



Abolition of Abortion in Poland

Report on the Citizens' legislative initiative towards a comprehensive protection of human life

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Résumé

L'initiative législative citoyenne pour l'interdiction totale de l'avortement, déposée au Parlement polonais le 5 juillet 2016, vise à garantir à tous les enfants, avant comme après leur naissance, des droits égaux et la protection de leur vie et de leur santé. Fondé sur une solide argumentation tirée de la Constitution polonaise et de la jurisprudence du Tribunal constitutionnel, le projet de loi propose de définir légalement l'enfant conçu et le moment de la conception. Cette proposition revient à faire de l'enfant à naître un sujet de droit qui peut être considéré comme un patient à la lumière de la loi sur les droits des patients. La suppression des trois motifs permettant actuellement le recours à l'avortement est proposée, conformément au principe de proportionnalité. En même temps est garanti tout traitement médical nécessaire à la sauvegarde de la vie de la mère, même si cela s'avère fatal pour l'enfant. Le rétablissement d'une sanction pénale de l'avortement illégal est aussi suggéré, alors même qu'est prévue une possibilité d'atténuation ou de remise exceptionnelle de la peine pour la femme.

Le projet de loi ne concerne pas uniquement l'interdiction de l'avortement, mais aussi l'obligation positive des autorités publiques envers les familles, notamment les mères, en cas de grossesse non désirée. Des mesures concrètes d'assistance de la part de l'État sont proposées. Le développement des soins périnataux, des soins pédiatriques à domicile, de l'aide matérielle et psychologique ainsi que des procédures permettant l'adoption est ainsi proposé. Cette attitude positive en faveur de la vie humaine correspond aux nombreuses initiatives concrètes destinées à soutenir les familles en situation difficile. En outre, le gouvernement travaille actuellement sur un Programme National pour la Procréation qui prévoit un système de santé reproductive global incluant des méthodes de procréation naturelle comme la NaProTechnologie.

L'avenir du projet de loi relatif à l'interdiction de l'avortement dépend du Parlement polonais. Après une première lecture, la proposition a été transmise le 23 septembre 2016 à la Commission Justice et Droits de l'homme où la discussion se poursuivra. La version finale du texte pourrait toutefois être substantiellement différente du projet initial.

Summary

The citizens' legislative initiative for the total abortion ban, delivered to the Polish Parliament on 5th July 2016, aims to ensure for all children, before as well as after birth, equal rights and protection of life and health. Founded on a solid argumentation deriving from the Polish Constitution and the jurisprudence of the Constitutional Tribunal, the draft law proposes to give a legal definition to the conceived child and to the moment of conception. This proposition means the empowerment of the unborn child, who can be considered as a patient in light of the Act on Patients' Rights. According to the principle of proportionality, the removal of the three current circumstances allowing abortion is proposed. Medical treatment necessary to save the mother's life, even if they may result in fatal consequences for the child, is simultaneously guaranteed. The reconstruction of the sanction norm for illegal abortion is also suggested, providing the possibility of extraordinary mitigation or withdrawal for the unborn child's mother.

The draft law is focused not only on the abortion ban but also on the positive obligation of public authorities towards families, notably mothers, involved in crisis pregnancies. Practical regulations of State's assistance are proposed. Thus, the development of perinatal care, pediatric care at home, material and psychological assistance or procedures enabling adoption is opposed to the current abortion offer. This positive attitude in favor of human life matches with the numerous concrete initiatives aiming to support families in difficult circumstances. Furthermore, the government's National Procreation Programme setting up a comprehensive reproduction health care, including methods of natural procreation such as NaProTechnology, is on the agenda.

The future of the draft law on abortion ban depends of the Polish Parliament. After the first lecture in the *Sejm*, the proposal has been sent on 23rd September 2016 to the Commission of Justice and Human Rights, where it will be further discussed. However, the final version of the proposal could be substantially different from the initial project.

Introduction

The parliamentary elections in Poland, held on October 25th 2015, have deeply changed the political landscape. The victory of the right-wing party Law and Justice (*Prawo i Sprawiedliwość*) has fueled hopes by proposing a number of possible changes in favor of strengthening family rights and in the field of human life protection from conception to natural death. Thus, inspired by the Catholic Social Teaching, the citizens' legislative initiative aiming for total abortion ban and a comprehensive protection of human life was a top priority and quickly drafted.

Citizens' legislative initiative is a form of participatory democracy giving the possibility to impact directly on the central level. The Polish Constitution of 1997 provides in article 118 paragraph 2 the right to introduce legislation to a group of at least 100,000 citizens having the right to vote in elections to the *Sejm* (the lower house of Polish Parliament). According to this instrument, almost a half-million signatures supporting abortion ban were delivered to the Polish Parliament on 5th July 2016. The draft and justification of an act has been prepared by the Ordo Iuris Institute for Legal Culture in cooperation with an array of pro-family and pro-life organizations.¹ A notice of establishment of the Legislative Initiative Committee "*Stop Abortion*" (*Stop aborcji*) has been presented on March 14th 2016 to the Speaker of the lower house of the Parliament. The initiative aims to change the act of January 7th 1993 on the planning of family, protection of the human fetus, and conditions of permissible termination of pregnancy, as well as the Criminal Code of June 6th 1997. "*We want Poland to join the group of two-thirds of the world's countries which protect the unborn better than us*" declared Jerzy Kwaśniewski, one of the authors of the ban.² Indeed, the standard of human life protection is higher in 123 countries (on 196 existing) than in Poland.³

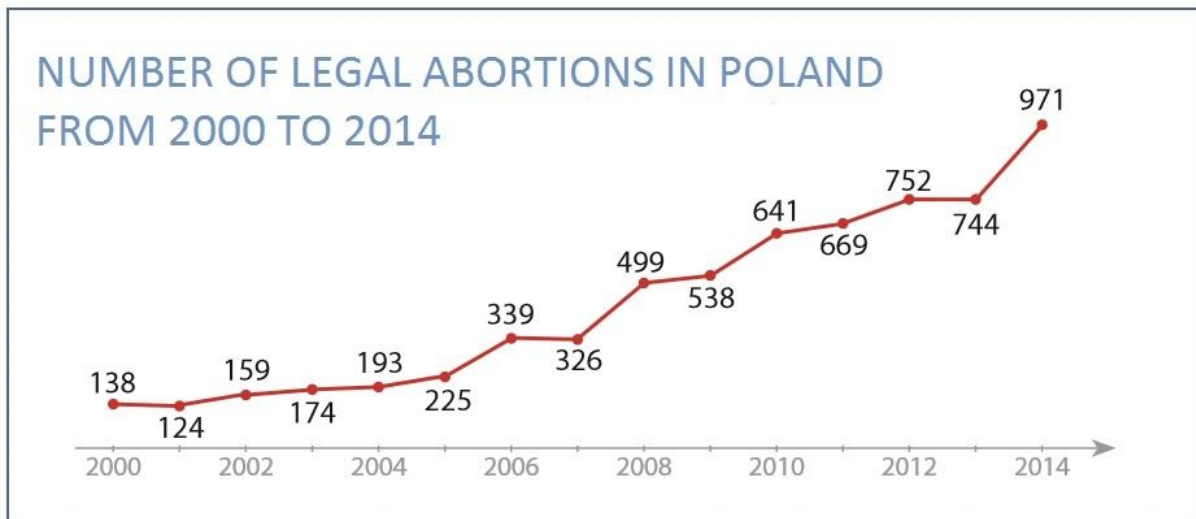
Currently, the Polish law allows abortion in three circumstances: when the woman's life or health is endangered by the continuation of pregnancy, when the pregnancy is a result of a criminal act, or when the fetus is seriously malformed. Historically, abortion was introduced for Polish women during the Nazi occupation between 1943 and 1945. Under the communist regime, abortion was legalized by the law of April 27th 1956 permitting it on medical grounds and when the pregnancy resulted from a criminal act or for "*difficult living conditions*". In practice, abortion was allowed on request. The current law adopted in 1993 was a fruit of a long struggle for the respect of human life since the conception, inspired and supported notably by the Catholic Church under the pope John-Paul II conduct. Presented often as a "*compromise*", it was a step towards comprehensive protection of human life, from conception to natural death.

