

**WOMAN-VOTER! NO ONE WILL GIVE YOU AS
MUCH AS A POLITICIAN PROMISES...
THE RIGHT TO ABORTION AS A DEMAND IN THE 2023
PARLIAMENTARY ELECTION IN POLAND**

**ŽENO-VOLIČKO! NIKDO VÁM NEDÁ TOLIK,
KOLIK SLIBUJE POLITIK...
PRÁVO NA POTRAT JAKO POŽADAVEK
PARLAMENTNÍCH VOLEB V POLSKU V ROCE 2023**

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Abstract

The topic of abortion and women's reproductive rights significantly influenced the 2023 parliamentary elections in Poland. With a record voter turnout of 74.38%, women and young voters were pivotal, driven by dissatisfaction with restrictive abortion laws and promises of change from opposition parties. This paper examines the socio-political context surrounding abortion legislation, the impact of the Constitutional Tribunal's 2020 ruling, and the election campaigns' focus on women's rights. Despite electoral promises, the coalition agreement omitted specific measures to liberalize abortion law, reflecting ongoing ideological divisions. The findings highlight the interplay between reproductive rights and political mobilization in Poland's evolving democratic landscape.

Keywords: Abortion, women's rights, parliamentary elections, Constitutional Tribunal

Abstrakt

Téma interrupcí a reprodukčních práv žen významně ovlivnilo parlamentní volby v Polsku v roce 2023. Rekordní volební účast 74,38 % zdůraznila klíčovou roli žen a mladých voličů, motivovaných nespokojeností s restriktivními zákony o interrupcích a sliby opozičních stran o změnách. Tento článek zkoumá sociálně-politický kontext legislativy týkající se interrupcí, dopad rozhodnutí Ústavního tribunálu z roku 2020 a zaměření volebních kampaní na práva žen. Přestože volební sliby zahrnovaly změny, koaliční dohoda konkrétní opatření k liberalizaci zákonů o interrupcích vynechala, což odráží přetrvávající ideologické rozdíly. Zjištění poukazují na propojení reprodukčních práv a politické mobilizace v proměňujícím se demokratickém prostředí Polska.

Klíčová slova: interrupce, práva žen, parlamentní volby, Ústavní soud

Introduction

The issues of the premises, scope of admissibility or penalisation of pregnancy termination are very

often the subject of pre-election debates in Poland. Political parties eagerly turn to worldview issues, such as abortion, the availability of the morning-after pill, public funding of the in vitro procedure

or institutionalisation of non-heteronormative relationships, as these controversial issues evoke extreme emotions, consolidate the permanent electorate, sometimes also attract new voters and imply media interest.

The elections to the Sejm and the Senate, which took place on 16 October 2023 in Poland, were special elections. A record high voter turnout of 74.38 % was recorded. In addition, for the first time in democratic Poland, so much attention was paid to women's rights and issues in the election campaign. Abortion, civil partnerships and contraception were on the election banners. A number of pro-frequency social campaigns were dedicated to women and young people, encouraging them to actively participate in the elections and reminding them of the causality of every vote they cast. An opinion poll conducted six months prior to the elections clearly indicated that the right to abortion, as an important topic, should be the subject of an election campaign, according to 72 per cent of respondents (TVN 24, 2023).

For many people, the parliamentary elections were a hope for change, after eight years of regressive rule by Law and Justice. One of the factors that mobilised so many people to vote in the elections were the assurances of the then democratic opposition parties that, if won, there would be a change in the draconian and dangerous law on the permissibility of abortion in Poland. The resistance and dissatisfaction of a large part of society grew especially after the Constitutional Tribunal's ruling in 2020, abolishing one of the three grounds for termination of pregnancy from legal circulation (Bień-Kacała, 2024). It cannot be overlooked that the politicisation of the perception of women's rights to terminate pregnancy was implied by Poland's culturally rooted traditional family model, conservative morality based on religiosity, the political activism of the Church or the firm stance of the right-wing government exposed as the only right one in the state media.

