foetus;
- 4) there was a reasonable suspicion that the pregnancy was the result of a criminal act.⁷⁹

In view of the above, the regulation of the circumstances in which abortion is permissible was not included in the law under procedure itself, but was the content of a provision to be introduced into the Criminal Code.

In addition, Article 8 was written into the Act, introducing an amendment to the Act of 8 March 1990 on local self-government,⁸⁰ which added the task of providing social, medical and legal care for pregnant women to the catalogue of the municipality's own tasks.⁸¹

The Sejm adopted the bill during the vote (result of the vote: 213 MPs in favour, 171 against, 29 abstentions). The Senate adopted the bill without amendments. The Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy was published in the Dz.U. of 1993 under number 17, item 78.

79 Full text of Article 149a § 3: 'No offence as defined in § 1 shall be committed by a medical practitioner taking this action in a public health care institution where:

1. the pregnancy was life-threatening or a serious risk to the health of the mother, ascertained by a decision of two doctors other than the doctor taking the action referred to in paragraph 1, this decision not being necessary in the event of an immediate need to abrogate the risk to the life of the mother,
2. when the death of the conceived child occurred as a result of measures taken to save the life of the mother or to prevent serious damage to the mother's health, the danger of which was confirmed by the judgment of two other doctors,
3. prenatal tests, confirmed by a decision of two doctors other than the doctor taking the action referred to in paragraph 1, indicate severe and irreversible damage to the foetus,
4. there is a reasonable suspicion, confirmed by a certificate from the public prosecutor, that the pregnancy has resulted from a prohibited act.'

80 Currently, the Act of 8 March 1990 on municipal self-government (Dz.U. No. 16, item 95, as amended).

81 Article 7(1)(16) of the Act of 8 March 1990 on local self-government (Dz.U. No. 16, item 95).

5.6 Act of 30 August 1996 amending the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and amending certain other acts; 1997 Constitutional Court ruling

In 1996, amendments to the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy were enacted – so the Act had only been in force in its original form for three years. The amendments were introduced during the Democratic Left Alliance (SLD) government. The amendment of the law was proposed by the Labour Union (UP). The project was supported by the SLD, UP, the New Democracy parliamentary group and the Polish Socialist Party. These were amendments facilitating access to abortion, which was met with protests across Poland. At the time, over a million complaints from citizens about the amendment in question were submitted to the Speaker of the Sejm, Józef Zych. Demonstrations and public prayer actions were organized in front of the Sejm building. On 20 November 1996, President Aleksander Kwaśniewski signed the amendment to the Act.⁸²

The amendment amended the preamble. In its original version, it read as follows: ‘Recognising that human life is a fundamental human good and that the care of life and health is one of the fundamental duties of the state, society and the citizen, it is established as follows.’ In the amended version, the preamble has been significantly expanded: ‘Recognising that life is a fundamental human good and that the care of life and health is one of the fundamental duties of the State, of society and of the citizen; recognising the right of everyone to decide responsibly to have children and the right of access to information, education, counselling and the means of exercising this right, it is established as follows.’

The original version of the Act of 7 January 1993 introduced, *inter alia*, the provisions of Articles 149a and 149b in the Criminal Code regulating the punishment for its commission. The provisions of the aforementioned Act

82 Act of 30 August 1996 amending the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and amending certain other acts (Dz.U. No. 139, item 646).

were amended by an amendment introduced on 30 August 1996 and after this amendment, which was of a liberalising nature, differed significantly in some aspects from the original version. Firstly, the amendment introduced a very important change consisting in the addition, after Article 4, of, *inter alia*, Article 4a, under which, in paragraph 1, the prerequisites giving legal grounds for an abortion were listed: ‘The termination of a pregnancy may only be carried out by a doctor where:

- 1) the pregnancy poses a risk to the life or health of the pregnant woman,
- 2) prenatal tests or other medical indications point to a substantial likelihood of severe and irreversible foetal disability or incurable life-threatening illness,
- 3) there is a reasonable suspicion that the pregnancy is the result of a criminal act,
- 4) the pregnant woman is in difficult living conditions or a difficult personal situation.’

An important provision is also included in paragraph 2 of Article 4a: ‘In the cases referred to in paragraph 1(2), termination of pregnancy shall be permissible until the foetus has attained the capacity to live independently outside the pregnant woman’s body; in the case referred to in paragraph 1(3) or (4), if no more than twelve weeks have elapsed since the beginning of pregnancy.’

Among other things, the amendment also added Article 4b stating that abortion is free of charge for those covered by social insurance.

As regards some of the changes introduced by the new law, the Constitutional Tribunal, chaired by Professor Andrzej Zoll, was critical in its historic ruling of 28 May 1997.⁸³ The Tribunal indicated the necessity of updating a number of provisions, *inter alia*, because they violated constitutional

83 Ruling of the Constitutional Court of 28 May 1997, ref. K 26/96.

guarantees for the protection of human life at each stage of its development or the principle of equality. By virtue of the aforementioned ruling of the Tribunal, the entire paragraph 4 concerning the social premise was deleted from Article 4a. Thus, a regulation that guaranteed almost unlimited access to abortion under the law was removed.

This Tribunal ruling has shaped the legal position on abortion in Poland for the next almost quarter of a century.

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Abstract

The subject of this chapter is to present, within the framework of a historical outline, how the legal regulations concerning the permissibility of abortion in Poland evolved in the years 1918–1996. The chapter opens with a discussion of the regulations from the inter-war period, the Nazi occupation, and the communist era. This is followed by a detailed discussion of the proposed abortion laws debated in parliament between 1989 and 1997, i.e., the entire path leading to the enactment of the currently binding Act of 7 January 1993 on family planning, protection of the human foetus and the conditions of permissibility of terminating a pregnancy.

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Key terms: Constitution of the Republic of Poland, protection of the life of the conceived child, human dignity, maternity, democratic legal state, protection of life

Chapter 8

Constitutional standards of protection of the life of the conceived child in the Polish legal order¹

1 Introductory remarks

On the grounds of the currently binding Constitution of the Republic of Poland of 2 April 1997, the standard of protection of human life at the prenatal stage of development is determined mainly by five provisions of the Constitution: Article 1, Article 2, Article 18, Article 30, and Article 38. However, their significance for providing the conceived child with a guarantee of legal protection of the most precious legal good, which is undoubtedly human life,² remains diverse and is subject to a certain gradation. Although only Article 38 of the Constitution refers to this issue in a literal way, the fundamental importance should be given to Article 30 of the Constitution.³ The two provisions are closely and inextricably linked.⁴

1 This paper uses excerpts from the *Opinia amici curiae Fundacji Instytut na rzecz Kultury Prawnej Ordo Iuris w sprawie stwierdzenia niezgodności art. 4a ust. 1 pkt 2 oraz art. 4a ust. 2 zd. pierwsze ustawy z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży* (Dz.U. Nr 17, poz. 78 z p.żn. zm.) z Konstytucją RP [Amici curiae opinion of the Ordo Iuris Institute for Legal Culture Foundation on the issue of ascertaining the inconsistency of Article 4a, paragraph 1, point 2 and Article 4a, paragraph 2, first sentence of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended) with the Constitution of the Republic of Poland], submitted to the Constitutional Tribunal in the proceedings conducted under the signature K 13/17, by M. Olszówka and B. Zalewski. The opinion is available at <https://ordoiuris.pl/opinia-amici-curiae-w-sprawie-stwierdzenia-niezgodnosci-art-4a-ust-1-pkt-2-oraz-art-4a-ust-2-zd>, accessed 5 September 2022.

2 See judgment of the Constitutional Tribunal of 30 September 2008, ref. K 44/07, OTK-A 2008, no. 7, item 126, para. III.71.

3 Judgment of the Constitutional Tribunal of 22 October 2020, ref. K 1/20, OTK-A 2021, no. 4, paras. III.1.2 and 3.1; T. Sroka, *Explanations to Article 38*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Tom I. Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2016, marg. no. 16.

4 The Constitutional Tribunal stated: 'A democratic state under the rule of law is a state based on respect for human beings, and in particular on respect for and protection of human life and dignity. These two goods are directly coupled' (judgment of the Constitutional Tribunal of 22 January 2013, ref. P 46/09, OTK-A 2013, no. 1, item 3, para. III.3.1.).

The Constitutional Tribunal has also pointed out that the key to determine the legal standard for protecting life is the principle of a democratic state of law, currently expressed in Article 2 of the Constitution.⁵ Correlating with this principle is also Article 1 of the Constitution, according to which the Republic of Poland constitutes the common good of all citizens.⁶ On the other hand, Article 18 of the Constitution, which imposes on public authorities the obligation to protect and care for maternity and parenthood, which implies the necessity to ensure protection of the lives of both subjects who participate in the bond of maternity – i.e., the mother and her child⁷ – is of somewhat subsidiary significance.

Other provisions of the Constitution are also related to the protection of human life, including in particular Article 39 (prohibition of subjecting to scientific experiments without the consent of the person concerned), Article 40 (prohibition of torture and cruel, inhuman, or degrading treatment and punishment, and prohibition of corporal punishment), Article 41(1) (guarantees of personal integrity), Article 68 (right to protection of health) and Article 233(1) (prohibition of restrictions on the rights and freedoms set out, *inter alia*, in Article 38 of the Constitution during martial law and state of emergency).

The identification of the constitutional standards of protection of the life of the conceived child also requires the jurisprudence of the Constitutional Tribunal to be taken into account.⁸ The historical ruling of the Constitutional Tribunal of 28 May 1997,⁹ as well as the subsequent decision of 18 April

5 See ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96, OTK ZU 1997, no. 2, item 19, para. 3; judgment of the Constitutional Tribunal of 22 January 2013, ref. P 46/09, para. III.3.1.

6 See M. Piechowiak, Explanations to Article 1, [in:] *Konstytucja Rzeczypospolitej Polskiej. Tom I. Komentarz do art. 1-86...*, marg. no. 105.

7 See ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96, para. 3. In the said ruling, the Tribunal referred to Article 79(1) of the constitutional provisions, which remained in force on the basis of Article 77 of the Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive authorities of the Republic of Poland and on local self-government (Dz.U. No. 84, item 426, as amended). See also: M. Granat, *Opinia w sprawie zgodności z Konstytucją projektu ustawy o świadomym rodzeniu*, "Przegląd Sejmowy" 2004, vol. XII, no. 6(65), pp. 142-143.

8 R. Piotrowski, *Opinia w sprawie zgodności z Konstytucją projektu ustawy o świadomym rodzeniu*, "Przegląd Sejmowy" 2004, vol. XII, no. 6(65), p. 153; R. Grabowski, *Opinia prawna do projektu ustawy o zmianie Konstytucji RP z uwzględnieniem pytania, czy możliwy jest inkorporacja art. 4a ust. 1 ustawy o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży do art. 38 Konstytucji*, [w:] *Konstytucyjna formuła ochrony życia. Druk sejmowy nr 993*, ed. M. Królikowski et al., Warszawa 2007 (series of Biuro Analiz Sejmowych "Przed pierwszym czytaniem" 2007, no. 3), p. 72.

9 Ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96.

2018,¹⁰ and the judgment of 22 October 2020 should be accorded fundamental importance in this regard.¹¹ Other decisions of the Tribunal, not necessarily directly related to the issue of the abortive killing of the conceived child, such as, in particular, the ruling of 15 January 1991,¹² the resolution of 17 March 1993,¹³ the judgment of 7 January 2004,¹⁴ the judgment of 30 September 2008,¹⁵ the judgment of 9 July 2009,¹⁶ or the judgment of 22 January 2013, also remain relevant.¹⁷

Human life should be understood not only as the minimum biological functions necessary for human existence, but also all factors necessary for 'proper development, as well as obtaining and preserving a normal psychophysical condition, appropriate for a given developmental age (stage of life)'.¹⁸ There is not the slightest doubt that human life, including the life of a human being at the prenatal stage of development, is a constitutional value that should be subject to protection established by the legislator.¹⁹ At the same time, scientific literature emphasises that human life constitutes a natural and inherent freedom, *ipso se* devoid of normative character (it is only the regulation of the sphere of freedom of life that has it).²⁰ However, it should be noted that the representatives of the science of law are not completely consistent in this respect, also using the term 'right to life' or 'subjective right to life'.²¹ As Paweł Sarnecki rightly notes, in the current state of the law, one ought to use the term 'subjective right to the protection of life'.²² This is also supported

10 Decision of the Constitutional Tribunal of 18 April 2018, ref. S 2/18, OTK-A 2018, no. 20; decision of the Constitutional Tribunal of 18 April 2018, ref. K 50/16, OTK-A 2018, no. 19.

11 Judgment of the Constitutional Tribunal of 22 October 2020, ref. K 1/20.

12 Ruling of the Constitutional Tribunal of 15 January 1991, ref. U 8/90, OTK 1991, no. 1, item 8.

13 Resolution of the Constitutional Tribunal of 17 March 1993, ref. W 16/92, OTK 1993, no. 1, item 16.

14 Judgment of the Constitutional Tribunal of 7 January 2004, ref. K 14/03, OTK ZU 2004, no. 1, item 1.

15 Judgment of the Constitutional Tribunal of 30 September 2008, ref. K 44/07.

16 Judgment of the Constitutional Tribunal of 9 July 2009, ref. SK 48/05, OTK-A 2009, no. 7, item 108.

17 Judgment of the Constitutional Tribunal of 22 January 2013, ref. P 46/09.

18 Judgment of the Constitutional Tribunal of 28 May 1997, ref. K 26/96, para. 3.

19 Ibid.

20 M. Piechowiak, *Wokół konstytucyjnej ochrony życia. Próba oceny propozycji nowelizacji Konstytucji RP*, "Przegląd Sejmowy" 2010, vol. XVIII, no. 1(96), p. 31; T. Sroka, Explanations to Article 38..., marg. no. 2; B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2012: commentary to Article 38, marg. no. 1.

21 For example: M. Różański, *Prawo do życia w Konstytucji Rzeczypospolitej Polskiej z 1997 roku*, "Polski Rocznik Praw Człowieka i Prawa Humanitarne" 2015, vol. 6, p. 257 et seq.; K. Borkowska, *Życie ludzkie jako przedmiot ochrony przepisów prawa ze szczególnym uwzględnieniem momentu objęcia ochroną*, "Security, Economy and Law" 2018 (XVIII), no. 1, p. 41 et seq.

22 P. Sarnecki, Commentary to Article 38, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II*, eds. L. Garlicki, M. Zubik, LEX 2016, note 4.

by the intentional interpretation,²³ of the provisions of the Constitution, in particular Article 38. Nevertheless, the term 'right to life' also appears in the jurisprudence of the Constitutional Tribunal.²⁴ It should therefore be treated as a kind of mental shortcut and reconstructed as a subjective right to ensure legal protection of the natural freedom that is human life. This freedom is not conferred by the state, in relation to which it has a primary character.²⁵

As it has been aptly emphasised in the jurisprudence of the Constitutional Tribunal concerning the title issue, 'a principle of the legal order of the Republic' is the 'right to life of the embryo' and the 'prohibition of subjective treatment of any embryo'.²⁶ It would therefore be illogical to assert that the 'right to life' is enjoyed by a human being at the embryonic stage, but not by a human being at a more advanced stage of physical development such as can be observed in the foetal period. Also unjustified – from the point of view of Article 32(1) and (2) of the Constitution – would be such an attempt to differentiate the legal situation of a child conceived, whereby only those children whose life began through in vitro fertilisation would be treated preferentially. This leads to the conclusion that the 'right to life' referred to in the Constitutional Tribunal's decision of 18 April 2018 applies to all children conceived but not yet born. This thesis was confirmed in the judgment of the Constitutional Tribunal of 22 October 2020, in which it was pointed out that 'the yet-to-be-born child, as a human being, endowed with inherent and inalienable dignity, is a subject with a right to life, and the legal system in accordance with Article 38 of the Constitution must guarantee due protection to this central good, without which its legal capacity would be undermined'.²⁷

23 In the course of drafting the Constitution, this question was also raised. T. Sroka summarises the proceedings of the Constitutional Committee of the National Assembly in the following words: 'P. Andrzejewski argued that "stating in the Constitution that man has a right to life would constitute too much hubris, because this is not determined by positive law, only by the Creator or natural law or universally binding standards of human rights, which we can enshrine in the Constitution on a declaratory basis". M. Drozdek agreed with him, stating that "the right to life of every human being is by all means a natural right, because man is by his very nature entitled to such a right" ("Biuletyn KKN" 1995, XII, p. 71). Also K. Łybacka pointed out that any determination that every human being has the right to life would be declaratory in nature, therefore in the Democratic Left Alliance's version there was a determination that every human being has the right to protection of life ("Biuletyn KKN" 1995, XII, p. 72)' (T. Sroka, Explanations to Article 38..., marg. no. 26).

24 Decision of the Constitutional Tribunal of 18 April 2018, ref. S 2/18.

25 P. Kuczman, *Prawna ochrona życia*, [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014, p. 31; M. Piechowiak, *Wokół konstytucyjnej...*, p. 31.

26 Decision of the Constitutional Tribunal of 18 April 2018, ref. S 2/18.

27 Judgment of the Constitutional Tribunal of 22 October 2020, ref. K 1/20, para. III.3.4.

It should be mentioned that both the indicated decision of the Constitutional Tribunal of 18 April 2018 and the subsequent judgment of 22 October 2020 are not in fact revolutionary in nature, but entirely inferential. In the ruling of 28 May 1997, the Tribunal, while admittedly limiting itself to stating that human life both before and after birth constitutes a ‘constitutionally protected value’, at the same time made it clear that every human being has legal capacity.²⁸ The statement that the conceived child – like any other human being – is entitled to the ‘right to life’ is therefore only a logical consequence of the Tribunal’s jurisprudence to date (stating only what is contained in the normative content of the Constitution).

2 Article 30 of the Constitution – obligation to respect human dignity as a fundamental determinant of the standard of protection of human life

As recognized in the jurisprudence of the Constitutional Tribunal, there is a direct and irremovable link between human dignity and the right to the protection of life guaranteed by the state.²⁹ Although human dignity has a universal dimension, and therefore the obligation of public authorities to respect and affirm it does not require explicit clarification in any normative act, the Polish legislator decided to confirm it in the Constitution.

The preamble of the Constitution already contains an exhortation addressed to those applying the Constitutional provisions to ‘do so with care for the preservation of the inherent dignity of the human being’. The same value is referred to above all in Article 30, which opens Chapter II on

28 Ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96, item 3. See also: J. Haberkro, *Cywilnoprawna ochrona dziecka poczętego a stosowanie procedur medycznych*, Warszawa 2010, pp. 42-43 (together with the literature cited by the author).

29 Judgment of the Constitutional Tribunal of 22 October 2020, ref. K 1/20, item III.3.4; judgment of the Constitutional Tribunal of 22 January 2013, ref. P 46/09, item III.3.1; judgment of the Constitutional Tribunal of 30 September 2008, ref. K 44/07, item III.8.1; judgment of the Constitutional Tribunal of 1 September 2006, ref. SK 14/05, OTK-A 2006, no. 8, item 97, item III.6.2; judgment of the Constitutional Tribunal of 7 January 2004, ref. K 14/03, item III.4.1. See also: judgment of the Constitutional Tribunal of 23 March 1999, ref. K 2/98, OTK ZU 1999, no. 3, item 38, pt. III; T. Sroka, *Explanations to Article 38...*, para. 15-16; P. Sarnecki, commentary to art. 38..., note 3; L. Bosek, *Opinia prawna odnosząca się do zmian w polskim ustawodawstwie zwykłym, które są niezbędne do zapewnienia ochrony godności i podstawowych praw istoty ludzkiej w okresie prenatalnym w sferze zastosowań biologii i medycyny wyznaczanej przez standardy międzynarodowe*, [in:] *Konstytucyjna formuła ochrony życia...*, p. 56.

freedoms, rights, and duties of man and citizen: 'The inherent and inalienable dignity of the human being is the source of human and civil liberties and rights. It is inviolable and its respect and protection is the duty of public authorities.' The inviolability referred to in Article 30 means that the protection of human dignity cannot be limited in any situation, whether by invoking Article 1 (the common good) or Article 2 (the principle of a democratic state of law) or Article 31(3) (the principle of proportionality). Pursuant to Article 233(1) of the Constitution, the duty of public authorities to respect and protect human dignity may not be restricted even during martial law and state of emergency.

The source of human dignity – due to its inherent nature – is not the will of the legislator. Indeed, the principle of protection and respect for this dignity is the link between natural law and law established by statute.³⁰ At the same time, natural law takes precedence over positive law.³¹ As Leszek Bosek points out, the inherent nature of human dignity presupposes its primary existence in relation to the state and determines independently, i.e., with the exclusion of the legislator's interference, the basic legal effects of its recognition by the legal order.³² Human dignity is a much older concept than human rights, it is a pillar of alternative thinking to utilitarianism, it expresses 'the civilisational axiom according to which every human being possesses an intrinsic, inalienable value, independent of personal characteristics or one's own behaviour, qualitatively different from other entities'.³³ In other words, human dignity points to the ontological uniqueness of human beings.³⁴

30 Judgment of the Constitutional Tribunal of 9 July 2009, ref. SK 48/05, para. III.2.2. See also: L. Garlicki, Commentary to Article 30, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II*, eds. L. Garlicki, M. Zubik, LEX 2016, notes 11-13; M. Zdyb, *Godność człowieka w perspektywie art. 30 Konstytucji RP*, [in:] *Normatywny wymiar godności człowieka*, eds. W. Lis, A. Balicki, Lublin 2012, pp. 50-52; K. Stępień, *Filozoficzne źródła sporu o rozumienie praw dziecka. Studium z filozofii prawa i praw człowieka*, Lublin 2016, pp. 66 et seq. (in the context of natural law as a source of human rights).

31 L. Garlicki, Commentary to Article 30..., note 11.

32 L. Bosek, Explanations to Article 30, [in:] *Konstytucja Rzeczypospolitej Polskiej. Tom I. Komentarz do art. 1–86...*, marg. no. 3 and no. 5.

33 Ibid., marg. no. 2.

34 See W. Granat, *Personalizm chrześcijański. Teologia osoby ludzkiej*, Poznań 1985, pp. 559 et seq. (especially p. 567); T. Guz, *O naturze wrodzonej godności człowieka*, [in:] *Normatywny wymiar godności człowieka...*, pp. 13 et seq.; M. Zdyb, op. cit., p. 45. On this subject in the context of acts of international law: J. Adolphe, *The Legal Anthropology of Human Rights: A Canvass of Approaches to Explain the Same Reality*, [in:] *Protection of Human Life in its Early Stage. Intellectual Foundations and Legal Means*, ed. A. Stępkowski, Frankfurt am Main 2014, pp. 18-19.

The supra-positive nature of human dignity has been emphasised more than once in the jurisprudence of the Constitutional Tribunal. For example, in the judgment of 4 April 2001, it was noted: 'Already in the introduction to the Constitution it is emphasised that the application of the Constitution should be accompanied by care for the preservation of the inherent dignity of the human being. Dignity therefore cannot be understood as a feature or set of rights conferred by the State. It is in fact primary in relation to the state, as a consequence of which both the legislator and the bodies applying the law must respect the content of the notion of dignity to which every human being is entitled.'³⁵ By contrast, in its decision of 6 November 2008 the Court indicated that '[...] pursuant to Article 30 of the Constitution, the inherent and inalienable dignity of the human being constitutes a source of human and civil freedoms and rights. The constitutional legislator thus recognizes the pre-state and supra-constitutional nature of fundamental human rights. The state is a political structure subservient to human rights. The primary task of the state is to ensure human and civil freedoms and rights, which do not originate from the will of the state. This fact can provide a compelling argument for an interpretation of the Constitution giving its norms the widest possible temporal scope of their application'.³⁶

In the judgment of the Constitutional Tribunal of 22 October 2020, it was pointed out: 'Human dignity as such is not a right, but is the foundation and source from which rights are only derived. Since it is their source, it cannot be limited by them in any way [...]. Dignity, as inherent and inalienable, does not require normative legitimacy, since its source is not any right conferred by the State. Moreover, it is primary in relation to it and constitutes a kind of opening of the constitutional system to values outside the law and prior to the law. In this sense, the evocation of dignity in the text of the Constitution constitutes a kind of link, a bridge between the order of natural law and positive law [...]'.³⁷

As emphasised in the jurisprudence of the Constitutional Tribunal, on the grounds of Article 30 of the Constitution, 'the notion of human dignity

35 Judgment of the Constitutional Tribunal of 4 April 2001, ref. K 11/00, OTK 2001, no. 3, item 54, para. III.6.

36 Decision of the Constitutional Tribunal of 6 November 2008, ref. P 5/07, OTK-A 2008, no. 9, item 163, para. II.6.

37 Judgment of the Constitutional Tribunal of 22 October 2020, ref. K 1/20, para. III.3.3.1.

should be ascribed the character of a constitutional value of central importance for the construction of the axiology of the current constitutional solutions'.³⁸ On the other hand, in accordance with the judgement of the Constitutional Tribunal of 23 March 1999,³⁹ it should be assumed that 'the Constitution in its entirety gives expression to an objective system of values, the implementation of which should serve the process of interpretation and application of particular constitutional provisions'.⁴⁰ Therefore, it is not possible to interpret constitutional provisions which, with all their consequences, would lead to results that could justify violations of human dignity. Moreover, the axiological system constituting the foundation for the constitutional solutions adopted in Poland is objective in nature, and therefore the values recognized by the legislator as important and subject to protection on the grounds of the Constitution cannot be relativised.

It is worth noting that the adjective 'inherent' used by the legislator in Article 30 of the Constitution means 'given by nature',⁴¹ i.e., immanently intrinsic in the essence of man, and not resulting from the fact of birth.⁴² The inherent nature of dignity implies the recognition of man, and only man, as the supreme value and, consequently, the recognition of every human being as a person; thus, the very existence of man is a necessary and sufficient condition for his personal and subjective existence.⁴³ Dignity is inherent, so it belongs to every human being, irrespective of his or her qualifications, psychological and physical state and current life situation, thus constituting the basis for the recognition of his or her subjectivity.⁴⁴ Circumstances such as a person's age, gender, race, or state of health are therefore irrelevant.⁴⁵ Therefore, it is rightly pointed out in the literature on the subject that the dignity referred to in Article 30 also belongs to a child

38 Judgment of the Constitutional Tribunal of 30 September 2008, ref. K 44/07, para. III.8.1.

39 Judgment of the Constitutional Tribunal of 23 March 1999, ref. K 2/98.

40 Ibid., para. III.

41 See *Mały Słownik Języka Polskiego PWN*, ed. E. Sobol, Warszawa 1993, p. 754.

42 More extensively on this topic: F. Cieplý, *Aborcja eugeniczna a dyskryminacja osób niepełnosprawnych*, "Czasopismo Prawa Karnego i Nauk Penalnych" 2014, vol. XIX, issue 2, pp. 79-80. See also L. Bosek, Commentary to Article 30..., marg. no. 5; M. Królikowski, Commentary to Article 152, [in:] *Kodeks karny. Część szczególna. Tom I. Komentarz do art. 117–221*, eds. M. Królikowski, R. Zawłocki, Warszawa 2017, marg. no. 12, SIP Legalis.

43 See L. Bosek, Explanations to Article 30..., marg. no. 2. See also: F. Cieplý, op. cit., p. 75 et seq.

44 Judgment of the Constitutional Tribunal of 30 September 2008, ref. K 44/07, para. III.8.2.

45 See W. Granat, op. cit., p. 563.

conceived,⁴⁶ because the essence of humanity is the possession by an organism of a human genotype, which prejudices that a given living being is a human being, regardless of the structure, shape, morphological characteristics of this organism, or even more so the circumstances accompanying its conception.⁴⁷ This was confirmed, even before the formal entry into force of the Constitution of the Republic of Poland of 1997, by the Constitutional Tribunal, when it noted that ‘The abandonment of the general clause granting legal capacity in the field of civil law in no way impinges also on the coverage of legal protection of such important legal goods as life or health of the *nasciturus*, and in particular its dignity [...]’.⁴⁸ Such a view is also supported by the literature on the subject. According to Andrzej Zoll: ‘The life of a human being as a representative of the species, but above all as a separate being possessing determined individual characteristics, is a process and this process undoubtedly begins at the moment of conception. From that moment on, we can speak of a human being with his or her inherent and inalienable dignity and with all the consequences that this entails, including for the duties of public authorities, including legislative ones. [...] The right to the protection of life and the right to the protection of health, but also, for example, the freedom from being the subject of scientific experiments that do not serve the health of the person in question, cannot be excluded or restricted at any stage of a person’s life.’⁴⁹ In turn, Marian Zdyb emphasised: ‘The right to life should be considered as a fundamental principle of the idea of human dignity. It should be considered inviolable from the moment of conception until natural death.’⁵⁰

46 See, for example: M. Piechowiak, *Filozofia praw człowieka. Prawa człowieka w świetle ich międzynarodowej ochrony*, Lublin 1999, pp. 84-85; L. Bosek, *Opinia prawna odnosząca się do zmian w polskim ustawodawstwie zwykłym...*, p. 56; W. Wróbel, *Opinia prawna dotycząca propozycji modyfikacji projektu zmian art. 38 Konstytucji oraz znaczeniu wprowadzenia ewentualnych zmian do art. 30 Konstytucji RP*, [in:] *Konstytucyjna formuła ochrony życia...*, p. 96; R. Trzaskowski, *Opinia prawna na temat oceny cywilnoprawnych konsekwencji zmiany art. 38 of the Constitution of the RP (Sejm Druk sejmowy nr 993)*, [in:] *Konstytucyjna formuła ochrony życia...*, p. 45; A. Zoll, *Opinia prawna w sprawie oceny konstrukcji i skutków projektu zmian art. 30 i 38 Konstytucji RP*, [in:] *Konstytucyjna formuła ochrony życia...*, pp. 102-103; M. Królikowski, *Commentary to art. 152...*, marg. no. 12, *Problem interpretacji tzw. przesłanki eugenicznej stanowiącej o dopuszczalności zabiegu przerwania ciąży*, [in:] *Współczesne wyzwania bioetyczne*, eds. L. Bosek, M. Królikowski, Warszawa 2010, pp. 177-178; F. Cieply, *op. cit.*, pp. 78-80; D. Karkowska, *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, Warszawa 2012, p. 77.

47 M. Szydło, *Opinia prawna na temat petycji w sprawie ustawy o świadomym rodzicielstwie*, letter BAS-WAL-2730/16 of 8 March 2017, [http://orka.sejm.gov.pl/petycje.nsf/nazwa/141/\\$file/141.pdf](http://orka.sejm.gov.pl/petycje.nsf/nazwa/141/$file/141.pdf), pp. 10-11, accessed 28 April 2022. See also L. Bosek, *Gwarancje godności ludzkiej i ich wpływ na polskie prawo cywilne*, Warszawa 2012, pp. 165-167; J. Haberko, *op. cit.*, p. 44; M. Królikowski, *Problem interpretacji...*, p. 177.

48 Ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96, para. 4.4.

49 A. Zoll, *Opinia prawna...*, pp. 102-103.

50 M. Zdyb, *op. cit.*, p. 61.

The moment of birth is therefore completely irrelevant to the fact of being human. One is human to the same extent before and after birth, and the supposition that it is not known when 'being' human (human life) begins has no scientific basis, but is merely an expression of the convictions inherent in various ideologies and currents of worldview that question the objective state of affairs and the objective system of values.⁵¹

In the light of Article 30 of the Constitution, the most fundamental duty of the public authorities is to respect and protect human dignity, and thus to care for the respect of human dignity in the entirety of the legislative, political, administrative, and social activities that are undertaken by the authorities of the Republic. The obligation of the public authorities to protect and respect the inherent dignity of the human being, as set out in the Constitution, must also be realised in the case of care for the lives of seriously ill and disabled persons and involves the need to provide them with appropriate health care and living conditions. Similarly, the permissibility of killing an unborn child due to the circumstances of its conception (e.g. a criminal act) must be assessed. It is therefore a flagrant violation of Article 30 of the Constitution to allow the killing of such persons while they are still in *statu nascendi*.

The prohibition on violating human dignity is universal and addressed to all people.⁵² The Constitutional Tribunal pointed out: 'Because it is the source of individual rights and freedoms, the concept of dignity determines the way in which they are understood and realised by the State. The prohibition on violating human dignity is absolute and applies to everyone. In contrast, the obligation to respect and protect dignity is imposed on the public authorities of the State.'⁵³

It is worth adding that in the science of law an accurate view is formulated that '[...] the point of departure and the central point of reference for considerations about the constitutional notion of dignity becomes the understanding of

51 M. Olszówka, *Analiza zgodności z prawem obywatelskiego projektu ustawy o prawach kobiet i świadomym rodzielstwie*, 2017, <https://ordoiuris.pl/analiza-zgodnosc-i-z-prawem-obywatelskiego-projektu-ustawy-o-prawach-kobiet-i-swwiadomym>, accessed 30 August 2022.

52 J. Potrzebszcz, *Godność człowieka w orzecznictwie polskiego Trybunału Konstytucyjnego*, "Roczniki Nauk Prawnych" 2005, vol. XV, no. 1, p. 30. See also: P. Lee, R.P. George, *The Nature and Basis of Human Dignity*, "Ratio Iuris" 2008, vol. 21, no. 2, pp. 173 et seq.

53 Judgment of the Constitutional Tribunal of 4 April 2001, ref. K 11/00, para. III.6.

this notion in the Christian social teaching'.⁵⁴ This, in turn in an unambiguously negative way refers to the deprivation of life of the unborn, emphasising the necessity of its protection from the moment of conception. In the encyclical *Pacem in terris*, Pope John XXIII identified the right to life as the first of human rights.⁵⁵ The declaration of the Sacred Congregation for the Doctrine of the Faith on procured abortion (*De abortu procurato*) emphasised: 'Any discrimination based on the various stages of life is no more justified than any other discrimination. The right to life remains complete in an old person, even one greatly weakened; it is not lost by one who is incurably sick. The right to life is no less to be respected in the small infant just born than in the mature person. In reality, respect for human life is called for from the time that the process of generation begins. From the time that the ovum is fertilized, a life is begun which is neither that of the father nor of the mother, it is rather the life of a new human being with his own growth. It would never be made human if it were not human already.'⁵⁶ In contrast, the Pastoral Constitution on the Church in the Modern World *Gaudium et spes* points out that 'Therefore from the moment of its conception life must be safeguarded with the utmost care; abortion and infanticide are unspeakable crimes'.⁵⁷

The issue of the protection of human life was addressed with great concern by Pope St John Paul II, who in his fundamental encyclical *Evangelium vitae*, pointed out: 'The moral gravity of procured abortion is apparent in all its truth if we recognize that we are dealing with murder and, in particular, when we consider the specific elements involved. The one eliminated is a human being at the very beginning of life. No one more absolutely innocent could be imagined. In no way could this human being ever be considered an aggressor, much less an unjust aggressor!'⁵⁸ St John Paul II further emphasised: 'When the Church declares that unconditional respect for the right to life of every innocent person-from conception to natural death-is one of the pillars on which every civil society stands, she "wants simply to promote a human

54 L. Garlicki, Commentary to Article 30..., note 9. See also L. Bosek's comments approving of the view of L. Garlicki: *Opinia prawna odnosząca się do zmian w polskim ustawodawstwie zwykłym...*, p. 56.

55 John XXIII, Encyclical *Pacem in terris*, "Acta Apostolicae Sedis" (hereinafter: AAS) 55 (1963), para. 11.

56 Sacred Congregation for the Doctrine of the Faith, Declaration on procured abortion (*de abortu procurato*), AAS 66 (1974), para. 12.

57 Second Vatican Council, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, AAS 58 (1966), para. 51.

58 John Paul II, Encyclical *Evangelium vitae*, AAS 87 (1995), para. 58.

State. A State which recognizes the defence of the fundamental rights of the human person, especially of the weakest, as its primary duty”.⁵⁹ Pope Francis – extending the possibility of granting absolution from the excommunication-inducing sin of abortion *latae sententiae* to any priest with the right to hear confessions – also clearly indicated: ‘I wish to restate as firmly as I can that abortion is a grave sin, since it puts an end to an innocent life.’⁶⁰

The obligation of full protection of conceived life is most fully compliant with the axiology accepted on the grounds of the Polish Constitution, recognising that human dignity constitutes the source of freedom and human rights, and – as Czesław Strzeszewski aptly emphasised – ‘the first and most important personal right is the right to life’.⁶¹ The thesis derived from Catholic social teaching on the close connection between respect for human dignity and the legal protection of life remains fully compatible with the jurisprudence of the Constitutional Tribunal, which has stated: ‘There can be no protection of human dignity if sufficient grounds for the protection of life have not been established.’⁶²

Human dignity implies the necessity of being a subject. Man must always be the subject and not the object of the law. In the jurisprudence of the Constitutional Tribunal it has been pointed out that ‘against the background of Article 30 of the Constitution, a situation in which a human being would become exclusively an object of actions taken by the authorities, would be a “substitutable quantity”, and his/her role would be reduced to a purely instrumental one, or an accusation of “statutory de-subjectivation” may be regarded, as a rule, as a violation of dignity’.⁶³ The conditions identified by the Constitutional Tribunal for the misappropriation by the legislator of the obligation to respect and protect human dignity are fully illustrated in the provisions of the Act of 7 January 1993 on family planning, protection of the

59 Ibid., para. 101.

60 Francis, Apostolic Letter *Misericordia et misera*, AAS 108 (2016), para 12.

61 C. Strzeszewski, *Katolicka nauka społeczna*, Warszawa 1985, p. 384. With regard to the provisions of the Constitution in this regard, L. Bosek stated in a similar vein: ‘The systemic interpretation of Article 38 also allows for the formulation of an argument that human life is the most essential of constitutional values. Indeed, this provision opens the section of the Constitution of the Republic of Poland “Freedoms and personal rights”. It is therefore difficult to refute the argument that human life is the most significant value protected by the Constitution itself (only human dignity has a higher rank)’ (L. Bosek, *Opinia w sprawie poselskich poprawek do projektu nowelizacji art. 38 oraz projektu nowego art. 236a Konstytucji RP*, “Przegląd Sejmowy” 2007, vol. XV, no. 3(80), p. 152).

62 Judgment of the Constitutional Tribunal of 7 January 2004, ref. K 14/03, para. III.4.1.

63 Judgment of the Constitutional Tribunal of 15 October 2002, ref. SK 6/02, OTK ZU 2002, no. 5/A, item 65, para. III.6.1.

human foetus and the conditions for the permissibility of terminating a pregnancy.⁶⁴ In the optics of Article 4a (1) of the Abortion Act – especially in its original wording and taking into account the jurisprudence of the Supreme Court concerning the so-called wrongful birth and contra legem claims creating the ‘right to terminate pregnancy’ – the unborn child suspected of having a serious illness or disability became precisely a ‘substitutable value’, as it ceased to be a ‘somebody’, i.e., a person with inherent human dignity, but was treated as a ‘something’ that did not come out – as a mistake still possible (necessary) to be removed and ‘replaced’ in the future by a healthy child whose life, as a ‘full-fledged’ one, will already be protected from conception on the grounds of the Abortion Act and the Criminal Code. Similar statements can be made with regard to children conceived as a result of an (alleged) criminal act. Moreover, they are the ones who, although innocent, bear the legal consequences, including the most severe ones – resulting in the possibility of killing – of the forbidden act (crime), as a result of which their life was initiated, which was, after all, committed by someone else.

To sum up what has been said so far, human dignity does not depend on a person’s physical or psychological state, nor on the so-called quality of life, the circumstances of one’s conception or other utilitarian criteria. Dignity is not subject to gradation; it belongs equally (identically) to all human beings – those already born and those in the prenatal phase of development; those who enjoy full health and the sick and disabled. Public authorities are obliged to respect and protect this dignity. There is no doubt that the permissibility of killing children conceived because of their characteristics (like other innocent human beings) is a normative situation that directly challenges their dignity.

3 Article 38 of the Constitution – guarantee of legal protection of human life by public authorities

Article 38 of the Constitution stipulates that the Republic of Poland shall ensure to every human being the legal protection of life. According to

64 Dz.U. 2022, item 1575; hereinafter: Abortion Act.

the indicated provision, public authorities are obliged to legally secure the biological existence of a human being both at the level of law-making and law-application.⁶⁵ This right must be considered primarily from a vertical perspective (individual–state), but also from a horizontal perspective (individual–individual).⁶⁶

The issue that raises the most doubts in scientific literature is the subjective scope of the protection referred to in Article 38 of the Constitution. Some legal scholars argue that it does not cover a human being at the prenatal stage of development. Such a position was taken by Wiesław Lang, who stated that ‘if Article 38 of the Constitution included “conceived children” within its subjective scope, then Article 148 of the Criminal Code would have to be considered as contradictory to this provision of the Constitution. Covering human life in the prenatal phase with legal protection identical to the legal protection of the life of born human beings would require the use of the phrase in the provision of Article 38 of the Constitution: “to every man from the moment of conception” [...]’.⁶⁷ However, this author has interpreted the provision of Article 38 of the Constitution with reference to statutory provisions (Article 148 of the Criminal Code), which is an unacceptable interpretative procedure, since it is the provisions of the law that must be subjected to a pro-constitutional interpretation, never the other way round.

In support of the thesis of the narrow subjective scope of Article 38 of the Constitution, other arguments were provided by Wiesław Skrzydło. This author stated that the mentioned provision ‘[...] vouches for the protection of human life, i.e. an individual already born, and not only conceived. This is how this term is understood in medicine and in law, as opposed to the more broadly understood term “human being”, which we do not meet in the given provision’.⁶⁸ The weakness of this type of argumentation is that the terms ‘human being’ and ‘man’ are used interchangeably because they are

65 T. Sroka, *Explanations to Article 38...*, marg. nos. 117-118 and 120.

66 *Ibid.*, marg. no. 119; P. Kuczma, *op. cit.*, p. 34.

67 W. Lang, *Opinia w sprawie zgodności z Konstytucją projektu ustawy o świadomym rodzicielstwie*, “Parliamentary Review” 2004, vol. XII, no. 6(65), p. 116.

68 W. Skrzydło, *Commentary to Article 38*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, LEX 2013.

semantic equivalents.⁶⁹ This state of affairs has been recognized in both older and later jurisprudence of the Constitutional Tribunal. In a ruling of 28 May 1997 the Constitutional Tribunal stated that it ‘based its decision on the constitutional provisions in force. The Constitution of the Republic of Poland, enacted on 2 April 1997, confirms in Article 38 the legal protection of the life of every human being. The constitutional basis on which the Constitutional Tribunal based its ruling was therefore confirmed and clearly articulated in the Constitution of the Republic of Poland’.⁷⁰ In its judgment of 22 October 2020,⁷¹ the Tribunal upheld this position.

The predominant view in the literature is that the legal protection of life under Article 38 of the Constitution also extends to children *in statu nascendi*.⁷² In this regard, it is worth quoting in extenso some particularly pertinent observations raised by representatives of legal science. According to the already cited view of Andrzej Zoll: ‘The right to the protection of life and the right to the protection of health, but also, for example, the freedom from being the object of scientific experiments that do not serve the health of a given person, cannot be excluded or restricted at any phase of a person’s life.’⁷³ Tadeusz Smoczyński, in turn, accepted that ‘[...] the current Constitution of the Republic of Poland of 1997 explicitly provides for the protection of life (Article 38). Since life begins from conception, from

69 According to the dictionary definition, a human being is ‘homo sapiens, a living being from the family of man, from the order of primates’ (Słownik języka polskiego, Warszawa 1988, sub voce ‘człowiek’ [‘man’] p. 340) – the dictionary definition therefore does not allow us to accept the distinction between the terms ‘man’ and ‘human being’. The terms ‘man’ and ‘human being’ are synonymous: <https://www.synonimy.pl/synonim/czlowiek>, accessed 5 May 2020.

70 Ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96, para. 4.9.

71 Judgment of the Constitutional Tribunal of 22 October 2020, reference K 1/20.

72 So, for example: M. Granat, *Opinia w sprawie zgodności z Konstytucją projektu ustawy o świadomym rodzicielstwie*, “Przegląd Sejmowy” 2004, vol. XII, no. 6(65), p. 142; M. Masternak-Kubiak, *Opinia w sprawie zgodności z Konstytucją projektu ustawy o świadomym rodzicielstwie*, “Przegląd Sejmowy” 2004, vol. XII, no. 6(65), p. 120; L. Bosek, *Opinia prawna w sprawie struktury normatywnej i konsekwencji prawnych propozycji poprawki do projektu ustawy o zmianie Konstytucji Rzeczypospolitej Polskiej*, [in:] *Konstytucyjna formuła ochrony życia...*, p. 77; idem, *Opinia w sprawie projektu nowelizacji art. 30 i art. 38 Konstytucji i zgodności z Konstytucją RP projektu ustawy z dnia 30 marca 2004 r. o świadomym rodzicielstwie*, “Przegląd Sejmowy” 2007, vol. XV, no. 3(80), p. 141; D. Dudek, *Opinia w sprawie poselskich poprawek do projektu nowelizacji art. 38 oraz projektu nowego art. 236a Konstytucji RP*, “Przegląd Sejmowy” 2007, vol. XV, no. 3(80), pp. 130-131; T. Smoczyński, *Opinia prawna o poselskim projekcie zmian (art. 38) Konstytucji Rzeczypospolitej (Druk sejmowy nr 993)*, [in:] *Konstytucyjna formuła ochrony życia...*, p. 18; W. Wróbel, *Opinia prawna odnosząca do pytań dotyczące poselskiego projektu ustawy o zmianie Konstytucji RP*, [in:] *Konstytucyjna formuła ochrony życia...*, p. 25; A. Zoll, *Opinia prawna...*, p. 103; M. Królikowski, *Problem interpretacji...*, p. 177; T. Sroka, *Explanations to Article 38...*, marg. no. 99; Ł. Pilarz, *Ochrona dziecka poczętego a eksperyment medyczny – co trzeba jeszcze poprawić?*, [in:] *Nasciturus pro iam nato habetur. For the protection of the conceived child and its mother*, eds. J. Mazurkiewicz, P. Mysiak, Wrocław 2017, p. 249; M. Szydło, op. cit., p. 9.

73 A. Zoll, *Opinia prawna...*, p. 103.

the first day of pregnancy, the constitutional protection concerns human life at each of its stages.’⁷⁴ Also Włodzimierz Wróbel – referring to the previously quoted decision of the Constitutional Tribunal from 1997 and the principle *in dubio pro vitae humana* – stated that ‘life in the prenatal stage is also a man’s life, which, as a man, is entitled to the constitutional subjective right to its protection’.⁷⁵ A similar position is presented by Krzysztof Wiak, who considered that Article 38 of the Constitution of the Republic of Poland – next to Article 18 and Article 68 – determines ‘the general framework for the protection of life and health of the conceived child’ in Polish law.⁷⁶ Also Leszek Bosek assumed that ‘the jurisprudence of the Constitutional Tribunal indicates [...] that human life in the prenatal stage is subject to protection not only by ordinary legislation, but by virtue of the Constitution itself’.⁷⁷ A similar view was formulated by Tomasz Sroka, indicating that ‘[...] the constitutional concept of “man” or “every man” includes all human beings at every stage of development, including the prenatal period’.⁷⁸ This author further argued that ‘The thesis that Article 38 is, on the one hand, the basis for the protection of human life from birth as a subjective right and, on the other hand, the basis for the protection of human life before birth only as a constitutional value in question can also be accepted. Indeed, the wording of this provision does not allow the distinction of two substantively different norms defining different personal and materialscope of protection of the same constitutional value, which is the life of every man [...]’.⁷⁹

Janusz Roszkiewicz declared Article 4a(1) of the Abortion Act unconstitutional in its entirety, stating that ‘human life in the prenatal phase is not only a value but is protected as a subjective right, any restriction of which must be proportionate. The introduction of an exception to the right to the protection of human life would only be possible where it is undoubtedly

74 T. Smoczyński, op. cit., p. 18.

75 W. Wróbel, *Opinia prawna o poselskim projekcie zmian (art. 38) Konstytucji Rzeczypospolitej Polskiej (Druk sejmowy nr 993)*, [in:] *Konstytucyjna formuła ochrony życia...*, p. 21.

76 K. Wiak, *Polskie prawo karne wobec dziecka poczętego*, [in:] *Ius et lex. Księga jubileuszowa ku czci Profesora Adama Strzembosza*, eds. A. Dębiński, A. Grześkowiak, K. Wiak, Lublin 2002, p. 102.

77 L. Bosek, *Opinia prawna dotycząca pytania, czy sprecyzowanie „od momentu poczęcia do naturalnej śmierci” obejmie ochronę życia ludzkiego powstającego ex utero oraz ochronę przeciwko interwencji w genomie ludzkim zmierzającej do osiągnięcia zmian genetycznych*, [in:] *Konstytucyjna formuła ochrony życia...*, p. 63.

78 T. Sroka, *Explanations to Article 38...*, marg. no. 99.

79 Ibid., marg. no. 102.

incompatible with analogous rights of other persons. Any limitation of the legal protection of human life – in relation to general standards – must therefore be regarded as a measure of ultima ratio. In my opinion, Article 4a(1) of the Abortion Act is incompatible with Article 38 in conjunction with Article 31(3) of the Constitution'.⁸⁰

It is sometimes argued that the protection of human life before birth is weaker than that which applies to persons in the postnatal phase of life.⁸¹ However, such a position can be formulated only with regard to the protection on the grounds of statutory acts, as there are no grounds (linguistic-grammatical, systemic, intentional and axiological) which would indicate the different character of this value resulting from constitutional provisions (which do not constitute criminal provisions per se). The necessity to ensure the legal protection of life is objective in nature, and the lack of any basis for differentiating the value of human life is emphasised in the jurisprudence of the Constitutional Tribunal.⁸² On the other hand, the universal connection between the legal protection of human life and norms of a moral nature only supports the broadest possible interpretation of Article 38 of the Constitution. One may recall at this point the opinion expressed by Czesław Martyniak, who stated that 'in no way can law be separated from morality. There are not two ways of doing things: one – personal, the other – social, alien to morality. Both should be moral'.⁸³ Further Martyniak pointed out: 'A law contrary to morality is not a law, but an abuse of the law not binding on conscience'.⁸⁴

It should be noted, moreover, that since the Constitution does not explicitly prejudge the initial moment of legal protection of human life, this means that it is the duty of the public authorities to protect it from the beginning, i.e., from conception (fertilisation of a female gamete by a male gamete). This follows for at least three reasons.

80 J. Roszkiewicz, *Prawo nasciturusa do życia w prawie konstytucyjnym i prawie międzynarodowym*, "Forum Prawnicze" 2017, no. 4(42), p. 108.

81 See E. Zielińska, *Opinia prawna o poselskim projekcie zmian (art. 38) Konstytucji Rzeczypospolitej Polskiej (Druk sejmowy nr 993)*, [in:] *Konstytucyjna formuła ochrony życia...*, p. 14. In a slightly more veiled way, such a thesis seems to be put forward by R. Grabowski, *Opinia prawna do projektu ustawy o zmianie Konstytucji RP...*, p. 69.

82 Ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96, para. 3.

83 C. Martyniak, *Obiektywna podstawa prawa według św. Tomasza z Akwinu*, [in:] *idem, Dzieła*, Lublin 2017, p. 148.

84 *Ibid.*, p. 152.

Firstly, the systemic interpretation dictates to assume that since human dignity, which is the source of freedoms and rights, is vested in man from conception, the legal protection of life is also vested in every man from his conception. This is all the more justifiable as the protection of both constitutional values under consideration, i.e., both the protection of human dignity and the protection of human life are closely connected. Indeed, human life is one of the fundamental constitutional values, as the Constitutional Tribunal explicitly confirmed in its ruling of 28 May 1997: ‘The constitutionally protected legal good, which is human life, including life developing in the prenatal stage, cannot be differentiated.’⁸⁵ It should be emphasised that with the entry into force of the Constitution of the Republic of Poland, enacted on 2 April 1997, the constitutional standard of protection of human life – and therefore of the life of the conceived child – has been strengthened by the formulation of an explicit provision establishing the obligation of legal protection of human life. The Tribunal pointed this out, concluding the reasoning of the ruling cited here as follows: ‘The Constitution of the Republic of Poland, enacted on 2 April 1997, confirms in Article 38 the legal protection of the life of every human being. The constitutional basis on which the Constitutional Tribunal based its ruling has thus found its confirmation and clear articulation in the Constitution of the Republic of Poland.’⁸⁶ At the same time, it should be emphasised that the view that the life of every man is a value protected on constitutional grounds, and therefore the protection of human life must be respected at the statutory level, is very consistently presented in the jurisprudence of the Tribunal.⁸⁷

Secondly, a literal interpretation dictates to assume that since the Constitution does not contain in any provision a formulation of the type ‘the legal protection of the life of every man shall be granted from the moment of birth’

85 Judgment of the Constitutional Tribunal of 28 May 1997, ref. K 26/96, para. 3.

86 Ibid., para. 4.9; see also: K. Wiak, op. cit., p. 102; L. Bosek, *Opinia prawna odnosząca się do zmian w polskim ustawodawstwie zwykłego...*, pp. 56 et seq.

87 In addition to the cited ruling of 28 May 1997, ref. K 26/96, see also: judgment of the Constitutional Tribunal of 7 January 2004, ref. K 14/03, item III.4.1; judgment of the Constitutional Tribunal of 30 September 2008, ref. K 44/07, item III.7.1; judgment of the Constitutional Tribunal of 22 January 2013, ref. P 46/09, para. III.3.1; decision of the Constitutional Tribunal of 18 April 2018, ref. S 2/18 (right to life of the embryo); judgment of the Constitutional Tribunal of 22 October 2020, ref. K 1/20, paras. III.3.2 and 3.4. The unlawful nature (in a primary manner in relation to the Act) of the prohibition of the killing of the conceived child was already indicated by the Tribunal in its ruling of 15 January 1991, ref. U 8/90.

or a meaningfully equivalent one, it means that the legislator guaranteed the legal protection of human life from its beginning, i.e., from conception.

Thirdly, the Constitutional Tribunal in its previous jurisprudence, interpreting the close relationship between Article 30 and Article 38 of the Constitution, noted, following the doctrine, that the interpretative directive in *dubio pro vita humana* derives from the Constitution, according to which ‘all possible doubts about the protection of human life should be resolved in favour of this protection’.⁸⁸

As is not difficult to see, the content of the right to ensure the legal protection of human life is violated when legal regulations are framed in such a way as to enable both public authorities and other entities to annihilate the material (physical) existence of a human being, i.e., to kill him or her. Not only every provision of a law ordering the extermination of some group of people, but also ‘merely’ allowing the killing of certain people, whether due to their age, state of health, circumstances of conception or other characteristics – whether temporary or permanent – constitutes a violation of the essence of the right guaranteed by Article 38 of the Constitution.

4 Article 2 of the Constitution – the obligation of legal protection of human life as a consequence of the principle of a democratic state of law

In accordance with Article 2 of the Constitution, the Republic of Poland is a democratic state governed by the rule of law, which implements the principles of social justice. It should be emphasised that the deciding contained in the referenced ruling of the Constitutional Tribunal of 28 May 1997, which stated the incompatibility with the then constitutional provisions of Article 4a, paragraph 1, point 4 of the Abortion Act, permitting the killing of a child conceived in a situation where its mother was ‘in difficult life conditions or in a difficult personal situation’, was justified primarily by the content of the principle of a democratic state of law: ‘The

88 Judgment of the Constitutional Tribunal of 7 January 2004, ref. K 14/03, para. III.4.1.

basic provision from which the constitutional protection of human life is to be derived is Article 1 of the constitutional provisions upheld, in particular the principle of a democratic legal state. This is because such a state is realised exclusively as a community of people, and only people can be the proper subjects of the rights and obligations enacted in such a state. The fundamental attribute of a human being is his or her life. The deprivation of life therefore simultaneously annihilates man as the subject of rights and duties. If the content of the rule of law is a set of fundamental directives derived from the essence of democratically enacted law and guaranteeing a minimum of its justice, then the first such directive must be the respect, in a state governed by the rule of law, for the value without which all legal subjectivity, i.e., human life from its inception, is excluded. A democratic state under the rule of law places human beings and the goods most precious to them as the supreme value. Such a good is life, which in a democratic state under the rule of law must remain under constitutional protection at every stage of its development.⁸⁹

The quoted findings of the Constitutional Tribunal remain fully valid, as confirmed, *inter alia*, by the judgment of 30 September 2008, in which the Tribunal stated: ‘it would be definitely unacceptable in a democratic legal state, implementing the principles of social justice and protecting life and inalienable human dignity, to limit the legal protection of human life in order to protect goods located lower in the constitutional hierarchy, e.g. property and other property rights, public morality, protection of the environment or even the health of other people. The condition for limiting the right to the legal protection of life is therefore the existence of a situation in which it is undoubtedly irreconcilable with analogous rights of other persons. This prerequisite can be described in general terms as the requirement of symmetry of the goods: the sacrificed and the saved.’⁹⁰ For in a democratic state governed by the rule of law, ‘there is no doubt that human life is not to be valued based on its age, state of health, its expected duration, or any other criteria. Every human being, including passengers on an aircraft in the airspace of a state, has the right to the

89 Ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96, para. 3.

90 Judgment of the Constitutional Tribunal of 30 September 2008, ref. K 44/07, para. III.7.4.

protection of life by that state. For the State to grant itself the right to kill them, even if only in defence of the lives of others, is a denial of that right'.⁹¹

In the decisions cited above, the Constitutional Tribunal has perfectly captured the essence of a democratic legal state: 'The democratic legal state is a state based on respect for human beings and, in particular, on respect for and protection of human life and dignity.'⁹² A democratic legal state is therefore one in which it is forbidden to kill human beings, especially the innocent and most vulnerable – the unborn, including the unborn disabled. It is worth noting that it has been pointed out in the doctrine that the axiological justification of a democratic legal state is the principle of the common good (Article 1 of the Constitution), whose fundamental element, as a sum of conditions enabling and facilitating the development of the human person, his/her self-fulfilment and perfection, as well as the communities (associations) created by him/her, is precisely the respect for the inherent rights and duties of the human person resulting from his/her dignity, in particular the legal protection of life. Indeed, Article 1 places the human being living in a community at the foundation of the state, while Article 2 indicates the fundamental consequences of this for the shape of the state.⁹³ In a democratic state under the rule of law, the life of every human being – including those in the prenatal stage of development – deserves full protection.

5 Article 1 of the Constitution – protection of the life of the conceived child as a consequence of the principle of the common good

According to Article 1 of the Constitution, the Republic of Poland is the common good of all citizens. In its content, the quoted provision clearly refers to the concept of the state as a 'common good', which is in fact directly indicated by the very name 'Rzeczpospolita', whose root can be found in the phrase 'a common affair', 'a public affair'. The term is a literal

91 Ibid., para. III.7.5.

92 Ibid., para. III.8.1.

93 M. Piechowiak, Explanations to Article 1..., para. nos. 59, 69, 75, 105.

polonisation of the Latin *res publica*, and thus clearly indicates the models rooted in the ancient tradition which have been referred to over the centuries of Polish history.⁹⁴ In Roman philosophical reflection on the state and law, the character of the state as a common good of all citizens was strongly emphasised. This was expressed by Cicero in his attempt to define the Roman state, when he pointed out that a republic was: 'the concern of a people, but a people is not any group of men assembled in any way, but an assemblage of some size associated with one another through agreement on law and community of interest.'⁹⁵ Cicero recycled the earlier Greek concept of the state as a civic community (*polytheia*), present in the works of Plato and Aristotle.⁹⁶

In the ancient tradition, as well as in later medieval concepts – presented above all by John of Salisbury and St Thomas Aquinas – the state was essentially a political community, and thus remained an entity immanently linked to the citizens who constituted it.⁹⁷ The Polish-Lithuanian Commonwealth, treated as a common good, was perceived in a similar way. As Arkadiusz Stasiak points out, the state 'became something owned in common, which had to be taken care of'.⁹⁸

Reference to the concept of the Republic as a common good is also found in the preamble to the Constitution, where the legislator identifies Poland with the 'common good', and develops this idea in Article 1. In turn, Article 25(3) refers to the cooperation of the state and churches and religious

94 D. Pietrzyk-Reeves, *Wolność warunkowana cnotą: moralne podstawy wspólnotowego ładu politycznego w dawnej Rzeczypospolitej*, "Łódzkie Studia Teologiczne" 2017, t. 26, no. 2, p. 91.

95 Cicero, *On the Commonwealth and On the laws*, ed. J.E.G. Zetzel, Cambridge 1999, p. 18, Book I, [39a]. In a later period, 'public benefit' (*utilitas publica*) became the criterion for the jurist Ulpian's dichotomous division of law into public and private (see *Digesta Iustiniani Augusti*, eds. Th. Mommsen, P. Krueger, Berolini 1892, 1, 1, 1, 2).

96 See E. Voegelin, *Platon*, transl. A. Legutko-Dybowska, Warszawa 2015, p. 143; idem, *Arystoteles*, transl. M.J. Czarnecki, Warszawa 2011, pp. 100 et seq. Aristotle conceived of the state as a 'community of happy life' (L. Dubel, M. Łuszczzyńska, *Medieval sources of contemporary concepts of the common good*, [in:] *Pro publico bono – ideas and activities*, eds M. Marszał, J. Przygodzki, Wrocław 2016, p. 65).

97 On the contributions of John of Salisbury and St Thomas Aquinas to the concept of the common good (*bonum commune*), see L. Dubel, M. Łuszczzyńska, op. cit., p. 66 et seq.

98 A.M. Stasiak, *Patriotyzm w myśli konfederatów barskich*, Lublin 2005, p. 20. This kind of perception of the state is encountered already in the late medieval period (15th century) by Paweł Włodkowic and Stanisław ze Skarbimierza – see S. Wielgus, *Teoria ius gentium w średniowiecznej Polsce. Geneza, historia, twórcy, główne problemy*, [in:] *Paweł Włodkowic i polska szkoła prawa międzynarodowego*, eds. M.A. Cichocki, A. Talarowski, Warszawa 2018, pp. 210 et seq. Similarly, Andrzej Frycz Modrzewski pointed out that the Republic is 'a mother common to all' – quoted in D. Pietrzyk-Reeves, op. cit., p. 94. Also the Constitution of 3 May indicated in its preamble that it was established 'for the common good, for the consolidation of freedom, for the salvation of our homeland and its borders' – quoted in M. Piechowiak, *Explanations to Article 1...*, marg. no. 7.

associations 'for the good of man and the common good'. Concern for the common good is also the duty of every Polish citizen, as indicated in Article 82. This suggests that all actors of social and political life – the state in the institutional sense, churches and other religious associations, as well as citizens in general – have a duty to care for the common good.

The conception of the Republic as a common good determines the need to view the State as a human community. This aspect is also emphasised in the literature on the subject, pointing to the close connection between the protection of human life (including the life of people in the prenatal stage of development) and the principle of the common good. As Marek Piechowiak emphasises, 'even if the principle enunciated in the present Article 2 of the Constitution of the Republic of Poland encompasses human rights, it nevertheless – in isolation from Article 1 – places them in the perspective of the state as something first and primary, which is clearly visible in the judgment of the Constitutional Tribunal of 28 May 1997 (K 26/96, OTK 1997, No. 2, item 19), when, even before the entry into force of the Constitution of the Republic of Poland, the Constitutional Tribunal derived the right to life from the principle of a democratic state of law [...]'.⁹⁹ In the current state of the law, the constitutional legislator has clearly confirmed the primacy of the human being – conceived as an autonomous entity whose immanent specific feature (distinguishing it from other entities) is human dignity – *vis-à-vis* the state. The state is a human community and has a subservient role in relation to people. Understood in this way, its primary role is to defend human dignity and human life. Thus, just as in the classical concepts of the state – a political community (*politeia, civitas*), this entity has a teleological dimension on the grounds of the Polish constitutional provisions.¹⁰⁰ The primary

⁹⁹ M. Piechowiak, Explanations to Article 1..., marg. no. 105.

¹⁰⁰ This was most clearly outlined by Aristotle – see *Politics* 1, 1, 1: 'Every state is a community of some kind, and every community is established with a view to some good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at good in a greater degree than any other, and at the highest good' (Aristotle, *Politics*, transl. B. Jowett, <https://classics.mit.edu/Aristotle/politics.1.one.html>, accessed 28 April 2022). As E. Voegelin points out, in Aristotle's views the goal (*telos*) belongs to the nature of the state, hence the philosopher considered the state to be a natural entity (and therefore not a natural creation in the biological sense) – E. Voegelin, *Arystoteles*, pp. 87-89. The goal of the state, i.e., 'happy existence' – which M. Piechowiak defined using contemporary legal terminology as 'personal development' (M. Piechowiak, Explanations to Article 1...) – is therefore the fundamental sense of its existence, impossible to achieve without guaranteeing the protection of human life.

objective of the state is to protect the biological existence of the national and civic community both in the collective dimension (for example, in the case of an armed conflict) and in the individual dimension. In this sense, Article 1 in a self-contained manner sets the standard for the protection of human life, including also persons remaining in the prenatal stage of development, whose ontological status is identical to that of people already born.

6 Article 18 of the Constitution – protection and care of maternity and parenthood by the public authorities and the standard of protection for the life of the conceived child

Concern for the rights of the nasciturus also stems from the constitutional principle of the protection of maternity and parenthood referred to in Article 18 of the Polish Constitution. Maternity is a constitutional value that cannot mean only the protection of the interests of the mother – it also includes a component of protection of the conceived child, in particular ensuring the inviolability of its life. The Constitutional Tribunal, in its ruling of 28 May 1997 – an extensive passage of which is worth quoting here *in extenso* – stated:

‘It remains to consider, therefore, whether the regulation of Article 4a(1)(4) [of the Abortion Act – authors’ note] can be justified by the right to decide responsibly about having children. Such a right can indeed be derived from the scope of fundamental human rights and freedoms, and in the constitutional provisions themselves, from the guarantees they provide for motherhood and the family. The right to parenthood must be interpreted in a positive and a negative sense. Indeed, it must mean the prohibition of measures restricting the freedom to have children, as well as the prohibition of measures coercive to having children.

This right specifically concerns the decision to conceive a child. In fact, any interference, whether by state authorities or others in this sphere would have to be considered an unacceptable infringement of the fundamental

right of every human being. The question arises whether the right to decide to have a child can be understood more broadly, also as the right to decide to give birth to a child. In this case, it would be impermissible to establish a legal prohibition of the birth of a conceived child, a prohibition that would be enforced by the state. Similarly, it would be inadmissible to establish any negative legal consequences linked to the fact of giving birth to a child. Any public or private interest that could justify the introduction of such a regulation would have to be set against the primary value of the life of the conceived child and the parents' right to have children.

It is a different matter to consider the right to have a child in a negative aspect, and therefore also as a right to terminate a pregnancy. In this situation, in relation to the origin of life, the right to decide to have a child would in fact have to come down to the right not to give birth to a child. One cannot decide to have a child in a situation where the child is already developing in the prenatal phase and in this sense is already possessed by the parents. The right to have a child can therefore only be interpreted in a positive aspect and not as a right to annihilate a developing human foetus.

The right to decide responsibly to have children thus amounts, in its negative aspect, exclusively to the right to refuse to conceive a child. Then, after all, when the child has already been conceived, this right is only exercisable from the positive aspect, as, inter alia, the right to give birth to the child and to bring it up.¹⁰¹

The quoted findings of the Constitutional Tribunal are universal and immanent to the principle of a democratic state under the rule of law respecting the inherent and inalienable dignity of the human being, and moreover they find a detailed development in Article 18 of the Constitution, which orders the Republic of Poland to protect and care for maternity and parenthood. Indeed, it is not possible for the public authorities to fully realise this obligation if the law allows for the killing of the *nasciturus*, i.e., one of the two subjects of the constitutionally protected

101 Ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96, para. 4.3.

relationship of maternity (parenthood), without which this relationship would be interrupted.¹⁰²

The period of maternity encompasses the time both after and before the birth of the child – from the moment of conception. Indeed, on the grounds of constitutional regulation, the mother is referred to in both situations – for according to Article 71(2) of the Constitution: ‘The mother before and after the birth of her child has the right to special assistance from the public authorities, the extent of which shall be determined by law.’ As noted in the Tribunal’s jurisprudence, the indicated regulation ‘refers to the mother “before and after the birth of the child”. The correlate of the relationship of “being a mother” is the relationship of “being a child”. If one is a mother before and after the birth of a child, then one is a child not only after the birth, but also in the period before the birth, i.e., in the prenatal phase of life. In doing so, it is not possible for someone to be a child and not be a human being. It cannot be doubted that every child is a human being (see the statement of Senator Alicja Grzeškowiak Constitutional Committee of the National Assembly, Bulletin No. XLV, Warszawa 1997, p. 44)’.¹⁰³

Parenthood, in the light of Article 18, is an objective state of affairs, independent of the individual, subjective feelings of those involved in this unique relationship. The fact that it signifies such a bond between a mother and her child, which is subject to legal protection, determines the necessity of safeguarding the existence of the subjects participating in this bond. The obligation to protect motherhood – like the other values set out in Article 18 – has the nature of a constitutional principle (relating to the social system, not the political system), and therefore its content determines the understanding of other constitutional provisions, including those relating to rights and freedoms (Chapter II of the Constitution).¹⁰⁴ Moreover, not only does it intrinsically determine the standard of protection of the life of the mother and her child (including the conceived child), but it also prevents

102 See W. Borysiak, Explanations to Article 18, [in:] *Konstytucja Rzeczypospolitej Polskiej. Tom I. Komentarz do art. 1–86...*, para. nos. 154–158.

103 Judgment of the Constitutional Tribunal of 22 October 2020, ref. K 1/20, para. III.3.3.2.

104 See judgment of the Constitutional Tribunal of 11 May 2011, ref. SK 11/09, OTK-A 2011, no. 4, item 32, para. III.3.4.

such an interpretation of other provisions of the Constitution that could lead to a lowering of the level of protection of human life.

7 Conclusions

Many provisions of the Constitution guarantee the protection of the life of the conceived child. Articles 30 and 38 as well as Articles 1, 2 and 18 of the Constitution of the Republic of Poland are of key importance in this respect. The first mentioned provisions directly impose on public authorities the obligation to respect human dignity, with which the obligation to ensure the legal protection of human life is immanently connected. No group of persons may be excluded from it. The legal order cannot allow exceptions on grounds of sex, race, ethnic origin and nationality, age, stage, or quality of life, or for any other reason. Indeed, the preservation of life conditions the enjoyment of all other constitutional rights and freedoms. Therefore, the right to ensure the preservation of human life must be assumed to take precedence over them. Analogous conclusions are drawn by the content of Article 2 of the Constitution of the Republic of Poland, which states the principle of a democratic state under the rule of law, understood not as a territory defined by borders, but as a community of people deserving equal protection under the law, irrespective of their birth, and Article 1 – no development, not to mention integral and comprehensive one, will be possible if a human being is deprived of life. Also the protection of motherhood and parenthood, which is the duty of the public authorities in Poland by virtue of Article 18 of the Constitution of the Republic of Poland, includes the injunction to introduce norms guaranteeing the legal protection of the life of both the mother and her child, as constitutive conditions for the duration of the protected relationship.

Summing up the above, one has to conclude that the constitutional standard of protection of human life, including that of the conceived child, is reconstructed on the basis of several internally consistent provisions which provide stable normative guarantees of its protection. The issue of its full realisation both at the statutory level and in the practice of law application by public authorities is, however, already a separate issue.

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Abstract

This chapter aims to reconstruct the constitutional standard of protecting the life of a conceived child based on Article 1, Article 2, Article 18, Article 30, and Article 38 of the Constitution of the Republic of Poland of 1997. The analysis takes into account both the case law of the Constitutional Tribunal, including the key ruling of 28 May 1997, ref. K 26/96, and the judgment of 22 October 2020, ref. K 1/20, as well as the views expressed in the literature on the subject. The obligation of the legislature to ensure adequate protection of the life of a conceived child is primarily a consequence of Article 30 of the Constitution of the Republic of Poland, which establishes the obligation to respect and protect the inherent and inalienable human dignity, which is the source of all rights and freedoms. Personal dignity is intrinsically related to man as a being with a special ontological status, which results from the very fact of belonging to the human species. In this context, it should be noted that Article 38 of the Constitution of the Republic of Poland states that the Republic of Poland guarantees the legal protection of the life of every human being, and thus also an unborn child, regardless of its health condition or circumstances of conception. Other provisions of the Constitution are of a subsidiary nature in this context – Article 1, which refers to the Republic of Poland as a common good, Article 2 establishing the principle of a democratic rule of law and Article 18, which requires public authorities to, among others, ensure the protection and care of motherhood, i.e., the relationship that is established between a mother and her child already at the moment of karyogamy.

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Key terms: abortion law in Poland, 1993 Family Planning Act, abortion tourism, criminal law protection of the child survivor of an abortion

Chapter 9

The current state of the law in Poland: the Family Planning Act and its interpretation

1 Matters concerning the permissibility of abortion outside of legal regulation

The issue of the protection of the life of the conceived child is regulated primarily in the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy.¹ The provisions contained therein determine the conditions in which it becomes permissible to carry out a termination of pregnancy and thus deprive the conceived child of life.

The legislator introduces the principle of the legal protection of life already in the preamble of the Family Planning Act, indicating that the fundamental good of the human being is his or her life, while the care for it constitutes one of the fundamental duties of the state, society and the citizen. In Article 1, it specifies that life is also protected in the prenatal phase. Although the literal wording of the provision indicates a limited scope of this protection, due to the wording ‘within the limits specified by law’ present there, it should be emphasised that this limitation is deprived of validity on the basis of the ruling of the Constitutional Tribunal to the extent that it makes the protection

¹ Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended), hereinafter: the Family Planning Act.

of life in the prenatal phase dependent on the decision of the ordinary legislator.² Despite the already historical nature of the said judgment, the content of the provision in question has still not been adapted to it.

However, the principle of the protection of human life suffers from certain limitations originating in the exceptions provided for in the Family Planning Act, which define the circumstances in which it is possible to terminate a pregnancy within the law. Pursuant to Article 4a, an abortion is permitted when:

- the pregnancy poses a risk to the life or health of the pregnant woman,
- there is a reasonable suspicion that the pregnancy is the result of a criminal act.

Under the same article, restrictions are placed on the time limit for the procedure. In the second case, termination of pregnancy is possible if the child has not reached 12 weeks of age.

2 Interpretation of the provisions of the Family Planning Act

The first of the justifications listed in the Family Planning Act for the permissibility of abortion has to do with the need to save the health or life of the mother. This means that the legislator decided to protect not only the life, but also the health of the mother at the expense of the life of the child. It is left exclusively to the woman to make the decision to terminate the pregnancy in a situation where this premise exists.³

Attention should be drawn to the rich case-law of the Constitutional Tribunal in the matter in question, whose line of jurisprudence on the protection of human life, including at the prenatal stage, has remained unchanged for years. The Tribunal takes the view that an exception to the right to the protection of

² Ruling of the Constitutional Court of 28 May 1997, ref. K 26/96.

³ J. Haberkowicz, *Podjęcie decyzji o przerwaniu ciąży w sytuacji zagrożenia dla życia lub zdrowia ciężarnej*, [in:] *Cywilnoprawna ochrona dziecka poczętego a stosowanie procedur medycznych*, LEX 2013.

human life may be introduced only in a situation where it is in conflict with an analogous right of another person. At the same time, it is unacceptable to limit the protection of life in order to safeguard goods lower in the constitutional hierarchy, such as property rights, the protection of the environment, public morals or even the health of other people, and any such limitation must be absolutely necessary, i.e., constitute a measure of *ultima ratio*.⁴

The view that the protection of life takes precedence over the protection of health can also be found in the literature in this domain.⁵ Although the solution of taking the life of the child in order to save the health of the mother may be useful and necessary for the protection of her health, it undoubtedly involves a disproportion between the good saved and the good sacrificed.

This issue is evident in a very famous case considered by the European Court of Human Rights in Strasbourg (ECtHR), concerning an action brought by Alicja Tysiąg against Poland. The plaintiff wanted to terminate her pregnancy on the grounds that both pregnancy and childbirth could endanger her eyesight. However, ophthalmologists refused to issue her with a certificate allowing her to have an abortion. After the birth, Alicja Tysiąg's health deteriorated and she reported the doctors' decision to the public prosecutor's office. The proceedings were discontinued, as experts ruled that the birth had no effect on the deterioration of her eyesight. As a result, Tysiąg turned to the ECtHR, alleging that Poland had violated, among other things, her right to respect concerning her private life and her physical and moral integrity. The Tribunal awarded the claimant €25,000 in damages, citing that the woman had not been afforded the right to appeal the doctors' decision.

The applicant feared that her pregnancy and childbirth might endanger her eyesight and the Tribunal, despite having access to expert opinions, considered the fear as 'sufficient' and took the view 'that the applicant's fears could not be considered unfounded'.⁶ The dissenting opinion of Judge

4 Judgment of the Constitutional Court of 30 September 2008, ref. K 44/07.

5 B. Banaszak, Commentary to Article 38, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2012, marg. no. 4, SIP Legalis.

6 Judgment of the European Court of Human Rights of 20 March 2007 in *Tysiąg v. Poland*, Application No. 5410/03.

Francisco Javier Borrego (Spain) commented on the whole case very well, stating: 'All human beings are born free and equal in dignity and rights. To-day, the Tribunal has decided that a human being is born due to a violation of the European Convention on Human Rights. According to this reasoning, there is a child in Poland, who is now six years old, whose birthright is in violation of the Convention. I never thought that the Convention could go this far and I find it appalling.'⁷

It should be noted here, in turn, that the norm contained in Article 4(1)(3) of the Family Planning Act does not require the commission of a crime, as the premise is based on a reasonable suspicion of a criminal act. The term 'criminal act' does not refer only to rape, but encompasses a number of other criminal acts, such as:

- sexual activity with a child under 15 years of age (Article 200 of the Act of 6 June 1997 – Criminal Code; hereinafter: the Criminal Code),
- sexual activity with a person who is helpless or insane (Article 198 CC),
- incest (Article 201 CC),
- forced prostitution (Article 203 CC),
- sexual intercourse in a public place (art. 51 of the Petty Offences Code⁸).

It is impossible to demand respect for the mother's right to decide to have her children in the context of these criminal acts, which were committed with the mutual consent and will of the parties.

The Constitutional Tribunal points out: 'It is not possible to decide on the possession of a child in a situation where the child is already developing in the prenatal stage and in this sense is already possessed by the parents. The right to have a child can therefore only be interpreted in a positive

7 Ibid.

8 Act of 20 May 1971 – Petty Offences Code (Dz.U. 2019, item 821).

aspect and not as a right to kill a developing human foetus.⁹ There is therefore no right not to give birth to a child.

While the crime of rape is undoubtedly an extremely traumatic experience and leaves a mark on the victim's entire life, the other potential victim – the child conceived – must not be overlooked. The child is in no way responsible for the reprehensible act committed by its father. If, on the other hand, the mother decides to terminate the pregnancy, the number of victims of this dramatic event will simply increase. The norm contained in Article 4a(1)(3) of the Family Planning Act constitutes a legal anomaly of sorts due to the fact that it allows for the possibility that the most serious consequences of a criminal act will be borne by an innocent child – it will pay for it with its life.

3 An increasingly broad interpretation

In contemporary public debate, the attempt to expand the abortion culture, as well as the gradual degeneration of the law, imply an increasingly broader interpretation of the premises listed in the Family Planning Act for the permissibility of abortions. Analysing the data from 2000 to 2015, we can observe that each year there was an increased number of abortions on the same grounds. This probably had to do with the fact that there was increasing freedom in interpreting the provisions in question, which are, after all, intended as an exception to the general principle of the protection of life. According to the Ministry of Health, during these fifteen years, the number of abortions performed in Poland increased as much as eightfold: from 138 (in 2000) to 1,040 (in 2015), the vast majority of which were related to the performance of prenatal tests.¹⁰ This number started to decrease only after the removal of the so-called eugenic premise from the law (due to the Constitutional Tribunal's judgement of 22 October 2020¹¹), which allowed abortion due to a high risk of severe and irreversible disability of the child

9 Ruling of the Constitutional Court of 28 May 1997, ref. K 26/96.

10 K. Łanda, Response to parliamentary question No. 5624 on NFZ [National Health Fund] statistics on the reasons for abortions in Poland between 1993 and 2016, <http://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=031EE640>, accessed 30 December 2022.

11 Judgement of the Constitutional Tribunal of 22 October 2020 ref. K 1/20.

or a life-threatening disease (cf. the number of abortions in the following years: 2019 – 1110, 2020 – 1076, 2021 – 107¹²).

4 A counter-narrative transformed into a legal right?

It should be noted that under Polish legislation there is no such construction as a ‘legal right to abortion’.¹³

In the literature in the domain, we can encounter the following definition of a legal right: ‘It is a certain legal situation designated to people by the norms in force and protecting the legally recognized interests of those people. This situation consists of free – in normative terms – psychophysical or conventional behaviour of the entitled person, to which the duties of another person are always attached, whereby, as a rule, the entitled person is also entitled to demand that a coercive state body bring about the realisation of the attached legal duties.’¹⁴

It is also difficult to consider that there is a ‘right to abortion’ under Article 47 of the Polish Constitution. According to its wording, we can speak of the existence of the right to the legal protection of private life, family life, honour, and good name and to decide on one’s personal life. However, a woman’s decision to terminate a pregnancy prejudices not only her private and personal life, but also the life of the conceived child, and therefore goes far beyond the framework of the constitutional right. Moreover, it is also impossible to see this kind of construction under European legislation. The European Court of Human Rights indicates that there is no ‘right to abortion’ – on the grounds that termination of pregnancy is not a private matter of the mother. According to the ECHR, the state can only authorise an abortion on the grounds of a conflict with the rights guaranteed by the European Convention for the

12 Report of the Council of Ministers on the implementation and consequences of the application in 2021 of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended).

13 W. Borysiak, *Naruszenie przez lekarza prawa rodziców do planowania i przerywania ciąży jako podstawa roszczenia odszkodowawczego. Głos do wyroku SN z dnia 13 października 2005 r., IV CK 161/05, “Państwo i Prawo” 2006, no. 7, pp. 116-120.*

14 Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warszawa 2013, p. 87.

Protection of Human Rights and Fundamental Freedoms, thus, for example, in a situation where the health or life of the mother is at risk.¹⁵

According to representatives of legal doctrine, on the other hand, the circumstance of depriving an abortion procedure of its criminal character may be considered in the light of a justification in law (or an institution similar to it) or a negative characteristic of a prohibited act on the basis of Article 152 of the Criminal Code.¹⁶

Apologists of the first of the concepts indicated above see in abortion an act which, although fulfils the statutory attributes of a crime, is not a crime, because the Family Planning Act repeals its unlawfulness due to the lack of purposefulness of punishment in a given case. It is worth noting here that, according to W. Borysiak, 'it is evident that from a situation which is unlawful in criminal law, no subjective right can be derived in civil law'.¹⁷

In the line of jurisprudence, we also find significant statements in this regard. The Constitutional Tribunal, in one of its judgments, although issued during the time of the law permitting the termination of pregnancy to a broader extent, which remains valid, states: 'This act [that is, the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy – author's note] determines the conditions for the permissibility of the termination of pregnancy and thus, in its assumption, concerns situations that should be an exceptional legalisation of behaviour that is generally unlawful. For this reason, these provisions are treated in the doctrine of criminal law as defining a counter-circumstance, i.e., a circumstance excluding the unlawfulness of the act. The imposition of an obligation of counter-criminal behaviour may be something quite exceptional and generally concerns specific services acting to restore public order or to implement an authority's decision. The position of the Ombudsman assuming that there is a woman's freedom to terminate her pregnancy limited by the Act of 27 April 1956 on the conditions for the permissibility of termination of pregnancy cannot be considered

15 Judgment of the European Court of Human Rights of 26 October 2004 in *Silva Monteiro Martins Ribeiro v. Portugal*, Application No. 16471/02.

16 A. Zoll, Commentary to Article 152, [in:] *Kodeks karny. Część szczególna. Tom II. Część I. Komentarz do art. 117–211a*, eds. W. Wróbel, A. Zoll, LEX 2017; W. Borysiak, op. cit.

17 W. Borysiak, op. cit. p., 118.

accurate. The state of the law is just the opposite. The prohibition of the termination of pregnancy comes first, and the Act only defines the conditions of permissibility of derogation from this prohibition.¹⁸

Nevertheless, a firm position on the matter in question was taken, already on the basis of the Act in force today, by the Supreme Court, stating: 'The circumstances indicated in Article 4a(1) of the Act are similar in nature to a counter-narrative, and therefore involve the exclusion of unlawfulness. However, this is not tantamount to recognising the "right to abortion" as a personal good, as it should be pointed out that the collision of goods inherent in the justification in law excludes the possibility of constructing a legal right the object of which would be a personal good consisting in the possibility of violating the personal goods of others.'¹⁹

The arguments raised by the proponents of the second concept lead to the conclusion that the existence of provisions of the law abrogating the unlawfulness of termination of pregnancy in certain situations results in the fact that the performance of abortion itself does not de facto exhaust the elements of any criminal offence. Hence, this construction should be considered in the context of the negative elements of a prohibited act under Article 152 of the Criminal Code.²⁰

It is worth emphasising again at this point that, irrespective of the resolution of the theoretical dispute on the choice of the correct concept, the 'legal right to abortion' does not exist in Polish legal reality.

5 The crime of abortion in the Criminal Code

The termination of pregnancy in violation of the provisions of the Criminal Code constitutes a crime, as the life of the conceived child is protected under the provisions of the Code. In the case of the offences specified in

18 Ruling of the Constitutional Court of 15 January 1991, ref. U 8/90.

19 Resolution of the Supreme Court of 22 February 2006, ref. III CZP 8/06.

20 A. Zoll, Commentary to Article 152, [in:] *Kodeks karny...*, eds. W. Wróbel, A. Zoll, LEX 2017; R. Kokot, Commentary to Article 152, [in:] *Kodeks karny. Komentarz*, ed. R. Stefański, Warszawa 2017, para. nos. 4-5, SIP Legalis.

Articles 152-153 of the Criminal Code, it is it that is the direct object of protection.²¹ This view is also confirmed by judicial decisions.²²

According to Article 152 § 1 of the Criminal Code, whoever, with the consent of the woman, terminates her pregnancy in violation of the provisions of the Code, shall be punished with imprisonment of up to three years. In the next paragraph, the legislator provides identical limits of criminal liability for a person who assists or induces a pregnant woman to violate the provisions of the Act. Article 152 § 3 of the Criminal Code stipulates that the punishment will be more severe when the conceived child has reached the capacity for independent life outside the mother's body. Then the lower limit of the statutory penalty is six months and the upper limit is eight years. It should be assumed that the limit of the child's ability to live outside the woman's body with the use of appropriate medical devices is between the 22nd and 24th week of pregnancy.²³

All the offences set out in Article 152 of the Criminal Code are of a universal nature and can therefore be committed by anyone. From the point of view of the fulfilment of the elements of the criminal act, the manner in which it was carried out is irrelevant. Any form of termination of pregnancy – whether mechanical or pharmacological – will be culpable.²⁴

Due to the fact that the woman herself performing or permitting the abortion does not fulfil the elements of the type of prohibited act set out in Article 152 § 2 of the Criminal Code, behaviour analogous to aiding and abetting cannot be punished under the general rules. It was therefore necessary to sanction the type of offence *sui generis*. However, the causal activity, in this case consisting in assisting or inciting a pregnant woman to terminate a pregnancy in violation of the law, is identical to aiding and abetting within the meaning of Article 18 § 3 of the Criminal Code and incitement (Article 18 § 2 of the Criminal Code).²⁵

21 A. Zoll, Commentary to Article 152, [in:] *Kodeks karny...*, eds. W. Wróbel, A. Zoll, LEX 2017; A. Zoll, commentary to Article 153, [in:] *Kodeks karny. Komentarz*, eds. W. Wróbel, A. Zoll, LEX 2017.

22 Decision of the Supreme Court of 26 March 2009, ref. I KZP 2/09; judgment of the Court of Appeal in Katowice of 16 October 2008, ref. II AKa 255/08.

23 V. Konarska-Wrzošek, Commentary to Article 152, [in:] *Kodekskarny. Komentarz*, 3rd edition, eds. A. Lach et al., LEX 2020.

24 A. Zoll, Commentary to Article 152, [in:] *Kodeks karny...*, eds. W. Wróbel, A. Zoll, LEX 2017.

25 Ibid.

In the light of the jurisprudence of common courts, the responsibility of the perpetrator of a prohibited act under Article 152 § 2 of the Criminal Code does not depend on the occurrence of an effect in the form of the killing of the conceived child, as it is indicated that the offence is of a formal nature.²⁶ If the termination of pregnancy does not ultimately occur, the perpetrators may also incur liability for attempt.²⁷

Any behaviour which facilitates a woman's termination of pregnancy in contravention of the provisions of the law will be an aid.²⁸ It should be noted that the elements of the prohibited act in Article 152 § 2 of the Criminal Code are also fulfilled by a person who, contrary to the legal, specific obligation to prevent the commission of a prohibited act, by his/her omission enables another person to commit it.²⁹

Drawing on the body of case law and literature, examples of actions justifying criminal liability under the provision in question can be listed. These include:

- the provision of instruments or chemicals for the termination of pregnancy (including so-called morning-after pills);³⁰
- giving advice (such as repeatedly jumping off the table)³¹ or information (such as where to terminate a pregnancy);³²
- brokering arrangements for abortions, including arranging a meeting between the pregnant woman and the abortion provider;³³
- providing financial support to cover costs of an abortion;³⁴

26 Judgment of the Supreme Court of 20 November 2014, ref. IV KK 257/14; judgment of the Court of Appeal in Warsaw of 21 December 2015, ref. II AKa 401/15.

27 L. Tyszkiewicz, Commentary to Article 152, [in:] *Kodeks karny. Komentarz*, 5th edition, ed. M. Filar, LEX 2016.

28 V. Konarska-Wrzošek, Commentary to Article 152, [in:] *Kodeks karny...*, eds. A. Lach et al., LEX 2020.

29 M. Królikowski, Commentary to Article 152, [in:] M. Królikowski, R. Zawłocki, *Kodeks karny. Część szczególna. Tom I. Komentarz do artykułów 117–221*, Warszawa 2013, marg. no. 44, SIP Legalis.

30 Judgment of the Court of Appeal in Katowice of 30 September 2008, ref. II AKa 231/08; judgment of the Court of Appeal in Szczecin of 14 April 2016, ref. II AKa 36/16.

31 V. Konarska-Wrzošek, Commentary to Article 152, [in:] *Kodeks karny...*, eds. A. Lach et al., LEX 2020.

32 Ibid.; judgment of the Court of Appeal in Gdańsk of 9 February 2017, ref. II AKa 294/16.

33 M. Budyn-Kulik, Commentary to Article 152, [in:] *Kodeks karny. Komentarz aktualizowany*, eds. P. Kozłowska-Kalisz et al., LEX 2020.

