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Referendum on Abortion in Poland. Submitted Proposals and Main Topics of the Debate

Abstract: Considerations undertaken in this article relate to requests to hold a referendum on abortion, which were submitted in the years 1989-2018. In the period covered by the research, the eligible entities submitted 7 initiatives, which in whole or in part concerned the postulate of conducting a nationwide referendum in the analyzed subject matter. Thus, regulation of legal principles for protection of a conceived child was an important point in the public debate and aroused great public interest. Importantly, the citizens themselves attempted to initiate a nationwide referendum. In this context, the question arises as to why, despite so many applications, the representatives have not decided to apply direct democracy procedures to the issue of admissibility of pregnancy termination? An attempt to refer to such a research problem was the goal of this research.

The obtained research results indicate a significant discrepancy between parties of the political dispute regarding permissibility of the referendum on abortion. Supporters of such a solution argue that this is the best way to resolve a public issue because of the direct involvement of the sovereign. In turn, opponents of the referendum indicate that the right to life is a natural human right and lasts from the conception to the natural death. Therefore, there is no way to limit it through a referendum.

Keywords: democracy, direct democracy, referendum, abortion

1. Preliminary considerations

Referendum, as one of the forms of direct (semi-direct)¹ democracy, enables the citizens of contemporary democratic states to make decisions or express opinions

1 Considerations on nature of direct, semi-direct and representative democracy have been addressed by the author in his work on functions of popular initiative in Poland. "Direct democracy means a decision-making procedure, which citizens have full control over (they decide on the final shape of the adopted solutions), whereas in the case of semi-direct democracy there is cooperation between citizens and representative bodies. The term representative democracy

on public matters². Referendum is applied at the level of the state or constituents of a political community (e.g. at the local level). From the point of view of the construction of currently dominant model of democracy, i.e. the representative democracy model, the use of a referendum is an exception, as the vast majority of public affairs are settled by representatives of the sovereign³. By way of direct voting, citizens express their position e.g. in matters related to the shape of the political system, European integration and they make decisions (express opinions) about social and moral problems, such as legal protection of a conceived child (including the admissibility of pregnancy termination, abortion)⁴.

In the years 1989-2018, the eligible entities (among others, the President of the Republic of Poland, deputies, groups of at least 500,000 citizens) submitted more than 40 applications for a nationwide referendum, of which 7 concerned the whole or partial legal protection of a conceived child. What is important, all applications regarding the abortion referendum were submitted in the years 1989-1997, and therefore in the initial period of political transition, when the works on new constitution and laws specifying conditions for admissibility of pregnancy termination were underway. Thus, the analysed issue was among those most often proposed to be resolved through a referendum in the initial period of political transition in Poland, besides such issues as the shape of political system of the Republic of Poland and the issue of reprivatisation and privatization of the state property. Ultimately, the referendum on admissibility of terminating a pregnancy did not take place. Why, in spite of so many applications, the representatives did not decide to yield the right to make a decision in the analysed area to the sovereign itself? An attempt to refer to such a research problem was the goal of this research, the results of which were presented on pages of this scientific article.

During the research, the historical genetic method (research on the genesis of political phenomena), the institutional and legal method (analysis of legal provisions) as well as the system analysis were particularly important. The basis for writing this article were primarily parliamentary prints, as well as monographs on the referendum.

describes a situation where the representative bodies retain full control over the decision-making procedure"; M. Rachwał, *Funkcjonowanie obywatelskiej inicjatywy ustawodawczej w Polsce. Podstawy prawne – praktyka – perspektywy rozwoju*, Poznań 2016, p. 6.

2 M. Rachwał, *Demokracja bezpośrednia w procesie kształtowania się społeczeństwa obywatelskiego w Polsce*, Warszawa 2010, pp. 60-92.

3 E. Kuźlewska, *Do the Poles Influence the Decision-Making Process by Applying Direct Democracy Instruments?*, "Annales Universitatis Mariae Curie-Skłodowska. Sectio M" 2016, vol. I, p. 123.

4 M. Marczevska-Rytko, *Demokracja bezpośrednia w teorii i praktyce politycznej*, Lublin 2001, pp. 114-117; E. Kuźlewska, *Referendum w procesie integracji europejskiej*, Warszawa 2006, p. 39.

