

7 From Abortion on Demand to its Criminalization: the Case of Poland in the 1990s

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During the 1990s women in Poland have faced a tough battle for one of the most basic rights necessary to control their lives in a society where contraception is not used by around 40 per cent of the population: access to abortion. They went from a situation where abortion was almost available on demand until the end of the 1980s, to its being virtually illegal in 1993. By the end of 1996 the law was partially liberalized, although the issue is still the subject of conflict.

From 1956 Poland had experienced some of the most liberal abortion legislation in the world. The regulations introduced in 1993 meant that abortion was more restricted in Poland than any other European country with the exceptions of the Republic of Ireland, Malta and Andorra. By worldwide standards, comparable abortion laws exist in several South American countries, half of Africa and most of South East Asia. But what makes the Polish case unique is the way that abortion became dramatically politicized and changed during a period of unusual social transition. Other countries in the region experienced similar transitions, but this was accompanied by the liberalizing of abortion laws. Soon after the political reforms in the early 1990s, Romania, Bulgaria and Albania reversed virtual bans, and Hungary and the Czech and Slovak Republics have introduced laws which maintain reasonable access to abortion.

THE CLAMPDOWN ON ABORTION BETWEEN 1989 AND 1993

Poland previously had a relatively liberal policy on abortion compared with the rest of Europe. The 1932 Penal Code permitted an

abortion if pregnancy resulted from a criminal offence or seriously threatened the mother's life. In 1956 the Abortion Admissibility Law was introduced permitting abortion for social or economic reasons. The final decision allowing this was the doctor's. But the Ministry of Health made modifications and then the law was changed again in 1959 to make the woman's application enough for an abortion to be administered. No time limit was set, and this was left for the medical profession to determine on a case-by-case basis.

The legislation during the 1950s was a major step forward for Polish women even though it was introduced without consultation and was not motivated by feminist thinking. It supported wider policies of integrating women into the workforce that were simultaneously being introduced into many Soviet bloc countries in the absence of widely available contraception. There are many sources indicating that abortion operated as a form of contraception in Poland. Marek Okolski notes one source where, 'According to one of very few reliable estimates, in 1977, every second pregnancy was terminated by induced abortions.'¹

The first indication that restrictions on abortion were going to accompany Poland's new political freedom came with the submission of a draft law just before Parliamentary elections in June 1989. The Sejm (Lower House of Parliament) decided to set up a special committee to investigate changes to the law arising from these debates and a bill was drawn up by the Senate (Upper House of Parliament).

This bill proposed a two-year prison sentence for anyone who caused the death of an unborn child, only allowing an abortion to save the mother's life. It also stated that contraceptives like pills and intrauterine devices (IUDs) should be illegal. The Sejm examined the recommendations of the select committee and attitudes recorded in opinion polls. It decided to adopt a resolution from the post-Solidarity Democratic Union (UD) to ban private abortions as a compromise and delay legislation until after the elections in October 1991.

While the legislation remained unclear, it became more difficult to get an abortion following the actions of the medical profession. From 1990 three physicians and the approval of a state-registered psychologist were required to allow an abortion. On 14 November 1991 it was proposed that a 'Physicians' Code of Ethics' should be enforced by the Chamber of Physicians. This established that doctors who performed abortions or prenatal tests in state hospitals

would not be allowed to continue as practising doctors. Signs declaring 'No Abortions Here' went up outside state hospitals. The prices of private abortions rocketed. State hospitals had already been told to charge the equivalent of one third of the average monthly family income for an abortion obtained for social reasons. This step was taken by the Polish medical profession despite considerable influence from the World Bank and European doctors in reforming the Polish health system, as described by Arthur Mierzecki.²

The action by the medical elite was considered unconstitutional by some, who stated that the 1956 Law providing for abortions still held. This led to a challenge in the Supreme Court, which was thrown out on a technicality. But new legislation was already being prepared and in March 1993 the Law on Family Planning, Defence of the Foetus and the Acceptance of Pregnancy Terminations was passed in the Sejm.