34 R. Kokot, Commentary to Article 152, [in:] *Kodeks karny...*, ed. R. Stefański, marg. no. 12, SIP Legalis.

- issuing a false certificate on the criminal origin of a pregnancy or on severe foetal abnormalities;³⁵
- arranging for a woman to travel abroad for an abortion (as part of so-called abortion tourism).³⁶

In the context of abortion tourism, actions justifying criminal liability include, among the above, primarily:

- brokering arrangements for the termination of pregnancy, including arranging a meeting between the pregnant woman and the abortion provider;
- providing financial support to cover costs of an abortion;
- providing advice or information (for example, where to terminate a pregnancy).

Furthermore, it should be emphasised that, by analogy, anyone who, contrary to a specific legal duty to prevent the commission of a criminal act, by his or her omission facilitates the commission of the act by another person is also liable for aiding and abetting.³⁷

Abetting a pregnant woman to illegally terminate a pregnancy is to be understood as any means of inducing her to wish to terminate the pregnancy and consequently to prevent the birth of the child.³⁸ If the illegal termination of pregnancy does not take place, the instigator and the aider are liable as for attempt.³⁹

Despite the specific nature of the offence in question, the criminal activity fully corresponds to aiding and abetting within the meaning of Article 18(3) of the Criminal Code and incitement within the meaning of Article 18(2)

35 V. Konarska-Wrzošek, Commentary to Article 152, [in:] *Kodeks karny...*, eds. A. Lach et al., LEX 2020.

36 Ibid.; the issue of abortion tourism is further discussed in the subsection *Abortion tourism*.

37 M. Królikowski, op. cit.

38 V. Konarska-Wrzošek, Commentary to Article 152, [in:] *Kodeks karny...*, eds. A. Lach et al., LEX 2020, note 3.

39 L. Tyszkiewicz, op. cit., note 9.

of the Criminal Code, with the only difference that it is providing assistance or inducing a pregnant woman to terminate a pregnancy in breach of the provisions of the Criminal Code. Significantly, providing assistance to a person other than the pregnant woman in performing an abortion in violation of the Criminal Code also gives rise to criminal liability, only the basis for it changes, which will then be the general principles.⁴⁰

The termination of a pregnancy against the will of the woman gives rise to more severe criminal liability. According to Article 153 § 1 of the Criminal Code: 'Whoever, by using violence against a pregnant woman or in any other way without her consent, terminates a pregnancy or by using violence, unlawful threat or deception leads a pregnant woman to terminate a pregnancy, shall be subject to the penalty of deprivation of liberty from 6 months to 8 years.' Also in this case, the legislator has provided for a qualified type of criminal act. If the conceived child has reached the capacity to live independently outside the organism of the mother, the statutory threat of imprisonment increases and ranges from one to 10 years.

The violence referred to in the first sentence of Article 153 § 1 of the Criminal Code is to be understood as the use of such physical means as to prevent a pregnant woman from resisting and consequently to terminate the pregnancy. Thus, it can be both actions consisting in incapacitating the woman and performing an abortion against her will, as well as physically affecting the child, for example hitting the woman's abdomen in order to kill the child. The offence can also be committed without the use of violence. In this case, it will be sufficient for such a qualification of the act if the woman is deprived of consciousness that the procedure performed on her will result in termination of the pregnancy – deprivation of consciousness can occur, for example, by taking advantage of the woman's unconsciousness caused by administering pharmacological agents to her.⁴¹

The nature of the act described in the second part of the regulation in question is different. In this case, the perpetrator does not terminate

40 A. Zoll, Commentary to Article 152, [in:] *Kodeks karny...*, eds. W. Wróbel, A. Zoll, note 23.

41 A. Zoll, Commentary to Article 153, [in:] *Kodeks karny...*, eds W. Wróbel, A. Zoll, LEX 2017.

the pregnancy himself, but brings the pregnant woman to this act. However, it is not necessary for the termination of the pregnancy to be the result of the woman's own action – it can also be carried out by a doctor on her instructions.⁴² Under this part of the provision, violence is to be understood as 'acting on a woman by physical force, e.g. by beating her, in order to break her resistance and lead her to decide to terminate the pregnancy'.⁴³

An unlawful threat is subject to consideration under Article 115 § 12 of the Criminal Code, thus: 'An unlawful threat is both the threat referred to in Article 190 and the threat to cause criminal or other proceedings in which an administrative monetary penalty may be imposed, as well as the broadcasting of a message derogatory to the honour of the threatened person or his or her next of kin; it does not constitute a threat to cause criminal or other proceedings in which an administrative monetary penalty may be imposed if it is only intended to protect the right violated by the offence or conduct threatened by the administrative monetary penalty.'

Finally, the deception referred to in the provision (Article 153 § 1 sentence 1 of the Criminal Code) is defined by doctrine representatives as misleading a woman or taking advantage of her mistake in order to induce her to make a decision to have an abortion. An example of this type of criminal action may be falsely informing a woman that her child is irreversibly handicapped, resulting in her decision to terminate the pregnancy. In order to exhaust the elements of the offences specified in Article 153 of the Criminal Code, it is necessary to have the effect of depriving the life of the conceived child, as these offences are of an effectual nature.⁴⁴ What is more, each of them can be committed only intentionally – the perpetrator must be aware both of the consequences of his/her action and of the fact that he/she acts against the will of the woman, or at least accept that she has not expressed such a will.⁴⁵

42 Ibid.

43 Ibid.

44 M. Szwarczyk, Commentary to Article 153, [in:] *Kodeks karny. Komentarz*, 7th edition, LEX 2016.

45 Judgment of the Court of Appeal in Katowice of 9 December 2010, ref. II AKa 397/10.

Ad extremum, it should be noted that the legislator decided to criminalise not only the act directly harming the life of the conceived child, but also the act aiming at the infringement of its health. In accordance with the norms of Article 157a § 1 of the Criminal Code, whoever causes bodily harm to the conceived child or a life-threatening disorder of its health, is subject to a fine, restriction of liberty, or imprisonment for up to two years. On the other hand, in the light of Article 157a § 2 of the Criminal Code, a medical practitioner does not commit an offence if bodily injury or health disorder of the conceived child is a consequence of medical treatment necessary to avert the danger threatening the health or life of the pregnant woman or the conceived child. The mother of the child may also be guilty of a prohibited act, but under Article 157a § 3 of the Criminal Code she will not be subject to punishment. It will therefore be an unlawful, but unpunishable act.

This 'causing' of a life-threatening bodily injury or health disorder amounts to various actions which, in violation of the rules of conduct established by knowledge and experience with regard to the health of the unborn child, induce or seriously intensify a danger threatening its life or health.⁴⁶

The literal wording of Article 157a § 1 of the Criminal Code leads to the acceptance of the position that the result of a prohibited act is any bodily injury, regardless of its degree. However, only such causing of disorder of health which endangers the life of the conceived child is subject to criminalisation.⁴⁷

In the doctrine of criminal law, one can find the position that, although Article 157a § 2 of the Criminal Code does not explicitly introduce such a condition, the legality of therapeutic actions will depend on the pregnant woman's consent.⁴⁸ The representatives of the literature on the subject see the source of this objection in Articles 32-34 of the Act of 5 December 1996 on the professions of physician and dentist.⁴⁹

46 A. Zoll, Commentary to Article 157a, [in:] *Kodeks karny...*, eds. W. Wróbel, A. Zoll, LEX 2017.

47 J. Potulski, Commentary to Article 157a, [in:] *Komentarz do niektórych przepisów Kodeksu karnego*, LEX 2003.

48 A. Zoll, Commentary to Article 157a, [in:] *Kodeks karny...*, eds. W. Wróbel, A. Zoll, LEX 2017.

49 Act of 5 December 1996 on the professions of physician and dentist (Dz.U. 2020, item 514).

6 Abortion tourism

Since Poland's accession to the European Union and the advent of visa-free travel within the Schengen Area, the availability of abortion clinics in neighbouring countries has increased. Given the fact that in most European countries the standard of life protection remains lower than in Poland, and abortion is more widely available, a phenomenon known as abortion tourism addressed to women residing in the territory of Poland has developed very rapidly.

As indicated above, except in cases where termination of pregnancy is permissible, abortion constitutes a crime in Poland. It should be emphasised that due to the already discussed nature of the offences specified in Article 152 § 1-3 of the Criminal Code, their perpetrator does not have to be a doctor. Moreover, in accordance with Article 4a(1) of the Family Planning Act, the termination of pregnancy by a person who is not a doctor will always be carried out in violation of the law. It is worth noting at this point that in every circumstance in which, according to the provisions of the Act, legal abortion is possible, the procedure may be performed by a doctor who has the qualifications specified in the Regulation of the Minister of Health and Social Welfare of 22 January 1997 on the professional qualifications of doctors authorising the termination of pregnancy and on the determination that the pregnancy endangers the life or health of the woman or indicates a high probability of severe and irreversible impairment of the foetus or an incurable disease threatening its life.⁵⁰

The perpetrator of the offences in question cannot be the mother performing or permitting the abortion herself.⁵¹ Nor is she the victim of the offence in question. The Supreme Court expressed its opinion on her legal status, indicating that 'a woman whose pregnancy was terminated with her consent, in violation of the provisions of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility

50 Regulation of the Minister of Health and Social Welfare of 22 January 1997 on the professional qualifications of doctors authorising the termination of pregnancy and on the determination that the pregnancy endangers the life or health of the woman or indicates a high probability of severe and irreversible impairment of the foetus or an incurable disease threatening its life (Dz.U. No. 9, item 49).

51 L. Tyszkiewicz, *op. cit.*, note 4.

of terminating a pregnancy (Dz.U. No. 17, item 78, as amended), does not belong to the circle of victims of the types of prohibited acts specified in Article 152 § 1-3 of the Criminal Code within the meaning of Article 49 § 1 of the Code of Criminal Procedure, if the acts described in these provisions do not at the same time exhaust the elements set out in another provision of the Criminal Act [i.e., the Criminal Code – editor’s note] by which her legal good has been directly violated or threatened. It also does not acquire the right to act in the case as an auxiliary prosecutor as a substitute party (Article 52 § 1 of the Code of Criminal Procedure).⁵²

The offence of abortion can only be committed intentionally and therefore requires acting with direct or at least possible intent. The perpetrator must therefore be aware that his or her actions may result in the killing of the child in the prenatal phase of life, which he or she wants or agrees to.⁵³ It should therefore be assumed that incitement with the possible intent is also subject to criminalisation, as it is possible in particular when the instigator is aware that the final decision remains with the woman and that the content of this decision is indifferent from the perspective of the instigator’s interest.⁵⁴ For more considerations of incitement and aiding and abetting, see the subsection on the regulation of the crime of abortion in the Criminal Code in section 5 above.

It should be emphasised here again that, in the light of the body of case-law and doctrine, the offence under Article 152 § 2 of the Criminal Code is formal in nature, so that the perpetrator bears criminal responsibility regardless of whether the effect occurred, and regardless of the place where it was supposed to have occurred.⁵⁵ The liability of the perpetrator does not depend on whether or not the abortion occurred or, if it did occur, where – inside or outside the country.⁵⁶ The fact that the woman did not initiate the actions aiming at termination of pregnancy, or even whether such an intention arose on her part at all, is also irrelevant.⁵⁷

52 Decision of the Supreme Court of 26 March 2009, ref. I KZP 2/09.

53 A. Zoll, commentary to Article 152, [in:] *Kodeks karny...*, eds. W. Wróbel, A. Zoll, LEX 2017, note 27.

54 L. Tyszkiewicz, op. cit., note 7.

55 Judgment of the Supreme Court of 20 November 2014, ref. IV KK 257/14; judgment of the Court of Appeal in Warsaw of 21 December 2015, ref. II AKa 401/15.

56 Judgment of the Court of Appeal in Warsaw of 21 December 2015, ref. II AKa 401/15.

57 R. Kokot, Commentary to Article 152, [in:] *Kodeks karny...*, ed. R. Stefański, marg. no. 12, SIP Legalis.

On this basis, it can be concluded that the phenomenon of so-called abortion tourism falls within the scope of this article. In this respect, the place where the woman performed or would perform the abortion procedure is irrelevant. What is essential is the performance of the causal act itself on the territory of the Republic of Poland, which consists in providing assistance to a pregnant woman in aborting a pregnancy or inducing her to do so.

However, in opposition to the presented view, there is a judgment of the Court of Appeal in Kraków, in which, by virtue of the judgment of 22 April 2014, it was indicated: 'The phrase "termination of pregnancy in violation of the provisions of the Act" of Article 152 § 2 of the Criminal Code may be only such "termination of pregnancy" which is subject to the regulations of Polish law. It does not include termination of pregnancy, which is performed outside Poland, as Polish law does not regulate the principles of termination of pregnancy abroad, so that law cannot be "violated" there. It also applies to aiding and abetting a pregnancy termination performed in Poland when the procedure itself is or is to be performed outside Poland. Indeed, it would be unjust to punish for aiding or abetting lawful behaviour.'⁵⁸

It is impossible to agree with the conclusions drawn in the decision of the Court of Appeal in Kraków in terms of resolving the issue of assistance and inducement to terminate a pregnancy, the performance of which would take place in Poland, even if the procedure itself was to be performed outside its borders. J. Kędzierski, in a critical analysis to the ruling in question, rightly pointed out: 'The position [...] stating that aiding and abetting a pregnancy termination procedure to be performed outside Poland is not punishable *de lege lata*, as Polish Criminal Law does not regulate the rules of terminating a pregnancy abroad, so this law cannot be "violated" there, is not correct. Such aiding and abetting is a punishable act, as there is no provision in the Polish legal system permitting such actions, understood as a permitted "service". [...] The decriminalisation of aiding or abetting a cross-border abortion [...] cannot be accepted.'⁵⁹ This ruling must be assessed as obviously erroneous, as confirmed by the Supreme Court, which

⁵⁸ Judgment of the Court of Appeal in Kraków of 22 April 2014, II AKa 37/14.

⁵⁹ J. Kędzierski, *Glosa do wyroku sądu apelacyjnego z 22 kwietnia 2014 r.*, II AKa 37/14, LEX 2020.

overruled it in its ruling of 20 November 2014 and indicated that ‘in the light of the regulation of Article 6 § 2 of the Criminal Code, the place where the offence under Article 152 § 2 of the Criminal Code is committed is the place of action of the perpetrator. In the circumstances of this case, it follows from the undisputed findings of fact that the conduct corresponding to all statutory attributes of the offence of Article 152 § 2 of the Criminal Code was committed by the accused on the territory of Poland. In the light of these considerations, for the existence of perpetration of a crime under Article 152 § 2 of the Criminal Code it is indifferent that the abortion was to be performed outside Poland, where this procedure is considered legal’.⁶⁰

Again in this regard, the Supreme Court expressed its opinion in 2019, upholding its previous position and indicating that ‘where (in which country and under which law in force in that country) the abortion was performed is not relevant. The fulfilment of the elements of the act under Article 152 § 2 of the Criminal Code confronts only the law in force where the act is committed and not where the woman undergoes the abortion’.⁶¹

In the matter at hand, attention should be drawn to the provisions concerning responsibility for offences committed abroad. Pursuant to Article 109 of the Criminal Code, a Polish citizen is liable under Polish criminal law for an offence committed abroad (the so-called principle of subjective nationality). On the other hand, Article 111 § 1 of the Criminal Code contains a proviso according to which the condition for responsibility for an act committed abroad is that such an act is also recognized as an offence by the law in force at the place where it was committed (the so-called principle of double criminality).

On a side note, it is worth recalling that, in accordance with Article 111 § 3 of the Criminal Code, this condition does not apply to a Polish public official who, while on duty abroad, committed an offence there in connection with the performance of his or her functions, nor to a person who committed an offence in a place not subject to any state authority.

60 Judgment of the Supreme Court of 20 November 2014, ref. IV KK 257/14.

61 Judgment of the Supreme Court of 23 October 2019, ref. V KK 517/18.

The legal literature points to two approaches to the dual criminality condition: *in concreto* and *in abstracto*. The former is considered to be fulfilled when ‘an offence punishable in one State may be punished in another State if the offence was committed in the territory of the latter’⁶² and when ‘the offender may incur criminal liability under the legislation of the State concerned’.⁶³ The *in abstracto* condition, on the other hand, ‘is limited to indicating whether there is a norm prohibiting a certain behaviour in the systems of the two States concerned. It is not a question of fulfilling the *nomen iuris*, but that the act fulfils the elements of a prohibited act according to the criminal legislation of both states’.⁶⁴

On the basis of Article 111 § 2 of the Criminal Code, in the case of differences between the Polish law and the law in force in the place where the act was committed, the court has the power to take the differences into account in favour of the perpetrator. However, this solution is of an optional nature.⁶⁵

Although under Polish legislation, the termination of pregnancy in violation of the provisions of the Act on Family Planning fulfils the elements of a prohibited act, in the case of the legal systems of foreign countries the situation is often different. Therefore, the principle of double criminality specified in Article 111 § 1 of the Criminal Code should not be applied here, unless the causative act in question took place entirely on the territory of another state, where it would not be subject to criminalisation.

In the case of Slovak legislation, according to Section 151(1) of the Slovak Criminal Code, whoever performs an abortion on a pregnant woman with her consent, using procedures or under conditions that violate generally applicable legislation on abortion, is punishable by imprisonment from two to five years.⁶⁶ Moreover, according to Section 152(2) of the Slovak Criminal Code, a person who assists a pregnant woman

62 M. Plachta, *Przekazywanie skazanych między państwami*, Kraków 2004, pp. 478-479.

63 Ibid.

64 A. Sakowicz, Commentary to Article 111, [in:] *Kodeks karny. Część ogólna. Tomy I–II. Komentarz do artykułów 1–116*, eds. M. Królikowski, R. Zawłocki, Warszawa 2021, marg. no. 5, 10, SIP Legalis.

65 Ibid., marg. no. 10.

66 § 151(1) of the Slovak Criminal Code, <https://www.zakonypreludi.sk/zz/2005-300>, accessed 20 May 2022.

to have an abortion is also punishable.⁶⁷ On the other hand, according to Article 4 of the 1986 Act of the Slovak National Council on Abortion,⁶⁸ abortion is possible upon the written request of the woman if the pregnancy has not exceeded the 12th week and there are no contraindications due to the woman's health. Pursuant to Article 10 of the said act, the aforementioned regulation does not apply to foreigners who only temporarily stay in Slovakia, unless the abortion is necessary for health reasons, if the life or health of the woman or child is at risk or the child has developmental abnormalities. Consequently, where abortion tourism takes place in Slovakia (i.e., where the abortion is performed), the condition of double criminality is met if the woman does not reside permanently in Slovakia. The same conclusion follows from the Czech regulation of the termination of pregnancy. According to § 160 of the Czech Criminal Code, whoever performs an abortion with the woman's consent in contravention of the law regulating unnatural termination of pregnancy shall be punished with imprisonment.⁶⁹ On the other hand, according to Section 161, criminal liability also extends to a person who assists a woman to have an abortion.⁷⁰

An analysis of the Czech act of 1986 on abortion⁷¹ leads to the conclusion that the termination of pregnancy – as in Slovakia – is permissible upon the written request of the woman and only up to the 12th week of pregnancy, unless the pregnancy threatens her health. In contrast, this regulation does not apply to foreign women who are only temporarily residing in the Czech Republic (§ 10 of the law in question). An exception to this is when abortion is medically desirable and when it is performed with the consent of the pregnant woman or on her initiative, if the life or health of the woman or the healthy development of the conceived child is endangered, or if the conceived child has a genetic disorder. In other cases, therefore, the principle of double criminality also applies.

67 § 152(2) of the Slovak Criminal Code.

68 Act of the Slovak National Council on abortion, <https://www.zakonypreludi.sk/zz/1986-73>, accessed 20 May 2022.

69 § 160 of the Czech Criminal Code, <https://www.zakonyprolidi.cz/cs/2009-40>, accessed 20 May 2022.

70 § 161 of the Czech Criminal Code.

71 Czech National Council Act on abortion, <https://www.zakonyprolidi.cz/cs/1986-66>, accessed 20 May 2022.

The analysed issue of abortion tourism is also worth showing in the context of the possibility of exhausting the attributes of the offence specified in Article 258 of the Criminal Code, i.e., participation in an organized group or association aimed at committing a crime. The view is well established in doctrine and jurisprudence that an organized group should comprise at least three persons and be characterised by a certain degree of organization, consisting of established leadership and division of roles.⁷² The qualification of a given activity as an organized criminal group requires the establishment of 'at least a low degree of organizational-hierarchical links between its members, i.e., the establishment of static elements independent of dynamic elements, i.e., links which make it possible to commit an offence in cooperation with other persons. The type of such links may vary, but they always include the existence of a clearly defined decision-making centre (leadership) and a relatively stable division of tasks and functions within the group, links between its members [...]'.⁷³ A group of this kind can function on the basis of the voluntary participation of its members,⁷⁴ and their motives remain legally irrelevant.⁷⁵ The subjective side, on the other hand, allows for both direct and alternative intent.⁷⁶ Thus, the perpetrator may not be sure of the criminal nature of the group's activity, it is sufficient that by becoming a member of the group, he accepts such a possibility. The Supreme Court noted that the assessment of a given association of persons as a group within the meaning of Article 258 of the Criminal Code belongs each time to the adjudicating court, while the accused may at most question the premises relevant for such assessment.⁷⁷ This means that persons who are part of structurally organized groups of persons aiming to provide abortion tourism services may simultaneously be criminally liable under Article 258 of the Criminal Code.

72 Judgment of the Court of Appeal in Kraków of 19 December 2003, ref. no. II AKa 257/03; judgment of the Court of Appeal in Łódź of 23 October 2006, ref. no. II AKa 174/06; judgment of the Court of Appeal in Kraków of 8 October 2008, ref. no. II AKa 92/08; K. Wiak, Commentary to Article 258, [in:] *Kodeks karny. Komentarz*, 7th edition, ed. A. Grześkowiak, K. Wiak, marg. no. 3, SIP Legalis.

73 Judgment of the Court of Appeal in Kraków of 8 October 2008, ref. II AKa 92/08.

74 K. Wiak, op. cit., marg. no. 4, SIP Legalis.

75 Judgment of the Court of Appeal in Kraków of 16 December 2012, ref. II AKa 252/11.

76 Judgment of the Court of Appeal in Kraków of 26 April 2017, ref. II AKa 245/16.

77 Decision of the Supreme Court of 6 June 2013, ref III KK 66/13.

7 Criminal law protection of a child conceived and surviving an abortion

The issue of the treatment of children who have survived abortions appears to be a sufficiently important issue to be considered even on the grounds of compliance with the prohibition of torture and inhuman treatment. According to scientific research, the conceived child is able to feel touch as early as the eighth week of life, while the ability to feel pain, according to some scientific representatives, appears at the end of the 20th week.⁷⁸

Practices observed not only in Europe, but also worldwide, lead to the conclusion that a child may also be killed in the name of the law after birth by a person carrying out an abortion procedure, who will not bear any consequences of his or her act. This raises the question of whether such a state of affairs is the result of a breach of the applicable standards or the lack of appropriate regulation of such a situation. Nevertheless, the current state of the law should be analysed in order to determine whether a person born as a result of an artificial termination of pregnancy is subject to the same legal protection as a child born naturally.

It is difficult to find in Polish jurisprudence any judgements which strictly define the legal status of a child born as a result of a defectively performed abortion procedure. Therefore, it will be necessary to analyse the protection of the object of the offence defined in Article 148 of the Criminal Code in terms of determining whether it is also a child born as a result of an unsuccessful termination of pregnancy. According to Prof. Andrzej Zoll, expressed in his commentary to the norm in question, the protection of life within the meaning of Article 148 § 1-4 of the Criminal Code is not dependent on any circumstances. He emphasises that 'there is no human life that is excluded from legal protection. Any life and at any time is protected, including a life that cannot be saved in the short term'.⁷⁹

78 K. Kosińska-Kaczyńska, M. Wielgoś, *Czy płód może odczuwać ból?*, "Ginekologia Polska" 2011, no. 82, p. 134.

79 A. Zoll, Commentary to Article 148, [in:] *Kodeks karny...*, eds. W. Wróbel, A. Zoll, LEX 2017.

Attention should be drawn to the wording of Article 149 of the Criminal Code, which protects the life of a born or newly born child from an attempt by the mother. According to its wording, a mother who kills her child during the period of childbirth under the influence of its course is subject to lower criminal liability, while the life of a born or just-born child is protected against the acts of all other persons under Article 148 of the Criminal Code. Thus, the moment the pregnancy ends and the child is born, the legal qualification of the protection of its life changes. It ceases to be subject to the provisions criminalising the termination of pregnancy and begins to be subject to the protection of human life under Article 149 of the Criminal Code or under Article 148 of the Criminal Code.⁸⁰

The moment when the birthing action begins is considered to be the beginning of this protection.⁸¹ It must therefore be considered whether a defectively performed abortion procedure can constitute a birth action in this context. It is not possible to find a statutory definition of this term and therefore dictionary definitions must be used. From the Latin, the word 'abortion' means miscarriage and therefore stillbirth. In the situation under consideration, however, there is no death of the child, as it is born alive. It therefore seems appropriate to assume that the nature of this situation is closest to that of an artificially induced birth.

The literature on the subject indicates that 'in order to be covered by the protection mechanism in criminal law concerning human life and health on the basis of, *inter alia*, Article 148 of the Criminal Code, it is necessary to encounter a birth which can no longer be stopped, and which definitively ends the pregnancy, while the born child exhibits any possible signs of life'.⁸² Since, therefore, a child who manages to survive a termination of pregnancy procedure shows any signs of life, he or she becomes a full citizen entitled to the full protection of life. In such a case, doctors have a legal obligation to save his or her life.

80 V. Konarska-Wrzošek, Commentary to Article 148, [in:] *Kodeks karny...*, eds. A. Lach et al., LEX 2020.

81 Decision of the Supreme Court of 25 November 2009, ref. V KK 150/09; judgment of the Supreme Court of 27 September 2010, ref. V KK 34/10.

82 V. Konarska-Wrzošek, Commentary to Article 148, [in:] *Kodeks karny...*, eds. A. Lach et al., LEX 2020.

A different interpretation of the legislation, allowing such a born child to be left without adequate assistance, would lead to gross inequality before the law in the context of ensuring equal protection of life for everyone and would constitute a serious violation of the provisions of the Polish Constitution.

Indeed, the Constitutional Tribunal has repeatedly pointed to the prohibition of differentiation of the legal good that is human life. It has also drawn attention to the importance of the right to the legal protection of life as fundamental for the individual, since its existence conditions the possession and realisation of other rights and freedoms.⁸³

In turn, in another ruling, the Tribunal stated: 'The protection of human life cannot be understood solely as the protection of the minimum biological functions necessary for existence, but as the guarantee of normal development, as well as the acquisition and preservation of a normal psychophysical condition appropriate to a given developmental age (stage of life).'⁸⁴ Thus, doctors have a duty not only to provide palliative care for the child, but to take all measures to enable the child to develop normally. It should be borne in mind that even if the statutory conditions allowing exceptions to the general principle of the protection of life after birth are met, the child must not be put to death, as these conditions are no longer valid for the child.

83 Judgment of the Constitutional Court of 30 September 2008, ref. K 44/07.

84 Ruling of the Constitutional Court of 28 May 1997, ref. K 26/96.

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Abstract

This chapter presents an interpretation of the provisions of the Act of 7 January 1993 on family planning, protection of the human foetus and conditions for permissibility of terminating a pregnancy (the 'Act'), which is the main act in the Polish legal system regulating the issue of protecting the life of a conceived child. The Act specifies the conditions under which it becomes permissible to terminate a pregnancy and thus deprive a conceived child of the right to life. This is allowed when the pregnancy poses a threat to the life or health of the pregnant woman, and when there is a reasonable suspicion that the pregnancy resulted from a prohibited act. In the second case, termination of pregnancy is possible if the child has not reached the 12th week of life.

In interpreting the provisions of the Act, reference was made to the literature and jurisprudence of the Constitutional Tribunal, whose jurisprudence with regard to the protection of human life, including at the prenatal stage, has remained unchanged for years. According to it, the only exception to the right to the protection of human life is when it conflicts with the same right of another person.

The chapter emphasizes that in the Polish legal system, there is no such legal concept as the 'right to abortion'.

The sanctions provided by Polish law for abortion, apart from the exceptions provided for in the Act, were also analysed. Abortion is a crime as the life of a conceived child is protected under the provisions of the Criminal Code. Moreover, the chapter discusses the problem of so-called abortion tourism, i.e., abortions performed by Polish women abroad.

The issue of criminal law protection of a child who survived an abortion was also raised. Practices observed not only in Europe, but also globally, lead to the conclusion that a child can legally be killed also after birth by a person performing an abortion, who will not suffer any consequences for his/her act. It was pointed out that, even if the statutory prerequisites allowing for exceptions to the general principle of protection of life are met, once a child has been born, it must not be put to death as the exceptions do not apply to children after they are born.

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Key terms: so-called abortion compromise, attempts to change Polish pro-life law, deputies' bills, citizens' bills

Chapter 10

Bills limiting or increasing the legal protection of life in Poland after 1997

1 Introduction

Since the promulgation of the Constitutional Tribunal's ruling of 28 May 1997,¹ in which the so-called social premise of abortion (i.e., the legal permission to terminate a pregnancy if the woman experienced difficult life conditions or a difficult personal situation) was deemed to be contrary to the principle of a democratic state of law, there have been numerous attempts to modify the existing legal situation at the time. To this end, bills were submitted to the Speaker of the Sejm which were intended to at least partially limit the availability of prenatal infanticide in Poland or, on the contrary, referred to the dubious idea of so-called sexual and reproductive rights.

This chapter provides a brief overview of the 21 bills submitted after 1997 (until 2022) relating to the issue of the protection of life, i.e., all of them with the exception of the bill to amend the Constitution of the Republic of Poland,² among which there are 13 bills limiting the legal protection of life and 8 raising the standards of human rights in this area.

1 Ruling of the Constitutional Court of 28 May 1997, ref. K 26/96.

2 Deputies' bill to amend the Constitution of the Republic of Poland (print No. 993 of 5 September 2006), [https://orka.sejm.gov.pl/Druki5ka.nsf/0/79EB9DAFA9F1849FC12571F60033806C/\\$file/993.pdf](https://orka.sejm.gov.pl/Druki5ka.nsf/0/79EB9DAFA9F1849FC12571F60033806C/$file/993.pdf), accessed 17 February 2022.

2 Deputies' bills limiting the legal protection of life

2.1 Deputies' bill on informed parenthood (2004) – Sejm Paper No. 3215, 4th term of office of the Polish Parliament³

The Deputies' bill on informed parenthood was submitted to the Speaker of the Sejm (the lower house of the Polish Parliament) on 30 March 2004 by more than 50 Democratic Left Alliance MPs represented by Joanna Senyszyn.

The proposed regulation envisaged granting everyone the right to 'self-determination in the field of reproduction under conditions enabling informed decision-making about parenthood' and 'to information, education, counselling and measures enabling the exercise of the right to informed parenthood'. It obligated government and local authorities to ensure access to medical services related to informed parenthood, as well as to guarantee pregnant women medical care, free access to prenatal examinations and the necessary material assistance. The public authority was also to ensure the availability of contraceptive methods and supplies and health services for assisted procreation. It was postulated that new generation contraceptives, including postcoital contraceptives, should be reimbursed. The addition of the subject 'knowledge of human sexuality' to school curricula was envisaged, to be implemented from the first year of primary school.

The project envisaged the introduction of a concept unknown to Polish law, the 'right to abortion'. During the first 12 weeks of pregnancy it was to be unlimited – in the following weeks the possibility of killing the conceived child was to be allowed if any of the following conditions were met:

- 1) continuing the pregnancy endangers the woman's life or may impair her health;
- 2) there is a likelihood of severe foetal impairment or an incurable life-threatening disease;
- 3) pregnancy is the consequence of a criminal act.

3 Deputies' bill on informed parenthood (Sejm Paper No. 3215 of 30 March 2004), [https://orka.sejm.gov.pl/Druki4ka.nsf/0/15F8113DE65C0C16C1256F07002D40C7/\\$file/3215.pdf](https://orka.sejm.gov.pl/Druki4ka.nsf/0/15F8113DE65C0C16C1256F07002D40C7/$file/3215.pdf), accessed 16 February 2022.

The proposed law was to enter into force within three months of its publication.

The bill received a negative opinion from the Supreme Medical Council⁴ – the opinion indicated that the planned regulations are incompatible with the Polish Constitution, other acts, the Code of Medical Ethics, ‘principles of treating a human being accepted in the civilised world’,⁵ as well as ‘basic principles of rational lawmaking’.⁶ A similar opinion was expressed by the Presidium of the National Commission of the NSZZ ‘Solidarność’,⁷ pointing out that the project ‘crosses out the legal protection of life’,⁸ ‘attacks the fundamental rights of the family’,⁹ and ‘eliminates the real preparation of children for life in the family’.¹⁰

On 30 July 2004, the bill was referred to the Sejm for first reading. However, at its meeting on 15 February 2005, the Sejm, with votes from almost all parliamentary clubs and parliamentary circles, rejected the motion to keep the item on the agenda as follows: ‘First reading of the deputies’ bill on informed parenthood.’¹¹ Consequently, the bill suffered discontinuation.

2.2 Deputies’ bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (2008) – Sejm Paper No. 1786, 6th term of office of the Polish Parliament¹²

The motion was brought on 24 October 2008 by a group of MPs belonging to the Democratic Left Alliance. Izabela Jaruga-Nowacka was the rapporteur. The bill assumed an amendment to the regulations on the reimbursement

4 Position No. 67/04/IV of the Supreme Medical Council of 17 September 2004 on the deputies’ bill on informed parenthood, [http://orka.sejm.gov.pl/Druki4ka.nsf/0/5EC37335B91BA6C4C1256F24003528FE/\\$file/3215-x.pdf](http://orka.sejm.gov.pl/Druki4ka.nsf/0/5EC37335B91BA6C4C1256F24003528FE/$file/3215-x.pdf), accessed 16 February 2022.

5 Ibid.

6 Ibid.

7 Decision of the CC Presidium [Presidium of the National Commission of the Independent Self-Governing Trade Union ‘Solidarity’] No. 280/04 on the opinion on the deputies’ bill on informed parenthood (Sejm Paper No. 3215), [http://orka.sejm.gov.pl/Druki4ka.nsf/0/A470BF1FE08ECD7CC1256F41003AA9D6/\\$file/3215-y.pdf](http://orka.sejm.gov.pl/Druki4ka.nsf/0/A470BF1FE08ECD7CC1256F41003AA9D6/$file/3215-y.pdf), accessed 16 February 2022.

8 Ibid.

9 Ibid.

10 Ibid.

11 Vote on keeping the item on the agenda as follows: First reading of the deputies’ bill on informed parenthood (Sejm Paper No. 3215), <http://orka.sejm.gov.pl/SQL.nsf/glosowania?OpenAgent&4&97&1>, accessed 15 February 2022.

12 Deputies’ bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 1786 of 24 October 2008), [https://orka.sejm.gov.pl/Druki6ka.nsf/0/AB7F8C0009BB9298C125757D0034FC26/\\$file/1786.pdf](https://orka.sejm.gov.pl/Druki6ka.nsf/0/AB7F8C0009BB9298C125757D0034FC26/$file/1786.pdf), accessed 16 February 2022.

of contraceptives and included regulations on the establishment of a network of facilities providing counselling and family planning services. In addition, under the draft law, it was planned to introduce the subject 'knowledge of human sexual life' into school curricula. It also specified rules for the employment of teachers teaching it, which were to prevent it from being taught by persons 'who, due to their worldview, do not recognize the norms and standards of contemporary knowledge in this matter'.¹³

The proposal of the drafters was 'real access to all methods of family planning',¹⁴ including enabling the use of modern contraception for indigent persons as well as young people: according to the wording of the bill, the government administration and local self-government bodies were to be obligated, within the scope of their powers set out in specific provisions, to provide citizens with free access to methods and means of conscious procreation. According to the drafters, fully accessible postcoital contraception (i.e., used after intercourse) has had a real impact on reducing the number of unwanted pregnancies and so-called abortions in countries where it has been introduced. It should be noted at this point that the use of this type of medicine can result in the killing of the child *in statu nascendi*, and that the spread of this form of birth control therefore lowers the standard for the protection of human life.

In its opinion, Biuro Analiz Sejmowych [the Sejm Research Bureau] pointed out that the proposed amendments lacked clarification as to how the implementation of the constitutional principles of the state's worldview neutrality and parents' right to raise their children in accordance with their own beliefs would be guaranteed.¹⁵ Without taking these issues into account, the implementation of the proposed statutory changes was exposed to the accusation of violating the freedom of conscience and religion of citizen and could also strengthen worldview conflicts and ideological disputes already existing in Polish society.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Legal opinion on the deputies' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy, dated 25 May 2009 [Sejm Paper No. 1786], [http://orka.sejm.gov.pl/RexDomk6.nsf/0/E36AA4E0888D1E54C1257584003200CF/\\$file/i627-09.rtf](http://orka.sejm.gov.pl/RexDomk6.nsf/0/E36AA4E0888D1E54C1257584003200CF/$file/i627-09.rtf), accessed 16 February 2022.

On 17 March 2009, the project was referred for first reading to the Education, Science, and Youth Committee, the Social Policy and Family Committee, the Local Government and Regional Policy Committee and the Health Committee. On 16 June 2009, the Prime Minister's Office submitted a negative opinion of the parliamentary project, without, however, questioning the need itself to intensify activities in the field of sexual and procreative health.¹⁶ It was pointed out, *inter alia*, that the bill was too general, the costs were high and that the proposed rule, according to which access to reimbursed medicines was to depend on the patient's material situation, was contrary to Article 68(2) of the Polish Constitution. On 10 April 2010, the bill was finally withdrawn from the Sejm by the drafters.

2.3 Deputies' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (2010) – Sejm Paper No. 3085, 6th term of office of the Polish Parliament¹⁷

The bill was proposed on 28 April 2010 by a group of Democratic Left Alliance MPs led by Bartosz Arłukowicz.

The proposed regulation was based on the withdrawn Sejm Paper No. 1786 (described in subsection 2.2). After some modifications, it was submitted as a new bill (Sejm Paper No. 3085). It envisaged allowing access to so-called modern family planning methods and the introduction of knowledge about human sexual life as a compulsory subject in education. The bill obligated the minister responsible for health care to supplement the list of reimbursable medicines with contraceptives, including postcoital. At the same time, for persons whose personal income did not exceed the minimum sustenance level (according to the Social Welfare Act), the reimbursement amount was to be calculated as for lump-sum medicines.

¹⁶ Position of the Government on the deputies' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 1786), letter DSPA – 140 – 67(5)/09 of 16 June 2009, [http://orka.sejm.gov.pl/Druki6ka.nsf/0/2E680064E38232F9C12575D-F0041F05F/\\$file/1786-s.pdf](http://orka.sejm.gov.pl/Druki6ka.nsf/0/2E680064E38232F9C12575D-F0041F05F/$file/1786-s.pdf), accessed 16 February 2022.

¹⁷ Deputies' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 3085 of 28 April 2010), [https://orka.sejm.gov.pl/Druki6ka.nsf/0/240A306617F93F78C125772A003198F3/\\$file/3085.pdf](https://orka.sejm.gov.pl/Druki6ka.nsf/0/240A306617F93F78C125772A003198F3/$file/3085.pdf), accessed 16 February 2022.

According to the Director of the Sejm Research Bureau, Michał Królikowski, the deputies' bill did not violate the provisions of European Union law.¹⁸ On 21 May 2010, it was referred to the first reading in the four relevant committees. On 3 September 2010, Donald Tusk's government submitted its opinion on the bill.¹⁹ For the second time, the government gave a negative view on the presented bill. As noted, the prevention of conception is not a form of medical therapy, thus medical drugs prescribed for contraceptive effects are not in fact related to the medical treatment process. Therefore, it is not possible to consider them as health care services and thus reimburse them under the Act on publicly funded health care services. In turn, the obligation imposed on the Minister of Health to include them in the list of reimbursed medicines was viewed as non-systematic and in contradiction with the referenced Act. It was pointed out that the deputies' bill also did not contain any financial implications for the public sector – either for the National Health Fund or the national budget – as well as did not indicate the sources of funding, thus violating the rules of procedure of the Sejm.

Sejm Research Bureau commissioned outside experts to provide legal opinions on the bill. It was positively assessed by Barbara Namysłowska-Gabrysiak (University of Warsaw).²⁰ The author of the opinion welcomed the concept of providing citizens with access to contraceptives, which, according to her, should be guaranteed under the 'right to reproductive health', derived in turn from the broader right to family life and expressed in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Furthermore, the author of the opinion questioned the government's position regarding the impossibility of considering contraceptives as health care services and funding them as such. The opinion

18 Sejm Research Bureau, Opinion on the compliance with the European Union law of the deputies' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (representative of the applicants: Bartosz Arłukowicz), letter BAS-WAPEiM-724/10 of 10 May 2010, available together with the bill at the internet address indicated with the bill.

19 Position of the Government on the deputies' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 3085), letter DSPA – 140 – 67 (5)/10 of 3 September 2010, [http://orka.sejm.gov.pl/Druk6ka.nsf/0/7E5760FD71CCB-779C12577A6002BF743/\\$file/3085-s.pdf](http://orka.sejm.gov.pl/Druk6ka.nsf/0/7E5760FD71CCB-779C12577A6002BF743/$file/3085-s.pdf), accessed 16 February 2022.

20 B. Namysłowska-Gabrysiak, Opinion on the bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 3085) of 20 December 2010, [http://orka.sejm.gov.pl/RexDomk6.nsf/0/699093AB285CF5D0C12577DC0030C885/\\$file/i1937-10.rtf](http://orka.sejm.gov.pl/RexDomk6.nsf/0/699093AB285CF5D0C12577DC0030C885/$file/i1937-10.rtf), accessed 16 February 2022.

of Leszek Bosek (also from the University of Warsaw) was much more balanced as he noted that the draft largely duplicates the normative content of the existing law.²¹ At the same time, he considered it to be significantly imprecise, burdened with legislative shortcomings, and in need of supplementation and clarification. He also pointed out that the bill could violate constitutional guarantees on two points, including, *inter alia*, the right to raise children in accordance with one's own convictions. Adoption of the bill was eventually discontinued.

2.4 Deputies' bill on informed parenthood (2011) – Sejm Paper No. 4603, 6th term of office of the Polish Parliament²²

For the third consecutive time in the sixth term of the Polish Sejm, a bill on the restriction of the legal protection of life was proposed on 8 July 2011 once again by MPs of the Democratic Left Alliance. They were represented by former Health Minister Marek Balicki.

The most significant solution proposed by the drafters was the introduction of an unlimited legal right of a woman to terminate her pregnancy in the first 12 weeks after conception, depriving the child of legal protection at this earliest stage of life. Furthermore, the draft granted everyone the right to information, education, counselling, and the means to exercise the right to informed parenthood. Among other things, public authorities were to be obligated to provide a woman with unfettered access to prenatal tests and information about these tests. Once again, it was proposed to introduce the subject 'knowledge of human sexuality' into schools, including, *inter alia*, knowledge of methods and means of preventing pregnancy and of partnerships between women and men. It was proposed to provide reimbursement for contraceptives (including post-coital), as well as access to medically assisted procreation as a health benefit (no more than three cycles of treatment).

21 L. Bosek, Opinion on the deputies' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 3085) of 22 November 2010, [http://orka.sejm.gov.pl/RexDomk6.nsf/0/00F23CD552D38456C12577C7003444A6/\\$file/i1937_10.rtf](http://orka.sejm.gov.pl/RexDomk6.nsf/0/00F23CD552D38456C12577C7003444A6/$file/i1937_10.rtf), accessed 16 February 2022.

22 Deputies' bill on informed parenthood (Sejm Paper No. 4603 of 8 July 2011), [https://orka.sejm.gov.pl/Druki6ka.nsf/0/E4F997D46EC2E8FAC12578F10031991D/\\$file/4603.pdf](https://orka.sejm.gov.pl/Druki6ka.nsf/0/E4F997D46EC2E8FAC12578F10031991D/$file/4603.pdf), accessed 16 February 2022.

The opinion of the Supreme Court Office of Studies and Analyses of 24 August 2011, which concerned the draft in question, indicated that it should not be subject to further legislative work.²³ The authors of the opinion argued that its adoption would be associated with social repercussions, which could result in violation of the *status quo* in terms of abortion law, and also drew attention to the election campaign period, which would not be conducive to substantive discussion of the draft regulation. In addition, objections were expressed to the study and analytical work undertaken by the drafters prior to the filing of the draft, as well as to the very high level of generality of the justification of the draft law (comments in the justification regarding the estimated costs of applying the proposed legislation were given as an example). Some of the data cited was considered unverified or incorrect. Individual substantive provisions were also questioned, alleging, *inter alia*, their high level of generality and the exclusion of the participation of churches and religious associations in the provision of assistance in the care of pregnant women, the organization of foster care and assistance in the adoption of children (without a motive for this change being given in the justification of the draft). As stated, the draft ignores the teaching on the value of the family and the life of the child in the prenatal phase. The opinion referred to the normative model of marriage and family guaranteed by Article 18 of the Constitution of the Republic of Poland, constituting a superior norm and binding for the ordinary legislator. In view of the above, it was explicitly stated that teaching about human sexuality cannot omit explaining that responsible parenthood should be preceded by marriage. With a view to the postulated so-called right to abortion, it was recalled that even in the case of the social premise of abortion repealed by the Constitutional Court, the will of the woman alone was not of a nature to prejudge the further fate of the child in her womb – other circumstances were necessary. Instead, the drafters assumed full freedom of a woman's decision to terminate a pregnancy during the first 12 weeks, while in the justification of the draft they did not indicate legal arguments rebutting the presumption of unconstitutionality of the proposed provision (with reference to the Constitutional Tribunal's ruling with the signature K 26/96).

23 Supreme Court Office of Studies and Analyses, Opinion on the deputies' bill 'on informed parenthood', letter BSA – I – 021 – 172/11 of 24 August 2011, [http://orka.sejm.gov.pl/Druki6ka.nsf/0/B435CEEAFEE4B2F3C12578FC004745D3/\\$file/4603-001.pdf](http://orka.sejm.gov.pl/Druki6ka.nsf/0/B435CEEAFEE4B2F3C12578FC004745D3/$file/4603-001.pdf), accessed 16 February 2022.

Just one week later – at a sitting on 31 August 2011 – the Sejm rejected the bill at its first reading with 369 votes in favour [of rejection – editor’s note], 31 against and two abstentions.

2.5 Deputies’ bill on informed parenthood (2012) – Sejm Paper No. 562, 7th term of office of the Polish Parliament²⁴

Another bill on informed parenthood was submitted to the Speaker of the Sejm on 16 January 2012 by a group of members of the Ruch Palikota (Palikot Movement) club represented by Armand Kamil Ryfiński.

The bill bore a confusing resemblance to previous drafts put forward by Democratic Left Alliance MPs. It granted everyone the right to self-determination in the field of reproduction, which boiled down to guaranteeing women the legal right to freely terminate a pregnancy during the first 12 weeks of its duration, and thereafter in specified cases analogous to those provided for in the 1997 Act²⁵ in the manner it was formulated in at the time. In addition, it regulated issues related to the right to information, education, counselling, and the means to make decisions on informed parenthood. Administrative bodies were to be obligated to ensure the implementation of so-called reproductive rights. As in previous bills, it was also proposed to introduce ‘knowledge of human sexuality’ as a school subject. It was postulated that everyone, irrespective of legal capacity, should have access to and be reimbursed for pregnancy prevention methods and measures.

It should be emphasised that the bill excluded the application of the conscience clause regarding the refusal of health services (which included abortion) and the refusal to provide information on pregnancy prevention and prenatal tests. It also repealed the definition of a child from the Children’s Ombudsman Act confirming that a child is any human being from conception to adulthood.

24 Deputies’ bill on informed parenthood (Sejm Paper No. 562 of 16 January 2012), <http://orka.sejm.gov.pl/Druki-7ka.nsf/0/952951D10B8AE386C1257A3800454D45/%24File/562.pdf>, accessed 16 February 2022.

25 Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended), hereinafter: the Family Planning Act.

The bill was given a negative opinion by the Presidium of the Supreme Medical Council.²⁶ The Council believed that termination of pregnancy was one of the health services to which even uninsured persons would be entitled. The imposition of an obligation on doctors to prescribe contraceptives to minors, on the other hand, was seen as destroying the basic principles of the relationship between parents or guardians and children and the patient-doctor relationship. It was further pointed out that the bill undermined the freedom of doctors (written declarations and registers in relation to the conscientious objection clause) and created a contradiction in the imposition of the obligation to perform abortions with the Resolution of the Council of Europe of 7 October 2010 concerning the right to a conscience clause within the framework of legitimate medical care. The Union of Voivodeships of the Republic of Poland commented on the excessive generality of some of the proposed provisions and pointed out that the implementation of the bill in the proposed structure would require a significant reorganization of the budget.²⁷ The Attorney General, in turn, raised the issue of potential unconstitutionality of the norms in the scope of depriving the child conceived up to the 12th week of life of any protection.²⁸ This is because the drafters have not demonstrated arguments that are definitive enough to support the introduction of such a solution. The Supreme Court also gave a negative opinion of the bill, noting that such an extreme liberalisation of abortion regulations could lead to treating termination of pregnancy at the woman's request as the main method of family planning.²⁹ It also considered it necessary to verify the alleged 'circumvention' of the existing law (the so-called abortion underground), its misuse, and to establish the causes and scale of these possible phenomena.

26 Position of the Presidium of the Supreme Medical Council No. 5/12/P-VI of 10 February 2012 on the deputies' bill on informed parenthood, document available together with the bill at the internet address indicated with the bill.

27 Letter from the Union of Voivodeships of the Republic of Poland (ZW/0714/30/12) of 13 February 2012, document available together with the draft at the web address indicated with the draft.

28 Letter from the Attorney General (PG VII G 025/40/12) of 2 March 2012, document available with the draft at the web address indicated with the draft.

29 Supreme Court Office of Studies and Analyses, Opinion on the bill 'on informed parenthood', submitted by a group of of the Sejm of the Republic of Poland representing the 'Palikot Movement' parliamentary club, letter BSA I – 021 – 41/12 of 23 April 2012, document available together with the draft at the internet address indicated next to the draft.

The bill was referred to the first reading at a session of the Sejm in July 2012. It was originally scheduled to take place on 26 September, but the Speaker of the Sejm, Ewa Kopacz, postponed the vote on the motion to reject the bill at first reading to the next sitting of the Sejm. On 10 October 2012, the motion to reject the bill was supported by 365 MPs, with 60 against, and seven abstentions.

2.6 Deputies' bill on informed parenthood (2012) – Sejm Paper No. 1122, 7th term of office of the Polish Parliament³⁰

Less than two weeks after the rejection of the previous bill (described in subsection 2.5) in the first reading, another bill on informed parenthood was proposed in the seventh term of the Polish Parliament on 22 October 2012.³¹ It was initiated by MPs of the Democratic Left Alliance. The project initiators were represented by Marek Balt MP – at that time the party's Vice-Chairman – and from 25 March 2015, by Dariusz Joński MP.

The bill repeated the demands from earlier legislative efforts. It concerned the regulation of the right to information, education, counselling, and measures which – according to the drafters – enable informed parenthood decisions. These measures in the draft included, above all, the introduction of an unlimited legal right of a woman to terminate pregnancy during the first 12 weeks of its duration (after this period, it would be possible only in three cases corresponding to those provided for in provisions of the Family Planning Act binding at the time), the provision of reimbursement of contraception, and supplementing the existing regulations with conditions for the use of medically assisted reproduction methods (the so-called *in vitro* method), as well as the operation of germ cell and embryo banks. This bill, compared to the previous ones, was more expansive on issues amending the Act on the collection, storage,

30 Deputies' bill on informed parenthood (Sejm Paper No. 1122 of 22 October 2012), <http://orka.sejm.gov.pl/Druki7ka.nsf/0/3F3468648F985504C1257B1900636CA5/%24File/1122.pdf>, accessed 17 February 2022.

31 The page on the legislative progress of this project: <https://www.sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?nr=1122> (accessed 17 February 2022) shows a date of 23 October 2012, however, the print itself and another letter submitted by the applicants gives a date of 22 October 2012. See Applicants' letter regarding change of representative, <https://orka.sejm.gov.pl/Druki7ka.nsf/0/58725706FD73258BC1257E1B003B7288/%24File/1122-002.pdf>, accessed 17 February 2022.

and transplantation of cells, tissues, and organs, which was to become the 'act on the collection, storage and transplantation of cells, tissues, and organs, and the management of human embryos'.

The Sejm Research Bureau issued an opinion stating that, although the bill implements European Union law, it 'restricts the Treaty freedom to provide services and thus violates Article 56 of the Treaty on the Functioning of the European Union. In addition, the bill contains provisions which raise doubts as to their compatibility with European Union law. With regard to the provisions aimed at implementing Directives 2006/17/EC and 2006/86/EC, it should be noted that the draft law makes no reference to the implemented Directives, which constitutes an infringement of the second subparagraph of Article 7(1) of Directive 2006/17/EC and the third subparagraph of Article 11(1) of Directive 2006/86/EC'.³² In addition, the need to supplement the explanatory memorandum of the proposal has been demonstrated. In order to remedy this situation, the drafters submitted an auto-amendment on 10 December 2012. The Sejm Research Bureau, in its repeated opinions taking into account the auto-amendment, stated that the bill does not violate EU law or is simply not covered by binding provisions of this law,³³ although it may be considered a draft law implementing EU law.³⁴

The Supreme Court, considering the concurrence of the presented draft with the previous Sejm Paper No. 562, upheld the previous critical position.³⁵ The Marshall's Office of the Zachodniopomorskie Voivodeship negatively addressed the draft law, indicating that the proposed regulations are

32 Sejm Research Bureau, Legal opinion on the determination – pursuant to Article 95a(3) of the Rules of Procedure of the Sejm – whether the deputies' bill on informed parenthood (representative of the applicants: Marek Balt, MP) is a bill implementing European Union law, letter BAS – WAPEiM – 2823/12 of 5 November 2012, available together with the bill on the internet site indicated in the bill.

33 Sejm Research Bureau, Legal opinion on the compliance with the European Union law of the deputies' bill on informed parenthood (representative of the applicants: Marek Balt, MP), in the version taking into account the self-amendment, letter BAS – WAPEiM – 3289/12 of 18 December 2012, available together with the bill on the internet site indicated in the bill.

34 Sejm Research Bureau, Legal opinion on the determination – pursuant to Article 95a(3) of the Rules of Procedure of the Sejm – whether the deputies' bill on informed parenthood (representative of the applicants: Marek Balt, MP), in the version taking into account the self-amendment, is a bill implementing European Union law, letter BAS – WAPEiM – 3290/12 of 18 December 2012, available together with the bill on the internet site indicated in the bill.

35 Letter from the First President of the Supreme Court (BSA I – 021 – 449/12) of 3 December 2012, document available with the bill at the web address indicated with the bill.

superfluous, contentious, and contain incomprehensible, and controversial terms.³⁶ The Marshall's Office of the Lubelskie Voivodeship, in turn, drew attention to the overly vague definitions of the duties of the self-government, preventing a reliable analysis of organizational and financial consequences.³⁷ On the other hand, the Marshall's Office of the Lubuskie Voivodship responded positively to the draft, and commented on it in a brief two-sentence statement.³⁸ The Supreme Medical Council motioned for the rejection of the draft³⁹ – it pointed to the lack of regulations on the prevention and treatment of infertility, as well as the lack of proposed regulations on genetic testing, which cannot be limited only to prenatal tests. The Attorney General, in turn, stated that the project requires further in-depth analysis.⁴⁰ In doing so, he expressed a number of concerns, including of a legislative nature. The Inspector General for the Protection of Personal Data presented his position, which indicated the need to clarify part of the regulation.⁴¹

On 21 February 2013, the draft was referred to the first reading at the session of the Sejm. On 16 May 2013, the Council of Ministers submitted an unequivocally negative opinion,⁴² which drew attention to definitional deficiencies and doubts about the financing of termination of pregnancy as a health benefit. It was also pointed out that the intention of the drafters was that the termination of pregnancy was to be carried out within 72 hours of the woman's decision, although many countries with liberal laws leave a correspondingly longer transition period for a possible review of the decision. Furthermore, it was pointed out that the drafters did not consider the consequences of the procedure on the woman's health, as they did not factor in the need to consult a second specialist when performing an abortion for medical reasons.

36 Letter from the Union of Voivodeships of the Republic of Poland (ZW/0714/40/13) of 5 February 2013, document available with the bill at the web address indicated with the bill.

37 Ibid.

38 Ibid.

39 Position No. 16/12/VI of the Supreme Medical Council of 14 December 2012 on the deputies' bill on informed parenthood, document available together with the bill at the web address indicated with the bill.

40 Letter from the Attorney General (PG VII G 025/405/12) of 18 December 2012, document available with the bill at the web address indicated with the bill.

41 Letter from the Inspector General for the Protection of Personal Data (DOLIS-033-553/12/AFS/78460) of 31 December 2012, document available with the bill at the web address indicated with the bill.

42 Government's position on the deputies' bill on informed parenthood (Sejm Paper No. 1122), letter DSPA – 140 – 38(4)/13 of 16 May 2013, <http://orka.sejm.gov.pl/Druki7ka.nsf/0/225990A8FA04EAD1C1257B79003D-97FE/%24File/1122-s.pdf>, accessed 17 February 2022.

The bill was finally rejected at first reading on 9 April 2015 by a vote of 379 MPs, with 56 voting against and one abstaining.

2.7 Citizens' bill on women's rights and informed parenthood (2016) – Sejm Paper No. 830, 8th term of office of the Polish Parliament⁴³

The citizens' bill was submitted to the Sejm on 4 August 2016. Barbara Nowacka was elected to represent the Legislative Initiative Committee. This was the first bill among the discussed, reducing the standard of legal protection of life in Poland, which was brought by the legislative initiative by citizens.

In terms of content, it resembled projects previously tabled by the Democratic Left Alliance, among others. It concerned the regulation of women's rights to 'self-determination in matters of procreation', including access to 'sexual education' and 'modern family planning methods'. It again envisaged the introduction of the subject 'knowledge of human sexuality' in schools, the availability of pregnancy prevention methods and measures to everyone, regardless of legal capacity, and introduced a legal right to abortion up to the 12th week of pregnancy. The bill also included a definition of 'reproductive rights', according to which the term would mean 'human rights related to informed parenthood, as well as free and voluntary access to education on knowledge of human sexuality, means of prevention of pregnancy, termination of pregnancy, health care for pregnant women and the right to information and the means to realise them'.

The Sejm Research Bureau, in its opinion of 7 September 2016, stated that the bill, insofar as it excludes the right of a certain category of doctors to conscientious objection, is incompatible with Article 10(2) of the Charter of Fundamental Rights of the European Union.⁴⁴ The Union of Polish Counties drew attention to the violation of the principles of legislative integrity and an

43 Citizens' bill on women's rights and informed parenthood (Sejm Paper No. 830 of 9 September 2016), <http://orka.sejm.gov.pl/Druki8ka.nsf/0/3C2A10A649B1C39EC12580290048DCD3/%24File/830.pdf>, accessed 17 February 2022.

44 Sejm Research Bureau, Opinion on the compliance with the European Union law of the citizens' bill on women's rights and informed parenthood, letter BAS – WAPEiM – 1796/16 of 7 September 2016, document available with the bill at the above-mentioned web address.

attempt to impose new tasks on local government units without indicating the sources of financing.⁴⁵ The local government of the Opolskie Voivodeship approved the initiative to increase the availability of contraceptives by refunding them, as well as to extend the catalogue of persons entitled to their purchase, without limiting this right only to health reasons.⁴⁶ Similarly, it referred to the postulate to extend the offer of educational and information activities aimed at young people to prevent sexually transmitted infections and diseases as well as unplanned pregnancies. However, objections were expressed regarding the planned obligation of schools to provide leave and other necessary assistance to pregnant students, as well as the lack of indication of additional sources of funding for local governments in the context of the costs of maintaining facilities providing counselling and services in the field of informed parenthood. The self-government of the Zachodniopomorskie Voivodeship gave a negative opinion on the bill.⁴⁷ As it pointed out, doubts were raised, *inter alia*, by the introduction of the phrase 'on women's rights' in the title of the draft, which in its view contradicted the principle of equality between women and men in various spheres, and thus did not exhaust both women's rights and men's duties regarding informed parenthood in a fair proportion. There was also criticism of the excessive focus on pregnancy prevention with insufficient coverage of fertility preservation and the protection of reproductive health. There were also reservations about the provision ordering the doctor to provide pregnancy prevention services at the request of a minor without the consent of the legal representative. The Regional Centre for Social Policy in Lublin raised objections to the intention to finance pregnancy prevention measures for persons receiving social assistance from the budgets of local governments.⁴⁸ It also stated that the introduction of teaching on human sexuality as part of the education process should only take place at the adolescence stage of pupils, and not already from the first grade of primary school. The Marshall's Office of the Podlaskie Voivodeship expressed a negative opinion on the bill, drawing attention to

45 Letter from the Union of Polish Counties (Or.A.0531/208/16) of 12 September 2016, <http://orka.sejm.gov.pl/Druki8ka.nsf/0/8E92366F4EA7C8C7C125802D003D1141/%24File/830-001.pdf>, accessed 17 February 2022.

46 Letter from the Union of Voivodeships of the Republic of Poland (ZW/0714/190/16) of 20 September 2016, <http://orka.sejm.gov.pl/Druki8ka.nsf/0/6016F0B8EA8B29F2C12580350040E02B/%24File/830-003.pdf>, accessed 17 February 2022.

47 Ibid.

48 Ibid.

the inadequacies related to its financing.⁴⁹ Several comments were also made by the Inspector General for the Protection of Personal Data.⁵⁰

On 9 September 2016, the bill was referred to the first reading session of the Sejm, which took place on 23 September. A motion to reject the bill at first reading was put to the vote. The motion was adopted: 230 MPs were in support, 173 voted against, and 15 abstained.

2.8 Citizens' bill on women's rights and informed parenthood (2017) – Sejm Paper No. 2060, 8th term of office of the Polish Parliament⁵¹

The bill was submitted to the Marshal's staff on 24 November 2017 under the procedure for the exercise of legislative initiative by citizens. The Legislative Initiative Committee was again represented by Barbara Nowacka.

The proposed draft regulation was supposed to concern the creation of a 'modern system' allowing for the actual (and not only theoretical) 'recognition of reproductive rights' and 'protection of reproductive health', and thus regulate matters related to the right to information, education, counselling, and means of exercising the right to informed parenthood. The draft envisaged the introduction of an unlimited subjective right of a pregnant woman to have an abortion up to the end of the 12th week of pregnancy, and in more advanced pregnancies abortion was to be allowed in certain cases. The written consent of the woman was to be required for an abortion.

Importantly, the draft introduced an expanded definition of 'reproductive rights' in which the most prominent element was 'the right of all couples and individuals to decide freely and responsibly the number, spacing, and timing of bringing children into the world', potentially paving the way for access not only to unlimited abortion during the first 12 weeks after conception, but

49 Ibid.

50 Letter from the Inspector General for the Protection of Personal Data (DOLiS – 033 – 419/16/BG/84535/16) of 21 September 2016, <http://orka.sejm.gov.pl/Druki8ka.nsf/0/8C0CCD6D84F40001C1258036003ACFF3/%24File/830-004.pdf>, accessed 17 February 2022.

51 Citizens' bill on women's rights and informed parenthood (Sejm Paper No. 2060 of 24 November 2017), <http://orka.sejm.gov.pl/Druki8ka.nsf/0/AECC1FCF910247EAC12581E20042A0B4/%24File/2060.pdf>, accessed 17 February 2022.

also to IVF treatments for single people or those in same-sex relationships. The draft also restricted freedom of assembly and freedom of expression by prohibiting ‘the posting of content and the holding of assemblies opposing the provisions of this law within a distance of less than 100 metres from medical entities, in particular gynaecological and maternity hospitals, as well as educational institutions such as schools and kindergartens’.

In the opinion of the Sejm Research Bureau, the draft, to the extent that it excluded the right of a certain category of doctors to conscientious objection, was incompatible with EU law.⁵² The Union of Polish Counties pointed out in its position paper that the proposed solutions consisting in the creation of counselling units exclusively for the indicated task and the imposition of an obligation to dispense contraceptives to patients without any financial restrictions or income thresholds would be ineffective.⁵³ They were considered extremely costly. The Marshal’s Office of the Opolskie Voivodship pointed out the incompatibility of the preamble and the rest of the draft with the provisions of the Polish Constitution guaranteeing the legal protection of life.⁵⁴ It stated that the draft attempts to restrict the freedom of conscience of medical personnel by forcing the doctor to provide patients with information on contraception and prenatal diagnosis – also when the mother expresses her intention to kill the child if the result of the prenatal test is incorrect. In addition, the provision allowing sterilisation on request, which would force doctors to permanently mutilate patients – who are often unaware of the distant consequences of these procedures – was considered completely incompatible with medical ethics. The introduction of the subject ‘knowledge of human sexuality’ into the curricula from the first grade of primary school was seen as a manifestation of a lack of knowledge of the psychology of child development and a violation of parents’ rights to individual education of their children in the prepubertal period. Imposing on a doctor the performance of a procedure that interrupts the life of a conceived child was described as

52 Sejm Research Bureau, Opinion on the compliance with the European Union law of the citizens’ bill on women’s rights and informed parenthood, letter BAS – WAPM – 2350/17 of 22 November 2017, document available with the draft at the web address indicated above.

53 Letter from the Union of Polish Counties (Or.A.0531/280/17) of 28 November 2017, <http://orka.sejm.gov.pl/Druki8ka.nsf/0/E548C310D48C530CC12581E80048222D/%24File/2060-001.pdf>, accessed 17 February 2022.

54 Letter from the Union of Voivodeships of the Republic of Poland (ZW/0714/445/17) of 4 December 2017, <http://orka.sejm.gov.pl/Druki8ka.nsf/0/7AE43B2026ACDA29C12581EE0051D46B/%24File/2060-002.pdf>, accessed 17 February 2022.

incompatible with the content of the medical oath, which obliges one to serve human health and life. On the other hand, the provision of pregnancy prevention advice by doctors to minors without parental consent was assessed as an attack on the rights of parents and the child, constituting an anti-parental instrument used to interfere with family relationships. As concluded, the draft contained a whole series of factual errors and inconsistencies with medical knowledge; it was also considered unacceptable on the grounds that its content contravened natural law and moral principles. At the same time, it was pointed out that it would cause negative consequences for the health of women and children. Significantly, the above opinion was subsequently withdrawn.⁵⁵ As explained, the original opinion was not intended to advocate against abortion, but only to indicate that it is a procedure that can have its consequences for women's health. The media's quoting of individual excerpts from the text was intended to distort the intentions of the local government of the Opolskie Voivodeship, which advocated for the preservation of the status quo in the context of abortion law. In contrast, the Marshal's Office of the Zachodniopomorskie Voivodeship raised the issue of the prohibition of the display of content and the organization of assemblies opposing the provisions of the law at a distance of less than 100 meters from medical entities and educational institutions.⁵⁶ This proposal, in the light of the submitted opinion, harmed the freedom of assembly and restricted freedom of expression. The introduction of criminal provisions regulating public discourse relating to the medical consequences of abortion and its detailed procedure, as well as the use of contraception, which would aim to dissuade from performing or undergoing an abortion or the use of contraception, was likewise criticised. The Office of the Marshal of the Silesian Voivodeship in turn gave a positive opinion on the project.⁵⁷ The Supreme Medical Council gave a negative opinion of the regulations relating to the blatant restriction of the admissibility of doctors' use of the conscience clause.⁵⁸ It also criticised

55 Letter from the Union of Voivodeships of the Republic of Poland (ZW/0714/476/17) of 29 December 2017. (request to withdraw the opinion of the Opolskie Voivodeship to the citizens' bill to amend the Act on the rights of women and informed parenthood, Sejm Paper No. 2060), <http://orka.sejm.gov.pl/Druki8ka.nsf/0/60F05A2634E94230C125821003546A2/%24File/2060-004.pdf>, accessed 17 February 2022.

56 Letter from the Union of Voivodeships of the Republic of Poland (ZW/0714/445/17) of 4 December 2017, op. cit.
57 Ibid.

58 Position No. 24/17/VII of the Supreme Medical Council of 15 December 2017 on the citizens' bill on women's rights and informed parenthood, <http://orka.sejm.gov.pl/Druki8ka.nsf/0/EF876F4ADF7344B0C12581FD0045B-8FD/%24File/2060-003.pdf>, accessed 17 February 2022.

the amendment allowing research experiments on people in the prenatal stage of development. Furthermore, the removal of Article 2 of the Act on the Ombudsman for Children, according to which a child is any human being from conception to adulthood, was considered too far-reaching.

On 24 November 2017, the bill was referred to the first reading in the Sejm. On 10 January 2018, it was rejected with 202 votes in favour, 194 against, and seven abstentions.

2.9 Deputies' bill on informed procreation (2018) – bill has not received a paper number, 8th term of office of the Polish Parliament⁵⁹

The project was submitted to the Marshal's staff on 18 January 2018 by a group of MPs from the Nowoczesna parliamentary club, represented by Joanna Mihułka (formerly: Joanna Schmidt).

Although the proposed law did not introduce the concept of a 'legal right to abortion', it de facto made it possible to perform an abortion at the woman's request in the first 12 weeks after conception, and at a later stage only in situations analogous to those provided for in the legislation in force at the time. According to the draft, the abortion was to be carried out on the condition that a woman who made a written request for termination of pregnancy had to undergo a consultation, during which she would be informed about the consequences of the abortion and about forms of assistance for pregnant women. The proposed regulation also concerned the expansion of the scope of teaching and the introduction of compulsory classes in knowledge of human sexuality and parenthood for pupils in the first, fourth, and seventh grades of primary schools and in the second or third grades of secondary schools. It provided wider access to contraception, as well as to testing for sexually transmitted diseases. It did not introduce the concept of 'reproductive rights' (although it was referred to in the body of the explanatory memorandum of the draft).

59 Deputies' bill on informed procreation (bill dated 17 November 2011, submitted 18 January 2011; not given a paper no.), [http://orka.sejm.gov.pl/Druki8ka.nsf/Projekty/8-020-821-2018/\\$file/8-020-821-2018.pdf](http://orka.sejm.gov.pl/Druki8ka.nsf/Projekty/8-020-821-2018/$file/8-020-821-2018.pdf), accessed 17 February 2022.

The bill was consulted with the Legislative Bureau, the Sejm Research Bureau, local government organizations as well as the Supreme Court, the Attorney General, and the Supreme Medical Council.⁶⁰

2.10 Deputies' bill on safe termination of pregnancy and on education, health and sexuality (2020) – bill has not received a paper number, 9th term of office of the Polish Parliament⁶¹

The bill proposed by MPs in the ninth term of the Polish Parliament included such aspects as the legal definition of reproductive rights and pregnancy prevention measures. It stipulated in Article 3 that 'everyone has the right to self-determination in the field of reproduction under conditions that allow informed decisions on parenthood'. At the same time, the bill proposes a time limit for the indicated 'reproductive self-determination', recognising that 'a pregnant woman has the right to terminate her pregnancy until the end of the 12th week of pregnancy'. After the 12th week of pregnancy, the right to abortion was to be granted in the case of a threat to the health or life of the woman, the likelihood of grave and irreversible damage to the foetus or a life-threatening disease, as well as the occurrence of a probability (confirmed by a prosecutor's certificate) that the pregnancy was the result of a prohibited act (and thus in cases allowing abortion as indicated in the then wording of the Family Planning Act). The draft provides further time caesuras in the right to 'reproductive self-determination', recognising that when there is a high probability of severe and irreversible impairment of the foetus or an incurable disease threatening its life, termination of pregnancy is permissible until the end of the 24th week of pregnancy. On the other hand, in the case of a reasonable suspicion that the pregnancy is the result of a criminal act, abortion was allowed until the end of the 18th week of pregnancy. The bill did not explain the time limits imposed therein as to the duration of pregnancy in which abortion was to be permitted.⁶²

60 No information on further work on the bill.

61 Deputies' bill on safe termination of pregnancy and on education, health and sexuality (submitted 14 April 2020; not given a paper no.), [http://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-143-2020/\\$-file/9-020-143-2020.pdf](http://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-143-2020/$-file/9-020-143-2020.pdf), accessed 16 March 2021.

62 No information on further work on the project.

2.11 Deputies' bill to amend the Act – Criminal Code (2020) – bill has not received a paper number, 9th term of office of the Polish Parliament⁶³

At the 26th sitting of the Sejm of the Republic of Poland, in voting No. 12 on the addition of an item to the agenda as follows: the first reading of the deputies' bill to amend the Act – Criminal Code, the inclusion of this bill in the agenda was rejected.⁶⁴ The bill, authored by Magdalena Biejat, was called a rescue bill by pro-abortion circles. It mitigated the penalty for aborting a pregnancy with a woman's consent, proposing a fine, restriction of liberty, or imprisonment of up to one year. In addition, it called for the complete abolition of the penalty for assisting a pregnant woman in aborting a pregnancy, as well as for inducing a woman to commit this act. Furthermore, the draft introduced a new counter-narrative, stipulating that 'one does not commit an offence who, with the consent of the woman, terminates her pregnancy if no more than 12 weeks have elapsed since the beginning of the pregnancy'. It also provided for the introduction of a paragraph stating that 'whoever terminates a pregnancy with the mother's consent, if prenatal tests or other medical indications point to a high probability of severe and irreversible impairment of the foetus or an incurable disease threatening its life, is not liable to punishment'.⁶⁵

2.12 Bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (2020), submitted by the President of the Republic of Poland – Sejm Paper No. 727, 9th term of office of the Polish Parliament⁶⁶

The presidential bill (submitted during Andrzej Duda's term of office) provided for the addition of point 2a to Article 4a(1) of the Act on family planning, protection of the human foetus and the conditions for the

63 Deputies' bill to amend the Act – Criminal Code (submitted 26 October 2020; not given a paper no.), [http://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-299-2020/\\$file/9-020-299-2020.pdf](http://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-299-2020/$file/9-020-299-2020.pdf), accessed 16 March 2021.

64 Vote on the addition of the following item to the agenda: First reading of the deputies' bill to amend the Act – Criminal Code, [http://orka.sejm.gov.pl/Glos9.nsf/nazwa/26_12/\\$file/glos_26_12.pdf](http://orka.sejm.gov.pl/Glos9.nsf/nazwa/26_12/$file/glos_26_12.pdf), accessed 16 March 2022.

65 No information on further work on the project.

66 Bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy, submitted by the President of the Republic of Poland Andrzej Duda (Sejm Paper No. 727 of 30 October 2020), <https://orka.sejm.gov.pl/Druki9ka.nsf/0/483A50FD9E14D216C1258614003D-C76E/%24File/727.pdf>, accessed 16 March 2022.

permissibility of terminating a pregnancy, which reads: ‘prenatal tests or other medical indications point to a high probability that the child will be born dead or with an incurable disease or defect leading inevitably and directly to the death of the child, regardless of the therapeutic measures applied.’ This would mean introducing into the national legal order a new premise conditioning the possibility of abortion in the case of so-called lethal defects in the child. The draft was referred to the first reading in the Justice and Human Rights Committee and the Health Committee.

2.13 Citizens’ bill on safe termination of pregnancy and other reproductive rights (2022) – Sejm Paper No. 2298, 9th term of office of the Polish Parliament⁶⁷

The bill was submitted to the Speaker of the Sejm on 2 May 2022, then on 25 May 2022 it was referred to the first reading. Marta Lempart became the Plenipotentiary of the Legislative Initiative Committee, Natalia Broniarczyk was appointed as her deputy.

The bill in question introduced the term ‘pregnant person’ instead of ‘pregnant woman’. Most significantly, it provided for the legalisation of abortion on demand up to the 12th week of pregnancy, as well as the legalisation of abortion up to the 24th week of pregnancy in the following cases: 1) if, during the examination, developmental or genetic abnormalities of the conceived child are found (significantly, the draft provided that further diagnostics were not required); 2) when the pregnancy is the result of a prohibited act: under the assumptions of the draft, only the submission of an appropriate declaration by the ‘pregnant person’ would suffice, the opinion of the public prosecutor would not be necessary. In the situation where the pregnancy would constitute a threat to the life, physical health or mental health of the ‘pregnant person’, as well as in the case of the identification of lethal defects in the child, the draft did not provide at all for time limits defining until which moment of pregnancy the conceived child could be deprived of life. Furthermore, the bill provided that a minor over the age of 13 would make the decision to have

⁶⁷ Citizens’ bill on safe termination of pregnancy and other reproductive rights (Sejm Paper No. 2298, 2 June 2022), <https://orka.sejm.gov.pl/Druki9ka.nsf/0/F389103FD35E0130C1258855002E753E/%24File/2298.pdf>, accessed 17 December 2022.

an abortion. It should also be pointed out that the proposed solutions would blatantly limit the conscience clause: in fact, the bill imposed an obligation on a doctor invoking conscientious objection to assist in the killing of an unborn child to indicate another doctor who would perform the procedure.

The first reading of the bill took place during the 57th sitting of the Sejm, on 23 June 2022. 265 MPs voted in favour of the motion to reject the bill at first reading (175 were against), resulting in the bill being rejected.

3 Deputies' bills increasing the legal protection of life

3.1 Citizens' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and certain other acts (2010) – Sejm Paper No. 4222, 6th term of office of the Polish Parliament⁶⁸

The citizens' bill was submitted to the Speaker of the Sejm on 26 May 2011. Mariusz Dzierżawski was appointed Representative of the Legislative Initiative Committee and Jacek Sapa was appointed as his deputy in the work on the bill.

The bill changed the title of the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy to the following: the Act on the protection of human life from conception. It granted to every human being from the moment of conception the inherent right to life, leaving the life and health of the child from the moment of conception under the protection of the law. It thus repealed all grounds for abortion. At the same time, it compelled administrative bodies to provide pregnant women with medical, social, and legal care. The administrative bodies were also obligated to help the Catholic Church, other churches, religious associations, and social organizations that provide care for pregnant women, foster care or assist in the adoption of children.

68 Citizens' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and certain other acts (Sejm Paper No. 4222 of 26 May 2011), [http://orka.sejm.gov.pl/Druki6ka.nsf/0/23E6F9AA70A2F2DFC125789B004349F5/\\$file/4222.pdf](http://orka.sejm.gov.pl/Druki6ka.nsf/0/23E6F9AA70A2F2DFC125789B004349F5/$file/4222.pdf), accessed 19 February 2022.

The project was addressed by the Supreme Council of Nurses and Midwives, which recommended its rejection, considering the solutions in question to be too stringent and expecting a broad public debate on the subject.⁶⁹ In contrast, the Attorney General raised doubts about its 'constitutional correctness' and the 'legitimacy of the legislative initiative'.⁷⁰ In the opinion of the Attorney General, the absolute legal protection of the life of the conceived child raised the greatest reservations. The document indicated that the conceived child is not a subject of rights protected on constitutional grounds, although at the same time it was admitted that human life at the prenatal stage of development is a value (a good) which deserves such protection. This was confirmed by the Constitutional Tribunal in its ruling of 28 May 1997, ref. K 26/96. The Attorney General emphasised that the limitation of legal protection of the conceived life may take place in sufficiently specified statutory circumstances. The Supreme Court accused the reduction of the 'independent' content of the act to one article, which raised formal and legislative doubts as to the purposefulness of the existence of a normative act with such a narrow content.⁷¹ The draft also did not take into account the links between the amended Act and regulations in the area of criminal and civil law – on this basis, concerns were raised about the potential incoherence of the Polish legal system.

On 1 July 2011, the first reading of the bill took place in the Sejm, which was then referred to the Social Policy and Family Affairs Committee as well as the Health Committee. The joint committees, in a combined report, moved to reject the bill, which was confirmed at the second reading on 31 August 2011 (191 votes in favour, 186 against, five MPs abstained).

69 Opinion of the Supreme Council of Nurses and Midwives (NIPIP-NRPIP-DM.0025.104.2011) of 8 June 2011 to the bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and certain other acts (Sejm Paper No. 4222), [http://orka.sejm.gov.pl/Druki6ka.nsf/0/90AC15562FA054D4C12578B200376EA6/\\$file/4222-001.pdf](http://orka.sejm.gov.pl/Druki6ka.nsf/0/90AC15562FA054D4C12578B200376EA6/$file/4222-001.pdf), accessed 19 February 2022.

70 Opinion of the Attorney General (PG VII G 025-64/11) of 29 June 2011 to the bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and certain other acts (Sejm Paper No. 4222), [http://orka.sejm.gov.pl/Druki6ka.nsf/0/103E4213AA-F8A580C12578CC0035620C/\\$file/4222-003.pdf](http://orka.sejm.gov.pl/Druki6ka.nsf/0/103E4213AA-F8A580C12578CC0035620C/$file/4222-003.pdf), accessed 19 February 2022.

71 Supreme Court Office of Studies and Analyses, Opinion of the Supreme Court (BSA V – 021 – 117/11) of 30 June 2011 to the bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and certain other acts (Sejm Paper No. 4222), document available together with the opinion of the Attorney General at the web address indicated above.

3.2 Deputies' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (2012) – Sejm Paper No. 670, 7th term of office of the Polish Parliament⁷²

The bill was submitted to the Sejm on 19 June 2012. It was submitted by a group of MPs from the Solidarna Polska Parliamentary Club represented by Bartosz Kownacki and, as of 21 September 2012, by Arkadiusz Mularczyk.

The draft repealed the permissibility of abortion in a situation where prenatal testing, or other medical indications point to a high probability of severe and irreversible foetal impairment or an incurable life-threatening disease (the so-called eugenic premise).

On 18 September 2012, the bill was referred to the first reading in the Sejm, which took place on 26 September. In the end, Sejm Speaker Ewa Kopacz postponed the vote on the motion to reject the bill at first reading to the next sitting of the Sejm. The vote rejecting the motion to dismiss the bill (189 votes in favour, 207 against, 30 abstentions) took place on 10 October 2012. A report by the Committee on Social and Family Policy and the Committee on Health on 23 October 2012 recommended rejecting the bill. The bill was rejected one day later, during the second reading (245 votes in favour, 184 against, 10 abstentions).⁷³

3.3 Citizens' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (2013) – Sejm Paper No. 1654, 7th term of office of the Polish Parliament⁷⁴

The citizens' bill was submitted to the Sejm on 21 March 2013. Kaja Godek became Chairman of the Legislative Initiative Committee, with Mariusz

72 Deputies' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 670 of 15 June 2012), <http://orka.sejm.gov.pl/Druki7ka.nsf/0/1F5C328089C9B5A9C1257A69003BB9B0/%24File/670.pdf>, accessed 19 February 2022.

73 See the proceedings of the legislative process on the deputies' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 670), <http://www.sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?id=7021D00A21BFF55CC1257A690040E248>, accessed 18 April 2022.

74 Citizens' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 1654 of 27 August 2013), <http://orka.sejm.gov.pl/Druki7ka.nsf/0/5821FF7D4C575A91C1257BD400566FA1/%24File/1654.pdf>, accessed 19 February 2022.

Dzierżawski appointed as Vice-Chairman. The wording of the bill was practically parallel to Sejm Paper No. 670, described in subsection 3.2 of this chapter. The bill repealed the eugenic premise of abortion. It was supported by the MaterCare Poland Foundation⁷⁵ and the National Council of Laboratory Diagnosticians.⁷⁶

On 27 August 2013, the bill was referred to the first reading at a session of the Sejm, which took place exactly one month later. By a decision of the High Chamber, the bill was rejected (233 votes in favour, 182 against, 6 MPs abstained).

3.4 Citizens' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and certain other acts (2015) – Sejm Paper No. 3806, 7th term of office of the Polish Parliament⁷⁷

The bill was submitted to the Sejm on 3 July 2015. Kaja Godek became Chairman of the Legislative Initiative Committee, Mariusz Dzierżawski was appointed as her deputy.

The bill introduced a total ban on abortion, the exclusion of criminalisation of abortion performed to abrogate an imminent danger threatening the health or life of the pregnant woman, and the requirement of written consent from parents or adult students to participate in school sex education classes. It proposed a penalty of up to three years' imprisonment for a person who terminates a woman's pregnancy with her consent. It also changed the title of the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy to the Act on the protection of human life and health from conception.

75 MaterCare Poland, Opinion on the bill to amend the Act, 20 March 2013, document available together with the opinion of the Attorney General at the web address indicated above.

76 Opinion of the National Council of Laboratory Diagnosticians (1.dz.4084.09.13) of 18 September 2013 to the citizens' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 1654), <http://orka.sejm.gov.pl/Druki7ka.nsf/0/B32B-85322D756E06C1257BEF003B5A9F/%24File/1654-002.pdf>, accessed 19 February 2022.

77 Citizens' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and certain other acts (Sejm Paper No. 3806 of 7 August 2015), <http://orka.sejm.gov.pl/Druki7ka.nsf/0/97F1E20915CE7B69C1257E9A0034AE0A/%24File/3806.pdf>, accessed 19 February 2022.

In the opinion of the Attorney General, the bill raised fundamental constitutional doubts, as it arbitrarily resolved certain conflicts of goods and constitutional values, giving human life at the prenatal stage a superior value over other goods and constitutional values.⁷⁸ As recognized, the law cannot be an instrument for forcing attitudes on citizens that go beyond the standard of what can reasonably be required of others. According to the Attorney General, there are limits to the protection of the life of the unborn, arising from the need to protect other valued goods. For these reasons, the bill was considered to raise objections especially with regard to the instrumental choice of legislative interference (the principle of proportionality).

On 7 August 2015, the bill was referred to the first reading at the session of the Sejm, which took place on 11 September. By decision of the Sejm, the citizens' bill was rejected (206 votes in favour, 178 against, 10 abstentions).

3.5 Citizens' bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and the Act of 6 June 1997 – Criminal Code (2016) – Sejm Paper No. 784, 8th term of office of the Polish Parliament⁷⁹

The bill was received by the Speaker of the Sejm on 19 August 2016. On the same day, it was referred to the first reading. The 'Stop Abortion' Legislative Initiative Committee was represented by Dr. Joanna Banasiuk, with Mariusz Dzierżawski as her deputy.

The bill envisaged providing comprehensive guarantees for the protection of life at the prenatal stage of development by introducing a total ban on abortion and excluded criminalisation of causing the death of a child conceived as a result of taking therapeutic measures to save the life of the

78 Opinion of the Attorney General (PG VIII G 025/278/15) of 12 August 2015 to the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and certain other acts (Sejm Paper No. 3806), <http://orka.sejm.gov.pl/Druki7ka.nsf/0/F76D55DC9201A885C1257E-B20021882A/%24File/3806-001.pdf>, accessed 19 February 2022.

79 Citizens' bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and the Act of 6 June 1997 – Criminal Code (Sejm Paper No. 784 of 19 August 2016), <http://orka.sejm.gov.pl/Druki8ka.nsf/0/CDB8B631C2EFE-830C1258014002A4E47/%24File/784.pdf>, accessed 24 February 2022.

mother. The bill also obligated the central and local self-government bodies to provide material assistance and care to families raising children suffering from severe handicaps or life-threatening illnesses, as well as to mothers and their children when there is a reasonable suspicion that conception occurred as a result of a crime.

The existing Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy was given a new title: the Act on the universal protection of human life and education on family life. The life and health of the child under the bill remained under the protection of the law. The bill also introduced changes within the Criminal Code. A conceived child was defined as a human being in the prenatal period of development, from the moment the female and male reproductive cells unite. A person causing the death of a conceived child was to be punished with imprisonment of three months to five years (up to three years in the case of manslaughter). Aiding and abetting in the abortion process was also criminalised. Under the bill, an offence did not arise if the death of the child was a consequence of therapeutic measures necessary to avert an imminent danger threatening the life of the mother. If the perpetrator of the act was the mother, the bill made it possible to apply extraordinary leniency to her or even to waive any punishment. The mother of a conceived child who caused its death unintentionally was not to be punished as well. In addition, a number of subsidiary regulations were implemented, aimed primarily at ensuring systemic coherence of all legal regulations concerning the situation of the conceived child.

The bill aroused great public controversy, and its actual content became the object of much manipulation and misrepresentation. The Zachodniopomorskie Voivodship gave a negative opinion of the bill, pointing out, *inter alia*, that the proposed provisions limit the right to make independent decisions on fertility and procreation and hinder access to sexual education and free contraceptives.⁸⁰ In the opinion of the drafters, the bill introduced unfairly high criminal sanctions: both for the pregnant woman and

80 Letter from the Union of Voivodeships of the Republic of Poland (ZW/0714/165/16) of 4 August 2016, <http://orka.sejm.gov.pl/Druki8ka.nsf/0/6D9F4C74B1B19121C12580190034D335/%24File/784-001.pdf>, accessed 24 February 2022.

for the person who induced or contributed to the termination of pregnancy. The Silesian Voivodship submitted a number of comments, questioning such issues as the level of penalties, the extension of criminal liability or the proposed entry of the law into force.⁸¹ At the same time, the drafters were accused of ideological bias.

The first reading of the bill at the session of the Sejm took place on 23 September 2016. It included a vote to reject the bill at first reading (154 votes in favour, 267 against, 11 abstentions), followed by a motion to refer the bill to the combined Social Policy and Family Affairs Committee, Justice and Human Rights Committee and Health Committee (42 votes in favour, 361 against, 30 abstentions). The bill was eventually referred to the Justice and Human Rights Committee. In its report of 5 September, the Committee, after an extremely stormy meeting, proposed to reject the bill in its entirety.⁸² During its second reading at the Sejm, the Committee's proposal was adopted (352 votes in favour, 58 against, 18 abstentions).

3.6 Citizens' bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (2017) – Sejm Paper No. 2146, 8th term of office of the Polish Parliament⁸³

The project was submitted to the Sejm on 30 November 2017. Kaja Godek was appointed to represent the 'Stop Abortion' Legislative Initiative Committee, with Magdalena Kaliszuk as her deputy, whose place was taken by Krzysztof Kasprzak after her resignation.⁸⁴ The bill primarily repealed the eugenic premise of abortion.

81 Ibid.

82 Report of the Committee on Justice and Human Rights on the citizens' bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and the Act of 6 June 1997. – Criminal Code (Sejm Paper No. 907), <http://orka.sejm.gov.pl/Druki8ka.nsf/0/7580B3088612BFCBC125804300622996/%24File/907.pdf>, accessed 24 February 2022.

83 Citizens' bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 2146 of 4 January 2018), <http://orka.sejm.gov.pl/Druki8ka.nsf/0/F18A213C98C5BDC0C125820B005793D9/%24File/2146.pdf>, accessed 24 February 2022.

84 Letter from the bill's sponsors (MK-020-664/4/17) of 8 January 2018 regarding the change of the deputy representative of the Legislative Initiative Committee, <http://orka.sejm.gov.pl/Druki8ka.nsf/0/F794A545750D967C-C125820F003E94E4/%24File/2146-001.pdf>, accessed 24 February 2022.