¹ The initiative involved a number of social organizations, including the Right to Life Foundation (*Fundacja Pro-Prawo do życia*), the Centre for Supporting Initiatives for Life and Family, the Piotr Skarga Institute, and the Life Foundation.

² Natalia Dueholm, *Polish pro-lifers deliver 500,000 signatures to Parliament backing abortion ban*, LifeSiteNews, 8 July 2016, available on the website: <https://www.lifesitenews.com/news/polish-abortion-ban-supporters-deliver-nearly-500000-signatures-to-parliame>

³ Tymoteusz Zych, Jerzy Kwaśniewski (eds.), *Pelna ochrona prawna dziecka poczętego – aspekt prawno-karny. Materiał zespołu analitycznego Ordo Iuris [Full legal protection of unborn child – criminal law aspects. Materials prepared by the analytical team of Ordo Iuris]*, pp. 6-9, available on the Ordo Iuris website: http://www.ordoiuris.pl/pliki/dokumenty/pelna_ochrona_prawna.pdf

Unfortunately, abortion is still too often presented as “*the only offer*” in some difficult cases. Even if the law remains the same, the number of legal abortion increased seven times in recent years going since 139 abortions in 2000 to 971 in 2014 (1812 abortions was refunded in 2014 according to the information provided by the National Health Fund – *Narodowy Fundusz Zdrowia*).⁴ In fact, the proposed draft would likely ensure for all children, before as well as after birth, the equal rights and protection of life and health. The purpose of the initiative is also to guarantee the State’s support for families raising handicapped children or children conceived in circumstances related to the commission of an offence.



Source: K. Jusińska, J. Kwaśniewski, K. Pawłowska, O. Szczypiński, K. Walinowicz, T. Zych, *Równa ochrona prawna dla każdego dziecka zarówno przed, jak i po urodzeniu [Equal legal protection for every child before as well as after birth]*, Instytut na rzecz Kultury Prawnej Ordo Iuris, p. 2

The current initiative follows a long history of fight for human being dignity, which is an expression of culture of pro-life, which has been progressively built in Poland since the ban of abortion for social reasons in 1993. Already on 10th February 1989, experts of the Polish Bishops’ Commission for Family presented a project to ban abortion to the Speaker of the *Sejm*. In 2007, an attempt of the amendment of the Constitution by definition of human dignity since conception was also undertaken, though without success.⁵ “*The proposed ban came from a grass-roots movement and, contrary to previous claims, was issued neither by the Catholic Church nor by the government.*”⁶ In recent years there were several attempts to change the law. In June 2011, Polish pro-life non-government organizations collected over 500,000 signatures for a ban of abortion in Poland. The draft received enough support to be sent to a *Sejm* committee in order to be subject to further amendments, though it was ultimately rejected in the second reading by a majority of five votes.⁷ A similar initiative was presented in 2013. In September 2015, a citizens’ legislative initiative to introduce a complete ban on abortion was again rejected by the *Sejm* with 206 votes against. However, the support of 178 parliamentarians, coming mostly from Law and Justice and Polish People’s Party, demonstrates that the current initiative has a higher chance of success. The declaration of Polish President Andrzej Duda, during the electoral campaign in March 2015 is of particular

⁴ K. Jusińska, J. Kwaśniewski, K. Pawłowska, O. Szczypiński, K. Walinowicz, T. Zych, *Równa ochrona prawna dla każdego dziecka zarówno przed, jak i po urodzeniu [Equal legal protection for every child before as well as after birth]*, Instytut na rzecz Kultury Prawnej Ordo Iuris, p. 2, available on the website: http://www.ordoiuris.pl/files/OI%20broszura%20Stop%20aborcji_final_rozkladowki.pdf

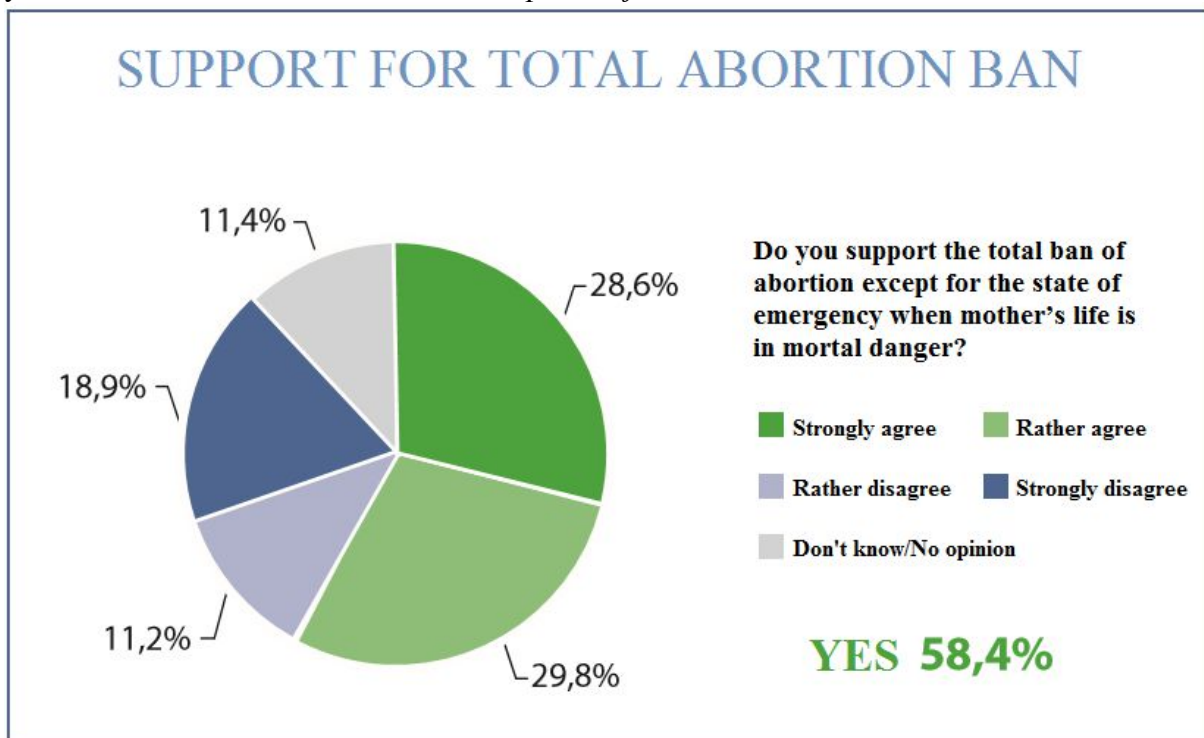
⁵ *Ibid.*, pp. 22-23.

