

## **Abortion and the Culture: A struggle between Reality and Morality in Poland**

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### **Abstract**

My paper deals with one of the most discussed social issues related to women's right in Poland. It studies the debates on the issue of abortion in Poland from the perspective of human rights and cultural norms in the country. Abortion law is one of the most important and controversial topics in current Polish politics. This issue has become the center of Polish politics. The issue of abortion in Poland construed within three main discourses: the pro-life National-Catholic discourse; the pro-choice liberal individual discourse; and the pro-choice feminist discourse. All of them pursued radically different interpretations of human rights and democracy. The moral and legal debates on this issue gained attention from worldwide. This paper through light on current social norms, existing legislations and people's expectations related to the issue of abortion in the country.

I am presenting my paper on one of the most discussed social issues related to women's right in Poland. My paper studies the debates from the perspective of human rights and cultural norms in the country. Abortion law is one of the most important and controversial topics in current Polish politics. The issue of abortion in Poland construed within three main discourses: the pro-life National-Catholic discourse; the pro-choice liberal individual discourse; and the pro-choice feminist discourse. All of them pursued radically different interpretations of human rights and democracy. The Roman Catholic Church always has been an important force in Poland and it has been always in conflict with the liberal forces on the issue of abortion. The moral debate regarding abortion focuses on two distinct issues: (1) whether a human fetus has a right to life, and, if so, (2) whether the rights of the mother ever override the fetus's right.

In the Polish post-communist abortion context, universal notions of human rights

and democracy have become extremely powerful political instruments for the articulation of particular interests and identities. Political transition has brought about a democratization of abortion law, meaning that abortion law, its re-drafting, and the alteration of its status have become issues of public debate. Accordingly, in the context of the regime changes of 1989, abortion issues were among the first raised by virtually all of the post-socialist governments of Eastern Central Europe.

The pro-life approach to the abortion issue has been represented in Polish contexts by conservative and National-Catholic positions. It defines abortion as the act of extermination of an innocent and defenseless person, which could not be justified under any circumstances, and is considered a violation of the human right to life and personal integrity, and one of the heaviest and most dangerous crimes. They believe that it is violation of the most fundamental human right if a human being is denied the right to

be born. Pro-life texts show that moral personhood begins at conception, and only in rare situations do the woman's rights outweigh those of the fetus. Religious scriptures and traditions also suggest that personhood begins at the moment of conception and that abortion is wrong. Conservatives argue that sexual activity has serious consequences, and women who choose to be sexually active assume the duty of bringing their fetuses to term if they become pregnant. One of the major arguments of orthodox-church is the fetus is an innocent being which cannot speak for its own interests, and, thus, society must actively defend the fetus's interests.

On the other hand liberals or pro-choice individuals believe that access to safe and legal abortion services is a human rights issue. They argue that women have the right to control their bodies, and this applies to the effects that pregnancy has on them. Many pregnancies can have long-term negative psychological impacts on women, and women have a right to be protected from such effects. Unwanted children can have a negative impact on society as a whole, such as by increasing crime and contributing to overpopulation. The most negative side of anti-abortion laws is the effects on women who are desperate to terminate their pregnancies will often do so by unsafe means if no legal means are available.

Until 1932, abortion was generally prohibited in Poland. On 11 July 1932, the restrictive legislation was modified to allow abortion when a pregnancy endangered the life or health of the woman or resulted from a crime. A law adopted by the Polish Parliament (Sejm) on 27 April 1956 further liberalized

the abortion laws by permitting abortion on medical grounds, if the pregnancy resulted from a criminal act or because of difficult living conditions. The great majority of abortions were performed on the ground of difficult living conditions. Although the procedural requirements to be observed in order for a lawful abortion to be performed were amended repeatedly over the years (1956, 1959, 1969, 1981 and 1990), access to abortion after the passage of the 1956 legislation remained largely constant until 1990 with the election of the first Non-Communist Government in Poland since the end of the Second World War.

In 1990, under regulations issued by the Ministry of Health and Social Welfare, a request for an abortion on the grounds of difficult living conditions had to be approved by two gynecologists and a general practitioner. The pregnant woman was also required to obtain the counseling of a state-approved psychologist. But in 1993, Parliament enacted further restrictions on access to abortion by eliminating entirely difficult living conditions as a ground for the performance of legal abortions. The Act permits termination of pregnancy only in the three following circumstances:

- 1) The pregnancy endangers the mother's life or health;
- 2) Until such time as the foetus is capable of surviving outside the mother's body" in cases where "prenatal tests or other medical findings indicate a high risk that the foetus will be severely and irreversibly damaged or suffering from an incurable life-threatening disease;

3) Until the end of the 12th week of pregnancy in cases where there are strong grounds for believing that the pregnancy is a result of a criminal act.

A ban was also placed on the performance of abortions in private clinics. A 1996 amendment to the 1993 Act had also permitted abortion in a fourth circumstance, namely for women who find themselves in difficult living conditions or a difficult personal situation. But in 1997 following a ruling of the constitutional court 1996 amendment was again withdrawn.

The newly added 2009 Act institutes a complaint mechanism - the Medical Board, which allows any patient to file an objection against a physician's opinion or ruling, which affects the patient's rights or obligations under the law. This law has its own limitations:

- The complaint mechanism is inaccessible;
- The mechanism does not provide for active participation of the complainant;
- The independence and impartiality of the decision makers is not guaranteed;
- The decisions of the review body cannot be appealed.

The Law had eliminated socio-economic grounds for abortion, woman's groups and left-leaning political parties, including the successor to the Communist Party, began working to modify its effects. Conversely, some of the strongest opponents of the former law sought to restrict abortion even further, believing abortion to be immoral under all circumstances.