The National Bar Association gave a negative opinion on the bill.⁸⁵ It was considered that the protection of the foetus in the prenatal phase should first and foremost manifest itself in the guarantee of full rights for women, including the freedom and autonomy of decision-making. The tightening of abortion regulations was considered to violate acts of international law binding on Poland, as well as the foundations of a democratic state of law (including the prohibition of discrimination and the right to protection of private life). Moreover, it was pointed out that the introduction of changes in the proposed bill would sanction the phenomenon of violence against women by violating fundamental human rights. An opinion on the 'Stop Abortion' bill was also presented by the Ordo Iuris Institute for Legal Culture.⁸⁶ The Institute stressed that the intensification of the protection of the life of the *nasciturus* is not only in line with the Constitution and international law but is even desirable. The Institute considered that having in mind the jurisprudence of the Constitutional Tribunal and the parallel jurisprudence of the Criminal Chamber of the Supreme Court, it seems necessary to adapt the statutory provisions to the level of protection of the conceived child guaranteed by the Constitution. The authors of the opinion pointed out that the eugenic premise which would allow abortion violates the constitutional prohibition of discrimination (Article 32, para. 2 of the Constitution of the Republic of Poland) and those provisions of the Constitution which prescribe special care for disabled persons (Article 68, Article 69, para. 3 of the Constitution of the Republic of Poland), including the fact that the law does not distinguish between those who are born and those unborn.

The Sejm Research Bureau was critical of the bill, pointing to the parallel need to develop palliative and hospice care and build a support system (such as the 'Za życiem' programme, eng. 'Pro-life'), which would entail excessive financial costs. This type of action was considered to better

85 Opinion of the National Bar Association (NRA.12-SM-1.4.2018) of 15 January 2018 on the bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy, <http://orka.sejm.gov.pl/Druki8ka.nsf/0/A5FABDA6934366EFC125821A002D2344/%-24File/2146-003.pdf>, accessed 24 February 2022.

86 J. Kwaśniewski, M. Olszówka, Opinion on the on the bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy ('Stop Abortion') – Sejm Paper No. 2146, <https://www.ordoiuris.pl/ochrona-zycia/opinia-dotyczaca-projektu-ustawy-o-zmianie-ustawy-o-planowaniu-rodziny-ochronie-plodu>, accessed 16 March 2021.

promote a pro-life attitude than the introduction of a ban on abortion.⁸⁷ The Sejm Research Bureau also warned against the increasing radicalisation of the debate and the activity of political circles aiming to introduce abortion on demand.⁸⁸ In doing so, it pointed to the financial, social, legal, and political costs and effects of the assumed regulation. The Ordo Iuris Institute for Legal Culture responded to the allegations expressed in the opinion of the Sejm Research Bureau.⁸⁹ It stressed that the theses presented in the opinion are not justified in the current legal state. First, they completely marginalise the constitutional guarantees of respect and protection of human dignity (Article 30 of the Polish Constitution) and legal protection of human life (Article 38 of the Polish Constitution). The Institute alleged bias in the selection of studies by the authors of the substantive opinion and the assessment of the effects of the regulation, as well as a superficial analysis of the regulation and a lack of support for the presented arguments with relevant calculations. The Institute pointed to a number of erroneous assumptions and abuses by the authors of both documents. In particular, the Institute pointed out that the statement that ‘in the context of the ban on eugenic abortion, there may also be a tendency to limit – by various methods – prenatal tests’ is untrue. The bill that was the subject of the opinion of the Sejm Research Bureau did not deal with the issue of prenatal tests at all, hence hypotheses about a possible tendency to limit them are a far-reaching misrepresentation. The Institute pointed out that the opinions of external authors contain radically different conclusions. For example, in the expert opinion provided by Paweł Sobczyk, the author concluded that the legislator should create appropriate legal and material guarantees for mothers and families who decide to give birth to a child that is handicapped or affected by an incurable disease.⁹⁰ On the other hand,

87 I. Bień, J. Osiecka-Chojnacka, Legal and substantive opinion on the citizens' bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 2146), 9 April 2018, <http://orka.sejm.gov.pl/rexdomk8.nsf/0/16A86ADB4A0CB4F-0C125824B002C144F/%24File/i1546-18.docx>, accessed 24 February 2022.

88 I. Bień, J. Osiecka-Chojnacka, Impact assessment of the regulations contained in the citizens' bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm Paper No. 2146), 18 April 2018, <http://orka.sejm.gov.pl/rexdomk8.nsf/0/F79B5265E1BF00E4C125824B002D2666/%24File/i552-18.docx>, accessed 24 February 2022.

89 M. Olszówka, B. Zalewski, Position of Ordo Iuris on the opinion of the Sejm Research Bureau on the 'Stop Abortion' project, <https://ordoiuris.pl/ochrona-zycia/stanowisko-ordo-iuris-w-sprawie-opinii-biura-analiz-sejmowych-na-temat-projektu-0>, accessed 16 March 2021.

90 P. Sobczyk, Legal and substantive opinion on the citizens' bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Sejm

the legislator's action should not consist in arbitrarily defining exceptions to the constitutional principle of the legal protection of life, but in creating positive legal grounds for maternity and 'paternity'. At the same time, the bill, in the opinion of the drafting officer, is in line with the constitutional concept of the legal protection of life, respect and protection of human dignity by public authorities.

On 4 January 2018, the bill was referred to the first reading at a session of the Sejm, which was held on 10 January. The motion to reject the bill at first reading was rejected (134 votes in favour, 277 against, seven abstentions) and the bill was referred to the Committee on Social Policy and Family with the recommendation to consult the Committee on Justice and Human Rights. 19 March 2018. The Justice and Human Rights Committee gave a favourable opinion. On 2 July 2018, the bill was referred to an extraordinary subcommittee and, at the same time, a subcommittee chaired by Grzegorz Matusiak was formed.

As a consequence of the Constitutional Tribunal's judgement of 22 October 2020⁹¹ the demands contained in the bill have been implemented.

3.7 Citizens' bill to amend the Act – Criminal Code and certain other acts (2021) – Sejm Paper No. 1693, 9th term of office of the Polish Parliament⁹²

The draft was received by the Speaker of the Sejm on 22 September 2021 and was then referred to the first reading on 28 October 2021. Mariusz Dzierżawski became Chairman of the Legislative Initiative Committee, with Łukasz Jończyk appointed as his deputy.

An important premise of the draft was the introduction of a definition in the Criminal Code treating every person from the moment of conception until

Paper No. 2146), 28 March 2018, <http://orka.sejm.gov.pl/rexdomk8.nsf/0/2B88FBD6A375450AC125824F002F-BF70/%24File/546-18.rtf>, accessed 24 February 2022.

91 Judgment of the Constitutional Court of 22 October 2020, ref. K 1/20.

92 Citizens' bill to amend the Act – Criminal Code and certain other acts (Sejm Paper No. 1693 of 22 September 2021), <https://orka.sejm.gov.pl/Druki9ka.nsf/0/711C9A67B618B3D1C125877D003AA3F8/%24File/1693.pdf>, accessed 16 December 2022.

the age of 18 as a child. The bill also stated that a conceived child is any child up to the time when birth begins. Subsequent proposed legislation followed the recognition of the conceived child as an equal human being and treated the taking of his or her life as equal to the taking of the life of an adult. Only in the case of a mother who kills her conceived child did the draft provide the possibility for the court to apply extraordinary leniency or even to waive the penalty. One of the bill's fundamental assumptions was that the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy would cease to be in force.

The National Council of the Judiciary declined to take a position on the draft in question, stating that its subject matter did not relate to the scope of matters subject to its opinion.⁹³

The National Bar Association submitted its comments on the draft.⁹⁴ It acknowledged that all the changes proposed in the bill are a consequence of the demand to introduce a definition of 'child' in the Criminal Code as a human being from the moment of 'conception' to adulthood. However, the opinion undertook a broad argument that the adoption of the term 'conception' was unprofessional and referred to terminology used by the Catholic Church. The National Bar Association went on to state that the proposed draft 'in several cases is in sharp conflict with the human rights belonging to the woman'. The opinion explicitly took the side of abortion, citing, among other things, *Roe v. Wade*, a 1973 ruling in the United States,⁹⁵ as well as the situation in Northern Ireland from the time when abortion was illegal there, 'forcing women into abortion tourism'. It also cited the UN Human Rights Committee's view that the total ban on abortion in Northern Ireland was a violation of women's rights under Article 7 of the International Covenant on Civil and Political Rights (prohibition

93 Opinion of the National Council of the Judiciary (DS.175.772.21) of 24 November 2021 on the citizens' bill to amend the Act – Criminal Code and certain other acts, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/5237F8225207F5C-5C1258799004944D4/%24File/1693-001.pdf>, accessed 16 December 2022.

94 Opinion of the National Bar Association (NRA.12-SM-1.126.2021) of 15 November 2021 to the citizens' bill to amend the Act – Criminal Code and certain other acts, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/0C7C948EB-8F23B43C125879E004A5E03/%24File/1693-002.pdf>, accessed 16 December 2022.

95 On 24 June 2022, this ruling was overturned by the US Supreme Court.

of torture and inhuman treatment). The main thrust of the National Bar Association's opinion was that the draft in question was contrary to the Constitution of the Republic of Poland and binding international law in Poland due to its contradiction with mandatory law, in this case the prohibition of torture and cruel, inhuman and degrading treatment, which would be the prohibition of abortion.

At the first reading of the bill at the 43rd sitting of the Sejm on 2 December 2021, 361 MPs voted in favour of the motion to reject the bill, 48 voted against and 12 abstained. The bill was thus rejected.

3.8 Citizens' bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions of admissibility of abortion and other acts (2022) – Sejm Paper No. 3008, 9th term of office of the Polish Parliament⁹⁶

The bill was submitted to the Sejm on 28 December 2022. Krzysztof Kasprzak was appointed Chairman the Legislative Initiative Committee, while Kaja Godek was appointed as deputy chairman.

The bill aimed to ban the promotion of abortion. It first envisaged the addition of relevant provisions to the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy. The draft provisions provided for the prohibition of '(a) the promotion of any action concerning the possibility of aborting a pregnancy within the country and abroad; (b) public exhortation to abort a pregnancy within the country and abroad; (c) public information about the possibility of an [illegal – author's note] abortion; (d) producing, recording, importing, acquiring, storing, possessing, displaying, transporting, or transmitting print, recordings or other objects or data carriers containing the content referred to in (a) – (c) above'. In addition, the bill proposed to amend the Criminal Code by adding provisions stating that inducing a woman to have an abortion is an offence punishable by

96 Citizens' bill to amend the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and other acts (Sejm Paper No. 3008 of 7 February 2023), <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=3008>, accessed 12 March 2023.

imprisonment for up to three years, and that such action, in a situation where the child has reached the capacity to live independently outside the mother's organism, is punishable by imprisonment for six months to eight years. Furthermore, the authors proposed that, if convicted of these offences, the court should order that the sentence be made public. It was also proposed to introduce custodial sentences in situations where the death of a pregnant woman would arise as a consequence of such offences as well as the offences indicated in Article 152 of the Criminal Code. In addition, the bill provided for the addition of a new article to the Criminal Code, which specified the penalties for the offences provided for in the bill, which were to be added to the Family Planning Act (see above); in the event of a conviction for these offences, the court was also to order that the sentence be made public.

The opinion on the bill was issued by the President of the Office for Personal Data Protection (OPDP),⁹⁷ who raised doubts about the provision compelling the court to make the verdict public in the case of a conviction for the crime of inducing the mother to have an abortion. As noted by the President of the OPDP, such a situation would result in the pregnant woman's data being made public, which in turn could result in her being stigmatised. The opinion also highlighted that this issue was omitted from the justification of the draft. Furthermore, it was pointed out that the drafting authority had failed to carry out the necessity and proportionality test provided for in the data protection regulation, as well as the proportionality test under the Polish Constitution. The President of the OPDP suggested 'reconsidering the form adopted in the draft' of the provision on making the judgment public.

On 7 February 2023, the draft was referred to the first reading at the session of the Sejm.⁹⁸ The first reading took place one month later, on 7 March 2023, at which time the bill was rejected. 300 MPs voted in favour of its rejection, 99 MPs voted against, while 27 abstained.

97 Opinion of the President of the Office for Personal Data Protection, letter DOL.401.66.2023.WL.TG of 8 March 2023, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/6266FFA6413E9811C125896D0063CFA5/%24File/3008-001.pdf>, accessed 12 March 2023.

98 Proceedings of the legislative process on the citizens' bill to amend the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and other acts (Sejm Paper No. 3008), <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=3008>, accessed 12 March 2023.

4 Conclusions

In summary, most of the attempts to date to undermine the so-called abortion compromise have been the result of the efforts of left-wing groups seeking to lower the standard of protection of human life in Poland by introducing a 'right to abortion' or at least shaping the circumstances allowing for its performance in such a way that in the first 12 weeks after the child's conception it is not restricted in any way. In doing so, the position of the father was completely ignored, and the decision to prenatally kill the child was to be a sovereign act of the mother's will. Moreover, pro-abortion circles repeatedly pushed to ratify almost the same bill, which was slightly modified and re-submitted. The accusations levelled against the conservative circles of exclusively seeking to 'violate the abortion compromise' are therefore unjustified. At the same time, each of the 21 instances to date of submitting bills after 1997 ended at the third reading in the Sejm at the latest. At the same time, there are no serious indications that this state of affairs will change in the near future.

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Abstract

This chapter is a description of attempts to change Poland's abortion law from 1994 to 2020. The authors describe all the citizens' and deputies' bills (except for the bill from 2006 to amend the Constitution of the Republic of Poland) aimed at expanding the possibility of performing an abortion, as well as all the bills aimed at more effectively protecting the lives of children in the prenatal period of development.

The summary shows that most of the attempts to undermine the so-called abortion compromise so far have been the result of the efforts of left-wing groups seeking to lower the standard of protection of human life in Poland by introducing the 'right to abortion' or at least shaping the circumstances enabling it in such a way that in the first 12 weeks from the conception of a child it was not restricted in any way. At the same time, the rights of the father were completely ignored, and the decision to kill the child prenatally would be a sovereign act of his mother's will. Therefore, the allegations of the exclusive pursuit of 'violation of the abortion compromise' formulated against conservative circles are unjustified.

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Key terms: eugenic abortion, Down syndrome, Turner syndrome, somatic defects, lethal defects, misdiagnosis, prenatal medicine, abortion medical records

Chapter 11

Audit of deprivation of life through abortion: what irregularities does the Constitutional Tribunal judgment K 1/20 address?¹

1 Objective of the study

Social consent to abortion, which became widespread in Poland during the 37 years of the communist abortion law² (1956-1993), led to a permanent distortion of sensitivity to the protection of conceived life in an entire generation. Numerous doctors, nurses and other health care workers, as well as citizens in general, were deprived of their natural openness to the basic needs and rights of a special category of patients – people already conceived but not yet born. In this context, it is important to emphasise what a major role health professionals have to play in restoring the protection of this special category of patients: in addition to expressing their personal conscientious objection and refusing to participate in the killing of their own patients, they can all also engage in a concerted effort to bring about a systemic, definitive departure from the vestiges of the Communist abortion legislation.

1 Text originally published on 4 February 2021 under the same title, available at https://ordoiuris.pl/sites/default/files/inline-files/Audyt_aborcyjnego_pozbawiania_z%CC%87ycia_w_polskich_szpitalach.pdf, accessed 9 January 2023. The chapter refers to data available at the time of publication of the original version.

2 Act of 27 April 1956 on the the conditions for the permissibility of termination of pregnancy (Dz.U. No. 12, item 61).

The Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy³ (hereinafter: AFP) did not meet many expectations; however, the practice of its application raised the most objections. In particular, eugenic abortion, performed in Poland more than 20 times more often than the next most common premise, i.e., a threat to the life or health of the mother, was met with the greatest social opposition, which was confirmed by numerous public opinion polls. The statutory eugenic exception was characterised by an astonishing lack of precision and vagueness – the life or death of a human being was determined by the result of tests, which were supposed to ‘indicate a high probability of severe and irreversible impairment of the foetus or an incurable disease threatening its life’. The eugenic exception was interpreted in very different ways by state-authorised abortion providers, who in practice used brainlessness, spina bifida, Down syndrome, and Turner syndrome as grounds for depriving a child of its life.

The reality of abortion in Poland is also characterized by a glaring lack of transparency. Until recently, the public had no way of knowing the breakdowns of the specific conditions that the staff of a particular hospital considered to make the decision to kill a particular child, and even now access to this data is hindered in many ways. In reports to the National Health Fund (hereinafter: NHF; in Polish: Narodowy Fundusz Zdrowia), the deprivation of the life of the developing child was hidden in one group with medical procedures, making it impossible to identify the specific sums of money that were allocated from the NHF budget for abortion. Reports to the Ministry of Health, on the other hand, only from 2016 onwards began to distinguish between the individual medical conditions constituting the rationale for eugenic abortion, which, however, remained at a level of gross generality objectionable to doctors and bioethicists.

3 Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended).

This situation demonstrates the urgency of the Constitutional Tribunal's judgment and the need to carry out a kind of abortion audit and verification of medical records after 1993 in order to check what specific reasons determined the killing of persons suspected of being disabled in their mothers' wombs during that period. For it is extremely important not only to point out the obvious immorality of the procedure of eugenic abortion or the equally obvious incompatibility of this procedure with the Constitution of the Republic of Poland, but also the practical necessity, resulting from the real possibility of its abuse, to remove this premise of admissibility of abortion. It should be emphasised that the present elaboration concentrates intentionally on the eugenic premise of abortion, not touching – from the ethical and legal point of view – the issue of depriving the unborn children of life in cases of threats to the life or health of the mother and conceptions resulting from forbidden acts (including in particular rape), which are recognized by the legislator as legal. The indicated selective analysis of the issue results from the fact that the text was written as a commentary to the judgment of the Constitutional Tribunal issued on 22 October 2020⁴ (hereinafter: the judgement of the Constitutional Tribunal in case K 1/20), which considered the compatibility with the Constitution of the Republic of Poland of the eugenic premise only. A circumstance no less important in this respect is the fact that the suspicion of a disease or disability of a child conceived before that judgment constituted the most common reason for performing abortions in Poland.

2 Misuse of the eugenic ground

The share of eugenic abortions in the total number of terminated pregnancies has fluctuated around 95% for years (see Table 1). For example, in 2019, there were 1,074 eugenic abortions, 33 abortions due to a threat to the health or life of the mother and only 3 due to the pregnancy resulting from a criminal act. The judgement of the Constitutional Tribunal in case K 1/20, declaring abortion in the case of a suspected severe and

4 Judgment of the Constitutional Tribunal of 22 October 2020, ref. K 1/20, available at <https://ipo.trybunal.gov.pl/ipo/Sprawa?sprawa=15959&dokument=14500&cid=1>, accessed 2 February 2022.

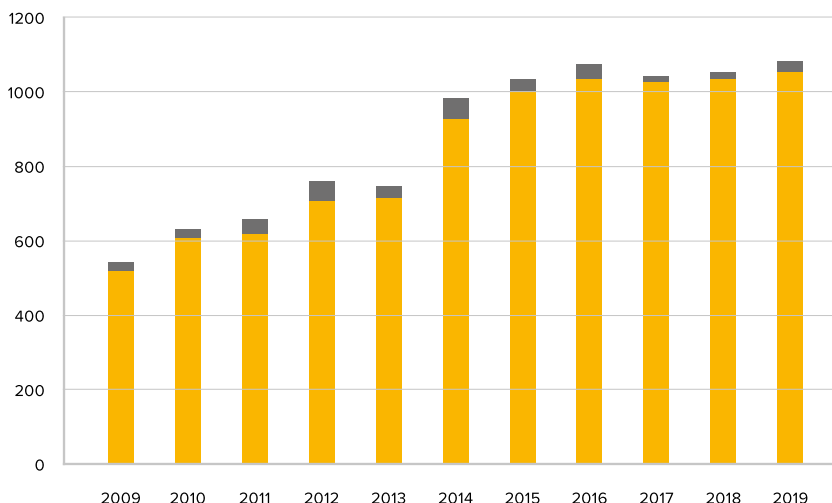
irreversible impairment of the foetus or an incurable disease threatening its life unconstitutional, resolved many problems and abuses related to the application of this premise.

Table 1. Number of abortions performed by general statutory grounds

Year	Abortions carried out in accordance with AFP				
	Total	(1) Pregnancy posed a risk to the life or health of the mother	2) Prenatal testing or other medical indications pointed to a high probability of severe and irreversible foetal impairment or an incurable life-threatening disease	3) Pregnancy resulted from a criminal act	Eugenic abortions as % of total abortions
2009	538	27	510	1	94.80
2010	641	27	614	0	95.79
2011	669	49	620	0	92.68
2012	752	50	701	1	93.22
2013	744	23	718	3	96.51
2014	971	48	921	2	94.85
2015	1040	43	996	1	95.77
2016	1098	55	1042	1	94.90
2017	1057	22	1035	0	97.92
2018	1076	25	1050	1	97.58
2019	1110	33	1074	3	96.76

Source: Prepared on the basis of the reports of the Council of Ministers from 2009-2019 on the implementation and effects of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended).

Chart 1. Number of abortions performed by general statutory grounds



- 1. Where the pregnancy posed a risk to the life or health of the mother.
- 2. Where prenatal testing or other medical indications pointed to a high probability of severe and irreversible foetal impairment or an incurable life-threatening disease.
- 3) Where there was a suspicion that the pregnancy resulted from a criminal act (the number of abortions performed on the basis of this premise is so insignificant that it was not reflected on the scale of the chart, it was, respectively, for individual years: 2009 – 1, 2010 – 0, 2011 – 0, 2012 – 1, 2013 – 3, 2014 – 2, 2015 – 1, 2016 – 1, 2017 – 0, 2018 – 1, 2019 – 3).

Source: Prepared on the basis of the reports of the Council of Ministers on the implementation and effects of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions of admissibility of abortion (Dz.U. No. 17, item 78, as amended) from 2009 to 2019.

The first problem was that the premise on which most abortions were based was vague and general and thus left room for different interpretations to arise. The very term ‘severe and irreversible impairment’ was not a fully unambiguous term, as it did not specify which defects within the meaning of the AFP were to be severe and which light, which in turn created the risk of doctors classifying lighter defects and handicaps as a premise for abortion. Furthermore, the premise placed lethal diseases on an equal footing with those that do not carry a risk of imminent death, but which may merely be a cause of disability or may be amenable to treatment at the prenatal stage. The direct result of formulating standards in this way was the dehumanisation not only of people with lethal diseases, but also of those

with disabilities and handicaps – often insignificant ones. What also raised concern is that the decision to terminate a pregnancy depended on the results of prenatal tests or other unspecified medical indications – which, however, did not provide certainty as to the presence of serious defects in the child – and the diagnoses could turn out to be wrong.

It is worth noting that the line on allowed abortion was not drawn on the handicaps leading to the inevitable and very early death of the child – under the repealed legislation, the defect constituting the reason for its killing by hospital personnel did not have to be a fatal defect at all. The statutory solution leaving it up to doctors to decide whether a given birth defect is a severe defect was risky – especially when it comes to somatic defects, which are less schematic than genetic defects. Another issue is the risk of medical error, which also includes those cases considered by doctors to be fatal. The premise of Article 4a(1)(2) of the AFP, repealed by the Constitutional Tribunal, allowing termination of pregnancy for eugenic reasons, was based on the ‘high probability’ of the child having a defect or disease. However, there are known cases of diagnostic mistakes in this respect.⁵

It is worth noting the dissonance in the level of severity of the diseases that have hitherto qualified for abortion, which did not seem to take into account the current state of scientific knowledge. Down syndrome and Turner syndrome were placed alongside severe, lethal genetic defects such as trisomy 13 (Patau syndrome) and trisomy 18 (Edwards syndrome), which most often result in the death of the child while still in the prenatal stage of development or in infancy. Girls suffering from the latter disease usually show normal intellectual development, and the external characteristics, congenital defects and health problems they present do not prevent

5 A. Kidszun et al., *What If the Prenatal Diagnosis of a Lethal Anomaly Turns Out to Be Wrong?*, “Pediatrics” 2016, Vol. 137(5), <https://doi.org/10.1542/peds.2015-4514>; D. Anumba, *Errors in prenatal diagnosis*, “Best practice & Research. Clinical Obstetrics & Gynaecology” 2013, Vol. 27(4), pp. 537-548, <https://doi.org/10.1016/j.bpobgyn.2013.04.007>; NBC News, *Prenatal Tests Have High Failure Rate, Triggering Abortions*, <https://www.nbcnews.com/health/womens-health/prenatal-tests-have-high-failure-rate-triggering-abortions-n267301>, accessed 28 January 2022; B. Daley, *When baby is due, genetic counselors seen downplaying false alarms*, <https://www.bostonglobe.com/metro/2016/03/05/when-baby-due-genetic-counselors-seen-downplaying-false-alarms/> BBC0KAFVidJASkOiMg6DI/story.html, accessed 28 January 2022; M. Rumińska, *Lekarze doradzali aborcję. Dziecko urodziło się zdrowe*, <https://parenting.pl/lekarze-doradzali-aborcje-dziecko-urodzilo-sie-zdrowe>, accessed 28 January 2022; K. Majak, *Lekarz zalecił jej aborcję, bo dziecko miało umrzeć. Poszła do prof. Bogdana Chazana. Cóрка urodziła się zdrowa*, <https://natemat.pl/106231,lekarz-zalecil-jej-aborcje-bo-dziecko-mialo-umrzec-poszla-do-prof-bogdana-chazana-corka-urodzila-sie-zdrowa-wywiad>, accessed 28 January 2022.

them from functioning in society.⁶ Next to Down's syndrome, which is the most common reason for abortion, Turner's syndrome was probably the most obvious example of a rationale used for legal abortion that did not fit within the framework of 'severe and irreversible foetal disability'.

2.1 Objections to Ministry of Health reporting forms

In considering the transparency of the reporting system, it will be important to discuss the objections to the form by which the Ministry of Health collected statistical data and the changes made to it in 2018. Pursuant to Article 9 of the AFP, the Council of Ministers is obligated to present an annual report on the implementation of the AFP and on the effects of its application – the basis for this report is the data collected by the Ministry of Health using the MZ-29 form. Since 2016, hospitals have been obligated to specify on the form the number of abortions performed on the basis of the statutory grounds, indicating the detailed reason for the application of the eugenic ground allowing the termination of pregnancy in the case of a high probability of severe and irreversible impairment of the foetus or an incurable disease threatening its life.

The MZ-29 form used prior to 2016⁷ was a very simplified document – it only identified three statutory reasons as grounds for terminating a pregnancy: 'due to danger to the life or health of the mother', 'as a result of prenatal testing' and 'as a result of a prohibited act'. Not only did the general category of 'prenatal testing' not specify the specific genetic defects and diseases found as a result of the test, but there was also no room to include medical grounds other than prenatal testing, as referred to in Article 4a(1)(2) of the AFP. Such a general treatment of the eugenic premise bridged the differences between diseases of different clinical significance and de facto carried the risk of classifying as lethal (i.e., fatal) those cases that are in fact subject to treatment.

6 D. Gieruszczak-Białek, *Zespół Turnera: przyczyny, objawy i leczenie*, <https://www.mp.pl/pacjent/pediatrica/choroby/genetyka/151765,zespol-turnera>, accessed 28 January 2022.

7 Annex No. 3 to the Regulation of the Prime Minister of 7 March 2012 on the determination of the templates of reporting forms, explanations on the manner of their completion and templates of statistical questionnaires and surveys used in the statistical surveys established in the programme of public statistical research for 2012 (Dz.U. 2012, item 446).

The original version of the form has since been expanded – on the basis of the Prime Minister's regulation of 2 February 2017, amending the regulation defining the specimen reporting forms for 2016,⁸ the form MZ-29 within the premise on prenatal testing for the first time separated a specific list of medical conditions into genetic and somatic defects.⁹ The new classification thus allowed for some differentiation of the severity of the diseases, with a major strength of the form being to show the exact number of pregnancies terminated due to the detection of Down syndrome and Turner syndrome.

This change was a first step in the right direction, but the form is still¹⁰ very vague and the list of defects used groups the conditions in a very disproportionate way. On the one hand, specific trisomies of chromosome 21, 13, 18, etc. are singled out, while on the other hand, very broad categories of 'an isolated defect' (affecting one system or organ on imaging) and 'multiple defects' (defects of two or more systems or organs on imaging) have been used for somatic defects. In doing so, the form does not require to specify which particular somatic defects were considered to be grounds for termination of pregnancy. In addition, these terms do not take into account the severity of the disease, which makes it unclear whether the detected defects in fact constituted a severe handicap. Defects classified as isolated and multiple defects can vary greatly in terms of prognosis – some cases may be amenable to treatment or even go beyond the statutory grounds for termination of pregnancy. There is a similar problem with trisomies, the severity of which is also graded – which is particularly the case with Down syndrome.

8 Regulation of the Prime Minister of 2 February 2017 amending the Regulation on the determination of the templates of reporting forms, explanations on the manner of their completion and templates of statistical questionnaires and surveys used in the statistical surveys established in the programme of public statistical research for 2016 (Dz.U. 2017, item 249).

9 Annex No. 2 to the Regulation of the Prime Minister of 2 February 2017 amending the Regulation on the determination of the templates of reporting forms, explanations on the manner of their completion and templates of statistical questionnaires and surveys used in the statistical surveys established in the programme of public statistical research for 2016 (Dz.U. 2017, item 249). Similarly, in the Regulation of the Prime Minister of 12 January 2018, currently in force in this respect, amending the Regulation on the determination of the templates of reporting forms, explanations on the manner of their completion and templates of statistical questionnaires and surveys used in the statistical surveys established in the programme of public statistical research for 2017 (Dz.U. 2018, item 332).

10 In the currently available MZ-29 form for 2022, the sections detailing the defects and diseases for which the abortion was performed have been left in place.

Table 2. Number of abortions performed by specific medical diagnoses

Detailed medical diagnosis	2019	2018	2017	2016
Abortions carried out on so-called eugenic grounds	1074	1050	1035	1042
Trisomy 21 without concurrent somatic defects	271	245	255	221
As a percentage of eugenic abortions	25.23%	23.33%	24.64%	21.21%
Trisomy 21 with concurrent somatic defects	164	130	104	167
As a percentage of eugenic abortions	15.27%	12.38%	10.05%	16.03%
Trisomy 13 or trisomy 18 without concurrent somatic defects	60	68	76	49
As a percentage of eugenic abortions	5.59%	6.48%	7.34%	4.70%
Trisomy 13 or trisomy 18 with concurrent somatic defects	88	74	85	69
As a percentage of eugenic abortions	8.19%	7.05%	8.21%	6.62%
Other trisomies and partial trisomies of autosomes without concomitant somatic defects	5	4	10	24
Other trisomies and partial trisomies of autosomes with concomitant somatic defects	7	13	12	6
Monosomies and deletions of autosomes without concomitant somatic defects	1	1	3	4
Monosomies and deletions of autosomes with concomitant somatic defects	14	4	4	5
Balanced translocations without concomitant somatic defects	0	5	2	0
Balanced translocations with concurrent somatic defects	0	6	0	2
Turner syndrome with coexisting somatic defects	13	22	15	18
As a percentage of eugenic abortions	1.21%	2.10%	1.45%	1.73%
Monogenic conditioned diseases without concomitant somatic defects	7	1	1	7
Monogenic conditioned diseases with concomitant somatic defects	8	7	19	3
Genetic syndromes with foetal oedema	21	21	17	18
Other sex chromosome aberrations with a female phenotype without concurrent somatic defects	2	5	6	1
Other sex chromosome aberrations with female phenotype with concurrent somatic defects	8	2	4	2

Detailed medical diagnosis	2019	2018	2017	2016
Other sex chromosome aberrations with male phenotype without concurrent somatic defects	8	4	2	1
Other sex chromosome aberrations with male phenotype with concurrent somatic defects	9	5	5	1
Other chromosome aberrations not elsewhere classified without concomitant somatic defects	17	7	21	3
Other chromosome aberrations not elsewhere classified with concomitant somatic defects	15	29	17	38
Isolated defect (affecting a single system or organ on imaging study)	156	188	181	176
As a percentage of eugenic abortions	14.53%	17.90%	17.49%	16.89%
Multiple defects (defects of two or more systems or organs on imaging study)	200	209	196	227
As a percentage of eugenic abortions	18.62%	19.90%	18.94%	21.79%

Source: Prepared on the basis of the 2016-2019 reports of the Council of Ministers on the implementation and effects of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended).

2.2 Specific grounds for eugenic abortion 2016-2019

Since 2016, i.e., since the Ministry of Health reports were supplemented with the detailed medical grounds on which the decision to terminate a pregnancy was made, Down syndrome has been the cause of an average of 36% of all abortions performed annually. As is well known, unless there has been a miscarriage at an early stage of pregnancy, it is not a lethal and disabling defect in society¹¹, whereas the syndrome of birth defects with which trisomy 21 manifests itself consists overwhelmingly of somatic defects that are small and do not affect the quality of life, so-called dysmorphic features¹².

After Down syndrome, the most common chromosomal aberrations are trisomy 13, resulting in Patau syndrome, and trisomy 18, i.e., Edwards syndrome – these defects together accounted for 13.5% of abortions due to suspected foetal impairment or life-threatening incurable disease (of which 6% without

11 L. Sadowska et al., *Diagnostyka i terapia dzieci z zespołem Downa w świetle badań własnych i przeglądu literatury przedmiotu*, "Przegląd Medyczny Uniwersytetu Rzeszowskiego" 2009, no. 1, pp. 8-30.

12 L. Korniszewski, *Dziecko z zespołem wad wrodzonych. Diagnostyka dysmorfologiczna*, 2nd edition, Warszawa 2005, p. 30.

concurrent somatic defects and 7.5% with concurrent defects). Both trisomies are lethal defects, but, as the cases of children born despite the detection of the defect at the prenatal stage show, their appearance does not differ significantly from that of a healthy child. Moreover, some children born with trisomy 18 live longer than a week, and in some cases even longer than a year.¹³ It is worth noting that, in both cases, the estimated prevalence of trisomy mosaicism is around 5%, which means that the presence of the chromosomal aberration can be limited to up to a dozen or so per cent of cells and result in a phenotype that falls within the normal range and lacks dysmorphic features¹⁴.

The second largest group of medical diagnoses which were the reason for carrying out abortions on the basis of a eugenic premise were somatic defects, divided into isolated defects, i.e., defects of one system or organ on imaging, which accounted for almost 17% of eugenic abortions, and multiple defects, i.e., defects of two or more systems or organs on imaging, which accounted for almost 20% of eugenic abortions. As mentioned above, due to the flawed design of the form forming the basis of the Ministry of Health's reports in question, it is not possible to determine unequivocally the percentage that lethal defects accounted for among the grounds for abortion, and what proportion of them could be treated. This simplification was one of the most blatant abuses of the reporting system for abortion eligibility to date. Indeed, the category of somatic defects repeatedly included conditions that cease to be lethal if medical intervention is taken at the right moment – immediately after birth or in some cases still at the prenatal stage. Spina bifida, hydrocephalus or congenital abdominal malformations are examples of congenital malformations that are falsely portrayed as not only fatal but also gruesome, even in the current public debate. In the case of a spina bifida defect, neonates show no signs of distress or sleep problems at all,¹⁵ while the vast majority of babies born are able to function properly on

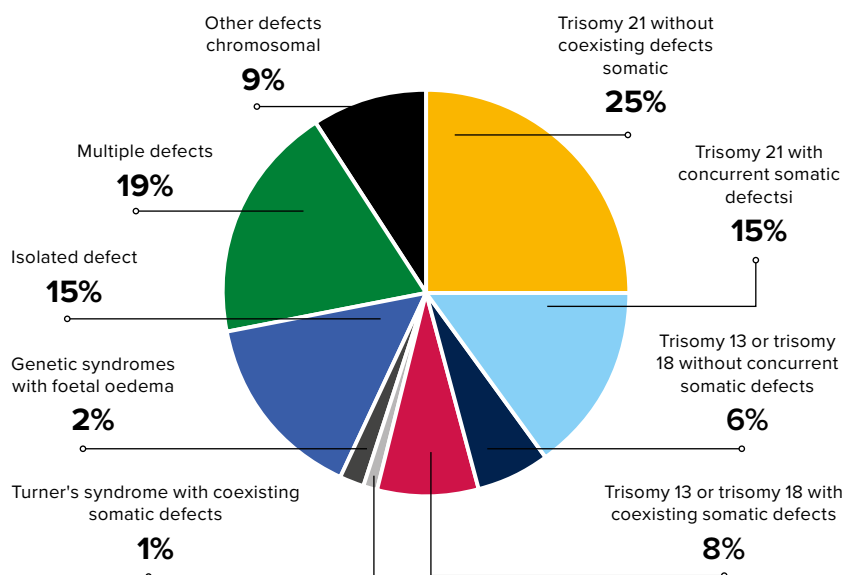
13 A. Cereda, J.C. Carey, *The trisomy 18 syndrome*, "Orphanet Journal of Rare Diseases" 2012, vol. 7, no. 1, <https://doi.org/10.1186/1750-1172-7-81>.

14 C.P. Chen et al., *Prenatal diagnosis of low-level mosaicism for trisomy 13 at amniocentesis associated with a favorable outcome*, "Taiwanese Journal of Obstetrics and Gynecology" 2017, vol. 56(6), <https://doi.org/10.1016/j.tjog.2017.10.025>, pp. 840-842; A. Cereda, J.C. Carey, op. cit.; R.E. Magenis, F. Hecht, S. Milham Jr., *Trisomy 13 (D1) syndrome: studies on parental age, sex ratio, and survival*, "The Journal of Pediatrics" 1968, vol. 73, [https://doi.org/10.1016/s0022-3476\(68\)80072-1](https://doi.org/10.1016/s0022-3476(68)80072-1), pp. 222-228.

15 Insomnia in a newborn baby when provided with favourable sleeping conditions would indicate severe pain, as opposed to normal sleep.

their own and, if appropriate treatment is administered, long-term survival rates are observed in patients.¹⁶ The same is true for hydrocephalus, which can be operated on surgically as early as the prenatal stage, significantly increasing survival and improving the prognosis of patients.¹⁷ Also, the mortality rate of neonates with congenital evisceration, which is usually an isolated defect, in leading paediatric surgery centres does not exceed 10%.¹⁸

Chart 2. Abortions performed in 2019 due to a high probability of severe and irreversible foetal impairment or an incurable life-threatening disease by specific medical diagnosis



Source: Prepared on the basis of the Report of the Council of Ministers on the implementation and effects of the application in 2019 of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended).

16 T.H. Rob de Jong, *Deliberate termination of life of newborns with spina bifida, a critical reappraisal*, "Child's Nervous System" 2008, vol. 24(1), pp. 13-28, <https://doi.org/10.1007/s00381-007-0478-3>; P. Oakeshott et al., *Expectation of life and unexpected death in open spina bifida: a 40-year complete, non-selective, longitudinal cohort study*, "Developmental Medicine & Child Neurology" 2009, vol. 52(8), pp. 749-753, <https://doi.org/10.1111/j.1469-8749.2009.03543.x>.

17 K. Szaflik et al., *Terapia płodu – ocena zastosowania shuntu komorowo-owodniowego w leczeniu wodogłowa*, "Ginekologia Polska" 2014, vol. 85, no. 12, pp. 916-922.

18 H. Bułhak-Guz et al., *Wrodzone wady powłok brzusznych a ultrasonograficzna diagnostyka prenatalna*, "Nowa Pediatria" 2000, no. 3, pp. 5-7.

It should also be noted that the lethal defects cited by many opponents of full protection of the life of the unborn child are most often not only extremely rare birth defects such as holoprosencephaly or neural tube defects, the incidence of which is estimated to be well below 0.01% but are also presented with graphics depicting extremely severe cases of the conditions cited. Meanwhile, some of the most common birth defects are cardiac and genitourinary malformations. There is also a widespread belief that congenital malformations are the only cause of death in the perinatal period, when they account for about 24% of intrauterine deaths and about 30% of deaths of born infants.¹⁹

2.3 Life as an overriding value

The majority of pregnancies with severe foetal harm spontaneously die in the first weeks after conception. In its judgment of 22 October 2020. The Constitutional Court referred to those situations in which, despite serious developmental abnormalities of the child, the pregnancy lasts longer. In such cases, as the Constitutional Court pointed out, 'while a high probability of severe and irreversible foetal handicap or an incurable disease threatening its life may also be associated with a threat to the life or health of the mother, Article 4a(1)(2) of the AFP does not refer to such a situation, the more so as the circumstance of such a collision was indicated as a separate premise for the admissibility of termination of pregnancy in Article 4a(1)(1). This means that if the circumstances specified in Article 4a(1)(1) and (2) occurred simultaneously, Article 4a(1)(1) should apply'.²⁰ Article 4a(1)(1) of the AFP allows saving the life of the mother first and foremost.²¹ The position that priority is given to actions aimed at saving the mother's life should not

19 M. Troszyński et al., *Przyczyny martwych urodzeń i zgonów noworodków w Polsce w latach 2007–2009*, "Ginekologia Polska" 2011, vol. 82, no. 8, pp. 598–601.

20 See the reasoning of the judgment of the Constitutional Tribunal in case K 1/20, marg. no. 165.

21 The ground for aborting a pregnancy based on a threat to the health of the mother raises concerns from the point of view of normative ethics. There is no doubt that the fundamental good of every human being is his or her life, and as such it comes first in the hierarchy of goods. Health is not an equivalent good, but an inferior one. Ethical conduct allows actions that save the life of the mother, even if it results in the death of her unborn child (according to the principle of double effect), but normative ethics does not allow such a procedure in which the killing of the child is a measure aimed at improving the health of the mother. In addition, significant doubts regarding the undefined concept of 'risk to the health of the pregnant woman' were raised in 2008 by the Ombudsman Dr. Janusz Kochanowski in a draft motion to examine the constitutionality of this condition for the permissibility of termination of pregnancy (draft motion of the Ombudsman, RPO-556383-II/05/PS, <https://bip.brpo.gov.pl/pliki/1202901674.pdf>, accessed 26 October 2022); the motion did not ultimately reach the Constitutional Court.

raise ethical concerns – for most of the pregnancy period, the possibility of the child's survival fully depends on the mother's existence.

Finally, there are lethal defects that do not threaten the life and health of the woman, with which children live to an advanced pregnancy or even the end of the pregnancy. Although radical sides of the social discourse try to extrapolate this situation of risk to the woman's life and health to all pregnancies with genetic disorders or other developmental defects (and even to perfectly healthy pregnancies), given the percentage of lethal defects among all pregnancies indicated above, we can estimate that these types of cases are singular, and that it is possible to investigate them and address the associated problems in a straightforward manner.

The discussion about this type of lethal defect concerns, on the one hand, the suffering of the child after birth – this is where the advances of palliative medicine come in as a solution – and, on the other hand, the psychological suffering of the women who would have to experience it due to the deformities and the general poor condition and subsequent rapid death of the child. The question then remains as to the impact of trauma on a woman's mental health – whether it is greater in the situation described above or in the situation of having an abortion. The answer certainly varies on a case-by-case basis, but it is worth noting that research indicates that the experience of abortion significantly increases the risk of mental disorders and the onset of suicidal thoughts relative to the experience of childbirth,²² and there is even a higher mortality rate among women who have had an abortion.²³

2.4 Risk of diagnostic error

It should not be forgotten that prenatal tests, which are the basis for decisions on abortion, are subject to a high risk of error and do not at all provide certainty as to the accuracy of the diagnosis. Incorrect diagnoses often

22 J.R. Cougle, D.C. Reardon, P.K. Coleman, *Depression associated with abortion and childbirth: a long-term analysis of the NLSY cohort*, "Medical Science Monitor" 2003, vol. 9(4), pp. 157-164; D.M. Fergusson, L.J. Horwood, E.M. Ridder, *Abortion in young women and subsequent mental health*, "Child Psychology and Psychiatry" 2006, vol. 47(1), pp. 16-24, <https://doi.org/10.1111/j.1469-7610.2005.01538.x>.

23 D.C. Reardon, P.K. Coleman, *Short and long term mortality rates associated with first pregnancy outcome: Population register based study for Denmark 1980-2004*, "Medical Science Monitor" 2012, vol. 18(9), pp. 71-76, <https://doi.org/10.12659/2FMSM.883338>.

contribute to the termination of pregnancies in which, in fact, the child has a high chance of survival, or even to the killing of fully healthy children. A common diagnostic error is when a doctor incorrectly diagnoses an ectopic pregnancy and prematurely prescribes methotrexate, a chemical agent intended to terminate the pregnancy. In a situation where the foetus is developing normally, such an action causes abnormalities in the child's development and ultimately leads to a handicap or miscarriage, whereas the child was initially healthy.²⁴ Sometimes the mother finds out at the next ultrasound examination that the embryo is developing in the uterus, contrary to previous assurances of an ectopic pregnancy. However, it is too late to save the baby.²⁵ Misdiagnoses of miscarriage are also not uncommon, on the basis of which doctors refer pregnant women for a uterine curettage without further verification of their condition. An example of this is the case of a woman who was referred for a uterine curettage procedure to remove the remnants of a miscarriage, and it was only through an additional ultrasound examination that she found out that the baby was still developing in her uterus.²⁶ It even happens that in such situations, the mistake is repeated by several doctors – the patient is sent for cervical dilation and curettage without hesitation, without verifying the results of the tests provided by the predecessor and checking that all the required tests were actually performed.²⁷ Diagnoses based on prenatal tests sometimes turn out to be wrong even in cases of such serious conditions as emphysema, polyposis or Edwards syndrome. Some parents find out about the diagnostic error and the absence of genetic defects after the abortion, based on the results of more detailed tests that were given to them with a long delay.²⁸ In other cases – where the parents decide to keep the child alive despite the detection of lethal defects – it turns out after the birth that the child is fully healthy and developing normally despite a negative prognosis,²⁹

24 L. Nurmohamed et al., *Outcome following high-dose methotrexate in pregnancies misdiagnosed as ectopic*, "American Journal of Obstetrics and Gynecology" 2011, vol. 205(6), pp. 533.e1-533.e3, <https://doi.org/10.1016/j.ajog.2011.07.002>.

25 C. Goldberg, *Tragically Wrong: When Good Early Pregnancies Are Misdiagnosed as Bad*, www.wbur.org/commonhealth/2013/10/11/ectopic-pregnancy-misdiagnosed-methotrexate, accessed 28 January 2022.

26 E. Cain, *Still Pregnant: My Miscarriage Was Misdiagnosed*, www.health.com/condition/pregnancy/still-pregnant-my-miscarriage-was-misdiagnosed, accessed 28 January 2022.

27 Sonographer, Mr C; Radiologist, Dr B; District Health Board, *A Report by the Health and Disability Commissioner, Case 15HDC00881*, www.hdc.org.nz/media/4448/15hdc00881.pdf, accessed 28 January 2022.

28 The Christian Institute, *Healthy baby aborted after misdiagnosis*, <https://www.christian.org.uk/news/healthy-baby-aborted-after-misdiagnosis>, accessed 28 January 2022.

29 A. Salawa, „Wielu specjalistów namawiało mnie na zakończenie ciąży...”, <https://www.pl.aleteia.org/2017/08/25/te-dzieci-urodzily-sie-wbrew-smiertelnej-diagnozie-lekarzy>, accessed 28 January 2022.

or its defects turn out to be operable and treatable, contrary to the assurances given by doctors in the early stages of pregnancy.³⁰ It follows from the above that a 'high probability' of a severe or fatal disease established on the basis of prenatal tests under the AFP may turn out to be a death sentence even for a completely healthy child.

3 The Ordo Iuris action and the lack of systemic transparency

Between 2017 and 2019, the Ordo Iuris Institute for Legal Culture conducted a campaign to send requests to Polish hospitals for public information (based on the provisions of the Act on access to public information of 6 September 2001³¹, hereinafter: API) concerning the number and causes of abortions performed since 1993.

Not all of the hospitals responded, and of those that did, not all responded comprehensively to the questions posed in the requests. Some of the answers were less and some were more detailed than others. The figures presented in the following section are therefore estimates and fragmented. Nonetheless, in the absence of other, particularly scientific, data on the subject, it is worth citing the results collected as part of the Ordo Iuris Institute's audit, which may serve to further research the issue at hand.

Applications were sent to 431 hospitals across the country, including 367 hospitals with reference levels I and II and 64 hospitals with reference level III. At this point, it should be noted that in March 2017, the legal basis for the division of hospitals by reference level changed. This is because the Regulation of the Minister of Health and Social Welfare of 22 December 1998 on the national hospital network and its reference levels³²

30 A. Hein, *Parents of babies misdiagnosed with terminal brain condition in utero left fate 'in God's hands'*, <https://www.foxnews.com/health/parents-of-baby-misdiagnosed-with-terminal-brain-condition-in-utero-left-fate-in-gods-hands>, accessed 28 January 2022.

31 Act of 6 September 2001 on access to public information (Dz.U. No. 112, item 1198).

32 Regulation of the Minister of Health and Social Welfare of 22 December 1998 on the national hospital network and its reference levels (Dz.U. No. 164, item 1193).

(hereinafter: MHSW Regulation of 22 December 1998), which had been in operation since 1998, was repealed, and now the issues of the division of hospitals within the system of basic hospital provision of healthcare services are regulated by the provisions of the Act of 27 August 2004 on healthcare services financed from public funds³³ (hereinafter: AHPS). However, considering that the questions addressed to hospitals mainly cover the period when the repealed regulation of the Ministry of Health was in force, in the further part of the study, the division of hospitals functioning in it was used.

The division of hospitals in terms of the degree of reference, introduced into the Polish legal order by the MHSW Regulation of 22 December 1998, was as follows:

- The first reference level comprised hospitals providing healthcare services in four basic medical specialities, including obstetrics and gynaecology;
- The second included provincial hospitals providing health services in the four basic specialities, as well as in anaesthesiology and intensive care and in at least four of the eleven specialities, which included pregnancy and neonatal pathology;
- The third included teaching hospitals of state medical universities or a state university conducting teaching and research activities in medical sciences and research and development units subordinate to the Minister of Health and Social Welfare.

Of the 367 hospitals of reference level I and II, only 74 (20.16%) acknowledged that abortions were performed in them between 1993 and 2017 on the basis of Article 4a of the Act a total of 956 abortions were performed in 74 hospitals (average: 13.46 abortions per hospital, median: 5 abortions). More than 50% of all abortions were performed in only 7 hospitals (number of abortions per hospital: 143, 111, 83, 64, 49, 26, and 24).

33 Act of 27 August 2004 on health care services financed from public funds (Dz.U. No. 210, item 2135).

Of the 64 hospitals with a reference level III, 27 (42.19%) admitted that abortions were performed in them between 1993 and 2017. A total of 4951 abortions were performed in the 27 hospitals (mean: 183.37 abortions per hospital, median: 79 abortions). More than 50% of all abortions were performed in just 3 centres (number of abortions per hospital: 1404, 912 and 575).

The actions undertaken by the Institute, in addition to providing illustrative data on abortion practice in Poland, first, highlighted the lack of openness with which the reporting system in this area is characterised, and demonstrated the need to carry out a kind of abortion audit – a verification of medical records after 1993 in order to check what specific reasons determined the killing of persons suspected of being disabled in their mothers' wombs during that period. A significant number of hospitals evaded answering and providing the detailed information referred to in the request, that is, the number of abortions performed by year, the specific reason for the abortion and the age of the mother. To some extent, the hospitals' responses are understandable – they point to problems arising from systemic inefficiencies – but in some cases the line of argumentation points to deliberate and unwarranted obstruction of access to public information.

3.1 No data aggregation system

One of the most common justifications cited by hospitals for not providing the requested information is that it would be a time-consuming and costly undertaking to complete and analyse the requested records. Thus, in many of the responses, we find detailed calculations of the number of medical records held at the hospital, the hours required to carry out such work and the additional staff that the hospital would have to employ for this purpose, topped by the amount of the fee that the requestor must pay to obtain the requested information. Interestingly, the time it takes to analyse one set of documents and the man-hour rate quoted by different facilities can vary drastically – from 10 minutes to an hour for a set of documents, from PLN 16 to over PLN 100 per hour of work, and so on. Although the reluctance to undertake such a demanding action seems justified – as we can learn from the answers, in some hospitals the matter boils down to the analysis of tens of thousands of sets of medical documents – it is worth asking ourselves

why documentation concerning such an important matter is hidden deep in archives and has not been organized on a national level so far.

The lack of a system to aggregate this type of data makes it impossible to make reliable analyses and create evidence-based health policies. An audit conducted by the Ordo Iuris Institute pointed to the need for a better system of reporting on procedures performed by health care institutions that is transparent to the public and scientific research. Hospitals are, after all, obligated to submit the MZ-29 forms to the Ministry of Health every year, which should include information on the number of abortions performed each year, together with the reasons for performing them. The response to the Institute's request should therefore not require hospital staff to analyse each medical record individually, but rather a dozen or so archived MZ-29 forms, completed and submitted previously to the Ministry. If hospitals do not have such statements and do not keep transparent records of abortions performed, this is another systemic problem that should be resolved. If some citizens are being deprived of their lives, claiming that this is justified by the law in force, then this procedure should be duly justified; it should be demonstrated in an honest and unbiased manner that it is absolutely unavoidable, and the case should be made as transparent as possible.

Some hospitals cited the difficulty of processing older records because they were paper-based or not possible – with individual hospitals not implementing electronic records at the same time. There were also cases where hospitals did not keep the statistics in question at all or had only been doing so for a few years. Furthermore, some claimed that they were not obliged to keep such statistics or that they were not required by law to do so. Such an argumentation is false, as the MZ-29 form itself indicates that 'the obligation to provide statistical data results from Article 30(3) of the Public Statistics Act of 29 June 1995 (Dz.U. 2020, item 434, as amended)'.

On the other hand, several hospitals informed that they could not provide data from the entire period requested in the request, i.e., from 1993 onwards, because medical records are kept for a period of 20 years, starting from the calendar year in which the last entry was made, and then destroyed: the hospitals referred here to Article 29(1) and (2) of the Act of

6 November 2008 on patients rights and the Patients Rights Ombudsman³⁴ (hereinafter: APR). However, Article 29(1)(1) of the said APR already includes an exception for medical records ‘in the case of death of a patient as a result of bodily injury or poisoning, which shall be kept for a period of 30 years, counting from the end of the calendar year in which the death occurred’. At the very least, it seems worthy of consideration whether the fact that a patient – the conceived child – dies as a consequence of bodily harm as a consequence of the abortion procedure should not affect the extension of the retention period of medical records. By denying the conceived child the title of patient or its homicide by assigning the term ‘health service provided’ in place of death, one inevitably departs from the subjective treatment of the human being.

3.2 Need for better access to public information

Another very frequent case was the refusal to respond explained by the lack of an obligation to provide it – the medical institutions indicated that the information covered by the request for public information did not meet the criteria for public information. Hospitals also argued that in order for there to be an obligation to provide information deemed by the healthcare entity to be processed information, the applicant should demonstrate that it is in fact of particular importance to the public interest – at the same time adding that the requested information does not have particular importance to the public interest. Some responses juxtaposed the importance of a public good with a social good or, for a change, a private good. For example, in a letter from the Independent Public Clinical Hospital named after Professor Witold Orłowski in Warsaw, we read that ‘the information indicated in the request does not concern public interest, but social interest’.³⁵ It is worth mentioning that although social interest is sometimes combined with group interest or the interest of social organizations representing groups, this concept is often treated as identical to the concept of public interest. Irrespective of their distinction, however, the protection of human life is certainly in the interest of society as a whole and, at the same time,

34 Act of 6 November 2008 on patients rights and the Patients Rights Ombudsman (Dz.U. 2009, No. 52, item 417).

35 Professor Witold Orłowski Independent Public Clinical Hospital, letter No. D-022Z/157/2018 of 13 April 2018.

constitutes the credibility of the state, which, according to the Constitution, is supposed to ensure the protection of the life of every citizen. In another response – from the John Paul II Regional Hospital in Bełchatów – it was rightly noted that ‘in accordance with Article 5(1) of the Act [API], the right to public information is subject to restriction to the extent and on the principles specified in the provisions on the protection of classified information and on the protection of other statutorily protected secrets’.³⁶ It was further pointed out that diagnoses concerning individual medical cases or their verification are not public information, and ‘the determination of the reason why the pregnancy endangers the life or health of the pregnant woman, as well as the results of prenatal tests or the description of medical indications pointing to a high probability of severe and irreversible impairment of the foetus or an incurable disease threatening its life require recourse to medical records covered by medical secrecy’.³⁷ Nevertheless, the position that statistics on the number of abortions performed and the grounds on which they were performed constitute public information, and the need for the hospital to make such information available if necessary, is supported by case law. On 15 December 2017 the Provincial Administrative Court in Kraków issued a judgment,³⁸ in which it considered the complaint of the Ordo Iuris Institute against the hospital director’s decision to refuse to make public information available. The decision was partially overturned. The court acknowledged the legitimacy of 7 out of 11 questions asked by the Ordo Iuris Institute, confirming that ‘if the enquiry concerns, in fact, information in the field of medical statistics, the authority’s position that it is not public information cannot be accepted’. The Institute was therefore entitled to demand information on whether abortions had been performed in the hospital in question between 1993 and 2016, how many abortions had been performed, on which statutory grounds this had been done, in how many cases pharmacological induction of miscarriage had been carried out, how many cases of non-self-induced and spontaneous miscarriages there had been, and how many uterine curettage (abrasion) procedures had been carried out.

36 John Paul II Regional Hospital in Bełchatów, letter no. DSO/0707/19/2018 of 16 April 2018.

37 Ibid.

38 Judgment of the Provincial Administrative Court in Kraków of 15 December 2017, ref. II SA/Kr 1206/17.

3.3 The need for greater accountability related to the spending of public funds

What seems surprising, however, is the refusal of the position of the non-public hospital Tuchów Health Centre Sp. z o.o. [in Polish: Centrum Zdrowia Tuchów Sp. z o.o.; hereinafter: CZT], which provides health services on the basis of a contract with the NHF but claims that it does not dispose of public property or perform public tasks. It reads that 'CZT cannot be considered an entity qualifying for the group mentioned in Article 4 (1)(5) of the Act on access to public information',³⁹ because 'there is no State Treasury, local or economic or professional self-government unit in the ownership structure of CZT Sp. z o.o.'. CZT further argues that 'despite providing services under contract with the NHF, it also does not dispose of public assets', because 'the treatment entity does not dispose of public funds', but only 'receives remuneration for the services provided; except that the payer is not the insured patient but the NHF'. 'CZT Sp. z o.o. in its activities does not perform public tasks but provides socially useful services refinanced in some part by the NHF. The legal framework for the provision of these services is defined by the Act of 15 April 2011 on therapeutic activity. Thus, the mere receipt of remuneration from the NHF for services provided to insured patients does not yet prove that a public task has been performed.'⁴⁰ This position is wrong, in confirmation of which it is worth quoting an excerpt from the justification of the judgment of the Supreme Administrative Court of 12 June 2019,⁴¹ in which the Supreme Administrative Court indicated that 'there is no doubt that the Hospital, which provides medical services on the basis of an agreement with the NHF, is [...] an entity obligated to make public information available, in connection with this circumstance, pursuant to Article 4(1)(5) of the u.d.i.p. [API]. In the case, it is not disputed that the Hospital has a civil-law agreement signed with the NHF and performs services for which it receives remuneration.

39 According to Article 4(1)(5) of the Act on access to public information, 'the entities obliged to make public information available are public authorities and other entities performing public tasks, in particular: [...] (5) entities representing other persons or organisational units that perform public tasks or dispose of public property, and legal persons in which the State Treasury, units of local self-government or economic or professional self-government have a dominant position within the meaning of the provisions on competition and consumer protection' – editor's note.

40 Tuchów Health Centre Sp. z o.o. letter of 18 April 2018.

41 Judgment of the Supreme Administrative Court of 12 June 2019, ref. I OSK 2594/17, LEX no. 2725990.

Since certain services are provided to patients and the NHF is the payer of those services, it is reasonable to conclude that with respect to services financed by the NHF, the activities of a commercial law company providing medical services are subject to social control consisting of the obligation of the company to provide public information'. When deciding to cooperate with the NHF, a non-public medical entity is therefore obligated to keep statistics and make them available within the framework of access to public information to the extent that its activities are financed from a public fund made up of taxpayers' money.

3.4 A tertiary referral hospital – the default place to perform abortions

In several cases, the hospitals explicitly stated that the termination of pregnancy is not performed in them due to the fact that they belong to institutions of the first referral level – these were the Multi-Specialist Independent Public Healthcare Institution Hospital in Zgorzelec, the Brzeg Medical Centre, the Medical Centre in Łańcut, the Independent Public Healthcare Institution in Bielsk Podlaski, and Szpitale Tczewskie S.A. The hospitals explained that it is within their authority to provide care for women with uncomplicated pregnancies and those giving birth on time, while the cases specified in Article 4a of the Act of 7 January 1993 are not handled by them. The Independent Public Healthcare Institution in Zgorzelec even admits that 'in the case of a genetically damaged pregnancy (diagnosed and confirmed on the basis of ultrasound and biochemical tests), the patient is referred to a centre of the 3rd reference level'.⁴² Szpitale Tczewskie S.A. provided the most precise information, stating that every patient with a pregnancy found to be subject to the Act (on the conditions for the permissibility of terminating pregnancy) is referred to a centre of 3rd reference level in Gdańsk for further diagnosis and treatment. This means that abortion is widely considered by specialists to be such a dangerous procedure that many refuse to perform it due to inadequate conditions – even in seemingly specialised units.

42 Multi-Specialist Independent Public Healthcare Institution Hospital in Zgorzelec, Organization and Supervision Department, letter No. WS – SP ZOZ/DON/pft/2018/301 of 26 April 2018.

As the measures taken show, obtaining information on abortions based on the provisions of the AFP, directly from hospitals is often impossible, and hospitals themselves avoid sharing statistical data. On the other hand, the collected responses indicate the likelihood of reporting and financial abuse and raise doubts about the reliability of the collected data. Some hospitals do not transparently keep records of abortions performed or even report on them at all. This is particularly reprehensible in those situations where such activity is a publicly reimbursed part of the activity of the healthcare entities. In view of the many inaccuracies, potential abuses, and the general lack of transparency in the system, it seems necessary to carry out a kind of audit to comprehensively verify statistical documentation on the performance of abortions.

4 Discrepancies in data from the Ministry of Health and the National Health Fund

Records of abortions performed are kept by two bodies: The Ministry of Health and the NHF. The data collection system is mainly characterised by a lack of transparency and leaving room for undetectable abuses. In principle, the reporting of both bodies should be consistent, but – as it turns out – the data collected by the NHF on the number of abortions differs significantly from the data published in the annual reports of the Ministry of Health. For example, in 2016, according to the NHF, 1602 ‘inductions of miscarriage’ were performed, while government data shows that 1098 ‘abortions’ were performed. Such significant differences raise questions about the reason for the inconsistencies and cast doubt on the reliability of the data.

4.1 Termination of pregnancy procedure vs. induction of miscarriage

The discrepancies between the documentation of the Ministry of Health and the National Health Fund are related to differences in the nomenclature and classification systems used by the two institutions. The reports of the Ministry of Health show ‘termination of pregnancy procedure’ – a term consistent with the statutory nomenclature. The reports include a breakdown

of the number of abortions performed according to the three statutory grounds, as well as the age of the patient and the province in which the procedure was performed. The obligation to prepare the statements arises from Article 9 of the AFP, according to which the Council of Ministers is obligated to present an annual report on the implementation of the AFP and on the effects of its application. The basis for this report is the data collected by the Ministry of Health using the MZ-29 form. On the other hand, the data collected by the NHF is of a financial, billing nature, and the breakdown of treatments takes into account the value of the services provided. Within the system of homogeneous groups of patients [in Polish: *jednorodne grupy pacjentów*; hereinafter: JGP], which is used to account for medical services provided in hospitals on the basis of contracts with the National Health Fund, abortion is included in the category of services with code M17 *Induction of miscarriage* – thus, the statutory concept of termination of pregnancy does not function in this system.

One can encounter information that the above-described differences in classification lead to incomparability of information from the two sources – the terms used by the NHF and the MZ are supposed to cover a different range of treatments. The Ministry of Health’s answer to the parliamentary question on these discrepancies in 2016 shows that the M17 benefit covers a wider pool of treatments than the statutory ‘termination of pregnancy’. When asked in 2016 whether, by using the phrase ‘induction of miscarriage’, the NHF was not trying to hide the main reason for performing abortions, the then Undersecretary of State replied that ‘the individual groups [i.e., categories of services – editor’s note] have a specific clinical relevance involving a similar treatment modality and patient profile. They include medical cases of similar cost intensity related to the adopted treatment modality’.⁴³ Professor Stanisław Radowski, National Consultant for Obstetrics and Gynaecology at the time, explained in an interview with the Polish Press Agency that ‘induction of a miscarriage is a legal abortion performed on medical grounds, such as foetal demise. Induction of miscarriage is

43 Response to parliamentary question No. 3717 on the abortion underground in Poland, 29 June 2016, answered by Undersecretary of State in the Ministry of Health Marek Tombarkiewicz, <https://www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=7D5F64B9>, accessed 28 January 2022.

a broader concept than termination of pregnancy for legal indications'.⁴⁴ While this explanation should be factually correct, in the light of the data obtained and the response from the Ministry of Health, it is questionable whether it is always understood in this way in the statistics.

In 2018, in response to another parliamentary question 'on the discrepancy of data on abortions performed', the Ministry of Health explained the same discrepancy quite differently, claiming that the reason for the inconsistency was the incorrect process of qualifying treatments under group M17 *Induction of miscarriage*.⁴⁵ According to the adopted algorithm, 'when the diagnosis indicated the management of a missed miscarriage, the hospitalisation in question should be classified under group M16 *Threatened or completed miscarriage, management of intrauterine foetal demise*'. On the other hand, 'when the medical procedure 69.01 *Dilation of the cervical canal and curettage of the walls of the uterine cavity for termination of pregnancy* was additionally demonstrated, the hospitalisation in question incorrectly implied group M17'.⁴⁶ This means that the correct category for a curettage procedure performed after a spontaneous miscarriage is group M16⁴⁷ *Management of intrauterine foetal demise*, whereas only abortion should appear in category M17.

This division is confirmed by the characteristics of the individual benefit categories in the JGP system [system of homogeneous groups of patients – editor's note], which can be found in Annex No. 9 to the Order of the President of the NHF of 31 December 2019.⁴⁸ In this document, there are detailed lists of procedures and medical diagnoses that allow a benefit to be classified in a specific category. Thus, for the benefit M17 *Induction of miscarriage*, there is a list of diagnoses covering only artificial miscarriages (induced by a doctor) in various variants, as well as a list of procedures

44 Gosc.pl, *Najnowsze statystyki legalnych aborcji w Polsce*, <https://www.gosc.pl/doc/2432742.Najnowsze-statystyki-legalnych-aborcji-w-Polsce>, accessed 28 January 2022.

45 Response to parliamentary question No. 23921 on the discrepancy of data on abortions performed by hospitals, 13 September 2018, answered by Secretary of State at the Ministry of Health Józefa Szczurek-Żelazko, www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=B4KHG8, accessed 28 January 2022.

46 Ibid.

47 CompuGroup Medical, *JGP Group. M16*, <http://jgp.uhc.com.pl/doc/52.5/jgp/M16.html>, accessed 28 January 2022.

48 Order No. 184/2019/DSOZ of the President of the National Health Fund of 31 December 2019 on defining the conditions for concluding and performing contracts in the type of hospital treatment and hospital treatment – highly specialised services, Annex No. 9.

leading to artificial miscarriage: 69.01 *Dilation of the cervical canal and curettage of the walls of the uterine cavity for termination of pregnancy*, 75.01 *Injection of prostaglandin to induce miscarriage*, 75.03 *Termination of pregnancy by intrauterine injection*, 99.295 *Administration of a preparation to terminate pregnancy*, 99.993 *Insertion of a prostaglandin suppository* (see Table 3). In addition, in Annex No. 1a to the Order – as well as in the online JPG system⁴⁹ – a note appears about the compatibility of benefit M17 with the AFP, this being the only benefit for which the AFP is indicated as the legal basis.

Treatments that fall outside the category of termination of pregnancy for legal indications, i.e., leading to termination of pregnancy after natural foetal demise, and therapeutic management after foetal demise, are assigned to the benefit M16 *Threatened or completed miscarriage, management of intrauterine foetal demise*. There is a very comprehensive list of M16 diagnoses, including, but not limited to, missed miscarriages, empty foetal eggs, non-genital and clustered hydrops, ectopic pregnancies, continuation of pregnancy after a termination. The procedures assigned to benefit M16 are 69.01 *Dilation of the cervical canal and curettage of the walls of the uterine cavity for termination of pregnancy* and 69.02 *Dilation of the cervical canal and curettage of the walls of the uterine cavity after delivery or miscarriage; the first procedure refers to a missed miscarriage* (intrauterine foetal demise), see Table 3: diagnosis O31.2 *Continuation of pregnancy after the death (intrauterine death) of one or more fetuses*.

It is not true, therefore, that the category M17 *Induction of miscarriage* includes both abortions performed on statutory grounds and the procedure to remove the body of a dead foetus from the uterus and the treatment necessary after the foetus has died – these cases are clearly assigned to the category M16 *Threatened or completed miscarriage, management of intrauterine foetal demise*. The number of M17 services performed should only include the number of physician-induced artificial abortions, i.e., procedures to remove a living and developing foetus from the woman's body, i.e., the number of abortions performed.

49 CompuGroup Medical, JGP Group. M17, <http://jpgp.uhc.com.pl/doc/52.5/jgp/M17.html>, accessed 28 January 2022.

Table 3. Characteristics of homogeneous groups of patients according to the 2019 Order of the President of the National Health Fund

M16 Threatened or completed miscarriage, management of intrauterine foetal demise
<i>required to indicate principal diagnosis from list of M16 diagnoses</i>
ICD-10
O02.0 Empty foetal egg and non-genital hydrops
O02.1 Missed miscarriage
O02.8 Other specified abnormal foetal egg
O02.9 Abnormal foetal egg, unspecified
O03.0 Spontaneous miscarriage (incomplete, complicated by infection of the genital tract and pelvic organs)
O03.1 Spontaneous miscarriage (incomplete, complicated by prolonged or excessive bleeding)
O03.2 Spontaneous miscarriage (incomplete, complicated by embolism)
O03.3 Spontaneous miscarriage (incomplete, with other and unspecified complications)
O03.4 Spontaneous miscarriage (incomplete, without complications)
O03.5 Spontaneous miscarriage (complete or unspecified, complicated by infection of the genital tract or pelvic organs)
O03.6 Spontaneous miscarriage (complete or unspecified, complicated by prolonged or excessive bleeding)
O03.7 Spontaneous miscarriage (complete or unspecified, complicated by embolism)
O03.8 Spontaneous miscarriage (complete or unspecified, with other or unspecified complications)
O03.9 Spontaneous miscarriage (complete or unspecified, without complications)
O05.0 Other miscarriage (incomplete, complicated by infection of the genital tract and pelvic organs)
O05.1 Other miscarriage (incomplete, complicated by prolonged or excessive bleeding)
O05.2 Other miscarriage (incomplete, complicated by embolism)
O05.3 Other miscarriage (incomplete, with other and unspecified complications)
O05.4 Other miscarriage (incomplete, without complications)
O05.5 Other miscarriage (complete or unspecified, complicated by infection of the genital tract or pelvic organs)
O05.6 Other miscarriage (complete or unspecified, complicated by prolonged or excessive bleeding)
O05.7 Other miscarriage (complete or unspecified, complicated by embolism)
O05.8 Other miscarriage (complete or unspecified, with other or unspecified complications)
O05.9 Other miscarriage (complete or unspecified, without complications)
O06.0 Miscarriage, unspecified (incomplete, complicated by infection of the genital tract and pelvic organs)
O06.1 Miscarriage, unspecified (incomplete, complicated by prolonged or excessive bleeding)
O06.2 Miscarriage, unspecified (incomplete, complicated by embolism)
O06.3 Miscarriage, unspecified (incomplete, with other and unspecified complications)
O06.4 Miscarriage, unspecified (incomplete, without complications)
O06.5 Miscarriage, unspecified (complete or unspecified, complicated by infection of the genital tract or pelvic organs)
O06.6 Miscarriage, unspecified (complete or unspecified, complicated by prolonged or excessive bleeding)
O06.7 Miscarriage, unspecified (complete or unspecified, complicated by embolism)
O06.8 Miscarriage, unspecified (complete or unspecified, with other or unspecified complications)
O06.9 Miscarriage, unspecified (complete or unspecified, without complications)
O08.0 Infections of the reproductive tract and pelvic organs following miscarriage, ectopic pregnancy and gestational hypertrophy
O08.1 Prolonged or excessive bleeding due to miscarriage, ectopic pregnancy, and chorionic hypertrophy
O08.2 Embolism following miscarriage, ectopic pregnancy, and chorionic hygroma
O08.3 Shock as a result of miscarriage, ectopic pregnancy, and chorionic hygroma
O08.4 Renal failure following miscarriage, ectopic pregnancy and gestational hypertension
O08.5 Metabolic disorders following miscarriage, ectopic pregnancy and gestational hypertrophy
O08.6 Damage to pelvic organs and tissues following miscarriage, ectopic pregnancy, and hydrops gestation
O08.8 Other complications following miscarriage, ectopic pregnancy, and hydatidiform myoma
O08.9 Complication of miscarriage, ectopic pregnancy, and chorionic hypertrophy, unspecified
O20.0 Threatened miscarriage
O20.8 Other hemorrhage in early pregnancy
O31.2 Continuation of pregnancy after death (intrauterine death) of one or more foetuses
or
<i>required to indicate the principal diagnosis from the list of M16 and the procedure from the list below</i>
69.01 Dilatation of the cervical canal and curettage of the walls of the uterine cavity for termination of pregnancy
69.02 Dilatation of the cervical canal and curettage of the walls of the uterine cavity after delivery or miscarriage
M17 Induction of miscarriage
<i>required indication of principal diagnosis from the M17 list of diagnoses and procedure from the M17 list of procedures</i>
ICD-10
O04.0 Artificial (physician-induced) miscarriage (incomplete, complicated by infection of the genital tract and pelvic organs)
O04.1 Artificial miscarriage (physician-induced) (incomplete, complicated by prolonged or excessive bleeding)
O04.2 Artificial miscarriage (physician-induced) (incomplete, complicated by embolism)
O04.3 Artificial miscarriage (physician-induced) (incomplete, with other and unspecified complications)
O04.4 Artificial miscarriage (physician-induced) (incomplete, without complications)
O04.5 Artificial miscarriage (physician-induced) (complete or unspecified, complicated by infection of the reproductive tract or pelvic organs)
O04.6 Artificial miscarriage (physician-induced) (complete or unspecified, complicated by prolonged or excessive bleeding)
O04.7 Artificial miscarriage (physician-induced) (complete or unspecified, complicated by embolism)
O04.8 Artificial miscarriage (physician-induced) (complete or unspecified, with other or unspecified complications)
O04.9 Artificial miscarriage (physician-induced) (complete or unspecified, without complications)
ICD-9
69.01 Dilatation of the cervical canal and curettage of the walls of the uterine cavity to terminate pregnancy
75.01 Injection of prostaglandin to induce miscarriage
75.03 Termination of pregnancy by intrauterine injection
99.295 Administration of a preparation to terminate pregnancy
99.993 Insertion of prostaglandin suppository

Source: Order No. 184/2019/DSOZ of the President of the National Health Fund of 31 December 2019 on defining the conditions for concluding and performing contracts in the type of hospital treatment and hospital treatment – highly specialised services, Annex No. 9.

In view of the above, the number of performed procedures included in the reports of the Ministry of Health and the NHF – i.e., the number of ‘pregnancy terminations’ and ‘inductions of miscarriage’ – should be equal. Meanwhile, each year in the period 2009-2019⁵⁰ the number of ‘inductions of miscarriage’ services reimbursed and declared by the 16 provincial centres of the NHF exceeded the number of abortions appearing in the reports of the Ministry of Health by several hundred cases. In 2019, the difference was more than 300 procedures. On the other hand, the number of procedures in category M16, leading to the termination of pregnancy after natural foetal demise or related to therapeutic management after foetal demise – which, according to some opinions, are to be included in category M17 used by the NHF and are supposed to make up the difference between the number of abortions and the number of inductions of miscarriage – in fact far exceeds 80,000 per year (see Table 4 and Figure 3).

Table 4. Number of performed abortions and services – M17 *Induction of miscarriage* and M16 *Threatened or completed miscarriage, management of intrauterine foetal demise* – reimbursed between 2009 and 2019

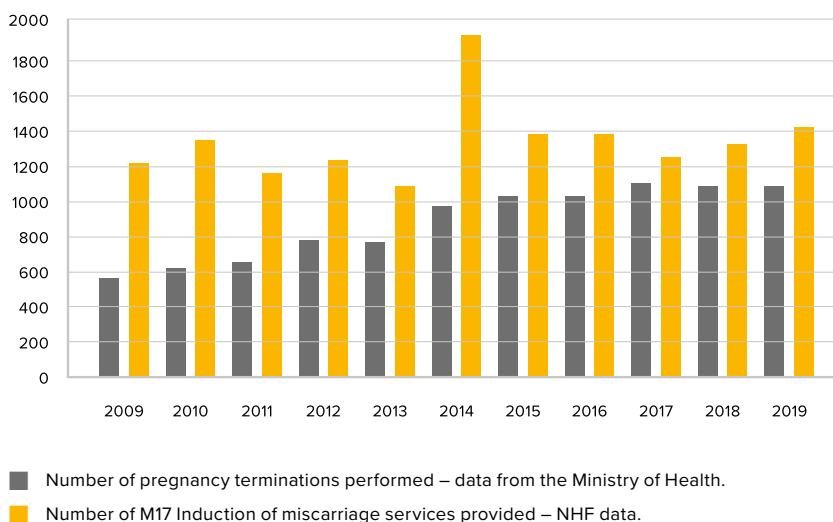
	Ministry of Health: abortions	NHF: M17 <i>Induc- tion of miscarriage</i>	NHF: M16 <i>Threatened or completed miscarriage, management of intra- uterine foetal demise</i>
2009	538	1222	112 098
2010	641	1346	98 523
2011	669	1169	91 480
2012	752	1252	90 551
2013	744	1351	90 033
2014	971	1924	87 302
2015	1040	1377	87 558
2016	1098	1602	89 372

50 The JGP system [system of homogeneous groups of patients – editor’s note] was introduced by an order of the President of the NHF of 11 June 2008 (order No. 32/2008/DSOZ of the President of the National Health Fund of 11 June 2008 on defining the conditions for the conclusion and performance of contracts in the type: hospital treatment), so the NHF does not have data on the performance of groups M16 and M17 before 2008. The earliest available data cover the second half of 2008 (781 procedures). The most recent data [available at the time of this publication – editor’s note] covers the first three quarters of 2020, during which 1069 inductions of miscarriage services were performed.

	Ministry of Health: abortions	NHF: M17 <i>Induction of miscarriage</i>	NHF: M16 <i>Threatened or completed miscarriage, management of intrauterine foetal demise</i>
2017	1057	1242	84 048
2018	1076	1332	83 271
2019	1110	1444	85 133

Source: Prepared on the basis of the NHF response to a request for public information and the annual reports of the Council of Ministers on the implementation and effects of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended).

Figure 3: Number of abortions performed and M17 *Induction of miscarriage* services reimbursed between 2009 and 2019



Source: Prepared on the basis of the NHF response to a request for public information and the annual reports of the Council of Ministers on the implementation and effects of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended).

Given that the M17 benefit should only cover terminations of pregnancy as defined by law, it is clear that there is misconduct and reporting errors.

4.2 Potential misconduct and reporting errors

First, one may suspect that there is intentional falsification of data and underreporting of statistics by not reporting some of the abortions performed

and reimbursed by the NHF in the MZ-29 forms. In this way, it is possible for hospital staff to conceal the termination of a healthy pregnancy that did not qualify for abortion on the basis of statutory grounds. Indeed, for the purposes of reimbursement from the NHF, it is not necessary to provide information on the detailed reason for the performance of the service, either in legal or medical terms, but it is only necessary to indicate the principal diagnosis from the list provided in the form.

Another possible incident is fraud and the overstatement of the statistics on the number of services performed to be reimbursed by hospital authorities in order to increase the subsidies given to that facility by the NHF. There are known cases and allegations of falsification of documentation by hospital staff and receipt of amounts not actually due to hospitals from the NHF.⁵¹ It is therefore realistic to suspect that a similar incident may also apply to inductions of miscarriage services.

Also likely is the incorrect use of the JGP system and the erroneous, albeit unintentional, classification of procedures for management of a missed miscarriage as M17, even though they are in fact in the M16 category. Such an omission would artificially inflate the number of inductions of miscarriage services. However, here it is worth noting that the presence of procedure 69.01 *Dilation of the cervical canal and curettage of the walls of the uterine cavity for termination of pregnancy* in both the list of procedures for benefits M16 and M17 also does not exclude the occurrence of reverse errors, i.e., misclassification of inductions of miscarriage services to group M16. The coincidental occurrence of both errors significantly reduces the requirement to state the principal diagnosis from the lists assigned to benefits⁵² in addition to the procedure performed – the diagnoses included in the M16 and M17 lists do not overlap.

51 Komenda Wojewódzka Policji w Kielcach [Provincial Police Headquarters in Kielce], *Podejrzani o wyludzenie kilku milionów z NFZ-u*, <https://www.policja.pl/pol/aktualnosci/191241,Podejrzani-o-wyludzenie-kilku-milionow-z-NHF-u.html>, accessed 28 January 2022; K. Kowalska, *Lekarze rejestrują fikcyjne wizyty i wyludzają pieniądze z NFZ*, <https://www.rp.pl/Lekarze-i-pielegniarki/302289930-Lekarze-rejestruja-fikcyjne-wizyty-i-wyludzaja-pieniadze-z-NHF.html>, accessed 28 January 2022.; Komenda Wojewódzka Policji w Szczecinie [Provincial Police Headquarters in Szczecin], *Zarzuty za fałszowanie dokumentacji i wyludzenia z NFZ*, <https://www.policja.pl/pol/aktualnosci/102668,Zarzuty-za-falszowanie-dokumentacji-i-wyludzenia-z-NHF.html>, accessed 28 January 2022; GazetaPrawna.pl, *NFZ: w szpitalach dochodzi do fałszowania dokumentacji medycznej*, <https://praca.gazetaprawna.pl/artykuly/313303,NHF-w-szpitalach-dochodzi-do-falszowania-dokumentacji-medycznej.html>, accessed 28 January 2022.

52 In the case of M16, stating the procedure is not always necessary, stating the diagnosis is.

In practice, there are also cases of deliberate falsification of documentation and concealment of abortions performed in statistics in another category – situations where doctors ‘performed the procedure, only that they wrote in the hospital records “spontaneous miscarriage”’.⁵³ Of course, this could apply to both the documentation for the Ministry of Health and the NHF at the same time, which would mean that a doctor-induced artificial miscarriage documented in this way would not appear as a termination of pregnancy anywhere. By the way, the value of M16 and M17 services is very similar, which means that the entity taking such steps would not suffer financial losses from this, and may even achieve a small benefit – the point value of M16 *Threatened or completed miscarriage, management of intrauterine foetal demise* is 1559 (1434 for elective hospitalisation), while the point value of M17 *Induction of miscarriage* is 1448 (1333 for elective hospitalisation).⁵⁴

As a result, it is not possible to define the true number of abortions performed, to identify the amount of public funding allocated to it or to detect abuses in this regard. The manner of reporting has also often made it impossible to verify whether aborted pregnancies met the statutory conditions for abortion. Thus, we observe many actions that can be interpreted as either gross oversights or deliberate actions to conceal unwarranted abortions.

5 Proposals for further action

In the face of the unconstitutionality of the eugenic ground, it is necessary to transform the health care system in such a way as to provide maximum care to pregnant women and their children, especially those with disabilities and serious illnesses. Assistance must be provided both at the prenatal stage and after birth. It is therefore necessary to develop prenatal medicine and the organization of full-time care for mothers during pregnancy, as well as to provide appropriate conditions and treatment for sick children and their families from the moment of birth.

53 Notatki na mankietach, *Posłowie do czarnego protestu*, <https://futrzak.wordpress.com/2016/10/04/poslowie-do-czarnego-protestu>, accessed 28 January 2022.

54 Order No. 184/2019/DSOZ of the President of the National Health Fund of 31 December 2019 on defining the conditions for concluding and performing contracts in the type of hospital treatment and hospital treatment – highly specialised services, Annex No. 1a.

5.1 Development of prenatal medicine

The judgment of the Constitutional Tribunal of 22 October 2020 restored prenatal medicine – and prenatal examinations in particular – to their proper purpose. During the period when Article 4a(1)(2) of the AFP was in force, prenatal examinations were mostly treated as a stage of verification of the child's state of health, and when they ended with a negative diagnosis, they usually preceded the decision to perform an abortion. Rather, they served as a tool for detecting the possibility of using a eugenic ground and were sometimes even used by doctors as a basis for making suggestions and recommendations to terminate a pregnancy. By contrast, there is now the prospect of prenatal diagnosis being used in accordance with its proper purpose – in accordance with the proper purpose of any diagnosis – which is to enable treatment and possibly to halt further development of the disease. A diagnosis made while still pregnant allows action to be taken at the earliest stage of the disease.

In this context, it is worth emphasising that the views presented in the public space that the Constitutional Tribunal ruling may result in limiting the availability of prenatal examinations on the basis of the APR are completely unfounded. Meanwhile, when using the term 'health services', the APR refers to the Act of 15 April 2011 on medical activity. In accordance with the definition contained therein, the term health services should be understood as 'activities aimed at preserving, saving, restoring or improving health, as well as other medical activities resulting from the treatment process or separate provisions regulating the principles of their performance'.⁵⁵ It should be noted that an analogous definition of health benefit was used by the legislator in Article 5(40) of AHPS. On the basis of Article 31d of this Act, a decree was issued specifying the conditions of the prenatal testing programme.⁵⁶

It is clear from the legal acts referred to above that the first and primary purpose of the provision of health services by health care entities is to save or sustain human health within the framework of their therapeutic activities.

⁵⁵ Act of 15 April 2011 on medical activity (Dz.U. 2020, item 295), Article 2(1)(10).

⁵⁶ Regulation of the Minister of Health of 6 November 2013 on guaranteed services in the field of health programmes (Dz.U. 2020, item 2209).

On this basis, it can be concluded that there are equal consequences for both the pregnant woman and her child from the framework of health services thus defined. This is because all medical activities should first of all save fundamental goods, such as life and then human health. This principle also follows from the Code of Medical Ethics: '[...] it is the duty of the physician to endeavour to preserve the health and life of the child also before birth.'⁵⁷ It must be emphatically emphasised that, although invariably the purpose of prenatal testing is to detect a defect or disease in the child before birth, this is not with a view to depriving the child of life in the event of illness, but on the contrary with a view to taking appropriate therapeutic measures as early as possible.

This position is also justified by Article 31a(1) of the AHPS, where it is indicated that the qualification of healthcare services as guaranteed benefits is made taking into account the objectives defined as health priorities. These priorities, on the basis of the Regulation of the Minister of Health of 27 February 2018 on health priorities, include not only improving the quality of the effectiveness of perinatal care and health care for the mother, the newborn and the child under three years of age, but also increasing the coordination of care for elderly, disabled and dependent patients.⁵⁸

It should therefore not be overlooked that the purpose of prenatal diagnosis is above all to detect defects or illnesses in unborn children so that they can be treated as early as possible (also intrauterine). Furthermore, prenatal tests are intended to enable parents to prepare in good time for the necessary treatment of their child after birth. It should be emphasised that the above position is confirmed by the current (i.e., adopted before the entry into force of the judgment of the Constitutional Tribunal in case K 1/20) assumptions of the prenatal testing programme, which are available on the website of the Ministry of Health and the NHF: 'The programme aims to identify the risk of foetal defects and their diagnosis at an early stage of pregnancy. This will make it possible to undertake treatment of defects

57 Resolution of the Extraordinary Second National Congress of Physicians of 14 December 1991 on the Code of Medical Ethics, Article 39, second sentence.

58 Regulation of the Minister of Health of 27 February 2018 on health priorities (Dz.U. item 469), § 1 paras. 8 i 10.

while still in foetal life. The programme enables the child's parents to prepare for the immediate implementation of specialised care after birth.⁵⁹

In the light of the above remarks, the standpoint according to which the judgement of the Constitutional Tribunal in case K 1/20 may result in limiting access to prenatal tests should be regarded as unfounded. On the contrary, in the light of the recognition by the Tribunal of a higher level of legal protection of the conceived life, it is justified to undertake all legislative initiatives aimed at guaranteeing the right to a comprehensive prenatal diagnosis and prenatal and neonatal surgeries.

The scale of prenatal diagnosis to date is very high, which makes it all the better for the future. For example, in 2017, 115,210 patients, including more than 90,211 women aged 35 years and over,⁶⁰ benefited from tests designed for women in the high-risk group concerning the diagnosis of the likelihood of abnormal pregnancy development; this represents approximately $\frac{1}{4}$ of the number of births in the same year.⁶¹

Above all, a reorganization of the treatment system within gynaecology and obstetrics should be advocated to ensure that pregnant women feel safe and are helped at every stage of pregnancy and that children with disabilities receive ongoing medical care. In the event of the diagnosis of a potentially treatable defect, the treatment procedure should be planned at this early stage so that it can be started immediately after birth (or in certain cases still at the prenatal stage), and perinatal management should be established: place, date and method of delivery. It is unacceptable to leave a woman with a negative diagnosis without immediately organizing further medical care.

It is necessary to develop medical technology in the field of perinatology and especially prenatal surgery in order to use it to better protect life.

59 Pacjent.gov.pl, *Program badań prenatalnych*, <https://pacjent.gov.pl/program-profilaktyczny/program-badan-prenatalnych>, accessed 28 January 2022.

60 Report of the Council of Ministers on the implementation and effects of the application in 2017 of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended).

61 GUS [Statistics Poland], *Urodzenia i dzietność*, <https://stat.gov.pl/obszary-tematyczne/ludnosc/ludnosc/urodzenia-i-dzietnosc,34,1.html>, accessed 28 January 2022.