The Act stated that an abortion was legal only in a state hospital under the following circumstances:

1. When the pregnancy constituted a threat to the life of the mother, confirmed by two doctors other than the physician involved in the case;
2. If a prenatal examination indicated heavy and irreversible damage to the embryo, again validated by two doctors not involved in the case;
3. After a legal prosecution had determined that the pregnancy was the result of an illegal act like incest or rape.

Aiding or performing an abortion was subject to two years' imprisonment under the Act, although the woman having the abortion could not be prosecuted. These changes had dramatically changed many aspects of Polish society by 1993. UNICEF reports that the abortion rate per 100 live births fell from 20 in 1985 to 2.3 in 1992.³ The number of legal abortions the Ministry of Health showed a decline from 31,000 in 1991, to 11,640 in 1992 and to 777 in 1993. Of the 777 in 1993, 736 were approved due to a threat to life, nine were court-sanctioned because a rape had taken place, and the other 32 were not publicly explained. It was also noted that the number of miscarriages had fallen from 72,000 in the early 1980s to 51,802 in 1992, but had then risen by 1,225 in 1993.⁴ Illegal abortions by private payment became widespread in Poland. This was evident from statements by women and doctors as well as the vast number of adverts in newspapers and magazines which

usually read something like 'All Gynaecological Services Available'. In addition 'health holidays' for foreign abortions became big business. Some could afford the better clinics in Germany. There were cheaper and more dangerous bus trips to Belarus, the Ukraine and parts of Russia.

Discoveries of abandoned children rose from 22 in 1992 to 35 in 1993, then to 50 in 1994 and 49 in 1995. There was an additional rise in the number of children left in hospitals, recorded separately, which reached 153 in 1993. Infanticide figures recorded a new high of 59 in 1992, 56 in 1993, 52 in 1994 and 42 in 1995, according to Polish Main Police Headquarters.⁵ The Polish Police found a total of 162 dead babies in 1994.⁶ The number of teenage and late pregnancies increased from both rates being 6 per cent of all births in the late 1980s to the former being 8 per cent and the latter 11 per cent of all births in 1995.⁷ The changes to abortion in Poland in the early 1990s affected people in terms of their livelihoods and sexual relations.

THE ROLE OF THE CATHOLIC CHURCH

The political changes in Poland during the late 1980s transformed the role of the Catholic Church. It had acted as an intermediary between opposition forces and the state during the 1970s. This earned the Catholic Church its place in the mythology of the Solidarity underground.⁸ But the Church simultaneously increased its influence on state policy and began to lay the foundations for anti-abortion legislation. Frances Pine recalls how in the 1970s 'The state embarked on a highly emotive pro-natal campaign, with the obvious backing of the Church. Motherhood was celebrated, and pictures of 'unborn babies' were posted in churches and public buildings.'⁹

In 1989 the Catholic Church helped negotiations between the two sides in the 'Round Table Talks' that facilitated political transition. Diplomatic relations with the Vatican were opened and the Church began to play a dominant role in social policy. Religious teaching was introduced into state schools in 1990 and religious ceremonies became frequent in the army. There is undoubtedly a strong influence on attitudes towards sex and contraception. Some priests openly tell their congregations that they will go to hell if they use contraception. Women often have to sign a pledge not to use an IUD, and there are rumours of a first communion or Christian

burial being denied to families who refuse. Most surveys indicate that around only two per cent of Polish women use the pill.

