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LIFE ISSUES MATTER: CATHOLIC CHURCH AND THE DISPUTE ON THE PRIMARY MORALITY POLICY IN POLAND

Abstract

In recent decades regulation of issues like abortion, euthanasia, same-sex unions, etc, has become in Poland an area of highly emotional political conflicts, deeply dividing democratic society. At the same time, despite significant internal tensions, against the background of most other European countries Poland is an example of a country consistently upholding human life and family based on monogamous marriage. The main aim of the text is a discussion of the role of the Catholic Church in the dynamics of the discourse on primary morality policy in Poland on the example of the debate over the legalization of euthanasia and the debate over the legalization of *in vitro* procedures.

Keywords: morality policy, Catholic Church, abortion, euthanasia, in vitro, Poland

Introduction

In the recent decades in Europe and the USA “the regulation of issues like abortion, euthanasia, gun control, same-sex unions, pornography, drugs or gambling”² has become an area of highly emotional political conflicts, deeply dividing democratic societies³. Poland is no exception in this matter. In fact, since the fall of communism, morality policy issues have been the subject of disputes in the Polish public debate, getting more and more intense with each new decade. At the same time, despite significant internal tensions, against the background of most other European countries Poland is an example of a country consistently upholding human life and family based on monogamous marriage. In this text, I would like to point to the role of the Catholic Church in the dynamics of the discourse on primary morality policy in Poland. There are two main questions I try to answer. First, discussed in section 3, asks if attitude of Polish society

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2 Christop Knill, The study of morality policy: analytical implications from a public policy perspective, *Journal of European Public Policy*, Vol. 20, No. 3, 2013, p. 309.

3 Gertrude Himmelfarb, *One Nation, Two Cultures: A Searching Examination of American Society in the Aftermath of Our Cultural Revolution*, Random House, New York, Toronto 2001.

towards morality policy can be linked with the formative role of Catholicism and Catholic Church. Second, discussed in sections 4 and 5 by analysing two cases: the debate over the legalization of euthanasia and the debate over the legalization of *in vitro* procedures, is concentrated on the question of the role of the Catholic Church in the public debate and regulation of life issues in Poland. At the beginning of analysis, it is necessary however to clarify two theoretical points: the meaning of the morality policy (section 1) and the possible role of religion in the issues it involves (section 2).

Morality policy – scope and types

In the originated in the USA content-related approach to morality policy, it is defined as a policy that regulates issues related to the demand for, or desire to get, “what some people think of as sin”⁴. In that case, we talk about morality policy when at least one advocacy coalition portrays the issues as one of morality or sin. Undoubtedly, a significant number of issues in the framework of morality policy complies with the above criterion. From the issue of gambling, to those of prostitution, abortion or euthanasia, we are in the area of regulating “what some people think of as sin”. Nevertheless, already such issues as religious education, freedom of conscience, gun control, etc. are beyond the logic of sin as an analytical category.

Some researchers perceive thus morality policy more broadly: as a policy of issues regarding “first principles”⁵, statements related to right and wrong⁶, and thus the moral foundations of political community. Most generally speaking, in this perspective morality policy would be the legal sanction of right and wrong, legitimizing a particular set of fundamental values and invalidating other⁷. Such an approach is justified well by the political nature of moral disputes, seen from the functional side, and their great social importance. It is difficult to imagine that the moral foundations of political community, and thus defining fundamental protected goods and rules regulating its life, would not be a key issue for that community and would not attract public attention.

Although the above perspective seems to hit the nail on the head, solving the problems related to sin in the course of defining morality policy, it opens other problems related to the vastness of issues attributed to morality policy. For example, in the case of granting (or refusing to grant) gays the right to marry, we are dealing with legitimization of values and invalidating others, as well as with

4 Kenneth J. Meier, Drug, Sex, Rock and Roll. The theory of morality politics, *Policy Studies Journal*, Vol. 27, No. 4, 1999, p. 682.

5 Christopher Mooney, “The Public Clash of Private Values”, in: *The Public Clash of Private Values. The Politics of Morality Policy*, Christopher Mooney (ed.), Chatman House Publishers, New York, London 2001, p. 3.

6 Donley T. Studlar, Alessandro Cagossi, Robert Duval, Is morality different? Institutional explanations for postwar Western Europe, *Journal of European Public Policy*, Vol. 20, No. 3, 2013, p. 354.

7 Kenneth J. Meier, Drug, Sex, Rock and Roll. The theory of morality politics. . . p. 682.

an undeniable political act and a popular social problem. However, does this also happen in the context of legalizing casinos and gambling?

It seems it could be worthy perceived defining morality policies in the categories of “sin” and “first principles” not so much as two contradictory models, but rather as complementary ones. The years-long discussion on defining morality policy: whether it is about “sin” or about “values” can be, so to say, reconciled. If we agree that one can distinguish at least three subfields of morality policy: issues of life and death (including abortion, euthanasia, artificial insemination, stem cell research and capital punishment); issues of sexual behaviour (homosexuality, prostitution, pornography); issues related to addictive behaviour (gambling, drugs)⁸, then we easily discover that in the case of the last one one tackles with “the redistribution of sin”, whereas two first cases concern with “legitimization of values”. Let us discuss this statement in brief.

As Kenneth J. Meier emphasizes, a characteristic feature of making different perversions (like prostitution or gambling) legal is that “no one is willing to stand up for sin. Legislators do not rise and recite the joys of drunk driving, the pleasures of prostitution, or the thrill they get from serial killings”⁹. In these cases, legislators do not ask about the value of a given activity (it is obvious that - in a moral sense - it is an anti-value), but they ask if something that people want to do can be legal even though it depraves them. Therefore, this question lies within the bounds of the discussion on the autonomy of law, asking about acceptable areas of differing legal and moral norms, but at the same time not discrediting the properties of the latter¹⁰. The authorization of prostitution, of the sale of alcohol or cigarettes is not justified here by their benefits but by the legitimacy - resulting from awareness of human weakness - of distinguishing between what morality is and what law is; between what man should do and what he is forced to do by sanctions.

If in the case of “issues of addictive behaviour” the essence of the dispute concerns the extent of the autonomy of law in the framework of universally accepted morality, in the case of disputes on life and death as well as on sexual behaviour it is about something different. One discovers here a new aspect related to the fact that the solutions proposed for legal sanctions (like legalization of abortion, of the same-sex marriages, of *in vitro*, etc.) are no longer presented as moral “crimes”, but they are granted the status of values that should be recognized and guaranteed by the state¹¹. Therefore, it is not about legal authorization - for these or other reasons, to a certain degree - of something that depraves man, but about recognizing that “what some people think of as sin” is good: not only it does not deny human dignity but even constitutes an element of its pro-

8 Christop Knill, The study of morality policy: analytical implications from a public policy perspective. . . p. 309.

9 Kenneth J. Meier, Drug, Sex, Rock and Roll. The theory of morality politics. . . p. 683.

10 Marek Safjan, Prawo, wartości i demokracja, *Chrześcijaństwo – Świat – Polityka*, Vol. 5, No. 1, 2008, pp. 5-24.

11 John Paul II, *Encyclical Letter Centesimus Annus*, No. 11, http://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus.html, (accessed 12.09.2020).

tection and development.

Of course, this change in the nature and essence of moral disputes does not have to be visible at once. Sometimes the moral discourse may be similar as in “latent policies”. For instance, in the case of the dispute over abortion in the 70s and 80s, people often mentioned the necessity to separate what was legal from what was moral. However, a careful observer of that discourse could notice that behind the pro-abortion reasoning there was a completely different argument. As Kazimiera Szczuka, the Polish feminists and researcher of the feminist discourse, insightfully observes, from the very beginning of this dispute, the most important argument for abortion “has been the reversal of values”¹². The discourse regarding gay rights has been conducted in an analogical way. Franklin Kameny, one of the pioneers of the modern gay rights movement, emphasized in the course of hearings in the late 1950s of the last century that “homosexuality is not only immoral, but it is affirmatively moral” and in 1968 he coined the phrase “gay is good”¹³. Modern discussions on *in vitro* fertilization or surrogacy are held in a similar vein.