The possibilities of treatment at the prenatal stage are very broad, 'intrauterine therapy of the foetus may be based not only on pharmacotherapy of the foetus through the mother, but also on direct pharmacotherapy and on surgical interventions'.⁶² Poland is not at all at odds with Western Europe or the United States in this respect – it is now possible to perform in Poland every intrauterine procedure that is performed in the world.⁶³

Already in 2010, inter alia, procedures related to the treatment of abnormal amniotic fluid (amnioinfusion and amnioreduction as therapy for amniocentesis and multilocentesis), intrauterine blood transfusions to treat serological conflict, which were introduced in our country at the turn of the 1980s and 1990s, drainage procedures for hydrocephalus or surgical interventions to treat meningo-spinal hernia, were performed in Poland. Within the thoracic area, foetal adenomatous lung degeneration (CALM), sequestration, effusions, diaphragmatic hernia (CDH) and valvular heart defects were also treated surgically, while non-invasive, pharmacological therapy was given to children with circulatory failure and cardiac arrhythmias. Intrauterine treatment has also been used for urinary tract defects, sacroccocygeal anomalies or complications of multi-foetal pregnancy, including trans-foetal transfusion syndrome (TTTS).⁶⁴ Currently, procedures are also frequently performed to allow the child to survive in the event of a diaphragmatic hernia, when organs from the abdominal cavity move into the thorax through the opening created in the diaphragm.⁶⁵ In one Polish centre, difficult operations on spina bifida associated with hydrocephalus and meningo-spinal hernia are also carried out.⁶⁶ Prenatal medicine is also linked to the development of therapy for premature babies: in 2020, doctors from the University Clinical Centre of the Warsaw Medical University carried out a procedure to implant a pacemaker in a 30-week-old baby with congenital complete

62 K. Preis, *Terapia prenatalna – obecne możliwości*, "Ginekologia po Dyplomie" 2010, no. 5, pp. 26-32.

63 A. Niestuchowska, *Rozmowa z dr n. med. Marzeną Dębską, specjalistką w zakresie położnictwa i ginekologii, ultrasonografii i diagnostyki prenatalnej, ze Szpitala Bielańskiego w Warszawie*, <https://swiatlekarka.pl/zabiegi-wewnatrzmaciczne>, accessed 28 January 2022.

64 K. Preis, op. cit.

65 E. Nieckuła, *Tak ratuje się nienarodzonych pacjentów. Operacje w łonie matki*, <https://www.focusnauka.pl/artykul/tak-ratuje-si-nienarodzonych-pacjentow-operacje-w-onie-matki>, accessed 28 January 2022.

66 M. Gostkiewicz, *W Bytomiu robią coś, czego nie robi niemal nikt w Europie. Operują małe dzieci w łonie matki. Skutecznie*, <https://weekend.gazeta.pl/weekend/1,177333,20057298,w-bytomiu-robia-cos-czego-nie-robi-niemal-nikt-w-europie-operuja.html>, accessed 28 January 2022.

atrioventricular block.⁶⁷ The development of perinatal therapy in Poland does not deviate from the world level – Polish doctors participate in international meetings of specialists in surgery in the womb, which are organized by the Swiss Foetal Surgery Club. Prenatal medicine is currently most developed in the United States, where pioneering research and intrauterine surgery are performed in many facilities. Switzerland and Belgium are leaders in our part of the world, although Poland compares very well within Europe.⁶⁸

The scale of the activities in question is, however, limited. There are only a few centres in Poland where prenatal therapies are carried out (these include: Obstetrics Clinic in Gdańsk, the Polish Mother's Health Centre Institute in Łódź, and Specialist Hospital No. 2 in Bytom), as well as a dozen smaller ones dealing only with diagnostics.⁶⁹ Gynaecologists involved in perinatal medicine point to the small proportion of cases operated on among all those that could be referred for therapy – usually only a dozen or so out of several hundred children born with the disease annually are operated on, which is partly due to the gynaecologist not informing the patient about the possibility of therapy.⁷⁰ It is therefore advisable to introduce changes in the public health system in order to maximise the development of prenatal medicine – by funding prenatal therapies and operations within the benefits system, by subsidising gynaecological-obstetric wards, by informing every pregnant patient about the possibility of treating her child while still in the foetal stage, by organizing training courses for gynaecologists and obstetricians and by educating a new generation of doctors in the relevant medical specialities.

Special care should also be given to mothers with terminally ill children. A great help for parents facing their child's terminal illness is perinatal hospices, hitherto much neglected in the health care system. They differ from traditional hospices in that they do not just involve providing

67 M. Majewska, *UCK WUM: Transport „in utero” i wszczepienie stymulatora serca u 30-tygodniowego wcześniaka*, <https://pulsmedycyny.pl/uck-wum-transport-in-utero-i-wszczepienie-stymulatora-serca-u-30-tygodniowego-wczesniaka-997942>, accessed 28 January 2022.

68 M. Gostkiewicz, op. cit.

69 A. Niestuchowska, op. cit.

70 E. Nieckuła, op. cit.

physical care for the sick patient but provide psychological counselling and emotional support for the parents. Additional tests, including genetic tests, and further genetic and obstetric care are organized there, and hospice staff accompany the parents until delivery. If the baby survives the birth, he or she often becomes a patient of the home hospice. When a diagnosis of terminal illness is made, the gynaecologist should be obligated to refer the pregnant patient without delay to a specific perinatal palliative care centre, where she will receive specialised medical and psychological support.

Currently, perinatal hospices are an underdeveloped area. In 2020, the NHF concluded contracts for the co-financing of palliative and hospice care services through provincial departments with 515 healthcare providers. However, only 16 hospices with contracts with the NHF provided perinatal palliative care services. Only in 3 voivodeships, perinatal palliative care is provided in more than 1 unit: The Silesian Regional Branch of NHF has concluded contracts for services in this area with 3 hospices, while agreements the Lower Silesian and Pomeranian Regional Branches of NHF have each concluded contracts with 2 hospices. Perinatal palliative care is not provided at all on the basis of contracts with the NHF in the Kujawsko-Pomorskie, Lubuskie, Świętokrzyskie, and Zachodniopomorskie voivodeships.⁷¹ There are also hospices providing perinatal care that are not reimbursed by the NHF, but their number is even smaller.⁷²

It is therefore necessary to ensure access to perinatal palliative care services across all provinces, eliminating geographical differences in access. Given that the level of need for perinatal palliative care can be determined by the number of neonatal deaths, abortions and intrauterine deaths to date, it is particularly important to increase access in those provinces where the need is greatest. To this end, it is necessary to significantly increase the amount of funding allocated to perinatal care while reassessing the value of services.

71 NFZ.gov.pl, *Informator o zawartych umowach*, <https://www.nfz.gov.pl/o-nfz/informator-o-zawartych-umowach>, accessed 28 January 2022.

72 See Aborcjaforum.pl, *Nie musisz zabijać dziecka, zamiast aborcji masz wybór*, <https://aborcjaforum.pl/hospicjum.html>, accessed 28 January 2022; Hospicjum.lublin.pl, *Hospicja perinatalne w Polsce*, <https://hospicjum.lublin.pl/index.php/hospicjum-perinatalne/hospicja-perinatalne-w-polsce>, accessed 28 January 2021.

It is advisable to organize support groups at treatment centres for parents of both disabled and terminally ill children. This provides an opportunity for much-needed conversation, care and contact with families of other children with similar conditions, as well as meeting parents' need to get out of the home and interact socially, an important part of therapy, and having a positive effect on their mental state in the face of the problems they have to face. Consideration should also be given to holding bereavement support meetings for parents whose children have already passed away. In the case of terminally ill children, it is necessary to provide parents with the opportunity to say goodbye and leave their child with dignity. Special farewell rooms should be placed in all facilities, enabling parents to say goodbye to their child without disturbing their privacy.

It would also be advisable to intensify the training of specialists in perinatal palliative care, to develop this field at medical universities, to organize training and educational meetings, to undertake joint activities for the palliative and hospice medicine community. A specialisation for doctors or a medical skill 'paediatric and perinatal palliative medicine' should therefore be introduced. It is also important to provide well-trained nursing staff with responsibility for social and psychological care. In addition, there should be compulsory classes in medical studies on communicating difficult diagnoses, especially for doctors in contact with parents – currently such classes are optional and not very popular.

Another element of support for disabled children and their parents could be psychological and psychiatric care organized on a compulsory basis for all those who need it. Meetings with psychologists and psychiatrists could be planned in advance at the time of diagnosis and take place during pregnancy and continue after birth for the whole family, including the sick child, who should automatically be covered.

5.2 Audit of Polish hospitals

In the current situation, having established the incompatibility with the Polish Constitution of the provision allowing abortion in the case of a high probability of severe and irreversible impairment of the foetus or an

incurable disease threatening its life, the next action of the public administration should be to conduct a kind of abortion audit and verification of medical records from 1993 to 2021. The aim of this audit should be to find out what specific reasons determined, during this period, the killing of persons suspected of disability in their mothers' wombs. This task will require extraordinary diligence and patience; at stake, however, is the credibility of the Polish state in the field of the realisation of the constitutional principle of the protection of the life of every human being.

Medical records from all hospitals where abortions were performed should be diligently examined to rank all identifiable cases of legal abortions in Poland between 14 March 1993 and 27 January 2021 against all possible criteria. In particular, the total number of abortions actually performed should be shown and all categories of medical grounds used as a rationale for the abortion procedure should be distinguished. It will also be valuable to know whether the suspected disease or impairment of the child was verified by an adequate number of medical examinations and subsequent doctors, and whether these grounds were adequately documented. Of course, the review of medical records should take place anonymously, without violating the patient's right and revealing patient-specific medical information. The information gathered should take the form of aggregated data. The audit should be carried out by persons with medical training who will be adequately familiar with the way medical records are kept, the procedures of the hospital administration system and the specifics of the diseases and medical examinations encountered in the records. It should be carried out by an entity financed from the state budget.

6 Conclusions

In conclusion, with regard to legal issues, one should point to the intensified actions on the part of the left, directed towards undermining the so-called abortion compromise, aiming at lowering the standard of protection of human life in Poland through the introduction of a 'right to abortion' or at least such shaping of the circumstances allowing for its performance that in the first 12 weeks from the child's conception it is not restricted in any way.

It should be recalled at this point once again that in Polish legislation there is no concept of a subjective 'right to abortion' which could constitute a value opposed to the right to life. In many legal systems, the different state of affairs leads in certain cases to a kind of censorship or even criminalisation of activities undertaken in defence of the life of the conceived child, which should normally be subject to the protection of the right to freedom of expression. It should be recalled that at the level of international law and in the universal system of human rights, there is no construction of a 'right to abortion'. Moreover, numerous states have repeatedly expressed their opposition to attempts to create such a right.

It should be pointed out, however, that although there are legal possibilities to protect the right to life of the unborn child, the level of this protection could be increased. Among the proposed solutions, it is mentioned, among other things, to increase efforts in dedicated education, which would constitute a kind of contemporary grassroots work.

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Abstract

The purpose of this chapter is to show the immorality of the eugenic abortion procedure, its obvious non-compliance with the Constitution of the Republic of Poland, confirmed by the judgment of the Constitutional Tribunal in 2020, as well as the need to remove this premise of admissibility of abortion due to the real possibility of its abuse. The system of reporting on the reasons for abortions performed in Polish hospitals was found to be defective, including due to a lack of transparency. Until 2017, the public did not have the opportunity to know the list of conditions that the staff of a given hospital considered the basis for the decision to kill a given child. Despite significant improvements in this area, access to this data is still hampered in many ways. This situation indicates an urgent need to conduct a specific abortion audit and verify medical records after 1993 in order to check whether the law allowing abortion as an exception to the general principle of protection of life in Poland has not been abused in practice.

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Key terms: postcoital contraception, early abortion pills, pharmacological abortion, pharmaceutical law, levonorgestrel, ulipristal acetate, ellaOne, Halyone, misoprostol, mifepristone

Oral postcoital contraception and pharmacological abortion: product characteristics and basic trade issues in Poland under pharmaceutical law, taking into account the international context

1 Introduction

This analysis is focused on the basic aspects of marketing postcoital contraceptives and abortifacient pills. It addresses issues related to the characteristics of these products, their situation under the law in force in Poland and in relation to the international context. Attention has been drawn to issues which remain controversial and require further research and debate. In particular, to determine the exact mechanism of action of the active substances contained in oral postcoital contraceptives, as well as the moment from which human life in the prenatal phase is legally protected. Emphasis has also been placed on the possibility to use the available legal instruments to eliminate, or at least restrict, the circulation of contraceptive and abortifacient products.

2 Types, characteristics and mode of action of postcoital contraception

2.1 Types of postcoital contraception and World Health Organization recommendations

The term 'postcoital contraception' is used to refer to the set of pregnancy prevention methods used in cases of emergency, that is, after sexual intercourse without effective protection or when the contraceptive method used has not worked as intended. Equivalent terms are also commonly used to describe the set of these methods: 'emergency', 'post intercourse' contraception. The World Health Organization (WHO) recommends the use of postcoital contraception after sexual intercourse, including, among others, the following situations:

- not using any method of pregnancy prevention;
- sexual violence where the woman was not protected by an effective contraceptive method;
- concern about the possible failure of a contraceptive method (for example, if a condom breaks or slips, if three or more consecutive, regularly used, combined oral contraceptive pills are missed, if there is a delay of more than three hours in taking a progestogen-only pill – the so-called minipill – or more than 27 hours from taking the previous pill – and the like).¹

The World Health Organization distinguishes four methods of postcoital contraception:

- tablets containing the active substance ulipristal acetate (UPA);
- tablets containing the active substance levonorgestrel (LNG);²

1 World Health Organization, *Emergency contraception*, <https://www.who.int/news-room/fact-sheets/detail/emergency-contraception>, publication date 9 November 2021, accessed 1 September 2022.

2 Both types (UPA and LNG) have a status referred to as emergency contraception pills – ECPs.

- combined oral contraceptive pills (COCs);
- copper-bearing intrauterine devices (IUDs).³

The following section will focus on the analysis of postcoital contraceptive methods including tablets containing the active substance ulipristal acetate (UPA) and tablets with the active substance levonorgestrel (LNG).

Some sources also cite pills containing the active substance mifepristone as a method of postcoital contraception.⁴ It is used in abortion pills but the marketing of it is illegal in many countries. According to data published in April 2016 by the European Consortium for Emergency Contraception (ECEC), mifepristone was not available as one method of postcoital contraception in EU countries, but only in Armenia, Moldova, Ukraine, China, Russia, and Vietnam.⁵

2.2 Emergency oral contraception as one method of postcoital contraception. Types of products of this type available in Poland

Pills containing either the active substance ulipristal acetate or levonorgestrel are the primary form of postcoital contraception. Depending on the type of active substance, the International Consortium for Emergency Contraception (ICEC) provides information on the use of ‘emergency’ pills as shown in Table 1.

Table 1. Composition, dosage, popular brands of oral postcoital contraceptives

Composition and dosage	Number of tablets	Popular brands
Levonorgestrel 1.5 mg	1	Escapelle, Plan B One-Step, NorLevo 1.5, Vikela, Postinor 1.
Levonorgestrel 0.75 mg	2	Levonelle-2, NorLevo 0.75, Next Choice, Postinor 2

³ World Health Organization, *Emergency contraception...*

⁴ European Consortium for Emergency Contraception (ECEC), *What is Emergency Contraception?*, <https://www.ec-ec.org/emergency-contraception-in-europe/what-is-emergency-contraception>, accessed 1 September 2022.

⁵ European Consortium for Emergency Contraception (ECEC), *An update on access to emergency contraception in European Union countries*. April 2016, <https://www.ec-ec.org/wp-content/uploads/2016/04/UPDATE-Access-to-EC-in-EU-countries-ECEC-April2016.pdf>, accessed 2 September 2022.

Composition and dosage	Number of tablets	Popular brands
UlipristalAcetate 30 mg	1	ella, ellaOne
Mifepristone 25 mg	1	Ciel

Source: ICEC, Pill Formulations, <https://www.cecinfo.org/what-is-ec/pill-formulations>, accessed 2 September 2022.

The World Health Organization gives identical dosage recommendations for oral UPA and LNG-containing agents. Mifepristone-containing tablets are not included by the WHO as a method of emergency contraception. However, the WHO does provide an additional combined method of postcoital contraception (COCs) referred to as the Yuzpe method. In this method, ethinylestradiol and LNG are taken in two doses: first a dose of 100 µg ethinylestradiol plus 0.50 mg LNG, followed by a second dose of 100 µg ethinylestradiol plus 0.50 mg LNG 12 hours later.⁶ The Yuzpe method is used as a method of ‘emergency’ contraception when pills with an indication for use as emergency contraception (ECPs) are not available at all or access to them is limited. It is considered a method with lower efficacy and more side effects compared to ECPs.⁷

Tablets containing ulipristal acetate and levonorgestrel are a group of medicinal products with an indication for emergency contraception also in Poland. According to the data in the official Register of Medicinal Products (RPL), tablets containing ulipristal acetate (UPA), listed in Table 2,⁸ have valid distribution authorisation in Poland.

Table 2. List of oral postcoital contraceptives containing UPA authorised in Poland

Name	Common name	Power	Form	Permit number	Validity of the permit	Responsible entity	Type of procedure	ATC code
ellaOne	Ulipristalum	30 mg	Tablet			Laboratoire HRA Pharma	CEN	G03AD02

6 World Health Organization, *Emergency contraception...*

7 International Consortium for Emergency Contraception (ICEC), *Using oral birth control pills as EC*, December 2014, https://www.cecinfo.org/wp-content/uploads/2014/12/ICEC_Yuzpe_FactSheet_2014.pdf, accessed 2 September 2021.

8 Status at 23 September 2022.

Name	Common name	Power	Form	Permit number	Validity of the permit	Responsible entity	Type of procedure	ATC code
ellaOne	Ulipristalum	30 mg	Coated tablet			Laboratoire HRA Pharma	CEN	G03AD02
Misstala	Ulipristali acetat	30 mg	Film-coated tablets	25332	2024-05-10	Zentiva, k.s.	DCP	G03AD02
Ulipristal Aristo	Ulipristali acetat	30 mg	Film-coated tablets	25198	2024-03-19	Aristo Pharma Sp. z o.o.	DCP	G03AD02

Source: Register of Medicinal Products, <https://rejestrmedycznych.ezdrowie.gov.pl/rpl/search/public>, accessed 23 September 2022.

Emergency contraceptives containing the active substance levonorgestrel (LNG)⁹ are also authorised for marketing in Poland.

Table 3. List of oral postcoital contraceptives containing LNG authorised in Poland

Name	Common name	Power	Form	Permit number	Validity of the permit	Responsible entity	Type of procedure	ATC code
Escapelle	Levonorgestrelum	1.5 mg	Oro-disintegrating tablets	26803	2026-12-16	Gedeon Richter Polska Sp. z o.o.	DCP	G03AD01
Escapelle tablet 1500 micrograms	Levonorgestrelum	1500 mcg	Tablets	414/13	2023-09-25	Pretium Farm Sp. z o.o.	IR	G03AD01
Escapelle tablet 1500 micrograms	Levonorgestrelum	1500 mcg	Tablet	431/17	2022-12-22	InPharm Sp. z o.o.	IR	G03AD01
Escapelle tablet 1500 micrograms	Levonorgestrelum	1500 mcg	Tablet	361/18	2023-12-18	Delfarma Sp. z o.o.	IR	G03AD01
Escapelle tablet 1500 micrograms	Levonorgestrelum	1500 mcg	Tablets	12048	Unlimited	Gedeon Richter Plc.	MRP	G03AD01

9 Status at 23 September 2022.

Name	Common name	Power	Form	Permit number	Validity of the permit	Responsible entity	Type of procedure	ATC code
Livopill	Levonorgestrelum	1.5 mg	Tablets	25976	2025-08-12	Exeltis Poland Sp. z o.o.	MRP	G03AD01
Halyone	Levonorgestrelum	1500 mcg	Tablets	25674	Unlimited	Laboratorios Leon Farma, S.A.	DCP	G03AD01

Source: Register of Medicinal Products, <https://rejestrmedyczne.ezdrowie.gov.pl/rpl/search/public>, accessed 23 September 2022.

2.3 Characterisation of active substances included in oral postcoital contraceptives

2.3.1 Ulipristal acetate as an active substance of oral postcoital contraceptives

According to the information available on the website of the Register of Medicinal Products, five medicinal products containing UPA have a current marketing authorisation in Poland for use in emergency contraception. Each of these products contains 30 mg of the active substance ulipristal acetate. In the following section, data on ellaOne¹⁰ will be used as representative of all these products.

The primary document defining the properties of the drug – the Summary of Product Characteristics of ellaOne – states the mechanism of action of the active substance as follows: ‘Ulipristal acetate is an orally-active synthetic selective progesterone receptor modulator which acts via high-affinity binding to the human progesterone receptor. When used for emergency contraception the mechanism of action is inhibition or delay of ovulation via suppression of the luteinising hormone (LH) surge. Pharmacodynamic data show that even when taken immediately before ovulation is scheduled to occur [...], ulipristal acetate is able to postpone follicular

¹⁰ Spelling of the preparation's name adopted after the manufacturer's way of writing (see ellaOne leaflet, <https://www.hra-pharma.com/PIL/PL>, accessed 23 September 2023), as also used, among other, in the Summary of Product Characteristics.

rupture for at least 5 days in 78.6% of cases [...].¹¹ A similar statement can be found in the patient leaflet: 'ellaOne contains the substance ulipristal acetate which acts by modifying the activity of the natural hormone progesterone which is necessary for ovulation to occur. As a result, this medicine works by postponing ovulation.' It is clear from the cited documents approved in the marketing authorisation procedure that the mechanism of action of ulipristal acetate is limited to interfering with ovulation. At the same time, both the Summary of Product Characteristics (SmPC) and the product leaflet of ellaOne state that UPA does not terminate an existing pregnancy,¹² suggesting that it is not an abortifacient substance.

It is clear that this action of ulipristal acetate, which prevents pregnancy by inhibiting ovulation, applies only to the pre-ovulatory phase. In contrast, taking ellaOne is recommended at any time during the menstrual cycle. At the same time, the mechanism of action of UPA when ellaOne is taken in the post-ovulatory phase, when fertilisation of the ovum has occurred, is not described. In this regard, the SmPC and the leaflet contain an indication that if the menstrual cycle is delayed or if there are symptoms of pregnancy before taking the pill, pregnancy should be excluded.¹³ In addition, there is some brief and unclear information in the SmPC relating to the mechanism of action of UPA when ovulation and conception has occurred as a result. In particular, the following excerpts from the SmPC of ellaOne should be noted: 'Pregnancy may occasionally occur after ulipristal acetate intake. Although no teratogenic potential has been observed, animal data are insufficient with regard to reproduction toxicity (see section 5.3). Limited human data regarding pregnancy exposure to ellaOne do not suggest any safety concern.'¹⁴ and 'Information from reproductive toxicity studies is limited due to the absence of exposure measurement in these studies. Ulipristal acetate has an embryo-lethal effect in rats, rabbits (at repeated doses

11 See the Summary of Product Characteristics of ellaOne (hereinafter: ellaOne SmPC; same abbreviation: SmPC for the Summaries of Product Characteristics of other pharmaceuticals), section 5.1, https://www.ema.europa.eu/en/documents/product-information/ellaone-epar-product-information_en.pdf, accessed 23 September 2022; the same information can be found in the SmPC of other emergency contraceptives authorised in Poland.

12 See ellaOne SmPC, section 4.6.

13 See ellaOne SmPC, section 4.2; ellaOne product leaflet.

14 ellaOne SmPC, section 4.6.

above 1 mg/kg) and in monkeys. At these repeated doses, the safety for a human embryo is unknown.¹⁵ The cited data from studies on a medicinal product containing 30 mg ulipristal acetate clearly indicate that the mechanism of action of this substance when used after fertilisation of the human ovum has not been sufficiently investigated with regard to possible risks to the embryo.

In addition, the pharmacological data in the report of the Committee for Medicinal Products for Human Use (CHMP),¹⁶ evaluating the properties of ellaOne at the pre-marketing authorisation stage in the European Union by the European Commission,¹⁷ clearly indicate that 'ulipristal acetate prevents progesterone from occupying its receptor, thus the gene transcription normally turned on by progesterone is blocked, and the proteins necessary to begin and maintain pregnancy are not synthesized'.¹⁸ It should therefore be clear that stopping, disrupting, or delaying ovulation is not the exclusive mechanism of action of ulipristal acetate. Several possible effects of this substance were also clearly indicated by the responsible party in the marketing authorisation application for ellaOne. The CHMP report states that the applicant identified the following mechanisms of action for ellaOne:

- the ability to block, interfere with or delay ovulation;
- the ability to block or delay ovulation even after the onset of LH hormone output;
- ability to delay endometrial maturation possibly resulting in prevention of implantation.¹⁹

¹⁵ ellaOne SmPC, section 5.3.

¹⁶ The Committee for Medicinal Products for Human Use is the unit of the European Medicines Agency (EMA) that carries out the scientific evaluation of a marketing authorisation application and makes a recommendation to the European Commission on whether a medicinal product can be marketed.

¹⁷ In accordance with Article 3(2)(a) of Regulation (Ec) No. 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136, p. 229).

¹⁸ European Medicines Agency, CHMP Assessment Report for ellaOne, Doc.Ref: EMEA/261787/2009, https://www.ema.europa.eu/en/documents/assessment-report/ellaone-epar-public-assessment-report_en.pdf, p. 8, accessed 19 May 2021.

¹⁹ Ibid., p. 9.

The anti-implantation properties of UPA are supported by scientific evidence. After evaluation of the documentation submitted by the applicant, the CHMP concluded that the information in the ellaOne SmPC indicating that ‘the primary mechanism of action [of this product – author’s note] is thought to be inhibition or delay of ovulation, but alterations to the endometrium may also contribute to the efficacy of the product’.²⁰

Other studies confirming the anti-implantation nature of ulipristal acetate are also available, from the results of which the following conclusions can be cited:

- ‘[...] some of the latest investigations pertaining to ulipristal’s mechanism of action as an emergency contraceptive propose that it principally elicits its action by preventing embryo implantation, as opposed to preventing ovulation. [...] Endometrial biopsy samples studied from such circumstances in such investigations [in situations where UPA has been administered after the onset of ovulation – author’s note] subsequently show that the administered ulipristal causes endometrial tissue to become inhospitable and unsuitable for embryo implantation [...].’;²¹
- ‘[...] Lira-Albarrán administered ellaOne® to women in the most fertile pre-ovulatory days: they had normal ovulation, but their endometrium, evaluated through samples obtained in the implantation window, became inhospitable: the expression of 1183 genes was exactly the opposite of that observed in the receptive pro-gestational endometrium. This agrees with information by EMA-CHMP-Assessment Report “EMA/261787/2009” (p. 8): after UPA administration “the proteins necessary to begin and maintain pregnancy are not synthesized”.’ The authors of the study concluded that the mechanism of action of postcoital contraception is mainly to prevent implantation.²²

20 Quoted in *ibid.*, p. 23.

21 DrugBank, *Ulipristal: Mechanism of action*, <https://www.drugbank.ca/drugs/DB08867> and literature cited therein, accessed 19 May 2021.

22 B. Mozzanega, G.B. Nardelli, *UPA and LNG in emergency contraception: the information by EMA and the scientific evidences indicate a prevalent anti-implantation effect*, “The European Journal of Contraception & Reproductive Health Care” 2019, 24(1), <https://doi.org/10.1080/13625187.2018.1555662>.

The induction of endometrial changes by ulipristal acetate has also been found in studies conducted in the United States: ‘Another study found that ulipristal acetate altered the endometrium, but whether this change would inhibit implantation is unknown.’²³

In the context of the documented early-abortive effect of UPA described above, it should be added that information about possible uterine changes caused by ulipristal acetate was in the original 2009 version of the ellaOne product leaflet. In the new version of the leaflet (2010), this passage has been omitted.²⁴ However, regardless of the changes to the ellaOne leaflet, information on the effects of the product’s active substance on the endometrium remained available within the summary of the European Public Assessment Report (EPAR): ‘The sex hormone progesterone plays a role in the timing of ovulation and in preparing the lining of womb to receive the fertilised egg. The active substance in ellaOne, ulipristal acetate, acts as a progesterone receptor modulator. This means that it attaches to the receptors that progesterone normally attaches to, preventing the hormone from having its effect.’²⁵

In 2011, researchers from the University of Padua highlighted the early abortive effect of the ellaOne pill in the pages of the Italian Journal of Gynaecology and Obstetrics, the main journal of gynaecology and obstetrics in Italy. They came to conclusions that differed from the information contained in the registration documentation of the ellaOne tablet. In his article, Andrzej Kobyliński refers to the results of their work as follows: ‘the agent ellaOne renders the endometrium “inhospitable”, i.e., the mucous membrane lining the uterus, thus preventing the implantation of an already conceived child in a suitable environment (cf. Cosmi, Mozzanega 2013: 195). The anti-implantation effect of the “five days later” pill consists

23 J. Trussell, E.G. Raymond, K. Cleland, *Emergency Contraception: A Last Chance to Prevent Unintended Pregnancy* (January 2019), <https://ec.princeton.edu/questions/ec-review.pdf>, p. 8, accessed 19 May 2021.

24 *Stanowisko Rady Naukowej Centrum Bioetyki Instytutu na Rzecz Kultury Prawnej Ordo Iuris ws. zmiany kategorii dostępności na terenie Polski produktu leczniczego ellaOne* [Position of the Scientific Council of the Bioethics Centre of the Ordo Iuris Institute for Legal Culture on the change of the availability category in Poland of the medicinal product ellaOne], https://ordoiuris.pl/ochrona-zycia/rada-naukowa-centrum-bioetyki-ordo-iuris-ollaone#_ftn10, publication date 8 June 2017, accessed 19 May 2022.

25 European Medicines Agency, EPAR summary for the general public: ellaOne, ulipristal acetate, EMA/764301/2014, https://www.ema.europa.eu/en/documents/overview/ellaone-epar-summary-public_pl.pdf, accessed 19 May 2022.

in a tightening, a contraction of the endometrium. A study by researchers from Padua showed that, in fact, only a small number of women who use this preparation experience a postponement of ovulation. Among women who took the ellaOne pill at the beginning of their fertile days, i.e., three to four days before ovulation, ovulation was postponed in only 25 per cent of cases. In the last two days before the release of the ovum, ovulation is no longer delayed at all, and ellaOne functions as a placebo in relation to ovulation, while acting all the time as an anti-implantation agent. Bruno Mozzanega and Erik Cosmi have scientifically demonstrated that ellaOne rarely delays ovulation, but always makes the endometrium inhospitable. If fertilisation occurred before taking the “five days later” pill or if it occurs shortly afterwards, implantation will not take place and an artificial miscarriage will occur (cf. Cosmi, Mozzanega 2011). Italian researchers pointed out that “in the prevention of pregnancy” by ellaOne, the anti-implantation effect on the endometrium is decisive, while the anti-ovulatory effect plays a much lesser role.²⁶ There is thus ample scientific evidence to support the claim that the prevention of embryo implantation (early abortifacient effect) is not an incidental and additional, but the primary mechanism of action of ulipristal acetate, a substance used in emergency contraception.

2.3.2 Levonorgestrel as an active substance of oral postcoital contraceptives

All products with the active substance levonorgestrel that are legally marketed in Poland (indicated in Table 3) contain a dose of 1500 µg of this ingredient, and therefore one of them, the medicinal product with the trade name Halyone, will be discussed as representative in the following section. The SmPC of this drug states: ‘When used as prescribed, levonorgestrel is thought to act mainly by preventing ovulation and conception, provided that sexual intercourse took place during the pre-ovulatory period, when the likelihood of conception is greatest. It can also cause changes in the endometrium, making embryo implantation more difficult. Levonorgestrel

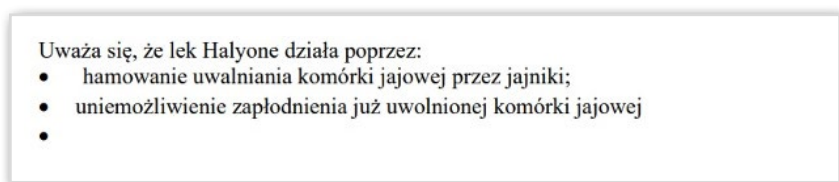
26 A. Kobyliński, *Etyczne i prawne aspekty stosowania preparatu medycznego ellaOne czyli tzw. pigułki „pięć dni później”*, “Studia Ecologiae et Bioethicae” 2015, 13(1), pp. 9-34.

is not effective if the implantation process has already started.’²⁷ Also in the patient leaflet, approved in the marketing authorisation procedure, the following information on the mechanism of action of LNG is given: ‘The drug Halyone is believed to act by:

- inhibition of ovarian release;
- preventing fertilisation of an already released ovum.’²⁸

Significantly, in the patient leaflet for Halyone, available in 2020, the section describing the mechanisms of action of the product included, in addition to those mentioned above, the following: ‘stopping a fertilised egg from implanting in the endometrium.’ Following the update of the leaflet, this notation was deleted, with only the bullet point indicating the presence of the earlier notation remaining (see Figure 1).

Figure 1. Excerpt from the Polish leaflet for Halyone describing its mechanism of action; the last point where information on the product’s early-onset properties is crossed out is visible²⁹



Source: Halyone product leaflet, <https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/40925/leaflet>, accessed 4 October 2022.

The pre-amendment leaflet, which contains information on the early-onset properties of the drug, is still available via some websites (see Figure 2).

27 Halyone SmPC, <https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/40925/characteristic>, accessed 23 September 2022, section 5.1.

28 Halyone product leaflet, <https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/40925/leaflet>, accessed 4 October 2022, para 1.

29 The text on the leaflet reads: ‘Halone acts through:

- inhibiting the release of the ovum by the ovaries
- preventing fertilization of an already released egg cell.’

Figure 2. Excerpt from the Polish leaflet for Halyone describing its mechanism of action; the last bullet, which states the product's early abortifacient properties, is visible³⁰

Uważa się, że lek Halyone działa poprzez:

- hamowanie uwalniania komórki jajowej przez jajniki;
- uniemożliwienie zapłodnienia już uwolnionej komórki jajowej; lub
- powstrzymanie zapłodnionego jajeczka przed zagnieżdżeniem się w błonie śluzowej

Source: Halyone product leaflet available at Baza-lekow.com.pl, <https://baza-lekow.com.pl/download/halyone-ulotka>, accessed 2 November 2022.

The quoted excerpts from the registration documents of the drug Halyone show that:

- the drug has been authorised as safe and effective, although the exact mode of action is not known;
- the mechanism of action of levonorgestrel includes interference with the endometrium preventing implantation of the embryo and its further development (according to the 2020 leaflet – before update).

The way in which LNG-containing tablets prevent pregnancy is therefore essentially the same as for ulipristal acetate products, i.e., anti-ovulatory when used in the pre-ovulatory phase, but anti-implantation when ovulation has occurred and fertilisation of the ovum has taken place (the active substances contained in the preparations prevent the embryo from implanting in the endometrium). In contrast to ulipristal acetate, the anti-implantation effect of LNG is included in the registration dossier for Halyone (leaflet version 2020). In contrast, in the registration dossiers for other LNG medicinal products legally marketed in Poland, information on the early-implantation properties of this substance was omitted. The mode of action of the substance levonorgestrel described in the characteristics

30 The text on the leaflet reads: 'Halone acts through:
• inhibiting the release of the ovum by the ovaries
• preventing fertilization of an already released egg cell
• stopping a fertilised egg from implanting in the endometrium.'

(SmPC) of these products is not complete, because it does not take into account the stage of pregnancy between the fertilisation of the yak cell and implantation of the embryo in the endometrium.³¹ It should also be stressed that these LNG products authorised in Poland contain exactly the same dose of the same active substance (1500 µg levonorgestrel) as Halyone.

3 Criteria for distinguishing between postcoital contraception and pharmacological abortion (oral abortifacients)

3.1 Characteristics of oral abortifacients

Pills described as ‘emergency’ are included in the group of contraceptives, i.e., those that prevent pregnancy. The characteristics of UPA drugs authorised in Poland state: ‘Ulipristal acetate does not terminate an existing pregnancy.’³² Similarly, according to the documentation for tablets containing LNG in a dose of 1500 µg, this substance ‘does not cause the termination of an existing pregnancy’.³³

Oral abortifacients are therefore a separate category on the market as those which result (in principle) in the termination of an existing pregnancy (pharmacological abortion). The WHO, which promotes universal access to so-called safe abortion, primarily recommends the combined use of two substances, mifepristone and misoprostol, or possibly misoprostol alone, to terminate a pregnancy. These substances have been recognized by the WHO as effective, safe and, moreover, relevant to the health care system, and are therefore included in the WHO List of Essential Medicines.³⁴

31 See e.g. section 5.1 of the Escapelle SmPC (<https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/43293/characteristic>, accessed 23 September 2022) and section 5.1 of the Livopill SmPC (<https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/42880/characteristic>, accessed 23 September 2022).

32 See section 4.6 of the SmPC of: ellaOne, Eginilla (<https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/39628/characteristic>, accessed 23 September 2022), Misstala (<https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/40718/characteristic>, accessed 23 September 2022), Ulipristal Aristo (<https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/39629/characteristic>, accessed 23 September 2022).

33 See section 4.6 of the Escapelle SmPC.

34 World Health Organization, *Medical Management of Abortion 2018*, <https://apps.who.int/iris/bitstream/handle/10665/278968/9789241550406-eng.pdf?ua=1>, accessed 19 May 2021.

Mifepristone is a progesterone receptor antagonist that inhibits the action of progesterone, a hormone necessary to sustain pregnancy, thereby causing its termination. The action of misoprostol is to soften and dilate the cervix and induce uterine contractions. Due to its properties, it is used in induction of labour, natural or artificial miscarriage and to prevent postpartum haemorrhage.³⁵ In Poland, the sale of abortifacients for self-induced abortion is against the law, and therefore there are no pills containing the referenced substances with indications for use in pharmacological abortion on the legal market. However, as misoprostol has other medical uses, it is available on the Polish market in the following medicinal products:

- Cytotec 200 µg, tablets (*Misoprostolum*) – used in the prevention of gastric and duodenal ulcers arising during treatment with non-steroidal anti-inflammatory drugs (NSAIDs),³⁶
- Arthrotec 50 mg + 0.2 mg tablets (*Diclofenacum natricum* + *Misoprostolum*) and Arthrotec Forte 75 mg + 0.2 mg tablets (*Diclofenacum natricum* + *Misoprostolum*) – indicated for use in patients requiring concomitant use of a non-steroidal anti-inflammatory drug (diclofenac) with misoprostol. Diclofenac included in Arthrotec is indicated for the symptomatic treatment of osteoarthritis and rheumatoid arthritis. Misoprostol is indicated for the treatment of patients who need prophylaxis of gastric and/or duodenal ulceration caused by NSAIDs.³⁷

These medicinal products are legally marketed in Poland. However, in addition to their registered medicinal indications, they are also used for pharmacological abortion.³⁸ These products have the ‘Rp’ (prescription) availability category, so their purchase in a pharmacy is only possible upon presentation of a medical prescription.

35 Ibid.

36 See Cytotec SmPC, <https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/1651/characteristic>, accessed 23 September 2022.

37 See Arthrotec SmPC (<https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/149/characteristic>, accessed 23 September 2022) and Arthrotec Forte (<https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/8721/characteristic>, accessed 23 September 2022).

38 Fundacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Przerwywanie ciąży: metoda farmakologiczna 2020*, https://federa.org.pl/wp-content/uploads/2020/03/Federa_aborcja-farmakologiczna_broszura.pdf, accessed 19 May 2021.

In addition, a drug called Angusta, available in the form of eight tablets containing a total of 200 µg of misoprostol (25 µg each), was granted marketing authorisation in 2018. According to the SmPC, it is indicated for induction of labour from the 37th week of pregnancy.³⁹ The drug Angusta has an 'Rp' (prescription) availability category,⁴⁰ whereas section 4.4 of the SmPC clearly states that the product 'should only be administered by trained obstetric staff in a hospital setting allowing continuous monitoring of foetal condition and uterine function'. In this context, it would seem reasonable to change the availability category of Angusta from 'Rp' to 'Lz' (for in-hospital use only), since, under the current legislation, this availability category includes medicines which, 'on account of their pharmacological properties, route of administration, indications, innovativeness or for reasons of public health interest', are reserved for 'treatment which can only be carried out in the form of inpatient health-care'.⁴¹

It follows from the above that, although the circulation of abortifacients on the territory of Poland is, in principle, illegal, these drugs are in fact available and can be used to terminate pregnancies in cases not permitted by law.

3.2 The problem of determining the onset of pregnancy in the context of the distinction between postcoital contraception and pharmacological abortion

However, the commonly used distinction between postcoital contraception and abortifacients in practice is not as clear-cut as suggested by the characteristics of these preparations (SmPC) or the publicly available information on emergency contraception. In particular, it should be noted that in the registration documents for drugs containing LNG, in addition to the assertion that the substance will not cause the termination of an existing pregnancy, there is also the statement: 'Levonorgestrel is not effective if the implantation process has already started'.⁴² This statement suggests

39 See Angusta SmPC, <https://rejestrmedyczne.ezdrowie.gov.pl/api/rpl/medicinal-products/39415/characteristic>, accessed 23 September 2022.

40 See decision of the President of ORMP [Office for Registration of Medicinal Products, Medical Devices and Biocidal Products] of 21 June 2018 on the issue of marketing authorisation No. 24780 for the medicinal product Angusta, No. UR/RD/0291/18.

41 See § 3 of the Regulation of the Minister of Health of 14 November 2008 on the criteria for placing a medicinal product in particular categories of availability (Dz.U. 2016, item 1769).

42 See, e.g., section 5.1 of the Escapelle SmPC.

that the products in question are characterised solely by their contraceptive action and, at the same time, do not have abortifacient properties, understood as the termination of an existing pregnancy. These properties are supposed to distinguish them from strictly abortifacient pills used for abortions. However, it appears that the determination of the onset of pregnancy is crucial in order to determine whether a medicinal product is treated as an abortifacient or as a contraceptive pill. Indeed, if the period of pregnancy does not include the time from the fertilisation of the ovum to its implantation in the endometrium, the information found in the leaflet of the product Halyone in 2020: ‘the drug Halyone works by: [...] stopping a fertilised ovum from implanting in the endometrium’ will not indicate an early abortifacient effect of this product. Pregnancy in such a case is understood to be a state which begins when the fertilised ovum is implanted in the endometrium. The pre-implantation stage is therefore not considered to be a stage of pregnancy, so that an anti-implantation measure does not constitute an abortion. This position is indirectly expressed in the registration documents of postcoital contraception available in Poland. It is in line with the WHO definition of pregnancy: ‘Thirty years ago, the WHO accepted that pregnancy begins when the embryo is implanted in the uterus and not when the two reproductive cells, male and female, fuse. Since the preparation “the day after” does not allow the implantation of the embryo, since it only prevents its implantation in the womb, there can be no artificial miscarriage or abortifacient action under this definition.’⁴³ This definition is accepted by many medical communities around the world, for example by the National Institute of Health in the USA or the American College of Obstetricians and Gynecologists: ‘pregnancy begins when the fertilised ovum implants in the endometrium. Implantation begins five to seven days after fertilisation of the ovum and ends a few days later. Emergency contraception will not work if the woman is already pregnant.’⁴⁴ The thesis of pregnancy starting at the moment of embryo implantation is also expressed in the summary of the European Public Assessment Report (EPAR) for ellaOne, quoted above: ‘For pregnancy to occur there has to be ovulation [...] followed by the fertilisation of the egg [...] and implantation in the womb.’ This concept seems to have

43 A. Kobyliński, op. cit., p. 13.

44 The Emergency Contraception Website, *How emergency contraception works: Does emergency contraception cause an abortion?*, <https://ec.princeton.edu/questions/ecabt.html>, accessed 19 May 2021.

been accepted also by Polish state authorities, in particular by the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products (ORMP), who on this basis issues marketing authorisations for postcoital contraceptives as products without abortifacient properties. However, this position contradicts the legal protection of life adopted in Poland, which also covers the initial stage of the prenatal phase.

In conclusion, contrary to the available official information⁴⁵ and the commonly held belief, the concept of abortion pills in Poland should also include commercially available emergency contraception. This is because the results of clinical studies show that these drugs are characterised primarily by their anti-implantation effect and not by their anti-ovulation effect, thus causing termination of pregnancy at its earliest stage, i.e., they have an early abortifacient effect.

4 The legal status of oral postcoital contraception under Polish law

4.1 Most important legal acts regulating the marketing of postcoital contraceptives in Poland

The marketing of medicines in Poland is primarily regulated by the provisions of the Act of 6 September 2001 – Pharmaceutical Law (hereinafter: PL).⁴⁶ This Act implements into the Polish legal order Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (hereinafter: Directive 2001/83).⁴⁷ Furthermore, for medicines authorised under the EU centralised procedure, the provisions of Regulation (EC) No. 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down EU procedures for the authorisation and supervision of medicinal

45 See also International Consortium for Emergency Contraception (ICEC), *Emergency contraception and medical abortion: what's the difference? February 2013*, https://www.cecinfo.org/wp-content/uploads/2014/01/ICEC_Medical-Abortion-Fact-Sheet_Feb-2013.pdf, accessed 19 May 2021.

46 Act of 6 September 2001 – Pharmaceutical Law (Dz.U. No. 126, item 1381).

47 Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311 of 28 November 2001, p. 67).

products for human and veterinary use and establishing a European Medicines Agency (hereinafter: Regulation 726/2004)⁴⁸ apply. In addition, a legal act that has a practical bearing on the issue of availability of medicinal products on the Polish market is the Regulation of the Minister of Health of 14 November 2008 on the criteria for classifying a medicinal product into individual availability categories (hereinafter: Ministry of Health Regulation).⁴⁹

4.2 The issue of classifying postcoital contraceptives as medicinal products

According to the legislation in force in the territory of the Republic of Poland, oral postcoital contraceptives have the status of medicinal products. The aforementioned legal acts provide, in this respect, a uniform definition of this type of goods. Article 2(32) of the PL reads that ‘a medicinal product is a substance or a mixture of substances presented as having properties for the prevention or treatment of a human or animal disease or administered with a view to making a diagnosis or to restoring, correcting or modifying physiological functions of the body through pharmacological, immunological or metabolic action’.⁵⁰ In the light of this definition, oral postcoital contraceptives should be considered to meet the last of the listed criteria, as agents that cause modification of the physiological functions of the female organism through a pharmacological action – as their use causes changes that prevent the conception of a child or its development in the uterus. However, emergency contraceptives cannot be considered to have any of the other properties of medicinal products: they are not intended to prevent or treat disease, nor are they used to diagnose, restore or improve the functioning of the body.

It should be noted that the criterion of modification of the natural functions of an organism is fundamentally different from the other elements of the definition of a medicinal product. Indeed, the term ‘modification’ as used in the PL is not limited to the positive aspect, i.e., resulting in an improvement in the condition

48 Regulation (EC) No. 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136 of 30 April 2004, p. 229).

49 Regulation of the Minister of Health of 14 November 2008 on the criteria for placing a medicinal product in particular categories of availability (Dz.U. 2016, item 1769).

50 See also Article 1(2) of Directive 2001/83 and Article 2 of Regulation 726/2004.

of any organ or organism as a whole. It follows that the modifying effect of a particular medicinal product also includes its negative effects on the normal functioning of the organism. The available information on the mechanism of action of UPA and LNG substances provides arguments that this is the case for emergency contraception. On the basis of this definition, oral anti-ovulatory and anti-implantation agents can function as medicinal products on the market.

The classification of substances as medicinal products that do not have any therapeutic properties but only modify the functioning of the body is a controversial issue. This issue was dealt with by the Court of Justice of the European Union (CJEU) in joined cases C-358/13 and C-181/14.⁵¹ Although the basis for the CJEU's ruling were the provisions of Directive 2001/83 and the factual circumstances involved the marketing of hallucinogenic substances, the scope of the concept of 'medicinal product' analysed by the Court is the same under the Polish PL and Directive 2001/83, so the ruling of the CJEU should be considered adequate to the problem under consideration. In the judgment in question, the national court asked the CJEU to clarify whether the concept of 'medicinal product' in Article 1(2)(b) of Directive 2001/83 must be interpreted as excluding substances whose action is limited to a mere alteration of physiological functions, without bringing about their improvement, and which are consumed with the sole purpose of inducing a state of intoxication and, consequently, are harmful to human health.⁵² In response to this question, the CJEU indicated that a product is a medicinal product if one of the two definitions of 'medicinal product' in Article 1(2) of Directive 2001/83 can be applied to it.⁵³ It added that a correct interpretation of the term 'medicinal product' does not make it possible to separate its various components.

To illustrate the CJEU's position in this case, it is worth quoting the following extended passage from the judgment's reasoning: 'Admittedly, according to its ordinary meaning in everyday language, the word "modify" is neutral in

51 Judgment of the Court of Justice of the European Union (hereinafter: CJEU) of 10 July 2014 in joined cases C-358/13 and C-181/14, ECLI:EU:C:2014:2060; <http://curia.europa.eu/juris/document/document.jsf?jsessionid=FC76753AC2AED5FDD821451959CA9296?text=&docid=154827&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6600116>, accessed 19 May 2022, hereinafter: CJEU judgment in cases C-358/13 and C-181/14.

52 With regard to the early-abortion pills under consideration, it can reasonably be argued that they are not so much harmful to health as a real threat to human life.

53 CJEU judgment in cases C-358/13 and C-181/14, para. 28.

terms of whether the effects produced are beneficial or harmful. However, it is settled case-law that in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, *inter alia*, the judgments in *Merck*, case 292/82, EU:C:1983:335, paragraph 12, and in *Brain Products*, case C-219/11, EU:C:2012:742, paragraph 13). According to recital 3 in the preamble to Directive 2004/27, in aligning national laws, it is necessary to attain a high level of human health protection. Accordingly, the whole of Directive 2001/83, and in particular Article 1(2) thereof, must be read bearing that objective in mind. That provision is not merely neutral with regard to action taken in connection with human health and implies that a beneficial effect should be secured for human health. In that regard, it should be noted that the definition in Article 1(2)(a) of Directive 2001/83 refers to “properties for treating or preventing disease in human beings”, words which unambiguously allude to the existence of a beneficial effect for human health. Article 1(2)(b) of that directive also uses terms which imply the existence of such a beneficial effect, since, at the end of that provision, it refers to a “medical diagnosis”, the purpose of such a diagnosis being to identify any disease or illness so that it may be treated in good time. [...] The word “modify” must, therefore, be interpreted as encompassing substances which are capable of having a beneficial effect on the functioning of the human organism and, as a consequence, on human health. It follows from the foregoing considerations that the term “medicinal product” in Article 1(2)(b) of Directive 2001/83 must be interpreted as not covering substances whose effects merely modify physiological functions and which are not such as to entail immediate or long-term beneficial effects for human health.⁵⁴ That conclusion is not affected by the argument that, in essence, that interpretation is at odds with the intention of the legislature, which designated as medicinal products in Article 4(4) of Directive 2001/83 “contraceptives or abortifacients”, even though such products modify physiological functions without being such as to entail a beneficial effect for human health.⁵⁵

54 In this context, it is worth noting the threat posed by the WHO’s definition of the scope of the term ‘health’, which also includes so-called sexual health. ‘Sexual health is a state of physical, mental, and social well-being in relation to sexuality. It requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence’ (World Health Organization, *Sexual health*, https://www.who.int/topics/sexual_health/en, accessed 19 May 2021).

55 CJEU judgment in cases C358/13 and C181/14, paras. 34-39.

The cited CJEU judgment highlights a very important problem that relates to the issue considered in the chapter. Contraceptive pills (including post-coital pills) and abortifacients are authorised as medicinal products, while they do not have any therapeutic characteristics to justify this status.⁵⁶

4.3 The question of the impact of EU law on the application of national legislation on postcoital contraception

Doubts about the categorisation of contraceptives and abortifacients as medicinal products are reflected in the wording of Directive 2001/83. Article 4(4) of this legislation states that ‘this Directive shall not affect the application of national legislation prohibiting or restricting the sale or use of medicinal products as contraceptives or abortifacients’. The applicable EU law in Poland therefore does not prejudge that postcoital contraception and abortifacients should be on the market in the Member States. The Directive explicitly leaves it up to individual countries to apply laws that eliminate or at least restrict this marketing: “contraceptives or abortifacients” are subject to a special regime under Directive 2001/83, since the Member States are authorised by Article 4(4) thereof to apply to those products their own restrictive rules. Accordingly, the position of such products under Directive 2001/83 is not in any way comparable to that of medicinal products falling within the general scheme established by that directive.⁵⁷ The possibility of restricting or even banning the marketing of postcoital agents in a Member State (including those authorised under the centralised procedure, such as ellaOne) was confirmed by the European Commission in its position paper of 28 August 2017.⁵⁸

It is also worth noting that, in the aforementioned judgment, the CJEU indicated that the competent authorities of the Member States should carry out a detailed analysis of the characteristics of a product before granting

⁵⁶ See also the CJEU judgment of 30 April 2009 in case C-27/08, paras. 18 and 19, ECLI:EU:C:2009:278; judgment available in Polish at: <https://infocuria.curia.europa.eu/tabs/document?source=document&text=&docid=73331&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=6602990>, accessed 19 May 2022.

⁵⁷ CJEU judgment in Cases C-358/13 and C-181/14, paras. 40 i 41.

⁵⁸ Answer to the parliamentary questions given by Mr Andriukaitis on behalf of the Commission, E-004885/2017(ASW), https://www.europarl.europa.eu/doceo/document/E-8-2017-004885-ASW_EN.html?redirect, accessed 13 October 2022.

marketing authorisation for it and, on that basis, decide whether or not the product falls within the definition of a medicinal product: ‘in Article 4(4) of that Directive, the legislator has defined as medicinal products not specific products but, in a general way, a whole category of products.’⁵⁹ On this basis, national authorities should assess on a case-by-case basis whether a preparation exhibits any therapeutic effect inherent in medicinal products before issuing a marketing authorisation decision.

4.4 The Polish legal order and the issue of legal marketing of oral postcoital contraception

Directive 2001/83 provides for the possibility to restrict the marketing of oral postcoital contraceptives, which, however, the Polish legislator does not use. The only impediment to the availability of such products is their respective availability in the ‘Rp’ (prescription) category, whereas in most European countries they can be purchased without the need to present a prescription. The possibility of legal purchase and use of emergency contraceptives, which have been shown to have an early abortifacient effect, raises justified objections in light of the norms establishing the legal protection of life. On the basis of the regulations in force in Poland, human life is subject to constitutional protection also in the initial prenatal phase, as the Constitutional Tribunal has repeatedly pointed out in its judgements.⁶⁰ Also, Article 2, paragraph 1 of the Act of 6 January 2000 on the Ombudsman for Children⁶¹ clearly indicates that the beginning of human life is the moment of conception. The Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy specifies the cases and conditions under which termination of pregnancy is possible. In the light of these provisions, as a rule, the marketing of abortifacients is not permitted in Poland (exceptions are medicines with other registered uses, which are used, however, beyond the indications, for the termination of pregnancy).

59 CJEU judgment in cases C-358/13 and C-181/14, paras. 42 i 43.

60 See in particular the ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96 and the judgment of the Constitutional Tribunal of 22 October 2020, ref. K 1/20.

61 Act of 6 January 2000 on the Ombudsman for Children (Dz.U. 2020, item 141).

Thus, on the one hand, certain constitutional and statutory provisions establish the protection of life from conception, while on the other hand, provisions of other legal acts consent to the trade in products which annihilate life at the earliest stage of development. A clear inconsistency of legal regulation and inconsistency of the Polish legislator can be seen here. There may be various reasons for this, among which the problem of the lack of a comprehensive assessment by the ORMP of the actual properties of medicinal products which are the subject of applications for marketing authorisation can be mentioned as a probable one. Regulatory inconsistency may also result from an inappropriate approach, based on the WHO position, to the determination of the onset of pregnancy as the moment of implantation of the embryo in the endometrium. In order to limit the circulation of oral postcoital contraceptives, it is worth considering the postulate of introducing into the Polish legislation an autonomous definition of pregnancy, based on a concept in line with scientific knowledge (human life arises at the moment of karyogamy, not at the moment of implantation of the embryo in the uterus) and thus consistent with the Polish constitutional order. In this context, it is worth quoting the position of the Pontifical Academy for Life of 2000, according to which ‘pregnancy, in fact, begins with fertilisation and not with the implantation of the blastocyst in the uterine wall’ and ‘the proven “anti-implantation” action of the morning-after pill is really nothing other than a chemically induced abortion. It is neither intellectually consistent nor scientifically justifiable to say that we are not dealing with the same thing’.⁶² This definition would serve as a direct point of reference for the evaluation of products with abortifacient properties (including early abortifacients) qualified as medicinal products in the procedure for marketing authorisation in Poland.

4.5 Problems of availability of emergency contraceptive pills

Currently, all oral postcoital contraceptives have the status of medicinal products with the availability category ‘Rp’ (prescription), which means

62 Pontifical Academy for Life, *Statement on the so-called ‘Morning-after Pill’*, https://www.vatican.va/roman_curia/pontifical_academies/acdlife/documents/rc_pa_acdlife_doc_20001031_pillola-giorno-dopo_en.html, accessed 23 September 2022, quoted in A. Kobyliński, op. cit., p. 16.

that they can be dispensed from the pharmacy on the basis of a doctor's prescription. According to the provisions of the Ministry of Health Regulation, the 'Rp' (prescription) availability category means that emergency pills belong to the group of medicines that:

- 1) may pose a direct or indirect risk to human life or health, even when used correctly without medical supervision, or:
- 2) may often be applied incorrectly, resulting in a direct or indirect risk to human health, or:
- 3) contain substances whose therapeutic action or adverse effects require further study.⁶³

Medicinal products with an 'Rp' (prescription) category constitute a group of products, the use of which – above all because of the possible danger to human life or health – requires medical supervision. A fundamental problem with regard to the real possibility of acquiring and subsequently using such products inappropriately (not in accordance with the indications) is the fact that any doctor can issue a prescription for postcoital oral contraception or even for abortifacient medicines, including one who, because of his/her other specialisation, has no substantive knowledge of the action of the active substances contained in such drugs.

Furthermore, medical supervision in this case is limited only to the moment of acquisition of the medicinal product, but no longer covers its use. On the other hand, in many European Union countries, the emergency pill ellaOne is sold without the need to present a prescription ('OTC' [Over the Counter] availability category). This was also the case in Poland between 2015 and 2017, but in 2017 medical control over the sale of these drugs was reinstated. The restriction of availability by changing the 'OTC' category to the 'Rp' category constitutes a certain barrier to the purchase of such substances. However, practice shows that even when a doctor refuses to issue a prescription, pro-abortion organizations operating in

63 § 1 para. 1, pts. 1-3 of the Ministry of Health Regulation.

Poland, such as the Federation for Women and Family Planning FEDERA,⁶⁴ and online services, such as Receptomat.pl,⁶⁵ help in obtaining emergency contraception. Radical feminist circles intensified this kind of activity particularly after the Constitutional Tribunal's verdict of 22 October 2020, which significantly improved the standard of protection of human life in Poland. In practice, therefore, the restriction in the form of the requirement to present a prescription does not constitute a real and effective obstacle to obtaining and using emergency contraception.

At this point, it is worth noting that the Ministry of Health Regulation also lists 'Lz' (for in-hospital use only) as an availability category for medicinal products, i.e., used exclusively in inpatient health-care. According to § 3 of this legal act, a medicinal product is included in this category of availability when, due to its pharmacological properties, method of administration, indications, innovativeness or for reasons of public health interest, it is reserved for treatment that can only be carried out in inpatient treatment. Medicinal products in this category cannot be dispensed from the pharmacy for use by the patient at home, which certainly limits their availability and has the effect of reducing the scale of their circulation.⁶⁶

5 Pharmacological abortion – legal status of the abortion pill in Poland and existing practices

5.1 Abortion pills – legal status in Poland

The cases in which termination of pregnancy is permissible in Poland are specified in Article 4a of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of

64 Fundacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Skąd wziąć „tabletkę po” (antykoncepcję awaryjną)?*, <https://federa.org.pl/awaryjna-poradnik>, accessed 14 October 2022.

65 Receptomat.pl, produkt: Tabletki „Dzień Po” 72–120h [product: Morning-after pill 72–120 hours], https://receptomat.pl/landing/aa?gender=f&k=antykoncepcja%20awaryjna&c=13984691670&g=125498777895&a=535130130601&d=c&utm_source=adwords&gclid=EAlaIqobChMh93n0LPO8gIViOF3Ch1X8gcoEAAAYBCAAEgKUYPD_BwE, accessed 14 October 2022.

66 See the position of the Minister of Health of 17 March 2017 on the possibility of using Lz-category medicines at home, PLO.4642.1.2.2017.JM; available at: https://oipip.opole.pl/wp-content/uploads/2017/03/skmbt_odp_mz_leki_lz.pdf, accessed 14 October 2022.

terminating a pregnancy (hereinafter: AFP).⁶⁷ In any circumstance in which it is permissible to terminate a pregnancy in accordance with the provisions of the AFP, the procedure may be performed by a qualified physician. Furthermore, the circumstances justifying the termination of pregnancy should be ascertained – depending on the case – by a doctor other than the one performing the procedure, or by the public prosecutor.⁶⁸

Interrupting a pregnancy in contravention of the provisions of the AFP constitutes the prohibited acts set out in Articles 152-154 of the Criminal Code (hereinafter: CC).⁶⁹ Under these provisions, third parties who take part in aborting a pregnancy contrary to the provisions of the AFP, whether with the consent of the woman (Article 152 of the CC) or without her consent (Article 153 of the CC), are subject to criminal liability. From the point of view of the issue of trade in abortion pills on the territory of Poland, the provision of Article 152 § 2 of the CC, according to which a person who assists or induces a pregnant woman to terminate her pregnancy in violation of the provisions of the AFP bears criminal liability. In the light of this standard:

- an action of an illegal nature will be any pharmacological abortion performed by a person who is not authorised to do so,⁷⁰
- The perpetrator of such an offence may be anyone who assists a woman in terminating a pregnancy, where the term ‘assistance’ also means the sale of abortifacients via the internet.⁷¹

5.2 Circulation of abortifacient tablets in practice

Practice shows that the current provisions of the CC do not constitute a real obstacle preventing marketing in tablets with which it is possible to perform a pharmacological abortion on one’s own. In fact, there are many

67 Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. 2022, item 1575).

68 Ibid., Article 4a(5).

69 Act of 6 June 1997 – Criminal Code (Dz.U. 2022, item 1138).

70 Cf. R. Kokot, Commentary to Article 152, [in:] *Kodeks karny. Komentarz*, ed. R. Stefański, Warszawa 2019, SIP Legalis (together with the view of A. Zoll cited therein).

71 See judgment of the Court of Appeal in Szczecin of 14 April 2016, ref. II AKa 36/16.

organizations which, via the Internet, aid in obtaining abortion pills in Poland and provide all the necessary information on how to use them or, for example, on the related legal liability. The websites also provide advice on how to behave if a consignment of tablets is stopped by the Polish state authorities.⁷²

5.2.1 Products and services related to pharmacological abortion available in Poland

It is not necessary to visit a doctor to obtain information on how to perform a pharmacological abortion yourself at home and to have access to the resources needed to perform it. Many websites provide comprehensive information in Polish on this subject. Websites such as Womenonweb.org, Womenhelp.org, Federa.org.pl, Aborcyjnydreamteam.pl, Poronne.org and the like provide all the necessary instructions and enable the purchase of abortion pills containing mifepristone and misoprostol, which are not available in Polish pharmacies. For example, the website Poronne.org functions as an online shop allowing the purchase of abortion preparations at home. The 'shop' offers, among other things, delivery of the pills by courier to your home, contact details of doctors providing advice on pharmacological abortion, drug leaflets with a Polish translation, an instructional video on how to proceed to terminate a pregnancy, and the like.⁷³ The purchase of abortion pills is made using the 'add to cart' function. In this case, even the remote consultation service with a doctor offered by other sites is omitted. The pills are delivered by courier from the Netherlands on the same basis as any other product that is in legal circulation in Poland.

5.2.2 Status of abortifacient tablets imported from abroad for personal use

Importing abortion pills into Poland from countries where they are available is possible thanks to the provision of Article 68(5) of the PL, under which importing a medicinal product from abroad for one's own medicinal needs

72 See press material available at: <http://codziennikfeministyczny.pl/problem-przesylkami-od-women-web>, accessed 14 October 2022.

73 See Poronne.org, produkt: Tabletki poronne zestaw 16 + 1 (najskuteczniejszy zestaw leków) [product: abortion pills set 16 + 1 (most effective drug set)], <https://www.poronne.org/sklep/tabletki-poronne-oryginalne-cena/>, accessed 27 October 2022.

in a number not exceeding five smallest packages does not require the consent of the President of ORMP. The Act does not add that the imported medicinal product or its equivalent should also have a marketing authorisation in Poland. Paragraph 6 of the provision in question only restricts the importation of narcotic drugs and psychotropic substances into Poland. The recent interpretation of Article 68(5) of the PL recently considered it permissible to purchase medicines abroad and bring them to Poland via courier or post. In March 2018, however, the Polish Supreme Administrative Court (SAC) interpreted the concept of ‘importing a medicinal product from abroad for personal use’, indicating that ‘by “import” one should understand the act of bringing something, i.e., physically taking something (object) with oneself to another (specified) place. Thus, the importation of medicinal products for personal use within the [legal – editor’s note] limit should refer to an act so understood. It cannot, therefore, refer to sales involving postal or courier services. This provision therefore refers to a direct, active, and personal act, which cannot be regarded as a situation where a medicinal product is imported by mail order’.⁷⁴ According to the interpretation made by the SAC, the practice in which abortifacients are delivered to the buyer by third parties is therefore now prohibited.⁷⁵

It is also worth noting that in Article 68(5) of the PL, the legislator specified that importing a medicinal product from abroad without the consent of the President of the ORMP is allowed only for the purpose of satisfying one’s own therapeutic needs. Although abortifacient tablets are marketed on the market as medicinal products, there is no doubt that they do not actually have therapeutic properties. Consequently, the nature of these products should exclude them from being imported into Poland for therapeutic purposes and thus from the scope of the standard of Article 68(5) of the PL.

5.2.3 Problems of limiting the circulation of abortion pills in Poland

Despite the existing legal grounds for prosecuting the practice of Internet sales of abortifacients, such activities often go unpunished in practice.

74 Judgment of the Supreme Administrative Court of 6 March 2018, ref. I GSK 1277/16.

75 See press material available at: <https://www.rynekaptek.pl/prawo/sciaganie-tabletek-poronnych-z-zagranicy-stalo-sie-nieosiagalne,26266.html>, accessed 27 October 2022.

In particular, the fact that these persons do not carry out their activities on the territory of Poland may be an obstacle to prosecuting persons involved in assisting in illegal termination of pregnancy. The legitimacy of qualifying the online sale of abortifacients as a form of assistance in termination of pregnancy, as well as holding the perpetrators criminally liable when there is no certainty that the effect in the form of termination of pregnancy occurred, is also questionable.

In this context, it is worth noting the arguments expressed in the doctrine and decisions of the court ruling on the basis of Article 152 § 2 of the CC, as indicated below:

- The activity of selling abortifacients online and giving instructions on how to use these drugs to terminate a pregnancy constitutes an offence under Article 152 § 2 of the CC. As the Court of Appeal in Szczecin noted in its 2016 judgment: 'It is significant, however, that R. S., knowing about the early abortive properties of the drug [...], sold it for the sole purpose referred to in Article 152 § 2 of the CC, i.e., to assist pregnant women in terminating their pregnancies in violation of the provisions of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. 1993, No. 17, item 78, as amended). Thus, in this state of affairs, it is obvious that through unlawful conduct, the accused committed the offence stipulated in Article 152 § 2 of the CC [...].'⁷⁶
- The criminal act of assisting in the termination of a pregnancy is a formal offence: 'The offence under Article 152 § 2 of the CC [...] is a sui generis offence involving either incitement (synonymous with incitement under Article 18 § 2 CC) or assistance (a form of aiding and abetting under Article 18 § 3 CC). When it is a case of incitement or aiding and abetting of an act which, on the part of the perpetrator, is not a prohibited act, the provisions of the general part of the CC concerning forms of criminal collaboration do not apply to incitement and aiding and abetting in terms of Article 152 § 2 of the CC, as such does not occur here. Therefore, the coincidence of

76 Judgment of the Court of Appeal in Szczecin of 14 April 2016, ref. II AKa 36/16.

the description of the criminal offence defined in Article 152 § 2 of the CC with the description of incitement in Article 18 § 2 of the CC or aiding and abetting in Article 18 § 3 of the CC, relates only to the characteristics of the elements of perpetration. It is beyond dispute that the offence under Article 152 § 2 of the CC is formal in nature, the perpetrator is liable regardless of whether the termination of pregnancy has occurred or not.⁷⁷

- The foreign nature of Internet portals should not be an obstacle to holding their founders criminally liable; indeed, it is argued in the doctrine that in the case of Internet offences it is justified to assume that the place of action of the perpetrator of a formal offence is both the place where the perpetrator was when committing the offence and the place where the computer system which the perpetrator influenced is located – currently, however, this view is treated as a *de lege ferenda* postulate.⁷⁸

The position of the courts and the doctrine cited above provides important guidance on the possibility of prosecuting illegal trade in abortifacients, including when it takes place via the Internet.

6 Access to postcoital contraception and pharmacological abortion – legal comparative elements

6.1 Access to postcoital contraception in Poland and other European countries

In 2017, the so-called European Contraception Policy Atlas was created on the initiative of the European Parliamentary Forum for Sexual & Reproductive Rights (EPF), an organization of, among others, parliamentarians from European countries. It is a kind of ‘ranking’ of 46 European countries in terms of contraceptive accessibility – the easier this access is, the higher the country scores.⁷⁹

⁷⁷ Judgment of the Supreme Court of 20 November 2014, ref. IV KK 257/14.

⁷⁸ B. Kunicka-Michalska, Commentary to Article 6, [in:] *Kodeks karny. Komentarz*, ed. R. Stefański, Warszawa 2019, SIP Legalis.

⁷⁹ European Parliamentary Forum for Sexual and Reproductive Rights, *2022 European Contraception Policy Atlas*, <https://www.epfweb.org/node/89>, accessed 27 October 2022.

In addition to the graphical part, the study includes a descriptive part outlining the criteria for classifying each country into a colour category.

Among the criteria mentioned are ‘Prescription requirements’, which is to be understood as a reference to the availability of postcoital contraception depending on the legal requirement to present a prescription. Indeed, as shown in the table, in the column entitled ‘Availability of emergency contraception’, Poland is the only country where it is indicated that this form of contraception is not available (‘No’ attributed to Poland). It should be emphasised, however, that this information is true only if it is specified that by the term ‘availability’ we mean the possibility of purchasing the contraceptive without presenting a prescription. Otherwise, it would mean that postcoital contraceptive pills are not available in Poland at all, which is not true. In Poland, the purchase of this type of product is possible and its availability is only slightly limited by the prescription availability category assigned to it. Based on the information provided in the descriptive part of the Atlas, it may also be concluded that out of the 46 European countries, only Hungary and Russia have a legal restriction on the availability of emergency contraceptive pills in the form of a requirement to present a prescription, apart from Poland, which is referred to as ‘Yes’ (illegal).⁸⁰ From this reference it appears that, according to the laws of these countries, the pills in question are only available on prescription, but in practice they can be purchased without a prescription. With regard to Poland, on the other hand, it is stated that the practice coincides with the applicable law, which prohibits their dispensing without a prescription.⁸¹ Finally, it is worth noting that the information for individual European countries in 2022 is presented in the Atlas in a less precise manner than it was still in 2020, where the descriptive section included a column clearly entitled ‘Availability of emergency contraception without prescription’.⁸² The lack of clarification that in the 2022 statement ‘availability’ means the possibility to purchase the preparations in question without the need to present a prescription, may

80 See *Contraception Policy Atlas Europe 2022*, heading ‘Prescription Requirements’, column ‘Availability of emergency contraception’: Hungary, Russia, https://www.epfweb.org/sites/default/files/2022-03/CCception-InfoA3_EN%202022%20MAR2%20LoRes%20%281%29.pdf, accessed 27 October 2022.

81 See *ibid.*, ‘Prescription Requirements’ section, column ‘Availability of emergency contraception’: Poland.

82 See *Contraception Policy Atlas Europe 2020*, https://www.epfweb.org/sites/default/files/2020-11/CCceptionInfoA3_EN%202020%20NOV2.pdf, accessed 27 October 2022.

cause misinterpretation of the data and a false belief that there is a total ban on the marketing of postcoital contraception in Poland.

The requirement to show a prescription as a restriction on access to tablets containing ulipristal acetate was also in place in countries such as Croatia, Germany, and Italy until 2015. Moreover, in Italy, an additional requirement prior to the purchase of an emergency pill with UPA was the exclusion of pregnancy by means of a pregnancy test.⁸³ However, the situation changed when the European Medicines Agency recommended changing the availability category of ellaOne from 'Rp' to 'OTC'.⁸⁴ On this basis, the European Commission issued a decision in January 2015 to amend the marketing authorisation of the medicinal product ellaOne – with this decision the manufacturer was allowed to sell the product without a prescription in all EU countries.⁸⁵ The OTC availability category for ellaOne tablets was adopted in Poland in 2015 (this status remained until 2017). Subsequently, Malta (2016), Gibraltar (2017), and Andorra (2018) joined the countries where ellaOne can be sold without a prescription.⁸⁶ After 2015, only Hungary invariably maintained a prescription requirement, for reasons of patient safety, for the purchase of all postcoital contraceptives.⁸⁷ The sale of such preparations is still restricted there, but at the same time, data obtained by the Atlas authors indicate that it is possible – contrary to the law – to obtain emergency contraceptives in this country also without a prescription.

In light of the above, in 2022 Poland presents itself as the country which, compared to other European countries, restricts access to postcoital contraception to the highest degree. However, legal restrictions in our country do

83 See European Consortium for Emergency Contraception (ECEC), *Emergency Contraception Availability in Europe*, <https://www.ec-ec.org/emergency-contraception-in-europe/emergency-contraception-availability-in-europe>, accessed 27 October 2022.

84 European Medicines Agency, *EMA recommends availability of ellaOne emergency contraceptive without prescription*, Press release of 21 November 2014, EMA/710568/2014, https://www.ema.europa.eu/en/documents/press-release/ema-recommends-availability-ellaone-emergency-contraceptive-without-prescription_en.pdf, accessed 27 October 2022.

85 European Commission Implementing Decision C(2015)51 (final) of 7 January 2015 amending the marketing authorisation granted by Decision C(2009)4049 for 'ellaOne – ulipristal acetate', a medicinal product for human use.

86 S. Italia, P. Schröder-Bäck, H. Brand, *Switching emergency contraceptives to non-prescription status and unwanted pregnancy among adult and teenage women: A long-term European comparative study (Original research)*, "South Eastern European Journal of Public Health" 2020, <https://doi.org/10.4119/seejph-3277>.

87 European Consortium for Emergency Contraception (ECEC), *Emergency Contraception Availability in Europe*, <https://www.ec-ec.org/emergency-contraception-in-europe/emergency-contraception-availability-in-europe>, accessed 27 October 2022.

not eliminate the phenomenon of online ‘sales’ of prescriptions issued also for emergency contraception on the basis of so-called e-consultations.⁸⁸

6.2 Access to pharmacological abortion in Poland compared to other countries

Data published at the end of 2019 shows Poland as a country belonging to a small group of European countries where the termination of pregnancy is limited by law and thus the standard of protection of human life – including life in the prenatal stage – is relatively high. Apart from the Republic of Poland, this group includes Liechtenstein, Monaco, Andorra, and Malta.⁸⁹ By contrast, internationally, there are numerous countries where abortion is either illegal (for example: Syria, Madagascar, Afghanistan) or restricted only to cases where a woman’s life is at risk (for example: Somalia, Venezuela, Iraq, Egypt).⁹⁰ Substances used for abortive purposes (misoprostol) are also not available in some of these countries.

7 Conclusions

The results of scientific studies presented in this chapter show that, contrary to the commonly held belief, substances used in oral postcoital contraception are characterised by an early abortifacient effect. On the basis of the regulations in force in Poland, these substances are available on the market as medicinal products for use as contraception (in the sense of preventing conception: gr. *antí* – against, lat. *conceptio* – conception). However, their proven anti-implantation character provides reasonable grounds for the reclassification of these products as abortifacients, the sale of which is prohibited by law.

The sale of abortifacients via the Internet, illegal under the current state of the law, is another problem requiring effective action by law enforcement

88 See, e.g., Dobra-recepta.pl, https://dobra-recepta.pl/recepta/tabletka-po/?gclid=EAlaIQobChMImP-a0K2A-wlVGmgYCh3C5wXdEAAYAyAAEgJUrfD_BwE, accessed 27 October 2022.

89 *Ranking of countries in terms of the level of legal protection of human life at the prenatal stage of development*, eds. M. Olszówka, N. Bernaciak, A. Czelejczyk, Annex 1 to this monograph.

90 See Woman on Waves, *Abortion information per country*, <https://www.womenonwaves.org/pl/map/country>, accessed 26 August 2021.

authorities. In this regard, it is worth pointing out the referenced legislative proposal indicating the possibility of punishing the perpetrators of cross-border Internet crimes.

Irrespective of the nature of the products identified by the applicants in the registration procedure, the ORMP should each time conduct a thorough analysis of their properties and decide on the possibility of issuing a marketing authorisation on this basis. In addition, EU Member States are equipped with the possibility to prohibit or restrict the marketing of contraceptives and abortifacients on their territory, which, in the case of the proven early abortifacient properties of postcoital contraception, gains additional justification.

Moreover, for the purposes of marketing medicinal products, it seems reasonable to supplement Polish legislation with its own definition of the beginning of pregnancy, different from that adopted by the WHO, while reflecting the constitutional principle of the protection of human life from the moment of conception.

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Abstract

This chapter analyses the basic aspects of the trade in emergency contraceptives and abortifacient pills. It discusses the characteristics of these products and their situation under the current law in Poland, also taking into account the international context. The research results presented in this chapter show that the substances used in emergency contraceptive pills have an early abortifacient effect. On the basis of the regulations in force in Poland, these agents are available on the market as medicinal products for contraceptive use. Their different nature, however, provides reasonable grounds for reclassifying these products as abortifacients. The sale of such products is currently prohibited by law.

The online sale of abortion products is also illegal and is another problem requiring effective law enforcement action. In this respect, it is reasonable to refer to the view formulated in the literature that, in the case of Internet crimes, the place of operation of the perpetrator of a formal crime is not only the place where the perpetrator commits the criminal act, but also the place where the computer system that the perpetrator interacted with is located.

Contraceptives and abortion pills have a specific status in EU law. The Member States of the European Union have been given the option of prohibiting or limiting the trade of contraceptives and abortifacients on their territory, which, in the case of proven anti-implantation properties of oral emergency contraception, gains additional justification.

In addition, for trade in goods with the status of medicinal products, it seems reasonable to supplement the provisions of Polish legislation with a definition of pregnancy different from the one adopted by the World Health Organization, and at the same time reflecting the principle of the protection of human life from the moment of conception adopted on the basis of the Constitution of the Republic of Poland.

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Key terms: abortion, right to life, human rights, SRHR, WHO, UN

Chapter 13

Abortion and international law

1 Introduction

Contrary to assertions often repeated in the public realm, abortion is not recognized by international law as a human right, much less a fundamental human right. As a general rule, acts of international law – based on the universal, internationally accepted standards of civilisation (including human dignity) – recognize the right to life as the first and fundamental human right, and within the provisions related to the right to life do not indicate limitation clauses (limiting this right).¹ Hierarchically, it is therefore the first, most important and fundamental right, which is also a kind of *sine qua non* for the existence and actual realisation of other rights, such as, for example, the right to health or the right to privacy.

Social and civilisational changes based largely on rebellion against the hitherto prevailing rules of action for the common good and aimed at liberation in the broad sense (not only from social and moral norms, but also from legal norms), also bring with them attempts at reform in the field of international law. This is the result of a kind of ‘march through the institutions’: having achieved a certain degree of social acceptance of abortion – presented not as the deprivation of the life of the unborn child, but as a medical procedure, an act resulting from the possibility of deciding on one’s own body – the next step is to carry out legal changes enabling real implementation of the demand for access to take the life of the child in the

1 See Universal Declaration of Human Rights of 10 December 1948 (hereinafter: Declaration), Article 3; International Covenant on Civil and Political Rights of 19 December 1966 (Dz.U. 1977, No. 38, item 167; hereinafter: ICCPR), Article 6(1); Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989 (Dz.U. 1991, No. 120, item 526; hereinafter: Convention on the Rights of the Child), preamble, Article 1 and Article 6.

name of the right to self-determination of its mother. Changes in the field of state legislation cannot be complete without a thorough reform of the system of international law, which, although sometimes interpreted in different ways, still upholds the right to life as the foundation of the social contract, which is the basis for the functioning of the human rights system worldwide.

Therefore, attempts to legitimise abortion take place predominantly through potentially symbolic or insignificant actions. Currently, attempts to establish abortion as one of the human rights are mainly based on the formulation of such a demand within the framework of non-binding documents, standards, recommendations, positions, guides – soft law acts.² They serve to prepare the ground for the adoption of an international standard for the recognition of abortion as a human right. The language used in these documents creates a narrative suggesting that abortion is enshrined in the human rights protection system. At the same time, these documents provide a basis to legitimise this approach for subsequent documents, including those of a binding nature. They are supposed to become a point of reference, the supposed voice of society or experts.

At the same time, the pro-abortion narrative today is based on an attempt to detach abortion from the right to life and link it to the health or self-determination rights of individuals, excluding any connection between abortion and the life of another human being, which is, after all, the child developing in the womb.

2 The absence of a ‘right to abortion’ in international law

The most relevant international documents dealing with the human right to life, but also with the right to health or the right to respect for privacy and family life – i.e., the rights that are nowadays most often placed as superior to the right to life of the conceived child, and thus as allowing for the

2 See European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU, in the frame of women's health (2020/2215(INI); hereinafter: the Matic Report, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0314_EN.html, accessed 25 June 2022.

abrogation of the protection of life – do not provide a basis for deriving the superiority of any rights of one human being (the mother) over the rights of another (the child), nor do they establish a ‘right to abortion’ at the international level. In this context, it is worth mentioning that the dehumanisation of the human being during the pre-birth period is intended to facilitate social acceptance of the demand for a ‘right to abortion’.

2.1 Universal Declaration of Human Rights (1948)

The 1948 Universal Declaration of Human Rights is the first international document to absolutely affirm the unlimited right to life of every human being. Already in the preamble it is indicated that ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world’.³ In turn, Article 3 of the Declaration reads: ‘Everyone has the right to life, liberty and security of the person.’⁴

The absence of an explicit reference to children in the prenatal phase of development in Article 3 of the Declaration does not mean that they are not covered by the rights contained therein. It would be contrary to the art of jurisprudence to apply a restrictive interpretation in the absence of any indication that the legislature intended to limit the application of a regulation to – in this case – a specific group of persons. One of the basic principles of reading the meaning of legal provisions is to give priority to literal interpretation (literal understanding of the text, reading it on the basis of linguistic directives). In the case of Article 3 of the Declaration, this interpretation is unambiguous – the provision applies to ‘everyone’. In doing so, there is no doubt that every being with a human genome is already a human being in the period before birth and remains one after birth. The search for the intentions of the legislator creating a given norm using a different interpretation, whether purposive or functional, is admissible only when the formulation of the provision under examination is not clear or unambiguous, as well as when the literal understanding of the

3 Declaration, preamble.

4 Ibid., Article 3.

provision would be inconsistent with the objectives that the given legal act is supposed to achieve.⁵ Such prerequisites do not occur in the case at hand, still less is there an indication to apply a restrictive interpretation.

This understanding of the right to life in terms of subject matter is in line with the principles of interpretation of international treaties, as confirmed by the provisions of the Vienna Convention on the Law of Treaties, drawn up in Vienna on 23 May 1969. Indeed, Article 31 of the Convention, concerning the general rule of interpretation, indicates that every 'treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.⁶ This 'ordinary meaning' must be interpreted bearing in mind that at the time of the adoption of the Declaration, almost all countries prohibited the killing of human beings at the prenatal stage of development, and this was the understanding of the phrase 'everyone has the right to life'.

It is worth mentioning at this point, however, that the social attitudes to abortion at the time were also shaped differently from today's dualistic division between pro-life and pro-choice attitudes. Society in the first half of the twentieth century, and to a large extent almost until the end of the second half of the twentieth century, was largely ambivalent towards abortion as a procedure that was not at all linked to the life of the child, but rather treated as a form of late contraception that in no way harmed developing life (it should be remembered, for example, that as recently as the 1980s even operations on newborn babies were performed without anaesthesia, based on the assumption of their incomplete humanity, which resulted in the conviction that such a young child felt no pain).⁷ It was only with the development of medicine that it became clear that already at the prenatal stage – irrespective of the developmental stage – we are dealing with a human being who should have the same rights as a person already born. In this case, the correctness of the direction taken

5 L. Morawski, *Principles of law interpretation*, Toruń 2010, pp. 191-198, 207-209.

6 Vienna Convention on the Law of Treaties, drawn up at Vienna on 23 May 1969 (OJ 1990, No. 74, item 439; hereinafter: Vienna Convention), Article 31.

7 See M.B. McGraw, *Neural Maturation as Exemplified in the Changing Reactions of the Infant to Pin Prick*, "Child Development" 1941, 12(1), pp. 31-42; D.B. Chamberlain, *Babies Remember Pain*, "Pre- and Perinatal Psychology Journal" 1989, 3(4), <http://www.cirp.org/library/psych/chamberlain>, accessed 9 November 2022.

earlier in the Declaration for the protection of life from conception was confirmed by advances in medical science.

2.2 International Covenant on Civil and Political Rights (1966)

2.2.1 The scope of the protection of life in the International Covenant on Civil and Political Rights

According to Article 6(1) of the International Covenant on Civil and Political Rights (hereinafter: ICCPR, Covenant): 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'⁸ According to the Covenant, the right to life is inherent in every human being and is therefore enjoyed by all human beings, at every stage of their development.⁹ Contrary to appearances, the term therefore has nothing to do with being born or not, the inherent right to life derives from the very fact of being a human being and is also entitled to it at the prenatal stage.

The fact that the right to life guaranteed by the ICCPR is inherent means that it is independent of the will of the legislator. International bodies, therefore, cannot grant or take it away from anyone – they can only affirm and protect it. This right is derived from the fact of being a human being and not from being bestowed by an external entity. It arises with the coming into existence of a human being, the beginning of which is marked by the moment of conception. It is then that a human being comes into being and begins to live and develop. From the point of view of science, it possesses a fully complete organism (although not yet fully mature) and is characterised by a distinct and unique genetic material.¹⁰ Therefore, there is no doubt that

⁸ ICCPR, Article 6(1).

⁹ A. Domagała, A. Florczak, *Prawa człowieka*, Wrocław 2018, p. 14, https://eul.ceo.org.pl/sites/eul.ceo.org.pl/files/prawa_czlowieka.pdf, accessed 25 June 2022. It is noteworthy that an identical definition of the 'inherent' right to life is also given by the pro-abortion organization Amnesty International: 'Human rights are the basic norms to which each of us is entitled by virtue of the very fact of being human, such as the right to life [...]. The source of all rights and freedoms is the dignity of every human being. Human rights are: [...] inherent (they exist independently of the will of the authorities or the laws, the state only creates a system for their protection [...]).' (Amnesty International, *Co to są prawa człowieka?*, <https://amnesty.org.pl/co-robimy/prawa-czlowieka>, accessed 5 November 2021).

¹⁰ See, inter alia, M. Troszyński, *Położnictwo. Ćwiczenia. Podręcznik dla studentów medycyny*, Warszawa 2003, p. 69; Z. Bielańska-Osuchowska, *Jak zaczyna się życie człowieka*, Warszawa 1994, p. 37; *Medycyna perinatalna*, t. I, ed. Z. Słomko, Warszawa 1985, p. 19; M. Rybakowa, *Życie człowieka zaczyna się wraz z pierwszym podziałem zapłodnionej komórki rozrodczej*, "Służba Życiu: Zeszyty Problemowe" 1999, no. 2/3, pp. 8-9; *Zdrowie rodziny*, eds. K. Bożkowska, A. Sitko, Warszawa 1983, p. 35.

Article 6(1) of the Covenant, while literally protecting the life of every human being, also protects it at this earliest stage, in the first phase of existence.

The further stages of prenatal human development, despite their different names, are also subject to the same legal protection under Article 6(1): the ICCPR does not differentiate between the value of the life of individual human beings, including on the basis of their age, assuming that everyone has an equal right to life. Article 6 does not contain the phrase 'from birth' or any formulation equivalent to it. The argument that the lack of a precise specification that the right to life already exists prior to birth excludes people at the prenatal stage of development from the protection guaranteed by Article 6 is erroneous. Following this line of reasoning, any category of people (newborns, the elderly, the sick, the disabled, women, men) could be excluded, since none of these groups is explicitly mentioned in the provision. It follows from the above that the Covenant, while extending protection to the life of every human being, does not exclude human life also at the earliest, prenatal stage of development – further stages, each of which also has a name, are subject to the same legal protection provided for in Article 6(1) of the Covenant. Indeed, the object of protection is human life itself, regardless of the developmental stage. Any other interpretation would be incompatible with the prohibition of discrimination on the basis of birth or status contained in Articles 24 and 26 of the Covenant.

It is worth noting that the recognition of the right to life of the unborn child fully corresponds to the other provisions of the Covenant, as well as fitting into the context of Article 6 as a whole. By way of example, we can point to paragraph 5 of this article, where we find the prohibition of executing a pregnant woman. This provision is a consequence of the recognition of the independent status of the unborn child in relation to its mother, which was explicitly acknowledged during the preparatory work on the content of the Pact. The documents from the preparatory work on the Covenant, which, according to Article 32 of the Vienna Convention on the Law of Treaties, constitute 'supplementary means of interpretation',¹¹

11 Vienna Convention, Article 32.

clearly indicate that the main reason why the death penalty should not be carried out on pregnant women is 'to save the life of an innocent unborn child' and 'inspired by humanitarian considerations and by consideration for the interests of the unborn child'.¹² This interpretation leaves no doubt that Article 6(5) of the Covenant not only protects people at the prenatal stage of development, but also recognizes their legal capacity as those entitled to human rights.

2.2.2 Attempts to limit the protection of life guaranteed by the International Covenant on Civil and Political Rights

Disregarding the unambiguous tone of Article 6 of the ICCPR, promoters of amendments to recognize abortion as a human right refer to Article 7 of the ICCPR, according to which 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment' (Article 7 of the ICCPR), and derive from it the right to lawful termination of pregnancy, citing the UN Human Rights Committee's decision in *Amanda Jane Mellet v. Ireland*.¹³ Meanwhile, the Committee, while acknowledging the complaint in terms of Article 7 of the ICCPR, in its opinion, while indeed indicating that the decriminalisation of abortion in Ireland would be a remedy for factual situations similar to the Amanda Jane Mellet case, pointed primarily to the difficulty for a woman to obtain knowledge regarding access to the possibility of legally terminating a pregnancy outside the country, even though the provision of such information to a person expressing a desire to do so was not criminalised in Ireland. The Committee also pointed out that it was unacceptable not to provide medical assistance to a woman once the pregnancy had been terminated. It was these circumstances, not the prohibition of eugenic abortion, that the Committee considered it to constitute 'cruel, inhuman, or degrading treatment'. The Committee's recognition of Ireland's interference with a woman's right to privacy (Article 17 of the Covenant) should also be read in relation to the failure to provide information about the possibility of terminating a pregnancy despite the

12 See A/3764, § 118, Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957. The Article 6(4) mentioned in the document is the current Article 6(5) – author's note; see A/2929, Chapter VI, §10, Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955.