After formulating initial and methodological assumptions, the submitted initiatives to conduct a referendum on abortion were discussed. In the next part of the article, the arguments of supporters and opponents of applying the referendum to define principles for legal protection of a conceived child were presented in a synthetic form. The considerations are crowned with a summary in which an attempt was made to refer to the research problem as well as a forecast regarding the possibility of conducting a referendum on abortion in Poland was formulated.

2. Initiatives to conduct a nationwide referendum on abortion

The Sejm of the 10th term (1989-1991) received two initiatives to conduct a referendum on abortion. It was the initial period of political transition, during which the analysed issue was an important element of public debate. "A particularly extensive discussion about legal regulation of pregnancy termination have been taking place in Poland since 1989"⁵. According to the opinion of applicants, due to significant variety of assessments on abortion, "this problem should have been subjected to a national referendum (...). A number of circles and groups of citizens demanded a referendum in this case"⁶.

According to the initiative, which was received by the Sejm in 1991⁷, the citizens of the Republic of Poland were to address the following questions:

1. "Are you for a complete ban on abortion?"
2. Are you for legal admissibility of abortion on medical grounds? (woman's life and health).
3. Are you for legal admissibility of abortion due to social indications? (social situation of the pregnant woman or her family).
4. Are you for legal admissibility of terminating a pregnancy resulting from a crime? (incest, rape).
5. Are you for legal admissibility of abortion on woman's request?"⁸.

Both proposals for holding a referendum on abortion submitted during the 10th term of the Sejm proved to be ineffective. As it turned out, each subsequent application reported in the analysed subject matter had the same fate.

The next term of the Sejm (1991-1993) received three initiatives to hold a nationwide referendum, two of which concerned abortion. Proposals in this respect were formulated by representatives of the Democratic Left Alliance, the

5 M.T. Staszewski, J.B. Falski, Referendum w praktyce parlamentarnej X, I i II kadencji Sejmu Rzeczypospolitej Polskiej, (in:) M.T. Staszewski, D. Waniek (eds.), Referendum w Polsce i w Europie Wschodniej, Warszawa 1996, p. 20.

6 *Ibidem*, p. 20.

7 Druk nr 833, Sejm X kadencji.

8 *Ibidem*, quoted in: M.T. Staszewski, J.B. Falski, Referendum..., *op. cit.*, p. 20.

Polish People's Party, the Democratic Union and the Labour Union⁹. The indicated circles postulated that the scope of legal protection for a conceived child should be determined precisely by means of a referendum, and therefore directly by the sovereign. Consistently against the idea of organizing the referendum on regulating the analysed social issue was, among others, the Catholic Church.

On March 30, 1992, a parliamentary draft resolution on nationwide referendum regarding admissibility of terminating pregnancy was submitted¹⁰. "Due to the variety of socio-legal assessments of abortion and the parliamentary tendency to substantially limit the conditions for admissibility of pregnancy termination in relation to legal regulations which were in force since 1956, there is (according to the applicants) a need to subject the problem to a nationwide referendum (...). The applicants referred to opinions of many circles and groups of citizens who had been requesting a referendum in this matter for many months. The results of informal social consultations and public opinion research carried out on this issue have undeniably shown the diversity of attitudes in this matter and a great interest in the problem itself"¹¹.

Parliamentary debates regarding the referendum on abortion were conducted in an emotional atmosphere. Opponents of resolving the analysed issue by means of a general voting argued that "one cannot use referendum to solve problems of moral nature, while the supporters claimed that the project concerns legal problems"¹².

When the Sejm rejected the above-mentioned initiative to conduct a referendum on legal protection of a conceived child, another draft postulating a decision on the issue directly by the sovereign was submitted¹³. Similarly to the previous initiative, this was a project submitted by circles being opposed to introduction of significant restrictions within the right of women to abortion. In this context, it should be recalled that (during the Sejm of the 1st term) works on the act determining the conditions for admissibility of abortion were being carried out concurrently. Ultimately, these works ended with the adoption of the Act of January 7, 1993 on family planning, protection of the human foetus and conditions for admissibility of abortion. The said act significantly reduced the possibilities of terminating a pregnancy as compared with the previous legal status. According to the original wording of the 1993 Act, a physician, who performed an abortion in a public health care facility, could not be held liable for an offense in case of death of a conceived child, provided that:

- 1) pregnancy constitutes a life threat or a serious hazard to the mother's health, confirmed by a decision of two physicians other than the abortion doctor,

9 A. Dudek, *Historia polityczna Polski 1989-2005*, Kraków 2007, pp. 244-245.

10 Druk nr 194, Sejm I kadencji.

11 M.T. Staszewski, J.B. Falski, *Referendum...*, *op. cit.*, p. 22.

12 *Ibidem*, p. 22.