Looking from the content-based perspective, the distinction between “re-distribution of sin” and questioning the “first principles” would be connected with different approaches to the system of values dominant in a given political community. In the first case, axiological system is not shaken. There is only demand for some “space” for human weakness. In the latter, the aim of moral policy is much more serious: it goes about the redefinition of the core ethical values. From the content-based perspective, we should then call those two subtypes of morality policy primary and secondary. Primary morality policy would be then related to the re-definition of the core ethical values of political community and thus to the dispute over the first principles. Secondary morality policy would be related to the dispute over the political and legal scope of implementation of fundamental moral principles, and therefore to what was classically described as “the redistribution of sin”. Consequently, presented analysis focuses on primary morality policies. One could add that from the processual or functional perspective, primary morality policies work in most cases as manifest morality policies as they are connected with high social emotions and dispute.

Catholic Church and primary morality policy

One important issue is the question about the position of the Catholic Church on what is considered today the area of primary morality policy. It is worth pointing out that although the Church does not claim to have competence in the area

12 Kazimiera Szczuka, *Milczenie owieczek*, WAB, Warszawa 2004, p. 145.

13 Robert Reilly, *Making Gay Okay. How Rationalizing Homosexual Behaviour is Changing Everything*, Ignatius Press, San Francisco 2014, p. 4.

of politics¹⁴, it does not consider issues relating to the definition of human life and marriage/family to be an area governed by the rules of democratic politics. Believing that democracy needs to be based on an adequate concept of man¹⁵, the Church concurs with Thomas of Aquinas that the issues of life and family represent two primary, pre-political aspects of human nature which politics should protect rather than settle; without which it is impossible to uphold the common good and therefore to fulfil the goal of politics. In other words, in the light of the Catholic theory of politics, issues related to the understanding of human life and marriage/family belong not so much to the area of politics but to that of meta-politics¹⁶, delineating the inviolable limits to political activity.

It is worth adding that until recently this standpoint had been self-evident in the Western theory of politics. Since World War II, in line with the tradition going back to John Locke or Montesquieu, Western liberalism was related to objective moral law. Based on the conviction that every human being has the capacity for moral knowledge through reason and conscience, a Universal Declaration of Human Rights was developed which then became the foundation for the protection of human rights in all liberal democracies and the entire "free world". It is characteristic that the Declaration did not create human rights, but "declared" them, that is, stated that they existed irrespective of the will of the states which endorsed it, and that their existence was intrinsic to human nature. This revealed the conviction, characteristic of post-war liberalism, that politics did not encompass the whole of human existence, and consequently did not represent the highest normative order. The ultimate point of reference for political decisions was natural law, which was reflected both in the concept of human rights and (until recently) in the public morality clause which allowed the state to restrict various rights (e.g. of speech or artistic expression) precisely in view of the risk of demoralization.

It is worth noting that the above approach has allowed the Church to fulfill without any controversy its specific role, different from that of non-governmental organizations, lobbyists, or political institutions, as a meta-political actor on the public scene¹⁷. The task of its official representatives (the hierarchy), which consists in proclaiming moral and transcendental truth, has great public significance. On the one hand, it helps form the citizens' conscience; on the other hand, it involves not only looking at current political disputes from a distance, but also the duty to object against those political ideas whose implementation would destroy God's image in man by contradicting natural law. Observance of the latter

14 John Paul II, *Encyclical Letter Centesimus annus* . . .

15 *Ibidem*, No. 46.

16 Macieja Zięba OP, "Kościół wobec liberalnej demokracji", in: *Chrześcijaństwo. Demokracja. Kapitalizm*, M. Novak, A. Rauscher SJ, M. Zięba OP (eds.), W drodze, Poznań, 1993.

17 Michał Gierycz, *Overcoming Reductionism. On „In-depth” Systems Analysis in the Political Science of Religion*, *Chrześcijaństwo – Świat – Polityka*, No. 23, 2019.

and its postulate of protecting human life and marriage/family – as noted by Paul VI in *Humanae Vitae* – “is necessary for men’s eternal salvation”. This specific place of the Church, recognized also in some constitutional orders, is sometimes called the “non-political politics of the Church”¹⁸, and involves the effort to hold back the politics’ claim to omnipotence. It should be remembered that the Catholic Church, as it was underlined in *Lumen Gentium* by Second Vatican Council, is not limited to the hierarchy alone. Lay Catholics, who may differ on various political issues, are called by the Church to maintain unity as regards the ethical foundations of politics. In an age of intensifying disputes over the first principles, the Congregation for the Doctrine of the Faith has issued a Note on political participation in which it explicitly stated which solutions must not be supported by Catholics in politics, including, among others, those provisions which strike at the most fundamental principles of natural law mentioned above (abortion, euthanasia, *in vitro*, legalization of homosexual unions, etc.)¹⁹.

The domination after World War II of the freedom-inspired perspective of liberalism, in which, as Montesquieu wrote, “liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will”, did not mean, however, that the attractiveness and influential force of its other current was diminished. Its popularity in the West increased gradually since the end of the 1960s. Freedom was understood here as a radical emancipation: man was supposed to determine anything that mattered on his own. This thoroughly materialistic vision of reality is premised on the assumption that there is nothing that precedes us; that everything is constructed. It cultivates the Enlightenment belief that by nature people “could be neither good nor bad” (J.J. Rousseau) and the related claim about the relative and historical nature of moral convictions. Thus, while in the freedom-inspired current of liberalism reason is seen as capable of knowing moral truth by referring to God or to natural law, in the emancipatory current man is considered a plastic being whose moral dispositions – as noted by John Stuart Mill – are “susceptible, by a sufficient use of the external sanctions and of the force of early impressions, of being cultivated in almost any direction”. This entails a special role of social and political elites who – as Mill writes in his *Utilitarianism* – has the ability, if only owing to their experience, to better evaluate what action or behaviour is right, thus enabling the implementation of the idea of radical emancipation. This “unconstrained” anthropology²⁰, breaking away from the ontology of man, turns democracy into a total project which, by encompassing the whole of existence, brings with it the hope of ultimately solving social problems, understanding politics as the ultimate normative

18 Piotr Mazurkiewicz, Niepolityczna polityczność Kościoła, *Chrześcijaństwo – Świat – Polityka*, Vol. 14, No. 2, 2012.

19 *Doctrinal Note on Some Questions Regarding the Participation Of Catholics In Political Life*, Congregation for the Doctrine of the Faith, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html, (accessed 12.09.2020).

20 Michał Gierycz, *Europejski spór o człowieka. Studium z antropologii politycznej*, Wydawnictwo Naukowe UKSW, Warszawa, 2017, pp. 216–247.

instance. Consequently, social relations, also within the framework of democratic institutions, are now perceived as relations based on power, on imposing the will of some on others, without any possibility of appealing to the objective criterion in solving disputes. From this perspective, the fact the Church performs the above-mentioned mission is treated as “unacceptable” political involvement, and moral issues become a “morality policy”.

Catholicism and the “axiological condition” of Poland in the European context

Reflection on the role of the Church in Poland in the dispute over the first principles should begin with the fundamental issue of the formative role of Catholicism. If, as argued by E.W. Boeckenfoerde, liberal democracy is based on foundations which it does not establish²¹, it is menaced by a permanent crisis of stability of the basic systemic and axiological principles. As rightly noted by Dariusz Karłowicz, this crisis may only be overcome by a transcendental reference: “the transfer of all power to the community is possible (without the risk of complete arbitrariness and relativism) due to the existence of an axiological framework considered to be invariable, which in the Polish reality is provided by Catholicism (and institutionally by the Church)”²². This thesis is confirmed by sociological research. Studies on religiousness in Poland, conducted since the 1980s, prove that Catholicism is a constitutive characteristic of the personal identity of the majority of Poles²³. As sociologists remark, almost all respondents (95%) claim they are religious, and one in nine considers themselves deeply religious²⁴. The declarations signal also that over half of adults (57%) take part in religious practices at least once a week, which proves that despite fundamental changes in numerous areas of life, secularization, which was expected after 1989, has not taken place²⁵.