These factors are significant within a population that is 95 per cent baptized in the Catholic Church with 60 per cent regularly attending church. However, the Catholic Church is an institution which is very unpopular in Poland and few Poles want to live by its rules. A survey in April 1992 showed that 61 per cent of Poles favoured retaining the 1956 abortion law, despite their Catholic orientation.¹⁰ Nevertheless, prominent members of the Catholic Church have intervened directly into political life on the abortion issue. Poland's Primate, Cardinal Jozef Glemp, was seen on the steps of the Parliament just after the vote on the 1993 Act and met all Senate members the night before they cast crucial votes on abortion legislation. In the political vacuum that opened up in 1989, the Church fought to have its anti-abortion attitudes made into law. Adam Michnik identified this trend, calling for more discussion on the issue: 'As the Church tries to legislate evangelical values, it is time to concentrate again on the need for dialogue.'¹¹

There is no doubt that the Catholic Church was behind the initial anti-abortion legislation proposed in 1989. The Church organized meetings bringing together doctors and lawyers under the Episcopal Commission for the Family. This Commission gathered experts to work with parliamentary committees in 1988-9 and organized Catholic lawyers to write draft legislation. Renata Siemienka has described how the legislation restricting abortion proposed in 1989 was prepared under the protectorate of the Episcopate with the support of various groups including the United Peasant Party.¹² The bill that was drawn up suggested that abortion should be banned because the foetus has the same rights as a child.

In addition there is the external influence of the Polish Pope, John Paul II. The Polish link to the Vatican has created an additional pressure on change within Poland. When John Paul was elected he returned to Poland in the spring of 1979 and gave an important boost to opposition forces in the Solidarity uprising during the following year. He called for the re-establishment of a Christian Europe. Reform in Poland towards Catholic social policy was seen as the launchpad for the revival of Catholicism across Europe at a time when the Vatican was taking a firmer stand against abortion. The Pope wanted to stop the trend across Europe towards liberalizing abortion laws in predominantly Catholic countries such as Italy (1978), Portugal (1984), Spain (1985) and Belgium (1990). As Byrnes¹³

points out, the Pope needed to achieve reform on issues like abortion in his homeland to fulfil the wider aims of the Catholic Church at the time. The Polish state did not respond to the Pope's call for restrictive legislation in the 1980s. But the impact of his visits in the 1990s was quite different. On the eve of a trip to Poland in June 1991, John Paul II equated abortion with the genocide of the Jews. During his pilgrimage he expressed his disappointment over his compatriots' attitudes towards the unborn, particularly the failure of Parliamentary Deputies to pass a bill almost outlawing abortion.

The Catholic Church worked closely with most Solidarity leaders in the communist period and this relationship continued when the post-Solidarity politicians came to dominate governments during the first half of the 1990s. In March 1990 Solidarity developed its previously critical stance on abortion into support for a total ban. Former Solidarity leader and staunch Catholic Lech Walesa held the powerful post of President from 1990 to 1995. Post-Solidarity political factions controlled the government between 1989 and 1993 when the anti-abortion legislation was passed. At the time of writing, the legal status of the Catholic Church and the Concordat being reviewed alongside the new constitution. But the Church being reviewed alongside the new constitution. But the Church maintained its power in government through President Walesa until he was replaced in the election of 1995 by the former communist Aleksander Kwasniewski. That was the turning point for the Church's hold on government policy and the restrictions on abortion.

THE CHANGING POLITICAL TERRAIN

The domination of the government by the post-Solidarity factions in a harmonious relationship with the Catholic Church was the driving force behind the legislation restricting abortion in 1993. It was the Democratic Union that held the majority position in the governments between 1991 and 1993 and aided the passage of anti-abortion legislation with the support of the National Christian Union (ZChN). Even the female UD Prime Minister, Hanna Suchocka, would not challenge the aspects of the 1993 Act she disagreed with. She left the Parliament just before the vote on the Act. When she lost power in the 1993 parliamentary elections to the former communists the UD went from leading the government to political oblivion overnight and the ZChN had no Deputies re-elected. After the former

communist Alliance of the Democratic Left (SLD) took control of the government in coalition with the Polish Peasants' Party (PSL), relations between government and the Church became more fractious and further amendments to the 1993 Act were proposed.