13 Druk nr 578, 578-A, 578-B, Sejm I kadencji.

- 2) death of a conceived child occurred as a result of actions taken to save the mother's life or to counteract serious damage to the mother's health, the danger of which was confirmed by judgment of two different physicians;
- 3) prenatal tests, confirmed by a decision of two physicians other than the abortion doctor, showed severe and irreversible damage to the foetus,
- 4) there was a justified suspicion, confirmed by a public prosecutor's statement, that a pregnancy is a result of a prohibited act¹⁴.

Thus, the Act of 1993 on family planning, protection of human foetus and conditions for admissibility of abortion allowed it only in a few cases that required a solid documentation and justification. An earlier legal act regulating the subject matter, i.e. the Act of April 27, 1956 on conditions for admissibility of pregnancy termination, indicated that abortion was possible if justified by medical advice or difficult living conditions of the pregnant woman, as well in the case of reasonable suspicion that the pregnancy arose as a result of the crime¹⁵.

Applicants justifying the need to conduct a referendum on abortion have referred to the results of surveys, according to which over 2/3 of respondents were convinced that "the decision in this matter should ultimately be taken not by the parliament, but by the entire nation"¹⁶. In the original version, the Sejm's draft resolution assumed that citizens will address the following questions:

1. "Are you for legal admissibility of abortion on the grounds of woman's life and health?
2. Are you for legal admissibility of terminating pregnancy if the foetus is affected by severe, irreversible developmental defects or an incurable disease?
3. Are you for legal admissibility of terminating a pregnancy resulting from a crime? (incest, rape)?
4. Are you for legal admissibility of terminating pregnancy because of a particularly difficult living, material or family situation of the pregnant woman?"¹⁷.

After conducting proceedings in Sejm committees, as well as after a discussion at the plenary session of the Sejm, on January 7, 1993, Sejm members rejected the draft resolution, and therefore no referendum on legal protection of the conceived child was held.

14 Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży (Dz.U. Nr 17, poz. 78 ze zm., art. 7 pkt 2).

15 Ustawa z dnia 27 kwietnia 1956 r. o warunkach dopuszczalności przerywania ciąży (Dz.U. Nr 12, poz. 61 ze zm., art. 1 ust. 1).

16 M.T. Staszewski, J.B. Falski, Referendum..., *op. cit.*, p. 23.

17 Druk nr 578..., *op. cit.*; quoted in: M.T. Staszewski, J.B. Falski, Referendum..., *op. cit.*, p. 23.

In the next term of the Sejm (1993-1997), the entitled entities formulated three applications to use referendum in order to decide on conditions for admissibility of abortion.

In 1995, from the initiative of the Labour Union's parliament members, a proposal to conduct an initial constitutional referendum (a referendum on principles, which the new constitution was based on) was put forward. Possibility of conducting a referendum in such a form was introduced into the political system on the basis of the Act of 22 April 1994 amending the constitutional act on the mode of preparation and adoption of the Constitution of the Republic of Poland¹⁸. The Parliamentary Group of Women has launched an initiative to add the issue of abortion to the request for a preliminary constitutional referendum¹⁹. Ultimately, however, this general voting was not organized and, therefore, questions about legal protection of the conceived child were not resolved directly by the sovereign.

Another initiative regarding the referendum aimed at formulating a few questions about reprivatization, payments for education, local self-government structures as well as abortion. As far as the latter issue is concerned, it was suggested that citizens should answer the following question: "Do you think that the right to terminate pregnancy should: a) remain unchanged, b) be restricted in relation to the current legal situation, c) be extended to cases when a woman is in a difficult material or social situation"²⁰. Proposal to reject the draft resolution in the first reading was supported by 222 Sejm members, and therefore this initiative did not lead to a referendum.