The difference in the attitude to God correlates with typical Polish attitude to fundamental values, which are an object of dispute or dissent in many European countries. In relation to the question of approving abortion and euthanasia as justified practices, the Polish society, even if one takes separately different (also more „liberal”) regions of Poland, stands in complete opposition to the attitude characteristic of a large part of Western European societies. Disapproval of abortion and euthanasia is expressed by ca 65-70% of the society in Poland, while in Sweden, France, Spain or Great Britain it is the percentage of people approving of it. Analogically, differences can be noticed in relation to the approval of adoption of children by homosexual couples and general acceptance of homosexual behaviour.

21 Ernst Wolfgang Boeckenfoerde, *Wolność – państwo – Kościół*, Znak, Kraków, 1994.

22 Dariusz Karłowicz, *Teby – Smoleńsk – Warszawa*, Teologia polityczna, Warszawa, 2020, p. 108.

23 B. Rogowska, B. Wciórka, “Religijność i stosunek do Kościoła katolickiego”, in: *Polska. Europa. Świat. Opinia publiczna w okresie integracji*, Michał Strzeszewski, Krzysztof Zagórski (eds.), Scholar, Warszawa, 2005, p. 319.

24 *Ibidem*, p. 320.

25 *Ibidem*, p. 321.

In one of the newest research on attitude towards abortion the Public Opinion Research Center (CBOS) states that „two thirds of respondents (66%) agree that ‘human life should be protected, always and irrespective of the circumstances, from conception to natural death.’ This view is not shared by 28%, and approximately one in every seventeen respondents (6%) does not have an opinion on the matter”²⁶. Similarly, in the research on the attitude towards homosexuals in Poland Public Opinion Research Center shows that opposition against gay-marriages reaches 66% of Polish society in 2019 (69% in 2001) and against adoption of children by such couples 84% (same as in 2001)²⁷.

Interestingly, rejection of practices which contradict the first principles does not always directly translate in the Polish society into the attitude to their legal regulation. For example, public opinion polls in Poland show that “while most respondents advocate for the right to abortion to be applied at the most in the circumstances permitted under the law currently in force (71%), a majority of them (43%) believe that regulations in this area should be relaxed,” which the authors of the report call a “logical inconsistency”.²⁸

Thus, even though in the context of the above sociological studies it may be argued that the role of the Church in Poland consists “first of all in defining certain axiological boundaries within which politics may be done [...] It is a power in the pre-political area, but a real power nonetheless”²⁹, it is equally obvious that its bearing on political and legal settlements concerning primary morality policy issues remains an open question. It may legitimately be hypothesized that faith and Church affiliation will bear differently on views concerning certain settlements or issues in the area of primary morality policy. The case studies presented below should not only allow (or not) to substantiate the above claim about the role of the Church and religion, but also help understand the question about the nature and scope of its power in this area, and about how it bears on the current public discourse and concrete legal solutions concerning the “first principles”.

The analysis presented below is based on two case studies: the debate over the legalization of euthanasia, and the debate over the legalization of *in vitro* procedures. Both developed after 2004, which – due to the accession to the European Union – is considered to be the other, aside from 1989, caesura in the processes of systemic transformation and democratization.³⁰ Their selection is due both to the fact there is no way all issues related to primary morality policy could

26 CBOS, *Opinie o dopuszczalności aborcji*, Opinion Poll Report No. 51, 2016, https://cbos.pl/SPISKOM.POL/2016/K_051_16.PDF, (accessed 11.09.2020).

27 CBOS, *Stosunek Polaków do związków homoseksualnych*, Opinion Poll Report No. 90, 2019, https://cbos.pl/SPISKOM.POL/2019/K_090_19.PDF, (accessed 11.09.2020).

28 CBOS, *Opinie o prawnej dopuszczalności i regulacji aborcji*, Opinion Poll Report No. 102, 2011, https://cbos.pl/SPISKOM.POL/2011/K_102_11.PDF, (accessed 11.09.2020).

29 Dariusz Karłowicz, *Teby – Smoleńsk – Warszawa...* p. 180.

30 Magdalena Kozub-Karkut, *Religia w dyskursie polityki – polski spór o aborcję*, *Annales Universitatis Mariae Curie-Skłodowska*, Vol. XXIV, No. 2, 2017, pp. 237-255.

be discussed in this article, as well as the fact that the problem of the abortion dispute in Poland has already been extensively discussed in literature,³¹ while the dispute around LGBT rights currently seems to be at its peak, which makes it difficult to comprehensively evaluate it as a whole.

Due to the rather widespread view that case study is of little use in the verification of hypotheses, this approach calls for a brief substantiation. It should be stressed that limiting the scientific role of case study to the construction of hypotheses has no substantive justification. In the mid-1970s, Harry Eckstein already argued that case studies "are valuable at all stages of the theory-building process, but most valuable at that stage of theory building where least value is generally attached to them: the stage at which candidate theories are tested"³². Ultimately, as Bent Flyvbjerg rightly points out, when looking at the development of science we can see that "[c]arefully chosen experiments, cases, and experience were also critical to the development of the physics of Newton, Einstein, and Bohr, just as the case study occupied a central place in the works of Darwin, Marx, and Freud. In social science, too, the strategic choice of case may greatly add to the generalizability of a case study".³³ *A contrario*, William Ian B. Beveridge notes that "more discoveries have arisen from intense observation than from statistics applied to large groups".³⁴ Consequently, there are no substantive grounds for questioning the relevance of case studies for the saturation or testing of theoretical claims. The key condition for successfully saturating a theory is to make the correct choice of cases.

The selection of cases made for the purposes of this study was oriented at obtaining information from small samples and individual cases, that is, on maximizing the usefulness of information. Consequently, the cases presented here generally represent two types: critical and paradigmatic. Critical cases are ideal for "generalizing using the type of test that Karl Popper called 'falsification,' which in social science forms part of critical reflexivity. (...) [I]f just one observation does not fit with the proposition it is considered not valid generally and must therefore be either revised or rejected".³⁵ They are those cases which serve to "achieve information which permits logical deductions of the type, 'if this is (not) valid for this case, then it applies to all (no) cases'.³⁶ Paradigmatic cases emphasize more general characteristics of the studied objects, establishing "a school for the domain which the case concerns".³⁷ In order to fully saturate the constructed theory with reference to a single case, the process-tracing method has been employed,

31 Ibidem.

32 Harry Eckstein, "Case Study and Theory in Political Science," in: *Regarding Politics. Essays on Political Theory, Stability, and Change*, University of California Press, 1991, p. 80.

33 Bent Flyvbjerg, Five Misunderstandings About Case-Study Research, *Qualitative Inquiry*, Vol. 12, No. 2, 2006, p. 229.

34 Ibidem, p. 230.

35 Ibidem, p. 230.

36 Ibidem, p. 233.

37 Ibidem.

with its own, specific rigors; it “helps analyse the way in which a hypothetical cause affects the observed result”.³⁸

The dispute over euthanasia

In the Polish legal order, euthanasia is an offence against health and life, though punishable less severely than murder. Article 150 of the Criminal Code says: “Whoever kills a person at their request and acting out of compassion is punishable by imprisonment from 3 months to 5 years,” and adds that “[i]n some exceptional circumstances the court may apply an extraordinary mitigation or even waive the punishment”.