⁶ Natalia Dueholm, *op. cit.*

⁷ Bogumił Łoziński, *Zabrakło 5 głosów [Missing 5 votes]*, “Tygodnik Gość Niedzielny”, n° 51-52, 2011.

importance: “It must be clearly and firmly asserted: the absolute protection of life, especially of the defenseless - the unborn, must be introduced in Poland. This requires time and there is no question of any compromise (which does not recognize the left) because it comes with a life of Polish society. For me, part of Polish defense, defense of the Polish family is also the protection of life. There will not be Poland without new generations of Poles. Besides - everyone deserves to be able to be born. There is no discussion. I am a strong advocate of the protection of life.”⁸

Not only is pro-life receiving greater support within the government, but it is also becoming more widely supported by Polish citizens. A poll of March 2016 carried out by the Public Opinion Research Centre (CBOS) revealed that for all three cases in which abortion is allowed, support has dropped since 1992, “falling to 53 percent from 71 percent two decades ago in cases in which the fetus has a medical or genetic condition. Support for abortion if a mother’s life is threatened went from 88 to 80 percent, and in cases of rape or incest, from 80 to 73 percent”.⁹ In the same time, 81% of Poles consider than abortion “on request” is not acceptable.¹⁰ Moreover, in May 2016, IBRiS (Institut of Market and Social Research) conducted a poll in which Poles could express for the first time their opinion about the total ban of abortion, except the situation of danger for the mother’s life as it is previewed in the draft bill. According to this sampling, 58,4% of Poles (57,9% of women and 59,5% of man) support this ban while 30% are against. The highest support for the initiative of a total abortion ban is declared by the Polish youth: 79,2% of the young people between 18 and 24 years old is in favor of the initiative “*Stop aborcji*”.¹¹



Source: IBRIS (Institut of Market and Social Research) poll conducted on a sample of 1100 Poles on May 13-16, 2016.

⁸ Andrzej Duda, interview for catholic magazine *Niedziela* (“Sunday”), n° 10, 2015, pp. 22-23.

⁹ Monika Rębała, Sara Miller Llana, *Trending conservative, Poland considers tighter abortion laws*, “The Christian Science Monitor”, 18 April 2016, available on the website: <http://www.christiancentury.org/article/2016-04/polands-abortion-debate-why-support-current-laws-dropping>

¹⁰ *Dopuszczalność aborcji w różnych sytuacjach [Admissibility of abortion in different situations]*, “Komunikat z badań CBOS”, n° 71/2016, Warsaw, May 2016.

¹¹ K. Jusińska, J. Kwaśniewski, K. Pawłowska, O. Szczypiński, K. Walinowicz, T. Zych., *op. cit.*, p. 6.

These attitudes reflect the ways new laws shape culture. Polish example shows that this interaction can bring a positive change: after the fall of communism, the majority of Poles consider abortion a crime defined as an illegal act by the law, while, notably in the Western countries, abortion is presented as a right. According to Michał Łuczewski, a sociologist at the University of Warsaw and the Center for the Thought of John Paul II, the growing conservatism, observed especially among young people, is a form of resistance against the old system: *“Since 1989, the establishment in Poland was more or less liberal, so the revolt against it can't be liberal, too.”* Youths have also had a different experience on the specific issue of abortion: *“During communism, abortions were performed very often; when you experience something so often you start to accept it, you don't see it as something bad. For younger generations abortion has always been illegal and perceived as a crime.”*¹²

The citizens' legislative initiative on the total ban of abortion will be discussed in the Polish Parliament on autumn 2016. It will doubtless be a sharp debate dividing the politicians and Polish society. The liberal media has already criticized the possible abortion ban in Poland broadcasting inaccurate information about the draft.¹³ The articles inaccurately suggested that the draft would imprison women for inadvertent miscarriages or that doctors will not be able to save women's lives because of the protection of the unborn child. It has to be clearly stressed that, according to the draft, a woman will never be liable for inadvertently miscarrying her child: *“Thus, the draft does not change anything with respect to mothers who have miscarried. Moreover, even if a mother deliberately deprives her conceived child of life, judge have discretion to waive punishment in the case of extenuating circumstances. The penalty is first and foremost directed at those who conduct the abortion, provide the women with abortive resources, or those who force her to abort.”* Secondly, the citizens' legislative initiative makes it clear that *“doctors are permitted to undertake any medical treatment necessary to save the life of the mother, even if they may result in fatal consequences for the child.”*¹⁴

Furthermore, the pro-abortion movement has already prepared a counter-proposal liberalizing the access to abortion. The draft law has been submitted to the *Sejm* on 4th August 2016. It aims to allow abortion on request until the 12th week of pregnancy, and to improve access to contraception and sexual education. Carried by the committee *“Save the Women”* (*Ratujmy kobiety*), the alternative citizens' legislative initiative has received 215,000 signatures – widely half of those in favor of the abortion ban.¹⁵

¹² Monika Rębała, *Poland's abortion debate: Why is support for current laws dropping?*, “The Christian Science Monitor”, 18 April 2016, available on the website: <http://www.csmonitor.com/World/Europe/2016/0418/Poland-s-abortion-debate-Why-is-support-for-current-laws-dropping>

¹³ *Falszywe informacje o projekcie komitetu „Stop aborcji”* [False information about the project of the committee “Stop abortion”], *Ordo Iuris*, 3 April 2016, available on the website: <http://www.ordoiuris.pl/falszywe-informacje-o-projekcie-komitetu-stop-aborcji-3767,i.html> Cf. Wiktoria Beczek, *„Zabójca prenatalny” powoduje śmierć „dziecka poczętego”. Co jest w ustawie o zakazie aborcji? [„Prenatal killer” causes the death of “conceived child”. What is in the draft law on the abortion ban]*, *Gazeta.pl*, 1 April 2016, <http://wiadomosci.gazeta.pl/wiadomosci/1,114871,19853235,zabojca-prenatalny-powoduje-smierc-dziecka-poczetego-co.html#BoxNewsImg>

¹⁴ *Civic Legislation Initiative: Equal legal protection for children before and after birth*, the *Ordo Iuris* Institute for Legal Culture, 3 April 2016, available on the website: <http://www.en.ordoiuris.pl/falszywe-informacje-o-projekcie-komitetu-stop-aborcji-3767,i.html>

¹⁵ *Obywatelski projekt ws. liberalizacji prawa aborcyjnego w Sejmie* [Citizens' project on the liberalisation of abortion law in the *Sejm*], “*Rzeczpospolita*”, 4 August 2016, available on the website: <http://www.rp.pl/Zdrowie/308049913-Obywatelski-projekt-ws-liberalizacji-prawa-aborcyjnego---w-Sejmie.html#ap-1>

I. Comprehensive protection of mothers and babies from abortion

The draft law submitted by the committee “*Stop aborcji*” aims the implementation of a comprehensive protection of mothers and babies from abortion. The project is based on the protection of life from the moment of conception and on the principle of setting any doubt in this matter in favor of that protection – *in dubio pro vita humana*. Both principles derive from the Polish legal system and are established by the Polish Constitutional Tribunal. The authors also cite the Declaration of the Rights of the Child and UN Convention on the Rights of the Child: “*This stipulates that children, by reason of physical and mental immaturity, need special safeguards and care, including appropriate legal protection before and after birth*”.¹⁶

A. Empowerment of the unborn child (the conceived child as a subject of law)

The new law on abortion aims to change the Act of January 7th 1993 on the planning of family, protection of the human fetus, and conditions of permissible termination of pregnancy, as well as the Criminal Code of June 6th 1997 in the way of comprehensive respect of the article 38 of the Constitution stating that “*the Republic of Poland shall ensure the legal protection of the life of every human being*”. This principle means that the public authorities are not only obliged not to undertake any action which could have a negative impact on the protection of Constitutional values, such as life, but also have a “*positive obligation*” to the comprehensive realization of the right to life of every human being.¹⁷ This conviction has been confirmed by the Constitutional Tribunal on 23rd March 1999 when it observed that from the Constitution comes a certain objective system of values and the legislator has an obligation to guarantee the largest protection of these values.¹⁸ Finally, the Tribunal in his jurisprudence has formulated a principle of setting any doubt relating to the human life in favor of his protection – *in dubio pro vita humana*.¹⁹ Indeed, the same court affirmed in his judgment of 28 May 1997 that the “*human life becomes a value protected by the Constitution. This also applies to the prenatal stage.*”²⁰ In the Court’s opinion, human life, including the prenatal stage, “*is a legal interest protected by the Constitution, and cannot be accorded a different value at different stages in its development.*”²¹

Basing on the judgment of the Constitutional Tribunal and taking into account the international law, especially the Declaration of the Rights of the Child of 20th November 1959 and the Convention on the Rights of the Child of 20th November 1989, the authors of the draft law prove the gap of Polish ordinary law in the matter of the legal protection of the child, before as well as after birth. In order to ensure the equal rights of all children, they propose to remove the three existing circumstances under which an abortion is currently permitted in Poland. The detailed argumentation concerning the legal perspective of this removal is presented in the justification attached to the draft law.²² In substance, the analysis is founded

¹⁶ *Civic Legislation Initiative: Equal legal protection for children before and after birth, op. cit.*

¹⁷ Paweł Sarnecki, *Comment on the article 38*, in Leszek Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz [Constitution of the Republic of Poland. Comments]*, Volume I, Wydawnictwa Sejmowe, Warsaw, 1999, p. 3.