At the end of the Sejm's second term, one more initiative was taken to hold a referendum regarding admissibility of abortion, which was submitted by members of the Democratic Left Alliance²¹. Applicants formulated a proposal to ask three questions concerning non-punishment for termination of pregnancy in the following situations: when pregnancy poses a threat to woman's life or health, when the foetus is severely and irreversibly damaged, when the pregnant woman is in dramatic life situation²². As much as 178 Sejm members voted for the initiative, thus actually in favour of the referendum, while 197 supported the motion to reject the draft resolution in the first reading. Such a voting result meant that the referendum was not applied to resolve the analysed social issue.

18 Ustawa z dnia 22 kwietnia 1994 r. o zmianie ustawy konstytucyjnej o trybie przygotowania i uchwalenia Konstytucji Rzeczypospolitej Polskiej (Dz.U. Nr 61, poz. 251).

19 M. Jabłoński, Referendum ogólnokrajowe w polskim prawie konstytucyjnym, Wrocław 2001, p. 140.

20 Druk nr 1383, Sejm II kadencji.

21 Druk nr 2428, Sejm II kadencji.

22 *Ibidem*.

3. Attitudes to the idea of holding a referendum on abortion

Initiatives reported in the initial years of political transition assumed admission of pregnancy termination (under the condition of obtaining majority support, of course) in certain circumstances, such as: threat to health or life of the pregnant woman, severe and irreversible foetus malformation or incurable foetal disease, pregnancy resulting from an forbidden act (rape, incest), woman's difficult social situation (material, living). In addition, it was concluded that citizens should be asked about the admissibility of abortion without the need for a pregnant woman to give a reason. The applicants "expressed an opinion that referring to the public through referendum is the only fair way to make a decision on this matter, as it will directly reveal the actual attitude of the society"²³.

Results of the survey conducted on November 13-15, 1992 by the Public Opinion Research Centre indicated that 74% of the respondents were in favor of holding a nationwide referendum on the admissibility of abortion²⁴. Thus, the vast majority of respondents supported the formulated initiatives to conduct a referendum on abortion. At the same time, it should be added that there was a clear advantage of allowing abortion in three cases: due to health and life of women (81% of respondents supported such a solution), if the foetus is affected by severe and irreversible developmental defects or incurable disease (80%), if the pregnancy is the result of a crime (74%). Significantly fewer respondents expressed their approval for legalizing abortion due to a particularly difficult living, material or family situation of the pregnant woman, although it was still more than half of the research participants (53%). Definitely the fewest people supported the legal admissibility of abortion without any restrictions (29%)²⁵. As authors of the study pointed out, "a decreasing percentage of positive responses indicates there is a certain hierarchy of consent for termination of pregnancy within social consciousness"²⁶.

Representatives of the Catholic Church invariably presented a "negative attitude towards the abortion referendum. This position was formulated in official documents of the Church dedicated to protection of the right to life, family and abortion. It was connected with fundamental issues of democracy, the axiological foundations of legislation"²⁷. In its argument, the Church referred to the idea of natural rights, indicating that there are laws "which man did not establish and therefore cannot

23 M.T. Staszewski, Referendum o protestowane, (in:) D. Waniek, M.T. Staszewski (eds.), Referendum w Polsce współczesnej, Warszawa 1995, p. 90.

24 Centrum Badania Opinii Społecznej, Opinia społeczna o przerywaniu ciąży. Komunikat z badań BS/409/104/92, Warszawa, listopad 1992, https://www.cbos.pl/SPISKOM.POL/1992/K_104_92.PDF (access 12.11.2018).

25 Data as in: *Ibidem*.

26 *Ibidem*.

27 M.T. Staszewski, Referendum..., *op. cit.*, p. 93.

change them”²⁸. As a result, the referendum can be applied to regulate those areas of social life that remain within decisive power of people, “whereas natural rights, universally recognized in the civilized world, cannot be subjected to a vote because it violates human rights and harms the natural order”²⁹.

The bishops, in one of the letters, referred to the accusation that opposition to the idea of a referendum on legal protection of a conceived child is in fact an objection to democratic procedures for making public decisions. “According to the bishops, the publicists and politicians who presented such a position misunderstood the notion of necessary condition of democracy: the social consensus on the most elementary matters, which include human life, cannot be decided in a democratic voting”³⁰.