During the 1993 election campaign the former communists campaigned on a programme that included liberalizing the abortion law. After the election the Parliament that they dominated voted in favour of an amendment to the 1993 Act which would allow abortion on the grounds of personal or financial difficulty. The Senate also voted for the amendment. But President Walesa exercised his veto and threatened to resign rather than sign the amendment into law. The Sejm requires a two-thirds majority to overturn the President's veto. In the vote in the Sejm on 2 September 1994 this two-thirds majority was not reached and the amendment fell. It was not until the 1995 Presidential election was settled that reform could be achieved. Walesa's main opponent was Kwasniewski, who maintained his commitment to liberalizing the abortion law. With Kwasniewski's victory in this election the stage was set for the battle over the legislation to continue. On 30 August 1996 the Sejm voted in favour of liberalizing the abortion law by 208 votes to 61 with 15 abstentions. There was an immediate response from the Church. Bishop Tadeusz Pionek, Secretary General of the Polish Bishop's Conference stated: 'Parliamentarians elected to defend society and safeguard human life have declared themselves in favour of the deaths of innocent, helpless people.'¹⁴

There were then various attempts to stop the amendment including its rejection by the Senate on 3 October 1996. This was partly due to tensions within the ruling SLD-PSL coalition but was also influenced by 10,000 anti-abortion activists praying and singing outside the building where Senators were voting. But on 24 October 1996 the Sejm overturned the Senate veto and passed the bill. The new legislation allows for women to terminate a pregnancy before the twelfth week if they face personal or financial difficulties, but only after counselling and a three-day waiting period. The bill also provides for sex education in schools and less expensive birth control.

Reactions were mixed. A statement from the Vatican declared that Pope John Paul II's homeland had 'chosen the path of death'.¹⁵ Meanwhile, Wanda Nowicka, Director of the Federation for Women and Family Planning, was hesitant about how much the liberalization would improve access to abortion in many areas of Poland: 'I

am convinced that women who want legal abortions under the new law may have problems, especially in small towns, as the pressure on doctors is so strong.'¹⁶ But it is interesting to note how much less influential the Catholic Church was by the time of this amendment. By contrast NGOs (non-governmental organizations) like the Federation for Women and Family Planning suddenly appeared to have achieved a great victory.

THE INFLUENCE OF NON-GOVERNMENTAL ORGANIZATIONS

The abortion issue became highly politicized by the Catholic Church and various political parties in Poland. But there are many examples of how both anti-abortion and pro-choice NGOs seem to be becoming more able to influence the direction of abortion-related issues in Poland. At the present time it appears that the anti-abortion NGOs are more able to mobilize people for public demonstrations. This may be because it is publicly more acceptable to voice anti-abortion opinions in Poland now. During 1991 an in-depth study by Maria Daszynska indicated that 57.2 per cent of respondents said having abortion should not be subject to penalties, while only 11.7 per cent were in favour of penalizing abortion.¹⁷ Recent survey material indicates that most Poles are in favour of some restrictions on abortion, but not a total ban. For example, in March 1996 the Public Opinion Polling Centre (OBOP) carried out a survey with 1109 people. When asked the question, 'Do you approve of an abortion when the woman simply does not want to have a child?', 58 per cent said this should not be allowed, while 32 per cent said that it should. But when asked, 'Do you approve of abortion when the woman is facing difficult social circumstances?', 54 per cent approved and 34 per cent disapproved. Overall, 62 per cent were in favour of a change to the 1993 Act, although it should be noted that results in these opinion polls vary widely according to many variables including education, age and level of religious commitment.