13 Decision of the UN Human Rights Committee of 9 June 2016 in *Amanda Jane Mellet v. Ireland*, CCPR/C/116/D/2324/2013.

legal allowance for providing such information, and not as equating the prohibition of eugenic abortion (i.e., because of a malformation or disease of the child) with state interference in a woman's private life. In its opinion, the Committee pointed out the flawed nature of the legal norms, the formulation of which can de facto result in restricting access to legitimate information. Also, the charge of discrimination (Article 26 of the Covenant) was acknowledged by the Committee's concurrence with the opinion that the principle of equality is violated by the State guaranteeing care for a woman after a miscarriage or stillbirth and at the same time leaving a woman who has terminated a pregnancy outside the country without any support, even though terminating a pregnancy outside the State of Ireland is not a criminalised act. At no point in its opinion did the Committee indicate that the prohibition of eugenic abortion was in itself a violation of any of the provisions of the Covenant.

It follows from the opinion of the UN Human Rights Committee that international law requires states to determine, in an unambiguous manner and without any doubt of interpretation, which regulations on the issue of termination of pregnancy apply in their territory. In *Amanda Jane Mellet v. Ireland*, through the flawed wording of the Act, the applicant was prevented from obtaining the information, even though the doctor could have provided it without violating the law (since he would have done so at her express request). He did not do so because the way in which the provisions of the Act were framed might have given rise to his doubts. In the context of the *Mellet v. Ireland* case, it should be stressed again that, contrary to the numerous misrepresentations that have been reproduced, the Committee did not consider the ban on abortion itself to be a breach of any provision of the Covenant and did not call on Ireland to change its law on access to abortion.

2.3 Convention on the Rights of the Child (1989)

Already the preamble of the 1989 Convention on the Rights of the Child vouches for right to life of the conceived child explicitly, stating that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as

after birth'.¹⁴ Confirmation of this provision is also found in the Declaration on the Rights of the Child of 20 November 1959, to which the preamble of the Convention refers.

In the context of the preamble already indicated, Article 1 of the Convention also defines a child as 'every human being below the age of eighteen years'. It therefore clearly defines an upper age limit under which a person is considered a child, without setting any lower limit. It is therefore reasonable to assume that the provisions of the Convention also extend protection to unborn children, and this from the very beginning of their existence (conception). Furthermore, we do not find any other limitation clause in the Convention that restricts the right to life of children or stipulates that the status of a child is acquired at birth. Article 6 of the Convention states that 'every child has the inherent right to life' and that 'States Parties shall ensure to the maximum extent possible the survival and development of the child'. Thus, if States Parties have an obligation under the Convention to ensure the highest possible level of living and development conditions for children, they are first obligated to guarantee the conditions for their survival (protection against deprivation of life), without which the implementation of the other obligations in Article 6 becomes impossible in practice.

2.4 Convention for the Protection of Human Rights and Fundamental Freedoms (1953)

2.4.1 Scope of protection of the Convention for the Protection of Human Rights and Fundamental Freedoms

The Convention for the Protection of Human Rights and Fundamental Freedoms, known as the European Convention on Human Rights (ECHR), a document binding on the states of the Council of Europe, also contains no limitation on the scope of the right to life, which it explicitly surrounds with protection in Article 2: 'Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this

14 Convention on the Rights of the Child, Preamble.

penalty is provided by law.¹⁵ As in the case of the ICCPR, possible doubts of interpretation are fully dispelled by the documents of the preparatory work. The Consultative Assembly in 1949 made it clear that, among other things, the right to life is a right enjoyed by virtue of its very existence: 'The Committee of Ministers asked us to draw up a list of rights which man, as a human being, would naturally enjoy.'¹⁶

It should also be stressed that the European Court of Human Rights (ECtHR) has never redefined or limited the scope of Article 2. Life at the prenatal stage of development has therefore never been excluded from the protection of the European Convention on Human Rights.¹⁷ On the contrary, in a number of its judgments, the ECtHR has indicated that abortion is not a right under the ECHR: there is no right to abortion,¹⁸ there is no right to having it performed,¹⁹ while the introduction of a prohibition on abortion by a state does not in itself constitute a violation of the Convention.²⁰

2.4.2 The case law of the European Court of Human Rights and the protection of life under the European Convention on Human Rights

In the face of Article 2 of the European Convention on Human Rights, the European Court of Human Rights takes the controversial position in its jurisprudence that it allows States to define within their national legal order the stage of human development at which the protection of the right to life comes into effect. The European Court of Human Rights has never ruled

15 Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950 (Dz.U. 1993, No. 61, item 284, as amended; hereinafter: European Convention on Human Rights/ECHR).

16 *Collected Edition of the 'Travaux Préparatoires' of the European Convention on Human Rights. Volume II: Consultative Assembly, Second Session of the Committee of Ministers, Standing Committee of the Assembly* (10 August-19 November 1949), ed. M. Nijhoff, Hague 1975, p. 89.

17 See judgment of the European Court of Human Rights of 5 September 2002 in *Boso v. Italy*, Application No. 50490/99: 'In the Court's opinion, such provisions strike a fair balance between, on the one hand, the need to ensure protection of the foetus and, on the other, the woman's interests'; judgment of the European Court of Human Rights 8 July 2004 in *Vo v. France*, Application No. 53924/00, [WI], § 86 and § 95: 'the unborn child's lack of a clear legal status does not necessarily deprive it of all protection under French law. However, in the circumstances of the present case, the life of the foetus was intimately connected with that of the mother and could be protected through her', 'even assuming that Article 2 was applicable in the instant case (see paragraph 85 above), there has been no violation of Article 2 of the Convention'.

18 Judgment of the European Court of Human Rights of 26 October 2004 in *Silva Monteiro Martins Ribeiro v. Portugal*, Application No. 16471/02, <https://hudoc.echr.coe.int/eng?i=001-223139>, accessed 25 June 2022.

19 Judgment of the European Court of Human Rights of 5 October 1985 in *Jean-Jacques Amy v. Belgium*, Application No. 11684/85, <https://hudoc.echr.coe.int/eng?i=001-24113>, accessed 25 June 2022.

20 Judgment of the European Court of Human Rights 26 October 2004 in *Silva Monteiro Martins Ribeiro v. Portugal...*

that an unborn child cannot be considered a person, but it has also never explicitly pronounced on the full protection of life from conception. In order to understand the ECtHR's equilibristic stance, it is worth noting a few rulings that are particularly relevant to the interpretation of Article 2 ECHR, which, after all, prescribes the protection of the right to life of 'everyone'.

The ECtHR allows States Parties to the ECHR not to provide total protection of conceived life in their domestic legislation. Nevertheless, the ECtHR does not deprive prenatal life of all protection, since 'Article 2 of the Convention is silent as to temporal limitations on the right to life'.²¹ According to the interpretation applied by the ECtHR, if the European Convention on Human Rights did not protect life before birth, there would be no point in granting States a margin of appreciation, since any margin necessarily relates to a pre-existing obligation. Therefore, the ECtHR does not regard as unfounded applications that invoke Article 2 in relation to stillborn children, for example.²² In *Vo v. France*, the Grand Chamber emphasised that 'it may be regarded as common ground between States that the embryo/foetus belongs to the human race' and that 'potentiality of that being and its capacity to become a person [...] require protection in the name of human dignity'.²³ Therefore, according to the Court, 'it would be equally legitimate for a State to choose to consider the unborn to be such a person [a person within the meaning of Article 2 ECHR – author's note] and to aim to protect that life'.²⁴

Leaving states a margin of discretion on such a fundamental subject as the right to life raises legitimate concerns. By accepting that the decision to grant or withdraw this right is within the margin of discretion of national legislatures, the ECtHR *de facto* grants States Parties to the ECHR the right to define the personal boundaries of all other rights and freedoms, which after all stand much lower in the hierarchy than the absolutely fundamental right to life.²⁵

21 Judgment of the European Court of Human Rights of 8 July 2004 in *Vo v. France*..., § 75.

22 G. Puppinc, *Amicus Curiae* opinion submitted to the Constitutional Court of the Republic of Poland in case K 1/20 concerning eugenic abortion, <http://media.aclj.org/pdf/Opinia-Amicus-Curiae-przekazana-Trybuna%C5%82owi-Konstytucyjnemu-RP-w-sprawie-K-1.20-dotycz%C4%85cej-aborcji-eugenicznej.pdf>, accessed 25 June 2022.

23 Judgment of the European Court of Human Rights of 8 July 2004 in *Vo v. France*..., § 84.

24 Judgment of the European Court of Human Rights of 16 December 2010 in *A., B. and C. v. Ireland*, Application No. 25579/05, § 222, <https://hudoc.echr.coe.int/eng/?i=001-102332>, accessed 25 June 2022.

25 Similarly, J. Roszkiewicz, *Prawo nasciturusa do życia w prawie konstytucyjnym i prawie międzynarodowym*, "Forum Prawnicze" 2017, 4(42), pp. 97-124.

3 Regional Treaties

No binding instrument of international law imposes an obligation on states to legalise abortion to any extent, leaving the decision on this issue solely to the competence of individual states. The demand to legalise abortion only appears at the level of some – very few – regional treaties. For example, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, in Article 14 ('Reproductive health and rights'), imposes an obligation on States Parties to protect women's reproductive rights by ensuring the availability of abortion in three cases: threats to the health of the mother – both physical and mental, threats to the life of the mother or the child, and when the pregnancy is the result of incest, sexual assault or rape.²⁶

3.1 Acts guaranteeing full protection of life

By contrast, there are numerous regional international instruments that fully respect the right to life and commit to its protection. The Charter of Fundamental Rights of the European Union states in Article 2: 'Everyone has the right to life. No one shall be condemned to the death penalty, or executed.'²⁷ Again, there is no indication here that any group of persons is excluded from this protection; on the contrary, the wording of the article is not coincidentally similar to the provisions of the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights.

The American Convention on Human Rights (1969) explicitly states in Article 4: 'Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.'²⁸

26 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 14 § 2c: 'protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus' (<https://www.ohchr.org/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf>, accessed 25 June 2022).

27 Article 2 of the Charter of Fundamental Rights of the European Union (OJ C 202 of 7 June 2016, p. 389).

28 Article 4(1) of the American Convention on Human Rights of 22 November 1969.

4 The activities of the United Nations on issues relating to procreation²⁹

For further consideration and understanding of the basis for attempts to introduce abortion into international law as a ‘guaranteed service’ or ‘human right’, it is necessary to look at the work of the United Nations. It was at the UN that the phrase ‘right to family planning’ was first officially used, which then evolved into the term ‘sexual and reproductive health and rights’, most commonly found today under the acronym SRHR (sexual and reproductive health and rights). The UN is also a key player in the discourse on the understanding of these terms and the attempt to enact their final, universally accepted meaning. The documents of the various so-called UN population conferences provide a kind of ‘substantive ground’ for many far-reaching ideological demands.

4.1 The right to family planning and the first population conferences

Before the landmark year 1994 and the Cairo conference – as we will discuss further below – the terms ‘family planning’ and ‘population control’ were in common use. This is because at that time, procreation issues were mainly associated with the problem of overpopulation and not with women’s rights. The term ‘right to family planning’ first appeared as one of the rights declared in the – non-binding – Tehran Proclamation of 1968, crowning the First International Conference on Human Rights organized by the UN (22 April-13 May 1968).³⁰ Subsequent documents confirm that its functioning was, however, linked to population issues. Suffice it to mention the ‘Plan of Action’ adopted at the World Population Conference in Bucharest (1974) – the first such major conference on population and birth control. There are numerous mentions of abortion

29 Subsections 4.1-4.4 and 4.6 were written based on a draft version of the results of original, original research on the evolution of the concept of sexual and reproductive rights in international law conducted by Karolina Pawłowska, M.A., Ph.D. student at the Faculty of Law and Administration, University of Warsaw.

30 ‘The protection of the family and of the child remains the concern of the international community. Parents have a basic human right to determine freely and responsibly the number and the spacing of their children’ (Proclamation of Tehran, Final Act of the International Conference on Human Rights, Tehran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968), <http://hrlibrary.umn.edu/instree/l2ptichr.htm>, accessed 27 June 2022, para. 16).

in the document, but all of them refer to the prevention of its illegal performance.³¹

The approach to the subject of family planning evolved considerably in subsequent UN documents. Within the framework of the provisions of the Alma Ata Conference held in 1978, family planning services were included within maternal and child health care as one that should be provided as part of health care.³² In contrast, the first binding international treaty in which the right to family planning appeared was the 1979 Convention on the Elimination of All Forms of Discrimination against Women³³ (ratified by Poland in 1982).

Another population conference was held in 1984 in Mexico. In the documents elaborated at that time, there appeared for the first time a narrative linking the right to family planning with the concept of parents' responsibility towards their own children and the community.³⁴ In the context of the protection of life, it is important to note that within the recommendations it was made clear that women must be helped to reduce the number of abortions, as abortion cannot be considered as one method of family planning.³⁵ Significantly, it was at the Mexico conference where the questionable demand to combat illegal abortion by legalising abortion simultaneously resounded,³⁶ a principle which continues to guide the UN and other international organizations to this day.

Finally, in 1985, a conference was held in Nairobi, whose outcome document explicitly diagnoses 'the devaluation of women's productive and reproductive roles', as one of the causes of discrimination against women.³⁷

31 United Nations, UN Population Division, Department of Economic and Social Affairs, with support from the United Nations Population Fund, World Population Plan of Action, https://www.unfpa.org/sites/default/files/event-pdf/World%20Population%20Plan%20of%20Action_1.pdf, accessed 27 June 2022.

32 Declaration of Alma-Ata, VII.3., https://www.euro.who.int/__data/assets/pdf_file/0009/113877/E93944.pdf, accessed 27 June 2022.

33 Article 10(h) and 14(2)(b) of the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979 (Dz.U. 1982, No. 10, item 71).

34 United Nations, Report of the International Conference on Population, 1984, Mexico City, 6-14 August 1984, p. 23 (para. 26), p. 24 (Recommendation 26), https://www.un.org/development/desa/pd/sites/www.un.org/development.desa.pd/files/unpd_recommendations_e_conf.76_19_e.pdf, accessed 27 June 2022.

35 Ibid., Recommendation 18 (e), p. 21.

36 Ibid., p. 57 (paras. 72-75), p. 76 (para. 177).

37 United Nations, Report of the World Conference to revive and appraise the achievements of the United Nations decade for women: equality, development and peace, Nairobi, 15-26 July 1985, para. 18, <https://www.un.org/womenwatch/confer/nfls/Nairobi1985report.txt>, accessed 27 June 2022.

This means that, according to the UN, the possibility to control fertility and the number of children one has should be seen as a *sine qua non* for the full enjoyment of human rights. Although the ‘right to family planning’ has appeared in only one binding document,³⁸ it is impossible not to see from the chronology of the documents described above how quickly and in what direction the concept has evolved to be equated by parts of the international community with human rights within two decades.

4.2 Cairo International Conference on Population and Development (1994)

The outcome documents of the 1994 International Conference on Population and Development held in Cairo clearly state that abortion must not be promoted as a method of family planning and that states should take action to reduce the number of abortions.³⁹ Paradoxically, however, it is the Cairo conference that is the highlight of a long list of UN efforts to make abortion more widely available and guaranteed within the international legal order. It was in Cairo that the terms ‘sexual and reproductive health’ and ‘reproductive rights’ were first used. Contrary to the information often disseminated, they did not include the concept of a ‘right to abortion’, but – despite the disagreement of numerous states – abortion-related issues were incorporated into the official international discourse, for the time being only advocating that where it was legalised, it should be made safe, and stipulating that it should not be seen as one of the methods of family planning.⁴⁰

38 It is also worth noting that the term ‘sexual and reproductive health’, which later sort of replaced the ‘right to family planning’, appeared in the binding 2006 Convention on the Rights of Persons with Disabilities (see footnote no. 82 in this chapter), but the States Parties to it were able to indicate that ‘sexual and reproductive health’ does not include the ‘right to abortion’.

39 ‘In no case should abortion be promoted as a method of family planning. All Governments and relevant inter-governmental and non-governmental organizations are urged to strengthen their commitment to women’s health, to deal with the health impact of unsafe abortion²⁰ 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 [...]’ (United Nations Population Fund, Programme of Action adopted at the International Conference on Population and Development, Cairo, 5-13 September 1994, https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf, accessed 27 June 2022 (hereinafter: ICPD), para. 8.25). ‘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’ (para. 7.24 ICPD).

40 Ibid.

One of the most salient issues that emerged from the Cairo Conference's (ICPD) crowning document is the definition of the concept of reproductive health and related rights: 'Reproductive health is a state of complete physical, mental and social well-being, and not merely the absence of disease or disability, in all matters relating to the reproductive system, its functions and processes.'⁴¹

It is only from the elaboration of the above point that it follows that everyone has the right 'to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law',⁴² which clearly addresses the issue of access to legal abortion. It is noteworthy that the demand for abortion accessibility was not included in the 'right to family planning', but alongside it – as the inclusion of abortion among family planning methods was unacceptable to too many states.

Paragraph 7.6 of the ICPD is already much less subtle and explicitly states that 'all countries should strive to make accessible through the primary health-care system, reproductive health to all individuals of appropriate ages as soon as possible and no later than the year 2015. Reproductive health care in the context of primary health care should, *inter alia*, include: [...] abortion as specified in paragraph 8.25'. It is the wording of the aforementioned 8.25 that reflects the increased opposition of the international community to attempts to include access to abortion in international obligations. Although the UN pushed for the widespread adoption of the term 'sexual and reproductive health and rights', in the end only the term 'reproductive health and rights' was recognized. This was a result of the legitimate concerns of numerous states, including the Holy See, about the attempt to include abortion within the conceptual scope of the term 'reproductive health'. The broader concept of reproductive rights was advocated, among others, by the European Union, whose bodies are also currently taking numerous measures to make abortion more widely available in the Member States.

⁴¹ Para. 8.25 ICPD.

⁴² Ibid.

Ultimately, thanks to states firmly committed to the right to life, including the Holy See, the ICPD stipulated: '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 [...]. Prevention of unwanted pregnancies must always be given the highest priority and every attempt should be made to eliminate the need for abortion. Women who have unwanted pregnancies should have ready access to reliable information and compassionate counselling. Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances where abortion is not against the law, such abortion should be safe.'⁴³ At the same time, paragraph 7.24 of the ICPD indicates that abortion should never be shown as one of the methods of family planning and everything should be done to prevent it. What has been confirmed and officially accepted, however, is the inclusion of legal abortion within the concepts of reproductive health and reproductive rights.

The Cairo Conference represents a kind of watershed, as it marks the precise moment from which abortion began to be promoted internationally. The inclusion of legal abortion among reproductive health services and its presentation as 'safe abortion' laid the foundations for further, increasingly bold demands aimed at making abortion a 'good' that should be universally available, morally indifferent and in no way criminalised. The narrative of family planning as a means of bringing population issues under control was completely abandoned in Cairo in favour of the fight to guarantee the possibility of killing children at the prenatal stage of development, justified by concerns for women's health and safety. Although the ICPD, as a non-binding document, does not create any new rights, its introduction of the concept of reproductive rights is an obvious attempt to introduce the hitherto non-existent 'right to abortion' through international custom. This is evidenced by both the history of the 'right to family planning' and the subsequent actions of the UN, further supported by the activity of other international organizations, including the European Union.

43 Ibid.

4.3 World Conference on Women's Rights in Beijing (1995)

Of the conferences discussed, the most controversial is certainly the 1995 Women's Rights Conference held in Beijing. It was at this conference that the deliberations around the outcome document took a tumultuous turn, one of the reasons for which was the widely discussed topic of 'safe abortion', already defined explicitly as 'legal abortion'.

Two documents were eventually adopted. The first is the Beijing Declaration, echoing the rhetoric that 'good health is essential to leading a productive and fulfilling life, and the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment'.⁴⁴ The second document is the Platform for Action, which, in Part C treating women's health, repeatedly uses the terms 'reproductive health', 'reproductive rights', and 'sexual health', and presents so-called unsafe abortion – as opposed to legal abortion, which is supposedly safe for mothers – as women's biggest health problem. Article 97 of the Platform identifies the threat of unsafe abortions, describing them as a serious public health problem.⁴⁵ Hence, Strategic Objective C1 recognizes that it is necessary to 'recognize and deal with the health impact of unsafe abortion as a major public health concern, as agreed in paragraph 8.25 of the Programme of Action of the International Conference on Population and Development'.⁴⁶ Universal legalisation of abortion was therefore advocated as a way of counteracting what was described as unsafe abortion, which would protect women from its harmful health effects. It should be noted here that the concept of so-called safe abortion being pushed completely ignores the effect of depriving another human being (the unborn child, whose welfare has not been the subject of debate at all) of his or her life and the fact that every abortion always carries a potential risk to the woman's health or even life.

Finally, it is worth mentioning that the Beijing Conference caused serious friction in the international arena due to its extremely ideological overtones.

44 Beijing Declaration, p. 3 (para. 17), <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, accessed 28 June 2022.

45 Platform for Action, pp. 36-37 (para. 97), <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, accessed 28 June 2022.

46 Ibid., p. 39 (para. 106 (j)).

This was a watershed moment, when the term sex, based on objective biological conditions, was fully replaced by the ideological term 'gender'. It was also the moment when it was recognized that women's health problems (but reduced solely to the sphere of sexuality) could and should be solved through access to abortion legalised by the states.

4.4 Sustainable development goals – Agenda 2030

In 2015, a new agenda called the 2030 *Agenda for Sustainable Development* (hereinafter: 2030 Agenda) was adopted.⁴⁷ It is a roadmap with an agenda to address the world's most pressing problems in the economic, social and environmental areas. In reality, however, the 2030 Agenda is an extremely powerful political tool for putting pressure on United Nations states. Among the 17 Sustainable Development Goals (SDGs) are Tasks 3.7 and 5.6 on women's health, under which the state should guarantee universal and effective access to 'sexual and reproductive health-care services' for women and girls and ensure the effective exercise of 'reproductive rights'.⁴⁸ The already mentioned attempts to include the so-called right to abortion within the scope of these concepts in practice involve pressure on those states which, based on domestic legislation, oppose the recognition of such a demand. It is worth noting, however, that in the absence of a legal definition of the above-mentioned concepts, their scope is determined differently by individual UN states. An example here may be Poland, which, within the framework of the implementation of Objectives 3.7 and 5.6, has taken measures aimed at protecting women's procreative health and launched such programmes as 'Programme of comprehensive diagnostics and intrauterine therapy in the prevention of the consequences and complications of foetal developmental defects and diseases – as an element of improving the health condition of fetuses and newborns 2014-17' or 'Comprehensive

47 UN Sustainable Development Goals: The 17 Goals, <https://sdgs.un.org/goals>, accessed 28 June 2022.

48 'By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes' (ibid., 3.7) and 'Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences' (ibid., 5.6).

programme for the protection of reproductive health in Poland’.⁴⁹ In this way, by referring to procreative health rather than reproductive health, Poland seems to have distanced itself from the ideological postulates contained in Agenda 2030, while at the same time maintaining its pursuit of the health goals envisaged therein.

The form of adoption of the Agenda 2030 report is also highly questionable – as it was not accepted by all countries participating in the Open Working Group sessions at the first stage of its creation. Many of these states clearly opposed the inclusion of ‘reproductive rights’ and ‘sexual and reproductive health’ in the SDGs. Moreover, the 20 states – including the Holy See and a group of Arab states – opposing the inclusion of these controversial concepts in the SDGs were not given the opportunity to express their position in this regard. The document was adopted by acclamation, without considering the voice of all states on such an important issue, which undermines the principles of universality of the SDGs – it is futile to speak in such a situation of respecting the sovereignty, specificity and priorities of States Parties.

4.5 Nairobi Summit (2019)

The most recent event that should be mentioned when considering the topic of abortion in international law is the Nairobi Summit, which took place in November 2019 in relation to the 25th anniversary of the Cairo Conference. Its theme – in contrast to the population issues at the heart of the conference, the tradition of which it referred to – centred around the promotion of ‘sexual and reproductive rights’.

It is noteworthy that this event raised serious objections from the beginning, as the final document was prepared and published by the organizers already two months before the summit. It can be assumed that this action was calculated to avoid the ‘mistake’ made in Cairo, where the opportunity for dissent and debate was taken up by a large number of states. As

49 *Realizacja Celów Zrównoważonego Rozwoju w Polsce. Raport 2018*, <https://www.gov.pl/web/rozwoj-technologiea/monitoring-realizacji-agendy-2030>, accessed 28 June 2022, pp. 35-36.

a result, the provisions of the 1994 conference had to consider the positions of the participants, who did not accept the promotion of abortion and its recognition as a human right within the – also rejected – notion of ‘sexual and reproductive health and rights’ (SRHR). Therefore, in 2019, the summit organizers took measures to minimise the risk of allowing opponents to speak. In addition to the exclusion of participants from the final document, another factor that hindered the resonance of diverse opinions was the reduction of the summit’s duration from two weeks to just three days, which also significantly reduced the possibility of any coalition formation by states opposing the top-down imposed resolutions.

The final document itself, the Nairobi Statement,⁵⁰ sets as an objective the acceleration of the implementation of the sexual and reproductive rights agenda, and access to ‘safe abortion’ should be considered the main demand of the event – as it resounds in all documents and promotional materials of the summit. It is significant that the term ‘sexual and reproductive health and rights’ (SRHR) was used in these materials, although the Cairo conference findings expressed categorical opposition to attempts to create a category of ‘sexual rights’. It was the assumption of the summit organizers that the support of the UNFPA Population Fund (a UN agenda) and the governments of Denmark and Kenya would be sufficient to take a stand on this issue on behalf of all participants in the event: 170 countries and hundreds of NGOs from around the world.

The described attempts to exclude some participants from the deliberations, the pushing of ideological demands and the formal ploys used by the organizers to obtain the unanimous adoption of the highly controversial final document, led to an alternative event in which the governments of as many as 20 countries expressed their official opposition to the text of the Nairobi Declaration. In their position, these states stressed that the provisions of the current summit undermine the internationally developed notion of human rights, in which – despite attempts – neither ‘sexual and reproductive rights’ nor ‘safe abortion’ were included.

50 Nairobi Statement, <https://www.nairobisummiticpd.org/content/icpd25-commitments>, accessed 28 June 2022.

The Nairobi Summit was an unprecedented attempt to exclude participants in the event who oppose the imposition of the ideological demands of parts of the United Nations on the international community. This objective was partly achieved – the Nairobi statement is used, *inter alia*, in resolutions of the European Parliament as one of the bases for the positions adopted by that institution, even though it is not binding even on the states that signed up to it.

4.6 World Health Organization activities

Established in 1946, the WHO is one of the agencies of the United Nations.⁵¹ As the WHO constitution indicates, the main objective of the organization is ‘the attainment by all peoples of the highest possible level of health’.⁵² In the context of the consideration of abortion, Article 2 of the same constitution is relevant. Indeed, it is clear from the catalogue contained therein that the WHO’s operating principle is to respect the sovereign prerogatives of states in the field of health policy, which means that the WHO’s activities can only be of an advisory nature, and that any assistance in achieving its policy objectives can only take place at the request or with the express consent of a member state.⁵³ At the same time, almost from the very beginning of the introduction of terms such as ‘reproduction’, ‘reproductive health’, or ‘reproductive rights’ into the international discourse, WHO activities carried out in the areas to which these terms relate have been associated with going far beyond the content of internationally agreed definitions of these terms.

Not only does the WHO consistently use the term ‘sexual and reproductive health and rights’ (rejected by UN states at the Cairo conference), but it also openly works for the full legalisation of abortion worldwide by lobbying for the creation of a ‘right to safe abortion’ (understood by the WHO as legal abortion) to be recognized by all states in the world.

51 Article 57 of the Charter of the United Nations (Dz.U. 1947, No. 23, item 90) in conjunction with Article 69 of the Constitution of the World Health Organization (Dz.U. 1948, No. 61, item 477).

52 Article 1 of the Constitution of the World Health Organization.

53 Ibid., Article 2(C) and (E).

4.6.1 WHO documents promoting abortion

In 2001, the World Health Organization issued a training curriculum for health professionals entitled *A Training Curriculum for Health Programme Managers. Transforming Health Systems: Gender and Rights in Reproductive Health*.⁵⁴ The document provides guidelines to help guide the dissemination of ‘reproductive rights’ and a ‘gender’ perspective in training aimed at those involved in the public health sector. Among other things, the publication includes an example of an allegedly negative state action on ‘reproductive rights’, which, according to the authors of the training programme, is the restriction or abolition by the state of access to abortion.⁵⁵ According to the content of the programme promoted by the WHO, the ‘right to the benefits of scientific progress’ should include recognition of women’s right to control their reproduction, including through access to ‘safe abortion’.⁵⁶ By contrast, when considering SRHR, we read about the right of women to ‘choose whether or not they want to continue a pregnancy’ – decisions that for years have been made not by women, but by ‘law enforcers and medical practitioners’.⁵⁷

Another World Health Organization document worth citing is the 2004 Reproductive Health Strategy.⁵⁸ It recommends action to mobilise a variety of communities (legal, medical, women’s, political) to lobby for SRHR,⁵⁹ and in paragraph 57 it points out the need to remove ‘unnecessary restrictions from policies and regulations’ on access to SRHR.⁶⁰

54 World Health Organization, *Transforming health systems: gender and rights in reproductive health. A Training Curriculum for Health Programme Managers. Transforming Health Systems: Gender and Rights in Reproductive Health*. World Health Organization 2001, ed. S. Ravindran, Geneva 2001, http://apps.who.int/iris/bitstream/handle/10665/67233/WHO_RHR_01.29.pdf?sequence=1, accessed 29 June 2022, hereinafter: Training Curriculum.

55 Ibid., p. 143.

56 Ibid., p. 145.

57 Ibid., pp. 170-173.

58 World Health Organization, *Reproductive health strategy to accelerate progress towards the attainment of international development goals and targets. Global strategy adopted by the 57th World Health Assembly*, http://apps.who.int/iris/bitstream/handle/10665/68754/WHO_RHR_04.8.pdf?sequence=1, accessed 18 November 2022, hereinafter: SRHR Global Strategy; published on: World Health Organization, WHA57.12 *Reproductive health: strategy to accelerate progress towards the attainment of international development goals and targets*, https://apps.who.int/gb/ebwha/pdf_files/WHA57/A57_R12.en.pdf, accessed 29 June 2022.

59 SRHR Global Strategy, paras. 55 and 56.

60 Ibid., para. 57.

Also released in 2010, WHO's *strategic vision in sexual and reproductive health and rights – Business Plan 2010-2015*⁶¹ deals with countering 'unsafe abortion' understood as illegal abortion. Among other things, the document quotes Hilary Clinton's statement that 'reproductive health includes contraception, family planning, and access to legal, safe abortion'.⁶² The entire section on 'preventing unsafe abortions' assumes that safe abortion is simply legal abortion.⁶³

The WHO reports on estimates of the incidence of unsafe abortion worldwide are key documents in the context of so-called SRHR. *Unsafe abortion: global and regional estimates of incidence of unsafe abortion and associated mortality in 2003*⁶⁴ and *Unsafe abortion: global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008*⁶⁵ are documents in which the WHO attempts to argue that there is an important coincidence between the issue of allowing abortion in a given legal order and the number of 'unsafe abortions'. *Unsafe abortion 2003* states that 'restrictive legislation is associated with a high incidence of unsafe abortion',⁶⁶ while *Unsafe abortion 2008* already explicitly states that it does not matter whether abortion is legal or not – women will perform abortions anyway,⁶⁷ and where abortion is not legal, the risk of associated complications increases significantly.⁶⁸ The conclusions again boil down to the thesis that safe abortion and legal abortion are synonymous concepts.

An elaboration of the above thesis is found in the 2012 guidance, in which the WHO repeatedly draws attention to the relationship between the scale

61 World Health Organization, *WHO's strategic vision in sexual and reproductive health and rights – Business Plan 2010-2015*, http://apps.who.int/iris/bitstream/handle/10665/70369/WHO_RHR_10.10_eng.pdf?sequence=1, accessed 29 June 2022.

62 Ibid., p. 11.

63 See 'women from the more affluent groups are able to obtain safe abortions by using private services or travelling to a country with liberal laws on abortion' (ibid.)

64 World Health Organization, Department of Reproductive Health and Research, *Unsafe abortion: global and regional estimates of incidence of unsafe abortion and associated mortality in 2003*, 5th edition, 2007, http://apps.who.int/iris/bitstream/handle/10665/43798/9789241596121_eng.pdf?sequence=1, accessed 29 June 2022, hereinafter: *Unsafe abortion 2003*.

65 World Health Organization, Department of Reproductive Health and Research, *Unsafe abortion: global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008*, 6th edition, 2011, http://apps.who.int/iris/bitstream/handle/10665/44529/9789241501118_eng.pdf?sequence=1, accessed 29 June 2022, hereinafter: *Unsafe abortion 2008*.

66 *Unsafe abortion 2003*, p. 2.

67 *Unsafe abortion 2008*, p. 6.

68 Ibid., p. 6.

of ‘unsafe abortion’ and the laws adopted in a given country to protect life at the prenatal stage. The first chapter of *Safe abortion: technical and policy guidance for health systems* (2nd edition)⁶⁹ is entirely devoted to the issue of the legality of abortion and the economic costs associated with ‘unsafe abortion’.⁷⁰ In this document, the WHO presents abortion when the pregnancy endangers a woman’s health or is the result of rape, not as a counter-narrative, i.e., an exceptional circumstance that exceptionally excludes the criminalisation of the act in question, but as a ‘woman’s right’. At the same time, the WHO criticises obstacles to access to abortion in these cases, taking the position that the need for parental or spousal consent, as well as the doctor’s right to conscientious objection, lead to a violation of the ‘fundamental human rights’ of a woman ‘in need of safe abortion’.⁷¹

In 2015, the World Health Organization issued another pro-abortion document for health workers entitled *Health worker roles in providing safe abortion care and post-abortion contraception*.⁷² It, too, is based on the premise that the safety of abortion is solely dependent on its legality, and therefore legal access to abortion should be promoted. It is also the first document to call for the widespread use of pharmacological abortion early in pregnancy, to be carried out by women on their own and at home. The document also advocates allowing midwives, nurses and even GPs to perform vacuum aspiration abortions.⁷³

In the same year, the WHO also published the guide *Safe abortion: technical & policy guidance for health systems*,⁷⁴ which already makes specific recommendations on health policy and legislation for countries. In it, the WHO appreciates, among other things, countries where abortion-on-demand is

69 World Health Organization, Department of Reproductive Health and Research, *Safe abortion: technical and policy guidance for health systems*, 2nd edition, 2012, http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1, accessed 29 June 2022.

70 Ibid., pp. 16–26.

71 Ibid., pp. 86–98.

72 World Health Organization, Department of Reproductive Health and Research, *Health worker roles in providing safe abortion care and post abortion contraception*, 2015, http://apps.who.int/iris/bitstream/handle/10665/181041/9789241549264_eng.pdf?sequence=1, accessed 29 June 2022.

73 Ibid., pp. 6 and 34.

74 World Health Organization, Department of Reproductive Health and Research, *Safe abortion: technical & policy guidance for health systems*, 2015, <https://iris.who.int/server/api/core/bitstreams/28d85ed9-34ef-4d4f-896c-4078a4bef798/content>, accessed 30 June 2022.

operational as those that recognize that ‘the ultimate decision on whether to continue or terminate her pregnancy belongs to the woman alone’.⁷⁵

A final document to which special attention should be paid is the *Country-specific plans for scaling-up availability of medical abortion commodities* (version 29 June 2019),⁷⁶ a technical document that heavily promotes self-induced abortion at home. In it, WHO indicates, among other things, plans to increase access to early abortion pills containing mifepristone and misoprostol,⁷⁷ explaining that ‘there is a global need to increase availability of affordable, quality-assured mifepristone and misoprostol to improve access to safe medical abortion services’.⁷⁸

The documents discussed above represent only a small part of the World Health Organization’s overall SRHR advocacy work to achieve universal access to abortion on demand. Laws protecting human life from conception still act as a barrier to these demands, however, the narrative that abortion is safe whenever it is legal, consistently repeated over the years, has indeed begun to operate in the public space. The authority enjoyed by the WHO allows the organization to effectively promote the irrational notion that action to legalise abortion fulfils the Cairo Conference’s provision for making abortion safe where it is legal.

4.7 Activities of committees monitoring compliance with UN conventions

The UN Committee on the Elimination of Discrimination against Women, acting under the provisions of the Convention on the Elimination of All Forms of Discrimination against Women adopted by the United Nations General Assembly on 18 December 1979⁷⁹ (referred to as the CEDAW

⁷⁵ Ibid., p. 3.

⁷⁶ World Health Organization, *Country-specific plans for scaling-up availability of medical abortion commodities. Request for Proposals (RFP). Purpose of the RFP: To conduct landscape assessments and develop country-specific plans for scaling up availability of co-packaged mifepristone-misoprostol* (Updated on 27 June 2019), downloadable document at: <https://www.ungm.org/Public/Notice/92643>, accessed 30 June 2022.

⁷⁷ Ibid., p. 4.

⁷⁸ Ibid., p. 6.

⁷⁹ Convention on the Elimination of All Forms of Discrimination against Women adopted by the United Nations General Assembly on 18 December 1979 (Dz.U. 1982, No. 10, item 71).

Convention), published a position paper in 2014 calling on States to 'legalise abortion at least in cases of rape, incest, threats to the life and/or health of the mother, or severe foetal impairment'.⁸⁰ In the Committee's view, criminal sanctions against women who choose to terminate their pregnancies violate the right to health protection as well as the dignity of the woman.

It should be made clear at this point that the primary task of the committees established under the UN Convention is to examine reports submitted by States Parties and to make suggestions or general recommendations on matters relating to the reports submitted. Committees do not have the power to change the content of the treaties on the basis of which they were established, to establish new provisions therein or to reinterpret existing ones, to make a legal interpretation (binding) of any international agreement or to make any other authoritative pronouncements. In view of the above, the 2014 position of the UN Committee on the Elimination of Discrimination against Women can only be considered as a private opinion of the Committee's members, due to its clear excess of competence. At the same time, States Parties, including Poland, are obliged to comply only with the provisions of the CEDAW Convention and not with the content of the Committee's positions beyond these provisions.

When addressing the activities of UN committees, one cannot overlook the fact that the opinions they issue often contradict each other, including with regard to recommendations on the standard of living. As an example, one can point to the more recent opinion of the UN Committee on Persons with Disabilities, dating from October 2017,⁸¹ acting under the provisions of the Convention on the Rights of Persons with Disabilities drawn up in New York on 13 December 2006.⁸² In this position paper, the Committee explicitly recognized eugenic abortion as discriminatory against persons with disabilities

80 United Nations, Committee on the Elimination of Discrimination against Women, *Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review*, Fifty-seventh session, 10-28 February 2014.

81 United Nations, Committee on the Rights of Persons with Disabilities, *Comments on the draft General Comment No36 of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights*, <http://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/CRPD.docx>, accessed 30 June 2022.

82 Convention on the Rights of Persons with Disabilities, drawn up in New York on 13 December 2006 (Dz.U. 2012, item 1169), <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20120001169>, accessed 30 June 2022.

and stated that abortion for suspected defects in the conceived child is contrary to the Convention on the Rights of Persons with Disabilities.⁸³

However, it should be stressed once again that UN committees do not have the power to: change the content of laws, establish new laws, issue binding suggestions, recommendations or general comments, and therefore their declarations cannot have a decisive influence on law-making. Moreover, in view of the practice of individual committees issuing mutually contradictory rulings, it is questionable whether they should be given any special consideration at all at the law-making stage, or whether they should rather be treated on a par with the numerous other positions presented during public consultations.

5 The European Union's abortion soft law

5.1 Lack of EU authority in health policy

The European Union has no power to intervene in the health policies of the Member States. According to Articles 6 and 168 of the Treaty on the Functioning of the European Union (TFEU)⁸⁴ the issue of 'sexual and reproductive health' falls within the scope of the health policies of the States.⁸⁵ Article 6 TFEU enumerates a catalogue of areas in which the European Union has been granted competence to support, coordinate and supplement the action of the Member States. This catalogue includes, *inter alia*, the protection and improvement of human health. Here, the European Union has only a supporting power and cannot seek to harmonise legislation in the Member States within the scope indicated.

Whether, within the framework of its supporting powers, the European Union even has the right to speak or formulate positions on these issues

⁸³ Ibid.

⁸⁴ Treaty on the Functioning of the European Union (consolidated text: OJ C 202 of 7 June 2016, p. 47), hereinafter: TFEU.

⁸⁵ For an exhaustive discussion of the competences of the European Union in the field of health policy, see K. Gęsiak, M. Olek, *Federalizacja UE w obszarze polityki zdrowotnej z uwzględnieniem wybranych założeń Programu działań Unii w dziedzinie zdrowia („Program UE dla zdrowia”) na lata 2021–2027*, [in:] *Pomiędzy Europą narodów a superpaństwem. Doktrynalne, prawne i ekonomiczne aspekty projektu „głębszej integracji” w Unii Europejskiej*, eds. B. Zalewski, T. Zych, Warszawa 2021, pp. 116–118.

remains a matter of dispute. It is sometimes assumed in the literature in the domain that the exercise of this type of power may consist of issuing recommendations, opinions, resolutions, conclusions, formulating communications, and financing the activities of Member States.⁸⁶ However, this certainly does not include the possibility of demanding or pressuring a Member State to adopt specific solutions. This is because such actions undermine the right of Member States to self-determination in this area, and – which should be emphasised again – legal regulations related to the possibility of limiting or abrogating the legal protection of the life of the conceived child are reserved, from the perspective of EU law, for Member States. It is worth noting that this state of affairs has been repeatedly confirmed by the European Commission itself: ‘According to the Treaty of the European Union and the Treaty on the Functioning of the European Union, the definition of health policies and the organization and delivery of health services and medical care is primarily the responsibility of individual Member States. As such, the EU has no competences on abortion policy at national level and can therefore not interfere in Member States’ policies in this area.’⁸⁷

Despite the unambiguous regulation of health policy competences, and therefore of matters relating to the legality or illegality of abortion, the European Parliament regularly acts to illegitimately exert political pressure on Member States which, in the exercise of their sovereign prerogatives, limit access to legal abortion in any way. Moreover, it is apparent from the content of the resolutions adopted by the European Parliament that it claims the right to legislate on new human rights, which include unrestricted access to abortion.

Despite the evident promotion of abortion that took place in Europe as early as the twentieth century, it is important to note that, at the level of binding provisions and case law, the division of competences regarding law-making remained respected up to a certain point. The Court of Justice in *Society for the Protection of Unborn Children Ireland Ltd. v. Stephen Grogan and*

86 M. Malczewska, Article 168, [in:] *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Tom II* (art. 90-222), Warszawa 2012.

87 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, accessed 30 June 2022.

*others*⁸⁸ held that although abortion constitutes a service within the meaning of Article 60 of the EEC Treaty, it is not contrary to Community legislation for a Member State in which abortion is prohibited to prohibit the dissemination of information on the identity and location of clinics providing such a service in another Member State which does not prohibit abortion.

In the context of the above remarks, it is necessary, despite the demonstrated non-binding character of the resolutions adopted by the European Parliament in this regard, to bear in mind the specificity of the formation of soft law regulations and the construction of the so-called custom in international law. Indeed, there is no doubt that the systematic repetition of claims, unauthorised under current law, about abortion as an alleged human right or an 'essential health service' must be regarded as a strategy. The aim of this strategy is to gradually, consistently introduce these postulates into binding acts of international law and thereby compel all States Parties to implement them.

5.2 The issue of abortion in the European Economic Community

On 25 March 1957, two treaties were signed: the Treaty establishing the European Economic Community (EEC) and the Treaty establishing the European Atomic Energy Community (EAEC or Euratom), known as the Treaties of Rome. The communities created, together with the European Coal and Steel Community, were the first pillar of the European Union and represent its historical beginnings. Therefore, when discussing the topic of abortion in international law, including the law and policy of the European Union, it is impossible not to refer to the actions that the EEC has taken in this field, as Community bodies have consistently pressured Member States since the 1980s to modify national health legislation in a specific way.

In the resolution of 11 February 1981 on the position of women in European society,⁸⁹ it was considered unacceptable that the number of abortions

88 CJEU Judgment of 4 October 1991 in *Society for the Protection of Unborn Children Ireland Ltd. v. Stephen Grogan and Others* (C-159/90), [1991] E.C.R. 4685, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61990CJ0159>, accessed 30 June 2022.

89 Resolution on the position of women in the European Community, adopted by the European Parliament on 11 February 1981, <http://aei.pitt.edu/33698/1/A245.pdf>, p. 255, accessed 30 June 2022.

treated as a means of contraception, often performed illegally, abroad and at the risk of women's lives and health, was increasing. However, the solution to the problem of 'abortion tourism' was considered to be not positive measures (for example, education, improved standards and state care for pregnant women, mothers and their children, especially those with disabilities), but the legalisation of abortion in EEC member states.⁹⁰

Another resolution on abortion was adopted by the European Parliament on 12 March 1990.⁹¹ This document explicitly criticised countries that had not yet introduced the legal possibility of killing children at the prenatal stage of development.⁹² It therefore called on EEC countries to legalise abortion and to provide 'safe' abortion 'at reasonable prices' for all women.⁹³ It is worth noting at this point that over the course of 40 years the EU institutions, mainly the European Parliament, have issued many other non-binding pieces of legislation promoting abortion or even calling for its legalisation in all Member States.

5.3 Resolution of 11 February 2021 – 25 years after the Beijing conference

The resolution of 11 February 2021 on Future Challenges for Women's Rights in Europe more than 25 years after the Beijing Declaration and the Beijing Platform for Action⁹⁴ can be read as one of the links between the United Nations' and the European Union's efforts to create (formerly) and expand and perpetuate (now) space for ideological concepts, including free access to abortion.

In the February resolution under discussion, the European Parliament once again stated that abortion is a human right and a life-saving service (para. 45) and called on 'Member States to provide comprehensive

90 Ibid., para. 35.

91 Resolution on abortion (OJ C 96 of 17 April 1990, p. 19), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1990:096:FULL&from=EN>, accessed 30 June 2022.

92 Ibid., para. 1 (c).

93 Ibid., para. 2.

94 European Parliament resolution of 11 February 2021 on challenges ahead for women's rights in Europe: more than 25 years after the Beijing Declaration and Platform for Action (2021/2509(RSP)), https://www.europarl.europa.eu/doceo/document/TA-9-2021-0058_EN.html, accessed 30 June 2022.

sexuality and relationship education to young people and access to sexual and reproductive healthcare, including contraception, family planning and safe and legal abortion’ (para. 46). These fundamentally false claims and the call to Member States are not supported by any binding legislation – in fact, they are an attempt to legitimise UN action on SRHR within the European Union. Indeed, the mutual citation of individual positions and recommendations by the Union and the UN promotes an ongoing process of shaping new customs.

5.4 Resolutions of the European Parliament of 26 November 2020 and 11 November 2021 on Poland

26 November 2020, the European Parliament adopted a resolution on the *de facto* ban on abortion in Poland.⁹⁵ The European Parliament’s resolution expresses the position of the European Union in relation to the Constitutional Tribunal ruling on 22 October 2020 that eugenic abortion is incompatible with the Polish Constitution.⁹⁶ As a result of this ruling, the premise allowing the killing of a conceived child suspected of having a disease or disability was removed from the Polish legal order. The text of the adopted resolution raises serious objections both in the light of the lack of competence of the European Union in the matter of the applicable law protecting life in a Member State, as well as numerous ideological references and opinions testifying to a complete misunderstanding not only of the political but also of the legal situation in Poland.⁹⁷

From a health policy perspective related to abortion, the most relevant references in the document are the numerous references to the concept of SRHR, which the European Parliament has presented as including free access to abortion as part of ‘health care’ and as part of a human rights

95 European Parliament resolution of 26 November 2020 on the *de facto* ban on the right to abortion in Poland, https://www.europarl.europa.eu/doceo/document/TA-9-2020-0336_EN.html, accessed 30 June 2022.

96 Judgment of the Constitutional Court of 22 October 2020, ref. K 1/20, <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11300-planowanie-rodziny-ochrona-plodu-ludzkiego-i-warunki-dopuszczalnosci-przerywania-ciazy>, accessed 30 June 2022.

97 See the comprehensive commentary on the resolution of 26 November 2020: A. Kubacka, *Commentary on the European Parliament resolution of 26 November 2020 on the de facto ban on abortion in Poland (2020/2876(RSP))*, Warszawa 2020, https://ordoiuris.pl/sites/default/files/inline-files/Komentarz_do_rezolucji_PE_z_dn._26.11.2020_w_sprawie_aborcji_0.pdf, accessed 30 June 2022.

system. The term ‘sexual and reproductive rights’ appears for the first time already in letter C of the resolution under comment.⁹⁸ The use of this term, however, raises questions from both international law and EU law.⁹⁹

Firstly, it should be recalled that the term ‘sexual and reproductive rights’ does not exist in the official language of international law. Numerous attempts to introduce it into documents with binding or strategic status have each time met with opposition from the international community. This is due to the fact that the term is used in practice to introduce, *inter alia*, widespread acceptance of abortion, permissive sex education, or the promotion of gender ideology.

Secondly, it should be stressed that the term does not appear in either the Charter of Fundamental Rights or the European Convention on Human Rights. It can only be found in the jurisprudence of the ECtHR, but it should be borne in mind that the ECtHR does not have the power to legislate. Consequently, the use of the phrase ‘sexual and reproductive rights’ by the ECtHR in its judgments, as well as by the EU institutions in their non-binding documents, should be regarded – to the furthest extent possible – as the use of a colloquial term without any binding force.

At numerous points in its resolution, the European Parliament also repeats the unauthorised thesis that abortion is – not directly, but nevertheless – an element of human rights due to its alleged nature as a ‘medical service’. Hence, referring to the ban on eugenic abortion in Poland, the European Parliament ‘recalls that universal access to healthcare and SRHR are fundamental human rights’ (point 1 of the resolution) and ‘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’ (point 6 of the resolution).

98 See European Parliament resolution of 26 November 2020, point 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.’

99 For more on the history and meaning of the term SRHR, see subsection 4: United Nations activities on procreation issues.

Serious doubts are also raised by the unsubstantiated claim in paragraph F of the resolution that restricting access to abortion constitutes a threat to women's life and health. Polish legal regulations, similarly to the regulations of other countries protecting life from conception, allowed and still allow cases in which depriving the unborn child of life is possible due to the necessity of saving the life or health of the mother.¹⁰⁰ It should be emphasised that the judgment of the Polish Constitutional Tribunal of 22 October 2020, criticised by the European Parliament, does not concern the premise of saving the life and health of the mother at all, but only the one that is strictly related to the state of health of the child, not the woman.

Despite numerous materials clarifying and correcting the misinformation contained in the resolution of 26 November 2021, a year later, on 11 November 2021, the European Parliament adopted another resolution with similar content,¹⁰¹ in which it reiterated in principle all its unfounded allegations and expectations, including with regard to the alignment of Poland's health policy with the pro-abortion policies pushed in the documents it adopted. In both the 2020 and 2021 resolutions, the ban on eugenic abortion, although fully in line with the right of a Member State to decide sovereignly on the shape of its health policy, as well as with any international obligations, was considered by the European Parliament as a violation of the rule of law.¹⁰² It also reiterated the view that abortion is an element of undefined SRHR, which the European Parliament reiterated, in a completely unauthorised manner, as an element of human rights.

100 Article 4a(1)(1) of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended), hereinafter: AFP.

101 European Parliament resolution of 11 November 2021 on the first anniversary of the de facto abortion ban in Poland (2021/2925(RSP)), https://www.europarl.europa.eu/doceo/document/TA-9-2021-0455_EN.html, accessed 30 June 2022.

102 See European Parliament resolution of 26 November 2020, letter 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'; European Parliament resolution of 11 November 2021, letter E: 'whereas the erosion of the rule of law in Poland has led to violations of human rights, including SRHR; whereas the de facto abortion ban in Poland is a clear attack on the rule of law and fundamental rights, and restricts the realisation of SRHR in Poland, following the many attacks against the rule of law in recent years.'

5.5 Matić Report – Resolution of the European Parliament of 24 June 2021

In 2013, after several months of intense debate on a resolution on reproductive health and rights – known as the Estrela report¹⁰³ – the majority of the European Parliament rejected the document as extremely ideological. Its far-reaching demands (including pro-abortion) were unacceptable to the majority of MEPs at the time. In 2021, the claims of the Estrela report returned to the European Parliament in the Matić Report. This document was even more radical, and yet on 24 June 2021 it was adopted as a resolution on the situation of sexual and reproductive health and rights in the EU in the context of women's health.¹⁰⁴ In doing so, the European Parliament once again encroached on an area of health policy reserved to the Member States, in violation of Union treaty law, and undermined binding international provisions on the protection of life.

The Matić Report, adopted as the official position of the European Parliament, opposes the concept of 'sexual and reproductive rights' – which includes free access to abortion – and considers it a direct violation of democratic values. Moreover, the resolution falsely portrays the concept of SRHR as a binding international obligation and an element of human rights, even though, it should be stressed again, the term has never been used in any binding act of international law. The European Parliament in this document even goes so far as to state outright that abortion on request constitutes a human right. The report thus ignores the repeatedly expressed international opposition to attempts to incorporate abortion into the human rights system and the lack of agreement by states to introduce the phrase 'sexual and reproductive rights' into international documents.

The Estrela report (rejected in 2013) and the Matić Report (adopted in 2021) clearly demonstrate the European Parliament's progressive ideological offensive. The examples of these two resolutions are one of the clearest

103 European Parliament Committee on Women's Rights and Gender Equality, Motion for a European Parliament resolution on sexual and reproductive health and rights (2013/2040(INI)), https://www.europarl.europa.eu/doceo/document/A-7-2013-0426_EN.html, accessed 30 June 2022.

104 See the Matić Report, footnote 2.

testimonies of the implementation of the strategy described above – the creation of soft law aimed in fact at the binding imposition of ideological demands, including the full legalisation of abortion, on Member States.

5.6 Resolution of 7 October 2021 on the State of Texas

In response to a law passed in the state of Texas at the beginning of September 2021, banning abortions after the detection of a baby's heartbeat,¹⁰⁵ the European Parliament adopted, on 7 October 2021, a resolution on the anti-abortion state law in Texas.¹⁰⁶ MEPs not only condemned the Texas legislators, but also formulated a number of demands to the US authorities, from whom they expected, among other things, to block legal changes that increase the protection of unborn life.

In addition to the fact that an international organization has made unlawful demands of a third country such as the United States, particular attention should be paid to the language and categorical statements, which have no basis in international law, relating to access to abortion. This is how, *inter alia*, in paragraph C of the resolution, the European Parliament indicated that the EU-US partnership is rooted in their shared values – and these values include free access to abortion. This is a further step towards the arbitrary creation of a kind of 'new human rights' and 'European values', to which abortion is also to be incorporated and fully recognized by custom in future international forums. This is further corroborated by the provisions of the resolution, which repeatedly states explicitly that abortion is a human right, even though no binding instrument of international law has ever affirmed such a right.

In the absence of a legal basis to support its thesis, the European Parliament went so far as to replace arguments with slogans in the resolution (for example, in para. 15 of the resolution uses the phrase 'laying the

¹⁰⁵ Texas Senate Bill 8: Relating to abortion, including abortions after detection of an unborn child's heartbeat; authorising a private civil right of action, <https://capitol.texas.gov/tlodocs/87R/billtext/html/SB00008F.htm>, accessed 30 June 2022.

¹⁰⁶ European Parliament resolution of 7 October 2021 on the state law relating to abortion in Texas, USA (2021/2910(RSP)), https://www.europarl.europa.eu/doceo/document/TA-9-2021-0419_EN.html, accessed 30 June 2022.

groundwork for witch hunts in the 21st century’ – in the context of punishing the provision of illegal abortion services, and in paragraph G of the resolution: ‘their body, their choice’), to which it attempts to give the status of principles. To make matters worse, the Parliament has also used numerous manipulations of international provisions to supposedly legitimise its demands. Several such manipulations will be pointed out below.

- 1) The EP argues in paragraph D of the resolution that Tasks 3.7 and 5.6 of the UN Sustainable Development Goals, on which all Member States have assumed obligations and commitments to respect and promote these goals, relate to SRHR (including abortion as a fundamental element of this concept).

In fact, Goal 3.7 only refers to ‘sexual and reproductive health-care services’, while Goal 5.6 refers to ‘access to sexual and reproductive health and reproductive rights’. The term ‘sexual rights’ does not appear in the UN Sustainable Development Goals,¹⁰⁷ and furthermore, as indicated above, Poland, for example, although opposed to the concept of sexual and reproductive health and rights understood in such a way, the said Sustainable Development Goals are being implemented.

- 2) The EP states in letter E of the resolution that ‘SRHR are grounded in fundamental human rights, are protected in international and European human rights law such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, CEDAW¹⁰⁸ and the European Convention on Human Rights’.

Meanwhile, SRHR or even ‘sexual and reproductive health’ (SRH) do not appear in either of the first two international instruments mentioned by the European Parliament. Moreover, the United States has never ratified the International Covenant on Economic, Social, and Cultural Rights, so it is not bound by its provisions.

¹⁰⁷ See UN Sustainable Development Goals.

¹⁰⁸ Convention on the Elimination of All Forms of Discrimination against Women – author’s note.

Furthermore, the United States has also never ratified the CEDAW Convention (which, incidentally, also does not contain the wording of SRHR, but only mentions services ‘related to family planning’ in Article 12¹⁰⁹). The same applies to the European Convention on Human Rights, to which member states of the Council of Europe are signatories and to which the United States – for obvious reasons – does not belong. Also, the latter Convention does not use the term SRHR or SRH. Moreover, it explicitly states in Article 2 that ‘everyone’s right to life shall be protected by law’.

- 3) In letter J of the resolution, the European Parliament refers to the Charter of Fundamental Rights of the European Union.

Once again, the document ignores the fact that the United States – not being a member of the Union – is also not bound by the Charter.

- 4) The European Parliament also refers, among other things, to the International Conference on Population and Development (ICPD) held in Cairo in 1994 and its programme of action, with letter N of the resolution lamenting that the Texas anti-abortion law ‘will in any case lead to a chilling effect on healthcare providers’.

Meanwhile, the final resolutions of the Cairo conference indicated: ‘All Governments and relevant intergovernmental and non-governmental organizations are urged to [...] deal with the health impact of unsafe abortion [...] every attempt should be made to eliminate the need for abortion [...]’ (para. 8.25 of the ICPD).

It is also impossible not to refer to the European Parliament’s unusually strong attempts to push through pro-abortion solutions, which in this resolution took one of their most radical forms, demonstrating that it is turning a blind eye to its power limitations. Such a course of action also shows that it not only ignores the indisputable right to life under international law, but outright denies it and wants to establish its own norms in its

109 See Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979.

place. The legislative trend, which has been evident in the United States for some time now, towards the introduction of greater protection for life conceived, is of great concern to the Union, as the European Parliament refers to on several occasions in its resolution. In paragraph 17 of the resolution, it explicitly stated that it was ‘deeply concerned about the effect of Texas law on other US states, which [...] will attempt to pass abortion bans across the country, as has already been seen in Florida’. In this context, it is worth mentioning that, in addition to the Texas legislature, more than a dozen other states decided to adopt ‘pro-life’ laws. Their validity, however, was contingent on the Supreme Court overturning *Roe v. Wade*. It was on this judgment that the entire pro-abortion law in force for many years in the USA was based. On 24 June 2022, the Supreme Court overturned the *Roe v. Wade* ruling in *Dobbs v. Jackson Women’s Health Organization*, in effect leaving decision-making on the scope of legal protection of life to the individual states.¹¹⁰ The apparent U.S. shift towards the protection of life from conception had become of such concern to the EP that (even before the overturning of *Roe v. Wade*¹¹¹), it found it necessary to speak out against the legislative solutions adopted by Texas (paragraph 2 of the resolution – calling for the ‘swiftly repeal’ of the law, paragraph 8 – calling for access to legal abortion and encouraging it to be universally available, paragraph 9 – calling for the full decriminalisation of abortion, paragraph 10 – calling for universal access to abortion to be covered by federal protection, etc.). This kind of action is also part of the strategy of shaping binding international law through custom built on the basis of numerous acts having the form of soft law.

5.7 Court of Justice of the European Union

In view of the described aspirations of the European Parliament to revise human rights by repealing the legal protection of life from conception, it is noteworthy that the Grand Chamber of CJEU in *Oliver Brüstle v. Greenpeace eV*

¹¹⁰ *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. ____ (2022), https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf, accessed 30 June 2023.

¹¹¹ In connection with the overturning of *Roe v. Wade*, the European Parliament also adopted a resolution – see European Parliament resolution of 7 July 2022 on the US Supreme Court decision to overturn abortion rights in the United States and the need to safeguard abortion rights and women’s health in the EU (2022/2742(RSP)). It was not described in the chapter due to its publication after it had already been handed over – editor’s note.

(C 34/10) defined the embryo as follows: ‘any human ovum must, as soon as fertilised, be regarded as a “human embryo” [...] since that fertilisation is such as to commence the process of development of a human being.’¹¹² This is a clear establishment by the CJEU of the principle of legal protection of the dignity and integrity of the human embryo, and thus another contribution to the strengthening of the standard of protection of life from conception, which at the same time undermines the legitimacy of ideological attempts to push for legal changes by bodies such as the European Parliament.

6 Conclusions

At the level of international law and in the universal human rights system, there is no concept of a ‘right to abortion’. Moreover, numerous states have repeatedly expressed their opposition to attempts to create such a right.

It should be borne in mind that abortion violates fundamental human rights, including in particular the right to life guaranteed by many binding international instruments (Article 6 of the ECHR, Article 3 of the Universal Declaration of Human Rights, Article 6(1) of the ICCPR, among others). There is no doubt that abortion is also one of the cruellest forms of discrimination based on gender, colour, disability or simply the fact of ‘being unwanted’, which is explicitly prohibited by international law.

It is worth mentioning at this point initiatives to strengthen the protection of life, an example of which is the Geneva Consensus Declaration of 22 October 2020. Dozens of states have opposed attempts to view abortion as a human right by signing the document, which clearly recalls that the right to life is a fundamental right, and that abortion cannot be considered a human right.¹¹³

The declaration is a particularly important voice in the face of increasing attempts to push (particularly at the UN and in the European Union) pro-abortion policies designed to lead to real legal changes, i.e., the widespread

¹¹² CJEU judgment of 18 October 2011 in *Oliver Brüstle v. Greenpeace eV* (C-34/10), para. 35.

¹¹³ Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/344/30/PDF/N2034430.pdf?OpenElement>, accessed 30 June 2022.

acceptance of abortion. In spite of clearly defined standards for the protection of life in international law, abortion is presented as a 'health service' or an element of 'sexual and reproductive rights', and these are only a concept, a postulate, not present in binding legal acts. Extreme left-wing circles use so-called soft law, all sorts of non-binding recommendations, precisely because of their less formal nature, which makes it much easier to smuggle controversial content into them: this is facilitated by arguing that no one is obliged to follow them. In practice, the scale of political pressure is often in favour of adopting these non-binding proposals – and for this reason they are particularly dangerous.

An excellent example of the exertion of such pressure are the increasingly frequent resolutions of the European Parliament, which unjustifiably portray lower hierarchical interests of the individual (for example, the right to privacy, the right to decide on one's own body) as being able to override the right to life of another. These resolutions are designed to shape a kind of international custom and to influence subsequent legislation as soft law. Although this is theoretically non-binding law, it is nevertheless respected in principle, or at least taken into account internationally. What we have here is an unequivocal adherence to the principle 'a lie repeated a thousand times becomes the truth'. The use of soft law is particularly evident in the explanatory memoranda of draft regulations and directives (i.e., acts that are ultimately intended to be binding), whose authors routinely cite European Parliament resolutions as the documents underlying the proposed legal solutions.

The same aspiration can be seen at the United Nations, where the term SRHR is promoted in a particularly strong manner, with opponents of the UN's direction excluded from discourse (as the situation at the Nairobi Summit made clear).

On the sidelines of a consideration of the pro-abortion activities of the European Union and the UN, it is worth noting that these organizations, in spite of significant advances in medicine and knowledge of human development, treatment methods, psychiatry and psychology, in spite of numerous studies carried out to find out the real causes of abortion, have

not revised their position for 40 years; just as in 1981 the representatives of the EEC claimed that the best solution to the problem of abortion was to legalise it – so now this position is expressed by the European Union and the UN. The concept of ‘preventing unsafe abortion’ has become the main tool for pressuring states to legalise it and thus – irrationally – contribute to restricting its practice.

This chapter is not the place to consider the history of the pro-abortion movement, but in order to fully understand the activities of individual organisations, it is worth noting that the timing of the introduction of the concept of SRHR into international discourse (not law!) coincides with the expansion of the so-called second-wave feminist movement, which viewed procreation and human sexuality through the prism of unequal relations between men and women, seeing the source of these inequalities precisely in procreation and sexuality. Hence, representatives of this movement, including S. Firestone, postulated a ‘biological revolution’, the aim of which was to achieve equality for women, manifested largely in the sphere of sexual freedom.¹¹⁴ The radical feminist movement saw, and continues to see, motherhood as a form of oppression against women – consequently calling for the recognition of women’s right to ‘total control over their own bodies’ by granting them the ‘right to abortion’. This does not alter the fact that, under binding international law, it must be accepted without the slightest doubt that it is up to the national legislator to shape the regulations on the permissibility and principles of termination of pregnancy. It is worth emphasising, however, that the national legislator is bound in this respect by the applicable norms of international law, including those establishing the legal protection of life. A state which is a party to agreements and declarations, the interpretation of which clearly indicates the necessity to protect the life of the unborn child, has grounds to consider each introduced intensification of the protection of conceived life in the context of the fulfilment of international obligations.

114 See S. Firestone, *The Dialectic of Sex*, New York 1972, pp. 126-145, <https://teoriaevolutiva.files.wordpress.com/2013/10/firestone-shulamith-dialectic-sex-case-feminist-revolution.pdf>, accessed 23 June 2022.

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Abstract

Contrary to the theses often repeated in the public arena, abortion is not recognized as a human right by international law. Acts of international law recognize the right to life as the first and most fundamental human right, and do not indicate limitation clauses (limiting this right) as part of the provisions related to the right to life. Hierarchically, it is the first, most important and fundamental right, which is also a kind of *sine qua non* condition for the existence and actual exercise of other rights, such as the right to health or the right to privacy.

Attempts to establish abortion as one of the basic human rights are mainly based on formulating such a postulate in the framework of 'soft law': non-binding documents, standards, recommendations, positions, and guides. At the same time, the pro-abortion narrative today is based on an attempt to detach abortion from the right to life and bind it to the rights of health or self-determination of individuals, excluding any relationship between termination of pregnancy and the life of another human being.

This chapter analyses the provisions of, *inter alia*, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Values, and the activities of the EU and the UN in matters relating to procreation.

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Key terms: freedom of expression, information on the effects of abortion, freedom of pro-life activities, anti-abortion protests, protection zones, access zones

Chapter 14

Legal safeguards for freedom of expression and the admissibility of information on the consequences of abortion – a comparative legal perspective

1 Introduction

In many countries, there is a clash between the value of what is undoubtedly freedom of expression and the attempt to restrict it in connection with the desire to protect the so-called right to abortion. Many times, this manifests itself in questioning the possibility of reporting the facts about abortion (for example, the impact of abortion on women's health), which can deprive women who are considering it of full awareness of the consequences of the procedure. The following study aims – using in particular a comparative legal method – to identify the limits of freedom of expression in the context of information about the consequences of abortion, as defined by law and relevant national case law. The legal orders of both the common law and continental systems were examined, including the Polish legal system, which is distinguished from the other analysed systems by its relatively low level of repressiveness.

2 The United States of America

According to the First Amendment to the Constitution of the United States of America, no law enacted by Congress shall abridge the freedom of

speech, the press, or the right of assembly.¹ Furthermore, according to Section 1 of the Fourteenth Amendment, the authorities of the individual states may not restrict the rights and freedoms of US citizens – including freedom of speech – through the enactment and application of laws.² The principle of freedom of speech, which is fundamental to the legal order of the United States, can be derived from these provisions of the US Constitution.

However, the principle of freedom of speech is not absolute and may therefore be restricted in certain circumstances. The extent of the restrictions permitted by law depends on the nature of speech. There are three types of speech: political/public concern speech, commercial speech, and governmental speech. The first type of speech, according to case law, 'lie[s] at the heart of the First Amendment',³ and is therefore entitled to the highest standard of protection. The discussion on the issue of abortion also falls within this category of speech.⁴

Legal restrictions on freedom of expression in the area of political speech, and therefore also public statements on the issue of abortion, are subject to passing the so-called strict scrutiny test. The test involves verifying whether: the restriction of freedom of speech in this area is justified by a pressing governmental interest, the means of restriction used is the least onerous among other means by which the same objective could be achieved, and furthermore whether the restriction imposed does not infringe on other means of proclaiming the same views.⁵

Attributing abortion to murder, or calling abortion providers murderers, is in principle protected under the First Amendment of the US Constitution. In 1984, the Supreme Court ruled in *City Council v. Taxpayers for Vincent* that

1 First Amendment to the Constitution of the United States of America, <https://constitution.congress.gov/constitution/amendment-1>, accessed 10 December 2022.

2 Ibid.

3 *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357, 377 (1997), cited in G. Maroń, *Konstytucyjna wolność słowa w orzecznictwie sądów USA na przykładzie protestów antyaborcyjnych*, "Zeszyty Naukowe Uniwersytetu Rzeszowskiego. Seria Prawnicza" 2015, no. 87, p. 89, hereinafter: *Schenck v. Pro-Choice Network of Western New York*.

4 *Hill v. Colorado*, 530 U.S. 703, 714-15 (2000); *Schenck v. Pro-Choice Network of Western New York*; *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 762-764 (1992), as cited in G. Maroń, *Konstytucyjna wolność...*, p. 89.

5 *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989), as cited in G. Maroń, *Sąd jako strażnik lub cenzor wolności słowa w państwach common law na przykładzie dyskursu aborcyjnego. Aborcja jako „zabójstwo” dziecka, lekarz aborcjonista jako „morderca”*, "Prawo i Więź" 2016, no. 3(17), p. 79.

phrases such as ‘abortion is murder’ (as well as pro-abortion slogans and others unrelated to the protection of the unborn child, such as ‘alcohol kills’) may have a claim to protection under the US Constitution.⁶ A similar position can be found among other decisions of both federal and state courts.⁷

According to the decision of the Court of Appeals for the Tenth Circuit in *Cannon v. City and County of Denver*, in order for such terms to find protection under the First Amendment to the US Constitution, they must not qualify as so-called fighting words.⁸ This qualification occurs if three conditions are cumulatively met: (1) the terms used are directed at a specific person; (2) there is a high probability that they will provoke violent reactions; (3) the terms used do not play any role in the expression of ideas. The ruling in question concerned the case of anti-abortion posters that contained the phrase ‘the killing place’ and were placed in the immediate vicinity of an abortion clinic. According to the court, the phrase affected the staff and patients of this clinic, but not directly. The phrase used was offensive, but it did not constitute a threat to public order that could be created by a violent reaction of the audience. Moreover, in the court’s view, it is impossible to imagine an effective way of presenting anti-abortion views that did not use the argument that abortion is the deprivation of human life – thus, the wording used played a significant role in the presentation of views. With these considerations in mind, the court held that this manner of demonstration could not be qualified as inflammatory words, and that the arrest of the protesters in front of the abortion clinic violated the freedom of speech guaranteed by the First Amendment to the US Constitution.

A similar ruling was made by the Court of Appeals for the State of New York.⁹ This ruling overturned a first instance court ruling that anti-abortion posters placed in the vicinity of abortion clinics were prohibited from using the words: ‘kill’, ‘murder’, and others with a synonymous meaning.

6 *City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984) – text of ruling available at: <https://tile.loc.gov/storage-services/service/ll/usrep/usrep466/usrep466789/usrep466789.pdf>, accessed 9 December 2022.

7 G. Maroń, *Sąd jako strażnik...*, p. 79 et seq.

8 *Cannon v. City and County of Denver*, 998 F. 2d 867 (10th Cir. 1993), as cited in G. Maroń, *Konstytucyjna wolność...*, p. 114.

9 *O.B.G.Y.N. Ass'ns v. Birthright of Brooklyn & Queens, Inc.*, 407 N.Y.S.2d 903, 906 (N.Y. App. Div. 1978), as cited in G. Maroń, *Sąd jako strażnik...*, p. 80.

In its reasoning, the court wrote that this is a way of expressing views on political and public issues and is therefore protected under the First Amendment to the US Constitution. It added that restricting the use of words with a controversial or provocative dimension poses a threat to the expression of certain views.

The Court of Appeal for the State of California has partially overturned a ruling by the first instance court to the extent that it banned the use of phrases towards staff and patients in the vicinity of an abortion clinic such as: 'murderers', 'murdering', 'killers', 'killing', as well as any claims that babies at this location were 'murdered' or 'killed'. Furthermore, the Court of Appeal held that these expressions could also be used in the presence of children under the age of 12. It also stated that such a subject prohibition, as issued by the court of first instance, constitutes a rationing of freedom of expression, which is not justified by any interest of the authorities.¹⁰

U.S. appellate courts have, on at least three occasions, questioned the legality of police arrests of pro-life activists and have overturned convictions of pro-life activists in cases of disrupting public order by chanting slogans in the vicinity of abortion clinics indicating that abortion is murder.¹¹

According to the 1988 judgment of the Illinois Court of Appeals in *Van Duyn v. Smith*, public proclamation that a particular person kills children by performing or facilitating abortions cannot constitute defamation or the tort of emotional distress. In the case in question, a pro-life activist distributed two different posters that referred to an executive director at a health clinic where abortions were performed. The first poster resembled FBI handbills, detailing what crimes the director had committed, but the poster included a note that the activity depicted on it should not be seen as illegal, as abortion is not considered a crime under US law. The second poster, on the other hand, presented photographs of the remains of abortion victims, information about the scale of the phenomenon and a description of the practice. The court explicitly held that

10 *Planned Parenthood Shasta-Diablo, Inc. v. Williams*, 16 Cal. Rptr. 2d 540 (Cal. Ct. App. 1993), as cited in G. Maroń, *Sqd jako strażnik...*, p. 80.

11 G. Maroń, *Sqd jako strażnik...*, p. 80.

the mere distribution of these posters did not meet the requirements of emotional anguish. However, the pro-life activist also carried out other actions against the clinic's director, for example, repeatedly following her, obstructing her from entering and leaving the premises – this part of the charges was referred to the jury for determination. On the other hand, with regard to the allegations of defamation, the court found that there was no defamation, as, in the court's view, there was an expression of opinion and not a statement of fact. In the court's view, the expression that the director of the clinic is involved in killing means that she 'terminated the life of something or someone previously living',¹² and within the contextual interpretation of poster one (considering the social aspect), it is clear that the word 'killing' was used as a description of the abortion procedure or a description of its consequences. The average viewer, in the court's assessment, would quickly understand that the first poster depicts abortion as a killing procedure in which the protagonist of the poster participates and which, according to pro-life activists, should be considered a crime. The recipient would not have recognized that this poster alleges that the director of the clinic is involved in murder as a crime prosecuted by the authorities.¹³ The court also dismissed the allegation of violation of the clinic director's privacy, as no malice on the part of the pro-life activist, necessary for an allegation of falsity of statements involving publicly momentous issues, of which abortion is one, was demonstrated.

The linguistic acuity associated with the abortion issue also applies to words directed at pro-life activists. According to a ruling by the Court of Appeals for the Eleventh Circuit, calling an anti-abortion activist an 'accomplice to murder' falls within the bounds of constitutional freedom of speech in the case below. A pro-life activist posted details of doctors performing abortions on a website. One of the doctors mentioned was a victim of murder. As a result, the activist in question was targeted and specifically called an 'accomplice to murder'. The court found the phrase used to be 'rhetorical hyperbole' within the bounds of the First Amendment to the US Constitution.¹⁴

12 The 1988 judgment in *Van Duyn v. Smith*, 173 Ill. App. 3d 523, 537 (Ill. App. Ct.), as translated and cited in G. Maroń, *Sąd jako strażnik...*, p. 83.

13 *Ibid.*, p. 84.

14 *Horsley v. Rivera*, 292 F.3d 695 (11th Cir. 2002), as cited in G. Maroń, *Konstytucyjna wolność...*, p. 114.

However, US courts have not always been in favour of extending the protection of the First Amendment to the US Constitution to slogans proclaimed by anti-abortion activists. Thus, in 1985, the Superior Court for the State of New Jersey, in its ruling, prohibited anti-abortion activists from proclaiming slogans such as 'They murder babies there' and others of similar meaning during protests in front of an abortion clinic.¹⁵

A year later, the Washington State Supreme Court, in its ruling, banned demonstrators outside an abortion clinic from proclaiming towards doctors, patients and other clinic employees slogans such as: 'murdering' or 'murderers', 'killing' or 'killers', as well as other phrases containing statements that babies were 'killed' or 'murdered' by someone at the clinic. The ban itself only applied to verbal statements made by demonstrators in the presence of children but did not apply to the content of posters or other statements. In its reasoning, the court stated that a young child could be expected to suffer 'physical, emotional and psychological harm' by being told, for example, that 'your doctor murders babies' just before visiting their doctor, and that such statements could undermine the child's trust in their doctor.¹⁶ In addition, in 1992, the Court of Appeals for the Ninth Circuit upheld an order prohibiting a defence lawyer representing pro-life activists from using words such as 'kill', 'killer', 'murder', or 'murderer', on the grounds that these words were linked to excluded defences.¹⁷

Certain state statutes in the United States, as well as local ordinances, provide for the establishment of permanent buffer zones. These are designated areas around abortion clinics, the offices of doctors performing abortions and their places of residence. Within these areas, the following are prohibited: anti-abortion protests; in case of clinics where abortions are performed, obstruction of access to them and sometimes other activities such as distributing leaflets, shouting, and singing. Buffer zones do not include private property in the vicinity of the clinic. Such zones may also be of a floating nature: in that case they refer to the space around

15 *Planned Parenthood of Monmouth v. Cannizzaro*, 204 N.J. Super. 531 (N.J. Super. App. Div. 1985), as cited in G. Maroń, *Sąd jako strażnik...*, p. 88.

16 *Bering v. Share*, 721 P.2d 918 (Wash. 1986), as cited in G. Maroń, *Sąd jako strażnik...*, p. 88.

17 *Zal v. Steppe*, 968 F.2d 924, 930-31 (9th Cir. 1992), cited in G. Maroń, *Konstytucyjna wolność...*, pp. 114-115.

a person going to or returning from an abortion clinic. Such persons cannot, for example, be approached for the purpose of handing them a leaflet or advising them. The buffer zones are intended to ensure safe and unhindered access to abortion clinics for those wishing to use their services and for their staff.

Buffer zones may be enshrined in both state (state statute) and local (local ordinance) legislation. Given the nature of common law as a system based on precedent, they may also result from court injunctions. In the case of statutory or local provisions, the buffer zone applies to all persons and protects all abortion facilities within the area of the law. A court injunction, on the other hand, always concerns specific named persons or organizations – it may protect individual named facilities or facilities in a specific area or across the country. The applicant must adequately justify the application for an injunction based on previous incidents and threats by the persons to be targeted. The issuance of an injunction cannot be based on a concern to ensure the psychological comfort of those using the services of abortion clinics or to keep them away from the slogans proclaimed by anti-abortion activists.¹⁸

3 Canada

Under section 2(b) of the Canadian Charter of Rights and Freedoms,¹⁹ everyone is guaranteed freedom of thought, belief, opinion and expression. However, this freedom is not absolute and, in accordance with section 1 of the Canadian Charter of Rights and Freedoms, it may be subject to limitations that are grounded in law and justified in a free and democratic society.

If an allegation of infringement of freedom of expression is made before a court, the determining authority should first verify whether the activity to which the allegation relates meets the conditions for being protected

18 See *Mississippi Women's Medical Clinic v. McMillan*, 866 F. 2d 788 (5th Cir. 1989), as cited in G. Maroń, *Konstytucyjna wolność...*, p. 99.

19 Canadian Charter of Rights and Freedoms, in: The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, <https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html>, accessed 10 January 2022.

by the right to express one's views. In the event of a positive verification, the court assesses whether the legislation relating to that activity – by its purpose or effect deriving from it – rationalizes freedom of expression. If the rationing of freedom of expression is established, the specific relevant provisions are subjected to a test of constitutionality consisting of two elements involving answers to questions:

- 1) Do the provisions in question regulating freedom of expression pursue a 'sufficiently momentous' objective that is linked to 'substantial and pressing' issues?
- 2) Are the means used by the legislator justified and reasonable (proportionality test)?

At the same time, the court cannot presume the constitutionality of the controlled provisions, as the burden of proof that the provisions in question meet the two criteria above lies with the state. In order for the referenced proportionality test to pass, three criteria regarding the employer's measures must be met simultaneously:

- 1) the measures used are rationally related to the purpose for which they were introduced – they must not be arbitrary, unfair, or justified by irrational considerations;
- 2) the measures used restrict freedom of expression as little as possible;
- 3) there is proportionality between the effects of the legislation in question and the intended purpose of its introduction – it is to be assessed whether the negative consequences of a particular regulation restricting freedom of expression outweigh its benefits.

It must therefore be demonstrated at the outset that the means employed are likely to achieve the desired objective. Indeed, the use of measures that minimally regulate freedom of expression is not always necessary. The Supreme Court of Canada allows exceptions for the use of the least onerous means by the legislator in relation to a particular freedom or right

(here freedom of expression) in order to achieve the stated aim,²⁰ and emphasises that the broader the stated aim, the more difficult it is to prove that the means used are those which minimally regulate the subjective right in question.²¹

The protection of freedom of expression varies depending on the type of speech, it depends on the importance of the values behind the speech in question. The less important a value is, the easier it is to justify restrictions on the speech behind it. For example, it would seem reasonable to restrict pornography because of the questionable values behind it. Speech which realises high values is that which serves the search for truth (political, scientific, or artistic), protects the autonomy and self-development of the individual or promotes public participation in the democratic system.²²

The protection of freedom of expression also extends to certain expressions that are exaggerated, offensive or disparaging, or even deceitful. This is motivated by the fact that they may serve certain social purposes linked to the values underpinning freedom of expression and, moreover, it is sometimes difficult to assess the truthfulness of a given expression, especially concerning complex social and political issues. Any expression can be interpreted both literally and metaphorically. In addition, Canadian courts adopt a relativistic understanding of interpersonal communication, according to which the meaning of a given utterance is largely ‘an interactive process dependent on the listener as well as the speaker’, and ‘a statement that is true on one level or for one person may be false on another level for a different person’.²³

Under Canadian law, the exercise of freedom of speech also carries with it the need to respect the freedom of the audience. An individual may proclaim his or her views to those who wish to hear him or her – such

20 *R. v. Chaulk*, [1990] 3 S.C.R. 1303, as cited in G. Maroń, *Publiczne protesty antyaborcyjne w świetle orzecznictwa sądów kanadyjskich*, “Zeszyty Prawnicze” 2016, 16/3, p. 102.

21 *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, as cited in G. Maroń, *Publiczne protesty...*, p. 102.

22 *Ross v. New Brunswick School District No. 15*, [1996] 1 SCR 825, 1996 CanLII 237 (SCC) (89), as cited in G. Maroń, *Publiczne protesty...*, p. 102.

23 *R. v. Zundel*, [1992] 2 S.C.R. 731, quoted in G. Maroń, *Publiczne protesty...*, p. 103.

behaviour is justified under section 2 of the Canadian Charter of Rights and Freedoms. However, similar protection is not found in a mode of expression that does not leave the recipient free to refuse to receive that message. Freedom of expression may therefore be restricted if the recipients of a given message could become its 'captive audience'. Such an admission implies a de facto restriction of public debate on controversial and emotive topics. Such an understanding of freedom of expression, as established in the jurisprudence of Canadian courts, is in fact contrary to the essence of democracy, which is based on making decisions in accordance with the will of the majority after a debate presenting the whole spectrum of views and arguments on a given issue.

In Canada, following the legalisation of abortion in 1988, numerous protests against abortion broke out, which were not always peaceful. Acts of vandalism were then carried out against newly established abortion clinics, blocking access to them and even unlawful trespassing on their premises. In response to this situation, specific clinics began to apply (successfully) for injunctions that would prohibit anti-abortion protests, including peaceful ones, from taking place in the vicinity of these clinics.

Certain criminal provisions²⁴ and tort law also apply in Canada to restrict the activities of pro-life activists. One example is the tort of trespassing, which consists of unlawfully entering someone's property or failing to leave it despite summonses; another tort is the tort of nuisance involving unauthorised interference, for example through loud shouting. In 1995, a special law on access to abortion services was passed by the parliament of British Columbia.²⁵ This law prohibits any protest against abortion in the vicinity of abortion clinics, as well as the offices of doctors performing abortions and their places of residence. Similar laws have been passed in the provinces of Newfoundland and Labrador (2016)²⁶ and in Ontario (2017).²⁷

24 Most of the criminal provisions applicable here are found in the Criminal Code of Canada (Criminal Code of Canada, R.S.C., 1985, c. C-46, <https://laws-lois.justice.gc.ca/eng/acts/C-46>, accessed 10 January 2022).

25 Access to Abortion Services Act RSBC 1996, Chapter 1, http://www.bclaws.ca/civix/document/id/lc/statreg/96001_01, accessed 14 January 2022.

26 Access to Abortion Services Act, SNL2016, Chapter A-1.02, <https://www.assembly.nl.ca/Legislation/sr/statutes/a01-02.htm>, accessed 14 January 2022.

27 Safe Access to Abortion Services Act, S.O. 2017, Chapter 19, <https://www.ontario.ca/laws/statute/17s19>, accessed 14 January 2022.

The referenced laws contain provisions that define the area around abortion clinics, the offices of doctors performing abortions, and their places of residence as so-called access zones. These laws list the behaviour that is not permitted in the zones in question. They prohibit all anti-abortion protests, sidewalk interference, harassment, physical interference, and intimidation of patients, doctors and abortion providers. For example, in the first law (passed in the province of British Columbia), ‘sidewalk interference’ is defined not only as advising or persuading someone to abandon their intention to have an abortion, but even as giving them information and data about abortion services. Protesting, on the other hand – according to this law – includes expressing any disapproval formulated against abortion, or even attempting to do so. It is also unlawful to repeatedly communicate by telephone, fax, or other electronic means with a doctor or abortion provider in order to visit them since they have started or continue to offer these services.

In order for the perpetrator of the aforementioned acts to be liable, it is necessary for him to know that an access zone exists at the place where he has committed the act in question. It should be pointed out that the provisions of the laws in question do not extend to private property located within access zones. There is a sanction for violations of the Act, ranging up to a fine of up to \$10,000 and/or imprisonment of up to one year. The court may also impose judicial probation for up to two years.

The constitutionality of the Act in the province of British Columbia was ruled on by the competent Court of Appeal²⁸ in its 2008 judgment in the case of *R. v. Spratt*.²⁹ In that case, two men had committed the act of ‘protesting’ and ‘sidewalk interference’ within the meaning of the Act in an access zone. In its judgment, the Court of Appeal for British Columbia found that the measures introduced by the Act to restrict constitutional freedom of expression were consistent with section 1 of the Canadian Charter of Rights and Freedoms. The court’s reasoning set out the considerations carried out in accordance with the scheme outlined above (see information provided

28 In the Canadian system, the courts of appeal stand highest in the hierarchy of courts for a province – including being above the provincial and territorial supreme courts, which are not to be confused with the Supreme Court of Canada, which stands above the courts of appeal for specific provinces.

29 *R. v. Spratt*, [2008] BCCA 340 (CanLII), as cited in G. Maroń, *Publiczne protesty...*, p. 106.

at the beginning of the subsection on Canada), which has been developed by the jurisprudence of the Supreme Court of Canada.

In 2013, the same court handed down a sentence in which it convicted two persons for violating the provisions of the law in question.³⁰ They were punished for holding posters in the access zone in 2009 informing people of the risk of being arrested there under the provisions of the law in question. In addition, these persons distributed the texts of the law in question to passers-by. One of them had her mouth taped shut to illustrate enforced silence. Both were found guilty by the court, using an expansive interpretation, of violating the provisions of the Act, specifically 'sidewalk interference' and 'protesting'. What is noteworthy here is that neither person was protesting against abortion services, but against restrictions on freedom of speech.

Injunctions in the Canadian legal system are similar in scope to the aforementioned Acts. They may apply to specific persons or to an unspecified circle of addressees. They prohibit any activity with an anti-abortion dimension in a specific location, most often in the vicinity of an abortion clinic. In practice, such an injunction is most often requested by the abortion clinic concerned. Violation of an injunction is punishable by up to two years' imprisonment under Section 127 of the Criminal Code of Canada.

A court injunction against pro-life activities was first applied in Canada in the 1994 Ontario Superior Court decision in *Ontario (Attorney-General) v. Dieleman*.³¹ The court, at the request of the Attorney-General of Ontario, prohibited the enumerated behaviours against the provision of abortion services (including anti-abortion protests or 'sidewalk counselling') in a defined area around three abortion clinics, offices and residences of specific doctors. The court found that while such an injunction restricts freedom of expression, it does so in accordance with section 1 of the Canadian Charter of Rights and Freedoms, as it protects, through access to abortion services, the mental and physiological health of pregnant women, their privacy, and provides protection for abortion providers. The court also found that the

30 *R. v. Von Dehn*, [2003] BCCA 187, as cited in G. Maroń, *Publiczne protesty...*, p. 110.

31 *Ontario (Attorney-General) v. Dieleman*, [1994] CanLII 7509 (ON SC), quoted in G. Maroń, *Publiczne protesty...*, p. 111, hereinafter: *Ontario (Attorney-General) v. Dieleman*.

issuance of the injunction satisfied the proportionality test discussed above and was also justified in view of the referenced ‘captive audience’ doctrine.

