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Why Women Became the Enemy of Democracy in Poland? The Illiberal Regime's Response to the Women's Rights Movement¹

Abstract: After the political transformation in Poland, abortion was first regulated by the Law of 7 January 1993, Protection of the Human Fetus and Conditions Permitting Pregnancy Termination. Since then, attempts have been made to change the existing regulation. However, it was in 2016 that there were nationwide protests against changes to abortion provisions, and then in 2020, when the constitutional court ruling limited the possibility of termination of pregnancy in Poland. These protests can be seen in the context of the process of neo-militant democracy rule implementation, that is, the taking over the characteristics of non-democratic regimes by existing democracies under the cover of the regime self-preservation. The aim of this article is to identify and explain the government's attitude towards women as an enemy of democracy at the institutional level during the two waves of protests. The study shows that during the period considered, restrictions specific to neo-militant democracies in the area of assembly and association, speech and press and restrictions on religious freedom were imposed in order to limit the activity of protesters viewed as enemies of the democratic system.

Key words: neo-militant democracy, abortion, protests, woman's rights, illiberal, contentious politics, contention

Introduction

After the political transformation in Poland, abortion was first regulated by the Law of 7 January 1993, (Act 7 January 1993) on Protection of the Human Fetus and Conditions Permitting Pregnancy Termination. The possibility of termination of pregnancy was possible only in three cases, i.e., pregnancy poses a risk to the life or health of the woman; in the event of a high likelihood of severe and irreversible foetal impairment or incurable life-threatening disease. Then, on August 30, 1996 (Law 30 August 1996), an amendment appeared that made it possible to terminate the pregnancy in the event that the woman was in a difficult living conditions or difficult personal situation, but the Constitutional Court ruled that it was incompatibility with existing constitutional provisions (Constitutional Court ruling of 28 May 1997 K 26/96). Another attempt at change was made in 2007, the parliamentary bill was to enshrine in the constitution the protection of human life from the moment of conception, but it was not adopted by the Sejm (Constitutional Formula for the Protection of Life, Sejm No. 993). Since then, Poland has been talking about the so-called abortion compromise due to the admission of abortion in three cases specified in the bill.

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After the 2015 parliamentary elections, a parliamentary majority was won by a group that pledges allegiance to Christian values, namely the Catholic Church. For this reason, a bill tightening the abortion law of the Citizens' Committee of the Legislative Initiative "Stop Abortion" tabled on July 5, 2016 (Print No. 784) had a better chance of success and moving through the legislative process. After the first reading in the Sejm, it was submitted for consideration by the committees, while the draft initiative "Save women" (Print No. 830) relating to the unlimited possibility of abortion was rejected. Then for the first time there were protests and mass gatherings in Poland. Then, on November 30, 2017, the "Stop Abortion" Legislative Initiative Committee tabled a bill (Print No. 2146) that would abolish the right to abortion in the event of a high likelihood of severe and irreversible fetal impairment or an incurable life-threatening disease. Thus, in 2018, this project was referred to further work in the Committee on Social Policy and Family (*Obywatelski projekt ustawy...*), and the initiative "Save women 2017" was again rejected.

On 22 October 2020, the Constitutional Court ruled that abortion in the case of a condition of handicap or incurable disease is not justified by any constitutional provisions (*Wyrok w imieniu Rzeczypospolitej Polskiej...*). This triggered another wave of protests, despite the ongoing coronavirus pandemic and precautions e.g., restrictions of public assemblies and movement (Osiewicz, 2020).

These protests are particularly important in the context of the process of neo-militant democracy rule implementation, which has been observed in the Member States of the European Union since 2008 after the so-called financial crisis (Rak, 2019) and which has accelerated markedly during the refugee crisis and subsequent coronavirus pandemic (Rezmer-Płotka, 2020). The researchers noted that democracies are beginning to take over elements of non-democratic regimes and are introducing restrictions to defend the existing systems from the external or internal enemies (Rak, Bäcker, 2019). Thus, actions that seemingly protect the democratic system actually distort the essence of militant democracy.

In Poland, women have been treated as enemies of Christian values, the homeland and the democratic system. This consisted, inter alia, in the use of discriminatory terms in political discourse, referring to cultural war (a civilization of life opposed to the civilization of death/culture of death) or explicitly identifying protesters as enemies. In this way, the measures and actions appropriate to the neo-militant democracies taken against the protesters were justified by an attempt to defend the democratic system and its values. The purpose of this article is to find answers to research questions: how did the government justify using neo-militant democracy against protesters? Thus, how did the government view protesters as an enemy for the democratic system? The article also attempts to indicate which neo-militant democracy measures have been taken against the protesters.