The election was won thanks to the votes of young people and women, in which groups of the electorate there is a noticeable increase in active participation in the election. The turnout in the 2023 parliamentary elections, among women aged 18–29, was 71.5 per cent, and 77.3 per cent among women aged 30–39. Compared to the previous parliamentary elections, women were above average in their interest in the elections, with turnout among the youngest women increasing by as much as 25 percentage points.

Legal Situation on the Eve of the Elections Elections

The legal regulations in force in Poland which institutionalise the termination of pregnancy procedure are contained in the Act of 7 January 1993 on *family planning, protection of the human foetus and the conditions of permissibility of pregnancy*

termination, which defines the prerequisites and procedure of terminating a pregnancy (Journal of Laws, 2022). In the light of the law currently in force in Poland, the following grounds for legal abortion are permissible: when the pregnancy poses a threat to the life or health of the pregnant woman or when there is a justified suspicion that the pregnancy resulted from a prohibited act (art. 4a). The abortion procedure is, in principle, an unlawful act, as described in the Criminal Code.

In the Polish legal system, the indications legalising the carrying out of a termination of pregnancy constitute two exceptions, circumstances that abrogate the unlawfulness of the act, due to the collision of legally protected goods. This is because abortion, as an act causing in its assumption the death of the child in the prenatal stage, is an unlawful act, according to the provisions of the Penal Code (Borkowska, 2022).

The law currently in force in Poland defining the conditions for legal abortion is one of the most restrictive in Europe. Currently, it allows abortion only in two situations when the pregnancy poses a danger to the life or health of the pregnant woman or when there is a justified suspicion that the pregnancy is the result of a prohibited act (art. 4a par. 1 of the Act on Family Planning, Protection of the Human Foetus and Conditions for the Permissibility of Abortion). Unfortunately, even within this narrow scope, access to legal abortion in Poland is very difficult and the fundamental rights of pregnant women, including the right to life and health and the right to health services - are very often violated.

An unfavourable change for women was brought about by the ruling of the Constitutional Tribunal, issued on 22 October 2020, on the Act of 7 January 1993 on *family planning, protection of the human foetus and the conditions of permissibility of pregnancy termination*, which stated that one of the three statutory prerequisites permitting the termination of pregnancy due to 'severe and irreversible foetal disability or incurable life-threatening disease' (Article 4a(1)(2) of the Act) is unconstitutional (Constitutional Tribunal, 2020). Thus, the model of regulation permitting termination of pregnancy functioning in Poland so far was destroyed by elimination of the legal provision which was the most frequently used legal basis legitimising the legal termination of pregnancy (Michalczyk-Wliziło, 2024; Niżnik-Mucha, 2023). The Constitutional Court's ruling in question shattered the elementary sense of security, violated the right to dignity and integrity of women and triggered mass protests in Polish cities and towns, despite the ban on assemblies during the Covid-19 pandemic. By absolutising the legal protection of the foetus, the Constitutional Court deprived women of the possibility of choice and sanctioned the obligation to carry a pregnancy and give birth to a child suffering from a 'severe irreversible handicap or

an incurable life-threatening disease' (Gliszczyńska-Grabias, Sadurski, 2021; Młynarska-Sobaczewska, 2021). The effects of the ruling reinforced reproductive injustice and systemic oppression of women. Doctors were afraid to decide to perform abortions even when the life or health of the mother was at risk. „The ‚chilling effect‘ of the change in the current law made as a result of the Constitutional Tribunal's ruling resulted in the deaths of several women in Poland in whom doctors did not perform the abortion procedure. The media publicised the deaths of women who were not provided with timely assistance because the foetus was still alive (Michalczuk-Wlizło, Dziemidok-Olszewska, Siewierska, 2024) Derogation from the Polish legal system of the provision constituting the most common basis for terminating a pregnancy actually meant an almost total ban on abortion. The number of abortions recorded by the state fell tenfold. Data presented by the Minister of Health indicate that 107 legal abortions were performed in Poland in 2021, of which 75 procedures took place under the embryopathological premise, which was in force until 27 January 2021, i.e. until the date the Constitutional Tribunal's decision came into force, and a further 32 terminations of pregnancy were performed due to a threat to the life or health of the mother. The analogous report for 2020 indicated that 1,076 abortions were performed, of which 1,053 on the grounds of a high probability of fetal impairment, 21 on the grounds of a threat to the life or health of the mother and on the grounds of a criminal act- 2.