However, some of the charges brought in this case were dismissed. The court found that displaying posters in the vicinity of an abortion clinic that read: ‘Abortion Kills Children’, ‘Abortion: Canada’s Holocaust’, and posters showing pictures depicting the consequences of abortion in the form of remains of aborted babies are not sufficient to meet the defamation charge. According to the court, such posters are honest commentary on a matter of public concern.³² The court made it clear that naming specific doctors who perform abortions does not meet the elements of defamation under the applicable law, as long as the information is true. The reasoning of the judgment explained that an ordinary viewer would not perceive the content of the poster as suggesting that the doctor in question was committing a crime. It took into account the testimonies of several witnesses, in whose opinion the phrase ‘kills babies’ is an expression typical of the pro-life movement, as well as the evidence presented in the case, in which the opinions of doctors were presented regarding the frequent reference to the foetus as a baby by many members of the profession and pregnant women.³³ In addition, the court pointed out that the doctors whose opinions were cited recognize that abortion ‘puts an end to pregnancy’, while the phrase ‘puts an end to’ is a commonly accepted definition of the word ‘kills’ that can be found in the dictionary.³⁴ The anti-abortion terms found on the posters were considered ‘fair comment, expressing the opinion that the destruction of the foetus through a therapeutic abortion constitutes the “killing of a baby”’. This opinion has been voiced publicly for two decades by pro-life demonstrators. Even among legal theorists who support abortion, abortion is recognized and described as “killing”.³⁵ The court added that the legal regulation of defamation must be mindful of the value of freedom of expression, and that the offending terms may make up a substantial and legitimate message of expression.³⁶ However, this did not prevent the court from issuing the referenced injunction, which also prohibited such behaviour.

32 *Ontario (Attorney-General) v. Dieleman*, as cited in G. Maroń, *Sqd jako strażnik...*, p. 85.

33 *Ibid.*

34 *Ibid.*

35 *Ontario (Attorney-General) v. Dieleman*, cited in G. Maroń, *Sqd jako strażnik...*, p. 85.

36 *Ontario (Attorney-General) v. Dieleman*, as cited in G. Maroń, *Sqd jako strażnik...*, p. 86.

In the context of defamation, five years earlier, the same court had ruled to regulate freedom of speech in relation to pro-life pickets. This judgment prohibited anti-abortion activists from displaying posters in front of the offices of doctors performing abortions with the slogan: 'Doctor [...] stop killing unborn babies.' This act was considered by the court as defamation. In its reasoning, the court argued that the word 'kill', according to its basic definition, means the deprivation of life. Depending on the context, it may (but not necessarily) have a criminal or unlawful implication. In the court's view, the average viewer would perceive the word 'kill' on the posters as a pejorative word, accusing of unlawful or criminal acts. The court found that it was defamatory to suggest the illegality or criminality of therapeutic abortions. The act of the defendants was held to be an unjustified 'accusation of murder', which could not be protected under freedom of expression. It was significant that the aim of the anti-abortion activists was not to initiate a discussion that would be of public and social interest, but to get doctors to stop performing legal abortions.³⁷

In light of the regulations and case law presented, it must be assumed that the standard of freedom of expression in Canada remains low. The regulations analysed – sometimes under pain of criminal liability, or at least tort liability – prevent a rational debate on the legitimacy of protecting the life of the conceived child or the negative consequences of abortion for women themselves. The exacerbation of these trends should raise legitimate concerns about the state of protection and respect for human rights on the part of Canadian authorities.

4 Australia

Australian courts generally do not consider it defamatory to compare abortion to murder or manslaughter and to call its perpetrators murderers or killers. There are exceptions to this, such as the judgment of the New South Wales Court of Appeal, discussed below, whose reasoning has not,

37 *Assad v. Cambridge Right to Life (H.C.J.)*, [1989] CanLII 4309 (ON SC), as cited in G. Maroń, *Sąd jako strażnik...*, p. 88.

however, gained acceptance in the jurisprudence of Australian courts.³⁸ Before this judgment is discussed, however, it is worth recalling a judgment illustrating the basic line of these courts.

According to the Queensland State Court of Appeal's judgment in *Grundmann v. Georgeson*, there can be no defamation in comparing abortion to murder. The facts of the cited case were based on a press interview with a doctor named Georgeson, in which he criticised plans by another doctor, Grundmann, to open an abortion clinic (but did not explicitly mention his name). The following statements were made in the interview, for example: 'How can anyone deny the life of an unborn child? This is genocide.'³⁹ and 'Termination of pregnancy is just a nice way of saying murder.'⁴⁰ In addition to this, the defendant accused the plaintiff of violating the Hippocratic Oath. During the ongoing proceedings, Georgeson did not change his position and furthermore considered that abortion should be outlawed.

In the reasons for the judgment, the court stated that the defendant, when speaking of murder, meant abortion. Defamation could be spoken of if the defendant had suggested that the plaintiff had committed murder by killing someone in a way other than by having an abortion – and no such insinuation had taken place. The interview said that the plaintiff had performed abortions, which are, from the defendant's point of view, something unethical and should be prohibited. The court found that any rational viewer of the interview would understand the defendant's intentions. It is clear from Georgeson's words that his claim that the plaintiff has no respect for human life falls in the context of the abortions performed by the plaintiff. In the court's view, all of the defendant's alleged words boil down to the fact that the defendant condemned abortion in the interview in strong terms and claimed that the plaintiff aborts.⁴¹ The court found that Georgeson, by using the word 'genocide', was not accusing Grundmann of committing the act (even if only because he was performing abortions), but was merely expressing his opinion that abortion was immoral and

38 G. Maroń, *Sąd jako strażnik...*, p. 91.

39 As translated and cited in *ibid.*, p. 86.

40 As translated and cited in *ibid.*

41 *Grundmann v. Georgeson*, [1996] QCA 189 (18 June 1996), as cited in G. Maroń, *Sąd jako strażnik...*, pp. 86-87, hereinafter: *Grundmann v. Georgeson*.

should be banned. Words such as ‘murder’ or ‘genocide’ were linguistic hyperbole with which the defendant’s views were presented in an emphatic and emotional manner – in the court’s view, it would be unreasonable to expect the defendant to present his beliefs in a ‘reasonably sufficient’ manner.⁴² On the other hand, a finding that the plaintiff is in breach of the Hippocratic Oath, although defamatory in nature, is lawful by virtue of the fulfilment of all four prerequisites listed in section 377(8)(h) of the Queensland Criminal Code⁴³: the publication was made in good faith, in the course or for the purpose of discussing a topic of public interest, that public discussion is for the public benefit, and the comment constituting the defamatory content is fair. The matter of the establishment of the abortion clinic was related to a matter of public interest in which the plaintiff’s ethical standards are relevant to the discussion of his proposal to open such a clinic. In addition, the defendant acted in good faith – the message contained in the interview was ‘fair comment’ and also served the public benefit. With this in mind, the court held that the wording used was within the bounds of freedom of expression.⁴⁴

The New South Wales Court of Appeal in turn handed down a judgment interfering with the freedom of speech of anti-abortion activists. In the cited case, a defamation action was brought by an abortion doctor who was called an ‘abortionist’ during a television programme. According to the court, ‘abortionist’ means as much as ‘a person who terminates pregnancies with some regularity’, and – although it does not follow from the term that the person in question performs abortions illegally – accusing someone of performing legal abortions can constitute defamation: ‘Since any abortion is seen as despicable on moral grounds by a significant portion of society, calling a person an abortionist may expose him or her to the hatred, ridicule, or contempt of the ordinary rational person. Since opposition to abortion by a substantial part of society is based on moral grounds, legality is essentially irrelevant.’⁴⁵ The court stated that complaints are legitimate

42 As translated and cited in G. Maroń, *Sqd jako strażnik...*, p. 87.

43 This article is not currently in force, the provisions on defamation can be found in: The Defamation Act 2005, <https://www.legislation.qld.gov.au/view/pdf/inforce/2016-01-01/act-2005-055>, accessed 3 January 2022.

44 *Grundmann v. Georgeson*, as cited in G. Maroń, *Sqd jako strażnik...*, p. 87.

45 *Hepburn v. TCN Channel Nine Pty Ltd*, [1983] 2 NSWLR 682, as translated and cited in G. Maroń, *Sqd jako strażnik...*, p. 89.

where the subject of words can undermine respect in a significant and respected part of society, even though the same words can have the opposite effect among another part of society. According to the court, with this in mind, it is possible to speak of the occurrence of defamation when a particular utterance has undermined the respect towards the person in question among even a group constituting a minority of society.⁴⁶

As in the United States, some states in Australia also have the institution of protection zones. In strictly defined areas around abortion clinics by state law, anti-abortion protests, obstructing access to clinics, obstructing the pavement, harassment and intimidation of those seeking to use the services of abortion clinics are prohibited. In the case of the State of Tasmania, violations of the protection zone can be punished with a fine and/or imprisonment for up to 12 months.⁴⁷

5 France

In the case of France, Article L. 2223-2 of the Code de la santé publique can serve as the legal basis for repression against pro-life activists. In its current wording, it indicates: 'It is punishable by 2 years' imprisonment or a fine of up to €30,000 to prevent or attempt to prevent the voluntary termination of pregnancy or acquire information about the voluntary termination of pregnancy or acts preceding it, as provided for in Articles L. 2212-3 to L. 2212-8, by any means, including electronically or through the Internet, in particular by disseminating or transmitting allegations that may by their nature be intentionally misleading, with a view to deterrence, relating to the characteristics or medical consequences of the voluntary interruption of pregnancy:

- 1) Either by interfering with access to the facilities referred to in Article L. 2212-2, the free movement of persons in these facilities or the working conditions of medical and non-medical personnel;

⁴⁶ As cited in G. Maroń, *Sąd jako strażnik...*, pp. 88-89.

⁴⁷ R. Sifris, T. Penovic, *Anti-abortion protest and the effectiveness of Victoria's safe access zones: an analysis*, "Monash University Law Review" 2018, 44(2), p. 318.

- 2) Or by exerting moral and psychological pressure, using threats or any kind of intimidation against persons seeking information about voluntary termination of pregnancy, medical and non-medical personnel working in the facilities mentioned in the same article of L. 2212-2, women who have come for voluntary termination of pregnancy or relatives.⁴⁸

As J. Lupińska notes, the Criminal Chamber of the Court of Cassation is of the opinion that hospitals permanently authorised to perform abortions do not have to demonstrate that they fulfil the required criteria.⁴⁹ Furthermore, it is worth noting that, as is evident from the phrase ‘in particular’ used in the above-mentioned regulation, the information provided by the perpetrator may be true, and still the fulfilment of the elements of the criminal act will occur. This means that, even when acting from justifiable motives and based on scientific grounds, it is possible to be convicted of the offence in question (for example, in the case of information on the potential negative medical consequences of abortion for a pregnant woman, knowledge of which could change her decision to end the life of her unborn child).

Pointing out that obstruction of medical acts or acts preceding a medical intervention ‘may also take the form of organized incidents of an ideological nature, such as an organized intrusion into the maternity ward to prevent the movement of staff, even in the absence of their performing any medical act terminating the pregnancy at the time’, J. Lupińska cites here the rich case law of the French jurisprudence together with the relevant literature: ‘Cass. Crim., 5 mai 1997, Bull. Crim., 1997, n° 168; Cass. Crim., 27 novembre 1996, Bull. Crim., 1996, n° 431; RSC janviermars 1998, chronique par J.-P. Delmas-Saint-Hilaire, p. 117; RSC, 1996, p. 670; Droit pénal 1996, commentaire n° 87, note J.-H. Robert; JCP, éd. gén., 1996, II, 227133; Droit pénal 1997, commentaire n° 156, observation J.-H. Robert; Cass. Crim., 7 avril 1997, Bull. Crim., 1997, n° 70; Gazette du palais 1999, Chronique de droit criminel, observation J.-P. Doucet, p.

48 Code de la santé publique, Article L. 2223-2 https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000034243401, accessed 17 October 2022.

49 J. Lupińska, *La procréation humaine en droit pénal français et polonais comparé*, Nancy 2012, http://docnum.univ-lorraine.fr/public/DDOC_T_2012_0244_LUPINSKA.pdf, accessed 23 November 2022, pp. 131-132. All translations in this sub-section have been rendered into English on the basis of the Polish translations provided by the authors of the chapter.

104; Droit pénal, 1999, commentaire n° 102, observation J.-P. Robert; RDSS 1997, p. 25, observation J.-S. Cayla; Dalloz 1999, IR, 138; Dalloz, 2000, IR, 249; O. Dhavernas, *Entrave à l'interruption volontaire de grossesse, Esquisse d'un bilan*, RSC 1997, p. 821; J. Rubellin-Devichi, *Le droit et l'interruption de grossesse*, LPA 7 juin 1996.⁵⁰

As is also evident from more recent rulings, repressive law is actively applied in judicial practice. An example is the 2015 decision of the Criminal Chamber of the Court of Cassation, in which it rejected a cassation against a judgment of the Paris Court of Appeal.⁵¹ As part of the contested judgment, the convict was fined €10,000, including a suspended fine of €5,000. During the proceedings, it was established that the presence of the accused in the family planning clinic for prayer purposes disturbed the counsellors working there and the women waiting in the waiting room for advice on a possible voluntary abortion; it was pointed out that the possibility of performing voluntary medical abortions is one form of family planning. As is evident from the facts, the staff tried unsuccessfully to ask the accused to leave the premises and eventually had to call the police. Furthermore, the accused handed one of the women – without her consent – highly symbolic objects (it was a medallion with the Virgin Mary and baby shoes), which ‘exerted psychological pressure on her and constituted moral violence’. In the defence’s view, the presence of a praying man in the institution in question did not fulfil the elements of a criminal act, but the court did not accept the explanation denying the legal qualification of the defendant’s actions as the crime in question.

It is worth noting that the criminal provision L. 2223-2 as currently in force was dealt with by the Constitutional Council, which was to rule on its compatibility with the French Constitution.⁵² The applicants argued that criminalising the obstruction of a voluntary termination of pregnancy under the Code de la santé publique law disproportionately infringes freedom of

⁵⁰ Ibid., p. 132.

⁵¹ Cour de cassation, criminelle, Chambre criminelle, 1 septembre 2015, 14-87.441, Inédit, https://www.legifrance.gouv.fr/juri/id/JURITEXT000031134666?dateDecision=&init=true&juridictionJudiciaire=Cour+de+cassation&juridictionJudiciaire=Juridictions+d%27appel&page=1&query=L.2223-2+du+code+de+de+la+sant%C3%A9+publique&searchField=ALL&tab_selection=juri, accessed 23 November 2022.

⁵² Le Conseil Constitutionnel, Décision n° 2017-747 DC (16 mars 2017), https://www.legifrance.gouv.fr/cons/id/CONSTEXT000034310641?dateDecision=&init=true&page=1&query=L.2223-2+du+code+de+de+la+sant%C3%A9+publique&search-Field=ALL&tab_selection=constit, accessed 23 November 2022.

opinion, expression and communication. Furthermore, according to them, by its vague wording, the law does not fulfil the constitutional value of accessibility and comprehensibility of the law. Finally, the applicants pointed out that the law invoked violates the requirements of Article 8 of the 1789 Declaration of Human and Citizens' Rights on two grounds: on the one hand, the criminalisation of the conduct in question violates, in their view, the principle of legality of offences and penalties and, on the other hand, the penalties imposed in these cases are, according to the applicants, disproportionate.

However, the Constitutional Council considered the provision to be sufficiently precise and clear. It also rejected the view of a violation of the freedoms of opinion, expression and communication, as the provision was considered to be a guarantee of 'women's freedom', but some reservations were made in this regard. It was considered that 'the mere dissemination of information intended for an unspecified public in any medium, in particular on a website for public communication, cannot be regarded as coercion, a threat or an act of "intimidation" within the meaning of the contested provisions, except as a violation of freedom of opinion and communication. These provisions can therefore only permit the repression of acts aimed at preventing or attempting to prevent one specific person or more specific persons from obtaining or resorting to information on the voluntary termination of pregnancy'.⁵³ As the view of the Constitutional Council thus shows, the operation of, for example, a publicly accessible website providing information on the consequences of abortion does not by itself yet constitute the commission of a criminal act: 'apart from the infringement of freedom of expression and communication, the crime of obstruction [...] can be established with the existence of two conditions: information, not opinion, is required; that the information refers to the conditions under which voluntary termination of pregnancy is practised or to its consequences; and that it is provided by a person having or claiming to have competence in the matter'.⁵⁴ The Constitutional Council also found the allegation of the disproportionality of the punishment 'due to the nature of the criminal act' to be misplaced. Accordingly, the contested provision was found to be

⁵³ Ibid.

⁵⁴ Ibid.

constitutional. This decision is incomprehensible not only because of the French legislator's manifestly disproportionate interference with freedom of expression, but also because, as a result of the regulation under review, women seeking an abortion were deprived of information relating to the characteristics of the act of abortion itself (abortion techniques, manner of depriving the child of life), as well as the negative consequences (for example, medical) of the termination of pregnancy. The thesis expressed in the Constitutional Council's judgment that the possibility of abortion is a manifestation of women's freedom is also unacceptable – for making the life of a conceived child subject to the exclusive disposition of its mother violates not only the right to life of unborn male children, but also of female children. The ruling also overlooks the possible position of the child's father, who might have the intention of raising the child himself.

Finally, it should be pointed out that in February 2021, an amendment was tabled to the then-pending bill on strengthening the right to abortion,⁵⁵ which was to introduce a proviso that the proposed solutions within the framework of the submitted report to strengthen the 'right to abortion' must not cause disproportionate interference with the freedom of opinion, expression and communication.⁵⁶ The amendment was rejected on 30 November 2021 at second reading.

6 Poland

Against the background of the above-discussed legal regulations and the jurisprudential heritage of selected states, the Polish legal system provides a relatively high standard of protection of freedom of speech in the scope relating to reliable (although sometimes included in a drastic form) presentation of the consequences of abortion. It should be pointed out that the essence of abortion is the killing of the conceived child (in some situations,

55 Texte N° 3879, adopté par la commission, sur la proposition de loi, adoptée par l'Assemblée nationale, visant à renforcer le droit à l'avortement (n°3793) [Text n°3879, adopted by the committee, on the bill adopted by the National Assembly aimed at strengthening abortion rights (n°3793)], https://www.assemblee-nationale.fr/dyn/15/textes/I15b3879_texte-adopte-commission, accessed 23 November 2022.

56 Amendement N° 345, présenté par M. Reiss, Article 2 bis, <https://www.assemblee-nationale.fr/dyn/15/amen-tements/3879/AN/345.pdf>, accessed 23 November 2022.

especially in the case of so-called late-term abortions, also by dismemberment), from which the drastic character of the images documenting its consequences follows naturally – it cannot be omitted in the presentation of the consequences of abortion, even though for some recipients it is a shocking and discomforting sight.

It should be pointed out at this point that some Polish local authorities have attempted to interfere with freedom of expression in so far as it relates to the display of images of the remains of children deprived of life as a result of abortion. In relation to such actions of local self-governments, on more than one occasion they were declared invalid by the competent supervisory authority. Such rulings were also found to be correct by the administrative judiciary.⁵⁷

The judgment of the Supreme Court of 22 October 2021⁵⁸ concerning pro-life activities (placing ‘in a public place a large-format billboard depicting a dismembered, bloodied human foetus’) should also be indicated. The Supreme Court addressed, as a result of the cassation filed by the Prosecutor General, the issue of misdemeanour liability for violation of the disposition of Article 51 § 1 of the Petty Offences Code⁵⁹: ‘Whoever by shouting, noise, alarm or other disturbance disrupts the peace, public order, night-time-rest, or causes public nuisance in a public place.’

The panel of judges undertook to reconstruct through linguistic interpretation the terms ‘other disturbance’ and ‘public nuisance’ as relevant in principle for the determination of misdemeanour liability: ‘Taking into account the context in which the term “other disturbance” appears in Article 51 of the Petty Offences Code, the Supreme Court became convinced that it would not be appropriate to associate it with acoustic expression, but that it had to be assumed that what was involved was activity causing intolerable annoyance to bystanders, in some sense similar to the negative experiences associated with the three activities indicated in the provision

57 For more on this topic, see B. Lewandowski, M. Majkowska, M. Wadoń, *Prawne aspekty dopuszczalności prezentowania fotografii człowieka w prenatalnym okresie rozwoju pozbawionego życia w wyniku aborcji. Wystawy pro-life w świetle orzecznictwa sądów powszechnych*, Ordo Iuris Institute for Legal Culture, Warszawa 2018.

58 Judgment of the Supreme Court of 22 October 2021, ref. IV KK 247/21.

59 Act of 20 May 1971 – Petty Offences Code (Dz.U. No. 12, item 114, as amended).

in question. The meaning of the effect of the offender's behaviour, i.e., "public nuisance", should be understood even more restrictively. Although it is difficult to associate this concept only with the sexual sphere (although in Polish customs – as it seems – this is the case most often), according to the Cassation Court, this expression should mean here exerting a bad, demoralising influence on someone, and generally speaking – causing moral or social corruption (see M. Szymczak (ed.), *Słownik języka polskiego*, Warszawa 1992, p. 1010, vol. III).'

In acknowledging the compliance of the interpretation with the principles *in dubio pro libertate* and *nullum crimen, nulla poena sine lege*, as well as with Article 54, Section 1, Article 31, Section 3, second sentence and Article 30 of the Constitution of the Republic of Poland and Article 10 of the European Convention on Human Rights, the Supreme Court acquitted the defendant of the alleged act due to failure to fulfil the elements of the prohibited act specified in Article 51 § 1 of the Petty Offences Code.

Furthermore, on 30 June 2022, the Supreme Court issued another verdict⁶⁰ acquitting the defendant, who had published anti-abortion content, of an offence under Article 141 of the Petty Offences Code: 'Whoever places an indecent announcement, inscription or drawing in a public place or uses indecent words [...].'

In this judgment, the Supreme Court agreed that the content presented by the defendant depicting dead, aborted babies may be drastic, shocking and distasteful. However, they are not, according to the Supreme Court, 'indecent'. The court emphasised that in the public space there are pictures of victims of car accidents, of the effects of smoking tobacco products, as well as documenting crimes in concentration camps; although these pictures are drastic, unacceptable to a part of society, they are not 'indecent'. In justifying this argument, the Supreme Court referred to the meaning of the word 'indecent' found in dictionaries of the Polish language, which define it as, among other things, 'incompatible with moral norms', 'shameless', or 'immodest'.

60 Judgment of the Supreme Court of 30 June 2022, ref. II KK 116/22.

Furthermore, the Supreme Court stated that the issues related to the protection of life from the moment of conception to natural death are of such social importance that they can justify even the exaggerated form of expression used by pro-life advocates. Moreover, the Supreme Court held that such a message does not demoralise society or destroy prevailing moral norms.

The above reasoning was also confirmed in the judgment of the Supreme Court of 5 October 2022,⁶¹ in which the court added that the place of publication does not determine whether something is 'indecent', in other words, an 'indecent' photograph does not lose this attribute once it is moved to a private space (home), so even though the drastic content presented in public may break certain rules, it is not an offence under Article 141 of the Petty Offences Code, provided that the content is within the prevailing moral norms. Confirmation of the reasoning expressed in the Supreme Court's ruling of 30 June 2022 can also be found in other judgments of the Supreme Court: of 28 October 2022⁶² and of 4 January 2023.⁶³

It should be pointed out that in cases of defenders of life charged with an offence under Article 51 § 1 or Article 141 of the Petty Offences Code (less frequently: 140 of the Petty Offences Code), one can observe in the jurisprudence of Polish courts a well-established and uniform trend of issuing rulings refusing to initiate proceedings or discontinuing them, as well as acquitting the defendants of the acts they were charged with; by 9 February 2023, more than 130 such rulings had been issued.⁶⁴

7 Conclusions

The conducted legal analysis indicates that in many legal systems censorship or even criminalisation exists in relation to behaviour which should normally be protected under freedom of expression. A comparative analysis

61 Judgment of the Supreme Court of 5 October 2022, ref. V KK 484/21.

62 Judgment of the Supreme Court of 28 October 2022, ref. V KK 690/21.

63 Judgment of the Supreme Court of 4 January 2023, ref. I KK 419/22.

64 Own statistics.

shows, however, that the path of a repressive approach to the issue of informing about the consequences of abortion is not the only one in existence, which is clearly illustrated by the example of the Polish legal system. At the same time, it should be mentioned that the battle in the legislative and judicial field in this respect is ongoing.

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Abstract

This chapter addresses the issues related to the propagation of anti-abortion views in selected countries around the world. Legal solutions and court decisions are discussed. Regulations and judgments guaranteeing freedom of speech, stating that various ways of presenting anti-abortion content are legal, are presented and contrasted with provisions and jurisprudence limiting or even penalizing the dissemination of anti-abortion views due to the drastic form of the message or the place of their dissemination (e.g., restrictions related to access zones). The study covers the legal systems of such countries as the United States of America, Canada, Australia, France and Poland.

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Key terms: freedom of conscience, conscientious objection clause, right to conscientious objection

Conscientious objection as a form of exercising freedom of conscience and religion – the context of refusal to perform an abortion or to participate in procedures related to its performance by medical personnel in the Polish legal order

1 Introduction

Freedom of conscience encompasses not only the right to hold one's own convictions in the sphere of ethics, but above all – the right to act in accordance with the dictate of one's own conscience.¹ A particular manifestation of the exercise of the freedom of conscience is conscientious objection, i.e., the refusal to comply with an obligation under the law due to a rationally justified moral judgement of the addressee of the legal norm, which qualifies the behaviour in question as objectively ethically reprehensible (wrong, unworthy).² Conscientious objection conceived in this way may also find its complementary confirmation in statutory provisions

1 See ruling of the Polish Constitutional Tribunal of 15 January 1991, ref. U 8/90; decision of the Constitutional Tribunal of 7 October 1992, ref. U 1/92; judgment of the Constitutional Tribunal of 7 October 2015, ref. K 12/14, para. III.3.3.1. See also M. Skwarzyński, *Sprzeciw sumienia w europejskim i krajowym systemie ochrony praw człowieka*, "Przegląd Sejmowy" 2013, vol. XXI, no. 6(119), p. 10.

2 See M. Olszówka, *Analiza projektu ustawy o zmianie ustawy o zawodach lekarza i lekarza dentysty, ustawy o diagnostyce laboratoryjnej oraz ustawy o zawodach pielęgniarki i położnej, zawartego w druku senackim nr 1034/IX kadencja (sprzeciw sumienia)*, "Studia z Prawa Wyznaniowego" 2019, vol. 22, p. 349.

(usually shaping it in procedural or technical terms). These are referred to as conscience clauses.

Although the terms ‘conscientious objection’ and ‘conscientious objection clause’ are sometimes used interchangeably, it must be stressed that the right to conscientious objection – as an element of freedom of conscience – does not necessarily have to be expressed in any written document, since it derives directly from the inherent and inalienable dignity of the human being. Therefore, the sense of its possible inclusion in the content of legal acts of various kinds (constitutional acts, international treaties, ordinary legislation) is of a purely declaratory nature, and its purpose is to strengthen the legal guarantees of the exercise of freedom of conscience. For freedom of conscience is immanently inscribed in the essence of humanity, as is conscience. It is therefore not surprising that in the jurisprudence of the Constitutional Tribunal it has been stated that the freedom of conscience ‘is a kind of “right of rights”’,³ while in the literature the thesis is formulated that ‘the human right to freedom of conscience and religion lies closest to the dignity of the human person’,⁴ giving way, however, to the fundamental right to life, without which no rights and freedoms can be exercised.⁵

The subject of the present study is the legal guarantees of the exercise of conscientious objection consisting in the refusal to perform an abortion or to participate in procedures related to the performance of an abortion by medical personnel. The analysis of the indicated issue must include a discussion of the constitutional guarantees of freedom of conscience with particular consideration of the jurisprudence of the Polish Constitutional Tribunal, as well as a discussion of the content of acts of a lower stature – including, above all, acts of international law and ordinary legislation. The author also devotes some attention to the concept of conscience itself and how its understanding has evolved over the centuries, which makes it possible to identify some potential threats

3 Judgment of the Constitutional Tribunal of 7 October 2015, ref. K 12/14, para. III.4.4.1.

4 K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *Prawo międzynarodowe praw człowieka*, Warszawa 2020, p. 277.

5 See M. Olszówka, Explanations to Article 53 of the Constitution of the Republic of Poland, [in:] *Konstytucja RP. Komentarz*, eds. M. Safjan, L. Bosek, Warszawa 2016, marg. no. 3.

to the exercise of freedom of conscience in the field of conscientious objection and to formulate conclusions and postulates with respect to the future standards of the legal order.

2 Constitutional guarantees of freedom of conscience

The Constitution of the Republic of Poland guarantees everyone freedom of conscience and religion (Article 53(1)), which includes the freedom to profess or adopt a religion of one's own choice and to manifest one's religion individually or with others, publicly or privately, by worship, prayer, participation in rites, practice, and teaching. This freedom also includes the possession of temples and other places of worship according to the needs of the believers and the right of persons to receive religious assistance where they are located (Article 53(2)). The legislature has explicitly decided that the freedom to manifest religion may only be restricted by law and only if this is necessary to protect state security, public order, health, morals or the freedoms and rights of others (Article 53(5)).

The freedom of conscience and religion has been included by the legislator among the human rights and freedoms guaranteed by the Basic Law. The Constitution of the Republic of Poland does not in any way grant the freedom in question to people – its source is the inherent and inalienable dignity of man, not the will of the legislator. Thus, the fundamental law only ensures protection of the freedom of conscience and religion, primarily in relation to all legal regulations, and thus in its content independent of the will of the lawmaker, including even the constitutional lawmaker. This is understood to mean that it is the task of the ordinary legislator to safeguard this freedom against unauthorised interference by both third parties and state institutions. As the case law of the Constitutional Tribunal emphasises: 'Constitutional rights of freedom presuppose not only freedom from unjustified legal orders and prohibitions restricting the freedom of the individual, and freedom from unjustified use of physical coercion, but also freedom from other unauthorised forms of interference in the sphere of legally protected goods of the individual, undertaken with the aim of restricting the freedom to shape his or her conduct in

accordance with the choice he or she has made in a particular field.⁶ At the same time, the doctrine rightly notes that freedom of conscience and religion is one of the fundamental human rights, the guarantee and effective observance of which are the basis of a democratic society and state.⁷ Hence the need to clarify the normative meaning of freedom of conscience and religion, as well as the permissible scope of possible restrictions on this freedom.

The concept of 'conscience' or 'religion' lends itself very difficult to strict legal definition. Nevertheless, this does not mean that it is impossible to reconstruct the normative meaning of these concepts. In order to make such an interpretation, it is worth starting with an analysis of certain interpretative guidelines left by the legislator himself. This method of interpreting the binding Constitution is also indicated by the Constitutional Tribunal, stating that the Basic Law 'in the totality of its provisions gives expression to a certain objective system of values'.⁸ Hence, such an interpretation of individual constitutional provisions, which would lead to results contradictory to that 'objective system of values' assumed or directly expressed by the system legislator, should be regarded as unjustified.

In the context of the issue of freedom of conscience and religion, it is worth noting the shape of the preamble to the Polish Constitution, in which the legislator directly referred to the phenomenon of religion, drawing attention, *inter alia*, to the 'culture rooted in the Christian heritage of the Nation' and the 'sense of responsibility before God or one's own conscience'. These statements entitle one to search for the Christian origins of the 'religious' terminology used by the Polish legislator – including in the scope of individual freedom of conscience and religion discussed here. It is difficult to comprehensively present the Christian understanding of these terms in such a short text, thus this analysis will focus on general information relating strictly to the concept of conscience.

6 Judgment of the Constitutional Tribunal of 7 February 2006, ref. SK 45/04.

7 See J. Szymanek, *Wolność sumienia i wyznania w Konstytucji RP*, "Przegląd Sejmowy" 2006, vol. XIV, no. 2(73), pp. 39-41.

8 Judgment of the Constitutional Tribunal of 23 March 1999, ref. K 2/98, para. III.

As J. Ratzinger (later Pope Benedict XVI) pointed out, the medieval tradition distinguished between two levels of conscience: *syntheresis* (συντήρησις) and *conscientia*.⁹ According to St Thomas Aquinas, *syntheresis* denotes a certain natural human capacity to distinguish between good and evil.¹⁰ It is referred to by Aquinas as ‘the law of human thought’.¹¹ Hence, as the later Catholic philosopher and jurist Francisco Suarez (1548-1617), referring to the philosophy of St Thomas, stressed, *syntheresis* is one and the same for all human beings, just as there is only one truth and one natural law.¹²

It should be added that *syntheresis*, which earlier Christian authors such as St Augustine and St Bonaventure associated with the human will, St Thomas considers in the context of the rational actions of the human person.¹³ When writing about this capacity, St Thomas uses the Latin term *habitus*, which in this context means that certain primordial principles are cognisable naturally (intuitively) and are then only put into practice through rational action,¹⁴ which is always directed towards the good. There is therefore no room here for voluntarism.¹⁵ In a certain simplification, it can therefore be assumed that *syntheresis* is an innate capacity, permanently inscribed in the essence of humanity,¹⁶ which is encapsulated in the command to do good and to abstain from evil.¹⁷ At the same time, it should be noted that *syntheresis*, like any other capacity (*habitus*), also has a dynamic aspect – good and evil are distinguished by the human being through acquired experience.¹⁸

The second dimension of conscience is *conscientia*. St Thomas, pointing to the etymology of this term, which was already known to Cicero, states that it

9 J. Ratzinger, Sumienie a prawda, [in] idem, *Kościół. Wspólnota w drodze*, transl. D. Chodyniecki, Kielce 2009, p. 168. This author proposes replacing the term *syntheresis* by the term *anamnesis* of Platonic provenance (p. 169), which was not, however, used by St Thomas.

10 Thomas Aquinas, *Summa Theologiae*, I, q. 79, a. 12, <https://www.corpusthomicum.org/iopera.html>, accessed 23 March 2022.

11 Thomas Aquinas, *Summa Theologiae*, I-II, q. 94, a. 1.

12 F. Suarez, *De legibus ac Deo legislatore*, 2, 8, 5, https://ia600906.us.archive.org/5/items/tractatusdelegib-00suar_1/tractatusdelegib00suar_1.pdf, accessed 23 March 2022.

13 K. Stępień, *Synderesis and the Natural Law*, “Studia Gilsoniana” 2014, no. 3, p. 379.

14 Thomas Aquinas, *Summa Theologiae*, I, q. 79, a. 12; see also: E. Gilson, *Le Thomisme. Introduction au système de saint Thomas d'Aquin*, Paris 1922, pp. 208 et seq.; T. Stępień, *Introduction to the philosophical anthropology of Saint Thomas Aquinas*, Warszawa 2013, p. 137.

15 K. Stępień, op. cit. p. 380.

16 J. Ratzinger, op. cit. p. 175.

17 *Katechizm Kościoła katolickiego*, 1780, <http://www.katechizm.opoka.org.pl>, accessed 23 March 2022.

18 E. Gilson, op. cit. pp. 209-210.

derives from the prefix *cum* (together, jointly, in union) and the word *scientia* meaning knowledge.¹⁹ *Conscientia* is the knowledge of good and evil that is applied to a given, concrete situation (*applicatio autem scientiae ad aliquid fit per aliquem actum*).²⁰ The coupling of *synthesis* and *conscientia* is clearly discernible – for one follows logically from the other.²¹ In the thought of the Angelic Doctor, *conscientia* is an action (*actus*)²² undertaken on the basis of the knowledge possessed as a result of *synthesis*.

We can therefore assume that *conscientia* constitutes an act of conscience, which consists of the following elements: recognising (*recognoscere*) and bearing witness (*testificari*), and then making judgement (*iudicare*).²³ Recognition concerns man's perception that something has been done or, on the contrary, that an act has been omitted, and in this sense conscience is the 'witness of our deeds'.²⁴ The judgement of conscience, on the other hand, occurs twice – before an act is done (or omitted) and afterwards.²⁵ Hence it can be said that 'we are obligated to do something by our conscience', 'we have a clear conscience' or 'remorse'.²⁶ Hence, *conscientia* is rational in nature – the judgement of conscience is made through the use of reason.²⁷

The changes in the definition of the concept of conscience – far from the subtle and philosophically and anthropologically well-founded concept of St Thomas Aquinas – can be observed particularly from the end of the 18th century onwards. In the philosophy of the Enlightenment, the concept of *synthesis* was abandoned, detaching conscience from its objective basis. While Immanuel Kant (1724-1804) still emphasised the rational character of conscience based on authority, Johann Gottlieb Fichte (1762-1814) already regarded conscience as an 'infallible judge'.²⁸ Further transformations in the

19 Thomas Aquinas, *Summa Theologiae*, I, q. 79, a. 13.

20 Ibid.; J. Ratzinger, op. cit., p. 175; John Paul II, *Veritatis splendor*, 52, https://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor.html, accessed 23 March 2022.

21 See T. Zych, *W poszukiwaniu pewności prawa. Precedens a przewidywalność orzeczeń sądowych w tradycji anglosaskiej*, Toruń 2017, p. 89.

22 Thomas Aquinas, *Summa Theologiae*, I, q. 79, a. 13.

23 J. Ratzinger, op. cit., p. 175.

24 Thomas Aquinas, *Summa Theologiae*, I, q. 79, a. 13.

25 Ibid. See *Katechizm Kościoła katolickiego*, 1778.

26 Thomas Aquinas, *Summa Theologiae*, I, q. 79, a. 13.

27 Ibid., I-II, q. 19, a. 5; see also *Katechizm Kościoła katolickiego*, 1778.

28 J. Ratzinger, op. cit., p. 149, note 1.

perception of conscience are to be associated with the name of the founder of psychoanalysis, Sigmund Freud (1856-1939), who identified conscience with the so-called ‘superego’, intended to suppress natural human drives.²⁹

Freud’s theories – in a slightly modified form, dressed in a new, ‘humanistic’ garb – were used by a representative of the neo-Marxist Frankfurt School, Erich Fromm (1900-1980), who developed the concept of the ‘humanistic conscience’ and the ‘authoritarian conscience’.³⁰ Authoritarian conscience ‘is the voice of an internalised external authority: parents, the state, or whoever represents the moral law in a given society’.³¹ The source of conscience conceived in this way is fear or worship of authority.³² An authoritarian conscience is characterised by the fact that it is ‘good’ only if one is aware of one’s own weakness and subordination, which is supposed to lead to destructive behaviour.³³ Humanistic conscience, on the other hand, is ‘the reaction of our whole personality to its proper or disturbed behaviour’.³⁴ Referring to the well-known concept of *conscientia*, Fromm explains it not as knowledge of what is right and wrong applied in practice, but as ‘knowledge of ourselves’.³⁵ According to Fromm, the goal of the humanist conscience is the ‘productivity of life’, which is inhibited by any external interference: ‘any violation of the integrity and proper functioning of our personality in both thought and action, even in such matters as liking certain foods or sexual behaviour, is an action against our conscience,’ Fromm writes.³⁶ Peace of conscience (humanistic) according to Fromm’s theory is achieved when one experiences pleasure.³⁷

Both Fromm’s concept and other subjectivist theories of conscience are characterised by low utility for the analysis of the constitutional concept of conscience and may even carry various dangers related to the potential

29 D. Buksik, *Rozumienie sumienia w naukach psychologicznych*, “Seminare. Poszukiwania Naukowe” 1999, 15, p. 269.

30 E. Fromm, *Niech się stanie człowiek. Z psychologii etyki [Man for Himself: An Inquiry into the Psychology of Ethics]*, transl. R. Saciuk, Warszawa 2011, pp. 113 et seq.

31 Ibid., p. 115.

32 Ibid., pp. 116-117.

33 Ibid., p. 120.

34 Ibid., p. 125.

35 Ibid.

36 Ibid.

37 Ibid., p. 134.

shift of social life towards anarchy. This was recognized by the Polish Constitutional Tribunal in its judgment of 7 October 2015, pointing to ‘the danger of accepting relativism in the sphere of ethics, which would result from the subjective nature of conscience’.³⁸ In the same ruling, the law court noted: “Conscience” does not lend itself to legal definition’.³⁹ Objectivist concepts seem to be much closer to the constitutional understanding of conscience – for the Constitution itself ‘gives expression to a certain objective system of values in its entirety’.⁴⁰ A ‘subjectivist’ concept of conscience simultaneously becomes the basis for the formulation of views according to which conscientious objection ‘by definition’ is based on ‘a subjectivist evaluation of individual moral experiences and reflections’.⁴¹

The reconstruction of the normative content of freedom of conscience requires a reminder that, in the Polish reality, the Constitutional Tribunal ruled still under the provisions of the Polish Constitution of 1952 that ‘freedom of conscience does not only mean the right to represent a certain worldview, but above all the right to act in accordance with one’s conscience, to be free from compulsion to act against one’s conscience’.⁴² In the case of the choice of worldview (*forum internum*), the freedom of conscience and religion is unlimited. Consequently, no one – not other persons, let alone state authorities – has the right to interfere with what values or principles a person adopts as his or her own. The issue is somewhat different when it comes to acting in accordance with accepted values (*forum externum*).

Firstly, it should be emphasised that freedom of conscience and religion presupposes the freedom of action of a human being, and therefore it is not possible to create a comprehensive catalogue of behaviours that may be considered as manifestations of the exercise of this freedom. Hence, the matters indicated in Article 53 of the current Constitution, such as teaching, practising, receiving pastoral care or taking religious lessons organized in

38 Judgment of the Constitutional Tribunal of 7 October 2015, ref. K 12/14, para. III.4.2.4.

39 Ibid., para. III.4.2.3.

40 Judgment of the Constitutional Tribunal of 23 March 1999, ref. K 2/98, para. III. See also M. Olszówka, Explanations to Article 53 of the Constitution of the Republic of Poland..., marg. no. 46.

41 *System prawa medycznego*, vol. 5, *Odpowiedzialność prywatnoprawna*, ed. E. Bagińska, Warszawa 2021, p. 391.

42 Ruling of the Constitutional Tribunal of 15 January 1991, ref. U 8/90.

public schools, are only exemplary. This does not mean, however, that every behaviour motivated by ‘conscience’ or ‘religion’ deserves legal protection.

In conclusion, the possibility of acting in accordance with the dictates of conscience does not need any explicitly verbalised legal basis – it is necessary when state authorities wish to restrict the exercise of this right. Of course, this does not mean that an explicitly expressed affirmation of freedom of conscience in the content of positive legal acts is not desirable. On the contrary, a declaration of respect for and protection of freedom of conscience is to be expected, especially in acts with a high ranking in the hierarchy of sources of law.

3 The right to conscientious objection in the medical profession – *de lege lata* and *de lege ferenda* comments

As J. Pawlikowski rightly emphasises, in a democratic state of law, the conscience clause is an expression of the right to act in accordance with one’s conscience and, consequently, also an expression of freedom from compulsion to act against one’s conscience.⁴³ The Polish Constitutional Tribunal, when it considered the legal nature of the conscience clause in 2015, unequivocally stated that freedom of conscience must also manifest itself in the possibility to refuse to perform an obligation imposed by legal norms because of scientific, religious or moral convictions.⁴⁴

Hence, the conscience clause – where, as for example in the case of doctors, nurses, and midwives, it finds its statutory regulation – is not a legal basis for acting in accordance with one’s conscience, but a statutory restriction of the freedom of conscience.⁴⁵ Put differently, the legislator, by constructing the conscientious objection clause and by introducing conditions for the exercise of conscientious objection, actually restricts the freedom to act in accordance with one’s conscience. Precisely for this reason, the statutory regulation of the conscience clause must always be assessed

43 J. Pawlikowski, *Prawo do wyrażania sprzeciwu sumienia przez personel medyczny. Zagadnienia etyczno-prawne*, “Prawo i Medycyna” 2009, no. 3 (36, vol. 11), p. 29.

44 Judgment of the Constitutional Tribunal of 7 October 2015, ref. K 12/14.

45 A. Zoll, *Klauzula sumienia*, [in:] *Sprzeciw sumienia w praktyce medycznej – aspekty etyczne i prawne*, eds. P. Stanisławski, J. Pawlikowski, M. Ordon, Lublin 2014, p. 81.

from the perspective of the constitutional prerequisites for the restriction of the freedom of conscience and religion. In this connection, the view, sometimes presented in the literature on the subject, that the legislator, by introducing regulations on the conscience clause into the legal system, grants, for example, doctors the 'right to refuse to perform a health service',⁴⁶ and thus the exercise of this right is possible only on the basis of a legal norm expressly introduced into the system, should be regarded as erroneous.⁴⁷ This thesis is, moreover, untenable in the light of the judgment of the Polish Constitutional Tribunal of 7 October 2015, in which the law court stated that Article 39 of the Act of 5 December 1996 on the professions of physicians and dentists (hereinafter: PPD)⁴⁸ 'does not establish a privilege for the physician, since the freedom of conscience of every human being is a primary and inalienable category, which only constitutional law and international regulations vouch for. Freedom of conscience – including that element of it which is conscientious objection – must therefore be respected regardless of whether there are statutory provisions confirming it'.⁴⁹

An analysis of the jurisprudence of the European Court of Human Rights (ECtHR) in Strasbourg, which was developed on the basis of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, leads to similar conclusions. The case law of the ECtHR on the issue in question refers to a wide variety of cases, most often related to the problem of refusal of military service on grounds of conscience. While it is true that the rulings of the Strasbourg Court are not uniform on the question of whether the conscientious objection clause derives from the protection of freedom of conscience in Article 9 of the European Convention,⁵⁰ in the case of medical professionals, the Court is in no doubt that 'the State is obligated to organize the health care system in such a way as to ensure the effective exercise of freedom of conscience by health care professionals'.⁵¹

46 E. Zielińska, *Klauzula sumienia*, "Prawo i Medycyna" 2003, no. 13 (vol. 5), p. 30.

47 J. Hanc, *Klauzula sumienia a wykonywanie zawodu ratownika medycznego*, "Prawo i Medycyna" 2014, no. 3-4 (56/57, vol. 16), p. 41.

48 Act of 5 December 1996 on the professions of physician and dentist (Dz.U. 2021, item 790, as amended).

49 Judgment of the Constitutional Tribunal of 7 October 2015, ref. K 12/14, para. III.4.4.3.

50 See the judgment of the European Court of Human Rights of 7 July 2011 in *Bayatyan v. Armenia*, Application No 23459/03, para. 110; M. Skwarzyński, *Conscientious objection...*, p. 14.

51 Judgment of the European Court of Human Rights of 10 January 2012 in *Tsaturyan v. Armenia*, Application No. 37821/03.

With regard to the Council of Europe's human rights protection system, it is also worth pointing out that, according to Resolution 1762 of the Parliamentary Assembly of 7 October 2010, freedom of conscience also includes the right to conscientious objection, including in the medical profession and, furthermore, 'no person, hospital, or institution shall be compelled, held responsible or discriminated against in any way' for refusing to perform an abortion, euthanasia or any other act which might result in the death of a human being at the prenatal stage of development (foetus or human embryo).⁵² Although the resolutions of the Parliamentary Assembly do not have binding force and do not constitute an authoritative interpretation of the Convention, it must be assumed that in the light of the aforementioned resolution, a collective declaration refusing to participate in morally wrongful acts made by all the personnel of a given medical institution jointly is also admissible. The view expressed in the aforementioned resolution that such a declaration, together with its subsequent observance by the hospital staff, should not be the basis for any claim or other action which might infringe the freedom of conscience of the medical personnel. Obviously, it should be pointed out that conscientious objection cannot be applied in a situation where an action which may result in the death of the conceived child is necessary in order to save the life of the pregnant woman (this follows from the primacy of the right to protection of life over freedom of conscience).

Article 30 of the PPD imposes a legal obligation on a licensed physician to provide medical assistance in a situation where a delay in the provision of such assistance could result in a danger of loss of life, grievous bodily harm, or serious disorder of health, and in other cases of urgency. This obligation is absolute and must therefore be fulfilled even if the provision of the service in question is contrary to the moral principles accepted in conscience by the doctor. At the same time, as argued in the doctrine, it is closely linked to the statutory obligation to provide health services to insured persons.⁵³

52 Council of Europe – Parliamentary Assembly, Resolution 1762: *The right to conscientious objection in lawful medical care*, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17909>, accessed 22 March 2022. See J. Roszkiewicz, *Wolność sumienia osób prawnych. Tożsamość ideowa jako dobro osobiste i konstytucyjne prawo podmiotowe*, Warszawa 2022, p. 87 et seq.

53 See A. Dyszlewska-Tarnawska, Commentary to Article 30, [in:] *Ustawa o zawodach lekarza i lekarza dentysty. Komentarz*, ed. L. Ogiegło, Warszawa 2015, marg. no. 2.

Nevertheless, there is no doubt that the obligation indicated in Article 30 of the PPD is of a broader nature and also applies to uninsured persons. Nevertheless, the scope of the doctor's freedom to act or not to act on the basis of the principles accepted in conscience concerns the performance of medical services primarily with respect to persons benefiting from health insurance guaranteed by the state.

The Act of 15 April 2011 on medical activity⁵⁴ stipulates that health services are activities aimed at preserving, saving, restoring or improving health and other medical activities resulting from the treatment process or separate provisions regulating the principles of their performance (Article 2(1)(10)). Also in this context, it should be borne in mind that the patient has the right to immediate provision of health services due to a threat to health or life⁵⁵ – the healthcare provider in such a situation may not refuse them (Article 15).

Under the law in force until 2015, the exercise of the conscientious objection clause by a doctor was linked to the necessity to indicate to the patient the 'realistic possibilities' of obtaining the service in question from another doctor or treatment provider and to the obligation to justify and record the exercise of the clause in the medical records. In addition, doctors providing services on the basis of an employment or service relationship were obligated to notify their supervisor in writing in advance, as appropriate.⁵⁶ It is worth pointing out that it was argued in the doctrine that the first of the indicated duties could not be fulfilled, for example, by referring the patient to the appropriate information point run by the National Health Fund. Hence, the legislator assumed, as it were, a personal action of the doctor to lead to the patient obtaining a benefit whose moral decency was questioned by the doctor. In the light of the latter obligation, the legislator assumed that the doctor cannot determine for himself the scope of the health services to be provided, and thus determine which are and which are not in accordance with his own conscience – but in the case of each patient visit, he must prepare medical documentation, noting and justifying in it the use

54 Act of 15 April 2011 on therapeutic activity (Dz.U. 2021, item 1773).

55 Article 7(1) of the Act of 6 November 2008 on patients rights and the Patients Rights Ombudsman (Dz.U. 2020, item 849).

56 See A. Zoll, *Prawo lekarza do odmowy udzielenia świadczeń zdrowotnych i jego granice*, "Law and Medicine" 2003, no. 13 (vol. 5), pp. 23-24.

of the conscience clause. It is worth pointing out that this documentation is available primarily to the patient who has been refused a service, and therefore with whom the doctor has not established any legal relationship.⁵⁷

The statutory solutions concerning the use of the conscientious objection clause in the medical and dental professions have changed as a result of the Constitutional Tribunal's aforementioned judgment of 7 October 2015, ref. K 12/14. In this judgment, the Court ruled that Article 39 of the PPD is incompatible with Article 2 and Article 53(1) of the Constitution of the Republic of Poland to the extent that it imposes an obligation on a doctor to provide a health care service incompatible with his or her conscience in cases other than a danger of loss of life, grievous bodily harm, or serious disorder of health, as well as to the extent that it imposes an obligation on him or her to indicate the real possibility of obtaining such a service from another doctor or treatment facility.

This judgment – although universally binding and final already from the moment of publication in the Dz.U. – was properly implemented through a relevant amendment of the provisions of the statutory rank through a legislative procedure only by the Act of 16 July 2020 amending the Act on the profession of doctor and dentist and some other acts.⁵⁸ As indicated in the opinion of the Sejm Research Bureau: 'in connection with the judgment of the Constitutional Tribunal, Article 39 in conjunction with Article 30 – insofar as it imposes an obligation on a doctor to provide a health service incompatible with his or her conscience in "other cases of urgency" – has been ruled unconstitutional. Nevertheless, taking a legislative initiative aimed at adjusting the wording of the provisions to the legal state shaped by the judgment of the Constitutional Tribunal deserves approval, as it will contribute to increasing the clarity of the legal text and will facilitate its reception.'⁵⁹ In other words, already in the legal state existing after the pub-

57 L. Bosek, *Problem zakresowej niekonstytucyjności art. 39 ustawy o zawodach lekarza i lekarza dentysty*, [in:] *Sprzeciw sumienia w praktyce medycznej – aspekty etyczne i prawn*, eds. P. Stanisławski, J. Pawlikowski, M. Ordon, Lublin 2014, p. 99.

58 Act of 16 July 2020 amending the Act on the profession of physician and dentist and certain other acts (Dz.U. item 1291).

59 R. Dubowski, *Opinia prawna dotycząca rządowego projektu ustawy o zmianie ustawy o zawodach lekarza i lekarza dentysty oraz niektórych innych ustaw (druk nr 172)*, point 4.B – opinion available for download at: <https://www.sejm.gov.pl/Sejm9.nsf/opinieBAS.xsp?nr=172>, accessed 19 November 2022.

lication of the judgment and before the indicated amendment of the PPD, a doctor exercising the conscientious objection clause was not obligated to indicate to the patient 'real possibilities' of obtaining the service, and at the same time, in the exercise of this right such a doctor was limited only by the danger of the patient's loss of life or serious bodily injury or disorder of his or her health. Given the extraordinary importance of this ruling for the discussion on the conscience clause, it is worth taking a closer look at the arguments raised by the Tribunal in its reasoning.

Firstly, the Tribunal clearly indicated therein that the conscientious objection clause derives directly from the freedom of conscience and religion guaranteed by Article 53(1) of the Constitution of the Republic of Poland, hence the statutory solutions in question do not have the character of any privilege, as the freedom of conscience and religion must be respected regardless of whether there are specific statutory solutions guaranteeing it. In this connection, the Court finds that there are no grounds for formulating a separate right to exercise the conscientious objection clause and, therefore, the legislator may not arbitrarily shape the statutory solutions concerning conscientious objection or abolish them. On the contrary, the legislator must respect the constitutional conditions for establishing limitations on human and civil liberties and rights. Precisely for this reason, these restrictions must be clear, precise, leaving as little 'discretion' or room for interpretation as possible. Therefore, the Tribunal found that these requirements are not met by the statutory condition for 'other cases of urgency', under which a doctor may not refuse to provide a health service on axiological grounds. In the judgment in question, the Constitutional Tribunal found that such an undefined formulation leads to unremovable doubts as to the extent to which a doctor's freedom of conscience is restricted and thus declared it unconstitutional.

The Tribunal proceeded from the premise of the need for maximum protection of freedom of conscience and religion and held that it is unconstitutional to obligate a doctor exercising the conscientious objection clause to indicate the 'real possibilities' of obtaining the service in question. In the judgment in question, the Tribunal rightly noted that the performance of such an obligation meant obligating the doctor to participate indirectly in

the performance of a service that he considered morally unworthy. Thus, this was a disproportionate solution – and consequently constituted a constitutionally impermissible restriction of the doctor's freedom of conscience, since 'the constitutional guarantee of freedom of conscience protects [...] the individual not only from being compelled to undertake a direct attack on the protected good, but also from such conduct incompatible with the individual's conscience that indirectly leads to an ethically unacceptable result, in particular from being compelled to collaborate in achieving an unworthy goal'.⁶⁰

Taking into account the content of the analysed ruling and the legislative changes made, it should be pointed out that in the current state of the law, as we read in Article 39 of the PPD: 'A doctor may refrain from providing health services incompatible with his conscience, subject to Article 30, with the obligation to record this fact in the medical documentation. A doctor exercising his profession on the basis of an employment relationship or in the context of service shall also be obliged to inform his superior in writing in advance.' On the other hand, a doctor's refusal to provide a particular medical service on the basis of the conscientious objection clause is not linked to the obligation to inform the patient where he or she can obtain the service in question. At the same time, a doctor may not exercise the right to refuse to provide a given service only if a delay in doing so could cause a danger to the patient's life, grievous bodily harm or serious disorder of his or her health.

It is also worth pointing out that the legislator has decided to regulate the conscience clause also in relation to the profession of nurse and midwife. Pursuant to the Act of 15 July 2011 on the professions of nurse and midwife,⁶¹ a nurse and midwife may refuse to carry out a medical order and/or to provide other health services contrary to their conscience. In such a situation, they must immediately give the reasons for their refusal in writing to their supervisor or the ordering party. At the same time, this right has been restricted in situations where a delay in providing assistance could

60 Judgment of the Constitutional Tribunal of 7 October 2015, ref. K 12/14, para. III.6.2.1.

61 Act of 15 July 2011 on the nursing and midwifery professions (Dz.U. 2021, item 1559).

result in a state of health emergency (Article 12(1)). In addition, the nurse and midwife, when exercising the conscientious objection clause, are obligated to immediately inform the patient or his or her legal representative or actual guardian of such refusal and indicate the realistic possibilities of obtaining this service from another nurse, midwife, or health care provider (Article 12(3)) and to justify and record this fact in the medical records (Article 12(4)).

In view of the discussed judgment of the Constitutional Tribunal of 7 October 2015,⁶² such a formulation of the conscience clause may raise justified doubts relating to its compliance with the Constitution of the Republic of Poland. This concerns, in particular, the necessity to justify in writing the reasons for refusing to perform certain actions contrary to the conscience of a nurse or midwife, as well as the obligation to indicate the real possibilities of obtaining the service deemed unworthy from another nurse, midwife, or treatment facility. It should therefore be advocated that the indicated obligations imposed on nurses and midwives when exercising their right of conscientious objection should be derogated as soon as possible.⁶³

The absence of an explicit formulation of the conscience clause for other health professions may be fundamentally questionable. This applies in particular to the invariable lack of a conscientious objection clause for pharmacists, although it would also be extremely desirable to include it in the provisions concerning the activities of paramedics or laboratory diagnosticians.⁶⁴ As already mentioned, in the light of the jurisprudence of the Constitutional Tribunal, it can be stated without the slightest doubt that the right to invoke conscientious objection is in no way dependent on statutory regulation, as it remains covered by a constitutional guarantee. This does not change the fact, however, that in the case of professions particularly exposed to the possibility of a situation of conflict of conscience, such a regulation – meeting the constitutional standard – is desirable. Its introduction could finally cut through the unfounded doubts appearing in the literature with regard to the possibility for representatives of medical

62 Judgment of the Constitutional Tribunal of 7 October 2015, ref. K 12/14.

63 A similar position is presented by M. Olszówka in: *Analiza projektu ustawy...*, p. 373.

64 Ibid; M. Drozd, *Prawo farmaceuty do sprzeciwu sumienia w świetle obowiązujących regulacji prawnych*, "Studia z Prawa Wyznaniowego" 2013, vol. 16, pp. 278-279.

professions other than doctors, dentists, nurses, and midwives to exercise conscientious objection.⁶⁵

4 Exercise of the right to conscientious objection and its limits

Since the right to conscientious objection is an integral part of the constitutionally protected freedom of conscience, it must be assumed that, as a general rule, the exercise of this right does not involve any particular formalities. Everyone has the right to act in accordance with the dictates of their conscience and does not need to invoke any explicit statutory grounds for doing so. If, however, acts of a statutory nature impose certain procedural or technical requirements – as is the case, for example, in the medical profession or in the profession of nurse and midwife – it is necessary to comply with the rules introduced by the legislator (bearing in mind, however, the need for a pro-constitutional and strict interpretation of the provisions laying down such rules, as they are in fact a manifestation of a restriction of the freedom of conscience).

In the analyses of the problem of conscientious objection in the medical profession presented in the literature on the subject, it is indicated that this right should be considered primarily from the ‘negative’ angle – i.e., from the angle of the possibility to refrain from performing certain mandatory behaviour. Above all, it is argued that the moral dilemma as to the performance of a particular service can only arise when the prerequisites for the legality of its performance have been met (the addressee of the legal norm is obligated to behave in a certain way, although not necessarily on pain of some specific sanction). Hence, this dilemma concerns those situations in which – according to the indications of contemporary medical knowledge – a given service may or should be performed, and the patient gives consent to it. Obviously, this is not an absolute principle, and the legislator has provided for a number of exceptions, concerning,

65 Such doubts are formulated, for example, by M. Sobas: *Poszukując podstaw prawnych odmowy wydania leku przez aptekarza – czyli kilka uwag na tle wolności sumienia polskiego farmaceuty*, “Roczniki Administracji i Prawa” 2019, vol. 19, special issue, p. 79. The author is consistently silent about the judgment of the Constitutional Tribunal of 7 October 2015, ref. K 12/14, despite the fact that, in accordance with Article 190(1) of the Polish Constitution, it has a universally binding force and is final. In this context, it is not surprising that the theses put forward by the author are questionable.

among others, the age of the patient or the state of threat to his or her health or life. In view of this, it is difficult to speak of the application of the conscientious objection clause when, for example, a patient requests the doctor to prescribe a specific medicine, which in the light of the standards of medical science should not be used in a given case. The doctor in such a situation is obligated to behave in accordance with the canons of medical knowledge, hence he does not have to invoke his moral convictions by refusing – as in the cited example – to prescribe a medicine arbitrarily chosen by the patient.⁶⁶ It is all the more impermissible to invoke the conscience clause in order to perform a medical act contrary to the law or the principles of medical ethics.⁶⁷

In contemporary discourse, the issue of the conscientious objection clause in relation to the medical profession is associated with procedures such as abortion, euthanasia, palliative sedation or treatments whose primary purpose is not to cure the patient's ailment but to improve the natural characteristics of the body, as well as treatments in the field of so-called reproductive medicine. On the other hand, it is clear that the refusal to comply with any obligations imposed by law cannot take place on arbitrary grounds.⁶⁸ Accordingly, the doctrine postulates that the invocation of the conscience clause should be the ultimate means of resolving the conflict occurring between legal and moral norms and should not interfere with the rights of others.⁶⁹ With regard to the latter postulate, however, it should be emphasised that the assessment of the legitimacy of the use of the conscience clause will involve the need to take into account the hierarchy of rights and freedoms, in which the freedom of conscience – as already indicated at the beginning of this paper – stands high. In addition, when examining the legality of the invocation of conscientious objection, it must be assessed whether such behaviour is aimed at protecting goods

66 L. Kubicki, *Sumienie lekarza jako kategoria prawna*, "Prawo i Medycyna" 1999, no. 4 (vol. 1), p. 7.

67 M. Świeca, *Klauzula sumienia – jako rozwiązanie kolizji norm prawa stanowionego z normami światopoglądowymi*, "Prawo i Medycyna" 2013, no. 3-4 (52/53, vol. 15), p. 54.

68 W. Chańska, *Klauzula sumienia jako wyraz moralnego kompromisu*, "Prawo i Medycyna" 2013, no. 3-4 (52/53, vol. 15), p. 7.

69 M. Nestorowicz, N. Karczewska-Kamińska, *Prawa pacjenta do świadczeń medycznych a prawo lekarzy (szpitali) i osób z innych zawodów medycznych do klauzuli sumienia*, "Prawo i Medycyna" 2015, no. 2 (59, vol. 17), p. 7.

protected by law.⁷⁰ However, in this respect, it should be assumed that the system of law consists of both norms introduced into it by a decision of the legislator and moral norms (which may function under different terms, such as good morals or principles of social coexistence). Hence, it is not possible to refuse a legally obligatory behaviour on the grounds of conscientious objection on the basis of, for example, the patient's gender, colour or religion. Indeed, conscientious objection must be based on a rationally justified moral judgment – in the example cited, however, the mere invocation of conscientious objection would constitute an ethically unworthy (and also unlawful) act.

There is no doubt that a doctor is entitled to exercise the right of conscientious objection when it is necessary to protect the supreme value of the legal system, which is human life. It is from this source that the deepest justification for conscientious objection arises when a doctor is faced with a dilemma relating to the performance of an abortion. In the light of the jurisprudence of the Constitutional Tribunal, there is no doubt that the life of the unborn child is subject to legal protection.⁷¹ Therefore, a doctor is also entitled to use the conscience clause when a woman approaches him to perform an abortion in cases where the law does not provide for the criminalisation of such behaviour. It should be emphasised that the motivation for a doctor's action may relate not only to legal arguments, but also to religious (such as the precepts of the Decalogue), moral (the imperative to refrain from behaviour that we ourselves would not wish to experience) or purely humanitarian ones.

It should also be noted that a potential obstacle to the exercise of the right to conscientious objection is Article 3(2) of the Act of 17 May 1989 on guarantees of freedom of conscience and religion.⁷² This provision – unchanged since it was established by the Sejm of the People's Republic of Poland, sitting in a composition imposed by the authoritarian communist

70 M. Skwarzyński, *Sprzeciw sumienia w adwokaturze*, [in:] *Standardy bezstronności światopoglądowej władz publicznych*, eds. A. Mezglewski, A. Tunia, Lublin 2013, p. 207.

71 Ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96; judgment of the Constitutional Tribunal of 23 March 1999, ref. K 2/98; judgment of the Constitutional Tribunal of 7 January 2004, ref. K 14/03; judgment of the Constitutional Tribunal of 30 September 2008, ref. K 44/07.

72 Act of 17 May 1989 on guarantees of freedom of conscience and religion (Dz.U. 2017, item 1153).

authorities and not elected in democratic elections – states: ‘The exercise of freedom of conscience and religion may not lead to evasion of public duties imposed by laws.’ It should be advocated that it be derogated as soon as possible in its current wording and replaced by a provision that meets current constitutional standards.

5 Summary

Every human being – as confirmed by the Constitution of the Republic of Poland, as well as by a number of acts of international law – has a primary and inalienable right to exercise freedom of conscience, including the right to conscientious objection, i.e., the right to refuse to comply with an obligation under the law due to a rationally justified moral judgement of the addressee of the legal norm, which qualifies the behaviour in question as objectively ethically reprehensible (wrong, unworthy). Because this freedom is primary to its limitations, no one needs a detailed legal basis for acting in accordance with one’s conscience. Such a basis is only needed to limit the exercise of this freedom. The regulation of the conscientious objection clause in relation to medical professions such as doctors, nurses and midwives is therefore intended to give substance to the right to exercise conscientious objection.

The Constitutional Tribunal, in its judgment of 7 October 2015, stated that Article 39 of the Act of 5 December 1996 on the professions of physician and dentist ‘does not create a privilege for the physician, since the freedom of conscience of every human being is a primary and inalienable category, which constitutional law and international regulations merely vouch for. Freedom of conscience – including that element of it which is conscientious objection – must therefore be respected regardless of whether there are statutory provisions confirming it’.⁷³ While the conscientious objection clause for doctors and dentists has been brought into line with the requirements arising from the cited judgment of the Constitutional Tribunal,

73 Judgment of the Constitutional Tribunal of 7 October 2015, ref. K 12/14.

the analogous regulation relating to nurses and midwives still falls short of constitutional standards.

It is therefore appropriate to call for an explicit statutory confirmation of the right to conscientious objection for other professions where there is a risk of particularly frequent conflicts of conscience. This refers in particular to pharmacists and other medical professions. It is no less important to bring Article 3(2) of the Act on guarantees of freedom of conscience and religion into line with current constitutional standards without delay. This provision dates back to the period of authoritarian communist rule and offends Poland's current guarantees of freedom of conscience.

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Abstract

This chapter aims to analyse the concept of the right to conscientious objection (conscience clause) in the constitutional context. In its judgment of 7 October 2015, Poland's Constitutional Tribunal finally confirmed that the right to conscientious objection is an integral part of the constitutionally guaranteed freedom of conscience. For this reason, the right to conscientious objection is legally guaranteed by the Polish Constitution. This leads both to proposing an appropriate concept of conscience consistent with Polish constitutional axiology and to formulating *de lege ferenda* conclusions.

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Key terms: abortion underground, illegal abortion 'services', etiology of abortion crime, scale of illegal abortions

Chapter 16

Abortion crime in Poland

1 Introduction

In the public debate on the legalisation of abortion, the problem of abortion crime is most often referred to as the abortion underground. The incidence of this problem is used as one of the most important arguments of the advocates of the legalisation of abortion, who provide estimates in support of it; sometimes these are so divergent as to cast doubt on their reliability.

The abortion crime phenomenon has an elaborate aetiology. The reasons for which an abortion is performed in violation of the law can be very different. In view of this, also the prevention of the abortion crime phenomenon is based on various means of influence.

This chapter will discuss the problem of the aetiology of abortion crime, then present attempts to estimate the scale of the phenomenon, combined with an assessment of their reliability, and finally present ways to counteract the phenomenon.

2 The aetiology of abortion crime

In order to define the boundaries of the abortion crime phenomenon, it is necessary to indicate when an abortion performed or attempted is a crime and when it is permissible under Polish law. Pursuant to the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating

a pregnancy¹ (hereinafter: AFP), a pregnancy may be terminated only and exclusively by a doctor (Article 4a(1)). Two grounds are further mentioned that make abortion possible: a threat to the health or life of the mother as a result of pregnancy, and a justified suspicion that the pregnancy has resulted from a crime (for example, rape or incest). It is worth mentioning that the amendment to the AFP of 30 August 1996² introduced a premise in the form of severe living conditions or difficult personal situation of the pregnant woman. By virtue of the decision of the Constitutional Tribunal of 28 May 1997³ the provision containing this prerequisite is no longer valid. The mother's difficult material situation justified the abortion in the period from 4 January 1997 to 23 December 1997. In the justification of its judgment, the Constitutional Court stated, *inter alia*, that the criteria listed in Article 4a(1)(4) were to be understood subjectively, according to the mother's individual conviction that her material and personal situation was at risk.⁴ This vagueness of the premises meant that abortion on the basis of them became *de facto* abortion 'on demand'. On the other hand, with regard to the premise contained in Article 4a(1)(3) of the AFP, a period of 12 weeks from the beginning of pregnancy during which an abortion is possible was specified.⁵

In order to have an abortion under the AFP, the mother of the conceived child must give her written consent to terminate the pregnancy. If she is completely incapacitated or is a minor, the consent is given for her by her parent or guardian. When the minor mother has already reached the age of 13, her own consent is needed in addition to the consent of her parent or guardian and if she is under 13, the guardianship court gives consent for her. Furthermore, the child's mother, who is completely incapacitated, must also give her consent to the termination of the pregnancy, provided that her mental health condition allows her to do so. If the parent or guardian

1 Act of 7 January 1993 on family planning, protection of the human foetus and conditions for legal abortion (Dz.U. No. 17, item 78, as amended).

2 Act of 30 August 1996 amending the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and amending certain other acts (Dz.U. No. 139, item 646).

3 Ruling of the Constitutional Tribunal of 28 May 1997, ref. K 26/96.

4 *Ibid.*, para. 4.3.

5 U.p.r., Article 4a(2).

does not consent to the termination of pregnancy, it is necessary for the guardianship court to give its consent.⁶

In the case of termination of pregnancy, the perpetrator is criminally liable on the basis of Article 152 of the Criminal Code⁷ (hereinafter: the Criminal Code), if he or she terminated the pregnancy with the mother's consent, or on the basis of Article 153 of the Criminal Code in the case of termination of pregnancy without her consent. In addition, in Article 154 of the Criminal Code, the legislator has provided for an aggravated type in relation to the crimes described in the previous two articles, if the consequence of the termination of pregnancy is the death of the mother. For the purpose of further consideration, the author assumes that the abortion crime consists of acts concerning the termination of pregnancy with the mother's consent, as well as the provision of assistance to the mother in terminating the pregnancy. In both cases, it must be done in violation of the cited provisions of the law. It should also be added that abortion crime cannot be spoken of in a situation of so-called abortion tourism, where the termination of pregnancy is carried out in a place where local law allows it. In view of this, the territorial scope of abortion crime is limited to the territory of the Republic of Poland. However, in the case of inciting or assisting in the performance of an abortion outside the territory of the Republic of Poland, one may speak of crimes under Article 152 of the Criminal Code or Article 154 of the Criminal Code in conjunction with Article 18 of the Criminal Code, provided that the incitement or assistance itself took place in the area where the aforementioned provisions are in force; the subsequent place where the mother performed the abortion is not important.⁸

The aetiology of the incidence of abortion crime is varied. The cause of its existence and development is primarily the very fact that mothers make decisions to terminate their pregnancies, despite the fact that the conditions set out in the law have not occurred. These decisions may be conditioned, among other things, by a lack of respect for the life conceived. They are

6 U.p.r., Article 4a(4).

7 Act of 6 June 1997 – Criminal Code (Dz.U. No.88, item 553, as amended).

8 The issue of so-called abortion tourism is discussed more extensively in Chapter 3, subchapter 6 Abortion tourism of this publication.

also conditioned by a lack of reflection on the moment of the beginning of life, as many mothers who decide to terminate a pregnancy try to deny that they are carrying a life inside them. Often, instead of the term 'child', one comes across the term 'cluster of cells', or the more technical and non-personal term 'foetus'. Another factor influencing the decision to terminate a pregnancy is the desire to avoid responsibility for maintaining casual sexual relations, rooted in an egocentric approach to life.⁹

Another reason for deciding to terminate a pregnancy is the sense of shame the mother may experience, particularly if she is unmarried or a teenager. In such situations, she may face disapproval from both relatives, particularly parents, and the local community. In particular, the decision to abort may be influenced by fears of disapproval from those around her or the social ostracism prevalent in communities where people know each other (such as villages or smaller towns).¹⁰

Another factor that may influence the decision to have an abortion is that having to take care of the child changes the previous lifestyle in a significant way. Parents may fear new responsibilities, having to care for and support the child. In addition, previous plans, dreams or career aspirations may be curtailed. Sometimes abortion is justified by explaining that one is still too young to take on the tasks of parenthood, that there will still be time. Another similar reason for the decision is the fear of the changes that occur in the woman's body under the influence of pregnancy. The desire to look attractive and young for as long as possible also falls into this category.¹¹

Social factors also have a significant impact on the incidence of abortion and, consequently, the crime associated with its illegal performance. These include the prevalence of poverty among certain families, as well as the stereotype that families with many children live in poverty. To these reasons can be added unemployment, particularly among young people, and labour market conditions. It should also be mentioned here that there

9 B. Orłowska-Zielińska, *Nielegalne rynki usług aborcyjnych*, [in:] *Nielegalne rynki. Geneza, skala zjawiska oraz możliwości przeciwdziałania*, eds. W. Pływaczewski, P. Chlebowicz, Olsztyn 2012, pp. 138-139.

10 Ibid., p. 139.

11 N. Michels, *Aborcja. Przywrócić sens życiu*, Katowice 2005, pp. 15-16, quoted in B. Cwalina, *Aborcja – przyczyny i skutki*, <http://www.stowarzyszeniefidesratio.pl/Presentations0/pas01.pdf>, p. 6, accessed 13 November 2022.

is a reluctance to hire employees who already have children, due to the perception that they are less available and flexible to change. Another factor is the fact that social ties are gradually disappearing, replaced by individualism.¹²

It is worth mentioning that also the campaign for the right to abortion on demand, conducted by feminist circles, significantly influences the aetiology of abortion crime. An evaluation of a number of publications issued by various types of feminist organizations makes it easy to conclude that the alleged right to abortion on demand is one of the elements leading to the attainment of what they consider to be the primary goal, i.e., the 'emancipation' of women. Representatives of feminist organizations also use arguments of a eugenic and demographic or even socio-economic nature to justify the demand for abortion on demand.¹³ There is also the fact that abortion is described as a simple procedure that is painless and completely safe and without any complications.¹⁴ Added to these factors is also the rhetoric used by feminist circles, which includes slogans such as 'My body, my choice',¹⁵ or 'Hands off my uterus',¹⁶ or 'The right to abort is a human right'.¹⁷ These kinds of slogans, and even the very phrase 'pro-choice', change the image of abortion and aim to give the impression that abortion can be done by any woman who wishes it. Moreover, they suggest that it is a woman's inalienable right.

These factors are examples, mentioned in the literature in the domain, of causes that are relevant to the decision to terminate a pregnancy and thus constitute the aetiology of abortion crime. It should be added that these are not the only factors, for with the complexity of the cases in which abortions occur, it is impossible to identify all the causes.

12 B. Orłowska-Zielińska, op. cit. p. 139.

13 See M. Schooyans, *Aborcja a polityka*, Lublin 1991, p. 137, quoted in B. Orłowska-Zielińska, op. cit., p. 139.

14 B. Orłowska-Zielińska, op. cit., p. 139.

15 R. Grochal, „Żarty się skończyły. Moje ciało – moja sprawa” – protest pod Sejmem [report, realised by A. Sajkowska, B. Majkowski], <http://wyborcza.pl/1,154385,20774187,zarty-sie-skonczyly-moje-cialo-moja-sprawa-protest-pod.html>, accessed 15 November 2022.

16 RMF24.pl, *Ręce precz od mojej macicy!*, <https://www.rm24.pl/fakty/news-rece-precz-od-mojej-macicy,nld,641116>, accessed 15 November 2022.

17 Klub-lewica.org.pl, *Aborcja w Polsce będzie legalna, bezpieczna i darmowa*, <https://klub-lewica.org.pl/aktualnosci/2394-aborcja-w-polsce-bedzie-legalna-bezpieczna-i-darmowa>, accessed 27 January 2022.

In addition to the factors relating to the mother, there remain those relating to offenders who carry out abortions in contravention of the law or contribute to them, for example by making abortifacients available to the mother of the unborn child.

It is clear that the main motivation of abortion offenders is to get rich. On the Internet, on various portals and forums, one can find contact details of offenders offering their 'services'. As indicated by the media, services such as the provision of abortifacients or the arrival of 'service providers' at the place indicated by the mother are on offer.¹⁸ The price of the abortion is between PLN 400 and PLN 1,000 in the case of the provision of abortifacients (so-called pharmacological abortion), sometimes the abortifacients are formally provided free of charge, but in reality their dispatch is conditional on a 'donation' of EUR 70-90 to a feminist organization associated with the 'service provider'.¹⁹ In the case of a medical procedure, the cost ranges from PLN 1,500 to as much as PLN 4,000.²⁰

Due to the specific nature of the crime in question, it can be assumed that the vast majority of perpetrators make it a regular source of income. This may be confirmed by advertisements about the possibility of performing an abortion, most often placed on the Internet, an extensive range of 'services', including the possibility of sending money or travelling to the indicated place. The cost of performing an abortion, together with the existing demand for such 'services', must make it profitable for the offender to carry out a crime, which is, after all, threatened by a criminal sanction. The low rate of detection of this type of crime, as well as the passivity of law enforcement authorities, provide criminals with another incentive to make this practice a source of permanent income.

18 W. Waka, *Podziemie aborcyjne w Polsce. Nawet na telefon i z dojazdem. Ile kosztuje?*, <https://www.fakt.pl/wydarzenia/polska/ile-kosztuje-aborcja-w-polsce-nielegalna-aborcja-w-polsce/c3qmg2h>, accessed 19 November 2022.

19 Federacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Przerywanie ciąży – metoda farmakologiczna*, Warszawa 2020, https://federa.org.pl/wp-content/uploads/2020/03/Federa_aborcja-farmakologiczna_broszura.pdf, accessed 27 January 2022, p. 24.

20 Federacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Prawa reprodukcyjne w Polsce – skutki ustawy antyaborcyjnej*, ed. W. Nowicka, Warszawa 2007, http://www.hfhrpol.waw.pl/precedens/images/stories/federa_raport.pdf, accessed 19 November 2019.

3 The scale of the abortion crime phenomenon

According to police statistics, 297 offences under Article 152 § 1-3 of the Criminal Code were recorded in 2014, in 2015 – 344 offences, in 2016 – 31 offences, and in 2017 – 132 offences.²¹ In comparison, 971 abortions were performed in Poland in 2014, in 2015 – 1,040 abortions, in 2016 – 1,098 abortions, and in 2017 – 1,057 abortions.²² When the premise enabling legal abortion on the grounds of severe life conditions or difficult personal situation of the mother was in force (in 1997), 2,524 abortions were performed on such grounds,²³ while the total number of recorded abortions in 1997 was 3,047. In comparison, in the year before this premise came into force, i.e., 1996, 489 abortions were performed in Poland, and in 1998, 310 abortions were recorded. This data helps to estimate how many abortions are actually performed annually in the Republic of Poland.²⁴

The statistics presented above, however, do not fully show the scale of the problem, as crimes of illegal abortions are rarely reported, not least because there is a sense that no person has actually suffered harm. Also, in the case of legal abortions, the statistics may not correspond to reality, as they are not always recorded for various reasons. In view of this, the scale of the abortion crime phenomenon is only an estimate, at best.

The problem of estimating the scale of the abortion crime phenomenon has been addressed by sociologists. Their approach to estimating the number of illegal abortions on the territory of the Republic of Poland was based on the ratio of legal to illegal abortions in countries where abortion is fully legal. Thus, Marek Okólski provided a ratio of approximately 1:3, i.e., for every legal abortion performed, three are performed illegally.²⁵ Karol Meissner,

21 Statystyka.policja.pl, *Przestępstwa przeciwko życiu i zdrowiu (148–162). Przerwanie ciąży za zgodą kobiety (art. 152)*, <http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko/63421,dok.html>, accessed 16 November 2019.

22 Report of the Council of Ministers on the implementation and effects of the application in 2017 of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Dz.U. No. 17, item 78, as amended), Sejm Paper No. 3185, DSP.WIP.48211.2019.SZ.

23 Undersecretary of State at the Ministry of Health Krzysztof Łanda, Response to parliamentary question No. 5624 on NFZ [National Health Fund] statistics on the reasons for abortions in Poland between 1993 and 2016, <http://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=031EE640>, accessed 16 November 2022.

24 Ibid.

25 M. Okólski, *Zapobieganie i przerywanie ciąży w Polsce*, "Studia Demograficzne PAN" 1984, no. 2(76), quoted in A. Zięba, *Podziemie aborcyjne w Polsce*, Kraków 2006, p. 10.

on the other hand, states that this ratio is as high as 1:4.²⁶ Yet another ratio can be found in a paper published by Janina Jóźwiak and Jan Paradysz, according to which it is between 1:2.2 and 1:4.7.²⁷ Multiplying the number of abortions carried out in 1997, when abortion was possible virtually 'on demand', i.e., 3,047, by the highest ratio quoted here, one arrives at a figure of 14,321 abortions, and multiplying by the lowest of the ratios, a figure of 6,703 abortions. With this in mind, it can be estimated that the scale of the abortion crime phenomenon in Poland ranges from 6,703 to 14,321 (abortions performed illegally).

Confirmation of the estimates can be found in the report of the Centre for Public Opinion Research (hereinafter: CBOS) entitled *The abortion experience of Polish women* (orig. *Doświadczenia aborcyjne Polek*).²⁸ According to the report, at least one in four adult Polish women, but no more than one in three, has had at least one abortion. It is noteworthy that Polish women under the age of 35, i.e., those who reached childbearing age just before the introduction of broader statutory protection of life from the moment of conception, made the decision to have an abortion three times less often than Polish women over 35. According to the report, 13% of Polish women under 35 have had an abortion.

The differences between the two groups of Polish women can be justified primarily by the introduction of the statutory protection of life from the moment of conception. However, as indicated by two analogous CBOS surveys from 1997²⁹ and 2016,³⁰ the support in society for the possibility to have an abortion due to a bad financial situation or a difficult personal situation has changed significantly. This support fell from 71% to 12% during the period under study. In the 2016 survey, 81% and 80%, respectively,

26 K. Meissner, *Częstość poronień*, "Słowo Powszechne" 1991, XLV, 85-86; 12-13-14 IV, quoted in A. Zięba, op. cit., p. 10.

27 J. Jóźwiak, J. Paradysz, *Demograficzny wymiar aborcji*, "Studia Demograficzne PAN" 1993, no. 1(111), p. 37, quoted in A. Zięba, op. cit. p. 10.

28 CBOS, *Doświadczenia aborcyjne Polek*, series: Komunikat z badań, BS/60/2013, Warszawa, May 2013, https://www.cbos.pl/SPISKOM.POL/2013/K_060_13.PDF, accessed 18 November 2022.

29 CBOS, *Stosunek do aborcji po orzeczeniu Trybunału Konstytucyjnego*, Komunikat z badań, BS/97/97, Warszawa, July 1997, https://www.cbos.pl/SPISKOM.POL/1997/K_097_97.PDF, accessed 18 November 2022.

30 CBOS, *Dopuszczalność aborcji w różnych sytuacjach*, series: Komunikat z badań, no. 71/2016, Warszawa, May 2016, https://www.cbos.pl/SPISKOM.POL/2016/K_071_16.PDF, accessed 18 November 2022.

were already against the introduction of the possibility of abortion on the grounds of the mother's bad financial situation or personal hardship.

A much higher estimate was provided in a report from the year 2000 by the Federation for Women and Family Planning (orig. Federacja na rzecz Kobiet i Planowania Rodziny).³¹ According to this report, the scale of illegal abortions in the Republic of Poland ranged between 80,000 – 200,000. A lower estimate was presented in a 2013 report by the same organization, where the number of illegal abortions was estimated at 80,000 – 100,000 per year.³² In both these reports, no research was presented to confirm these estimates. The Federation presented similar figures in a 2007 report, with at least 100,000 illegal abortions per year.³³ Importantly, in the 2007 report, the indicated estimates were substantiated. The authors used the ratio of the number of abortions per 1,000 women who had reached childbearing age. The ratios for France, Hungary, and Slovakia were 14.6 abortions, 27.9 abortions, and 13.9 abortions per 1,000 women, respectively. According to the report, assuming that there are 10 million women in Poland who have reached childbearing age, the number of abortions at the indicated ratios would be, respectively: 146,000, 279,000, and 139,000. Therefore, the authors concluded that the number of illegal abortions must exceed 100,000 per year.³⁴ Moreover, the authors concluded that these estimates provide an explanation for the phenomenon of the falling number of births in Poland.³⁵

In calculating their estimates, the authors of the referenced reports did not take into account the legal prohibition of abortion outside the circumstances provided by law, which generates legal awareness and serves to educate society as well. Significant changes in support for

31 W. Nowicka, M. Tajak, *Ustawa antyaborcyjna w Polsce. Funkcjonowanie, skutki społeczne, postawy i zachowania. Raport – Wrzesień 2000*, Warszawa 2000, quoted in A. Zięba, op. cit., p. 3; A. Grzywacz et al., *20 lat tzw. ustawy antyaborcyjnej w Polsce. Raport 2013*, Warszawa 2013.

32 A. Grzywacz et al., op. cit. p. 23.

33 Federacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Prawa reprodukcyjne...*

34 Ibid., p. 32; R. Kielmans-Ratyńska, *Przestępczość aborcyjna w Polsce. Analiza Instytutu na rzecz Kultury Prawnej Ordo Iuris*, https://ordoiuris.pl/pliki/dokumenty/Analiza_Przestepczosc_Aborcyjna_w_Polsce.pdf, accessed 18 November 2022, pp. 2-3.

35 Federacja na rzecz Kobiet i Planowania Rodziny [Federation for Women and Family Planning], *Prawa reprodukcyjne...*, p. 31; R. Kielmans-Ratyńska, op. cit., p. 3.

abortion 'on demand' or performed due to the premise of the mother's difficult financial or personal situation can be seen by analysing the CBOS surveys from 1997 and 2016. Furthermore, it seems doubtful that the social and legal situation is even similar to the countries mentioned in the Federation's report from 2007, particularly in terms of attachment to family, tradition, and educational issues. These doubts are also confirmed by the referenced low police statistics, which, although do not reflect the scale of the abortion crime problem, are unlikely to be erroneous to a high extent. With regard to the birth rate, its downward trend is observed in all European countries and depends on a number of factors, such as wide access to contraception, marrying at an ever later age or demographic decline.³⁶

History shows that, on more than one occasion, the reporting of inflated statistics on the number of abortions carried out against the law has been one of the elements of the struggle to legalise the possibility of abortion. An example is the situation related to the introduction of abortion in the People's Republic of Poland. In 1956, the number of at least 300,000 abortions per year was made public, whereas after its legalisation, the number of abortions performed was 36,368 in 1957 and 44,233 in 1958,³⁷ i.e., almost 10 times less than previously reported. Similar situations can be found in the history of the United States, Germany, or the United Kingdom.³⁸

4 Tackling the crime of abortion

In considering how to counteract the phenomenon of abortion crime, one should consider the aetiology of this phenomenon discussed in the first part of this chapter. Due to the transactional nature of the crime, the reasons for the occurrence of the phenomenon in question are, on the one hand, the demand for termination of pregnancy, even if illegal, and, on the other hand, the supply, which occurs due to the profits provided by this procedure. The ideology of the perpetrators, who argue, for example, that

36 For more on the inaccuracies in the aforementioned Federation reports in: R. Kielmans-Ratyńska, *op. cit.*

37 A. Zięba, *op. cit.*, pp. 5-6.

38 More extensively in: A. Zięba, *op. cit.*, pp. 4-6.

aiding and abetting abortion is helping women to enforce their rights is also of significance. Another factor is the passivity of law enforcement agencies, which results in insufficient execution of criminal sanctions and low detectability of this type of crime. In view of this, countering the phenomenon should be based on two pillars: reducing both demand and supply.

It is already clear from Article 2 of the AFP that governmental and local authorities have the duty to provide medical, social, and legal care to mothers of conceived children. The ways in which pregnant women can be provided with help and care are also listed there. These include pre-natal care for the conceived child and medical care for the mother who is pregnant. In the case of a mother in a difficult material situation, she should be provided with material assistance and care under the Social Assistance Act,³⁹ as well as access to information on the range of different entitlements, allowances and benefits available to mothers, fathers and children and on institutions that can provide them with specific assistance, such as psychological assistance.

In view of the lack of widespread knowledge of institutions providing assistance, it seems necessary to impose an information obligation on the employees of hospitals, clinics and other medical institutions, in particular doctors, nurses or midwives. The obligation would include an indication of the places in the municipality where specific assistance can be obtained, as well as information on what entitlements, benefits and allowances are available in a specific situation.

The prevention of abortion crime is also served by maintaining a number of places where a single mother can receive appropriate assistance, not only materially, but also psychological and legal help. Perhaps, in special cases, the whole family, which is unable to provide for itself, should benefit from such centres. This solution could be one of the elements of support not only for the mother of the child, but also for the whole family, and at the same time would raise the importance of the family as such (not only

39 Currently, the Act of 12 March 2004 on social assistance (Dz.U. No. 64, item 593, as amended) applies to this matter.

maternity), which, according to Article 18 of the Polish Constitution, is, besides maternity, under the special protection of the Republic of Poland.

Another necessary element of effective abortion prevention is to ensure that there is sufficient access to information about the possibility and method of placing a child for adoption or foster care. It would be worthwhile for access to such information to be provided already at the hospital or other medical facility when the mother expresses her wish to give up her child or when a medical facility worker becomes doubtful that the mother may have an abortion. In such a situation, an employee of the facility would contact an employee of the relevant institution. The latter should then contact the mother while she is still in the institution in order to identify the situation, provide psychological support, as well as specific information on the possibility of receiving assistance in her current life situation and, ultimately, on the conditions and modalities of placing the child for adoption or foster family.

It is also important to provide adequate psychological support to a mother who does not want to accept her child. When a doctor or other health professional becomes aware of an unwanted pregnancy, he or she should inform a psychologist who could provide the woman with appropriate support before she decides to terminate the pregnancy, regardless of the circumstances under which a legal abortion may be performed. A psychologist could prevent the decision from being taken under duress or as a result of the strong emotions in which the mother finds herself.

With a view to combating abortion crime directly, it would seem reasonable to monitor the Internet more frequently in order to seek out offenders who post advertisements for the performance of a 'service', and to take consistent action as provided for in the Polish Code of Criminal Procedure to bring the perpetrators to justice.