Theoretical Background and Methodology

The category of militant democracy was first applied by Karl Loewenstein to the Weimar Republic (Loewenstein, 1937a; Loewenstein, 1937b). He thus defined a political regime in which parliament (Marszałek-Kawa, 2019) and the judiciary have legal measures that allow them to restrict individual democratic freedoms in order to defend itself against those considered to be their enemies (Bäcker, Rak, 2019, p. 68). Since then,

the threats posed to democratic systems, which were rooted in communist or fascist ideologies have changed (Osiewicz, Skrzypek, 2020, p. 15). However, the process of militant democracy is still visible, the Member States of the European Union are adopting to a greater or lesser extent illiberal solutions that aim to limit the rights and freedoms of citizens (Skrzypek, 2020; Drinóczy, Bień-Kacała, 2020; Sadurski, 2018).

Today, there is talk of neo-militant democracy, a category that assumes important characteristics of the classic approach, but also takes into account those that emerged after 2008. Studies omit features that have become outdated during this period (Rak, 2020, p. 65). On the basis of the current literature, neo-militant democracy according to Joanna Rak neo-militant democracy measures include restrictions on freedom of assembly, speech, press, association, religious freedom, active and passive electoral law, freedom to hold referendums, anti-terrorism and counter-terrorism regulations, anti-extremism, restrictions on the registration and functioning of political parties, the acquisition of citizenship and access to public employment (Rak, 2020, p. 65).

The analysis covers the government's attitude towards women identified as hostile to the democratic system. The focus is on the first wave of protests in 2016 against changes to abortion provisions and the second wave of protests in 2020, which broke out after the announcement of the position of the Constitutional Tribunal on changing the so-called abortion compromise. It should be emphasized that the first wave lasted until 2018 and at the end of it can be taken the last entry on the official website of the group Gals for Gals, which was the main representative of the women's protesters. In the case of the second wave, it is much more difficult to determine the specific moment of the end of the protests due to the pandemic and ultimately a very large dispersal of protesters. Initially, there was talk of a "Nationwide Women's Strike", an important part of which was again the Gals for Gals group, and eventually, internal divisions began to emerge, for example due to the reported demands. By convention, December 2020, when the protest was clearly weakened, mainly due to the upcoming holidays and the pandemic situation, can be considered as a moment of partial demobilization.

The next chapter will present how the protests under analysis should be perceived, as they were not a continuous process. Two waves of protests could be pointed out, which were caused by a completely different legal situations and activities, although they concerned the same issue (during this period, the majority had the Law and Justice). Over the years, the symbolism of the protests has changed, with the first being led by the Gals for Gals group and the second already being the National Women's Protest. However, during both waves of protests, their aim was to oppose the tightening of abortion laws and increased de-democratization. The chapter will discuss the government's attitude towards protesting women, how it viewed them as the enemy of the system and thus created a justification for the illiberal measures taken to defend the democratic system.

Nationwide women's protests and illiberal measures of neo-militant democracy

When the first attempt was made to change the existing law in 2016, a group of Gals for Gals was formed via Facebook (*Dziewuchy Dziewuchom*). It set itself the goal of fighting women for the right to choose and became the main leader of the protests that

took place in Poland. Joanna Rak points out that the period of political activity of this movement can be divided into 6 stages closely related to the legislative process, i.e.:

- 1) The first stage: from 1 April 2016 to 18 April 2016 – Gal mobilization until the date of submission of the first bill.
- 2) The second stage: 19 April 2016 to 23 September 2016 – submission of the first bill and first reading.
- 3) The third stage: from 24 September 2016 to 6 October 2016, the day after the proposal was submitted to the Committee on Social and Family Policy, the Committee on Justice and Human Rights and the Committee on Health and ended on the second reading day.
- 4) The fourth stage: 7 October 2016 to 29 November 2017 – the day after the first draft was rejected at second reading and the day before the second draft was submission.
- 5) The fifth stage: Submission of the draft law on 30 November 2017 and first reading on 10 January 2018.
- 6) The sixth stage: started on 11 January 2018, the day after the draft was sent to the Committee on Social Policy and The Family with a recommendation to consult the Committee on Justice and Human Rights and ended with the last entry on the official website of Gals for Gals on 12 April 2018, thereby demobilizing the movement (Rak, 2020, p. 99).

Currently, the stages proposed by the researcher should be expanded, as it was assumed that demobilization took place in 2018. However, the Constitutional Court's ruling triggered the second great wave of mobilization in 2020, and later even dissipated it. This was due to the expansion of the list of postulates with which part of the society ceased to identify with. From that moment on, the protests under the leadership of the Gals for Gals group are no longer mentioned, but about the National Women's Protest (but this group remained an important part of the protests).