Not only did the Law and Justice government lead to a tightening of anti-abortion laws, limiting women's rights, but the oppression of women by politicians also created an atmosphere of fear, which made women in Poland afraid to get pregnant and give birth, also out of fear for their own lives. Incidentally, it should be recalled that such profound interference in the private sphere of women has been repeatedly criticised by international bodies, for example, the European Court of Human Rights (Michalczuk-Wlizło, 2023), the Parliament of the European Union or the United Nations. Indeed, the legal position of female citizens is shaped not only by the norms of national law but also by the norms of international law.

In this situation, non-governmental organisations came to the aid of women in realising their rights. The association of pro-women's organisations, „Abortion Without Borders“, became even more actively involved in counselling related to unwanted pregnancies, the provision of information about organisations offering safe medicines for pharmacological abortion, the organisation of abortion procedures, as well as trips to other European Union countries, such as for example: the Czech Republic, Germany or the Netherlands (cf. Michalczuk-Wlizło, Dziemidok-Olszewska, Siewierska, 2024).

It should also be recalled that under current international law and human rights standards, Poland has an obligation to decriminalise abortion and guarantee access to safe abortion to all persons who need it, without discrimination and with respect for individual autonomy and human rights.

Election “Tug-of-War”

The majority of women in Poland hold diverse and unspecific political views, although the following tendencies are noticeable: women identify less frequently with the right wing than men and are more likely to vote for the left wing. Age and place of residence, for example, can be indicated as implying factors, as the older women are, the more often they represent right-wing views, and vice versa, the younger they are, the less often they have right-wing beliefs. The percentage of left-wing, liberal worldviews increases with the size of the place of residence (Dziemidok-Olszewska, Michalczuk-Wlizło, 2024). A special date is 2020 (the Constitutional Court ruling derogating the embryopathological premise K1/20) in which there was a significant increase in left-wing beliefs among women in most age categories and, compared to 2019, the largest, more than twofold increase in the percentage of left-wing beliefs was recorded among the youngest women aged 18–24 (CPOS, 2023).

The rule of Law and Justice, marked by the content and consequences of the 2020 Constitutional Court ruling, the introduction of a pregnancy registry, or the oppression of pro-women's organisations, has been reflected in the results of public opinion polls. In a poll conducted by Kantar for TVN's ‚Facts‘ and TVN24 in the summer of 2023, as many as 49 per cent of Poles said that the situation of women in Poland had worsened under the Law and Justice government, 27 per cent thought the situation had improved, 17 per cent of respondents thought it had not changed, and 7 per cent answered ‚don't know/difficult to say‘ (TVN24.PL, 2023a).

Donald Tusk, leader of the largest opposition party, the Civic Coalition, at election rallies, meetings or in interviews, has repeatedly declared that if he wins the election, access to free, safe and legal abortion will become law within the first 100 days of the government he leads taking power (Amnesty International 2024): *„Abortion a woman's decision, not a priest, prosecutor, police officer or party activist. And we have written it down as a concrete draft, we will be ready to propose it to the parliament on the first day after the next parliamentary elections. It is written there: abortion up to the 12th week, decision of the woman only,“* Donald Tusk said during Campus Poland. Specific dates were given at rallies, for example in Tarnow: *„Every woman will decide on her motherhood. Within the first 100 days, Polish women will regain their dignity, their happiness“* (Szpala, 2023), Tusk announced in Tarnow. The Civic Coalition included a section

entitled 'Women' in its election programme; '100 concretes', in which it formulated six demands, the vast majority of which concerned reproductive health. These were: a declaration of legal, safe and accessible abortion up to 12. week of pregnancy, according to the woman's decision; a commitment that no hospital with a contract with the National Health Fund would be able to refuse a legal abortion procedure on the basis of the conscience clause; the right to free anaesthesia during childbirth; full access to free prenatal tests; access to 'emergency contraception' without a prescription; state funding of the in vitro procedure; and the launch of a programme to support women's return to the labour market (Civic Coalition, 2023).