However, all of the above suggestions are no substitute for 'working from the ground up', based on proper education, which would address topics such as the beginning of human life, respecting it, and imparting knowledge on human sexuality and the consequences of sexual intercourse. It is equally

important to adequately prepare young people to cope with difficult life situations and to teach them to take responsibility for their actions.

The last important factor in counteracting the crime of abortion is to raise public awareness by creating a public debate showing the arguments for the defence of life from conception. However, this debate should be based on arguments anchored in the achievements of medicine as well as ethics. Due to the increasing secularisation of society, one should be very careful when using arguments of a religious nature. The effectiveness of raising awareness through debate can be evidenced by the CBOS survey quoted above, which illustrates a significant decline in Polish society's support for abortion on the grounds of the mother's difficult financial or personal situation. At the same time, it should be noted that this decline may reflect a decrease in the number of abortions performed illegally.

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Abstract

This chapter addresses issues related to the so-called abortion criminality (also often referred to as the 'abortion underground') in Poland, i.e., the phenomenon of aborting pregnancies in contravention of the law. The first part of the study concerns the issue of the diverse aetiology of this phenomenon. Next, an attempt was made to estimate the scale of the phenomenon. Moreover, manipulations in providing estimates related to the number of crimes of abortion against the provisions of the applicable law are also discussed. Then the author, referring to the aetiology, discusses the ways of counteracting the phenomenon of abortion criminality.

Annex 1

Ranking of countries in terms of the level of legal protection of human life at the prenatal stage of development

Following the publication in the Journal of Laws of the Polish Constitutional Tribunal's ruling declaring eugenic abortion unconstitutional on 27 January 2021, Poland moved up a bit; nevertheless, it is still (as of 31 December 2025) ranked 84th in the world in terms of the level of legal protection of life at the prenatal stage of development. This means that in 112 countries conceived children have worse legal protection than in Poland, and 83 provide better protection. In the classification of countries in terms of the level of legal protection of human life at the prenatal stage of development, published in 2023 by the Ordo Iuris Institute, Poland was ranked 85th (127th in 2018).

The legal orders of all 193 member states of the United Nations, two UN observer states (the Vatican City State and Palestine), and the Republic of China (Taiwan), totalling 196 countries, were included in the ranking.¹ References to the sources pertaining to each country (laws, regulations, and other acts) were placed in a separate column in the table. The main source on the legal orders of each country was the official data of the World Health Organization (WHO), available at <https://abortion-policies.srhr.org>. Other sources were also used, in particular acts available on the World Intellectual Property Organization (WIPO) website, <http://www.wipo.int/wipolex/en>.

1 The published ranking refers to the legal status as at 31st December 2025.

It should be emphasised that the ranking concerns **only a comparison of the legal status** prevailing in a given state (legal order), ranking the states from those whose legislation most fully protects life at the prenatal stage of development to those which hardly recognize the human right to life before birth, if at all, taking into account the manner in which they articulate the conditions (prerequisites) for the admissibility of killing the *nasciturus*. The ranking therefore does not take into account the issue of compliance with the law or the approach of public authorities, including the police, prosecutors and courts, to the criminality of abortion, nor does it take into account the level of social approval of the rights of the unborn and the actual number of abortions of children at the prenatal stage of development in each of these countries, including those resulting from the way the laws are formulated and the well-established practice of their application, which, *de facto*, may deprive the unborn child of legal protection to a greater extent than would be indicated by law (in other words, states in which abortion on request has not been introduced, but in which the conditions for permissibility of killing the *nasciturus* – for example, on the grounds of the mother's health – are interpreted so broadly as to allow almost any abortion, rank lower in the ranking than states providing abortion on request).

It is also worth noting that in some countries, the legislation is identical. This applies to countries that in the past two centuries were colonies or dependent territories of the same European country. These states have preserved the standard of civilisation in their legislation, which, until the middle of the 20th century, was respected in Western Europe in the area of the legal protection of human life before birth.

Based on an analysis of the available data, countries were ranked according to the following criteria:

- 1) full protection of the life of the mother and the child (deprivation of the life of either is allowed only to save the threatened life of the other, with the decision of which of the two lives to save if both are threatened being left to the mother as guarantor of the child's life);
- 2) permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise);

- 3) permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise);
- 4) permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental);
- 5) permitting the deprivation of a child's life on criminological or eugenic grounds;
- 6) permitting the deprivation of a child's life on criminological grounds or to protect the mother's health;
- 7) permitting the deprivation of a child's life on eugenic grounds or to protect the mother's health;
- 8) permitting the deprivation of a child's life on criminological or eugenic grounds, or to protect the mother's health;
- 9) permitting the deprivation of a child's life for social or economic reasons;
- 10) abortion at the mother's request.

As a result, 196 countries can be divided in terms of their level of legal protection of life at the prenatal stage of development into 10 main categories.

No.	Category			Number of countries (places in ranking)
1	Full protection of mother's and child's life			46 (places 1-46)
2	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)			2 (places 47-48)
3		Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)		1 (place 49)

No.	Category			Number of countries (places in ranking)
4			Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	21 (places 50-70)
5	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)		9 (places 71-79)
6	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)		Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	8 (places 80-87), Poland at no. 84
7		Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	6 (places 88-93)
8	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	27 (places 94-120)
9	Permitting the deprivation of a child's life for social or economic reasons			5 (places 121-125)
10	Abortion at the mother's request			71 (places 126-194)

Additional criteria, within each of the above-mentioned 10 categories, were adopted, such as:

- the presence of guarantees for the protection of conceived life in the constitution (only for states that guarantee full protection of the life of the child and the mother);
- the level of punishment, particularly in the basic type of the offence, i.e., 'abortion with the mother's consent';

- the age up to which the deprivation of a child's life is permitted;
- immunity for a mother who deprived her unborn child of life (or consented to it).

In the federal states where there is variation in legal protection by state (province), that is, the United States of America and Australia, an average period of permissibility for abortion on request was adopted. In contrast, in Mexico, where the legislation also depends on the state, the Supreme Court ruled, on 7 and 9 September 2021, and later on 6 September 2023, that punishments for the killing of a conceived child in every case – both at the level of statutes and state constitutions – are contrary to the federal constitution. In the last of these rulings, the Court even questioned the legal capacity of unborn children, which measurably reduces the standard of protection for the *nasciturus*, even if the legislation in force in the state in question still provides for the legal protection of life to some extent.

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
1.	Antigua and Barbuda	YES	–	–	–	–	–	Infant Life (Preservation) Act 1937 (http://laws.gov.ag/wp-content/uploads/2018/08/cap-216.pdf)	As in the case of murder of persons already born: criminalisation even in the form of life imprisonment
	Dominica	YES	–	–	–	–	–	Offences Against the Person Act 1873, Article 8 (https://pub-c3f08c78592b4d7c837d-c8e1b00a42e8.r2.dev/01-Dominica-Offences-Against-the-Persons-Act-1995.pdf#page=10)	As in the case of murder of persons already born: criminalisation even in the form of life imprisonment
	Solomon Islands	YES	–	–	–	–	–	Penal Code 1963, Articles 157-159 (https://pub-c3f08c78592b4d7c837d-c8e1b00a42e8.r2.dev/01-Solomon-Islands-Penal-Code-1963.pdf#page=66)	As in the case of murder of persons already born: criminalisation even in the form of life imprisonment
4.	Salvador	YES	–	–	–	–	–	Penal Code 1997, Articles 133-137 (https://pub-c3f08c78592b4d7c837d-c8e1b00a42e8.r2.dev/01-El-Salvador-Penal-Code-1998.pdf#page=35)	PROTECTION OF LIFE IN THE CONSTITUTION. 2 to 8 years' imprisonment for performing an abortion with the mother's consent or for a mother who performs an abortion herself or consents to another person performing an abortion; 4 to 10 years for an abortion performed without the mother's consent, using violence or deception; 6 to 12 years for a health worker who performs an abortion. Since 1 January 1999, according to Article 1 of the Constitution of El Salvador, 'El Salvador recognises as a human person every human being from the moment of conception'

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
5.	Honduras	YES	–	–	–	–	–	Penal Code of Honduras 1983, Articles 126-128, 132 (https://pub-c3f08c78592b4d7c837d-c8e1b00a42e8.r2.dev/01-Honduras-Penal-Code-1983.pdf#page=24)	Under Article 67 of the 1982 Constitution, as amended in 2021 it is considered prohibited and illegal to practice any form of interruption of the life of the unborn, whose life must be always respected. The legal provisions that establish otherwise will be null and void. The provisions of this Article may only be amended by a majority of three-quarters of the members of the Plenary of the National Congress, its provisions will not lose force or cease to be fulfilled when it is supposedly repealed or modified by another constitutional provision. 3 to 6 years' imprisonment for an abortion with the mother's consent; 6 to 8 years for an abortion without the mother's consent; 3 to 6 years in the case of the mother
6.	Philippines	YES	–	–	–	–	–	Revised Penal Code of the Philippines 1930, articles 256-259 (https://pub-c3f08c78592b4d7c837d-c8e1b00a42e8.r2.dev/01-PHILLIPINES-REVISED-PENAL-CODE-1930.pdf#page=69)	PROTECTION OF LIFE IN THE CONSTITUTION. 6 months' to 6 years' imprisonment for performing an abortion with the mother's consent; 6 to 12 years for performing an abortion without the mother's consent. According to Article 2(12) of the Philippine Constitution, '[t]he State shall recognise the sanctity of family life and shall protect and strengthen the family as a fundamental autonomous social institution. It shall protect equally the life of the mother and the life of the unborn child from conception'
7.	Dominican Republic	YES	–	–	–	–	–	Criminal Code 2014, Article 107 (https://www.wipo.int/wipolex/en/legislation/details/14439)	PROTECTION OF LIFE IN THE CONSTITUTION. 2 to 3 years' imprisonment for performing or being an accessory to an abortion (except as provided in Art. 110: 'The termination of pregnancy carried out by specialised medical personnel in public or private health care institutions shall not be punished if, as far as possible, all available scientific and technical means have been exhausted in order to save the life of both'); the same punishment applies to the mother if the abortion was performed; 1 to 2 years' imprisonment for the perpetrator if there is damage or illness to the foetus that seriously impairs its normal development or causes severe physical or mental impairment; 4 to 10 years' imprisonment for doctors, nurses, pharmacists, and other health professionals, as well as midwives. Since 2009, Article 37, Sentence 1, of the Constitution of the Dominican Republic (Right to life) reads: 'The right to life is inviolable from conception until death' (https://www.constituteproject.org/constitution/Dominican_Republic_2015). In 2014-2015, a eugenic or criminological exception was allowed by law, but the Constitutional Court declared these exceptions unconstitutional (https://tribunal-sitestorage.blob.core.windows.net/media/13148/sentencia-tc-0599-15.pdf). A penal code reform that is to enter into force in 2026 is to further reinforce this protection

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
8.	Senegal	YES	–	–	–	–	–	Penal Code 1965, Article 305 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Senegal-Penal-Code.pdf#page=50)	PROTECTION OF LIFE IN THE CONSTITUTION. 1 to 5 years' imprisonment for an abortion or attempted abortion (whether or not the mother consented); 5 to 10 years for a professional abortionist; 6 months to 2 years for the mother. According to Article 7, sentences 1 and 2, of the Senegalese Constitution, '[t]he human person is sacred. The human person is inviolable'
9.	Somalia	YES	–	–	–	–	–	Provisional Constitution 2012, Article 15(5) (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Somalia-Provisional-Constitution-of-Somalia-2012.pdf#page=12); Penal Code 1962, Articles 418-424 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/03-Somalia-Penal-Code-1962.pdf#page=70)	PROTECTION OF LIFE IN THE CONSTITUTION. 1 to 5 years' imprisonment for performing an abortion with the mother's consent; 3 to 7 years for performing an abortion without the mother's consent. According to Article 15(5) of the Somali Constitution, '[a]bortion is contrary to the Shariah and is prohibited except in cases of necessity, especially to save the life of the mother'
10.	Guatemala	YES	–	–	–	–	–	Penal Code 1973, Articles 133-140 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Guatemala-Penal-Code.pdf#page=41)	PROTECTION OF LIFE IN THE CONSTITUTION. 1 to 3 years' imprisonment for an abortion with the mother's consent; 6 months to 2 years for the mother if she was in a state of mental agitation; 3 to 6 years for an abortion without the mother's consent; 4 to 8 years if violence, threat or deception was used. According to Article 3 of the Guatemalan Constitution, '[t]he State guarantees and protects human life from conception, as well as the integrity and security of the person'
11.	Democratic Republic of the Congo	YES	–	–	–	–	–	Penal Code 1940, Articles 165-166 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Democratic-Republic-of-the-Congo-Penal-Code-2004.pdf#page=45)	5 to 15 years' imprisonment; 5 to 10 years in the case of the mother
12.	Libya	YES	–	–	–	–	–	Penal Code 1953, Articles 390-392 (https://security-legislation.ly/latest-laws/penal-code/)	At least 6 months' to 15 years' imprisonment for performing an abortion with the mother's consent; at least 6 months' imprisonment for the mother's
13.	Malawi	YES	–	–	–	–	–	Penal Code 1930, Articles 149-151 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Malawi-Penal-Code.pdf#page=72)	Up to 14 years' imprisonment; up to 7 years in the case of the mother
	Palestine	YES	–	–	–	–	–	Penal Code 1936, Articles 175-176 (https://learningpartnership.org/sites/default/files/resources/pdfs/Palestine-Penal-Code-Gaza-1936-Arabic.pdf#page=68)	Up to 14 years' imprisonment; up to 7 years in the case of the mother
15.	Kiribati	YES	–	–	–	–	–	Penal Code 1965, Articles 150-152 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Kiribati-Penal-Code-1977.pdf#page=64)	Up to 10 years' imprisonment; up to 5 years for aiding and abetting; life imprisonment in the case of the mother
	Tuvalu	YES	–	–	–	–	–	Penal Code 1965, Articles 150-152 (https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0007/1965-0007_2.pdf#page=71)	Up to 10 years' imprisonment; up to 5 years for aiding and abetting; life imprisonment in the case of the mother

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17.	Nauru	YES	–	–	–	–	–	Crimes Act 2016, Articles 68-69 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Nauru-Crimes-Act-2016.pdf#page=51)	Up to 10 years' imprisonment (5 for the assistance)
	Yemen	YES	–	–	–	–	–	Crimes and Punishments Law 1994 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Yemen-Law-on-Crimes-and-Punishment.pdf#page=18)	Up to 10 years' imprisonment
19.	Guinea-Bissau	YES	–	–	–	–	–	Penal Code 1993, Article 112 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Guinea-Bissau-Penal-Code-1993.pdf#page=15)	3 to 10 years' imprisonment for having an abortion without the mother's consent; 2 to 6 years for having an abortion with the mother's consent; in the case of the mother, the same penalty applies
20.	Vatican City State	YES	–	–	–	–	–	The Penal Code of Italy as in force on 7 June 1929 – this code applies by default within the Vatican in accordance with the Law on Sources of Law of 1 May 2008 (http://www.vatican.va/roman_curia/labor_office/docs/documents/ulsa_b16_1_1.it.html); Italian Penal Code of 30 June 1889, Articles 381-385 (http://www.antropologiagiuridica.it/cp1889.pdf#page=139)	1 to 4 years' imprisonment for the mother; 30 months to 5 years for an abortion with the mother's consent; 7 to 12 years for an abortion without the mother's consent
21.	Tonga	YES	–	–	–	–	–	Criminal Offences Act 1926 (revised edition 1988), Articles 102-105 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Tonga-Criminal-Offences-Act-1988.pdf#page=48)	Up to 7 years' imprisonment, up to 3 years in the case of the mother, 4 years for the assistance
22.	Afghanistan	YES	–	–	–	–	–	Penal Code 1976, Articles 402-406 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Afghanistan-Penal-Code-1976.pdf#page=130)	Up to 7 years imprisonment and a fine (in the case of the mother and consensual pharmaceutical abortion: 'medium' or 'short' imprisonment or a fine)
23.	Mauritania	YES	–	–	–	–	–	Penal Code 1983, Article 293 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Mauritania-Penal-Code.pdf#page=59)	1 to 5 years' imprisonment; 5 to 10 years for a professional abortionist; 6 months to 2 years for a mother
24.	Comores	YES	–	–	–	–	–	Penal Code 1981, Article 304 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Comoros-Penal-Code-1995.pdf#page=61)	1 to 5 years' imprisonment; at least 5 years of suspension or a complete ban on practicing their profession for a professional abortionists; 6 months to 2 years for a mother
	Congo	YES	–	–	–	–	–	Penal Code 1962, Article 317 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Congo-Penal-Code-2001.pdf#page=48)	1 to 5 years' imprisonment; at least 5 years of suspension or a complete ban on practicing their profession for a professional abortionists; 6 months to 2 years for a mother
	Madagascar	YES	–	–	–	–	–	Penal Code 1972, Article 317 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Madagascar-Penal-Code-1998.pdf#page=42)	1 to 5 years' imprisonment; at least 5 years of suspension or a complete ban on practicing their profession for a professional abortionists; 6 months to 2 years for a mother

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27.	Malta	YES	–	–	–	–	–	Criminal Code 1854, Articles 241-243A (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/04-Malta-Criminal-Code-Last-Amended-2023.pdf#page=122)	18 months' to 4 years' imprisonment (also for the mother). Article 243 of the Penal Code: 'Any physician, surgeon, obstetrician, or apothecary, who shall have knowingly prescribed or administered the means whereby the miscarriage is procured, shall, on conviction, be liable to imprisonment for a term from eighteen months to four years, and to perpetual interdiction from the exercise of his profession.' Article 243A of the Penal Code: 'Whosoever, through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, causes the miscarriage of a woman with child, shall, on conviction, be liable to imprisonment for a term not exceeding six months or to a fine [...].' The Constitution contains no explicit provision protecting life from conception to natural death: see the Constitution of Malta (https://legislation.mt/eli/const/eng)
28.	Paraguay	YES	–	–	–	–	–	Penal Code 1997 (https://lhl-databases.icrc.org/en/national-practice/penal-code-1997-0); Law 3440 amending the Penal Code 2008, Article 109 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Paraguay-Law-that-Modifies-Penal-Code-2008.pdf#page=8)	Up to 5 years' imprisonment for performing an abortion with the mother's consent; up to 8 years for performing an abortion without the mother's consent. A mother who performs the act of abortion herself may receive a maximum sentence of 2 years' imprisonment and may even go unpunished, especially in the absence of guaranteed support for the child
29.	Micronesia	YES	–	–	–	–	–	Code of the Trust Territory of the Pacific Islands 1980, Title 11 § 51 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Federal-States-of-Micronesia-Code-of-the-Trust-Territory-of-the-Pacific-Islands-1980.pdf#page=210)	Up to 5 years' imprisonment
	Palau	YES	–	–	–	–	–	Penal Code 2014, § 662 in conjunction with § 1309 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/04-Palau-Penal-Code.pdf#page=54)	Up to 5 years' imprisonment
31.	Marshall Islands	YES	–	–	–	–	–	Code of the Trust Territory of the Pacific Islands 1980, Title 11 § 51 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Marshall-Islands-Code-of-the-Trust-Territory-of-the-Pacific-Islands.pdf#page=210)	Up to 5 years' imprisonment. Automatic impunity for mothers
32.	Nicaragua	YES	–	–	–	–	–	Penal Code 2007, Articles 143-145 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Nicaragua-Penal-Code-2007.pdf#page=45)	1 to 3 years' imprisonment for performing an abortion with the mother's consent; 1 to 2 years for the mother; 3 to 6 years for performing an abortion without the mother's consent; 6 to 8 years for performing an abortion through violence, threat or deception
33.	Lebanon	YES	–	–	–	–	–	Penal Code 1943, Articles 541-542 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-LEBANON-PENAL-CODE-1943.pdf#page=127)	1 to 3 years' imprisonment for an abortion with the mother's consent; 6 months to 3 years for a mother
	Syria	YES	–	–	–	–	–	General Penal Code 1949, Articles 523-531 (https://urbanlex.unhbat.org/laws/syria/general-penal-code-73591); OHCHR, Questionnaire, HRC/ NONE/2015/164 (https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/riqhealth/States/SYRIA_EN.pdf)	One to 3 years' imprisonment for performing an abortion with the mother's consent; at least 5 years' imprisonment with hard labour for having an abortion without the mother's consent; 6 months to 3 years for a mother

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35.	Oman	YES	–	–	–	–	–	Penal Law 2018, Articles 315-318 (https://pub-c3f08c78592b4d-7c837dc8e1b00a42e8.r2.dev/09-Oman-Penal-Code-2018.pdf#page=1%0A)	From 5 years' imprisonment for an abortion without the mother's consent; from 6 months to 3 years for an abortion with the mother's consent; 3 months to 3 years for a mother
36.	Venezuela	YES	–	–	–	–	–	Penal Code (amended 2005), Articles 430-436 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/11-Venezuela-Penal-Code-Amended-2005.pdf#page=99)	12 to 30 months' imprisonment for performing an abortion with the mother's consent; 3 to 5 years for performing an abortion without the mother's consent; 6 months to 2 years for a mother
37.	Suriname	YES	–	–	–	–	–	Penal Code 1910 (amended 2015), Article 309 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Suriname-Penal-Code-2015.pdf#page=102)	Up to 3 years' imprisonment (up to 4 years in case of a doctor, midwife, or pharmacist)
38.	Andorra	YES	–	–	–	–	–	Penal Code 2005, Articles 107-109 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Andorra-Penal-Code-2005.pdf#page=24)	4 to 10 years' imprisonment for performing an abortion without the mother's consent; 3 months' to 3 years' imprisonment for performing an abortion with the mother's consent. Impunity for mothers
39.	Bangladesh	YES	–	–	–	–	–	Penal Code 1860, Articles 312-315 (https://pub-c3f08c78592b4d-7c837dc8e1b00a42e8.r2.dev/01-Bangladesh-Act-No-XLV-of-1860-Penal-Code-1860.pdf#page=67)	Up to 3 years' imprisonment or a fine (or both) for an abortion with the mother's consent in the case of an early abortion; up to 7 years' imprisonment and a fine for an abortion with the mother's consent in the case of a late-term abortion; up to 10 years' imprisonment or life imprisonment for an abortion without the mother's consent, and a fine
40.	Sri Lanka	YES	–	–	–	–	–	Penal Code 1956, Articles 303-307 (https://pub-c3f08c78592b4d-7c837dc8e1b00a42e8.r2.dev/01-Sri-Lanka-Penal-Code-1956.pdf#page=96)	Up to 3 years' imprisonment for an abortion with the mother's consent; up to 7 years' imprisonment for an abortion with the mother's consent in the case of late-term abortion; up to 20 years' imprisonment for an abortion without the mother's consent
41.	South Sudan	YES	–	–	–	–	–	Penal Code Act 2009, Articles 216-222 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-South-Sudan-Penal-Code-2008.pdf#page=116)	Up to 3 years' imprisonment; up to 7 years for the mother; up to 10 years for having an abortion without the mother's consent
42.	Myanmar (Burma)	YES	–	–	–	–	–	Myanmar Penal Code, Articles 312-318 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Myanmar-Penal-Code.pdf#page=105)	Up to 3 years' imprisonment or a fine (or both); up to 7 years and a fine in the case of late-term abortion
43.	East Timor	YES	–	–	–	–	–	Penal Code 2009, Article 141 (https://pub-c3f08c78592b4d-7c837dc8e1b00a42e8.r2.dev/01-Timor-Leste-Penal-Code-2009.pdf#page=42)	Up to 3 years' imprisonment for an abortion with the mother's consent; 2 to 8 years' imprisonment for an abortion without the mother's consent; up to 3 years' imprisonment for a mother
44.	Brunei	YES	–	–	–	–	–	Syariah Penal Code Order 2013, Article 161 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Brunei-Darussalam-Syariah-Penal-Code-Order-2013.pdf#page=75)	The total ban on abortion is based on Sharia law. Penalty: up to \$12,000 or up to 3 years' imprisonment (or both)
45.	Haiti	YES	–	–	–	–	–	Penal Code 1985, Article 262 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Haiti-Penal-Code-1985.pdf#page=23)	Punishment by imprisonment; without specifying the extent; for doctors, surgeons and other health professionals as well as pharmacists: hard labour

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46.	Bahrain	YES	–	–	–	–	–	Penal Code 1976, Articles 321-322 (https://www.unodc.org/cld/uploads/res/document/bhr/1976/penal-code_html/Bahrain_Penal_Code_Decree_No_15_of_1976_EN_translation_-_non_official.pdf); Legislative Decree No (7) for 1989 on the Practice of Human Medicine and Dentistry (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02b-Bahrain-Legislative-Decree-English-1989.pdf#page=6-English)	Up to 10 years' imprisonment for having an abortion without the mother's consent; up to 6 months' imprisonment for a mother
47.	Sudan	–	Rape* – up to 90 days	–	–	–	–	Criminal Act 1991, Articles 135–137 (https://features.hrw.org/features/african-union/files/Sudan%20-%201991%20Criminal%20Act%20as%20amended%20in%202009.pdf)	
48.	Laos	–	Rape – up to 28 weeks	–	–	–	–	Penal Code 2017, Article 201 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/08-Laos-Penal-Code-2017.pdf); Unsafe Abortion Prevention and Care Practical Guideline for Health Workers (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/07-Laos-Unsafe-Abortion-Prevention-and-Care-Practical-Guideline-for-Health-Workers-2016.pdf)	
49.	Iran	–	–	Up to delivery	–	–	–	Islamic Penal Code of the Islamic Republic of Iran, Book Five 1996, Articles 623–624 (https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five); Guidance on Medical Indications and Procedure for Therapeutic Abortion 2005 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/10-Iran-Guidance-on-medical-indications-and-procedure-for-therapeutic-abortion-2005.pdf#page=1); Therapeutic Abortion Act 2005 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Iran-Therapeutic-Abortion-Act-2005.pdf#page=1)	
50.	Costa Rica	–	–	–	Up to delivery*	–	–	Penal Code 1970 (amended 2010), Articles 118–121 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Costa-Rica-Penal-Code-2010.pdf#page=34)	*As a consequence of the repeal of Presidential Decree No. 42113-S (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/03-Costa-Rica-Norma-Tecnica-2019.pdf#page=7) by Presidential Decree No. 45233-S (https://www.imprentanacional.go.cr/pub/2025/10/16/ALCA134_16_10_2025.pdf) it is not permissible to perform an abortion due to the mother's health
51.	Papua New Guinea	–	–	–	YES*	–	–	Criminal Code Act 1974, Articles 225–226 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-PNG-Criminal-Code-Act-1974.pdf#page=88)	* Abortion resulting from 'local custom' is permitted, furthermore, in 1974, the Department of Justice of the Government of Papua New Guinea expressed the opinion that the preservation of life includes the preservation of the physical and mental health of the pregnant woman
52.	Vanuatu	–	–	–	YES*	–	–	Penal Code 1981 (consolidated edition 2006), Article 117 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Vanuatu-Penal-Code-2006.pdf#page=37)	* The Code allows abortion 'for compelling medical reasons' but does not define them

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
53.	Pakistan	–	–	–	Up to 120 days*	–	–	Penal Code (Act XLV) 1860, Article 338 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Pakistan-Penal-Code-1860.pdf#page=80)	* Due to 'necessary treatment'. The limit of 120 days is set by the doctrine of Islamic law (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/08-Pakistan-Punjab-Service-Delivery-Standards-and-Guidelines-Department-of-Health-Punjab-2015.pdf#page=11)
54.	Saudi Arabia	–	–	–	Up to 4 months*	–	–	Health Professions Practice Regulations 2005, Article 22 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Saudi-Arabia-Laws-pertaining-to-health-professions-practice.pdf#page=12)	* Only where the risk is serious (serious harm). During the first 40 days of pregnancy, an abortion can also be performed for another 'legitimate reason', which cannot be interpreted as a social rationale
55.	Samoa	–	–	–	Up to 20 weeks*	–	–	Crimes Act 2013 (formerly Crimes Ordinance 1961), Articles 111-117 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/04a-Samoa-Crimes-Act-EN-2013.pdf#page=52)	* The premise also includes mental health
56.	Malaysia	–	–	–	Up to 22 weeks or until the baby reaches 500 g*	–	–	Guideline on Termination of Pregnancy (TOP) for Hospitals in the Ministry of Health (Malaysia), 2012 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Malaysia-Guideline-on-Termination-of-Pregnancy-2012.pdf); Penal Code (Act 574), Articles 312-314 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Malaysia-Penal%20Code-2006.pdf#page=126)	* The premise also includes mental health
57.	Gambia	–	–	–	Up to delivery*	–	–	Criminal Code 1933, Articles 140-142, 198-199 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Gambia-Criminal-Code-Chapters-XII-to-XXIII.pdf#page=8)	* Exception for saving the mother's health permitted under the 1938 <i>Rex v. Bourne</i> decision (https://msu.edu/user/schwenkl/abtrbng/rvbourne.htm)
	Jamaica	–	–	–	Up to delivery*	–	–	Offences Against the Person Act 1864, Articles 72-73 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Jamaica-Offences-Against-the-Person-Act-1864.pdf#page=43)	* Exception for saving the mother's health permitted under the 1938 <i>Rex v. Bourne</i> decision (https://msu.edu/user/schwenkl/abtrbng/rvbourne.htm)
	Nigeria	–	–	–	Up to delivery*	–	–	Criminal Code Act (Chapter 77) 1916 (consolidated 1990), Articles 228-230 – Southern States (https://www.unodc.org/cid/uploads/res/document/nga/1916/criminal_code_act_html/Nigeria_Criminal_Code_Act_1916.pdf); Penal Code Law 1959, Articles 232-236 (incorporated into federal law by the Penal Code (Northern States) Federal Provisions Act 1960) – Northern States (https://anticor.world/assets/brics/The%20Panel%20Code%20Law%2C%20Northern%20Region%20No.18%201959.pdf#page=90); National Guidelines on Safe Termination of Pregnancy, 2018 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/04-Nigeria-National-Guidelines-on-Safe-Termination-of-Pregnancy-for-Legal-Indications-2018.pdf)	* Exception of saving the mother's health permitted under the 1938 <i>Rex v. Bourne</i> decision (https://msu.edu/user/schwenkl/abtrbng/rvbourne.htm), interpreted narrowly
	Saint Kitts and Nevis	–	–	–	Up to delivery*	–	–	Offences Against the Person Act 1873 (revised edition 2002), Articles 53-54 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-St-Kitts-and-Nevis-Offences-Against-the-Person-Act-2002.pdf#page=18)	* Exception for saving the mother's health permitted under the 1938 <i>Rex v. Bourne</i> decision (https://msu.edu/user/schwenkl/abtrbng/rvbourne.htm)
	Sierra Leone	–	–	–	Up to delivery*	–	–	Offences against the Person (British) Act 1861, Articles 58-59 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Sierra-Leone-Offences-against-the-Person-Act-1861.pdf#page=16)	* Exception for saving the mother's health permitted under the 1938 <i>Rex v. Bourne</i> decision (https://msu.edu/user/schwenkl/abtrbng/rvbourne.htm)

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
62.	Burundi	–	–	–	Up to delivery	–	–	Penal Code 2009, Articles 505-511 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Burundi-Penal-Code-2009.pdf#page=141)	
	Djibouti	–	–	–	Up to delivery*	–	–	Penal Code 1995, Articles 447-450 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Djibouti-Penal-Code.pdf#page=139)	* Article 450 of the Penal Code: 'The termination of pregnancy carried out by a doctor for therapeutic reasons in accordance with the Public Health Act does not constitute an abortion.'
	Jordan	–	–	–	Up to delivery	–	–	Penal Code 1960, Articles 321-325 (https://bwciimplementation.org/sites/default/files/resource/Jordan_PenalCode_EN.pdf#page=61); Public Health Law 2008, Article 12 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/02-Jordan-National-Health-Law-2008.pdf#page=4)	
	Morocco	–	–	–	Up to delivery	–	–	Penal Code 1962 (consolidated version 2015), Articles 449-458 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Morocco-Penal-Code-2015.pdf#page=164)	
	Tanzania	–	–	–	Up to delivery*	–	–	Penal Code 1945 (revised edition 1981), Articles 150-152, 219, 230 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-United-Republic-of-Tanzania-Penal-Code-1981.pdf#page=57)	* Exceptions on the grounds of maternal health, on the grounds of a prohibited act, and a eugenic exception are provided for in the Ministry of Health's 2013 medical standards (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/04-United-Republic-of-Tanzania-Standard-Treatment-Guidelines-and-Essential-Medicines-List-2013.pdf); however the Ministry of Health's 2017 medical standards do not contain such exceptions (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/06-Tanzania-Standard-Treatment-Guidelines-and-National-Essential-Medicines-List-2017.pdf); exception for saving the mother's health permitted under the 1938 Rex v. Bourne decision (https://msu.edu/user/schwenkl/abtrbng/rvbourne.htm)
	Trinidad and Tobago	–	–	–	Up to delivery*	–	–	Offences Against the Person Act 1925, Articles 56-57 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Trinidad-and-Tobago-Offences-against-the-Person-Act-1925.pdf#page=19); Code of Ethics in the Practice of Medicine (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/03-Trinidad-and-Tobago-Code-of-Ethics-in-the-Practice-of-Medicine-Responsibility-to-Profession.pdf#page=5)	* The premise also includes mental health; exception for saving the mother's health permitted under the 1938 Rex v. Bourne decision (https://msu.edu/user/schwenkl/abtrbng/rvbourne.htm).
68.	Peru	–	–	–	Up to delivery	–	–	Penal Code 1991, Articles 114-120 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Peru-Penal-Code-1991.pdf#page=57)	Abortion in cases where the pregnancy is the result of extramarital rape or artificial insemination carried out without the woman's consent, as well as eugenic abortion, carry a lesser penalty: up to a maximum of 3 months' imprisonment

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69.	Algeria	–	–	–	Up to delivery*	–	–	Penal Code 1966, Articles 304-310 (http://www.wipo.int/wipolex/en/text.jsp?file_id=228301); Health Law 2018, Article 77 (https://p4h.world/app/uploads/2024/09/Loi-de-Sante-2018.x73677.pdf)	* The premise also includes mental health, literally; therapeutic termination of pregnancy aims to preserve the health of the mother when her life or psychological and mental balance is seriously threatened by pregnancy
	Egypt	–	–	–	Up to delivery	–	–	Penal Code 1937, Articles 260-266 (https://hrlibrary.umn.edu/research/Egypt/criminal-code.pdf#page=100); Profession Ethics Regulations 2003 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/04-Egypt-Code-of-Medical-Ethics-Ministry-of-Health-and-Population-2003.pdf#page=10)	
71.	Brazil	–	Rape – up to delivery	NO*	–	–	–	Penal Code 1940, Articles 124-128 (https://pub-c3f08c78592b4d-7c837dc8e1b00a42e8.r2.dev/09-Brazil-Penal-Code-1940.pdf#page=54)	* 12 April 2012 – The Federal Supreme Court ruled on the admissibility of abortion of an anencephalic child (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/04-Brazil-Constitutional-Court-Resolution.pdf#page=3)
72.	Central African Republic	–	Up to 8 weeks	Up to 8 weeks	–	–	–	Penal Code 2010, Articles 78-80 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Central-African-Republic-Penal-Code-2010.pdf#page=13)	
73.	Gabon	–	Up to 10 weeks	Up to 10 weeks	–	–	–	Penal Code 2019, Articles 376-378 (https://counterterrorlaw.info/assets/downloads/Gabon-Code-2019-penal.pdf#page=77)	
74.	Indonesia	–	Up to 14 weeks	Up to 14 weeks	–	–	–	Penal Code 2023 (in force since 2 January 2026), Articles 463–465 (https://the-world-is-watching.org/wp-content/uploads/2023/02/2023-Indonesia-Penal-Code.pdf#page=108); Indonesian Law No. 17 of 2023 on Health, Articles 60-62, 427-429 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/10-Indonesia-Health-Law-2023.pdf)	
75.	Panama	–	Up to 2 months	Up to 24 weeks*	–	–	–	Penal Code 2007, Articles 141-144 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Panama-Penal-Code-2015.pdf#page=108)	* The eugenic exception applies only to life-threatening defects of the foetus and is derived from the Ministry of Health's 2007 standards (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/03-Panama-Integral-Revised-Standards-on-Women-Health-Ministry-of-Health-2007.pdf#page=59)
76.	United Arab Emirates	–	Up to 120 days	Up to 120 days	–	–	–	Criminal Code 1987, Article 391 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/05-UAE-Federal-Law-Decree-Promulgating-the-Crime-and-Penalties-2021.pdf) Cabinet Resolution 44/2024 (Cabinet Resolution 44/2024 https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/06-UAE-Cabinet-Resolution-Concerning-the-Permitted-Abortion-Cases-2024.pdf) Medical Liability Act of 2016. (https://mohap.gov.ae/documents/2017/454960/126c23cb-1b92-4820-9662-ca60c0241462.pdf/89fb7ca9-d0ea-630b-88ca-fb-8040ba77a8?t=1737675580211)	

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77.	Chile	–	Up to 12 weeks (up to 14 weeks – when the mother is under 14)	Up to delivery*	–	–	–	Sanitary Code 1967, Article 119 (https://www.leychile.cl/Navegar?idNorma=5595)	Three exceptions (including one for the protection of the already protected life of the mother) were introduced by a law effective from 23 September 2017 (https://www.leychile.cl/Navegar?idNorma=1108237). * 'Abortion is permitted when the embryo or fetus has an acquired or genetically congenital defect incompatible with independent ectopic life, in any case of a fatal nature' (https://abortion-policies.srrh.org/generate-pdf?country_id=153)
78.	Maldives	–	Sexual assault or incest – up to delivery	Up to 120 days*	–	–	–	Penal Code 2014, Article 416 (https://database.ilga.org/api/download/download/1/MV%20-%20LEG%20-%20Penal%20Code%20(2014)%20-%20TR(en).pdf?page=77)	The Penal Code criminalises as a crime an abortion carried out after the 120th day of pregnancy, except when the pregnancy is the result of sexual assault or incest. * The Fatwa of 11 December 2013 states that it is permissible '[w]hen, in a legal marriage, it is believed that the conceived foetus is affected by thalassaemia, sickle cell disease or that at birth the foetus is physically or mentally deformed and that it cannot be cured by any means - to terminate the life of the foetus within 120 days of gestation' (Country Profile on Universal Access to Sexual and Reproductive Rights: Maldives, https://arrow.org.my/wp-content/uploads/2017/04/Country-Profile-on-Sexual-and-Reproductive-Rights-Maldives.pdf)
79.	Côte d'Ivoire	–	Up to delivery	Up to delivery	–	–	–	Penal Code 2019, Articles 425-429 (https://sgbv-ihda.uwazi.io/api/files/1625043312808ain-f3x9qhk.pdf?page=34); Law amending the Penal Code 2024 (containing change of Article 427) (https://loidici.biz/2024/07/12/loi-n2024-358-du-11-juin-2024-modifiant-la-loi-n2019-574-du-26-juin-2019-portant-code-penal/lois-article-par-article/codes/le-code-penal/50891/naty)	
80.	Kenya	–	YES*	–	Viability**	–	–	Constitution of Kenya 2010, Article 26 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Kenya-Constitution-2010.pdf?page=24); Penal Code 1930 (revised edition 2014), Articles 158-160 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/02-Kenya-Penal-Code-2014.pdf?page=61); <i>Federation of Women Lawyers (FIDA – Kenya) & 3 others v. Attorney General & 2 others</i> , Petition No. 266 of 2015 [2019] KEHC 6928 (KLR), High Court of Kenya at Nairobi, Constitutional and Human Rights Division, 12 June 2019 (https://new.kenyalaw.org/akn/ke/judgment/kehc/2019/6928/eng@2019-06-12); National Guidelines on Management of Sexual Violence, 2014 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/12-Kenya-National-Guidelines-on-Management-of-Sexual-Violence-2014.pdf); AfricanLIL, <i>Abortion allowed when pregnancy follows rape – Kenya's constitutional court</i> (https://africanlil.org/article/20190619-abortion-allowed-when-pregnancy-follows-rape-kenyas-constitutional-court)	According to Article 26(2) of the Constitution of Kenya, human life begins from the moment of conception. However, according to section 4, there are constitutional exceptions to save the life and health of the mother, and the ordinary legislature has the power to allow further exceptions. * The Supreme Court has ruled that a pregnancy resulting from rape and defilement, if in the opinion of a trained health professional it endangers the physical, mental and social well-being of a mother, may be terminated under Article 26(4) of the Constitution (see Supreme Court Judgment on Petition No. 266 of 2015, § 399). The National Guidelines for Dealing with Sexual Violence state: 'The victim should be provided with information on child adoption or other available options. Health care providers and the victim should be aware of the constitutional provisions on abortion' (p. 25). The National Guidelines also list 'access to termination of pregnancy and post-abortion care in cases of pregnancy from rape' as one of the rights of victims of sexual violence (p. 78). However, in the Sexual Violence Act No. 3 of 2006, as amended in 2009, there is no reference to abortion for rape victims. ** Viability – ability to survive outside the mother's body

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81.	Liechtenstein	–	YES*	–	Up to delivery	–	–	Criminal Code 1987, paras. 96-98 (https://www.regierung.li/files/attachments/311-0-01-03-2023-en.pdf#page=73)	* Abortion is permitted if the mother is under the age of 14
82.	Saint Lucia	–	Up to 12 weeks	–	Up to 12 weeks*	–	–	Criminal Code 2004 (revised edition 2005), Article 166 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Saint-Lucia-Penal-Code-2005.pdf#page=111)	* The premise also includes mental health
83.	Bolivia	–	Up to 22 weeks or until the baby reaches 500 g	–	Up to 22 weeks or until the baby reaches 500 g	–	–	Technical Procedure for the Provision of Health Services in the Framework of Constitutional Plurinational Judgment 0206/2014 (Bolivia), Ministry of Health, 2015 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/15-Bolivia-Technical-Procedure-2014.pdf#page=43)	Automatic impunity for mothers
84.	Poland	–	Up to 12 weeks	–	Up to delivery*	–	–	Act of 7 January 1993 on family planning, protection of the human foetus and the conditions of permissibility of abortion (https://dziennikustaw.gov.pl/D2022000157501.pdf); Judgment of the Constitutional Court of 22 October 2020, ref. K 1/20 (https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210000175/O/D20210175.pdf); Guidelines on the Applicable Legal Provisions Regarding Access to the Termination of Pregnancy Procedure, Ministry of Health of the Republic of Poland, 2024 (https://www.gov.pl/web/zdrowie/wytyczne-w-sprawie-obowiazujacych-przepisow-prawnych-dotyczacych-dostepu-do-procedury-przerwania-ciazy)	Automatic impunity for mothers. * Since 2024, guidelines issued by Minister of Health Izabela Leszczyna on terminating pregnancy have been applied in practice, under which, it is claimed, any child can be killed on the basis of a certificate from a doctor. An amended regulation of the Minister of Health on the general terms of contracts for healthcare services introduces severe financial penalties for not performing an abortion. If these guidelines were taken into account, Poland would rank 192nd.
85.	Angola	–	Up to 16 weeks	–	Up to delivery	–	–	Penal Code 2020 (in force since 9 February 2021), Article 156 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/11-Angola-Penal-Code-2019.pdf#page=25)	
86.	Ecuador	–	Up to 12 weeks (up to 18 weeks for minors, Indigenous women, and those living in rural areas)*	–	Up to delivery**	–	–	Comprehensive Organic Penal Code 2014, Articles 147-150 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Ecuador-Penal-Code-2014.pdf#page=70); Clinical Practice Guideline 'Therapeutic Abortion Care', Ministry of Public Health of Ecuador, 2014 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/03-Ecuador-Guidelines-Therapeutic-abortion-Ministry-of-Health-2014.pdf)	* In 2021 the Constitutional Court removed the phrase 'who is mentally handicapped' from Article 150 of the Penal Code, thereby stating that voluntary abortion in the case of rape cannot be criminalised under Article 149 in respect of all women, not just those with 'intellectual disabilities'. The court also asked the legislature to 'create an appropriate regulatory framework for voluntary abortion in the case of rape' and set out certain guidelines and a timetable for this regulation (https://abortion-policies.srhr.org/country/ecuador/). ** The Criminal Code does not specify the term 'health'. However, the Therapeutic Abortion Guidelines state that health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. This definition is also contained in the Health Law (Global Abortion Policies Database, <i>Country Profile: Ecuador</i> , downloadable pdf file at: https://abortion-policies.srhr.org/country/ecuador/)
87.	Eritrea	–	Up to delivery	–	Up to delivery	–	–	Penal Code 2015, Articles 281-283 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/04-Eritrea-Penal-Code-2015.pdf#page=204)	
88.	Grenada	–	–	YES*	YES*	–	–	Criminal Code 1987, Articles 234, 250 (http://www.oas.org/juridico/spanish/mesicic2_grd_criminal_code.PDF#page=51)	* In practice, abortion on 'medical or surgical' grounds is permitted, which is sometimes interpreted broadly

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89.	Kuwait	–	–	Up to 4 months	Up to 4 months	–	–	Decree-Law on the Practice of Human Medicine, Dentistry and Associated Professions 1981 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/02-Kuwait-Ministerial-Decree-No-25-Practice-of-Medicine-1981.pdf); Global Abortion Policies Database, <i>Country Profile: Kuwait</i> (https://abortion-policies.srhr.org/country/kuwait/); Wikipedia.org, <i>Women in Kuwait</i> (https://en.wikipedia.org/wiki/Women_in_Kuwait)	
	Qatar	–	–	Up to 4 months	Up to 4 months	–	–	Penal Code 2004, Articles 315-317 (https://pub-c3f08c78592b4d-7c837dc8e1b00a42e8.r2.dev/01-Qatar-Penal-Code-11-2004.pdf#page=70); Law with respect to the Practice of the Profession of Medicine and Dental Medicine and Surgery 1983 (https://almeezan.qa/LawPage.aspx?id=253&language=en)	
91.	Iraq	–	–	Up to delivery	Up to delivery	–	–	Penal Code 1969 (amended 2010), Articles 417-420 (https://www.refworld.org/legal/legislation/nat-legbod/1969/en/103522); First Amendment to Instructions to Health Committees No. 1 of 1995 (Iraq), Instructions No. 13 of 2001, Higher Judicial Council (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Iraq-The-First-Amendment-to-Instructions-to-Health-Committees-Higher-Judicial-Council-2001.pdf#page=2)	
	Niger	–	–	Up to delivery	Up to delivery	–	–	Penal Code 2003 (amended 2008), Articles 295-297 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Niger-Penal-Code-2008.pdf#page=54); Reproductive Health Law 2006, Article 16 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Niger-Reproductive-Health-Law-2006.pdf#page=5)	
93.	Belize	–	–	Up to delivery	Up to delivery*	–	–	Criminal Code 1981 (revised edition 2020), Article 112 (https://www.agm.gov.bz/uploads/laws/639762f72be2e_Cap_101_Criminal_Code_Act.pdf#page=90)	* In the rationale for permitting abortion on the grounds of the mother's health, the impact of the continuation of the pregnancy and the possible birth of the child on the health of the pregnant woman's already born children is also taken into account: whether the continuation of the pregnancy entails greater risks than termination of the pregnancy
94.	Bahamas	–	YES*	YES*	YES*	–	–	Penal Code 1924 (revised 2010), Articles 295, 313 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Bahamas-Penal-Code-2010.pdf#page=165)	* In practice, abortion on 'medical or surgical' grounds is allowed, which is sometimes interpreted broadly as a rationale to protect the mother's health, including mental health, e.g., when the pregnancy resulted from rape
	Uganda	–	YES*	YES*	YES*	–	–	Constitution of 8 October 1995, Article 22(2) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Uganda-Constitution-1995.pdf#page=36); Penal Code 1950, Articles 141-143, 212, 224 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/07-Uganda-Penal-Code-Act.pdf#page=67)	* Exceptions are provided for in non-statutory health policy documents (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/11-Uganda-Clinical-Guidelines-for-the-Management-of-Common-Health-Conditions-2023.pdf , page 789); exception for saving the mother's health permitted under the 1938 Rex v. Bourne decision (https://msu.edu/user/schwenk/abtrbng/rbourne.htm)
96.	Seychelles	–	Up to 12 weeks	Up to 12 weeks	Up to 12 weeks	–	–	Termination of Pregnancy Act 1994 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Seychelles-Termination-of-Pregnancy-Act-2012.pdf)	

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
97.	Botswana	–	Up to 16 weeks	Up to 16 weeks	Up to 16 weeks	–	–	Penal Code 1964, Articles 160-162 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/02-Botswana-Penal-Code.pdf#page=65)	
98.	Zimbabwe	–	Up to 22 weeks or until the baby reaches 500 g	Up to 22 weeks or until the baby reaches 500 g	Up to 22 weeks or until the baby reaches 500 g	–	–	Termination of Pregnancy Act 1977 (amended 2001) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Zimbabwe-Abortion-Law-1977.pdf); National Guidelines for Comprehensive Abortion Care, 2014 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/05-Zimbabwe-National-Guidelines-for-Comprehensive-Abortion-care-2014.pdf#page=8); Global Abortion Policies Database, <i>Country Profile: Zimbabwe</i> https://abortion-policies.srhr.org/country/zimbabwe)	
99.	Equatorial Guinea	–	Up to 12 weeks*	Up to 12 weeks*	Up to delivery	–	–	Abortion Regulation Law 1991 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/03-Equatorial-Guinea-Law-on-Regulation-of-Abortion-1991.pdf); Law on Sexual and Reproductive Rights 2020, Articles 23-24 (https://guineasalud.org/archivos/Ordenes/Ley%20Num_4-2020.pdf#page=13)	* Article 24 of Abortion Law 4/2020 permits abortion after 12 weeks (and up to 22 weeks) in exceptional circumstances
100.	Mozambique	–	Up to 16 weeks	Up to 24 weeks	Up to delivery	–	–	Penal Code 2019, Articles 166-169 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/08-Mozambique-Penal-Code-2019.pdf#page=21)	
101.	Ethiopia	–	Up to 28 weeks or until the baby reaches 1000 g	Up to 28 weeks or until the baby reaches 1000 g	Up to 28 weeks from the last menstrual period or until the baby reaches 1000 g	–	–	Criminal Code 2004 (in force since 9 May 2005), Articles 545-552 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/05-Ethiopia-Criminal-Code-2004.pdf#page=186)	
102.	Cameroon	–	Up to 28 weeks	Up to 28 weeks	Up to 28 weeks	–	–	Standards and Guidelines for Reproductive Health Services, Ministry of Public Health, 2018 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/06-Cameroon-Family-Planning-Guidelines-2018.pdf#page=78); Penal Code 2016, Article 337 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/08-Cameroon-Penal-Code-2016.pdf#page=129)	
103.	Ghana	–	Up to 28 weeks	Up to 28 weeks	Up to 28 weeks*	–	–	Criminal Code 1960 (amended 2003), Section 58 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Ghana-Criminal-Code-1960.pdf#page=42); Prevention & Management of Unsafe Abortion: Comprehensive Abortion Care Services Standards and Protocols, 2012 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/02-Ghana-Comprehensive-Abortion-Care-Services-Standards-and-Protocols-Ghana-Health-Service-2012.pdf#page=15)	* The premise also includes mental health

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103.	Eswatini	–	Up to 28 weeks	Up to 28 weeks	Up to 28 weeks*	–	–	Constitution of 26 July 2005, Article 15(5) (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/01-Kingdom-of-Eswatini-Constitution-2005.pdf#page=15); Health Act 2023, Article 44 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/06-Eswatini-Health-Act-2023.pdf#page=44); Standard Treatment Guidelines and Essential Medicines List of Common Medical Conditions in the Kingdom Of Eswatini, Ministry of Health, 2021 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/08-Eswatini-Standard-Treatment-Guidelines-and-EML-2021.pdf)	* The premise also includes mental health. In accordance with Article 15(5) of the Constitution, the ordinary legislature has the power to allow further exceptions
105.	Taiwan (Republic of China)	–	Up to 24 weeks	Up to 24 weeks	Up to delivery	–	–	Reproductive Health Act 2009, Article 9 (https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?P-Code=L0070001); Criminal Code of the Republic of China 2025, Articles 288-292 (https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001)	
106.	Monaco	–	Rape – up to 12 weeks	Up to delivery	Up to delivery	–	–	Criminal Code 1967 (in force since 1 January 1968), Article 248 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/01-Monaco-Penal-Code.pdf)	
107.	Burkina Faso	–	Up to 14 weeks	Up to delivery	Up to delivery	–	–	Penal Code 2018 (https://www.refworld.org/legal/legislation/nat-legbod/2018/fr/122706), Articles 513-10, 513-13, 513-14; Reproductive Health Law 2005 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/03-Burkina-Faso-Reproductive-Health-Law-2005.pdf)	
108.	Mauritius	–	Up to 14 weeks	Up to delivery	Up to delivery*	–	–	Criminal Code (Amendment) Act 2012 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/02-Mauritius-Criminal-Code-Amendment-Act-2012.pdf)	* The premise also includes mental health
109.	Fiji	–	Up to 20 weeks	Up to delivery	Up to delivery	–	–	Criminal Decree 2009, Article 234 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/01-Fiji-Crimes-Decree-2009.pdf#page=84)	
110.	Rwanda	–	Up to 22 weeks	Up to delivery	Up to delivery	–	–	Law determining offences and penalties in general 2018 (amended 2023), Articles 123-127 (version from 2018: https://rwandali.org/akn/rw/act/law/2018/68/eng@2018-09-27 ; amendment from 2023 containing change of the Article 123: https://www.mini-just.gov.rw/index.php?eID=dump-File&t=f&f=86265&to-ken=7a1c0cebbe55c76696b-87ds5ac0c3894c3347c8); Ministerial Order determining conditions to be satisfied for a medical doctor to perform an abortion, 2019 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/10-Rwanda-Order-on-abortion-MoH-2019.pdf#page=6); National Guidelines for Termination of Pregnancy, Ministry of Health, 2024 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/14-Rwanda-Termination-of-Pregnancy-Guidelines-2024.pdf)	The 2023 amendment revised Article 123 to criminalise a woman's consent to an abortion performed by another person, making it subject to the same penalty as self-induced abortion

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111.	Bhutan	–	Up to delivery	Up to delivery	Up to delivery	–	–	Penal Code 2004 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/01-Bhutan-Penal-Code-2004.pdf#page=35), Articles 146-147; Standard Guidelines for the Health Workers on Management of Complications of Abortion (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/03-Bhutan-Standard-Guidelines-on-Management-of-Complications-of-Abortion-Ministry-of-Health.pdf#page=9)	
	Chad	–	Up to delivery	Up to delivery	Up to delivery	–	–	Penal Code 2017, Articles 356-358 (https://www.unodc.org/cld/uploads/res/document/code-pnal_html/Tchad-Code-penal-2017.pdf)	
	Guinea	–	Up to delivery	Up to delivery	Up to delivery	–	–	Penal Code 2016, Articles 262-263 (https://policehumanrightsresources.org/content/uploads/2019/07/NOUVEAU-CODE-PENAL-DE-LA-REPUBLIQUE-DE-GUINEE-Fevrier-2016.pdf#page=88); Reproductive Health Law 2000, Article 12 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/05-Guinea-Reproductive-Health-Law-2000.pdf#page=4)	
	Lesotho	–	Up to delivery	Up to delivery	Up to delivery	–	–	Penal Code Act 2010, Article 45 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/01-Lesotho-Penal-Code-2010.pdf#page=24)	
	Mali	–	Up to delivery	Up to delivery	Up to delivery	–	–	Penal Code 2024, Articles 321.19-321.21 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/09-Mali-Penal-Code-2024.pdf#page=52); Reproductive Health Law 2002, Article 13 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/02-Mali-Reproductive-Health-Law-2002.pdf#page=2)	
	Namibia	–	Up to delivery	Up to delivery	Up to delivery	–	–	Abortion and Sterilisation Act 2 1975 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/01-Namibia-Abortion-and-Sterilization-Act-1975.pdf)	
	Togo	–	Up to delivery	Up to delivery	Up to delivery	–	–	Public Health Code 2009, Articles 106-109 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/01-TOGO-PUBLIC-HEALTH-CODE-2009.pdf#page=19); Reproductive Health Law 2007, articles 42-44 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/03-TOGO-REPRODUCTIVE-HEALTH-LAW-2007.pdf#page=4)	
118.	Liberia	–	Up to delivery	Up to delivery	Up to delivery*	–	–	Penal Law – Title 26 – Liberian Code of Laws Revised 1976 (published 1978), para. 16.3 (https://pub-c3f08c78592b4d7c837d-c8eb00a42e8.r2.dev/01-Liberia-Penal-Law-1978.pdf#page=74)	* The premise also includes mental health
119.	Saint Vincent and the Grenadines	–	Up to delivery	Up to delivery	Up to delivery*	–	–	Criminal Code 1988 (amended 1992), Articles 149-151 (https://www.oas.org/en/sla/dlc/mesicic/docs/mesicic5_svg_annex8.pdf#page=45)	* In the premise for permitting abortion on the grounds of the mother's health, the impact of the continuation of the pregnancy and the possible birth of the child on the health of the woman's existing children is also taken into account: whether continuing the pregnancy entails greater risks than terminating it

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
120.	Israel	–	Up to delivery	Up to delivery	Up to delivery	–	–	Penal Law 1977, Articles 312-321 (https://pub-c3f08c78592b4d-7c837dc8e1b00a42e8.r2.dev/01-Israel-Penal-Law-1977.pdf#page=93)	Abortion also permitted if the mother is under 18 or over 40. Automatic impunity for mothers
121.	Barbados	–	Up to delivery	Up to delivery	Up to delivery	NO*	–	Medical Termination of Pregnancy 1983 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Barbados-Medical-Termination-of-Pregnancy-Act-1983.pdf)	* When giving consent to abortion, the doctor is to 'take into account the social and economic environment of the pregnant woman'
122.	Benin	–	Up to delivery	Up to delivery	Up to delivery	Up to 12 weeks	–	Sexual and Reproductive Health Law 2003, Article 17 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Benin-Law-on-Sexual-and-Reproductive-Health-2003.pdf#page=18); Law amending and supplementing Sexual and Reproductive Health Law 2021 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/10-Benin-Sexual-and-Reproductive-Health-Law-2021.pdf); Ministerial Voluntary Interruption of Pregnancy Decree 2023 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/12-Benin-Ministerial-Decree-Fixing-the-Conditions-of-Voluntary-Interruption-of-Pregnancy-2023.pdf)	
123.	Japan	–	Up to 22 weeks	–	Up to 22 weeks	Up to 22 weeks	–	Criminal Code 1907, Articles 212-216 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/04-Japan-Penal-Code-1907.pdf#page=70); Maternal Health Protection 1948, Article 14 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Japan-Maternal-Health-Act-1948.pdf#page=3); Wikipedia.org, Abortion in Japan (https://en.wikipedia.org/wiki/Abortion_in_Japan); Global Abortion Policies Database, Country Profile: Japan (https://abortion-policies.srhr.org/country/japan)	
124.	India	–	Up to 24 weeks	Up to 24 weeks	Up to 24 weeks	Up to 24 weeks	–	Penal Code 1860, Articles 312–316 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/11-India-Penal-Code-1860.pdf#page=140); Medical Termination of Pregnancy Act 1971 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-India-Medical-Termination-of-Pregnancy-Act-1971.pdf); Medical Termination of Pregnancy (Amendment) Act 2021 (https://www.mcolegals.in/kb/Analysing_the_Medical_Termination_of_Pregnancy_Amendment_Act_2021.pdf); Global Abortion Policies Database, Country Profile: India (https://abortion-policies.srhr.org/country/india)	'The following categories of women shall be considered eligible for termination of pregnancy [...] for a period of up to twenty-four weeks, namely: (a) survivors of sexual assault or rape or incest; (b) minors; (c) change of marital status during the ongoing pregnancy (widowhood and divorce); (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)]; (e) mentally ill women, including mental retardation; (f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government. The anguish caused by the unwanted pregnancy in the following situations is presumed to cause grave injury to the mental health of the pregnant woman where there has been failure of any device or method used by a married woman or her husband for the purpose of limiting the number of children.' (Global Abortion Policies Database, Country Profile: India, downloadable pdf file at: https://abortion-policies.srhr.org/country/india/)

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125.	Zambia	–	–	Up to 23 weeks*	Up to 23 weeks*	Up to delivery**	–	Termination of Pregnancy Act 1972 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Zambia-Termination-of-Pregnancy-Act-amended-1994.pdf); Standards and Guidelines for Comprehensive Abortion Care in Zambia, 2017 (https://pub-c3f08c78592b4d-7c837dc8e1b00a42e8.r2.dev/11-Zambia-Standards-and-Guidelines-for-Comprehensive-Abortion-Care-2017.pdf#page=7)	* Comprehensive abortion care standards and guidelines define abortion as 'the termination of a pregnancy before the embryo/foetus is viable'. ** Family health is interpreted as a social premise
126.	Turkmenistan	–	–	–	Up to delivery	Up to 22 weeks	Up to 5 weeks	Protection of Public Health Law 2015, Article 19 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/03-Turkmenistan-Law-on-Public-Health-2015.pdf#page=9)	
127.	Guyana	–	Up to 16 weeks	Up to 16 weeks	Up to delivery*	Up to 16 weeks*	Up to 8 weeks	Medical Termination of Pregnancy Act 1995 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Guyana-Medical-Termination-of-Pregnancy-Act-1995.pdf)	If the mother is of unsound mind or infected with the HIV virus, abortion is permitted up to 12 weeks of pregnancy. Where there is clear evidence that the woman became pregnant despite the use of a recognised method of contraception by her or her partner, abortion is permitted up to 16 weeks of pregnancy. * The social premise is 'included' in the rationale relating to the health of the mother: 'In determining whether the continuation of the pregnancy would involve a risk of serious harm to the pregnant woman's health [...], the medical practitioner or authorised medical practitioner shall take into account the entire social and economic environment of the pregnant woman, actual or foreseeable' (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Guyana-Medical-Termination-of-Pregnancy-Act-1995.pdf)
128.	Slovenia	–	–	–	Up to delivery*	–	Up to 10 weeks	Act on Health Measures in Exercising Freedom of Choice in Childbearing 1977, Articles 17-30 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Slovenia-Law-on-Health-Measures-in-Exercising-Freedom-of-Choice-in-Childbearing-1977.pdf#page=3); Criminal Code 2008, Article 121 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/02-Slovenia-Criminal-Code-2008.pdf#page=52)	* 'Up to delivery' also applies if a woman's future maternity is at risk (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-SLOVENIA-LAW-ON-HEALTH-MEASURES-IN-EXERCISING-FREEDOM-OF-CHOICE-IN-CHILDBEARING-1977.pdf#page=3)
129.	Turkey	–	Rape – up to 20 weeks	Up to delivery	–	–	Up to 10 weeks	Criminal Code, Articles 99-101 (https://staff.emu.edu.tr/alexanderchefranov/Documents/CMPE455/Turk%C4%B1sh%20Cr%C4%B1m%C4%B1nal%20Code.pdf#page=28); Population Planning Law 1983 (https://www.refworld.org/legal/legislation/natlegbod/1983/74410); Regulation on the administration and control of womb evacuation and sterilization 1983 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/05-Turkey-Regulations-concerning-the-administration-and-control-of-womb-evacuation-and-sterilization-Ministry-of-Health-1983.pdf#page=2); Global Abortion Policies Database, Country Profile: Türkiye (https://abortion-policies.srhr.org/country/turkey)	

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
130.	Portugal	–	Up to 16 weeks*	Up to 24 weeks	Up to 12 weeks	–	Up to 10 weeks	Exclusion of Illegality in Cases of Voluntary Termination of Pregnancy Law 2007 (https://diariodarepublica.pt/dr/detalhe/lei/16-2007-519464); Ministerial Order on Termination of Pregnancy Procedures 2007 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Portugal-Termination-of-Pregnancy-Act-2007.pdf); Global Abortion Policies Database, <i>Country Profile: Portugal</i> (https://abortion-policies.srhr.org/country/portugal)	* Abortion is permitted during the first 16 weeks of pregnancy when the pregnancy is the result of a crime against sexual freedom and sexual self-determination
131.	Croatia	–	Up to delivery	Up to delivery	Up to delivery	–	Up to 10 weeks	Health Measures for Free Decision-Making on Childbearing Law 1978 (amended 2009) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Croatia-Abortion-Law-1978.pdf)	
132.	Serbia	–	Up to delivery	Up to delivery	Up to delivery	–	Up to 10 weeks	Termination of Pregnancy in Health Institutions Procedure Law 1995 (amended 2005) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Serbia-Law-on-Abortion-in-Health-Institutions-2005.pdf)	
133.	Montenegro	–	Up to 20 weeks	Up to 32 weeks	Up to 32 weeks	Up to 20 weeks	Up to 10 weeks	Conditions and Procedure for Termination of Pregnancy Law 2009 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Montenegro-Law-on-the-Interruption-of-Pregnancy-2009.pdf)	
134.	Bosnia and Herzegovina	–	Up to delivery*	Up to delivery*	Up to delivery*	Up to delivery*	Up to 10 weeks	Conditions and Procedure for Termination of Pregnancy Law 2008 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/03-Bosnia-and-Herzegovina-Republika-Srpska-Law-on-the-conditions-and-procedure-for-the-termination-of-pregnancy-2008.pdf)	* In Republika Srpska
135.	Mexico	–	Up to delivery	In 22 states, up to delivery (usually)	In 21 states, up to delivery (usually)	In 3 states, up to 12 weeks or up to delivery	Up to 12 weeks*	Supreme Court Judgment No. 271 of 7 September 2021 (https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6579); Supreme Court Judgment No. 273 of 9 September 2021 (https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6581); Supreme Court Judgment No. 314 of 6 September 2023 (https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=7504); Wikipedia.org, <i>Abortion legislation in Mexico</i> (https://es.wikipedia.org/wiki/Legislaci%C3%B3n_del_abor-to_en_M%C3%A9xico)	6 September 2023 – Mexico's Supreme Court ruled that 'criminal laws that completely criminalise the right to decide to terminate a pregnancy are contrary to the rights to human dignity, reproductive autonomy and free development of personality, the right to health and the right to equality and non-discrimination' (https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=7504). In the general opinion, the main consequence of this ruling is the permissibility of abortion on request up to 12 weeks; 27 of 32 states have introduced such regulations (Guanajuato, Nuevo León, Querétaro, Sonora, and Tamaulipas still prohibit abortion on request under state law)
136.	Lithuania	–	–	–	Up to 24 weeks	–	Up to 12 weeks	Regulation of the Minister of Health on the Organisation and Provision of Abortion Services 2022 (https://www.e-tar.lt/portala/legalAct/5cad1e201a1811edb-4cae1b158f98ea5)	Since 1 January 2023: widely available pharmacological abortion up to 9 weeks of pregnancy
137.	Switzerland	–	–	–	Up to delivery*	–	Up to 12 weeks	Penal Code 1937 (version of 2015), Articles 118-120 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Switzerland-Penalty-Code-2015.pdf#page=54)	* 'When necessary to eliminate the danger of a serious injury to the physical integrity of the woman' (Global Abortion Policies Database, <i>Country Profile: Switzerland</i> , pdf file downloadable at: https://abortion-policies.srhr.org/country/switzerland-2/)

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
138.	Latvia	–	Up to 12 weeks	–	Up to 24 weeks	–	Up to 12 weeks	Sexual and Reproductive Health Law 2002 (amended 2007) (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/02-Latvia-Sexual-and-Reproductive-Health-Law-Parliament-of-Latvia-2007.pdf); Cabinet of Ministers Regulation on the Organisational Procedures for Termination of Pregnancy 2003 (amended 2007) (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Latvia-Organisational-Procedures-for-Termination-of-Pregnancy-Cabinet-of-Ministers-2003.pdf)	
139.	Germany	–	Up to 12 weeks	–	Up to delivery	–	Up to 12 weeks*	Penal Code 1871 (amended 2022), Article 218a (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/04-Germany-Penal-Code-Last-Amended-2023.pdf); Act to Amend the Act on Assistance for Pregnant Women and Families 1995 (https://dejure.org/BGBI/1995/BGBI_1_S_1050); AWMF [Association of the Scientific Medical Societies in Germany] Clinical Guideline on Termination of Pregnancy in the First Trimester (containing section on legal requirements), 2022 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/11-Germany-Guidelines-on-abortion-in-the-first-trimester-2022.pdf#page=44); Global Abortion Policies Database, <i>Country Profile: Germany</i> (https://abortion-policies.srhr.org/country/germany)	* Counselling requirement applies
140.	Czech Republic	–	–	Up to 24 weeks	Up to 24 weeks	–	Up to 12 weeks	Artificial Termination of Pregnancy Law 1986 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Czech-Republic-Law-on-Abortion-Czech-National-Council-1986.pdf); European Commission, <i>Czech Republic</i> (https://eu-rd-platform.jrc.ec.europa.eu/eurocat/eurocat-members/registries/Czech-Republic-en); Decree of the Ministry of Health implementing the Artificial Termination of Pregnancy Law (amended 1992) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/04-Czech-Republic-Decree-implementing-the-Law-on-Abortion-Ministry-of-Health-1986.pdf#page=1)	
141.	Bulgaria	–	–	Up to delivery	Up to 20 weeks	–	Up to 12 weeks	Ordinance No. 2 on Conditions and Procedure for Artificial Termination of Pregnancy 1990 (amended 2000) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Bulgaria-Law-No-2-Abortion-Annex-1-and-2-2000.pdf)	
142.	Ireland	–	–	Up to delivery in case of lethal child's defects	Up to delivery	–	Up to 12 weeks	Health (Regulation of Termination of Pregnancy) Act 2018 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/07-Ireland-Health-Regulation-of-Termination-of-Pregnancy-Act-2018.pdf)	Article 40.3.3 of the Irish Constitution, in force since 7 October 1983, stated: 'The State shall recognise the right to life of the unborn, fully respecting the analogous right of the mother to life, and shall guarantee that this right shall be respected in legislation and, as far as possible, defended and asserted in accordance with the legislation in force.' This Article was repealed in the referendum of 25 May 2018

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
143.	Belgium	–	–	Up to delivery	Up to delivery	–	Up to 12 weeks	Penal Code 1867 (as amended), Articles 348-352 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Belgium-Penal-Code-1867.pdf#page=86)	
	Cape Verde	–	–	Up to delivery	Up to delivery	–	Up to 12 weeks	Voluntary Termination of Pregnancy Law 1986 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Cape-Verde-Law-and-Regulation-on-Voluntary-Interruption-of-Pregnancy-1987.pdf)	
145.	Hungary	–	Up to 12-18 weeks	Up to 20-24 weeks	Up to 12-18 weeks	–	Up to 12 weeks	Protection of the Life of the Foetus Act 1992 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Hungary-Protection-of-Human-Life-Act-1992.pdf); Decree of the Minister of the Interior No. 29/2022 on the Implementation of the Protection of the Life of the Foetus Act 2022 (https://magyarkozlony.hu/dokumentumok/82ee8709b7c3f6f-ba3d8644ef9e6eaf35056edde/megtekintes)	A decree of the Minister of the Interior obliges a doctor intending to perform an abortion to first present the mother with clear evidence of the foetus's vital signs. Women seeking an abortion must listen to the heartbeat of the unborn child before the procedure is permitted
146.	Georgia	–	Up to 22 weeks	Up to 12-22 weeks	Up to 12-22 weeks	–	Up to 12 weeks	Order No. 01-74/N of the Minister of Labour, Health and Social Affairs on Rules for Artificial Termination of Pregnancy, 2014 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Georgia-Rules-for-the-Implementation-of-Abortion-2014.pdf#page=17); Order No. 75/N of the Georgia Minister of Health amending the Rules for Artificial Termination of Pregnancy 2023 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/10-Georgia-Amendments-to-the-Rules-for-the-Implementation-of-Abortion-2023.pdf); Helathcare Law 1997 (as amended) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/03-Georgia-Law-on-Healthcare-1997.pdf); Global Abortion Policies Database, <i>Country Profile: Georgia</i> (https://abortion-policies.srhr.org/country/georgia)	In specific cases, the gestational limit for permitted abortion may be extended
147.	Slovakia	–	Incest – up to 12 weeks	Up to delivery	Up to 6 months	–	Up to 12 weeks	Artificial Termination of Pregnancy Act 1986 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Slovakia-Abortion-Regulation-Act-1986.pdf); Global Abortion Policies Database, <i>Country Profile: Slovakia</i> (https://abortion-policies.srhr.org/country/slovakia)	

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
148.	San Marino	–	"Up to the point at which the foetus has no chance of surviving on its own"	"Up to the point at which the foetus has no chance of surviving on its own"	"Up to the point at which the foetus has no chance of surviving on its own"	–	Up to 12 weeks	Voluntary Termination of Pregnancy Regulation Law 2022 (https://www.consigliograndeegenerale.sm/on-line/home/organismi-istituzionali-e-commissioni-consiliari/commissioni-consiliari-permanenti/scheda7177841.html)	"A voluntary termination of pregnancy after the twelfth week may be requested and carried out up to the point at which the foetus has no chance of surviving on its own, in light of the latest knowledge regarding neonatal resuscitation" (Law of 7 September 2022 – Regulation of voluntary termination of pregnancy, Article 6(1)); "In cases of danger to the woman's life, if the possibility of independent life of the foetus exists, the doctor shall terminate the pregnancy by delivery and take all appropriate measures to safeguard the life of the foetus: the termination of pregnancy may take place in any week. In the case of a woman under eighteen years of age, the termination of the pregnancy may take place regardless of the consent of the persons exercising parental authority or guardianship" (ibid., Article 6(3)); "In the case of imminent danger to the life of the woman, even a minor, in any week of pregnancy and, if possible, after certification of urgency by the attending physician, the termination of the pregnancy may be carried out as an emergency procedure. If there is the possibility of independent life of the fetus within the meaning of Article 6(1), the doctor must take all appropriate measures to safeguard its life in accordance with Article 6(1)" (Article 7(1) of above mentioned Act)
149.	Nepal	–	Rape – up to 18 weeks, incest – up to 28 weeks	Up to 28 weeks	Up to 28 weeks	–	Up to 12 weeks	Right to Safe Motherhood and Reproductive Health Act 2018, Article 15 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/04-Nepal-The-Right-Safe-Motherhood-and-Reproductive-Health-Act-2018-2018.pdf#page=7); Global Abortion Policies Database, Country Profile: Nepal (https://abortion-policies.srhr.org/country/nepal); Guttmacher Institute, <i>Addressing Gaps in Safe Abortion Services in Nepal</i> (https://www.guttmacher.org/article/2022/06/addressing-gaps-safe-abortion-services-nepal)	
150.	South Africa	–	Up to 20 weeks	Up to delivery	Up to 20 weeks	–	Up to 12 weeks	Choice on Termination of Pregnancy Act 1996 (amended 2008) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-South-Africa-Choice-of-Termination-of-Pregnancy-Act-1996.pdf); National Clinical Guideline for Implementation of the Choice on Termination of Pregnancy Act 2019 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/11-South-Africa-National-Guideline-for-Implementation-of-Choice-on-Termination-of-Pregnancy-Act-2019.pdf)	
151.	Greece	–	Up to 19 weeks	Up to 24 weeks	Up to delivery	–	Up to 12 weeks	Penal Code 1951, Article 304 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Greece-Penal-Code-1951.pdf#page=109)	

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152.	Northern Macedonia	–	Up to 22 weeks	Up to 22 weeks	Up to delivery	–	Up to 12 weeks	Termination of Pregnancy Law 2019 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/06-Law-on-Termination-of-Pregnancy-No-08-2893-1-2019.pdf); Wikipedia.org, <i>Abortion in North Macedonia</i> (https://en.wikipedia.org/wiki/Abortion_in_North_Macedonia); Global Abortion Policies Database, <i>Country Profile: North Macedonia</i> (https://abortion-policies.srhr.org/country/the-former-yugoslav-republic-of-macedonia)	
153.	Uruguay	–	Up to week 14	Up to delivery	Up to delivery	–	Up to 12 weeks	Voluntary Termination of Pregnancy Law 2012 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Uruguay-Legal-Interruption-of-Pregnancy.pdf)	
154.	São Tomé and Príncipe	–	Until delivery	Up to 16 weeks	Up to delivery	–	Up to 12 weeks	Penal Code 2012, Articles 137-140 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Sao-Tome-and-Principe-Penal-Code-2012.pdf#page=39)	
155.	Cyprus	–	Up to 19 weeks	Up to delivery	Up to delivery*	–	Up to 12 weeks	Criminal Code 1929 (as amended), Article 169A (http://www.cylaw.org/nomoi/enop/non-ind/0_154/full.html); Cyprus Criminal Code (Amendment) Law No. 23(I)/2018 (amending Article 169A) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Cyprus-Law-amending-the-Criminal-Code-Art-169a-2018.pdf)	* In the premise for permitting abortion on the grounds of the mother's health, the impact of the continuation of the pregnancy and the possible birth of the child on the health of the woman's existing children is also taken into account: whether continuing the pregnancy entails greater risks than terminating it
156.	Cambodia	–	Rape – up to delivery	Up to delivery	Up to delivery	–	Up to 12 weeks	Abortion Law 1997 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Cambodia-Law-on-abortion-1997.pdf#page=2)	
157.	Russia	–	Up to 22 weeks	Up to delivery	Up to delivery	Up to 12 weeks	Up to 12 weeks	Federal Law on Health Protection of Citizens 2011 (as amended), Article 56 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Russia-Federation-Law-on-Public-Health-Protection-2011.pdf); Order No. 572n of the Ministry of Health on Obstetric and Gynaecological Care 2012 (as amended) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/05-Russian-Federation-Obstetric-Guidance-regarding-Pregnancy-Termination-Ministerial-Order-2014.pdf#page=34); ROAG [Russian Society of Obstetricians and Gynaecologists] Clinical Guidelines on Medical Abortion, 2024 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/13-Russian-Federation-Clinical-Guidelines-on-Medical-Abortion-2024.pdf); Global Abortion Policies Database, <i>Country Profile: Russian Federation</i> (https://abortion-policies.srhr.org/country/russian-federation)	
158.	Finland	–	Up to 20 weeks	Up to 24 weeks	Up to delivery	Up to 12 weeks*	Up to 12 weeks	Abortion Act 1970 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Finland-Law-on-Abortion-1970.pdf) as amended by the Act of 20 December 2022 (https://www.finlex.fi/sv/laki/ajantasa/1970/19700239)	* In addition to the criminal, eugenic and health exceptions, abortion is permitted after the 12th week of pregnancy on grounds of difficult living conditions of the mother and her family, limited capacity of at least one parent to provide care, and where the expectant mother is under 17 years of age at the time of pregnancy, over 40 years of age, or has already given birth to four children

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159.	Moldova	–	Up to 21 weeks	Up to delivery	Up to 21 weeks	Up to 21 weeks	Up to 12 weeks	Reproductive Health Law 2012 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/03-Moldova-Law-on-Reproductive-Health-Republic-of-Moldova-2012.pdf); Order of the Ministry of Health on Voluntary Termination of Pregnancy in Safe Conditions 2010 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Moldova-Regulation-Voluntary-Interruption-of-Pregnancy-in-safe-conditions-Ministry-of-Health-2010.pdf); Global Abortion Policies Database, <i>Country Profile: Moldova</i> (https://abortion-policies.srhr.org/country/republic-of-moldova)	
160.	Kuba	–	Rape – up to delivery	Up to 26 weeks or until the baby reaches 1000 g, exceptionally up to 35 weeks	Up to 22 weeks or until the baby reaches 500 g	Up to 22 weeks or until the baby reaches 500 g	Up to 12 weeks	Ministerial Resolution No. 24 of the Ministry of Public Health on Health Standards for Voluntary Termination of Pregnancy 2004 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/02-Cuba-Norms-for-voluntary-termination-of-pregnancy-Ministry-of-Health.pdf); Methodological Guidelines for the Implementation of Voluntary Termination of Pregnancy, 2011 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Cuba-Methodological-guidelines-for-the-implementation-of-voluntary-termination-of-pregnancy-Ministry-of-Health-2011.pdf); Global Abortion Policies Database, <i>Country Profile: Cuba</i> (https://abortion-policies.srhr.org/country/cuba)	
161.	Kazakhstan	–	–	–	–	Up to 22 weeks	Up to 12 weeks	Reproductive Rights of Citizens and Guarantees of their Implementation Law 2004 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/02-Kazakhstan-Reproductive-Rights-Law-2004.pdf); Order No. of the Minister of Healthcare on Approval of the Rules for Artificial Abortion and the List of Medical and Social Indications, as well as Contraindications for Artificial Abortion 2020 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/08-Kazakhstan-Decree-on-approval-of-the-rules-and-indications-for-artificial-abortion-2020.pdf)	
162.	Kyrgyzstan	–	–	Up to 22 weeks	–	Up to 22 weeks	Up to 12 weeks	Reproductive Rights of Citizens and Guarantees of Their Implementation Law 2007 (amended 2019) (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/13-Kyrgyzstan-Law-on-the-reproductive-rights-of-citizens-amended-2019.pdf); Health Protection of Citizens Law 2005 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/03-Kyrgyzstan-Law-on-Health-Protection-2005.pdf#page=18); Global Abortion Policies Database, <i>Country Profile: Kyrgyzstan</i> (https://abortion-policies.srhr.org/country/kyrgyzstan)	

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163.	Armenia	–	Up to 22 weeks*	Up to 22 weeks	Up to 22 weeks	Up to 22 weeks**	Up to 12 weeks	Reproductive Health and Reproductive Rights of the Person 2002 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Armenia-Law-on-Reproductive-Health-and-Rights-2002.pdf) with the 2024 amendment (Amendments and Additions to the Law on Reproductive Health and Reproductive Rights of the Person 2024, https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/10-Armenia-Changes-to-the-Law-on-Human-Reproductive-Health-and-Rights-2024.pdf); Global Abortion Policies Database, <i>Country Profile: Armenia</i> (https://abortion-policies.srhr.org/country/armenia)	In the case of female minors, parental consent is required. There is a prohibition on abortion based on the sex of the child. * The criminological premise is 'included' in the social premise. ** The social indications for abortion are: 1) death of the husband during pregnancy; 2) serving the sentence imposed on the wife or husband in the place of imprisonment in the manner prescribed by law; 3) divorce during pregnancy in the manner prescribed by law; 4) pregnancy as a result of rape' (Global Abortion Policies Database, <i>Country Profile: Armenia</i> , pdf file downloadable at: https://abortion-policies.srhr.org/country/armenia/)
164.	Azerbaijan	–	–	–	Up to delivery	Up to 22 weeks	Up to 12 weeks	Protection of Public Health Law, Article 30 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-Azerbaijan-Law-on-the-Protection-of-Public-Health.pdf#page=2)	
	Belarus	–	–	–	Up to delivery	Up to 22 weeks	Up to 12 weeks	Healthcare Law 1993 (consolidated 2014), Article 27 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Belarus-Law-on-Healthcare-2014.pdf#page=13)	
166.	Uzbekistan	–	Up to 22 weeks	Up to 22 weeks	Up to 22 weeks	Up to 22 weeks	Up to 12 weeks	Criminal Code 1994, Articles 114-115 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/05-Uzbekistan-Criminal-Code-1994.pdf#page=36); Order No. 312 of the Ministry of Health on Approval of Standards for Artificial Termination of Pregnancy 2013 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/03-Uzbekistan-Order-No-312-Induced-abortion-Ministry-of-Health-2013.pdf); Global Abortion Policies Database, <i>Country Profile: Uzbekistan</i> (https://abortion-policies.srhr.org/country/uzbekistan)	
167.	Albania	–	Up to 22 weeks	Up to delivery	Up to 22 weeks – threat to life or health	Up to 22 weeks	Up to 12 weeks	Law on the Interruption of Pregnancy 1995 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Albania-Law-on-Interruption-of-Pregnancy-1995.pdf); Global Abortion Policies Database, <i>Country Profile: Albania</i> (https://abortion-policies.srhr.org/country/albania)	
168.	Tajikistan	–	–	Up to 28 weeks	Up to 28 weeks	Up to 28 weeks	Up to 12 weeks	Reproductive Health and Reproductive Rights Law 1997, Article 20 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/03-Tajikistan-Law-on-Reproductive-Health-2002.pdf#page=5)	
169.	Estonia	–	–	Up to 22 weeks	Up to 22 weeks	–	Up to 12 weeks*	Termination of Pregnancy and Sterilisation Act 1998 (amended 2015) (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Estonia-Termination-of-Pregnancy-Law-2015.pdf)	* In cases where the mother is under 15 years of age or over 45 years of age, abortion 'on request' is permitted up to the 21st week of pregnancy

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
170.	Ukraine	–	Up to 22 weeks	Up to 22 weeks	Up to 22 weeks	–	Up to 12 weeks*	Civil Code 2003 (amended 2004), Article 281 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Ukraine-Civil-Code-Right-to-Life-2004.pdf); Resolution No. 144 of the Cabinet of Ministers of Ukraine on the Implementation of Article 281 of the Civil Code of Ukraine 2006 (https://zakon.rada.gov.ua/laws/show/en/144-2006-%D0%BF?utm)	* If the mother is under 15 or over 45 years of age, abortion is permitted up to 22 weeks of pregnancy. If the woman has an intellectual or cognitive disability, abortion may also be performed up to 22 weeks of pregnancy (Resolution No. 144 of the Cabinet of Ministers of Ukraine on the Implementation of Article 281 of the Civil Code of Ukraine 2006, https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/06-Ukraine-Resolution-of-Cabinet-of-Ministers-No-144-indications-for-12-22-weeks-Pregnancy-Termination-2006.pdf)
171.	Italy	–	–	Up to 90 days	Viability*	Up to 90 days	Up to 90 days	Social Protection of Maternity and Voluntary Interruption of Pregnancy Law 1978 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Italy-Abortion-Law-1978.pdf)	*The public health counselling centre and the socio-health facility have, in addition to the need to guarantee the necessary medical examinations, the obligation in every case, and especially when the request for termination of pregnancy is motivated by the impact of economic, social or family conditions on the health of the pregnant woman, to explore with the woman and the father of the conceived child, if the woman agrees, respecting the dignity and confidentiality of the woman and the person designated as the father of the conceived child, possible solutions to the problems reported, in order to help her to remove the causes that would lead her to terminate the pregnancy [...] (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Italy-Abortion-Law-1978.pdf#page=2). * Viability – ability to survive outside the mother's body
172.	Tunisia	–	–	Up to delivery	Up to delivery	–	Up to 3 months	Penal Code 1913 (consolidated version 2010), Articles 214-215 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Tunisia-Penal-Code-2010.pdf#page=76)	Abortion until delivery is also permitted in cases where the continuation of the pregnancy endangers the psychological balance of the mother (https://abortion-policies.sshr.org/country/tunisia)
173.	Austria	–	YES*	Up to delivery	Up to delivery	–	Up to 3 months	Criminal Code 1974 (as amended), Articles 96-97 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Austria-Criminal-Code-2015.pdf#page=27)	* Abortion is also not punishable if the girl was under the age of 14 when she became pregnant, in which case abortion is permitted without restriction as to the week of pregnancy (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Austria-Criminal-Code-2015.pdf#page=27).
174.	Great Britain and Northern Ireland*	–	Isle of Man – up to 23 weeks	Up to delivery; Jersey – up to 24 weeks	Isle of Man – up to 23 weeks; Guernsey – up to 24 weeks; Northern Ireland, Jersey, Great Britain – up to delivery	Up to 24 weeks**; Isle of Man – up to 23 weeks	Up to 13 weeks***	Global Abortion Policies Database, <i>Country Profile: United Kingdom</i> (https://abortion-policies.sshr.org/country/united-kingdom)	* Provisions vary depending on the country / dependencies of the British Crown. ** The premise relating to the physical and mental health of the pregnant woman's existing children is treated as a social premise. *** Average for Northern Ireland and the Isle of Man. In England, Wales, Scotland abortion on request is not de jure, but is carried out de facto
175.	Romania	–	–	Up to 24 weeks	Up to 24 weeks	–	Up to 14 weeks	Criminal Code 2009 (as amended), Article 201 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/02-ROMANIA-CRIMINAL-CODE-2009.pdf#page=80)	

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
176.	Spain	–	–	Up to 22 weeks or up to delivery*	Up to 22 weeks	–	Up to 14 weeks	Sexual and Reproductive Health and Voluntary Termination of Pregnancy Organic Law 2010, Articles 12-17 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Spain-Law-on-Sexual-and-Reproductive-Health-and-Abortion-1995.pdf#page=8) with the 2023 amendment (Organic Law 1/2023 of 28 February 2023, amending Organic Law 2/2010 of 3 March 2010 on sexual and reproductive health and voluntary termination of pregnancy, https://pub-c3f08c78592b4d-7c837dc8e1b00a42e8.r2.dev/16-Spain-Amendment-to-the-Law-on-Sexual-and-Reproductive-Health-and-Abortion-2023.pdf#page=10)	* 'The limit of 22 weeks in case of foetal impairment applies when there is a "risk of serious anomaly in the foetus". There is no limit of weeks in case of foetal abnormality incompatible with life or an extremely serious and incurable disease of the foetus' (Global Abortion Policies Database, <i>Country Profile: Spain</i> , pdf file downloadable at: https://abortion-policies.srhr.org/country/spain)
177.	Luxembourg	–	–	Up to delivery	Up to delivery	–	Up to 14 weeks	Health Code 1980 (consolidated version 2015) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Luxembourg-Health-Code-2015.pdf)	
178.	France	–	–	Up to delivery	Up to delivery	–	Up to 14 weeks	Public Health Code (consolidated version 2025), Articles L2212-1 to L2213-5 and L2222-1 to L2223-2 (https://www.legifrance.gouv.fr/codes/section_1c/LEGITEXT000006072665/LEGISCTA000006171542/#LEGISCTA000045292643); Global Abortion Policies Database, <i>Country Profile: France</i> (https://abortion-policies.srhr.org/country/france)	Freedom of voluntary abortion stipulated in Article 34 of the Constitution; the amendment was adopted on 8 March 2024 (https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur)
179.	Argentina	–	Up to delivery	YES*	Up to delivery	Up to delivery	Up to 14 weeks	Access to Voluntary Interruption of Pregnancy Law 2020 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/11-Argentina-Law-27610-Access-to-voluntary-termination-Official-Bulletin-January-2021.pdf); Penal Code 1984, Article 86 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Argentina-Penal-Code-1984.pdf#page=19); Legal Standards for the Care of Patients with the Right to Voluntary Interruption of Pregnancy, 2021 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/13-Argentina-Legal-Standards-for-the-attention-of-the-interruption-of-pregnancy-2021.pdf); Global Abortion Policies Database, <i>Country Profile: Argentina</i> (https://abortion-policies.srhr.org/country/argentina)	* 'The Legislative Body of the City of Buenos Aires passed the Law 1044 in June 2003 indicating that a pregnant woman with a fetus with anencephaly or a pathology incompatible with extrauterine life has to be informed and can request a preterm delivery once the pregnancy has reached 24 weeks. This law has been used in rulings of provincial courts to allow pregnancy interruptions (i.e. Buenos Aires and Neuquén)' (Global Abortion Policies Database, <i>Country Profile: Argentina</i> , downloadable pdf file at: https://abortion-policies.srhr.org/country/argentina)