Initially, it was about opposition to the tightening of the abortion law, then the postulates concerning, inter alia, the resignation of the government, sex education, partnership and the rights of LGBT people, unlimited access to contraception and the complete liberalization of the right to abortion. The first conflicts leading to divisions began, for example, between Marta Lempart, leader of the National Women's Strike and Szymon Hołownia (former presidential candidate, leader of the Poland 2050 movement). In this case, it was about accusing Hołownia of trying to pursue his political interests during the protests (Wprost, 2020). She eventually apologized because the protesters claimed it was unnecessary to create divisions. Hołownia stated that "We do not have to agree 100% today, it is enough even in 50. The opponent is one today. This government will overthrow women" (Wprost, 2020). This was meant to indicate a willingness to support women, beyond divisions and private worldviews. Especially since Hołownia has repeatedly declared himself a practicing Catholic.

Although the two waves differed in terms of symbols used (2016 – black umbrellas, 2020 – red lightning), or other means of expression, their main goal was to oppose the amendment of existing regulations relating to abortion. For this reason, the article does not distinguish between the government's attitude towards women at institutional level, broken down by the period of the first wave of protests and the second. However, it has been pointed out that this exists in order not to mislead the perception of protests as

a single continuous process. During the period considered, the power structure in the Polish Parliament has not changed, the majority party was still Law and Justice, so it is possible to treat the actions or decisions taken as the general attitude of the government towards protesting women (although men also participated in the protests, but to a smaller extent).

Religious freedom in Poland is governed primarily by Article 53 of the Constitution, which ensures freedom of conscience and religion for everyone. It can only be restricted if the protection of state security, public order, health, morality or the freedom of others is ensured (*Konstytucja Rzeczypospolitej Polskiej*, 1997). In both waves of protests, the most glaring example of neo-militant democracy measures was precisely the restriction of religious freedom. First of all, because Poland is a country in which there is formally a separation between church and state. If abortion laws are tightened, the religious freedom of citizens who share views other than Christian ones is violated.

One member of the ruling party, referring to Article 38 of the Constitution, which concerns the protection of life, referred to life from conception to natural death. Anna Milczanowska does not regard the Constitutional Court's verdict as political, but as a "victory for the civilization of life" (*Posłanka PiS o wyroku TK...*, 2020), because, according to her, the culture war in Poland has been going on for many years (*Posłanka PiS o wyroku TK...*, 2020). In this case, first, there was the mention of the culture war, and so there is the enemy with which this war is taking place. It can be presumed that these are women who recognize the right to abortion, hence the cultural clash between the civilization of life and the often common public and political discourse of the definition of the civilization of death. Very often, this determines who allow choice in cases such as abortion. The term itself was first used by Pope John Paul II in his encyclicals to describe people's attitudes to life. Activities that are contrary to the teaching of the Church and fall within the framework of a culture of garbage include, but are not limited to, abortion, euthanasia, contraception, murder and genocide (John Paul II, 1995).

Freedom of expression and the press is governed primarily by Article 54 of the Constitution and ensures that everyone has the freedom to express, obtain and disseminate information). Moreover, censorship of media is prohibited. Restriction of this freedom is possible only if there are conditions stated above, namely general security, health, morality and freedom of others (*Konstytucja Rzeczypospolitej Polskiej*, 1997). Restrictions on speech and the press will primarily apply to persons who, for openly expressing their views and participating in protests, have been or were to be held accountable/punished during both the first and second wave of protests. For example, for using protest symbols or slogans that can be considered offensive. It is also an announcement of sanctions against organisations such as universities, which were supposed to allow participation in protests by ordering hours off from classes (Łukasik, 2020). In addition, in this case, the terminology used and the rules adopted can be taken into account until the fetus or child is concerned (from the moment of conception or birth).

Freedom of assembly in Poland is ensured primarily in Article 57 of the Constitution. Restrictions may be introduced only in the event of conditions which have been indicated in advance when describing religious freedom and freedom of expression, the press and speech (*Konstytucja Rzeczypospolitej Polskiej*, 1997). The restriction of freedom to peaceful assembly and association was most evident during the protests during

the Coronavirus pandemic and the government's announcement of tightening measures. A spokesperson for the Law and Justice party said in an interview "First, there was an excuse that it is about women's rights, but it quickly turned out that this anarchist spectacle aims to demolish democratic order and Law and Justice's government. It was supported by organizers' intense aggression and opposition politicians who have seen the riots as a chance for themselves" (*Protesty strajku kobiet...*, 2020). In this speech, the creation of women as an enemy of the democratic system and order appears directly.

Besides these restrictions, detention without a court order was also used or force was used during numerous protests throughout Poland (Rzecznik, 2020). In this case, the President indicated that the police must act decisively against those who disturb order or put human lives and health in jeopardy (*Prezydent Duda chwali...*, 2021).