In addition to unrestricted abortion on request up to 12 weeks, the Left's candidates proposed in the election campaign the decriminalisation of assisted abortion. This programme offer is a return to the bill drafted by Left MPs in 2021. At that time, the draft was lost in the Sejm, without finding support among parliamentarians. Bearing in mind two determinants: the clearly declared stance of President Andrzej Duda on the liberalisation of abortion law and the composition and rules of operation of the Constitutional Court, the Left urged during the campaign that changes to abortion law should begin with the enactment of a law decriminalising assistance in the termination of pregnancy procedure. One Left MP argued that: „What is most feasible and what can be done immediately is a law on the decriminalisation of abortion, that is, the deletion of Article 152 from the Penal Code, because of which no one who helps a woman have an abortion feels safe. These are mothers, neighbours, colleagues, friends, sisters, all the people women can count on, but also doctors. This law has a chilling effect on the medical community, which directly threatens women's lives and health. Full liberalisation is the next step: no compromise, no consultation. It is time to give women back their bodies and their power“ (Wyborcza.co.uk, 2023).

The groupings forming the Third Way, i.e. Poland 2050 and the Polish People's Party, formulated the 12 Guarantees of the Third Way in their programme offer. Among the demands, in 6th place was the point: „Women, forward! (Poland2050, 2023). One of the actions declared for the realisation of the postulate and related to the subject of this article was the preparation of a law reversing the negative effects of the 2020 Constitutional Court ruling on the admissibility of abortion. The Third Way also proposed holding a referendum on the liberalisation of the abortion law, i.e. „giving Poles a voice in this matter“ (cf. Poland 2050, 2023). In addition, in the area of reproductive health, it offered access to a gynaecologist and midwife in every municipality, as part of gynaecological care reimbursing women for regular cytological examinations and contraceptive drugs, and introducing the possibility

of visiting a gynaecologist on one's own from the age of 16. The Third Way's plan was thus to quickly return to the so-called abortion compromise, i.e. a situation in which abortion is illegal but possible in three cases. However, it was not specified how the groups wanted to carry out the change in the legal status. Nor were the questions of the declared referendum presented.

The democratic parties formulated media-friendly demands, but there was a lack of specificity and reference to other important problems faced by women. It seems that the parties saw in the female electorate, often undecided or not participating in the elections, an opportunity to improve the electoral result and the programmes were prepared in such a way as not to overlook this very important social group. However, the programme offer lacked a more comprehensive and, above all, real offer aimed at women. Nonetheless, it should be emphasised that the fact that most political parties addressed their programme offer to women led to an increase in self-awareness, a strengthening of women's belief in their own agency and influence on the fate of the state, as well as a feeling of competence in evaluating proposals addressed to them by individual parties (Latos, 2023). And this constitutes an undeniable value.

Law and Justice supported by the Catholic Church proposed an electoral programme based on family rights, the civilisation of life and traditional conservative values, declaring the defence of the natural family, understood as the union of man and woman. An attempt was made to reverse the narrative of the opposition parties, pointing out that the 'women's hell' was not a change in the abortion law, but a proposal from the PO-PSL government to raise the retirement age for women (Polskieradio24.pl, 2023). At the election convention, the Speaker of the Sejm, Elżbieta Witek, presented programme assumptions towards women, based primarily on the continuation of the reforms started: „*Women have been taken care of by the state, which helps them to combine work and family ... Polish women are modern and respect tradition. Our programme is for women who want to realise their dreams and have a family*“ (cf. Polskieradio24.pl, 2023). The programme included phrases such as: „taking care of the proper position of women in society (PIS, 2023) at the same time declaring taking action to defend parenthood, the special role of the mother and respect for motherhood, declaring the killing of unborn children unacceptable (Warchoń, 2023). However, it pointed out: „*we defend the dignity and health of women. We believe in the imperative to save the life of the mother when there are lawful grounds for aborting a pregnancy*“ (cf. PIS, 2023)