While the majority appeared to be in favour of liberalizing the law, most public demonstrations have been against this. The Catholic Church plays an important role in supporting NGOs mobilizing against abortion. Indeed, throughout the communist period the Church supported groups campaigning to repeal the 1956 law. Then

in 1992 the Church supported the foundation of the Polish Federation of Movements to Defend Life. Such groups have a very active role in Polish politics. For example, during the final stages of the bill to amend the 1993 Act, 'The church organized a huge campaign of letters and protests against the bill, culminating in a silent march on Parliament Wednesday by more than 30,000 people from around Poland'.¹⁸

Anti-abortion activists have also been supported by international bodies. International NGOs like Human Life International and Pharmacists For Life have been active on the ground in Poland. For instance, Pharmacists For Life have been accused of buying up contraceptives to prevent their use. Human Life International have provided material to publicize anti-abortion attitudes. Several anti-abortion campaigners from the US helped organize a demonstration outside a clinic in Warsaw during 1992.

The pro-choice NGOs have almost been built from scratch. There have been women's groups in Poland since the founding of the Women's League in 1913 and Polish women were some of the first in Europe to be granted the franchise in 1918. But after the Second World War the communist government reformed the Women's League as an instrument of government policy. Anna Reading lists numerous autonomous feminist organizations which she believes developed from academic circles in the 1970s: the Polish Feminist Associations of Warsaw, Cracow and Lodz, the Movement For Protecting Women's Rights in Bydgoszcz, Women's Honour in Torun and the Women's Clubs of Poznan.¹⁹ But Jolanta Plakwicz claims that it was in 1980 that the first women's group in Warsaw was formed.²⁰ These differences probably arise from moving in different social circles, but they reveal how there were few women's organizations beyond clusters of friends before 1989 outside the Women's League, which had 150,000 members in 1992 but no real political weight.

The irony is that the anti-abortion legislation gave birth to an embryonic women's movement in Poland. The small groups mentioned above grew in numbers and influence, and extended their activities. On 12 November 1989 there was a small demonstration in Warsaw to demand safe and legal abortions. The Parliamentary Women's Circle was formed on 18 April 1991 and helped block the passage of anti-abortion legislation in Parliament on that day, aided by a demonstration outside the building.²¹ Malgorzata Fuszara has described the tactics used against the anti-abortion legislation

by the Parliamentary Women's Club, headed by Barbara Labuda.²² The Civic Movement for the Referendum organized a petition signed by over one million people against the restrictive legislation in the early 1990s. A political lobby group called the Democratic Union of Women was set up with the support of the SLD. However, these women's organizations were closely tied to Parliamentary Deputies and therefore cannot be classified as 'non-governmental'.

In 1992 the Federation For Women and Family Planning was formed. This brought together the Polish Feminist Association, the Women's League, Pro Femina Association, Neutrum and the YWCA. The activities of the Federation are varied. They have a telephone help line and have distributed pills and condoms free or at very low prices. In addition, counselling centres have been set up, often where family planning centres have been closed down. Posters, leaflets, manuals and videos are being distributed to the public.

The growth of all NGOs in Poland has been strongly supported by international bodies. On 21 September 1996 the first All-Poland Forum of Non-Governmental Initiatives opened. There were 3,500 representatives of over 1,000 Polish organizations. The event was sponsored by the European Union PHARE and TACIS programmes and the French Ministry of Foreign Affairs. On the abortion issue more specifically, the anti-abortion NGOs have been supported by a whole range of bodies from the Vatican to the Society for the Protection of Unborn Children (SPUC). Some pro-choice NGOs have benefited from the support of Western pharmaceutical companies keen to expand into the Polish market with contraceptives and reproductive technology. In addition, Polish groups have been aided by Western NGOs, Catholics For A Free Choice and the International Planned Parenthood Federation (IPPF). The IPPF have helped train Parliamentary Deputies in lobbying techniques and were instrumental in the setting up of the Polish Federation for Women and Family Planning in 1992. The teaching of advocacy skills to aid the development of 'civil society' groups outside of the state machinery has been central to the policies of many international bodies. But this has come as a surprise to many Poles. After all, it was the Solidarity movement in Poland against the state in the 1980s that stimulated so much discussion of 'civil society' in the world.