¹⁸ *Judgment of the Constitutional Tribunal of 23 March 1999*, Ref. No. K 2/98.

¹⁹ *Judgment of the Constitutional Tribunal of 7 January 2004*, Ref. No. K 14/03.

²⁰ *Judgment of the Constitutional Tribunal of 28 May 1997*, Ref. No. K 26/96.

²¹ Biruta Lewaszkiwicz-Petrykowska, *The principle of respect for human dignity*, in *The principle of respect for human dignity. Proceedings, Council of Europe Publishing*, Collection “Science and technique of democracy”, n° 26, September 1999, p. 22

²² Justification of the draft law on the abortion ban is available on the website: http://www.stopaborcji.pl/wp-content/uploads/2016/03/uzasadnienie_2016.pdf

on the “*proportionality test*”²³ claimed by the Constitutional Tribunal in reference to article 31 paragraph 3 of the Constitution which provides that “*any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.*” According to this principle, to be compatible with the fundamental law, the law must fulfill the criteria of utility and necessity, “*whether its effects remain in an adequate proportion to the burdens imposed on individuals.*”²⁴

In order to guarantee “*the medical care for the pregnant women and for the conceived child*”, the authors of the abortion ban propose to ensure the compliance with the principle of proportionality test before committing the irreparable act. Following this logic, the case of the threat to the life or health of the pregnant women (article 4a paragraph 1 point 1) comes first. Obviously, in some circumstances, abortion can be the only solution to save the life of the mother. In these conditions, the criterion of utility is respected. However, it cannot be the question of necessity. In the light of modern medicine, abortion cannot be considered as the only solution to save the life of pregnant women. The necessity of abortion is possible only when abortion is the only objective solution to save the mother’s life. This is also the conviction of the majority of Poles wishing to allow abortion when the women’s life is in danger.²⁵

The situation is a little different when the health of the mother is at risk. This is the question of the symmetry of two values defended by the law. The Constitutional Tribunal, in the judgment of 30th September 2008, clearly said that in the democratic State of law, the limitation of one right by another is possible only if the defended value is bigger than those sacrificed.²⁶ There are no doubts that the protection of life is “*the highest value in our civilization and legal culture*”²⁷ and goes before the protection of health. In consequence, the symmetry of defended values is not respected in the circumstances of the danger for mother’s health. From the medical point of view, abortion cannot be considered a solution to protect pregnant women’s health.

Whether discussing the second exception of the Act of 7th January 1993 allowing abortion when “*prenatal examinations or other medical conditions indicate that there is a high probability of a severe and irreversible fetal defect or incurable illness that threatens the fetus’ life*” (article 4a paragraph 1 point 2), it is difficult to define the protected value which could justify the legal waiver of the right to life. This eugenic abortion is rather the violation of the principle of non-discrimination for health reasons. The Polish Constitution guarantees in article 32 paragraph 2 that “*no one shall be discriminated against in political, social or economic life for any reason whatsoever.*” Moreover, as required by article 68 paragraph 3 of

²³ Cf. *Ruling of the Constitutional Tribunal of 26 April 1995*, Ref. No. K 11/94; *Judgment of the Constitutional Tribunal of 28 June 2000*, Ref. No. K 34/99; *Judgment of the Constitutional Tribunal of 3 June 2008*, Ref. No. K 42/07.

²⁴ Cf. Dawid Miasik, *Application of General Principles of EC Law by Polish Courts*, in Ulf Bernitz, Joakim Nergelius, Cecilia Cardner (eds.) in association with Xavier Groussot, *General Principles of EC Law in a Process of Development: Reports from a Conference in Stockholm, 23-24 March 2007, organised by the Swedish Network for European Legal Studies*, Kluwer Law International, 2008, p. 366

²⁵ IBRiS: *Polacy chcą całkowitego zakazu aborcji [IBRiS: Poles want the total abortion ban]*, “Rzeczpospolita”, 2 June 2016.

²⁶ *Judgment of the Constitutional Tribunal of 30 September 2008*, Ref. No. K 44/07.

²⁷ *Ibid.*

the Constitution, “public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age.” The protection of human life cannot be suspended only because of severe and irreversible handicap or incurable disease. This is also the conviction expressed by the Constitutional Tribunal in the judgment of 30th September 2008 when the court noted that “the human life is not subject to evaluation on account of age, state of health of the individual, the expected lifespan or any other criteria.”²⁸ The non-discrimination of persons with handicap also arises from the international engagements of Poland, in particular from the Convention on the Rights of Persons with Disabilities adopted on 13th December 2006 at the United Nations Headquarters in New York. Thus, in the light of national and international law, the suspension of the protection of life of children with disabilities on their prenatal stage appears in contradiction with the inherent human dignity and with the hierarchy of values. According to recent polls, it seems also that the Polish society is in support of the restoration of the full legal protection to conceived children with disabilities.²⁹

Finally, concerning the third exception when abortion is allowed by the Polish law, a detailed analysis is necessary. Indeed, in the light of Polish Criminal Code the pregnancy resulting of a criminal act can concern the crime of rape (article 197), sexual abuse resulting from the vulnerability or mental disability (article 198), another illegal act as sexual intercourse with minor under 15 years old (article 200), incest (article 201), or even the sexual intercourse in the public place provoking public outrage.³⁰ As the Constitutional Tribunal affirms in the ruling of 28th May 1997, the right to have children has to be considered only in the positive aspect and not as a right to annihilate the human fetus. “One may not plead violation of such personal right when the child has already been conceived and the mother wishes to terminate the pregnancy. One may not decide about having a child when the child is already developing and in this sense parents already have the child”.³¹ In other terms, the right not to give birth does not exist. Without denying the criminal circumstances of the child’s conception and the trauma and suffering of mother, we cannot forget the person of the child. In the case of abortion, the pain is bigger because the privation of child’s life adds to the criminal act. Moreover, it is a curious legal case when one responds for another’s act by his own life. Hence, abortion appears as a capitulation of the State which did not prevent the crime and which is not able to support mother and child in this dramatic circumstance. Abortion is presented as the only offer. The principle of proportionality is not respected either.