There has never been any public controversy about the above legal regulation, and consequently the issue of “the right to euthanasia” did not become a mainstream topic of the Polish public debate until the first decade of the 21st century. This does not mean, however, that the problem was entirely absent from the debate. Both its opponents (particularly those who were familiar with the consequences of legislation implemented in Holland in the 1990s) and its advocates evoked their standpoints on this matter from the turn of the century. For example, the Polish public debate took note of the book by Ryszard Fenigsen *Eutanazja. Śmierć z wyboru?* (*Euthanasia. Death by Choice?*) in which the author revealed the dramatic consequences of legalizing abortion in Holland, demonstrating not only that legalization not so much founds the inviolable limits to this phenomenon, but contributes to its further development, and thus not only erodes the ethos of the medical profession, but also leads to a moral disorientation of the society which develops a “Taygeian mentality” of getting rid of weaker individuals considered “useless”.³⁹

In a way replying to the theses presented by Fenigsen, in 2002 Professor Jan Hartman published his *Prolegomena do debaty nad legalizacją eutanazji* (*Prolegomena to the Debate on the Legalization of Euthanasia*). He argued that the approach to euthanasia prevailing in Poland, related to the domination of Christian morality, is neither morally obvious (since “euthanasia (the term is an artificial one; it appeared in the 17th century, when it meant “good death,” and at the end of the 19th century in its contemporary meaning), even though the Greeks and the Romans did not have a special word for it, was one of the moral ideals of classical culture⁴⁰), nor realistic. He claimed that the Christian vision of man is not in touch with reality, since people “do not lovingly care for the dying, but some-

38 Kamil Ławniczak, “Process tracing. Śledzenie mechanizmów przyczynowych,” in: *Metody jakościowe i ilościowe w badaniu organizacji i działania Unii Europejskiej*, Ławniczak Kamil (ed.), WDiNP, Warszawa, 2013, p. 69.

39 Ryszard Fenigsen, *Eutanazja. Śmierć z wyboru?*, W drodze, Poznań, 2002. The expression “Taygeian” comes from the name of the mountains from which ancient Spartans threw weak children off the cliff.

40 Jan Hartman, *Prolegomena do debaty nad legalizacją eutanazji*, <http://iphils.uj.edu.pl/~j.hartman/pu.php?c=bioetyka&p=eutanazja>, (accessed 11.09.2020).

times have had enough of the sacrifice it requires," and "when they are dying themselves, they *really* do not want to be a burden to others and suffer together with them, remembering the time when they were the ones who had to take care of someone else".⁴¹ He stresses, therefore, that "no sermon or law penalizing euthanasia will change this. They do not make anyone better and do not prevent any evil. At the most, they may evoke a sense of sinfulness and exclusion in all those who are considering suicide or praying for a quick death for themselves or their near and dear ones".⁴²

Interestingly, the voice of the Polish Church could not be heard distinctly during the debate at the time. Only in the letter on the occasion of the Holy Family Sunday in 2003, Polish Bishops noted "disturbing symptoms of 'the culture of death'" in the form of "a growing number of persons who allow for the possibility of euthanasia". Citing the teaching of *Evangelium Vitae* which says that "[d]epending on the circumstances, this practice involves the malice proper to suicide or murder" (EV, 65), they reminded Christians that "whether we live or whether we die, we belong to the Lord (Romans 14:8)". "To live for the Lord," the Bishops emphasized, "means to be able to overcome the sense of helplessness and despair, accepting pain just as Christ accepted his cross. To die for the Lord means to entrust one's own death entirely to the will of the Father, agreeing to accept it at the time he deems fit". Therefore they expressed their gratitude to those who walk through their illness in this way, pointing out that it is "a testimony of living faith in which we entrust to God entirely our pain and our struggle with the illness," as well as to all those who engage in various forms of palliative care in which – as they pointed out – "we find an important lesson in strengthening evangelic hope" and a lesson in "Christian humanism".

The issue of euthanasia which remained latent until the beginning of the 21st century erupted spectacularly in 2007 in relation to the case of Janusz Świtaj, who filed a request for euthanasia to the Court in Jastrzębie Zdrój, and immediately became "the face of the fight for dying with dignity".⁴³

The story of Janusz Świtaj was, so to say, a "model specimen" of a story which could spark off an emotional discussion in Poland and lead to a possible amendment to legal regulations. Janusz Świtaj "suffered a motorcycle accident in 1993, two weeks before his eighteenth birthday. As a result, his spinal cord was crushed and his cervical vertebrae were fractured".⁴⁴ Due to his injury, he lost "his own breathing and the ability to move all of his limbs on his own, controlled by his brain".⁴⁵ Terminally ill, with only his elderly parents to take care of

41 Ibidem.

42 Ibidem.

43 See more: <https://natemat.pl/275801,kto-to-janusz-switaj-walczył-o-eutanazję-teraz-obronił-pracę-magisterską>, (accessed 11.09.2020).

44 See more: <https://tvn24.pl/wiadomosci-z-kraju,3/chcial-eutanazję-teraz-janusz-switaj-zaczyna-studia,361672.html?h=1f3f>, (accessed 11.09.2020).

45 See more: <https://switajpsychologia.pl/#about-section>, (accessed 11.09.2020).

him, not receiving adequate aid from the state, experiencing physical (stabbing pain, breathing with a ventilator) and mental suffering, he officially asked state authorities to allow doctors to take his life, which, as he emphasized in a letter to the President of Poland, he would gladly do himself, but he could not.⁴⁶ He stressed that “there are no words which could express how much I suffer physically and mentally”.⁴⁷

This case provoked a heated discussion with the participation of bioethicists and philosophers, as well as others. Professor Jan Hartman, who had already opted for the legalization of euthanasia in Poland, argued in the then main opinion-leading newspaper in Poland that the request for the right to euthanasia was self-explanatory and “was bound to appear” since “these processes cannot be stopped and no conjurations will help”. He also pointed out that as regards amending laws, „the climate is good, as prosecutors and courts do not want to deal with euthanasia and are not keen on prosecuting and imposing punishments”. As far as the public opinion is concerned, this claim was justified in that already in 2001 opinion polls showed that 49% of respondents agreed “doctors should comply with the wishes of suffering, terminally ill patients who want to be administered lethal medication,” and only 37% did not agree.⁴⁸ Consequently, Hartman argued, it would be to the benefit of all citizens if the right to euthanasia was regulated following the example of Belgium or Holland, since without such regulation “abuse is more likely”. For essentially, he emphasized, “a prohibition does not regulate the phenomenon, but only removes it from sight”.⁴⁹ Even though this argumentation was objected to by other participants in the public debate, including Dariusz Karłowicz, philosopher, President of the Saint Nicholas Foundation, who stressed that “such requests are more of a cry for help, for this is not about dying, but about being provided with suitable conditions,”⁵⁰ in view of the high emotional potential of the case of Janusz Świtaj, the pro-euthanasia argumentation, particularly due to its latent presence and “crawling” acceptance in previous years,⁵¹ was beginning to clearly dominate in the public space. The fact that representatives of the Church did not join the debate is the best illustration of how difficult the situation was.

The road to changes in legislation following a pattern familiar from other Eu-

46 See: <https://wisla.naszemiasto.pl/32-letni-janusz-switaj-napisal-do-prezydenta-z-prosba-o-ar/c1-6602399>, (accessed 11.09.2020).. He said: “If I had been conscious, had known and been aware of my injury, I would not have allowed myself to be put on a respirator”.

47 Ibidem.

48 CBOS, *Opinie o eutanazji czyli pomocy w umieraniu*, Opinion Poll Report, June 2007, https://www.cbos.pl/SPISKOM.POL/2007/K_093_07.PDF, (accessed 11.09.2020).

49 “Umieranie w cieniu eutanazji”, an interview with dr. hab. J. Hartman, *Gazeta Wyborcza*, 27.02.2007, <https://wyborcza.pl/1,76842,3944489.html?disableRedirects=true>, (accessed 11.09.2020).

50 See: <https://wisla.naszemiasto.pl/32-letni-janusz-switaj-napisal-do-prezydenta-z-prosba-o-ar/c1-6602399>, (accessed 11.09.2020).