#### **Chronology of Legislations on abortion in Poland:**

1932 – Criminal Code allows abortion on medical and criminal grounds.

1956 – Law allowing abortion on social grounds.

1959 – Regulation of the Minister of Health introduces, in practice, abortion on request.

1993 – Anti-Abortion law (Act on family planning, human embryo protection and conditions of permissibility of abortion) criminalized abortions carried out on social grounds.

1996 – Abortion on social grounds was legalized.

1997 – Constitutional Tribunal states that abortion on social grounds is unconstitutional. Abortion on social grounds de-legalized again.

2004-5 – Unsuccessful attempt to liberalize law and pass the draft law on responsible parenthood.

While it may be impossible to construct a middle-ground social policy on abortion that all people can agree upon in each of the particulars but the liberal side should recognize that abortion is not the first choice of how to deal with an unwanted pregnancy and when possible, the numbers of abortions should be reduced. Apart from that parenting classes and economic assistance might help some women make the transition to motherhood. At the same time some conservatives might be willing to compromise on social policies that permit early first trimester abortions, while some liberals might be willing to compromise when it comes to policies that restrict abortions

within the second trimester. The health of fetus is as important as the physical, mental and economic state of fetus bearer.

The present situation in Poland related to abortion is grave, as it has failed to provide a sound and sustainable policy on this matter. The continuing lack of appreciation by the Polish authorities that their obligation to respect, protect and fulfil the rights enshrined in the International Covenant on Economic Social and Cultural Rights and other international human rights treaties includes the obligation to ensure that women and girls can access, without discrimination, the highest attainable standard of health, including by accessing reproductive and sexual health services and information.

- Women are having difficulty accessing abortion services within the health system when permitted by law. Women are experiencing pain and suffering, and in some cases loss of life, as a direct result of the deliberate denial of medically indicated treatment to pregnant women.
- Medical service providers and health institutions are not being held accountable for the denial of access to lawful health services and the consequences of that denial on the health and lives of women.
- Women are compelled to seek services for the termination of pregnancy outside the health sector, placing their health and lives at risk. The very low government figures for lawful abortion have been identified as a warning signal that illegal abortions are taking place in high numbers.

- Women who are denied access to health services for termination of their pregnancy due to their inability to obtain necessary certification are also at risk of being denied access to an effective remedy by the designated medical review mechanism.
- Women seeking abortion services and human rights defenders advocating on this issue have themselves been attacked in the press.

### **The Agata case**

A 14-year-old girl from Lublin, identified by the media under the pseudonym Agata, was subjected to delays in accessing legal abortion services. According to media reports, the prosecutor's office in Lublin certified that Agata had been a victim of crime under Article 200 of the Criminal Code which prohibits intercourse with a person under 15 in all cases. As a result, Agata was legally entitled to termination of pregnancy. However, even though she met the legal indication for abortion access, hospitals in Lublin and Warsaw refused to perform the abortion. Agata was eventually admitted to a hospital in Warsaw on 3 June 2008. The Warsaw hospital authorities delayed the procedure stating there was a three day waiting period for access to abortion services in her circumstances. Shortly after her arrival in Warsaw, Agata's personal details appeared on the internet, and she received text messages and phone calls from abortion opponents, a number of whom attempted to visit her at the hospital. The Warsaw hospital informed Agata and her mother that they would not provide abortion services to her, reportedly out of fear for the hospital's reputation. Following the intervention of the

Health Minister, Agata obtained an abortion four weeks after her initial request for the procedure and only one week before the end of the 12- week gestational limit on legal access to abortion.

Commenting on the Polish law, the Council of Europe Commissioner for Human Rights stated: "**The Polish law on termination of pregnancy is one of the most restrictive in Europe**".

The European Court of Human Rights asked the polish government to clarify the circumstances of the death in September 2004 of a 25 year old pregnant woman. In the months before her death, she was diagnosed with ulcerative colitis and an inflammation that required three operations. Later she was admitted to a number of hospitals, but none of them performed a full endoscopy and other diagnostic examinations for fear of risking the life of the fetus, despite appeals from her family. She miscarried on 5 September 2004 in the fifth month of pregnancy and died from septic shock on 29 September 2004.

According to the Freedom House, an US based NGO; the human rights have vastly improved after the fall of communism in 1989 and replacement of the old repressive regime with the modern, democratic government guaranteeing first class civil and political rights. However, one of the major obstacles in human right development in Poland is limitations on access to reproductive health care for women and girls. The criminalization of individuals for carrying out or assisting in carrying out abortions has serious impact. The lack of an effective remedy to challenge decisions of

doctors effecting the rights of women and girls to access to reproductive health services available within the law have all impeded the enjoyment by women of their rights to the highest attainable standard of health without discrimination, as well as their dignity, and their rights to life, to freedom from torture and other ill-treatment, and to private life.

We should appreciate that Poland is a country with long and deeply rooted traditions, and it is true that the question of abortion raises complex issues for the government to which there are no quick solutions. However, these issues need to be urgently addressed. The respect of physical integrity and freedom to control their own bodies is one of the fundamental rights of all human beings, including women. Reports and personal testimonies indicate that women, even when abortion is legal, encounter serious difficulties to have it performed. A woman's need to have abortion is not dependent on whether abortion is legal or not. However, her access to safe abortion is impacted by criminalization of abortion. When abortions are legal, they must be, apart from being safe, made accessible. In this context, the role of health professionals, both doctors and nurses, is of great importance. People have right to respect for their freedom of thought, conscience or religion but state has a legal obligation to ensure the enjoyment of the human right without hindrance or bureaucratic delay. The state is obliged to have in place a system, which while respecting the culture and conscience of people, ensures the solutions to real life problems.

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