Taking into account all these reasons, the draft law on the abortion ban aims a setting up of the “comprehensive protection of human life and on family life education”. Formulated as aforementioned, the new title of the Act of 7th January 1993 has to express the will of the legislator to establish the coherence between the name and the content of the law. The modification of the preamble having normative value is also recommended as follows: “Recognizing that the principle of legal protection of life of every human being as expressed in the Constitution of the Republic of Poland is related to the inherent and inalienable human dignity regardless of stage of his/her human development.”³²

²⁸ *Ibid.*

²⁹ *Opinie o dopuszczalności aborcji [Opinions when the abortion shall be allowed]*, CBOS Newsletter, 13/2016, available on the website: <http://www.cbos.pl/PL/publikacje/news/2016/13/newsletter.php>

³⁰ The English version of the Polish Criminal Law Code of 6 June 1997 is available on the website: https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf

³¹ Witold Borysiak, *Birth of a disabled child*, in Marek Safjan (ed.), *Medical Law. Cases and Commentaries*, Wolters Kluwer Polska, Warsaw, 2012, p. 315

³² *Justification of the draft law on the abortion ban, op. cit.*

To avoid any ambiguity, a definition of conception is proposed. This term is known to the Polish law and jurisprudence. Thus, the moment of conception is defined as “*the fusion of a female and male gametes*”. At the same time, the amended article 1 of the Act of 7th January 1993 foresees that “*the life and the health of a child since its conception are protected by the law.*”³³ This definition will have a positive impact not only on the abortion bill, but also on the interpretation of the rest of legislation. Furthermore, the draft law provides the introduction of the definition of the conceived child in the Criminal Code of 6th June 1997: “*A conceived child means a human being in the prenatal stage of development, since the fusion of the female and male gametes.*”³⁴ This definition has to play the role of safety lock for the reconstruction of the sanction norm.

Considering the conceived child as a subject of law is one of the most important input suggested in the citizens’ legislative initiative on the abortion ban. The draft law provides a terminology which does not dehumanize the child before birth. Consequently, the term of human fetus in article 2 of the Act is replaced by “*the conceived child*”. This change means the empowerment of the unborn child who can be considered as a patient in light of the Act of 6th November 2008 on Patients’ Rights and the Commissioner for Patients’ Rights. The justification of the project also confirms that “*access to prenatal testing is guaranteed by legislation regulating the access to medical services*”³⁵, even if the draft law removes the superfluous mention of the access to information and prenatal testing from the Act.

B. Legal protection of the conceived child – the question of sanction

The citizens’ legislative initiative on the abortion ban claims the necessity of the establishment of a criminal sanction in order to ensure the legal protection of the conceived child. The proposed changes in the Criminal Code have to be a necessary supplement to the present legislation, through which the State can realize the positive obligation to guarantee the values expressed in article 38 of the Constitution. According to the authors of the abortion ban, not only a clearly sanctioned norm regarding the boundaries of illegality is needed, but also a properly shaped sanctioning norm which determines the level of the protection. “*It is hard to talk about effective protection of the right to life by establishing a legal standard of prohibiting the killing of the unborn child, if the legislator does not establish sanctions for its violation. Such sanction may also experience weakening by introducing wide range of conditions allowing to mitigate or waive the punishment. In other words, crucial for the proper protection of the right to life prohibition of the prenatal murder requires the guarding criminal sanction not to be hampered by the mandatory exceptions, while retaining the possibility to reduce or waive the punishment in individual cases.*”³⁶

Indeed, the Polish law provides the automatic decriminalization of women which caused the death of their unborn child. It is a remnant of penal law introduced in the Polish legal system by the Act of 27th April 1956 on the conditions of permissibility of abortion. Next to the Soviet Union,³⁷ Poland was one of the first countries which removed from the Criminal Code the sanction for women having recourse to abortion. The strongest argument in favor of this

³³ *Ibid.*

³⁴ *Civic Legislation Initiative: Equal legal protection for children before and after birth, op. cit.*

³⁵ *Ibid.*

³⁶ Unofficial translation of the draft law presented to the Polish Parliament by citizens’ initiative “Stop abortion” on July 5th 2016 available on the website: http://obserwatoriumdemokracji.pl/wp-content/uploads/2016/07/draft_law_stop_aborcji.pdf

³⁷ The abolishing criminal liability of pregnant women for performing abortion was introduced by the Presidium of the Supreme Council of the Soviet Union on 5 August 1954.

decriminalization was presented by Helena Wolińska, military prosecutor involved in the judicial murders of anti-communist opposition members in 1950s during the times of Stalin's rule, and an employee of the School of Social Sciences at the Polish United Workers Party's Central Committee: *"abolishing the punishment of a pregnant woman is equal to abolishing legal protection of the foetus' life."*³⁸ The exclusion of the criminal sanction for women, introduced together with the legalization of abortion for social reasons, deprived the conceived child of the legal protection. Contrary to the precedent Criminal Code of 1932, the only value protected by the law was not the unborn child's life anymore, but solely the mother's health. Consequently, women's automatic decriminalization has trivialized the act of abortion in other cases punished by the law.³⁹

Currently, Poland does not allow abortion on request and automatically provides the decriminalization of women for the abortion of their conceived child. In Europe, no State, in which the standard of the protection of life of the conceived child is similar or higher, provides the exclusion of the criminal sanction for women aborting their unborn child.⁴⁰ In the Far East, a similar solution as in Poland is established only in Vietnam, the People's Republic of China and North Korea which confirms the communist origins of the absence of sanction. *"Automatic exclusion of punishability of women is present in the countries of the former socialist bloc, some states of Western Europe and only a handful of other countries, including some states in the United States, where the decision of the Supreme Court of 1973 abolished most of legal restrictions concerning abortion."*⁴¹ In summary, the general standard of legal protection of conceived children is higher in 123 countries of the world while it is lower in 96 countries where abortion on request or for social reasons is allowed.

The restoration of the penalisation of women due to an attempt on the life of their conceived child is the fulfilment of the basic function of the State as a protector of the right to life. The criminal sanctions have to play a general preventive function, commonly referred to as deterrence. *"Waiving punishment, however, takes place through the judiciary and not through an automatic exclusion of punishment of the mother who wilfully subjects the unborn child to abortion. Automatic exclusion of criminal liability of a woman for wilful abortion means that the law allows the mother to perform an abortion, condones such an act and leads to the conclusion regarding deprivation of legal protection."*⁴² Furthermore, in November 2013, the Criminal Law Codification Committee at the Ministry of Justice, headed by professor Andrzej Zoll, recommended partial restoration of the punishment of women for killing their own unborn children – in the case of a *"child able to live independently outside of the mother's organism."*⁴³

The intention of the draft law authors is also a confirmation of criminal sanctions for abortion providers (helpers) and people instigating a prenatal homicide (instigators). The proposed changes aim to prevent the medical abortion, often accessible by means of distance communication, in particular the growing phenomenon of availability of pharmacological abortion drugs purchased over the Internet. The amendment of article 152 of Criminal Code (prenatal homicide) is proposed in order to specify *"that anyone who helped or persuaded the*

³⁸ Helena Wolińska, *Przerwanie ciąży w świetle prawa karnego [Termination of pregnancy in the light of the criminal law]*, Warsaw 1962, p. 41.

³⁹ Tymoteusz Zych, Jerzy Kwaśniewski (eds.), *op. cit.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Andrzej Zoll, *Nowelizacja Kodeksu karnego z 1997 r. [Amendment of the Criminal Code of 1997]*, "Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury", Zeszyt specjalny (13)/2014, pp. 15-16.

mother to commit a prenatal infanticide, also bears full responsibility for abetting."⁴⁴ The draft law proposed to standardize the vocabulary in the Criminal Code therewith to introduce the expression of "*conceived child*" instead of dehumanizing or impersonal terms such as "*pregnancy*" (article 152 and 153 of the Criminal Code).