51 In 1988, 30% of respondents agreed that doctors should be able to administer lethal medication to patients, compared to 49% in 2001 – as mentioned above. CBOS, *Opinie o eutanazji*. . . , p. 3.

ropean countries was unexpectedly cut short by an intervention made by Anna Dymna. The well-known Polish actress runs the *Mimo wszystko* (*Anyway*) Foundation which helps adults with intellectual disabilities by offering support in their therapy, rehabilitation and education. From the point of view of our reflections, it is worth noting that while it is a secular organization, its inspiration was clearly Christian: "Anna Dymna took the name of her Foundation from the *Anyway* text inscribed on the wall of one of the shelters run by Mother Teresa in Calcutta".⁵² The actress offered Janusz Świtaj a position in her Foundation: "his task was to contact ill and disabled persons who needed help. He also received a special wheelchair from our Foundation which allowed him to finally leave his apartment and move around at will".⁵³ As a result of the interest he was shown and the real support he received from Anna Dymna, Janusz Świtaj not only withdrew his request for euthanasia, but also enrolled for studies and defended his M.A. thesis in psychology at the University of Silesia in 2019 to help those who are psychologically handicapped.⁵⁴ Even though his medical condition has not improved, he now stresses in the interviews that he has "made his greatest dream come true" and is now "living his life to the fullest".⁵⁵

The case of the euthanasia postulate made by Janusz Świtaj fundamentally affected the orientation of the debate on euthanasia in subsequent years, which never again resurfaced as a manifesto topic of morality policy in Poland. Public opinion polls conducted in the summer of 2007 (a few months after the "Świtaj case") reported that "the trend which had been observed so far of growing social acceptance for 'assisted suicide' was reversed. The percentage of persons who believed that doctors should comply with the wishes of suffering patients who wanted to die dropped by 12 points, while the percentage of respondents who were against such practices increased by 9 points,"⁵⁶ resulting in a clear majority of the opponents of this solution (46%) over its advocates (37%). It is worth recalling that in 2001 the majority was for accelerating death at the request of terminally ill patients (49% to 37%). Even though in subsequent years left-wing and liberal media tried to reopen the euthanasia debate in Poland,⁵⁷ and opinion polls showed that about "a half of the respondents were likely to accept euthanasia, in its most general meaning, i.e. understood as the administration by a doctor of drugs accelerating death to a seriously and terminally ill, suffering patient, provided the patient is fully aware and makes such a request him or herself," efforts

52 See: <https://mimowszystko.org/o-nas/>, (accessed 11.09.2020).

53 See: <https://lelum.pl/anna-dymna-161119-janusz-switaj/>, (accessed 11.09.2020).

54 See: <https://dziennikzachodni.pl/janusz-switaj-zostal-magistrem-psychologii-a-zadal-eutanazji-splnil-em-swoje-marzenie-mowi-uratowala-go-anna-dymna/ar/c1-14207999>, (accessed 11.09.2020).

55 Ibidem.

56 CBOS, *Opinie o eutanazji czyli pomocy w umieraniu*, komunikat z badań – czerwiec, 2007, https://www.cbos.pl/SPISKOM.POL/2007/K_093_07.PDF, (accessed 11.09.2020).

57 Eg. *Newsweek* in 2018. V. Ozimkowski, *Przez 26 lat patrzeć, jak twoje dziecko umiera*, <https://www.newsweek.pl/polska/eutanazja-w-polsce-czyli-blaganie-o-smierc/8wkrw7f>, (accessed 11.09.2020).

at making this issue once again the subject of public dispute were unsuccessful. There is a numerous group of permanent opponents to such practices amounting approximately to 40%. Moreover, the three classical situations calling for euthanasia are more often objected to than approved. According to a CBOS survey of 2013 (the most recent survey on the subject), “43% of respondents approve of medically assisted suicide, while 48% condemn it. 41% of respondents are for and 47% are against discontinuation of chemotherapy in advanced stadiums of cancer with no hope of improvement. The most frequently expressed negative opinion is on giving up reanimation procedures in the case of cardiac arrest in seriously and terminally ill patients with irreversible multiple organ failure: 51% of respondents are against, and 37% approve of such a practice”.⁵⁸ In this context it is clear that provisions of the Code of Medical Ethics which say that “a doctor must not provide euthanasia or assist the patient in committing suicide” have strong social foundations, and an attempt at undermining them has, paradoxically, resulted in their being strengthened.

The dispute over *in vitro*

At the threshold of the 21st century, the legalization of *in vitro* procedures was an important topic in the public debate in Poland. This involved several issues: on the one hand, the access to and state financing of such procedures in many European countries; on the other, the actual, commercial access to such procedures in the absence of any regulations on the matter whatsoever. The hierarchical Church actively participated in the dispute. As early as 2003 the Polish Episcopate pointed out that in the case of fertilization outside the body it was “practically impossible, using available techniques, to produce only one embryo to be implanted in the organism. Consequently, in the current practice of *in vitro* fertilization, many embryos are produced which are then kept alive by being frozen. In some countries the law allows for them to be kept for a maximum of five years. This leads to the unavoidable problem of what should be done with them afterwards. [...] In many Polish discussions, however, the killing of embryos is being made light of; moreover, demands are being made that this form of fertilization should be co-financed by the National Health Fund. In such case funds which come mostly from Catholics would be used to destroy life”.⁵⁹

The discussion about *in vitro* which emerged at the beginning of the 21st century simmered down in the years 2005-2007, during the coalition government dominated by the Law and Justice party. This does not mean the issue was forgotten. The early elections which the party lost in 2007 confirmed its poten-

58 CBOS, *Zaniechanie uporczywej terapii a eutanazja*, Opinion Poll Report, No. 3, 2013, https://www.cbos.pl/SPISKOM.POL/2013/K_003_13.PDF, (accessed 11.09.2020).

59 Świadkowie Ewangelii Życia, *List na Niedzielę Świętej Rodziny*, 28 December 2003, <https://episkopat.pl/swiadkowie-ewangelii-zycia/>, (accessed 11.09.2020).

tial and the newly formed coalition government dominated by the Civic Platform soon took the issue up again. First the then incumbent Minister of Health Ewa Kopacz, and then Prime Minister Donald Tusk himself said that “the Civic Platform-Polish People’s Party coalition intends to take real effort to increase the fertility rate,” and that the “*in vitro* fertilization method is worth supporting”.⁶⁰ This prompted an immediate reaction from the Polish Episcopate. The Family Council of the Polish Bishops’ Conference addressed a letter to all Members of Parliament and Senators in which “in the context of statements made recently by representatives of the Polish government concerning artificial ‘*in vitro*’ fertilization” reminded them of the Church’s teaching on the subject in a few simple sentences. They said that “firstly, on every attempt made using this method, a large number of embryos are destroyed – it is a form of sophisticated abortion. Secondly, every child has the right to be born out of a loving marital act of its parents. And thirdly, a child is not a thing and not even its future parents have any right to it, especially that this ‘right’ is always paid for by the death of its brothers and sisters”.⁶¹

The arguments presented by the Episcopate, particularly showing the analogy between *in vitro* and abortion, reverberated widely in the public discussion. They were attacked by the advocates of *in vitro* (from both within and without the Church) on many accounts. Firstly, they were presented as ignoring human suffering and non-pastoral (*ergo* contrary to the Bishops’ mission). As argued by the Catholic intellectual Hanna Bortnowska, calling the *in vitro* procedure wrong was a major “lapse” of the letter. For “to say one has done wrong is not the same as to say one has gone astray. To say ‘you have gone astray’ is to admonish someone; to say ‘you have done wrong’ is to judge them”.⁶² The publicist argued that the *in vitro* procedure was not morally wrong, but “morally imperfect. Less perfect than adoption or resigned consent to childlessness”. There are, she said, “many things more perfect than *in vitro* – but I cannot force anyone into perfection!”⁶³ as the Bishops allegedly did in their letter. Secondly, the position of the Episcopate was considered exaggerated. For example, Adam Szostkiewicz, a journalist writing for the left-wing liberal weekly *Polityka*, said the Episcopate’s argumentation was made in a “trenchant tone” and reflected a “pressure on the government not to consent to fund this method from the state budget”.⁶⁴ In a more poignant ver-

60 Tusk: *in vitro* warte wsparcia, 27 November 2007, https://www.money.pl/archiwum/wiadomosci_agencyjne/pap/artikul/tusk;in_vitro;warte;wsparcia,131,0,297091.html, (accessed 11.09.2020).

61 List Rady ds. Rodziny do parlamentarzystów na temat *in vitro*, <https://info.wiara.pl/doc/171775.List-Rady-ds-Rodziny-do-parlamentarzystow-na-temat-in-vitro>, (accessed 11.09.2020).