Referring to the above-mentioned position of the Catholic Church, M. Staszewski stressed that “in conflict situations, with different positions, one of the methods of just and socially acceptable manner of making decisions may be to appeal to the referendum. (...) Entrusting decisions on this issue (the abortion - note of MR) to the parliament did not guarantee that this particular problem would be settled in a manner that is consistent with the views of the majority of society”³¹. It seems that not only the issue of abortion belongs to the problems, of which decisions taken by representative bodies remain (may remain) in contradiction with the will of the majority of society (and therefore with the will of a sovereign being the subject of supreme power in a democratic state). It is an element of a wider research problem, namely the acceptable subjects of a referendum. “Hierarchy of the Church and related circles have been consistently against referendum projects (regarding abortion - MR)”³². A different position was expressed by left-wing circles, according to which the issue of admissibility of abortion, due to social importance of this case, should be made by the sovereign through direct voting. In this context, it is worth noting that the analysis of the legal bases of the nationwide referendum allows for the conclusion of the admissibility of the referendum on abortion³³.

4. Conclusion

The extent of legal protection of a conceived child, including the idea of resolving this issue by referendum, constituted (and still constitutes) an important

28 Biskupi polscy w obronie prawa do życia, „L'Osservatore Romano” (wyd. polskie) 1991, nr 7, p. 56; quoted in: M. T. Staszewski, *Referendum...*, *op. cit.*, p. 93.

29 M.T. Staszewski, *Referendum...*, *op. cit.*, p. 93.

30 *Ibidem*, p. 95.

31 *Ibidem*, p. 95.

32 *Ibidem*, p. 96.

33 Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. Nr 78, poz. 483 ze zm.); ustawa z dnia 14 marca 2003 r. o referendum ogólnokrajowym (tekst jedn. Dz.U. z 2015 r. poz. 318 ze zm.).

topic of public debate. Supporters of the referendum pointed out that this is the best way to make decisions in a very important and emotionally significant field. As emphasized by A. Malinowski, Poland did not take advantage of the experience of many democratic states that were referring to referenda when resolving the issue of abortion. "Thus, despite the growing role of referendum in modern democratic states, in Poland people have been deprived of the opportunity to take advantage of this form of direct democracy and resolve an important social problem. It can also be interpreted in a way that the government considered society as immature to make decisions. This is a sign of limiting the sovereignty of nation"³⁴.

The circles associated with the Catholic Church (referring in their programs to the values of the Catholic Church) consistently oppose abortion as well as a referendum on this subject. It is emphasized that human life begins at the moment of conception and lasts until natural death. Therefore, consenting to abortion would be a violation of the right to life (the natural law). "Protection of dignity of human life applies from the very moment of binding reproductive cells"³⁵. John Paul II in the encyclical *Evangelium Vitae* emphasized that nowadays "the first and non-transferable right to life becomes the subject of discussion or it is even denied through a voting of the parliament or at the will of a part of the society, even if it is predominant. This is a disastrous result of an unrestrained domination of relativism: «law» ceases to be a law because it is no longer based on the firm foundation of the inviolable dignity of a person, but becomes subordinated to a will of the stronger. In this way, democracy acting against its own principles in fact transforms into a totalitarian system"³⁶.

So far, there has been no referendum on abortion, mainly due to opposition of the Catholic Church (as well as the majority of Sejm members) to such a solution. Considering the current situation within the political scene, and thus the dominance of conservative groups that refer in their programs to the teachings of the Catholic Church, it is difficult to assume that a referendum on abortion may take place in Poland in a few or a dozen or so years. In this context, it should be remembered that long-term changes in social awareness may lead to accept the idea of a referendum. Ireland is a perfect example illustrating such an evolution. There, a very restrictive law regarding termination of pregnancy was in force. Nevertheless, in a referendum carried out in 2018, 2/3 of voters was in favour of abolishing the constitutional ban on abortion.

34 A. Malinowski, Społeczne uwarunkowania referendum, (in:) M.T. Staszewski, D. Waniek (eds.), Referendum w Polsce i w Europie Wschodniej, Warszawa 1996, p. 113.

35 Kiedy zaczyna się ludzkie życie? <http://niedziela.pl/artykul/26045/nd/Kiedy-zaczyna-sie-ludzkie-zycie> (access 12.11.2018).

36 *Evangelium Vitae*, http://w2.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html (access 12.11.2018).

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Ustawa z dnia 14 marca 2003 r. o referendum ogólnokrajowym (tekst jedn. Dz.U. z 2015 r. poz. 318 ze zm.).