Coalition Agreement

Less than a month after the elections, even before the government was formally appointed, the leaders

of the previous opposition - the Civic Coalition, the Third Way (PSL and Poland, 2050) and the Left - signed a coalition agreement specifying the recommendations and programme assumptions, the scope of settlements of the United Right's governments and the manner of the coalition's operation (Chancellery of the Prime Minister, 2023). In the body of the agreement, women's rights were devoted to point 6. It did not explicitly refer to the change in the scope of permissibility of pregnancy termination. It was raised, succinctly, that the judgment of the Constitutional Tribunal of 2020 (ref. act K1/20; abolition of the embryopathological premise) would be annulled. The right of women to self-determination was also written in. The remainder of point 6 was filled with declarations on the introduction of better perinatal care, funding from the pastoral budget for in vitro fertilisation or prenatal testing.

Granting women the right to self-determination is, in my opinion, particularly embarrassing for politicians, because the right to self-determination for everyone is one of the elementary *sine qua non* conditions of democratic standards and, above all, of human rights standards. Women in Poland did not expect recognition of their humanity, but the implementation of electoral demands, declaring the liberalisation of the right to terminate pregnancies and a change to one of the strictest systems of legal norms in this area among European countries. Despite building the election campaign strategy on emphasising the importance and urgency of changing the law on termination of pregnancy, these demands were not included in the coalition agreement. The word 'abortion' was not mentioned even once in the coalition agreement, and with regard to the right to terminate pregnancies, the coalition partners only gave a vague reference to the annulment of the Constitutional Court's 2020 judgment, without specifying when and under what procedure this would take place. It did not even include a compromise agreement on the law on the decriminalisation of abortion. This was over the objections of the Third Way - and above all the conservative Polish People's Party, linked to the views of the Catholic Church. The inclusion of the liberalisation of the right to abortion in the coalition agreement was negated by the leaders of the Third Way: the Polish People's Party, headed by a doctor, Władysław Kosiniak-Kamysz, defining abortion as a worldview issue rather than a medical procedure, and Szymon Hołownia, headed by Polska 2050, seeking a referendum on women's ability to have reproductive rights. There was no coalition agreement on abortion law, as eagerly

emphasised by Third Way politicians, who invoke the right to vote according to one's conscience on matters of worldview. This state of affairs points to an internal contradiction in the coalition agreement, which already in the second sentence contains a commitment by the coalition partners to work together to improve „the sense of security of citizens as a modern nation at the heart of Europe“ (cf. Prime Minister's Office, 2023). The omission of the legalisation of abortion contradicts the quoted sentence and has nothing to do with concern for citizens' sense of security or a modern Europe. The politicians signing the coalition agreement declared in it a dialogue with „broad consideration of the public voice“ (cf. Prime Minister's Office, 2023), yet they disregard the public voice because all opinion polls unquestionably confirm that the public is in favour of changing the abortion law.

The taking of the above position by the coalition partners of the 15 October 2023 elections, was loudly opposed by organisations fighting for women's rights in Poland. One of the largest aid organisations, the Federation for Women and Family Planning, raised: *„We are disappointed and furious. Women's rights have once again become pawns in a political game. The decision not to include the legalisation of abortion in such a key agreement of the future government is disrespectful to the women voters who went to the polls expecting the new government to represent the majority of society and finally guarantee us full access to abortion. It was the mass mobilisation of women that led to the coalition agreement being able to emerge at all - but politicians have, apparently, an extremely short memory. When it came down to it, we got a bummer in the form of the repeal of the so-called Constitutional Court ruling of 2020...“* (Wandas 2024).

It seems that a comparison of the turnout achieved, the electoral support given to the democratic political parties and the attitude of the electorate towards abortion allows the conclusion that support for a woman's right to terminate a pregnancy and her right to self-determination are highest among those groups of potential voters whose high mobilisation is, for parties with coalition capacity after the 15 October 2023 elections, crucial. It should also be recalled that in November 2022, 70% of those surveyed were in favour of the right to terminate a pregnancy up to the 12th week. In the electorate of the groupings forming the Third Way, the right to terminate a pregnancy up to the 12th week was in favour of respectively: 78% in the electorate of the Polish People's Party and 84% among the voters of Szymon Hołownia's Poland 2050 (Chrzczonowicz, 2023; Gębka, 2023).