62 “Upomnieć czy potępić? Z Haliną Bortnowską, Robertem Plichem OP, Marianem Tischnerem i Zbigniewem Zalewskim rozmawiają Krystyna Strączek i Michał Bardel,” *Znak*, No. 635, 2008, <https://www miesiecznik.znak.com.pl/6352008z-halina-bortnowska-robertem-plichem-op-marianem-tischnerem-i-zbigniewem-zalewskim-rozmawiaja-krystyna-straczek-i-michal-bardelupomniec-czy-potepic/>, (accessed 11.09.2020).

63 Ibidem.

64 See: <https://szostkiewicz.blog.polityka.pl/2007/12/19/tusk-mieknie-w-sprawie-in-vitro/>, (accessed 11.09.2020).

sion of this argument, it was even presented as an inadequate expression of the Catholic teaching, a kind of “Polish Catholicism”. In the Catholic monthly *Znak*, Zbigniew Zalewski argued that it contradicted the Vatican instruction *Donum Vitae*. He claimed that “despite the generally negative attitude to artificial insemination, [the instruction] includes so many concerns, reservations and loopholes allowing for the procedure to be accepted on certain conditions, or even coming to terms with it as an evil which cannot be prevented. An evil, yes, but not of the highest order; an evil that can be accepted”.⁶⁵ Finally, the third kind of argumentation was the argument of hypocrisy, often not expressed explicitly. Considering the absence of any bioethical regulations whatsoever, it was stressed, it is better to accept even imperfect law in order not to permit for uncontrolled procedures in which human embryos are destroyed. This view was also expressed by some experts, including the former President of the Constitutional Tribunal Professor Marek Safjan, it was therefore pointed out that bioethical issues needed to be regulated, postulating for example ratification of the Bioethics Convention of Oviedo.

A response to these charges was provided in a letter from the Bishops read on the Feast of the Holy Family in 2008, in which they wrote to the faithful that “unfortunately, no one can guarantee that each of the expecting couples will be fortunate enough to give birth to children. We understand the thoughts and emotions you are tormented with. In the name of responsibility for truth, we must say, however, that in no case is it morally permissible to resort to *in vitro* fertilization. God and God alone is the Master of life. Children are his gift, and not one of consumable goods. There is no such thing as a “right to a child”. This is not an opinion – as is sometimes suggested – of the Polish Bishops, but the ordinary teaching of the Catholic Church, long laid down in official documents”.⁶⁶ This last remark was particularly apt in that on 8 December 2008 the Congregation for the Doctrine of the Faith had published the *Instruction Dignitas Personae on Certain Bioethical Questions*.⁶⁷

The above letter was read in churches all around Poland, a few days after a public Statement made by the Polish Bishops Conference’s Bioethical Experts Committee in consultation with the Presidium of the Polish Bishops Conference. It stressed the “urgent need” to adopt bioethical regulations whose absence is “today a major moral challenge to the society at large, and above all to persons responsible for creating the law”. The Statement pointed out that “human embryos are being destroyed in Poland, many remain in a frozen state which de-

65 “Upomnieć czy potępić?...”

66 Polish Episcopate, *Otoczmy troską życie człowieka*. List na Niedzielę Świętej Rodziny, 28 December 2008, <https://episkopat.pl/otoczmy-troska-zycie-czlowieka/>, (accessed 11.09.2020).

67 *Instruction Dignitas Personae on Certain Bioethical Questions*, Congregation for the Doctrine of the Faith, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html, (accessed 11.09.2020).

grades human dignity, and are consequently threatened by destruction; they often become a tradable good. The practical application of the *in vitro* method also includes selective abortion. This must urgently be put an end to, so that this sensitive area is not left open to uncontrolled practices, as it is now". At the same time, the experts emphasized, "when a first initiative is taken to regulate this matter, all Members of Parliament who are committed to the protection of human life should take action aimed at prohibiting this method entirely. If such legal solution were to be nevertheless rejected, it is their [the MPs'] ethical obligation to be actively engaged throughout the legislative process in order to limit as far as possible the harmful aspects of the regulations".⁶⁸

The comments referring to legal regulations were related to the fact that first bioethical bills were already being developed by Civic Platform MPs. A Bioethics Team appointed by Prime Minister Donald Tusk and led by Jarosław Gowin had been working since April 2008 on a bill prohibiting the destruction and freezing of human embryos and the cloning of people, but allowing for the procedure itself. It provided that "the *in vitro* method is reserved only for married couples, may utilize the gametes of living persons, and not more than two embryos may be created; it also introduced an age limit of 40 years for women undergoing the artificial fertilization procedure".⁶⁹ As the bill was not supported by the Civic Platform parliamentary club, the MPs appointed a new team, led by MP Małgorzata Kidawa-Błońska. The team was supposed to prepare recommendations to the Gowin project, but in the end submitted its own bill, legalizing, among other things, the "creation of surplus embryos" and "the possibility of selecting embryos before implantation".⁷⁰ An alternative bill was proposed by the Law and Justice MP Bolesław Piecha. The bill of the opposition provided for "a complete prohibition of *in vitro* with a transition period for the adoption of embryos which are already in existence".⁷¹

Due to the division among coalition Members, the ambiguous position of Prime Minister Tusk, probably due to his reluctance to engage in a "war with the Church" and to take on an ethically sensitive subject in view of the coming elections, the first phase of the battle over *in vitro* between the state and the Church resulted in a Pyrrhic, to some extent, victory of the Church. Even though Donald Tusk's government did not decide to finance *in vitro* during their first term of office, neither did they pass any bioethical bill through the Sejm. Consequently, problems involved in artificial fertilization were left without any regulation.

68 Oświadczenie Zespołu Ekspertów KEP ds. Bioetycznych w porozumieniu z Prezydium Konferencji Episkopatu Polski, 22 December 2008, <https://info.wiara.pl/doc/181558.Eksperci-KEP-Calkowicie-zakazac-lub-maksymalnie-ograniczyc>, (accessed 11.09.2020).

69 Gowin: proponuję PO dwa projekty ustawy o *in vitro*, <https://ekai.pl/gowin-proponuje-po-dwa-projekty-ustawy-o-in-vitro/>, (accessed 11.09.2020).

70 Ibidem.

71 Ibidem. It is worth adding that "Contra *In Vitro*" Initiative also submitted a bill, which was an amendment to the Criminal Code providing for the penalty of imprisonment for using *in vitro*.

Once the political context calmed down, also the Episcopate became less interested in the topic. By the end of the first term of Donald Tusk's government, the Bishops referred to the issue of *in vitro* only twice (and only in memorandums of the plenary sessions of the Episcopate). In 2009, they thanked "those Members of the Polish Parliament, professors and doctors who have been advocating the full protection of human life and legal prohibition of artificial (*in vitro*) fertilization"⁷². A year later they reminded the faithful of the Church's teaching in this regard, stating, among other things, that "persons who engage in and who use the *in vitro* procedure risk committing a grave sin which destroys their relationship with God and undermines their unity with the Church of Christ. Such a sin results in a self-exclusion from Eucharistic Communion until it is forgiven in the sacrament of penance and reconciliation. Pastors, catechists and all people of good will have the duty to know and to communicate the full truth about medical procedures which are objectively immoral. (...) Married couples who suffer because they cannot have children should be offered help and support in treating the causes of infertility, without resorting to substitute reproduction. They should also be shown the option and the evangelic value of adopting a child if they are able to do so"⁷³.

Irrespective of the above cautions, including the identification of threats faced by and duties of the faithful, resumption of the subject of *in vitro* in the public debate, including the discussion on bills, one of which, permitting *in vitro* (proposed by Jarosław Gowin), was presented as "conservative", resulted in increased social support for this procedure. While in 2008 support for the availability of *in vitro* to married couples was declared by 60% of respondents (including 33% who believed "it should definitely be available"), in 2009 such a declaration was made by as many as 77% of respondents (including 53% who "definitely" supported it).⁷⁴ It is worth noting, therefore, that even though in Church circles the issue of *in vitro* was discussed from the ethical,⁷⁵ medical⁷⁶ or psychological⁷⁷ perspective, the few statements made by the Episcopate were not followed by any wide-ranging formative programme which would convincingly explain the Catholic teaching on artificial fertilization. Consequently, even very communicative pastors admitted that it was exceedingly difficult to explain the whole Catholic standpoint on *in vitro*,⁷⁸ which, characteristically, was not comprehensively

72 Komunikat z 352. Zebrania Plenarnego Konferencji Episkopatu Polski, Jasna Góra, 26 November 2009, item 3, <https://episkopat.pl/komunikat-z-350-zebrania-plenarnego-kep/>, (accessed 11.09.2020).