It has to be stressed that the draft law provides an extraordinary mitigation or withdrawal from punishment of the unborn child's mother, who intentionally caused the death of the unborn child. In the case of the mother, who in the current circumstances usually is a direct perpetrator of that act (by taking the abortion pills), the court may apply mitigation of punishment or renounce to inflict it. The intention of authors is the adjustment of the court's reaction to the degree of the perpetrator's fault and awareness, without the rigid casuistry. "*In particular, it would allow for renouncement of inflicting the punishment, whenever the killing of the unborn child was forced by the pressure of the family environment, the child's father or other circumstances. At the same time, it will be possible to use the full sentence against those responsible for instigating and providing the abortion.*"⁴⁵

In the case of an unintentional act causing the death of the unborn child, it is proposed to exclude the punishment: "*This exemption applies to unintentional acts, in principle involving insufficient care of the unborn child's mother, which is required in her condition. The proposed provisions mean that the legislator treats such actions as unlawful and culpable, however excludes the mother from the threat of sanctions, taking into account that usually the loss of a child in such situation is in itself a source of the suffering of the mother, who wanted a child.*"⁴⁶ In parallel to the mother's unintentional act, a physician is not deemed to have committed the offence set out by the Criminal Code "*if the bodily injury or an impairment to health of a conceived child are consequences of treatment necessary to remove an imminent threat for the health or life of the mother of the conceived child or of the conceived child.*"⁴⁷

⁴⁴ Tymoteusz Zych, Jerzy Kwaśniewski (eds.), *op.cit.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Civic Legislation Initiative: Equal legal protection for children before and after birth, op. cit.*

II. New programs designed to assist families and women involved in crisis pregnancies

The diagnosis of an incurable disability of the child in mother's womb is about the worst news that parents can receive. As for the other pregnancies involving difficult circumstances, abortion is unfortunately presented too often as the only "offer" of the public authorities. To change this situation, the authors of the citizens' legislative initiative "*Stop abortion*" propose to set up a coherent system of State support for families confronted to this crisis during their pregnancies. A broad spectrum of propositions has been prepared in order to assist families, notably women, involved in crisis pregnancies. The idea is to compel public authorities and local governments to guarantee the material and psychological help in these circumstances. Poland is a country where the development of different initiatives in favor of the respect of human life since conception till natural death can be observed. The solutions adopted in Poland can become an inspiration for other countries.

A. Obligation of public help into a crisis situation

"Public administration and local self-government bodies, within the limits of their respective competences, as specified in particular regulations, shall be obliged to provide material assistance and care to families raising children who are seriously handicapped or who suffer from a life-threatening illness, as well as to mothers and their children when there are reasons to suspect that the pregnancy is a result of an unlawful act" – this is one of the proposals of the citizens' legislative initiative on the abortion ban.⁴⁸ Public assistance for families in distress is a realization of the positive obligation to protect the right to life of every human being. It is an alternate solution from the "*current abortion offer*", which establishes a system of support that provides protection for every child, and a sense of security to every family, which too often are left to struggle alone.

The lawyers of the Institute for Legal Culture Ordo Iuris have prepared a series of additional proposals offering concrete assistance to parents in difficult situations. The package of amendments concerning four laws and three other regulations, gathered in one draft law, is conceived as a legal base to provide support for families involved in particularly aggravating situations. According to the authors, the yearly cost of all proposed legal changes is estimated to be 890 million PLN (approximately 205 million EUR).

The main proposal concerns the support for the perinatal hospices and establishment of additional measures relating to the palliative care for children. Contrary to the prenatal care relative only to the period before birth, perinatal care concerns the whole period around childbirth, as well as the assistance to other people involved in complicated pregnancy, notably mother before and after the birth. The proposed legislation would make palliative care for babies publicly funded. Additionally, Ordo Iuris recommended including perinatal hospice care to medical school curricula, as well as psychology, sociology, and other social sciences. Nowadays, despite an important demand of adequate care for babies with severe disabilities, children before 18 years old represent only 2,1% of 80,000 patients of hospices in Poland.⁴⁹

⁴⁸ *Civic Legislation Initiative : Equal legal protection for children before and after birth, op. cit.*

⁴⁹ *Pomoc dla kobiet i rodzin zamiast aborcji – projekt ustawy i zmiana przepisów wykonawczych [Assistance to women and families instead of abortion – draft law and amendment of additional regulations]*, Ordo Iuris, 7 June 2016, available on the website: <http://www.ordoiuris.pl/pomoc-dla-kobiet-i-rodzin-zamiast-aborcji---nowy-projekt-ustawy-i-zmiana-przepisow-wykonawczych,3809,i.html>

The new regulation dedicated only to the pediatric palliative care, mostly founded on the idea of home hospice, would be an answer to this demand.

The creation of perinatal hospices is followed by the proposition of development of long-term pediatric care at home. This proposal aims to support families raising children with severe handicaps. The idea is to set up a system of long term help at home, in the familiar conditions for children and their relatives. One of the proposed measures provides the inclusion of financial and medical assistance, including diagnostic tests and medicines, in this form of pediatric care.

Concerning the material assistance, the draft law provides for the suppression of the requirement of unemployment or resignation of work for parents of handicapped children under 16 years old. The current regulations decrease financial stability of families raising children with disabilities, often pushing them to exercise an undeclared work.⁵⁰ Moreover, for sick women who are not able to work during the pregnancy, a special health allowance is proposed. The idea is to support these women by an amount of 1000 PLN (230 EUR) per month during the whole period of pregnancy. The adjustment of this allowance along with other social benefits is also suggested.⁵¹

Next to material help, the draft law proposes the establishment of non material assistance, mostly psychological, for parents of children seriously handicapped or who suffer from a life-threatening illness, as well as to families whose pregnancy resulted from an unlawful act. According to the proposals, a special phone number for women and families involved in crisis pregnancies has to be set up. The objective is to have access to competent information about public help and the possibilities of assistance.

The draft law on concrete public authorities assistance towards families involved in crisis pregnancies also encompasses adoption procedures. In order to facilitate the adoption of children with severe disabilities or conceived in illegal circumstances, when parents are not able or do not want to take charge of them, an accelerated way of adoption is proposed. The proposal envisages the amendment of the Family and Guardianship Code, as well as the Code of Civil Procedure. According to this proposition, the procedure of adoption could start before the birth of such child thanks to blank consent, which nevertheless could entered into at least one month after the child's birth. Furthermore, the development of adoption centers designed for abandoned children is suggested. Unfortunately, every year in Poland, there are approximately 800 children who are abandoned for social reasons (parents without social stability, poverty, single parenthood, homelessness, unemployment, postpartum depression, violence, pregnancy from rape, addictions, etc.). According to the draft law, this obligation shall be entrusted to local governments.⁵²

Finally, the draft law postulates a reform of functioning of the single mother houses (*domy samotnej matki*). The idea is to help mothers relocate from harmful environments that would be a detriment to their child welfare, to a safer, child friendly local.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

B. Positive attitude in favor of human life

By adopting the abortion ban, Poland has an opportunity to become a precursor in terms of comprehensive protection of human life from conception to natural death. The Polish example can be an inspiration for other countries. The Polish experience has already shown that a number of positive changes regarding the unconditional respect of human life are possible.

Poland is a country with a relatively high level of protection of the human fetus and women's reproductive health as defined at the International Conference on Population and Development in Cairo in 1994. According to the latest United Nations data, Poland, *ex aequo* with Iceland, Greece and Finland, has one of the lowest maternal mortality ratios, which in 2015 stood at only 3 per 100,000 births. This is currently the best result in the world surpassing such countries as the United States of America (14/100,000), the United Kingdom (9/100,000), France (8/100,000) or Germany (6/100,000). In comparison with 1990, maternal deaths in Poland fell by 82,4%.⁵³ *“This number proves that there is a positive correlation between the level of procreative health and the level of protection of human life since conception.”*⁵⁴

The standards concerning the reproductive health in Poland, besides the Constitution and the Act of 7 January 1993, are regulated by implementing acts. In recent months, some new regulations have been adopted. The most important change for the per parturient care results from the program of Coordinated Pregnancy Care (CPC) which introduces a new model of pregnancy care, alternative to the current one. *“Women in each stage of their pregnancy will be able to apply for participation in the CPC programme. Within its framework, they will be provided care during pregnancy, childbirth, and the ensuing 6-week period. During the latter, mothers will be able to count on being visited in their homes by a midwife and on breastfeeding advice.”*⁵⁵ Entered into force on 1st July 2016, the CPC program is based on centralization of treatment, contrary to the previous model, where the woman could independently choose the doctor to follow pregnancy, the midwife and the hospital where she wanted to give birth to the child. There are some doubts concerning the usefulness of this model taking into account that a decentralized care responded to a satisfactory extent to the patients' needs.⁵⁶