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
180.	Mongolia	–	Up to delivery	Up to delivery	Up to 23 weeks	–	Up to 14 weeks*	Guidelines for Implementing National Standards for Comprehensive Abortion Care, 2004 (https://pub-c3f08c78592b4d7c837d-c8efb00a42e8.r2.dev/02-Mongolia-Guidelines-for-Abortion-Care-Ministry-of-Health-2004.pdf#page=10); Mongolia National Standard on Comprehensive Abortion Care, 2004 (https://pub-c3f08c78592b4d7c837d-c8efb00a42e8.r2.dev/03-Mongolia-National-Standard-Comprehensive-Abortion-Care-2004.pdf#page=4); Health Act 1998, Article 36 (https://pub-c3f08c78592b4d7c837d-c8efb00a42e8.r2.dev/01-Mongolia-Health-Act-1998.pdf#page=16); Ministerial Order No. 148 of the Ministry of Health on the Regulation of Abortion 2014 (as amended in 2015) (https://pub-c3f08c78592b4d7c837d-c8efb00a42e8.r2.dev/06-Mongolia-Ministers-Order-148-Bylaw-on-abortion-regulation-Ministry-of-Health-2014.pdf#page=1)	*If the mother is under 16 or over 45 years of age, abortion is permitted up to the point of delivery. The intellectual disability of the woman is also a premise for an abortion
181.	Thailand	–	Up to 20 weeks	Up to 20 weeks	Up to 20 weeks*	–	Up to 12-20 weeks**	Criminal Code Amendment, 2021 (https://pub-c3f08c78592b4d7c837d-c8efb00a42e8.r2.dev/11-Thailand-Penal-Code-Amendment-2021.pdf); Global Abortion Policies Database, <i>Country Profile: Thailand</i> (https://abortion-policies.srhr.org/country/thailand)	* The premise relating to the mother's health condition also includes mental health. ** 'The new section 301 criminalizes terminating a pregnancy after 12 weeks of pregnancy if there is no justification for the termination. [...] In addition, the new section allows abortions after 12 weeks but no later than 20 weeks of pregnancy in cases where a woman, after consulting with experts, insists that she must have an abortion' (https://www.loc.gov/item/global-legal-monitor/2021-03-01/thailand-abortion-in-first-trimester-legalized/)

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
182.	United States*	Arkansas, Northern Mariana Islands, Oklahoma, Texas, South Dakota,	Indiana, Mississippi, North Dakota, Idaho	West Virginia, Alabama	American Samoa, Georgia, Louisiana, Tennessee, Kentucky, Indiana, West Virginia, North Dakota	–	Georgia (up to the baby's first heartbeat), South Carolina, Florida, Georgia, Iowa, (up to 6 weeks), Nebraska (up to 12 weeks), North Carolina (up to 12 weeks), Guam (up to 13 weeks), Utah (up to 18 weeks), Kansas, Ohio (up to 22 weeks), Wisconsin (up to 22 weeks), Massachusetts (up to 24 weeks), Nevada (up to 24 weeks), New Hampshire (up to 24 weeks), Pennsylvania (up to 24 weeks), United States Virgin Islands (up to 24 weeks), Virginia (up to 25 weeks), Connecticut (viability***), California (viability***), Delaware (viability***), Maine (viability***), Maryland (viability***), Michigan (viability***), New York (viability***), Rhode Island (viability***), Washington (viability***), Arizona (viability***), Wyoming (viability***), Hawaii (viability***), Missouri (viability***), Illinois (viability***), Alaska (up to delivery), Colorado (up to delivery), District of Columbia (up to delivery), New Jersey (up to delivery), New Mexico (up to delivery), Oregon (up to delivery), Puerto Rico (up to delivery), Vermont (up to delivery), Minnesota (up to delivery), Michigan (up to delivery), Maryland (up to delivery)	<i>Dobbs v. Jackson Women's Health Organization</i> , Supreme Court of the United States, Judgment No. 19-1392 (24 June 2022) (https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf); Policy trackers available at https://www.kff.org ; Nyltimes.com, <i>Tracking the States Where Abortion Is Now Banned</i> (https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html); Wikipedia.org	* Provisions vary by state, federal district, and dependent territory. On 24 June 2022, the US Supreme Court ruled in <i>Dobbs v. Jackson</i> that individual states can decide on their own to protect the lives of unborn people, overturning 1973 <i>Roe v. Wade</i> and 1992 <i>Planned Parenthood v. Casey</i> which had guaranteed the right to kill a child until he or she is capable of independent life outside the mother's body (viability). ** The exception applies in cases of serious risk to the mother's health. *** Viability – ability to survive outside the mother's body
183.	Sweden	–	–	–	Viability*	–	Up to 18 weeks	Abortion Act 1974 (https://pub-c3f08c78592b4d7c837dc8e-1b00a42e8.r2.dev/01-Sweden-Abortion-Law-1974.pdf)	* Viability is understood to be the 22nd week of pregnancy
184.	Norway	–	Up to 22 weeks	Up to 22 weeks	Up to 22 weeks*	Up to 22 weeks	Up to week 18	Abortion Act 2024 (in force since 1 June 2025) (https://lovdata.no/dokument/NL/lov/2024-12-20-96); Global Abortion Policies Database, <i>Country Profile: Norway</i> (https://abortion-policies.sshr.org/country/norway)	* After the end of the 22nd week of pregnancy, abortion can only be performed if it is clear that the fetus will die during pregnancy or shortly after birth' (§ 3 of Abortion Act)
185.	Denmark	–	Up to delivery	Up to delivery	Up to delivery	Up to delivery	Up to week 18*	Health Act (consolidated version 2014), paras. 92-103 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/01-Denmark-Health-Act-2014.pdf#page=25) with the 2025 amendment (Act No. 404 of 29 April 2025 amending the Danish Health Act, https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/06-Denmark-Law-404-Amendment-2025.pdf#page=2)	* On the Faroe Islands until 12 weeks since 1 January 2026

	Country	Full protection of mother's and child's life	Permitting the deprivation of a child's life on the grounds of conception as a result of a criminal act (criminological premise)	Permitting the deprivation of a child's life on the grounds of disability or serious illness or suspicion thereof (eugenic premise)	Permitting the deprivation of a child's life on the grounds of the mother's health (physical or mental)	Permitting the deprivation of a child's life for social or economic reasons	Abortion at the mother's request	Sources	Additional comments
186.	New Zealand	–	–	Up to delivery	Up to delivery*	–	Up to 20 weeks	Crime Act 1961 (as amended), sections 182-187A (https://www.legislation.govt.nz/act/public/1961/43/en/latest/#DLM327394); Abortion Legislation Act 2020 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Iceland-Law-on-termination-of-pregnancy-2019.pdf#page=1)	Automatic impunity for mothers. * The health premise also includes mental health
187.	Iceland	–	–	–	–	–	Up to 22 weeks	Termination of Pregnancy Act 2019 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Iceland-Law-on-termination%20of%20pregnancy-2019.pdf)	
188.	Netherlands	–	–	Up to delivery and in the neonatal period*	–	–	Up to 22 weeks**	Termination of Pregnancy Act (consolidated version 2023) (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/20-Netherlands-Termination-of-Pregnancy-Act-Updated-2023.pdf); Global Abortion Policies Database, Country Profile: Netherlands (https://abortion-policies.srhr.org/country/netherlands/); Lzalp.nl, <i>Zorgvuldigheidseisen</i> (https://www.lzalp.nl/informatie/juridisch-kader/zorgvuldigheidseisen/); F.E. Vizcarrown, <i>Neonatal euthanasia: The Groningen Protocol</i> (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4240050/); Nos.nl, <i>Actieve levensbeëindiging mogelijk voor kinderen onder de 12 jaar</i> (https://nos.nl/nieuwsuur/artikel/2471386-actieve-levensbeëindiging-mogelijk-voor-kinderen-onder-de-12-jaar); Wikipedia.org, <i>Groningen Protocol</i> (https://en.wikipedia.org/wiki/Groningen_Protocol)	* 'The Netherlands also has the so-called Groningen Protocol on the performance of infant euthanasia. This is not a law formally adopted by a law under procedure in parliament, but a set of procedures drawn up by researchers at the University Hospital of Groningen in cooperation with the local public prosecutor's office. In 2005, the protocol was approved as a national guidelines by the Nederlandse Vereniging voor Kindergeneeskunde (Dutch Paediatric Association)' (https://www.gazetaprawna.pl/wiadomosci/swiat/artykuly/8699442,eutanazja-dzieci-w-wieku-do-12-lat-holandia.html). 'In April 2023, the Dutch government issued a statement that a regulation would be introduced regarding the ending of the lives of severely and terminally ill children between the ages of one and 12 years, modelled on the Groningen Protocol. The government specified that 'it will concern children with such a serious illness or condition that death is inevitable and the death of these children is expected within the foreseeable future' (https://nos.nl/nieuwsuur/artikel/2471386-actieve-levensbeëindiging-mogelijk-voor-kinderen-onder-de-12-jaar). ** The statutory limit is the child's ability to survive outside the mother's body. 'Abortion is permitted until the child could survive outside the mother's body. This limit is set at 24 weeks under the Criminal Code. In practice, doctors in abortion clinics apply a limit of 22 weeks. This is because doctors can determine the duration of a pregnancy to within 2 weeks' accuracy' (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/16-Netherlands-Abortion-Conditions.pdf)
189.	Australia*	–	–	Northern Territory and Western Australia – up to delivery	Northern Territory, Tasmania, Western Australia – up to delivery**	Western Australia – up to 23 weeks	Up to 16 weeks or up to delivery (average – up to 23 weeks)*	Global Abortion Policies Database, Country Profile: Australia (https://abortion-policies.srhr.org/country/australia/); Wikipedia.org, <i>Abortion in Australia</i> (https://en.wikipedia.org/wiki/Abortion_in_Australia); Healthdirect.gov.au, <i>Can I have an abortion in Australia?</i> (https://www.healthdirect.gov.au/blog/can-i-have-an-abortion-in-australia)	'A woman's sexual partner is not required to be notified of an abortion, and Australian courts will not grant injunctions to prevent the procedure, even if the applicant is the putative father of the foetus. No waiting periods are imposed on having an abortion. A minor does not need to notify a parent of a proposed abortion, nor is parental consent required' (https://en.wikipedia.org/wiki/Abortion_in_Australia#cite_ref-ParlAus_2-0). * Provisions vary by state/territory. ** Premise also includes mental health

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190.	Singapore	–	–	–	Up to delivery*	–	Up to 24 weeks	Termination of Pregnancy Act 1974 (revised edition 1985) (https://pub-c3f08c78592b4d7c837d-c8efb00a42e8.r2.dev/01-Singapore-Termination-of-Pregnancy-Act-1974.pdf); Global Abortion Policies Database, <i>Country Profile: Singapore</i> (https://abortion-policies.srhr.org/country/singapore/); Wikipedia, <i>Abortion in Singapore</i> (https://en.wikipedia.org/wiki/Abortion_in_Singapore)	* Abortion may be carried out after 24 weeks if 'the treatment is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman' (https://pub-c3f08c78592b-4d7c837dc8efb00a42e8.r2.dev/01-Singapore-Termination-of-Pregnancy-Act-1974.pdf#page=2)
191.	Colombia	–	Up to delivery*	Up to delivery*	Up to delivery*	–	Up to 24 weeks	Penal Code 2000 (https://pub-c3f08c78592b4d7c837d-c8efb00a42e8.r2.dev/02-Colombia-Penal-Code-Law-599-2000.pdf#page=139), Article 122 as interpreted by the Colombian Constitutional Court Judgment C-055/2022 of 21 February 2022 (https://pub-c3f08c78592b-4d7c837dc8efb00a42e8.r2.dev/27-Colombia-Constitutional-Court-Decision-2022.pdf)	* The three premises are in force by virtue of a 2006 Constitutional Court judgment
192.	South Korea	–	–*	–*	–*	–	Up to delivery*	Criminal Code 1953 (as amended up to Act No. 11731 of April 5, 2013), Articles 269-270 (https://pub-c3f08c78592b4d7c837d-c8efb00a42e8.r2.dev/01-Republic-of-Korea-Criminal-Act-2013.pdf#page=23) – repealed with effect from 1 January 2021, are included here for reference only; Mother and Child Health Act (version from 2012), Article 14 (https://pub-c3f08c78592b4d7c837dc8efb00a42e8.r2.dev/02-Republic-of-South-Korea-Mother-and-Child-Health-Act-2012.pdf#page=5); Enforcement Decree of the Mother and Child Health Act (version from 2012) (https://pub-c3f08c78592b-4d7c837dc8efb00a42e8.r2.dev/04-Republic-of-Korea-Enforcement-Decree-of-the-Mother-and-Child-Health-Act-1973.pdf#page=4)	* By a judgment of 11 April 2019 (https://www.law.go.kr/LSW/detcInfoP.do?mode=1&amp;detcSeq=150780), the Constitutional Court obliged the parliament to decriminalise abortion by the end of 2020. Since 1 January 2021, abortion has been legal without any criminal consequences; however, the Constitutional Court does not exclude the criminalisation of certain types of abortion
193.	Canada	–	–	–	–	–	Up to delivery	<i>R. v. Morgentaler</i> , Supreme Court of Canada, 28 January 1988 (https://pub-c3f08c78592b-4d7c837dc8efb00a42e8.r2.dev/01-Canada-R-v-Morgentaler-Supreme-Court-1988.pdf)	

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194.	North Korea	–	?	?	?	?	Up to delivery	–	
	People's Republic of China	–	?	?	?	?	Up to delivery	Technical Guidance for Commonly Used Family Planning Techniques, 2003 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/02-China-Commonly-used-family-planning-techniques-Ministry-of-Health-2003.pdf); Measures for the Implementation of the Law on Maternal and Infant Health Care of the People's Republic of China (2019 revision) (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/15-China-Measures-for-the-Implementation-of-the-Law-on-Maternal-and-Infant-Health-Care-2019.pdf); Maternal and Infant Health Care Law 1994 (as amended in 2005) (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/06-China-Law-on-maternal-and-infant-health-care-2005.pdf#page=3)	For many years, China enforced a one-child policy. In 2021, all restrictions on the number of children a family could have were removed
	Vietnam	–	?	?	?	?	Up to delivery	Health Protection Law 1989 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/01-Vietnam-Health-Protection-Law-1989.pdf); Population Ordinance 2003 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/03-Vietnam-Population-Ordinance-2003.pdf); Details and Guidelines for the Implementation of the Population Ordinance 2003 (https://pub-c3f08c78592b-4d7c837dc8e1b00a42e8.r2.dev/04-Vietnam-Details-and-guidelines-on-the-implementation-of-the-Population-Ordinance-2003.pdf); National Guidelines on Reproductive Healthcare, 2016 (https://pub-c3f08c78592b4d7c837dc8e1b00a42e8.r2.dev/13-Vietnam-National-Guidelines-on-Reproductive-Healthcare-2016.pdf)	Article 58(2) of the Constitution of Vietnam: 'The State, society and family are responsible for protecting and caring for the health of mothers and children, and for family planning' (https://vietnam-lawmagazine.vn/the-2013-constitution-of-the-socialist-republic-of-vietnam-4847.html). 'The Vietnamese National Assembly on Tuesday [3 June 2025] approved amendments to the Population Ordinance, removing the regulation that limited families to one or two children, Vietnam News Agency reported. Under the revised law, couples now have the freedom to decide on the number of children they wish to have, the timing of childbirth, and the spacing between births' (https://english.news.cn/asiapacific/20250604/9b625ab09f844a7a9f65da7f0dc6b9e/c.html)

Annex 2

Key voting results in the Sejm and Senate of the Republic of Poland in the 1990s

One of the misrepresentations that is sometimes spread in the media – especially before 2020 – is that in 1993, 460 men banned abortion in Poland. This is, of course, nonsense because both women and men voted in favour of and against the legal protection of the unborn child. Below are the results of the specific votes:

- the vote in the Sejm on the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy (Schedule 1),
- the vote in the Senate on the adoption of the above law (Schedule 2),
- the vote in the Sejm on the amendment of 30 August 1996,¹ introducing de facto abortion on request, *de jure* ‘on the grounds of grave life circumstances or difficult personal situation of the woman’ (Schedule 3),
- the vote in the Senate against the amendment (Schedule 4).

¹ Act of 30 August 1996 amending the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and amending certain other acts.

The Sejm then rejected the Senate's resolution to reject the pro-abortion amendment of 30 August 1996 (439 members voted, absolute majority: 220; 228 in favour, 195 against, and 16 abstentions).

With regard to the 1993 votes, it must also be remembered that some of the votes 'against' were dictated by principled disagreement with any exceptions which would allow abortion, even though the regulations adopted were undoubtedly an improvement on the legal status *quo ante*.

In this context, it is worth quoting the words of St John Paul II from the encyclical *Evangelium vitae* (73), promulgated in Rome, in St Peter's Basilica, on 25 March 1995, on the solemnity of the Feast of the Nativity of the Lord, commemorating the conception of Jesus Christ when the Word became flesh: 'A particular problem of conscience could arise in the case in which a parliamentary vote were to decide to introduce a more restrictive law, that is, one aiming to reduce the number of legal abortions, and representing an alternative to a more permissive law already in force or voted on. Such cases are not rare. Indeed, it is noticeable that while in some parts of the world campaigns for laws permitting abortion continue, often supported by powerful international organizations, in other countries – especially those that have already experienced the bitter consequences of such permissive legislation – there are more and more signs of a rethink. In the situation under discussion here, if it were not possible to reject or abolish the law on abortion altogether, a parliamentarian whose personal absolute opposition to abortion would be clear and known to all would be doing the right thing by lending his or her support to proposals aimed at limiting the harmfulness of such a law and thus seeking to reduce its negative effects on public culture and morals. In so doing, one does not unlawfully collaborate in the enactment of an unjust law, but rather makes a just and equitable attempt to limit its harmful consequences.'

Schedule 1. The vote in the Sejm on the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy²

Voted: 413

For: 213

Against: 171

Abstentions: 29

Did not vote: 47

Democratic Left Alliance – SLD (58)

Voted: 53

Pros: 2

Against: 51

Abstentions: 0

Did not vote: 5

1.	Adamski Władysław	Against
2.	Bajor Bronisława	Against
3.	Bańkowska Anna	Against
4.	Baraniecki Andrzej	Against
5.	Biały Leszek	Did not vote
6.	Biliński Tadeusz	Against
7.	Blida Barbara	Against
8.	Bocheń Irmino	Against
9.	Boral Marek	Against
10.	Borowski Marek	Against
11.	Cimoszewicz Włodzimierz	Against
12.	Dudkiewicz Anna	Against
13.	Gorzelańczyk Zbigniew	Against
14.	Iwaniec Kazimierz	For
15.	Iwiński Tadeusz	Against

2 Stenographic report of the 33rd sitting of the Sejm of the Republic of Poland on 30 December 1992 and 7 January 1993, Annex 3, [https://orka2.sejm.gov.pl/Stenogramy1.nsf/0/E549A696464A55C0C125894B004EEEE7/\\$file/033.pdf](https://orka2.sejm.gov.pl/Stenogramy1.nsf/0/E549A696464A55C0C125894B004EEEE7/$file/033.pdf), accessed 1 September 2023.

16.	Jankowski Jerzy	Against
17.	Janowski Zbigniew	Did not vote
18.	Jaskiernia Jerzy	Against
19.	Jędryka Waldemar	Against
20.	Jędrzejczak Tadeusz	Against
21.	Kaczmarek Wiesław	Against
22.	Kaleta Józef	Against
23.	Zbigniew Kaniewski	Against
24.	Kozłowski Marian	Against
25.	Krawczuk Aleksander	Against
26.	Kwaśniewski Aleksander	Against
27.	Krystyna Łybacka	Against
28.	Majewski Wit	Against
29.	Manicki Maciej	Against
30.	Martyniuk Wacław	Against
31.	Mazurkiewicz Marek	Did not vote
32.	Miller Leszek	Against
33.	Mochnaczewski Piotr	Against
34.	Nowacka Irena	Against
35.	Nowak Kazimierz	Did not vote
36.	Oleksy Józef	Against
37.	Pastusiak Longin	Did not vote
38.	Piechota Jacek	Against
39.	Pilarczyk Jerzy	Against
40.	Saletra Wojciech	Against
41.	Sekuła Ireneusz	Against
42.	Siemiątkowski Zbigniew	Against
43.	Sierakowska Izabella	Against
44.	Siwiec Marek Maciej	Against
45.	Sobotka Zbigniew	Against
46.	Sokołowska Wanda	Against
47.	Spychalska Ewa	Against
48.	Szarawarski Andrzej	Against
49.	Szmajdziński Jerzy	Against
50.	Śleziak Czesław	Against
51.	Tuszyński Zdzisław	Against
52.	Ulicki Ryszard	Against
53.	Waniek Danuta	Against
54.	Wiatr Jerzy	Against
55.	Zemke Janusz	Against
56.	Zych Bogumił	Against
57.	Żenkiewicz Marian	For
58.	Żochowski Ryszard Jacek	Against

Democratic Union – UD (57)

Voted: 53

For: 19

Against: 29

Abstentions: 5

Did not vote: 4

1.	Balicki Marek	Against
2.	Bober Andrzej	Against
3.	Braun Juliusz	For
4.	Ciemniewski Jerzy	Against
5.	Czernecki Andrzej	Against
6.	Dąbrowski Marek	Against
7.	Dmochowska Maria	Against
8.	Frasyniuk Władysław	Did not vote
9.	Gawlik Radosław	Against
10.	Geremek Bronisław	Against
11.	Górska Helena	Against
12.	Handzlik Stanisław	Against
13.	Hennelowa Józefa	For
14.	Janas Zbigniew	Against
15.	Kisiliczek Jan	For
16.	Komorowski Bronisław	For
17.	Kopania Jerzy	Against
18.	Kowalczyk Józef	Against
19.	Król Jan	For
20.	Krzyżanowska Olga	Against
21.	Kufel Zygmunt	For
22.	Kuroń Jacek	Against
23.	Labuda Barbara	Against
24.	Lipowicz Irena Ewa	For
25.	Lityński Jan	Against
26.	Liwak Władysław	For
27.	Mazowiecki Tadeusz	For
28.	Meisiel Józef	Abstained
29.	Nowina-Konopka Piotr	For
30.	Onyszkiewicz Janusz	Against
31.	Osiatyński Jerzy	Against
32.	Pawłowski Andrzej	Against
33.	Piskorski Jan	For

34.	Pokrywka Tadeusz	Did not vote
35.	Polmański Piotr	For
36.	Potocki Andrzej	Against
37.	Puzyna Włodzimierz	For
38.	Rokita Jan	For
39.	Setnik Ryszard	Against
40.	Staniszewska Grażyna	Against
41.	Staręga-Piasek Joanna	Against
42.	Suchocka Hanna	Did not vote
43.	Syryjczyk Tadeusz	For
44.	Szczepuła Tomasz	Against
45.	Szczygielski Kazimierz	Abstained
46.	Śledzińska-Katarasińska Iwona	Against
47.	Taylor Jacek	Against
48.	Turko Ludwik	Against
49.	Urbanowicz Anna	Did not vote
50.	Wesołowski Mariusz	For
51.	Wielowieyski Andrzej	Against
52.	Wójcik Gwidon	Abstained
53.	Wujec Henryk	Abstained
54.	Wyrowiński Jan	For
55.	Zajączkowska Maria	For
56.	Zdrada Jerzy	Abstained
57.	Żurowski Stanisław	For

Polish Liberal Programme – PPL (53)

Voted: 47

For: 12

Against: 32

Abstentions: 3

Did not vote: 6

1.	Abramski Paweł	Against
2.	Aleksandrowicz Eugeniusz	Against
3.	Arendarski Andrzej	Against
4.	Bańkowski Tomasz	Against
5.	Bielecki Jan Krzysztof	Abstained
6.	Boguski Dariusz	Against
7.	Boni Michał	Against
8.	Brach Tomasz	Against

9.	Bubel Leszek	Did not vote
10.	Chabiński Sławomir	Against
11.	Choiński Bogusław	Against
12.	Drzewiecki Mirosław	Did not vote
13.	Dziewulski Jerzy	Against
14.	Eysmont Zbigniew	Did not vote
15.	Eysmont Jerzy	Against
16.	Gadomski Witold	Against
17.	Hardy Andrzej	For
18.	Holc Tomasz	Against
19.	Kaczmarek Filip	Against
20.	Kłoczko Marek	Against
21.	Koczwara Marek	Against
22.	Kołodziejczyk Dariusz	Against
23.	Kośła Zbigniew	For
24.	Kurczewski Jacek	For
25.	Lewandowski Janusz	Against
26.	Lech Mażewski	For
27.	Merkel Jacek	Against
28.	Michalak Zenon	Did not vote
29.	Moszczyński Marek	Against
30.	Orłowski Jerzy	Against
31.	Orzeł Józef	Abstained
32.	Pamuła Jan	Against
33.	Pelc Waldemar	Against
34.	Piskorski Paweł	Against
35.	Przybyłowicz Marcin	Abstained
36.	Raj Andrzej	For
37.	Reichelt Władysław	For
38.	Rewiński Janusz	For
39.	Rzymek Jan	Against
40.	Samborski Marek	Did not vote
41.	Sośnicki Mirosław	Against
42.	Szafraniec Herbert	For
43.	Tusk Donald	Against
44.	Ulatowski Jarosław	Against
45.	Urbaniak Cezary	Against
46.	Urbański Andrzej	For
47.	Wardacki Wojciech	For
48.	Wójcik Wiesław	Against
49.	Zakrzewski Andrzej	Against

50.	Zalewski Maciej	For
51.	Zarębski Andrzej	Against
52.	Zylber Jan	Did not vote
53.	Żabiński Krzysztof	For

Polish People's Party – PSL (50)

Voted: 44

For: 18

Against: 23

Abstentions: 3

Did not vote: 6

1.	Bajołek Andrzej	Did not vote
2.	Barciński Piotr	For
3.	Bentkowski Aleksander	For
4.	Białobrzewski Witold	Against
5.	Borowski Andrzej	Abstained
6.	Bugaj Leszek	Against
7.	Bury Jan	Did not vote
8.	Cinał Józef	For
9.	Domański Zdzisław	Against
10.	Domin Marek	Against
11.	Dutka Bronisław	For
12.	Gajda Tadeusz	Abstained
13.	Galek Zbigniew	Against
14.	Jagieliński Roman	Against
15.	Jastrzębski Ryszard	For
16.	Kalemba Stanisław	For
17.	Kowalczyk Zofia	Against
18.	Kowalik Jan	For
19.	Kozakiewicz Mikołaj	Against
20.	Łochowski Józef	Against
21.	Łuczak Aleksander	Against
22.	Łukasiewicz Bogdan	Against
23.	Maćkowiak Janusz	Against
24.	Majewski Jan	Did not vote
25.	Maksymiuk Janusz	Against

26.	Mierzwa Zbigniew	Against
27.	Mojzesowicz Wojciech	For
28.	Pawlak Józef	Against
29.	Pawlak Waldemar	Against
30.	Piechociński Janusz	Against
31.	Władysław Serafin	Did not vote
32.	Siedlecki Henryk	Against
33.	Sienkiewicz Stanisław	For
34.	Smolarek Ryszard	Against
35.	Soska Jacek	Against
36.	Starownik Marian	For
37.	Stefaniuk Franciszek	For
38.	Strzelecki Henryk	Against
39.	Sytek Tadeusz	Against
40.	Szatkowski Sławomir	Did not vote
41.	Szczepaniak Jan	Abstained
42.	Szreder Bogumił	For
43.	Wiertek Włodzimierz	Against
44.	Witt Zenon	For
45.	Woroszczak Józef	For
46.	Wrona Władysław	For
47.	Zarzycki Wojciech	For
48.	Zych Józef	For
49.	Żabiński Władysław	Did not vote
50.	Żelichowski Stanisław	For

Confederation of Independent Poland – KPN (46)

Voted: 41

For: 28

Against: 8

Abstentions: 5

Did not vote: 5

1.	Adamczyk Zbigniew	For
2.	Andrzejczak Andrzej	Did not vote
3.	Aszyk Piotr	For
4.	Błażejczyk Krzysztof	For

5.	Bogusz Ryszard	For
6.	Brzycki Zbigniew	For
7.	Chmiel Andrzej	For
8.	Czyż Barbara	Against
9.	Frost Zbigniew	For
10.	Gaj Bożena	Against
11.	Golba Leszek	For
12.	Janiszewski Michał	For
13.	Kamiński Krzysztof	For
14.	Karwowski Tomasz	For
15.	Koza Janusz	Abstained
16.	Kraus Janina	Against
17.	Król Krzysztof	For
18.	Lewandowski Mirosław	For
19.	Łenik Zygmunt	Did not vote
20.	Mazurkiewicz Andrzej	For
21.	Michalak Elżbieta	Against
22.	Michalik Marek	For
23.	Moczulski Leszek	For
24.	Opilo Henryk	For
25.	Pawelec Józef	For
26.	Pęgiel Wojciech	For
27.	Pietrzyk Katarzyna	Did not vote
28.	Polczyński Waldemar	Against
29.	Popenda Krzysztof	Did not vote
30.	Pycak Wincenty	For
31.	Różycka Barbara	For
32.	Sengebusch Adam	Abstained
33.	Skorecki Zbigniew	Did not vote
34.	Słomka Adam	For
35.	Sońta Dariusz	For
36.	Sytek Przemysław	For
37.	Terlecki Andrzej	Abstained
38.	Then Artur	For
39.	Tokarzewski Michał	For
40.	Tromski Robert	Against
41.	Wartak Jarosław	Against
42.	Wilk Kazimierz	For
43.	Woźniak Jarosław	For
44.	Wójcik Dariusz	Abstained
45.	Zakrzewska Iwona	Abstained
46.	Ziemiński Adam	Against

Christian National Union – ZChN (46)

Voted: 46

For: 31

Against: 12

Abstentions: 3

Did not vote: 0

1.	Barucka Maria	For
2.	Bazala Teresa	For
3.	Berak Jadwiga	For
4.	Blajerski Włodzimierz	For
5.	Błaszczec Jozef	For
6.	Boba Bogumiła	Against
7.	Chrzanowski Wiesław	For
8.	Czarnecki Ryszard	For
9.	Dyka Zbigniew	For
10.	Dzierżyński Antoni	Against
11.	Godlewski Tadeusz	For
12.	Goryszewski Henryk	For
13.	Grabowski Mariusz	Against
14.	Hrybacz Jerzy	Against
15.	Jurek Marek	Abstained
16.	Kazimierski Grzegorz	For
17.	Klata Henryk	Against
18.	Kropiwnicki Jerzy	For
19.	Libicki Marcin	For
20.	Łopuszański Jan	Against
21.	Łukomski Adam	For
22.	Marasek Mariusz	Abstained
23.	Matyjek Jerzy	Against
24.	Michalak Jerzy	For
25.	Modzelewski Waldemar	For
26.	Mogiła-Lisowski Zygmunt	For
27.	Niesiołowski Stefan	For
28.	Nowina-Konopka Halina	Against
29.	Pękała Kazimierz	Abstained
30.	Piątkowski Jan	For
31.	Pieczka Feliks	For
32.	Piłka Marian	For
33.	Rakoczy Stanisław	For

34.	Schreiber Grzegorz	For
35.	Sikora Waldemar	Against
36.	Siwiec Marek	For
37.	Srebro Maciej	Against
38.	Stańdo Stanisław	For
39.	Strębska Halina	For
40.	Szablewski Alojzy	For
41.	Szysko Tomasz	For
42.	Turczyński Jacek	Against
43.	Usakiewicz Aleksander	For
44.	Walerych Piotr	Against
45.	Wądołowski Stanisław	For
46.	Zając Stanisław	For

NSZZ 'Solidarność' – NSZZ-S (26)

Voted: 21

For: 17

Against: 1

Abstentions: 3

Did not vote: 5

1.	Arkuszewski Wojciech	For
2.	Baran Stanisław	For
3.	Bartosz Waldemar	For
4.	Borusewicz Bogdan	Did not vote
5.	Frączek Barbara	Abstained
6.	Kielek Eugeniusz	For
7.	Kowalczyk Paweł	For
8.	Kulas Jan	For
9.	Lewandowski Tadeusz	For
10.	Ładosz Zbigniew	For
11.	Markiewicz Marek	Against
12.	Muller Edward	Did not vote
13.	Muszyński Marek	For
14.	Niczyperowicz Jerzy	For
15.	Panek Sławomir	Did not vote
16.	Pietrzyk Alojzy	Did not vote

17.	Rogucki Sławomir	For
18.	Rulewski Jan	Did not vote
19.	Seferowicz Elżbieta	For
20.	Smirnow Andrzej	For
21.	Sobański Stanisław	For
22.	Tyrakowski Antoni	For
23.	Wąsik Stanisław	For
24.	Węglarz Stanisław	Abstained
25.	Zieliński Marek	For
26.	Żółtowska Maria	Abstained

Polish Convention – KP (25)

Voted: 22

For: 18

Against: 2

Abstentions: 2

Did not vote: 3

1.	Balazs Artur	For
2.	Bąk Józef	Against
3.	Berdychowski Zygmunt	For
4.	Chałosiński Michał	For
5.	Fogler Piotr	For
6.	Gąsienica-Makowski Andrzej	Against
7.	Gil Mieczysław	Abstained
8.	Gutowski Józef	For
9.	Hall Aleksander	For
10.	Klisiewicz Wiesław	For
11.	Knysok Anna	Abstained
12.	Kowalczyk Tadeusz, Franciszek's son	For
13.	Lech Zbigniew	Did not vote
14.	Łączkowski Paweł	For
15.	Matuszczak Adam	For
16.	Niewiarowski Ireneusz	For
17.	Niewiarowski Wacław	Did not vote
18.	Pilarski Bohdan	For
19.	Raiter Władysław	For

20.	Rostek Kazimierz	Did not vote
21.	Rzepka Edward	For
22.	Steinhoff Janusz	For
23.	Ujazdowski Kazimierz	For
24.	Wojtyła Andrzej	For
25.	Zalewski Paweł	For

Covenant of the Centre – PC (25)

Voted: 24

For: 20

Against: 2

Abstentions: 2

Did not vote: 1

1.	Andrysiak Andrzej	For
2.	Bielewicz Antoni	For
3.	Bujak Jacek	For
4.	Dubiella Zdzisław	For
5.	Dziubek Marek	For
6.	Glapiński Adam	Abstained
7.	Górczyk Tadeusz	For
8.	Jedynak Tadeusz	Against
9.	Kaczyński Jarosław	For
10.	Kaczyński Lech	Did not vote
11.	Kania Józef	For
12.	Kern Andrzej	For
13.	Kołodziej Bartłomiej	For
14.	Kowalczyk Tadeusz, Piotr's son	For
15.	Lasota Marek	For
16.	Lipiński Adam	For
17.	Liszczy Teresa	For
18.	Maziarski Jacek	For
19.	Nowak Czesław	For
20.	Putra Krzysztof	For
21.	Siwek Sławomir	Against
22.	Sobierajski Czesław	Abstained
23.	Tchórzewski Krzysztof	For
24.	Tokarczuk Antoni	For
25.	Twaróg Bolesław	For

People's Agreement – PL (19)

Voted: 18

For: 13

Against: 3

Abstentions: 2

Did not vote: 1

1.	Adamowicz Andrzej	For
2.	Bąk Henryk	Against
3.	Czechoński Stanisław	For
4.	Frączek Józef	For
5.	Furtak Antoni	For
6.	Hardej Sławomir	For
7.	Janowski Gabriel	For
8.	Janowski Wiesław	Did not vote
9.	Klimczak Feliks	For
10.	Król Stefan	Abstained
11.	Krutul Piotr	Against
12.	Pawlak Mieczysław	Abstained
13.	Sikora Wanda	Against
14.	Suchora Henryk	For
15.	Sumara Włodzimierz	For
16.	Szańkowski Stefan	For
17.	Szymańczak Tadeusz	For
18.	Wierzbicki Roman	For
19.	Wójcik Tadeusz	For

Movement for the Republic – RdR (17)

Voted: 16

For: 16

Against: 0

Abstentions: 0

Did not vote: 1

1.	Anusz Andrzej	For
2.	Barczyk Kazimierz	For
3.	Bartoszcze Roman	For

4.	Choiński Janusz	For
5.	Hniedziewicz Stanisław	For
6.	Kostarczyk Andrzej	For
7.	Kotlarski Paweł	For
8.	Krasowski Edmund	For
9.	Mizikowski Jan	For
10.	Olszewski Jan	For
11.	Piasecki Cezary	For
12.	Synowiec Jerzy	For
13.	Świtoń Kazimierz	For
14.	Węglowski Stanisław	For
15.	Wierzbicka Danuta	For
16.	Włodarczyk Wojciech	For
17.	Wójcik Piotr	Did not vote

German minority – MN (7)

Voted: 7

For: 5

Against: 2

Abstentions: 0

Did not vote: 0

1.	Bastek Erhard	For
2.	Fabian Jan	For
3.	Flak Edward	Against
4.	Kost Antoni	Against
5.	Kozak Brunon	For
6.	Kroll Henryk	For
7.	Paździor Helmut	For

Labour Union – UP (6)

Voted: 4

For: 0

Against: 4

Abstentions: 0

Did not vote: 2

1.	Bugaj Ryszard	Against
2.	Bujak Zbigniew	Did not vote
3.	Czarnecki Piotr	Against
4.	Małachowski Aleksander	Did not vote
5.	Szymański Janusz	Against
6.	Ziółkowska Wiesława	Against

Christian Democracy – ChD (5)

Voted: 5

For: 5

Against: 0

Abstentions: 0

Did not vote: 0

1.	Hermanowicz Józef	For
2.	Lasocki Tadeusz	For
3.	Pastuszewski Stefan	For
4.	Rospa Henryk	For
5.	Staniuk Władysław	For

‘Spolegliwość’ – SPOLEG. (3)

Voted: 2

For: 1

Against: 1

Abstentions: 0

Did not vote: 1

1.	Halber Adam	For
2.	Ibisz Krzysztof	Against
3.	Piechowicz Adam	Did not vote

Union of Realpolitik – UPR (3)

Voted: 0

For: 0

Against: 0

Abstentions: 0

Did not vote: 3

1.	Korwin-Mikke Janusz	Did not vote
2.	Pruchno-Wróblewski Lech	Did not vote
3.	Sielańczyk Andrzej	Did not vote

Non-attached MPs – Niez. (14)

Voted: 10

For: 8

Against: 1

Abstentions: 1

Did not vote: 4

1.	Andrzejewski Roman	For
2.	Bartosz Ryszard	For
3.	Bień Tadeusz	For
4.	Chełstowski Kazimierz	Did not vote
5.	Czajka Antoni	Did not vote
6.	Czykwin Eugeniusz	Did not vote
7.	Kocjan Stanisław	For
8.	Kwiatkowski Wojciech	Abstained
9.	Macierewicz Antoni	For
10.	Musiół Paweł	For
11.	Rudnicka Jadwiga	Did not vote
12.	Rychlik Andrzej	For
13.	Sterkowicz Czesław	Against
14.	Świtka Jan	For

Schedule 2. The vote in the Senate vote on the adoption of the Act of 7 January 1993 on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy³

Voted: 89

For: 35

Against: 34

Abstentions: 20

Did not vote: 11⁴

Democratic Union – UD (23)

Voted: 21

For: 11

Against: 8

Abstentions: 2

Did not vote: 2

1.	Bałtakis Jadwiga	Abstained
2.	Bartnik Wacław	For
3.	Błaszczak Zbigniew	For
4.	Bogucka-Skowrońska Anna	Against
5.	Celiński Andrzej	Against
6.	Chmura Jerzy	Against
7.	Czemplik Marek	Against
8.	Findeisen Władysław	For
9.	Horodecki Krzysztof	For
10.	Kaźmierowski Andrzej	Did not vote
11.	Kozłowski Krzysztof	For

3 Stenographic report of the 32nd sitting of the Senate of the Republic of Poland, 2nd term, on 28, 29 and 30 January 1993, <http://ww2.senat.pl/k2/dok/sten/032/032sten.htm>, file: Votes, accessed 1 September 2023.

4 In the source material, next to the statistics summarising the voting results in the 'Did not vote' section, the number '0' refers to a situation where the senator was present in the room but did not vote. The source material distinguishes between two situations: a senator was absent (1) and a senator was present in the chamber but did not vote (2). In our study, the total number of senators covering both situations is given in the 'Did not vote' section.

12.	Kuratowska Zofia	Against
13.	Maliński Edmund	Against
14.	Pawlik Andrzej	For
15.	Połomski Franciszek	Against
16.	Simonides Dorota	For
17.	Szudejko Bolesław	Did not vote
18.	Tukało Konstanty	For
19.	Tyc Andrzej	For
20.	Wende Edward	Abstained
21.	Wójcik Wiesław	Against
22.	Wysoczański Jan	For
23.	Żak Stanisław	For

Christian National Union – ZChN (11)

Voted: 11

For: 0

Against: 2

Abstentions: 9

Did not vote: 0

1.	Andrzejewski Piotr	Against
2.	Bohdanowicz Waldemar	Abstained
3.	Dziekan Eugeniusz	Abstained
4.	Lewoc Leszek	Against
5.	Perzanowski Wiesław	Abstained
6.	Piotrowski Walerian	Abstained
7.	Pusz Zbigniew	Abstained
8.	Rupacz Michał	Abstained
9.	Skupiński Adam	Abstained
10.	Szafraniec Jan	Abstained
11.	Zamoyski Jan	Abstained

Polish People's Party – PSL (10)

Voted: 7

For: 6

Against: 1

Abstentions: 0

Did not vote: 3

1.	Antonowicz Jan	For
2.	Chojnacki Piotr	Did not vote
3.	Czarnobilski Zdzisław	Against
4.	Gajewski Sylwester	For
5.	Grzeszczak Eugeniusz	Did not vote
6.	Komorowski Zbigniew	For
7.	Makarewicz Henryk	Did not vote
8.	Rysak Elżbieta	For
9.	Struzik Adam	For
10.	Włodyka Mieczysław	For

NSZZ ‘Solidarność’ – NSZZ-S (9)

Voted: 9

For: 4

Against: 2

Abstentions: 3

Did not vote: 0

1.	Chełkowski August	Against
2.	Gościej Janina	For
3.	Hałasa Józef	Abstained
4.	Jurczak Stefan	For
5.	Mazurek Janusz	For
6.	Pankanin Piotr	Against
7.	Pieńkowska Alina	For
8.	Stasiak Wiktor	Abstained
9.	Wilkowski Eugeniusz	Abstained

Polish Convention – KP (7)

Voted: 6

For: 4

Against: 0

Abstentions: 2

Did not vote: 1

1.	Barańczak Jarosław	For
2.	Chodkowski Jan	Did not vote

3.	Draus Jan	For
4.	Kamiński Tadeusz	For
5.	Pawłowski Krzysztof	For
6.	Stępień Jerzy	Abstained
7.	Ślisz Józef	Abstained

Polish Liberal Programme – PPL (7)

Voted: 7

For: 3

Against: 4

Abstentions: 0

Did not vote: 0

1.	Borzyszkowski Józef	For
2.	Czapski Andrzej	For
3.	Filipkowski Zbigniew	Against
4.	Kruk Wojciech	Against
5.	Piesiak Andrzej	For
6.	Rzeźniczak Andrzej	Against
7.	Śnieżko Stefan	Against

Independent Senators' Club – KSN (7)

Voted: 6

Pros: 1

Against: 5

Abstentions: 0

Did not vote: 1

1.	Baranowski Janusz	Did not vote
2.	Bartodziej Gerhard	For
3.	Jagiełło Edmund	Against
4.	Jagodziński Tomasz	Against
5.	Madaj Jerzy	Against
6.	Stokłosa Henryk	Against
7.	Szymanowski Andrzej	Against

Covenant of the Centre – PC (6)

Voted: 4

For: 0

Against: 3

Abstentions: 1

Did not vote: 2

1.	Grześkowiak Alicja	Against
2.	Juros Paweł	Did not vote
3.	Musiał Jan	Against
4.	Piotrowski Leszek	Did not vote
5.	Poniatowski Kazimierz	Against
6.	Rossa Henryk	Abstained

People's Agreement – PL (5)

Voted: 5

For: 3

Against: 2

Abstentions: 0

Did not vote: 0

1.	Brzozowski Tadeusz	For
2.	Czarnocki Henryk	Against
3.	Hortmanowicz Zygmunt	Against
4.	Kamiński Jerzy	For
5.	Woźnica Janusz	For

Confederation of Independent Poland – KPN (4)

Voted: 4

For: 2

Against: 2

Abstentions: 0

Did not vote: 0

1.	Jesionek Jan	Against
2.	Kostka Stanisław	For
3.	Rejniewicz Marian	For
4.	Węgrzyn Zygmunt	Against

Movement for the Republic – RdR (4)

Voted: 3

For: 0

Against: 0

Abstentions: 3

Did not vote: 1

1.	Choroszuca Ireneusz	Abstained
2.	Kępa Jerzy	Abstained
3.	Piesiewicz Krzysztof	Abstained
4.	Romaszewski Zbigniew	Did not vote

Democratic Left Alliance – SLD (4)

Voted: 4

For: 0

Against: 4

Abstentions: 0

Did not vote: 0

1.	Jarzembowski Ryszard	Against
2.	Kopaczewski Jerzy	Against
3.	Kuczyński Józef	Against
4.	Wyględowski Mieczysław	Against

Non-attached Senators – Niez. (3)

Voted: 2

For: 1

Against: 1

Abstentions: 0

Did not vote: 1

1.	Bender Ryszard	Against
2.	Juszkiewicz Ryszard	Did not vote
3.	Kralczyński Andrzej	For

Schedule 3. The vote in the Sejm on the Act of 30 August 1996 amending the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy and amending certain other acts⁵

Voted: 284

For: 208

Against: 61

Abstentions: 15

Did not vote: 176

Democratic Left Alliance – SLD (169)

Voted: 153

For: 147

Against: 2

Abstentions: 4

Did not vote: 16

1.	Adamski Władysław	For
2.	Ajchler Romuald	For
3.	Andryszak Aleksander	For
4.	Banach Jolanta	For
5.	Bańkowska Anna	For
6.	Baszczyński Krzysztof	For
7.	Biliński Tadeusz	For
8.	Blida Barbara	For
9.	Błoch Jadwiga	For
10.	Bomba Zbigniew	For
11.	Borowski Marek	For
12.	Brachmański Andrzej	For
13.	Brzeziński Krzysztof	For
14.	Budkiewicz Jan	For

⁵ Stenographic report of the 87th sitting of the Sejm of the Republic of Poland on 28, 29 and 30 August 1996, Annex 3, [https://orka2.sejm.gov.pl/Stenogramy2.nsf/0/0D86136E16940998C1258959004A2802/\\$file/087.pdf](https://orka2.sejm.gov.pl/Stenogramy2.nsf/0/0D86136E16940998C1258959004A2802/$file/087.pdf), accessed 1 September 2023.

15.	Bujak Bogdan	For
16.	Bułka Władysław	For
17.	Byra Jan	For
18.	Ceranka Stefan	For
19.	Chojnacki Jan	Did not vote
20.	Ciborowska Danuta	For
21.	Ciesielski Wiesław	For
22.	Cimoszewicz Włodzimierz	Did not vote
23.	Cybulski Zygmunt	For
24.	Czajczyński Stanisław	For
25.	Czerniawski Mieczysław	For
26.	Dancewicz Dorota	For
27.	Drękowski Witold	For
28.	Dobosz Teresa	For
29.	Dyduch Marek	For
30.	Dzieniaiewicz Stanisław	For
31.	Dziewulski Jerzy	For
32.	Firak Witold	For
33.	Gawin Tadeusz	Against
34.	Gliniecki Lubomir	Did not vote
35.	Grabałowski Wojciech	For
36.	Grabek Józef	For
37.	Grabowska Danuta	For
38.	Grela Leon	For
39.	Grodzicki Ryszard	For
40.	Gruszka Grzegorz	For
41.	Grzebisz-Nowicka Zofia	For
42.	Halber Adam	For
43.	Herudziński Bolesław	For
44.	Hyla-Makowska Barbara	For
45.	Iwiński Tadeusz	Did not vote
46.	Janas Stanisław	Did not vote
47.	Janik Krzysztof	For
48.	Jankowski Jerzy	For
49.	Janowski Zbigniew	For
50.	Jaskiernia Jerzy	Did not vote
51.	Jasztal Teresa	For
52.	Jedon Mieczysław	For
53.	Jędrzejczak Tadeusz	For
54.	Jurecki Ignacy	For
55.	Jurek Janusz	For
56.	Jurgielanec Seweryn	For

57.	Kaczmarek Wiesław	For
58.	Kaleta Józef	For
59.	Kaniewski Zbigniew	For
60.	Kasprzyk Jacek	For
61.	Kasprzyk Paweł	For
62.	Kisieliński Jan	For
63.	Kobielusz Antoni	For
64.	Kocjan Jacek	For
65.	Konarski Włodzimierz	Did not vote
66.	Kopeć Stanisław	For
67.	Kossakowski Jerzy	For
68.	Kossakowski Wiesław	For
69.	Kowalczyk Stanisław	For
70.	Kowska Bronisława	For
71.	Krajewski Mieczysław	For
72.	Krawczuk Aleksander	For
73.	Krysiewicz Bogdan	For
74.	Kufel Zenon	For
75.	Lemański Janusz	For
76.	Lewandowski Marek	For
77.	Lewicka-Lęgowska Ewa	Did not vote
78.	Łybacka Krystyna	For
79.	Majewski Wit	For
80.	Maksymiuk Janusz	Did not vote
81.	Malinowski Janusz	Did not vote
82.	Maliszewski Stanisław	For
83.	Manicki Maciej	For
84.	Marczewski Marian	For
85.	Marczewski Sławomir	For
86.	Martyniuk Wacław	For
87.	Matyjek Tadeusz	For
88.	Mazurkiewicz Marek	Did not vote
89.	Miller Leszek	Did not vote
90.	Milner Kazimierz	Did not vote
91.	Modzelewski Kazimierz	For
92.	Murynowicz Alicja	For
93.	Musielak Kazimierz	Abstained
94.	Nieporęt Włodzimierz	For
95.	Nowacka Irena	For
96.	Nowaczyk Wojciech	For
97.	Nowak Kazimierz	For
98.	Nowicki Józef	For
99.	Nowicki Roman	For

100.	Nycz Kazimierz	For
101.	Oleksy Józef	For
102.	Olewiński Marek	Against
103.	Olszewski Andrzej	Abstained
104.	Ostrowska Małgorzata	For
105.	Pająk Urszula	For
106.	Panek Jerzy	For
107.	Paniec Henryk	For
108.	Pańtak Kazimierz	For
109.	Passendorfer Jerzy	For
110.	Pastusiak Longin	For
111.	Paszczyk Stanisław	For
112.	Pawlak Stanisław	For
113.	Pawłowska Regina	For
114.	Piechota Jacek	For
115.	Piecka Mieczysław	For
116.	Piela-Mielczarek Elżbieta	For
117.	Pilarczyk Jerzy	For
118.	Piotrowski Andrzej	For
119.	Plewa Siergiej	For
120.	Pogoda Czesław	For
121.	Potulski Franciszek	For
122.	Rojszyk Marek	For
123.	Rokicki Andrzej	For
124.	Rusznica Stanisław	Abstained
125.	Sas Kazimierz	For
126.	Sekuła Ireneusz	For
127.	Siemiątkowski Zbigniew	For
128.	Sierakowska Izabella	For
129.	Sitek Włodzimierz	For
130.	Siwiec Marek Maciej	Did not vote
131.	Skomra Szczepan	For
132.	Skrzyński Andrzej	For
133.	Stomski Andrzej	For
134.	Sobotka Zbigniew	For
135.	Spychalska Ewa	For
136.	Stec Stanisław	For
137.	Stępień Władysław	For
138.	Szarawarski Andrzej	For
139.	Szczepański Wiesław Andrzej	Abstained
140.	Szkop Władysław	For
141.	Szmajdziński Jerzy	Did not vote
142.	Szteliga Jerzy	For

143.	Szweda Wiesław	For
144.	Szymańczyk Lech	For
145.	Szymański Jan	For
146.	Szynalska Renata	For
147.	Śleziak Czesław	For
148.	Tomaszewski Tadeusz	For
149.	Tuszyński Zdzisław	For
150.	Ulicki Ryszard	For
151.	Urbańczyk Andrzej	For
152.	Waniek Danuta	For
153.	Wenderlich Jerzy	For
154.	Wiatr Jerzy	For
155.	Wieczorek Zbigniew	For
156.	Wilczyńska Zofia	For
157.	Winiarczyk-Kossakowska Małgorzata	For
158.	Zaborowski Zbyszek	For
159.	Zaciura Jan	For
160.	Zając Ryszard	For
161.	Zając Tadeusz	For
162.	Zakrzewski Jerzy	For
163.	Zalewska Anna	For
164.	Zbrzyzny Ryszard	For
165.	Zemke Janusz	For
166.	Żbikowski Władysław	For
167.	Żelazowski Andrzej	For
168.	Żenkiewicz Marian	For
169.	Żochowski Ryszard Jacek	Did not vote

Polish People's Party – PSL (129)

Voted: 25

For: 8

Against: 13

Abstentions: 4

Did not vote: 104

1.	Adamski Kazimierz	Did not vote
2.	Andrykiewicz Jan	Did not vote
3.	Bajotek Andrzej	Against
4.	Bartoszek Stanisław	Did not vote

5.	Bartoszewicz Zygmunt	Against
6.	Bentkowski Aleksander	Did not vote
7.	Błądek Lidia	Did not vote
8.	Bogdan Henryk	Did not vote
9.	Bogusławski Włodzimierz	Did not vote
10.	Bondyra Ryszard	Did not vote
11.	Borek Roman Edward	Did not vote
12.	Borkowski Jan	Did not vote
13.	Bugaj Leszek	Did not vote
14.	Bury Jan	Did not vote
15.	Chojnacki Piotr	Did not vote
16.	Choryngiewicz Henryk	Did not vote
17.	Cichosz Janusz	Did not vote
18.	Ciecióra Jacek	Did not vote
19.	Ciesielski Stanisław	Against
20.	Cieślak Czesław	Against
21.	Dejmek Kazimierz	For
22.	Dobroński Adam	Did not vote
23.	Dobrosz Janusz	Did not vote
24.	Dobrowolski Waldemar	Did not vote
25.	Domagalski Alfred	Did not vote
26.	Fal Stanisław	Did not vote
27.	Gajda Tadeusz	Did not vote
28.	Galek Zbigniew	Against
29.	Gąsiorczyk Alojzy	Did not vote
30.	Gietek Tomasz	Did not vote
31.	Gnat Edward	Did not vote
32.	Gołębiewski Wiesław	Against
33.	Gruszka Józef	Did not vote
34.	Grzyb Andrzej	Did not vote
35.	Jagieliński Roman	Did not vote
36.	Jasiński Władysław	Did not vote
37.	Kado Jerzy	Did not vote
38.	Kalbarczyk Ryszard	Did not vote
39.	Kalemba Stanisław	Did not vote
40.	Kalinowski Jarosław	Did not vote
41.	Kalisz Józef	Did not vote
42.	Kasprzak Mieczysław	Did not vote
43.	Kietczewski Leszek	Did not vote
44.	Kisielewski Henryk	Did not vote
45.	Kołodziej Ryszard	Did not vote
46.	Komornicki Jan	Did not vote

47.	Kopczyk Jan	Did not vote
48.	Kotowicz Grażyna	Did not vote
49.	Kowalczyk Tadeusz Józef	Did not vote
50.	Kowalik Jan	Did not vote
51.	Kozłowski Piotr	Did not vote
52.	Król Marian	Did not vote
53.	Kubik Jan	Did not vote
54.	Kujawa Ryszard	Abstained
55.	Kurnatowska Maria	Against
56.	Kurzawa Jarosław	Did not vote
57.	Kusior Stanisław	Did not vote
58.	Łochowski Józef	Abstained
59.	Łuczak Aleksander	Did not vote
60.	Machnio Bolesław	Did not vote
61.	Maćkowiak Janusz	Did not vote
62.	Madzia Tadeusz	Did not vote
63.	Malinowski Andrzej	Did not vote
64.	Małachowska Aleksandra	Abstained
65.	Masternak Stanisław	Did not vote
66.	Mączewski Jan	Did not vote
67.	Medwid Władysław	Did not vote
68.	Michalik Józef	Did not vote
69.	Michalski Marian	Against
70.	Michna Waldemar	For
71.	Mierzwa Zbigniew	Did not vote
72.	Mioduszewski Józef	Did not vote
73.	Opęchowski Wiesław	Did not vote
74.	Ozga Krystyna	Did not vote
75.	Pasoń Stanisław	Did not vote
76.	Pawlak Mirosław	Did not vote
77.	Pawlak Waldemar	Did not vote
78.	Pawlicki Jacek	For
79.	Petryna Irena	Did not vote
80.	Pęk Bogdan	Did not vote
81.	Piątkowski Wiesław	Abstained
82.	Piechociński Janusz	Did not vote
83.	Pieniądz Jan	Did not vote
84.	Pietrzyk Lucyna	For
85.	Pistelok Jerzy	For
86.	Podkański Lesław	Did not vote
87.	Podkański Zdzisław	Did not vote
88.	Polański Tadeusz	Did not vote

89.	Pomirski Miron	For
90.	Półciwarteł Ignacy	Did not vote
91.	Rychliczek Adam	Did not vote
92.	Rytych Grzegorz	Did not vote
93.	Sabat Tadeusz	Did not vote
94.	Samborski Tadeusz	Did not vote
95.	Sawicki Marek	Did not vote
96.	Serafin Władysław	Against
97.	Skubis Ireneusz	Did not vote
98.	Sławewski Tadeusz	Did not vote
99.	Smolarek Ryszard	Did not vote
100.	Soska Jacek	For
101.	Stanibuła Ryszard	Did not vote
102.	Starownik Marian	Did not vote
103.	Stasiak Stanisław	Did not vote
104.	Stasiak Wiesław	Against
105.	Stefaniuk Franciszek Jerzy	Did not vote
106.	Strąg Michał	Did not vote
107.	Suszciewicz Zygmunt	Did not vote
108.	Sytek Tadeusz	Did not vote
109.	Szatkowski Sławomir	Did not vote
110.	Szczepaniak Jan	Against
111.	Szczęsny Adam	Did not vote
112.	Szymański Krzysztof	Did not vote
113.	Ścierski Klemens	Did not vote
114.	Śmietanko Andrzej	Did not vote
115.	Święs Władysław	For
116.	Świrepo Jan	Did not vote
117.	Tarczyński Antoni Jan	Did not vote
118.	Tomaszewski Władysław	Did not vote
119.	Trawicki Krzysztof	Against
120.	Wierzbicki Janusz	Against
121.	Wiśniewski Andrzej	Did not vote
122.	Wótek Jan	Did not vote
123.	Wójcik Stanisław	Did not vote
124.	Wrona Władysław	Did not vote
125.	Zarzycki Wojciech Szczęsny	Did not vote
126.	Zegar Józef	Did not vote
127.	Zych Józef	Did not vote
128.	Żabiński Władysław	Did not vote
129.	Żelichowski Stanisław	Did not vote

Union for Freedom – UW (73)

Voted: 62

Pros: 18

Against: 40

Abstentions: 4

Did not vote: 11

1.	Arkuszewski Wojciech	Against
2.	Balicki Marek	For
3.	Bober Andrzej	Did not vote
4.	Borusewicz Bogdan	Against
5.	Braun Juliusz	Against
6.	Buczowski Piotr	Against
7.	Budnik Krzysztof	Against
8.	Celiński Andrzej	For
9.	Chwat Leszek	Against
10.	Ciemniewski Jerzy	Against
11.	Czech Mirosław	Against
12.	Dmochowska Maria	Abstained
13.	Dołowy Krzysztof	For
14.	Działoszyński Karol	Against
15.	Fiedorowicz Czesław	Against
16.	Figura Grzegorz	Against
17.	Frasyniuk Władysław	For
18.	Gaberle Andrzej	Abstained
19.	Gawlik Radosław	For
20.	Geremek Bronisław	Against
21.	Helena Góralska	For
22.	Imiołczyk Barbara	Did not vote
23.	Janas Zbigniew	Abstained
24.	Komorowski Bronisław	Against
25.	Koralewski Jerzy	For
26.	Kracik Stanisław	Against
27.	Król Jan	Against
28.	Krzyżanowska Olga	Did not vote
29.	Kuroń Jacek	For
30.	Lipowicz Irena	Against
31.	Lityński Jan	Did not vote
32.	Luks Krzysztof	Did not vote

33.	Machowski Andrzej	Against
34.	Mazowiecki Tadeusz	Against
35.	Mączka Zbigniew	Did not vote
36.	Milewski Zdobystaw	Against
37.	Niemcewicz Janusz	Against
38.	Nowina-Konopka Piotr	For
39.	Okoński Jan	Did not vote
40.	Olszowski Jan	Against
41.	Onyszkiewicz Janusz	Against
42.	Osiatyński Jerzy	For
43.	Piekarska Katarzyna Maria	Abstained
44.	Polmański Piotr	Against
45.	Potocki Andrzej	Did not vote
46.	Puzyna Włodzimierz	Against
47.	Rokita Jan	Against
48.	Rulewski Jan	Against
49.	Setnik Ryszard	Did not vote
50.	Skowrońska-Łuszczzyńska Anna	For
51.	Staniszewska Grażyna	Did not vote
52.	Stręga-Piasek Joanna	For
53.	Stolzman Maria	Against
54.	Suchocka Hanna	For
55.	Syrian Tadeusz	Did not vote
56.	Szafruga-Sypniewska Joanna	Against
57.	Szczygielski Kazimierz	Against
58.	Śledzińska-Katarasińska Iwona	For
59.	Taylor Jacek	Against
60.	Turko Ludwik	For
61.	Urbanowicz Anna	Against
62.	Wielowieyski Andrzej	Against
63.	Wierchowicz Jerzy	For
64.	Wolfram Krzysztof	Against
65.	Wójcik Gwido	Against
66.	Wójcik Wiesław	Against
67.	Wujec Henryk	Against
68.	Wyrowiński Jan	Against
69.	Zajączkowska Maria	Against
70.	Zawiła Marcin	Against
71.	Zdrada Jerzy	For
72.	Zieliński Marek	Against
73.	Zieliński Tadeusz Jacek	For

Labour Union – UP (35)

Voted: 29

For: 27

Against: 2

Abstentions: 0

Did not vote: 6

1.	Aumiller Andrzej	For
2.	Borowik Wojciech	Did not vote
3.	Bugaj Ryszard	For
4.	Bujak Zbigniew	For
5.	Czarnecki Piotr	For
6.	Faszyński Ryszard	For
7.	Grott Janusz	For
8.	Hajduk Henryk	For
9.	Jakubczyk Zygmunt	For
10.	Jaruga-Nowacka Izabela	For
11.	Jedynak Tadeusz	Did not vote
12.	Kaczmarek Bogusław	For
13.	Karpiński Sergiusz	Did not vote
14.	Kowalczyk Michał	Did not vote
15.	Małachowski Aleksander	Against
16.	Małachowski Mirosław	For
17.	Marciniak Grzegorz	Did not vote
18.	Marciniak Piotr	For
19.	Moszyński Tadeusz	For
20.	Nałęcz Tomasz	For
21.	Napierała Konrad	For
22.	Nowak Ryszard	For
23.	Nowakowska Maria	For
24.	Pankanin Piotr	Did not vote
25.	Polak Danuta	For
26.	Rogowski Stanisław	Against
27.	Siedlarek Artur	For
28.	Sienkiewicz Krystyna	For
29.	Smółko Artur	For

30.	Szczypiński Zbigniew	For
31.	Szymański Janusz	For
32.	Świerczyńska Beata	For
33.	Wiecheć Krzysztof	For
34.	Wiśniewski Stanisław	For
35.	Ziółkowska Wiesława	For

Non-partisan Reform Support Bloc and Confederation of Independent Poland – BBWR and KPN (21)

Voted: 0

For: 0

Against: 0

Abstentions: 0

Did not vote: 21

1.	Błasiak Wojciech	Did not vote
2.	Burski Ryszard	Did not vote
3.	Czajka Andrzej	Did not vote
4.	Gąsienica-Makowski Andrzej	Did not vote
5.	Kaczmarzyk Grzegorz	Did not vote
6.	Kaźmierczak Andrzej	Did not vote
7.	Kościelny Robert	Did not vote
8.	Kowolik Stanisław	Did not vote
9.	Koza Janusz	Did not vote
10.	Kraus Janina	Did not vote
11.	Laga Krzysztof	Did not vote
12.	Olszewski Ryszard	Did not vote
13.	Pietrzykowski Zbigniew	Did not vote
14.	Piotrowski Marian	Did not vote
15.	Piasarek Zdzisław	Did not vote
16.	Popenda Krzysztof	Did not vote
17.	Saar Paweł	Did not vote
18.	Słomka Adam	Did not vote
19.	Smykowski Leszek	Did not vote
20.	Wilk Kazimierz	Did not vote
21.	Zieliński Leszek	Did not vote

Confederation of Independent Poland – KPN (6)

Voted: 0

For: 0

Against: 0

Abstentions: 0

Did not vote: 6

1.	Cygonik Grzegorz	Did not vote
2.	Kamiński Krzysztof	Did not vote
3.	Król Krzysztof	Did not vote
4.	Moczulski Leszek	Did not vote
5.	Ostoja-Owsiany Andrzej	Did not vote
6.	Wójcik Dariusz	Did not vote

**Non-partisan Reform Support Bloc – Solidarity
in elections – BBWR-SW (5)**

Voted: 0

For: 0

Against: 0

Abstentions: 0

Did not vote: 5

1.	Aszyk Piotr	Did not vote
2.	Dyrda Henryk	Did not vote
3.	Gołaś Andrzej	Did not vote
4.	Gwizdź Jerzy	Did not vote
5.	Wuttke Jerzy	Did not vote

German minority – MN (4)

Voted: 3

For: 0

Against: 2

Abstentions: 1

Did not vote: 1

1.	Czernek Joachim	Against
2.	Kroll Henryk	Against
3.	Kurzbauer Roman	Abstained
4.	Paździor Helmut	Did not vote

New Democracy – ND (3)

Voted: 3

For: 2

Against: 0

Abstentions: 1

Did not vote: 0

1.	Januła Eugeniusz	For
2.	Nowakowski Sławomir	Abstained
3.	Zaborowski Jan	For

New Poland – NP (3)

Voted: 0

For: 0

Against: 0

Abstentions: 0

Did not vote: 3

1.	Kowalczyk Tadeusz	Did not vote
2.	Szweda Bernard	Did not vote
3.	Szyc Hans	Did not vote

Polish Socialist Party – PPS (3)

Voted: 3

For: 3

Against: 0

Abstentions: 0

Did not vote: 0

1.	Ikonowicz Piotr	For
2.	Miżejewski Cezary	For
3.	Walczyńska-Rechmal Maria	For

Non-attached MPs – Niez. (9)

Voted: 6

For: 3

Against: 2

Abstentions: 1

Did not vote: 3

1.	Eysymontt Jerzy	Did not vote
2.	Gąsienica-Łuszczek Tadeusz	Did not vote
3.	Labuda Barbara	For
4.	Lamentowicz Wojciech	Did not vote
5.	Micewski Andrzej	Against
6.	Pol Marek	For
7.	Siedlecki Henryk	For
8.	Skrobisz Jan	Against
9.	Zysk Zbigniew	Abstained

Schedule 4. The vote in the Senate (3 October 1996) on the rejection⁶ of the Act of 30 August 1996 amending the Act on family planning, protection of the human foetus and the conditions for the permissibility of terminating a pregnancy⁷

Voted: 94

For: 52

Against: 40

Abstentions: 2

Did not vote: 6⁸

Democratic Left Alliance – SLD (37)

Voted: 33

For: 0

Against: 33

Abstentions: 0

Did not vote: 4

1.	Adamski Jerzy	Against
2.	Berny Maria	Against
3.	Ciemniak Grażyna	Against
4.	Cieślak Jerzy	Did not vote
5.	Czarny Ryszard	Against
6.	Czerwiński Lech	Against
7.	Działocha Kazimierz	Did not vote
8.	Gibuła Ryszard	Against
9.	Graboś Witold	Against
10.	Jankiewicz Paweł	Against
11.	Jarmużek Zdzisław	Against

6 A vote 'for' indicates opposition to the amendment of 30 August 1996 and a vote 'against' indicates approval of the law passed by the Sejm.

7 Stenographic report of the 81st sitting of the Senate of the Republic of Poland, 3rd term, on 3 and 4 October 1996, <http://ww2.senat.pl/k3/dok/sten/081/081sten.htm>, file: Votes, accessed 1 September 2023.

8 In the source material, next to the statistics summarising the voting results in the 'Did not vote' section, the number '0' refers to a situation where the senator was present in the room but did not vote. The source material distinguishes between two situations: a senator was absent (1) and a senator was present in the chamber but did not vote (2). In our study, the total number of senators covering both situations is given in the 'Did not vote' section.

12.	Jarzembowski Ryszard	Against
13.	Karbowski Jan	Against
14.	Kempka Dorota	Against
15.	Kopaczewski Jerzy	Against
16.	Krupa Henryk	Against
17.	Kucharski Stanisław	Against
18.	Kuczyński Józef	Against
19.	Kulak Zbigniew	Against
20.	Kurczuk Grzegorz	Against
21.	Kustrzeba Wanda	Against
22.	Mąsior Bogusław	Did not vote
23.	Michaś Ireneusz	Against
24.	Miszcuk Piotr	Against
25.	Mulak Jan	Against
26.	Nowak Zenon	Against
27.	Olszewski Wincenty	Against
28.	Patyk Eugeniusz	Against
29.	Piwoński Zbyszko	Against
30.	Rewaj Tadeusz	Against
31.	Romańczuk Tomasz	Did not vote
32.	Rzemykowski Tadeusz	Against
33.	Sikorski Stanisław	Against
34.	Szczepański Andrzej	Against
35.	Szwonder Rajmund	Against
36.	Woźny Grzegorz	Against
37.	Wyględowski Mieczysław	Against

Polish People's Party – PSL (34)

Voted: 33

For: 32

Against: 0

Abstentions: 1

Did not vote: 1

1.	Adamiak Jan	For
2.	Antonowicz Jan	For
3.	Borkowski Krzysztof	For
4.	Ceberek Stanisław	For
5.	Chorąży Jerzy	For

6.	Daraż Adam	For
7.	Derkacz Jerzy	For
8.	Gajewski Sylwester	For
9.	Grzeszczak Eugeniusz	For
10.	Karaś Roman	For
11.	Kienig Edward	For
12.	Kieszkowski Zdzisław	For
13.	Kochanowski Stanisław	Abstained
14.	Komorowski Zbigniew	For
15.	Krakowski Czesław	For
16.	Kwiatkowski Marian	For
17.	Lipczak Władysław	For
18.	Łopatowska Maria	Did not vote
19.	Maciołek Henryk	For
20.	Makarewicz Henryk	For
21.	Matecki Wojciech	For
22.	Ochwat Ryszard	For
23.	Olejnicka-Górczewska Anna	For
24.	Orzechowski Jan	For
25.	Pastuszka Stefan	For
26.	Protasowicki Mieczysław	For
27.	Sęk Jan	For
28.	Stępień Piotr	For
29.	Strażewicz Wacław	For
30.	Struzik Adam	For
31.	Stypuła Jan	For
32.	Włodyka Mieczysław	For
33.	Woś Adam	For
34.	Żołyński Ryszard	For

NSZZ 'Solidarność' – NSZZ-S (12)

Voted: 12

For: 12

Against: 0

Abstentions: 0

Did not vote: 0

1.	Andrzejewski Piotr	For
2.	Bachleđa-Księdzularz Franciszek	For
3.	Biliński Mieczysław	For

4.	Chełkowski August	For
5.	Chronowski Andrzej	For
6.	Frączek Józef	For
7.	Grześkowiak Alicja	For
8.	Jurczak Stefan	For
9.	Łękawa Barbara	For
10.	Stokarska Jadwiga	For
11.	Tyrna Marcin	For
12.	Zarzycki Ireneusz	For

Senatorial Democratic Club – SKD (7)

Voted: 7

For: 4

Against: 3

Abstentions: 0

Did not vote: 0

1.	Bartodziej Gerhard	For
2.	Kozłowski Krzysztof	For
3.	Kruk Wojciech	Against
4.	Kuratowska Zofia	Against
5.	Madej Jerzy	Against
6.	Okrzesik Janusz	For
7.	Simonides Dorota	For

Independent Senators' Club – KSN (5)

Voted: 4

For: 1

Against: 2

Abstentions: 1

Did not vote: 1

1.	Gawronik Aleksander	Abstained
2.	Janowska Zdzisława	Against
3.	Minda Marek	For

4.	Religa Zbigniew	Did not vote
5.	Stokłosa Henryk	Against

Non-attached Senators – Niez. (5)

Voted: 5

For: 3

Against: 2

Abstentions: 0

Did not vote: 0

1.	Balazs Artur	For
2.	Kanicki Henryk	Against
3.	Lackorzyński Leszek	For
4.	Romaszewski Zbigniew	For
5.	Solska Elżbieta	Against

Biographies



Ewa Dmoch-Gajzlerska

Gynecologist-obstetrician, specialist in social medicine, doctor of medicine. She has held the positions of Deputy Head of the Study of Clinical Medicine at the Medical Center for Postgraduate Education, Vice-Dean of the Faculty of Health Sciences at Warsaw Medical University, Head of the Department of Gynecological and Obstetrical Didactics at this university, Head of the Gynecological and Obstetrical Ward at Solec Hospital. Editor-in-chief of the *Midwifery. Science and Practice*. Head of specialization of many doctors in the field of gynecology and obstetrics. Promoter of 20 doctoral dissertations. Awarded by the Minister of Health and Social Welfare, the Director of the Center for Postgraduate Education and the Rector of WUM for teaching, scientific and organizational achievements. She holds state decorations. She is the author of 302 publications, including 85 original papers, 41 conference communications, as well as four books, eight monographs and 65 chapters.



Piotr Kieniewicz

Catholic priest, Marianist, doctor of moral theology, bioethicist, author of books and articles popularizing knowledge of bioethics, preacher and retreat leader. He was born in Warsaw. In the Congregation of Marian Fathers since 1987. He currently serves as secretary of the Polish Province of the Congregation of Marian Fathers. He received his doctorate (2000) and habilitation (2011) from the John Paul II Catholic University of Lublin, where he worked from 1998 to 2014. He is a fellow of the National Catholic Bioethic Center, Philadelphia, PA (2007-2008), the St Pope Paul VI Institute for Human Reproduction, Omaha, NE (2011-2015) and (since 2020) the

Catholic Academy in Warsaw. Since 2017, member and secretary of the KEP Expert Team for Bioethics. Since 2024, ecclesiastical assistant of the National Section of Gynecology and Obstetrics of the Catholic Association of Polish Physicians.



Krzysztof Szczucki

Doctor habilitatus in legal sciences. Specializes in substantive criminal law, philosophy of criminal law and constitutional law. He received his doctorate (2014) and habilitation (2021) from the University of Warsaw. He has conducted scientific research in the UK, Austria, USA, Germany and Japan. He gained professional experience, among others, as an expert on legislation in the Office of Parliamentary Analyses, chief specialist in the criminal law team of the Office of the Ombudsman, chief specialist in the Office of Law and Order of the Office of the President, as well as deputy director of the legal department of the Office of the Prime Minister. From 2020 to 2023, president of the Government Legislation Center. In 2023, minister of education and science. From 2021-2023, member of the scientific council of the De Republica Institute. Member of the Sejm of the 10th term since October 2023. Author and co-author of scientific publications and commentaries on legislation.



Bartłomiej Baran

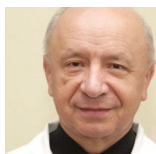
Lawyer, civil servant, legislative trainee at the Government Legislation Center. Graduated with honors from the University of Warsaw with a degree in law, and completed postgraduate managerial studies at the Warsaw School of Economics and corporate financial management at the Leon Koźmiński Academy. He gained experience, among others, in the European Parliament in Brussels and the District Court in Warsaw, as well as in numerous non-governmental organizations and public administration. Graduate of numerous training and leadership programs on law, politics and the importance of values in social life. Member of the Polish Legislation Society.



Nikodem Bernaciak

Attorney at the Warsaw Bar Association, graduate of the Faculty of Law and Administration at Warsaw University and the School of Ukrainian Law at Lazarski University in Warsaw. Senior analyst at the Research and Analysis Center of the Ordo Iuris Institute for Legal Culture, specializing in issues in the areas of state science, protection of life, identity of marriage and the institution of the family. He further developed his social and legal skills at the Catholic Youth Association and the Justice Institute. He has published in the quarterly magazines *Civitas Christiana*, *Polityka Narodowa*, the weekly *Do Rzeczy*, the daily *Rzeczpospolita* and the portal PCh24.pl. He completed the Political Theology Summer School – ‘Politics, Religion, Security’ and the KGHM Leadership School ‘Guides’.

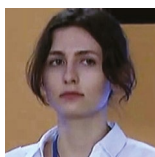
e-mail: nikodem.bernaciak@ordoiuris.pl



Bogdan Chazan

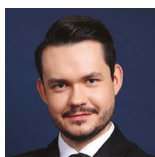
Physician, professor of gynecology and obstetrics. For many years a researcher at the Institute of Mother and Child in Warsaw, deputy director for scientific affairs, head of the Department of Obstetrics and Gynecology at the institution. He was Poland’s national consultant in obstetrics and gynecology for several years. Advocate for changes in Polish obstetrics aimed at the needs of families, as well as the defense of human life from the moment of conception. From 2004 to 2014, director of the gynecological-obstetrical Holy Family Specialized Hospital in Warsaw, fired for refusing to perform abortions. Member of the Government Population Council. Council member of the international organization of Catholic gynaecologists MaterCare International helping mothers in Africa, vice-president of the European Federation of Associations of Catholic Physicians, deputy president of the Catholic Association of Polish Physicians. Author of many scientific works, textbooks for doctors, promoter of habilitation and doctoral theses. Scientific interests: organization of obstetric-gynecological care, bioethics. He received the ‘Award of Honour – Christus

Medicus' from the World Federation of Catholic Doctors FIAMC and the 'Good Samaritan Medal – Curate Infirmos' from the Pontifical Council for the Pastoral Care of Health.



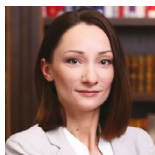
Aniela Czelejczyk

Third-year law student at the Collegium Intermarium.



Filip Furman

Sociologist, doctor of health sciences, graduate of Warsaw University and Beijing Language and Culture University. He defended his doctoral dissertation with honors at the National Institute of Public Health - National Institute of Hygiene. He gained experience in the Ministry of Health and in non-governmental organizations dealing with the broad area of health: both from the scientific and systemic side. Professionally, he is involved in bioethics, sociology of health and public health.



Katarzyna Gęsiak

Legal advisor, member of the Chamber of Legal Advisors in Warsaw, Director of the Ordo Iuris Center for Medical Law and Bioethics. Graduate of law studies at the Faculty of Law and Administration of the Jagiellonian University, scholarship holder at Université de Liège in Belgium. She gained experience working in a number of Warsaw law firms. Her current research interests focus on issues related to medical law and human rights.

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Anna Kubacka

Legal counsel trainee, graduate of the Faculty of Law and Administration at the Nicolaus Copernicus University in Toruń. She specializes in international law and European Union law, especially in the topics of women's rights, protection of life and family policy, while not losing interest in the study of Roman law. Analyst at the International Law Center of the Ordo Iuris Institute for Legal Culture. Author of numerous expert reports, legal analyses and commentaries, co-author of reports including: *Childcare for Children under 3. Legal, Economic and Social Aspects* (2018), *Between the Europe of Nations and the Superstate. Doctrinal, legal and economic aspects of the project of 'deeper integration' in the European Union* (2021) or *Commentary to selected proposals of the Conference on the Future of Europe* (2022). Privately a wife and mother.

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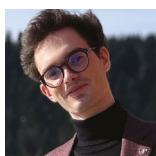


Jerzy Kwaśniewski

Chairman of the Board and co-founder of the Ordo Iuris Institute, Chairman of the Foundation Council. Creator of the Institute's Litigation Intervention Center. Attorney and managing partner at Parchimowicz & Kwaśniewski Law Firm (founded 2008). Graduate of the Faculty of Law and Administration at the University of Warsaw, scholarship holder at the University of Copenhagen (international commercial law, comparative constitutional law), completed courses organized by the Center for Ethics and Culture at the University of Notre Dame, Catholic University of Leuven. He has many years of experience in civil and criminal proceedings for the protection of civil rights and freedoms, family rights and children's rights. In his practice, he advises national and international associations, foundations, cooperatives and business organizations. He has represented citizens and civil society organizations in many precedent-setting cases before national and international courts and tribunals, and has participated in consultations at the invitation of

international bodies such as the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights.

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Jan Melon

Bachelor's degree in sociology from Cardinal Stefan Wyszyński University in Warsaw. Currently a master's student in sociology and a law student at the same university. Author of numerous analyses for non-governmental organizations. His research interests focus on the sociology of religion and family.

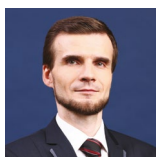
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Calum Miller

Graduated from the University of Oxford Medical School in 2015. Currently working as a medical doctor in the UK. He also teaches philosophy at the University of Oxford; his research at the university focuses on abortion policy in practice. He also holds a master's degree with honors in biblical studies. Dr. Miller has given more than 40 academic presentations around the world and has participated in numerous debates pitting him against the CEO of the UK's largest private abortion provider, BPAS. He has published papers in top academic centers on a variety of topics, including maternal mortality in developing countries, the ethics of voting on abortion, pain felt by animals and foetus, abortion and mental health, abortion using telemedicine, academic freedom and the philosophy of religion. He has received awards for his work in bioethics from Oxford University and the Royal College of Psychiatrists. He has presented his views to a wide range of professionals and parliamentarians around the world. He regularly appears in the mainstream media in the UK and is

invited to speak to various professional groups, such as the Association of Obstetricians and Gynaecologists in Uganda.



Marcin Olszówka

Doctor of Law, assistant professor at the College of Legal Sciences of the Nicolaus Copernicus University and at the Faculty of Law of the University Collegium Inter-marium in Warsaw, member of the Legislative Council of the 14th term at the Prime Minister's Office, deputy editor-in-chief of "The Legal Culture". From 2021 to 2024, director of the Department of Constitutional and Administrative Law at the Government Legislation Center and head of the legislative application conducted by the Government Legislation Center. From 2010 to 2014, an assistant at the Department of Constitutional Law and European Studies of the Institute of Legal Sciences of the Polish Academy of Sciences. Graduate of the Faculty of Law and Administration at the University of Warsaw. Doctoral dissertation entitled *Impact of the Constitution of the Republic of Poland of April 2, 1997 on the system of sources of religious law* defended with distinction at the Faculty of Law and Administration of the University of Warsaw in November 2016. Author of dozens of scientific publications, mainly in the field of constitutional law, religious law and bioethics, including several monographs, articles in high-scoring scientific journals and co-author of a commentary to the Constitution of the Republic of Poland published in 2016 by the C.H. Beck Publishing House.



Przemysław Pietrzak

Lawyer, graduate of the Faculty of Law and Administration at the University of Szczecin, the 'Professional Certificate in World Politics & International Negotiation' programme in New York, as well as the summer school 'The legal system and justice system of the U.S. in the global context'. He gained experience working, among others, in a Warsaw

law firm, the Ministry of Justice, the Permanent Representation of the Republic of Poland to the European Union in Brussels and the Institute of Justice in Warsaw.



Małgorzata Prusak

Graduate of the Faculty of Pharmacy at the Medical Academy in Gdańsk (MA in Pharmacy), Faculty of Theology at Cardinal Stefan Wyszyński University in Warsaw (MA in Theology), full-time doctoral studies at the University of Warmia and Mazury in Olsztyn. She headed the NCN (National Science Center in Kraków) basic research project Prelude 1: *Theological, ethical and legal aspects of pharmacists' conscientious objection*. Based on the dissertation *Objection of Conscience of Pharmacists. A theological and moral study*, she received a doctoral degree in theology. She has worked in the pharmaceutical industry, holding managerial positions in the areas of production, quality control and research and development. Since 2008, she has been working as an M.D. in pharmacy, currently as a pharmacy manager. She is interested in bioethical issues related to the beginning and end of human life. She is the author of the monograph *Objection of Conscience of Pharmacists. Ethical, Theological and Legal Aspects*, the book *Bioethics for the Pharmacist*, and co-editor of the collective work *Patient Pro Future Statements as a Medical, Ethical, Theological and Legal Problem*, in addition, she is the author of numerous scientific and popular science articles on conflict of conscience in the medical profession, the effect of contraceptives, vaccines and other current medical issues. President of the Association of Catholic Pharmacists of Poland. She is a member of the Association of Moral Theologians. She is a member of the Expert Panel of the Bioethics Commission of the Polish Bishops' Conference, as well as the Executive Committee of the International Federation of Catholic Pharmacists.

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Weronika Przebierała

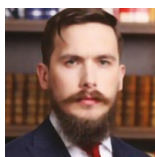
Lawyer, director of the Center for International Law at the Ordo Iuris Institute. She gained experience by co-founding the team of the Legal Office in the Sejm of the Republic of Poland and as an expert of the European Economic and Social Committee. She is the author of analyses, reports and legal opinions prepared for non-governmental organizations and state institutions. Her interests focus on European Union law and the international protection of human rights.

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Sociologist and historian of ideas, editor of the magazine *Christianitas* and the portal *Afirmacja*, columnist for the weekly *Do Rzeczy* and Radio PiK. A columnist for the magazine *Homo Dei*. In the past, associated with various press and Internet titles, including the periodicals *Res Publica Nowa* and *Frona*. Graduate of the Institute of Applied Social Sciences at Warsaw University, where he specialized in the history of political and social thought. Author of books, he has published, among others, *Dante's Bastards. Sketches on the Decline and Rebirth of Visible Christianity* (2015), *Kingdom Not of This World. On the principles of Catholic Poland on the basis of more recent and past events* (2018), *Turbopapierism. On the dynamics of a certain crisis* (2022), *Anachronistic modernity. Essays on the civilization of violence* (2022).



Kamil Smulski

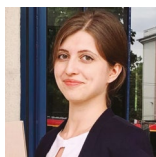
Graduate of law at the University of Wrocław. During his studies he served as vice-chairman and then chairman of the Student Scientific Circle Law, Society Culture, in

addition, he was active in many other scientific circles. He cooperated with Cardinal Stefan Wyszyński University in Warsaw, for which he drew up a scientific expertise *Marriage as a permanent union between a man and a woman – an analysis of selected current issues related to deconstruction and defense of the traditional paradigm*. His academic activities also include issues related to the legal aspects of abortion. He is a member of the Polish Academic Corporation Cresovia Leopoliensis, where he has served as president and vice president in the past.



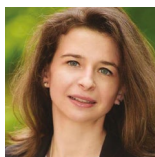
Małgorzata Szczepkowska

Doctor of Humanities, Polish philologist. She defended her PhD at the Institute of the Polish Language of the Polish Academy of Sciences in Cracow on the basis of a dissertation being a linguistic study of the Polish-language press for children and young people published in Soviet Ukraine at the beginning of its Sovietization. Research interests: the Polish language of the former Eastern Borderlands, propaganda and linguistic persuasion.



Gabriela Szewczuk

Master's degree in economic sciences, graduate of the Warsaw School of Economics in the fields of finance and accounting and economic analysis of law with a specialization in tax consulting. Co-author of reports and articles on socio-economic topics, including, among others, economic analysis of the effects of legal regulations, unpaid domestic labor and demographic policy.

**Agata Tarnacka**

Graduate of the Faculty of Law and Administration at Cardinal Stefan Wyszyński University in Warsaw, author of scientific articles and co-author of research reports on children's rights. Her area of scientific interest is primarily constitutional law and family law. She is a speaker at international and national scientific conferences. She has many years of experience in private law.

**Damian Tarnacki**

Graduated in administration from the Faculty of Law and Administration at Cardinal Stefan Wyszyński University in Warsaw, administration with a specialization in finance and banking from the Faculty of Historical and Social Sciences at Warsaw University of Technology, law from the Faculty of Law at the European School of Law and Administration, and Master of Business Administration studies from the Faculty of Social Sciences at the John Paul II Catholic University of Lublin. Lawyer and administrator, civil servant.

**Bartosz Zalewski**

Doctor of legal sciences. Legal advisor. Graduate of law studies at the Faculty of Law and Administration of Maria Curie-Skłodowska University. Research and teaching fellow at the Department of Political and Legal Doctrines and Roman Law of the Maria Curie-Skłodowska University. Expert of the Ordo Iuris Institute for Legal Culture and the Cegielski Analysis Center. Author of numerous publications on Roman law and legal history.

Abortion is an extraordinarily popular subject that stirs strong emotions both in Poland and across the world, and is at once not merely difficult but profoundly multifaceted. The authors argue that abortion constitutes a particular kind of medical procedure – one whose purpose is the ending of a child’s life, yet which is nonetheless commissioned from medical professionals, in direct conflict with their professional ethics and vocation. It is, moreover, most commonly performed on healthy women, which is not without consequence for the health and even the lives of mothers. The issues surrounding abortion encompass a wide range of concerns – not only medical, but also legal, social, and ethical – all of which are addressed in this publication with exceptional clarity and rigorous scholarly documentation.

Dr hab. Ewa Dmoch-Gajzlerska

The publication offers an admirably clear account of the development and decline of philosophical thought, which has undoubtedly shaped shifts in both social mores and the law. [...] The analysis of media language contained within the monograph reveals that the debate over the *nasciturus* is burdened with excessive emotion, with participants adopting entirely opposing positions: some regard the *nasciturus* as a human being, whilst others – even when they do so – dismiss that recognition entirely, placing themselves and their own interests above all else.

Rev. dr hab. Piotr Kieniewicz MIC

The monograph represents a highly original and remarkably well-judged treatment of the issue of abortion termination – simultaneously holistic and synthetic in its approach. The central problem addressed in this publication has acquired an altogether new significance, both scholarly and practical. Across the three aspects analysed by the authors, once transposed onto the terrain of public debate, it proves exceedingly difficult to identify a narrative free from emotional colouring – one that might allow those concerned to engage in genuinely interdisciplinary reflection. As a consequence, the debate appears to be shifting away from scholarly discourse and towards territory occupied almost exclusively by political and social actors, as was witnessed, amongst other instances, during 2020 in Poland. This book therefore constitutes a much-needed and long-awaited remedy to the problem of abortion discourse being dominated by non-academic frameworks. The work possesses considerable cognitive and didactic merit, and may fruitfully serve both purposes in the years ahead.

Dr hab. Krzysztof Szczucki



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