Conclusion

A few months after the parliamentary elections, the non-governmental aid organisation Abortion Dream Team, organising another event, appealed: *„On 7 January 1993, abortion was banned in Poland*

with three exceptions. After 31 years and the recent change of power as a result of the parliamentary elections, activists working to improve the availability of abortion are organising demonstrations in many cities (Warsaw, Łódź, Wrocław, Poznań and Gdańsk) under the slogan 'Last Bell', reminding politicians and politicians that it is time to fulfil the generous promises made during the election campaigns to change the anti-abortion law. Abortion was crucial to the outcome of the election, as it was the record turnout of women that determined the outcome, so we expect it to be treated as a key issue for the new government." (Przyborska, 2024).

In July 2024, the Sejm rejected a bill aimed at partially undoing the damage caused by the restriction of abortion law and the 2020 ruling of the Law and Justice (PiS)-controlled Constitutional Tribunal. The bill proposed, among other things, the decriminalisation of 'aiding and abetting abortion', and fell due to one of the member parties of the ruling coalition, the Polish People's Party, which rejected it, lining up with Law and Justice parliamentarians and other conservatives. However, there are also some politicians in the Polish People's Party who supported the bill (Forsal.pl, 2023). In August, Donald Tusk declared that it would not be possible to obtain the parliamentary majority needed to reform the abortion law until the next elections (Polskieradio24.pl, 2024), despite the fact that during the campaign he promised that the Civic Coalition would submit a bill liberalising the abortion law at the first sitting of the Sejm.

The announced veto of Polish President Andrzej Duda cannot justify the inaction of the Council of Ministers on abortion, and the resistance and attitude of the most conservative politicians in the government coalition should be a challenge to build a strong parliamentary majority, not an excuse. The voters who actively participated in the elections on 15 October 2023 and decided on the victory of those currently in power are unlikely to be fooled once again and there is little time left until the 2025 Polish presidential elections to realise such an important and fundamental electoral demand as the liberalisation of the right to abortion. It seems that also some Law and Justice MPs and Confederation MPs could vote in favour, or at least abstain. For these two formations have lost support for the extremely restrictive abortion law and could wish to rebuild themselves in the eyes of the electorate, as both the Law and Justice and Confederation electorates are in favour of permissible abortion. In the light of public opinion polls conducted in February 2024 by the Public Opinion Research Centre Foundation, support for abortion in situations which are currently permitted by law (the life or health of the mother is at risk, the pregnancy is the result of a forbidden act) is similar among all electorates and the greatest discrepancies concern the permissibility of abortion on request, ranging from 10% among those intending to vote for the Law and Justice Party to 71% among voters of the Left Party. In the electorate of the Civic Coalition it is 48%, and among those supporting the Confederation 20% and the Third Way 30% (CBOS, 2024).

Currently, the slogan 'abortion' identifies a list of unfulfilled promises made by the government formed after the October elections, which primarily burden the largest coalition partner, the Civic Coalition, and Donald Tusk, who heads the Council of Ministers. The disappointed hopes of voters, for whom reproductive rights are an important demand and motivated them to take part in last year's parliamentary elections, may result in this group of electors staying at home during the 2025 presidential elections. The efficiency and implementation, in an effective manner, by parliament of the declared changes to the right to terminate pregnancies, which would be vetoed, according to the declarations, by the President of Poland, would not burden the credibility of the 15 October Coalition groups. It seems that with the passage of time, inaction in the implementation of the electoral demand for liberalisation of the abortion law may become increasingly costly for those in power and the electorate will foot the bill during the upcoming presidential elections. For it should be remembered that almost four fifths of the electorate of those currently in power are in favour of relaxing the law currently in force (Żółciak, 2023) and voters whose votes brought about a change of power are becoming impatient with the lack of implementation of specific promises (Kublik, 2024).

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