Andrzej Kulczycki has been highly critical of the role of groups like the IPPF and Catholics For a Free Choice. He claims that they prioritized the forming of the Federation for Women and Family

Planning over the communist-founded Family Development Association and that this undermined the existing provision for family planning: 'The IPPF and its French affiliate donated contraceptives, but Polish women's groups lacked the means to distribute them. These overseas groups and the US-based Catholics for Free Choice favored the new Federation for Women and Family Planning over the Family Development Association, a lame survivor of the socialist era; but this preference undercut support for the only existing network of counseling centers that provided modern contraceptives, however inadequate.'²³

There is a plethora of NGOs now influencing the abortion issue in Poland, including Population Action International, the Transnational Family Research Institute and the Network of East-West Women to name just a few. While it seems that NGOs will continue to grow in influence in Poland, they did not play a decisive role in politicizing the abortion issue in Poland during the period discussed. There have been claims that the growing activities of pro-choice NGOs were the key factor in bringing about the liberalizing of abortion law in 1996. They have had a growing influence. But they were undoubtedly less able to mobilize mass pressure than the anti-abortion NGOs. It is claimed that the Federation for Women and Family Planning is 'little known, commands few resources, and has no presence outside the capital.'²⁴ Yet liberal reform did happen. In order to establish why the law was reformed, it is necessary to assess the judicial difficulties caused by the 1993 Act.

THE LEGAL MINEFIELD OF THE ABORTION LEGISLATION

Ever since the passing of the 1993 Act, the implementation of the legislation has been highly problematic. In particular there have been numerous judicial cases where prosecution has been far from straightforward. To give some examples:

- A rape victim applied to a special legal commissions for an abortion, which she was entitled to do under the 1993 Act. The commission told her to have the baby and get it adopted at birth.
- A gynaecologist decided to offer abortions to women turned down by these commissions. She was raided by the police and killed herself rather than face prison.

- A man was convicted and held in prison for organizing foreign abortion trips. But the evidence against him was obtained by illegally bugging his room.
- A doctor took a fertility clinic, *nOvrum*, to court in Warsaw. The doctor claimed that the clinic was using 'back-up' embryos and sperm of 'unknown origin' for his patients. The court ordered the clinic to cease treatment. But then some of the clinic's patients decided to sue the doctor for stopping their treatment.

This legal minefield created by the 1993 legislation represents just one element in the problems it has caused the governments of Poland. The Justice Ministry has admitted that it has had difficulties enforcing the law. Most of the investigations of alleged abortions arise because somebody reports their suspicions to the police. But the police have stated that of 83 recent cases, 30 were dropped because there had been no abortion (many of the women were not even pregnant), 39 were suspended and only 14 were still being investigated. Marek Balicki, the deputy chairman of the Parliamentary Health Commission, told the Parliament: 'The law restricting abortions turned out to be unfeasible. None of the ministries charged with carrying out the law has implemented a thing.'²⁵

This sums up why the government was keen to reform the 1993 abortion law in 1996. Although some Parliamentary Deputies were campaigning to amend the law because they are pro-choice, the government did not pursue the amendment simply as a matter of principle. From the point of view of the government, the 1993 Law has thrown up too many problems and has been too difficult to implement. There seemed to be a recognition that there needed to be some kind of provision for abortion for Polish society to have a functioning health system. The government needs to be able to regulate abortion, which is almost impossible if it is driven underground as happened in the early 1990s. The experience of trying to implement the 1993 Act taught the Polish elite that a different arrangement was needed to prevent further controversy over the abortion issue. This sentiment was expressed by President Kwasniewski when he announced that he was in favour of the amendment and that he would approve it: 'I will sign because I believe it provides a better and more sincere basis for eliminating the abortion issue from public life.'²⁶

It is naive to state that this amendment will remove the abortion issue from politics, even though this quote reveals the motivation

behind the reform for the President. If there is one lesson from the politicization of abortion in the 1990s in Poland, it is that it will remain highly contested.

NOTES

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