73 Komunikat z 352. Zebrania Plenarnego Konferencji Episkopatu Polski, Olsztyn, 20 June 2010, item 5, <https://episkopat.pl/komunikat-z-352-zebrania-plenarnego-konferencji-episkopatu-polski/>, (accessed 11.09.2020).

74 CBOS, *Opinie o dopuszczalności stosowania zapłodnienia in vitro*, Opinion Poll Report 95, 2015, p. 3.

75 Andrej Szostek, *Etyczne aspekty 'in vitro'*, *Chrześcijaństwo-Świat-Polityka*, No. 1, 2008, pp. 5-12.

76 Tadeusz Mazurczak, *Medyczne i genetyczne aspekty zapłodnienia 'in vitro'*, *Chrześcijaństwo-Świat-Polityka*, No. 1, 2008, pp. 13-22.

77 Artur Filipowicz, *Biopsychiczne dylematy stosowania technik 'in vitro'*, *Chrześcijaństwo-Świat-Polityka*, No. 1, 2008, pp. 23-32.

78 The opinion of Fr. Pilch in *Upomnieć czy potępić?*...

stated in the letter to the Members of Parliament mentioned above.⁷⁹

A new wave of the dispute developed after the government coalition won the elections in 2011. The Civic Platform, evolving towards the centre left, no longer felt as closely allied with the Bishops' position as four years earlier, and resumed the topic of legalising and financing *in vitro* once again. Already in 2012, Prime Minister Donald Tusk declared that "the *in vitro* procedure will be financed as part of the healthcare programme; funding will be available to couples which can demonstrate based on relevant documents that they have been trying for a baby without success for a year," stressing that not only married couples could apply.⁸⁰ Most interestingly, Tusk announced that the planned healthcare programme would not operate "based on a law or a regulation, but just like more than a dozen other programmes of the Ministry of Health," thus questioning the need for bioethical regulations to be in place first; they were to be developed "during the first three years of the programme's operation".⁸¹ The government's support for *in vitro* was thus a way of forcing, and creating a specific context for, the passing of a bill. After all, one can hardly imagine that a bill passed by the Parliament might prohibit what was funded under a government programme.

Consequently, the new Minister of Health Bartosz Arłukowicz said in July 2013: "we are putting an end to the time when politicians discussed *in vitro* in Poland. From now on, professors will decide"⁸² and initiated the Government Programme for the Treatment of Infertility Using Artificial Fertilization for the years 2013-2016. It could be applied for by couples in whom an absolute cause of infertility had been diagnosed and documented by medical records or who had been treated for infertility in accordance with recommended standards of medical practice for the 12 months preceding the application. As part of the Programme, a couple could use an individualized assisted reproduction procedure up to three times.⁸³

The launch of a programme under which the *in vitro* procedure was to be financed for 15 000 couples accelerated legislative works. An additional argument of the government was the potential penalty to be imposed on Poland by the EU Court of Justice for failure to implement the five so-called tissue directives.⁸⁴ The

79 The Church believes that the only morally permissible environment in which new life may – or should – be created is the marital act. This means that even if *in vitro* did not involve the death of "surplus" human embryos, *in vitro* would still be considered wrong.

80 See: https://www.money.pl/archiwum/wiadomosci_agencyjne/pap/artykul/premier;in;vitro;refundowane;w;ramach;programu;zdrowotnego,203,0,1182923.html, (accessed 11.09.2020).

81 Ibidem.

82 See: <https://www.mp.pl/pacjent/ciaza/aktualnosci/82848,arlukowicz-refundacja-in-vitro-od-1-lipca-2013>, (accessed 11.09.2020).

83 Program – Leczenie Bezpłodności Metodą Zapłodnienia Pozaustrojowego, Warszawa, 2013, pp. 6-10, https://www.premier.gov.pl/files/programme_leczenie_nieplodnosci_metoda_zaplodnienia_pozaustrujowego_na_lata_2013_2016.pdf, (accessed 11.09.2020).

84 See: <https://www.money.pl/gospodarka/wiadomosci/artykul/ustawa-o-in-vitro-groza-nam-kary-za-brak,243,0,1819123.html>, (accessed 11.09.2020).

Parliament began its works on a slightly modified bill proposed by Małgorzata Kidawa-Błońska on behalf of the government party, much more liberal not only than the bill proposed by the opposition, authored by Bolesław Piecha, but also that submitted by the Civic Platform Member Jarosław Gowin. It provided, among other things, for the production and freezing of surplus embryos,⁸⁵ and guaranteed *in vitro* not only for married couples, but for any “couples”. The bill was presented to the Sejm in March 2015, already by a new government led by Ewa Kopacz (previously Minister of Health), who replaced Donald Tusk as Prime Minister after he was appointed President of the European Council.

The accelerating works on the programme for financing *in vitro* from the state budget, and then on a law fully legalizing this procedure led to increased activity of the Episcopate. On 5 March 2013 the Bishops published a document *O wyzwaniach bioetycznych, przed którymi stoi współczesny człowiek (On Bioethical Challenges Faced by Contemporary Man)*, in which the issue of *in vitro* was discussed at length, showing not only the ethical, but also the medical and psychological problems involved in this procedure. Three months later the Polish Bishops Conference’s Bioethical Experts Committee published a document on the manipulation of scientific information concerning the *in vitro* procedure.⁸⁶ Finally, in the course of initiating works on the bill at the Sejm, the Presidium of the Episcopate made a statement: first (4 March) stating once again the general ethical principles which should be taken into account in the course of legislative works,⁸⁷ and then (31 March) specifying explicitly on what points the government’s draft should be amended, including a list of eight unacceptable solutions from the *in vitro* bill.⁸⁸

The Episcopate then kept track of the entire legislative process. After the law was adopted by the Sejm, the following documents were subsequently published: the Bishops’ Conference’s statement following the Sejm vote on the government bill “on the treatment of infertility” (25 June 2015); Statement of the Polish Bishops Conference’s Bioethical Experts Committee on the “infertility treatment law” passed by the Sejm of the Republic of Poland on 25 June 2015 (26

85 As Małgorzata Kidawa-Błońska, then already the government’s spokesperson, said: “If we want this method to be effective and give results – the embryos must be frozen”. See: <https://www.rmfm24.pl/tylko-w-rmf24/wywiady/kontrwywiad/news-kidawa-blonska-rzadowy-projekt-in-vitro-mrozenie-zarodkow-i-nld,1661145>, (accessed 11.09.2020).

86 Komunikat Zespołu Ekspertów ds. Bioetycznych Konferencji Episkopatu Polski w sprawie manipulacji informacjami naukowymi dotyczącymi procedury *in vitro*, 24 June 2013, <https://episkopat.pl/komunikat-zespołu-ekspertów-ds-bioetycznych-konferencji-episkopatu-polski-w-sprawie-manipulacji-informacjami-naukowymi-dotyczącymi-procedury-in-vitro/>, (accessed 11.09.2020).

87 Głos Prezydium Konferencji Episkopatu Polski w kontekście przygotowywanej ustawy o leczeniu niepłodności, Warszawa, 4 March 2015, <https://episkopat.pl/glos-prezydium-konferencji-episkopatu-polski-w-kontekście-przygotowywanej-ustawy-o-leczeniu-nieplodności-2/>, (accessed 11.09.2020).

88 Apel Prezydium Konferencji Episkopatu Polski w związku z rozpoczęciem prac nad projektem ustawy o medycznym wspomaganiu prokreacji (*in vitro*), Warszawa, 31 March 2015, <https://episkopat.pl/apel-prezydium-konferencji-episkopatu-polski-w-zwiazku-z-rozpozeciem-prac-nad-projektem-ustawy-o-medycznym-wspomaganiu-prokreacji-in-vitro/>, (accessed 11.09.2020). The Bishops pointed out e.g. that the “bill permits for the conception of children after the donor of generative cells has died, and does not prohibit the possibility of using surrogate motherhood in the event the woman dies”.