In addition, the leader of Law and Justice Jarosław Kaczyński in his speech called for the establishment of the National Guard, which was to defend the Church Polish (Bodalska, 2020). It was specifically intended to protect churches from the intrusion of protesters into them and to disturb the masses and were to protect sacred buildings from devastation (Leszczyński, 2020). This is another example of creating protesters as enemies of the homeland, that is, a system and Christian values that are considered common and universal for Poles. This is mainly due to the fact that a very large proportion of citizens declare their membership of this religion.

Conslusions

The issue of abortion in Poland is undoubtedly one of the most controversial topics leading to numerous disputes. Any attempt at change over the years has led to a great amount of social resistance, which did not mean approval for abortion. Rather, it was about the right to choose, self-regulation about life and health.

Based on the study, restrictions specific to neo-militant democracies in the area of assembly, speech and press, restrictions on association and restrictions on religious freedom can be identified. In addition, a measure such as detention without a court order was taken or a National Guard was set up to protect churches from devastation and violation of the liturgy order by protesters.

Due to the specific nature of the protests, no measures or restrictions were applied as regards: active and passive electoral law, the organization of referendums, the fight against terrorism and counter-extremism, the registration and functioning of political parties, the acquisition of citizenship or access to public employment. This may mean that the restrictions introduced were not intended to restrict all rights and freedoms and to protect the system. Nor were these restrictions introduced due to the epidemiological situation. The use of these neo-militant democracy measures was intended to limit only the activity of protesters perceived as enemies and only to the extent necessary to push through the new regulation, to tighten the rules.

The current coronavirus pandemic, during which countries introduce numerous restrictions to prevent the spread of the virus, may also justify illiberal measures. In the case of the second wave, protests took place during the assembly restrictions introduced earlier, while the government's announcements included tightening and enforcing the

restriction, which could already be seen as one of the measures appropriate to neo-militant democracy. Referring to the definition of militant democracy in the sense of Karl Loewenstein, the enemy of the system was mainly protesting women.

Analysis of both waves of protests indicates a significant change in the government's attitude towards women protesters. First, during the first wave, the reluctance was rather focused on the Gals for Gals group to a lesser extent on all the women taking part in the protests. Secondly, in the case of the second wave, there was a mass mobilization and the creation of a Nationwide Women's Strike. For this reason, the government could no longer refer to criticism of the actions taken by one group. Other women's protests were more or less organized, but were scattered across the country. In this case, women in general began to be created as an enemy, all protesters began to be presented as threatening the democratic system and Christian values. There was also one major protest in the capital, which reduced the dispersal of protesters. Thirdly, during the second wave, it was no longer about draft laws and tightening up the rules, but about the judgment of the Constitutional Court, which is a binding decision on this matter. Fourthly, during the coronavirus pandemic it is much easier to introduce restrictions and use illiberal means. Changing attitudes towards women and creating them as the enemy of the system can testify to the consolidation of neo-militant democracy structures in Poland. This meant that solutions against the internal enemy were being implemented. The intensification of political discourse and the actions taken may ultimately even lead to Poland becoming a quasi-militant democracy, a system that, in simple words, uses democratic solutions for self-destruction.

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Dlaczego kobiety stały się wrogiem demokracji w Polsce? Reakcja reżimu antyliberalnego na Ruch na rzecz Obrony Praw Kobiet²

Streszczenie

Po transformacji ustrojowej w Polsce aborcja została po raz pierwszy uregulowana ustawą z dnia 7 stycznia 1993 r. o ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży. Od tego czasu podejmowane są próby zmiany dotychczasowego rozporządzenia. Jednak dopiero w 2016 r. doszło do ogólnopolskich protestów przeciwko zmianom w przepisach dotyczących aborcji, a następnie w 2020 r., kiedy orzeczenie Trybunału Konstytucyjnego ograniczyło możliwość przerywania ciąży w Polsce. Protesty te można rozpatrywać w kontekście procesu wdrażania rządów demokracji opancerzonej, czyli przejmowania cech niedemokratycznych reżimów przez istniejące demokracje pod przykrywką samozachowania reżimu. Celem artykułu jest zidentyfikowanie i wyjaśnienie stosunku władz do kobiet jako wroga demokracji na poziomie instytucjonalnym podczas obu fal protestów. Z badania wynika, że w badanym okresie specyficzne dla demokracji opancerzonej ograniczenia w obszarze zgromadzeń i stowarzyszeń, wypowiedzi i prasy oraz ograniczenia wolności wyznania zostały wprowadzone w celu ograniczenia aktywności protestujących postrzeganych jako wrogowie systemu demokratycznego.

Słowa kluczowe: demokracja opancerzona, aborcja, protesty, prawa kobiet, nieliberalność, kontestacja polityczna, spór

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