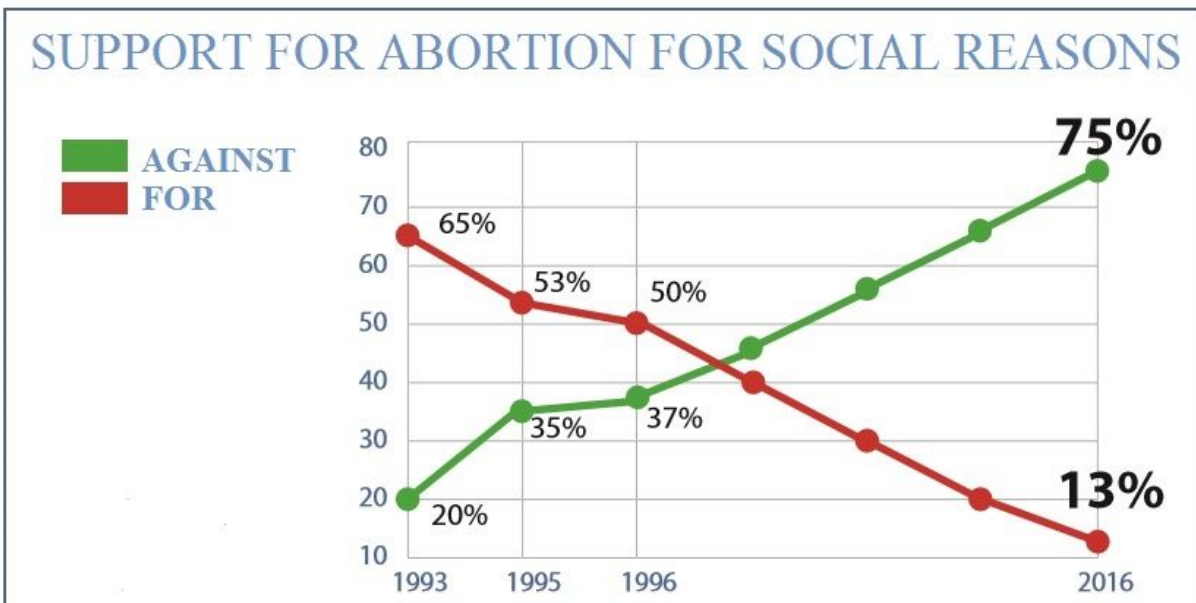
The first important step towards a culture of life was the interdiction of abortion for social reasons. The Act of 7 January 1993 permitted the change of attitudes of Poles in favor of respect of human life. With the growing awareness about the abortion procedure, there was an increase of concrete initiatives favoring the choice of life, in particular of the conceived child.

⁵³ Janusz Roszkiewicz, Karolina Pawłowska, *Implementation of the right to protection of reproductive health in Poland*, in Joanna Banasiuk, Tymoteusz Zych (eds.), *State of Democracy, Human Rights and the Rule of Law in Poland. Recent Developments*, Ordo Iuris Institute for Legal Culture, September 2016, pp. 181-182.

⁵⁴ Joanna Banasiuk, Tymoteusz Zych (eds.), *op.cit.*, p. 7.

⁵⁵ Janusz Roszkiewicz, Karolina Pawłowska, *op.cit.*, p.185

⁵⁶ *Ibid.*, p. 191.



Source: K. Jusińska, J. Kwaśniewski, K. Pawłowska, O. Szczypiński, K. Walinowicz, T. Zych., *op. cit.*, p. 21.

The best illustration of this cultural change is the example of the baby hatches commonly called “*windows of life*” (*okno życia*). They are heated incubator – style boxes placed on the other side of a door or hatch, often in hospitals or religious communities, where women can place the baby. The idea is to allow the mother to anonymously leave her child without any consequences. Once the child is in the box, the motion sensor launches the alarm. The child is directly transferred to the hospital. The adoption services contact the court and demand to establish child care as well as record the child’s identity. The court then decides to place the child in a foster care. The decision is usually very quick, often taken on the same day.⁵⁷

The first baby box was set up in 1999 by a German pastor, Gabriele Stangl, after a woman in Berlin confessed that she had murdered her unwanted newborn that had been conceived through rape. In Poland, the first baby hatch was opened in 2006 by Caritas of the Archdiocese of Cracow based on the initiative of Cardinal Stanisław Dziwisz, former secretary of Pope John-Paul II. The last one was opened on 8th December 2015 in Ostrów Wielkopolski. There are currently 58 windows of life in Poland (a list is available on the Internet): in ten years 90 children were saved this way.⁵⁸ The institution of baby boxes is known in several other European countries, notably in Austria, Belgium, Czech Republic, Germany, Italy, Lithuania, Russia and Switzerland. Thus, the boxes started to bear fruit and to stop women from abandoning their children in freezing conditions, or feeling they had no choice but to kill their offspring. According to the Polish police information, the windows of life contributed to the fall of infanticide cases, from 47 cases in 2000 to 4 in 2014.⁵⁹ However, in 2012 the United Nations Committee on the Rights of the Child said the scheme denies children a right to know their parents and it should be banned. Speaking in response to the call for the ban, Archbishop Józef Kowalczyk, the Roman Catholic primate of Poland, said the “*windows of life*” saved lives and were part of the country’s traditions.⁶⁰

⁵⁷ *Ibid.*

⁵⁸ *Okna życia w Polsce: 90 uratowanych dzieci [Windows of life in Poland : 90 children saved]*, 20 March 2016, available on the website: <https://ekai.pl/diecezje/warszawska/x97960/okna-zycia-w-polsce-uratowanych-dzieci/>

⁵⁹ *Ibid.*

⁶⁰ *Poland’s Church fights to save baby boxes*, Skynews, 3 December 2012, available on the website: <http://news.sky.com/story/polands-church-fights-to-save-baby-boxes-10461997>

However, respect for human life cannot be limited to the question of abortion. A structural and multi-vector assistance for the whole family is needed. In the context of crisis pregnancies, the development of perinatal hospices, such as suggested in the recent citizens' legislative initiative, is of great importance. Their existence at an international level, in particular in Central and Eastern Europe, is still rare (two hospices in Germany, two hospices in Czech Republic, one in Slovakia). The best perinatal infrastructures exist in the United States, where there is at least one hospice in every State.⁶¹ Poland has a relatively large array of centers with perinatal care. Indeed, there are perinatal hospices in the largest Polish cities as Warsaw, Łódź, Gdańsk, Wrocław, Cracow, Opole, Katowice, Poznań, Rzeszów or Lublin. This kind of care is proposed in Poland since 1999. In June 2016, a detailed report on "*Perinatal Hospice Care: Vision, Actions and Challenges*" has been presented by Błażej Kmieciak and Zofia Szafrńska-Czajka, two bioethics experts of the Institute Ordo Iuris.⁶² Describing unborn babies as patients with their own rights for health care, this report was the first of this kind in Poland, where the number of hospices is growing. Their role is also conceived as an alternative to eugenic abortion. Families can find complex medical and psychological support there. The objective is to guarantee the best quality of life to babies with malformations. Families also receive the possibility to spend some moments with their child, to know them and to say "good bye". All hospices are privately funded and staffed in part by *pro bono* personnel. The proposed legislation would make palliative care for babies publicly funded.⁶³

Poland has also an excellent pediatric palliative, even if further regulations facilitating their functioning are needed. Developed since 1994, the total home care area covers 96% of the population of Poland. In 2012, 54 hospices provided care to 1265 children. According to the Children's Hospice International organization, only seven million children in the world have access to pediatric palliative care. That there is palliative care for children in only one-third of the countries worldwide.⁶⁴

The positive attitude towards human life means not only the assistance to those who for different reasons have some difficulties to welcome new life, but also to help those who have difficulties conceiving a child. Promoting the chance of having healthy offspring and ensuring care during pregnancy results from the right to access appropriate reproductive health care services. Thus, at the beginning of 2016, the minister of health, Konstanty Radziwiłł announced the works on the National Procreation Program (*Narodowy Program Prokreacyjny*). Conceived within the National Health Program (*Narodowy Program Zdrowia*) adopted by the government of Law and Justice for the period 2016-2020, will begin in 2017. The new program aims to set up a comprehensive reproduction health care and, contrary to the current offer concentrated on the methods of artificial fecundation, wants to propose a complex medical diagnostic dealing with the causes of infertility. On June 2016, the ministry of health decided to suspend the government's funding for in-vitro fertilization launched on 1st July 2013 because of the controversies concerning the public funding for ethically doubtful

⁶¹ Błażej Kmieciak, Zofia Szafrńska-Czajka, *Perinatalna opieka hospicyjna : wizja, działania oraz wyzwania [Perinatal Hospice Care : Vision, Actions and Challenges]*, Raport Centrum Bioetyki Instytutu na rzecz Kultury Prawnej Ordo Iuris, Warsaw 2016, pp. 12-18

⁶² The report is available on the website: http://www.ordoiuris.pl/pliki/raport_hospicja.pdf

⁶³ Błażej Kmieciak, Zofia Szafrńska-Czajka, *op. cit.*, pp. 19-28.

⁶⁴ Katarzyna Kozera, Urszula Wojciechowska, Wojciech Marciniak, Elżbieta Tokarska, Tomasz Dangel, *Pediatryczna domowa opieka paliatywna w Polsce (2013) [Pediatric palliative home care in Poland (2013)]*, Raport XV, Fundacja Warszawskie Hospicjum dla Dzieci, Warsaw 2015, available on the website: http://www.hospicjum.waw.pl/phocadownload/Epidemiologia-Polityka_Zdrowotna/Pediatryczna-Domowa-Opieka-Paliatywna-w-Polsce-2013.pdf

methods. Instead, the establishment of the first baseline clinic proposing diagnostic and infertility treatment within the Polish Mother's Memorial Hospital Research Institute (*Instytut Centrum Zdrowia Matki Polki*) in Łódź is planned for the end of 2016. The standards elaborated in this centre have to be spread thereafter across Poland⁶⁵

One of the objectives of the new program is the development of NaProTechnology (Natural Procreative Technology)⁶⁶ which is a method of natural procreation developed since the 1970's by doctor Thomas Hilgers, the director of the Pope Paul VI Institute for the Study of Human Reproduction and the National Center for Women's Health in Omaha, Nebraska (USA). This is the first women's health science that uses the Creighton Model System to help a woman reach her optimal state of reproductive health. *"Its medical and surgical approaches, developed over decades of research and now emerging in peer-reviewed medical literature achieve real solutions to problems such as infertility, problem periods, pelvic pain, miscarriage, and postpartum depression."*⁶⁷ In the summer of 2004, *"The medical and surgical practice of NaProTechnology"*, a major textbook intended for doctors and medical schools, was published. In Poland, the method of NaProTechnology was presented for the first time in 2007 at the Congress of Ecologic Medicine in Cracow. In April 2008, the John Paul II Institute for the Treatment of Infertility in Marriage Foundation was created in order to develop training programs in NaProTechnology and offer assistance to married couples in building attitudes of openness for life.⁶⁸ At the end of 2008, the first formation about the NaProTechnology method took place in Lublin. Since then, numerous initiatives dedicated to the promotion of NaProTechnology were launched: the Fertility Care Centers of Poland were notably created in 2011. Poland has become a European leader in the field of natural procreative technologies. While there were only 13 physicians of NaProTechnology in the whole of Europe in 2008, there are 100 doctors practicing this method in Poland today and 70 instructors of the Fertility Care System.⁶⁹ The first results obtained thanks to natural procreative technology are promising: its further development in Poland is therefore expected.

⁶⁵ *Ministerstwo Zdrowia tworzy Narodowy Program Prokreacji [Ministry of Health works on National Procreation Programme]*, 10 May 2016, available on the website: <http://www.opoka.org.pl/aktualnosci/news.php?id=59991&s=opoka>

⁶⁶ Cf. Thomas W. Hilgers, *The new women's health science of NaProTechnology*, Archives of Perinatal Medicine 17(4), 2011, pp. 191-198, available on the website: <http://www.fccp.pl/images/APM174-2-Hilgers.pdf> More information on NaProTechnology is available on the website: <http://www.naprotechnology.com/>

⁶⁷ The information is available on the Pope Paul VI Institute for the Study of Human Reproduction website: <http://www.popepaulvi.com/about.php>

⁶⁸ The information about the John Paul II Institute for the Treatment of Infertility in Marriage Foundation is available on the website: <http://www.infertility.pl/en/>

⁶⁹ The information provides from the Fertility Care Centers of Poland website: <http://www.fccp.pl/>

Conclusions

The parliamentary elections held in Poland on October 25th 2015 have drawn a new political landscape, allowing for a number of possible changes which were inspired by the Catholic social teaching, particularly in favor of strengthening the protection of human life from conception to natural death. In this general context, the citizens' legislative initiative for the total abortion ban, supported by almost half a million of Poles, is the expression of a long-term effort for the legal protection of children, before as well as after birth.

The draft law, delivered to the Polish Parliament on 5th July 2016, aims to establish the comprehensive protection of human life. Founded on a solid argumentation deriving from the Polish Constitution and the jurisprudence of the Constitutional Tribunal, the proposition aims to give the legal definition of the conceived children and the moment of conception. This proposition means the empowerment of the unborn child, who can be considered as a patient in light of the Act on Patients' Rights, as well as the equal treatment with children who are born. The reconstruction of the sanction for illegal abortion is suggested.

The draft law on abortion ban is focused not only on the legal protection of the conceived child but also on the positive obligation of public authorities towards families involved in crisis pregnancies. Practical regulations relating to the State's assistance, notably to the mother of a child with severe disabilities or conceived in illegal circumstances, are proposed. This positive attitude in favor of human life matches with the numerous concrete initiatives aiming to support families in difficult circumstances.

The future of the draft law on abortion ban depends of the Polish Parliament. After the first lecture in the *Sejm* on 22nd September 2016, the proposal has been put forward to the Commission of Justice and Human Rights, where it will be further discussed. A motion on 23rd September 2016 whether to reject the draft bill saw 154 parliamentarians voting for, 267 voting against and 11 abstaining. However, the final version of the proposal can be substantially different from the initial project. While the eugenic abortion ban seems to gain the support of the majority of Polish parliamentarians, the reticence concerns the legal ban of two other circumstances currently allowed by the law, as well as the question of women's punishment. No deadline relating to the end of discussions on the draft law was set either. Meanwhile, the *Sejm* rejected the rival proposal aiming to allow women to terminate pregnancy on demand, up to the 12th week of pregnancy. The "Save Women" committee's proposal was rejected by 230 MPs, 173 MPs backed the bill, and 15 MPs abstained.⁷⁰ Thus, the Polish Parliament has already confirmed the cultural change which has occurred since the abortion ban for social reasons in 1993.

⁷⁰ *Sejm nie odrzucił projektu ws. bezwzględnego zakazu aborcji [The Sejm did not reject the proposal of total abortion ban]*, "Rzeczpospolita", 23 September 2016.