June 2015), Announcement of the Presidium of the Polish Bishops Conference in the context of the “infertility treatment law” of 25 June 2015 (7 July 2015); Opinion of the Polish Bishops Conference’s Legal Bureau: *Why the objection to the infertility treatment law passed by the Sejm on 25 June 2015 which provides a liberal legalization of in vitro fertilization* (9 July 2015); finally – after the Senate vote – Announcement of the Presidium of the Polish Bishops Conference on the publication of the results of the Senate vote on the *in vitro* procedure law (10 July). The Episcopate once again pointed out that “the results of the Senate vote on the law concerning the *in vitro* procedure legalize – under the guise of infertility treatment – the destruction of human embryos, as well as other practices. We express our strong objection to this. (...) It is medical knowledge, and not religious worldview, that make it imperative that every human life should be protected from the moment of conception. Persons who believe in Christ must in no case support a law on *in vitro* which is prejudicial to human life if they want to remain in the full community of faith”.⁸⁹ The President of the Episcopate also made an attempt – unprecedented even in the relations between the state and the Church in Poland – at influencing the President of the Republic of Poland to persuade him to veto the law passed by the Sejm. On 17 July 2015 Bronisław Komorowski, who was acting President for the last couple of days after he lost the elections to Andrzej Duda (who would enter upon the office on 6 August 2015), received a letter from Archbishop Stanisław Gądecki. The hierarch asked the President, who publicly declared his Catholicism, “to refer the so called ‘infertility treatment’ bill back to be reconsidered by the Sejm or to submit it to the Constitutional Tribunal”. He emphasized that “in relation to the *in vitro* procedure, there are more than just the two main parties to the polemic involved, namely its advocates and its opponents. There is also a third party who is being entirely ignored and objectified. This third party are the unborn children. They are the ones who, immediately after they are conceived, are denied the right to develop, be born, and live with dignity. This way, they are no longer treated as human beings, but as objects which can be disposed of at will”.⁹⁰ President Komorowski replied to the President of the Bishops Conference on 22 July 2015. Pointing out that “the democratic legal order demands from us all a willingness to compromise, which sometimes means recognizing that parliamentary agreement is more important than one’s personal convictions,” and stressing that the bill submitted for signature meant “progress compared to the present situation where no relevant legal regulations are in place,” informed that he would sign the bill,⁹¹ which he did on the very same day. In this situation, the

89 See: <https://episkopat.pl/komunikat-prezydium-kep-po-ogloszeniu-wynikow-glosowania-w-senacie-ws-ustawy-dotyczacej-procedury-in-vitro/>, (accessed 11.09.2020).

90 Abp Stanisław Gądecki, *List Przewodniczącego KEP do Prezydenta RP*, Warszawa, 17 July 2015, <https://episkopat.pl/list-przewodniczacego-kep-do-prezydenta-rp-2/>, (accessed 11.09.2020).

91 He also announced he would apply to the Constitutional Tribunal about one of its provisions, secondary as far as the essence of the dispute was concerned. See: <https://www.radiomaryja.pl/kosciol/odpowiedz-prezydenta-rp-na-list-abp-gadeckiego/>, (accessed 11.09.2020).

Episcopate could only “express their most profound disappointment and deep regret,” as the Presidium of the Episcopate put it in an announcement released on the same day. They stated that “the price for the birth of one human being is the destruction of other unborn children, which is why Catholics cannot use the *in vitro* procedure (...). The moral responsibility for what has happened falls on the legislators who supported and approved a law which permits the use of the *in vitro* method, and on the managers of healthcare facilities where these techniques are employed”.⁹²

Even though the elections in the fall of 2015 were won by the opposition, and starting from 2016 the programme for the state funding of *in vitro* was replaced by a programme supporting naprotechnology, the law remained in force. Funding for the *in vitro* procedure is now provided by the local governments of many municipalities. Interestingly, even though the previous opposition has now been governing for more than 5 years, the Church has not postulated that the legislation passed in 2015 should be amended. This may have been the result of a number of factors (including the political calculations of the Church which e.g. in 2016 made it play an ambiguous role in torpedoing an attempt at amending the law permitting abortion⁹³), it is not without significance, however, that in the dispute over *in vitro* which has continued since the beginning of the 21st century, the Church has lost more than a political battle. The most important loss is related to the failure to ground the moral order resulting from natural law in social awareness. Public opinion polls show that 77% of the society (made up mostly of Catholics) accept the *in vitro* procedure (only 17% are against), and more than a half of the society do not object against the creation of additional embryos if that increases the odds of actual pregnancy (exactly 33% of the respondents are against). It should be emphasized that in the light of CBOS polls cited above, not even weekly participation in the mass results in a material “divergence” from the society’s average. Among those who practice regularly, 71% accept *in vitro* for married couples. Only once the group of Catholics who practice several times a week is isolated, the majority object to *in vitro* (57% were against); yet even among those acceptance is expressed by nearly 2/5 of the respondents (exactly 38%).⁹⁴ From this perspective, the law seems to be based on universally shared social convictions which turn out to be at odds with Catholic morality.

92 Komunikat Prezydium Konferencji Episkopatu Polski po podpisaniu przez Prezydenta RP ustawy dotyczącej procedury „in vitro”, Warsaw, 22 July 2015, see: <https://episkopat.pl/komunikat-prezydium-konferencji-episkopatu-polski-po-podpisaniu-przez-prezydenta-rp-ustawy-dotyczacej-procedury-in-vitro/>, (accessed 11.09.2020).

93 Michał Gierycz, “Liberalizm i konserwatyzm a misja Kościoła”, *Pastores*, Vol. 2, No. 75, 2017.

94 CBOS, *Opinie o dopuszczalności stosowania zapłodnienia in vitro*, Opinion Poll Report No. 95, 2015, p. 4.

Conclusions

The two cases of disputes over the first principles analysed above confirm that faith and Church affiliation are not directly reflected in standpoints taken in the area of morality policy. Presented analysis enable a correction of preliminary thesis, which claimed that the role of the Church in Poland consists “first of all in defining certain axiological boundaries within which politics may be done [...] It is a power in the pre-political area, but a real power nonetheless”⁹⁵. It seems that, although Catholic faith helps to sustain awareness of natural law principles in Polish society, it is nowadays hard to speak about Church’s “real power” to “define axiological boundaries” in most axiologically sensitive issues of morality policy. In essence, in both discussed cases, despite a generally negative attitude to euthanasia and abortion (which is now an element of *in vitro* procedures), initial support for unethical legislative solutions was expressed by nearly half of the society.

It is also worth stressing that although it is legitimate to claim that indirect formative role of the Church for those both cases was important (still half of society was against – what is more than in most European countries), Church’s formative role in the direct response to discussed problems has been negligible. In the dispute over euthanasia, the hierarchical Church was practically absent; in the debate on *in vitro* it was activated responsively, but not so much in response to social attitudes, but to political projects which contradicted the principles of natural law (it was not a coincidence that the Church’s activity increased with the intensification of legislative works). This seems to be an important observation, which is worth saturating as part of other studies. It would mean that the Church in Poland focuses its attention on political and legal regulations, assuming or hoping, in a way, that the social soil is a self-evident factor. Which, as has been demonstrated by the surveys, is not the case. As a consequence, despite the proportionately high, compared to other European societies, recognition of the general norms of natural law in Poland, the hierarchical Church not so much controls the axiological agenda (which would be required by its hypothetical power in the meta-political sphere), but allows for it to be imposed on it, remaining “on the defensive” almost by default. Particularly in view of the framing of disputes over the first principles in the narrative about the suffering of others (parents who want to have children, terminally ill patients who wish for death, discriminated gays and lesbians, etc.), such responsiveness deepens the sense of a lack of empathy and (paradoxically) mercy on the part of the Church. This defensiveness may be further enhanced (as in the case of “soft-peddling” the *in vitro* law after the change of power in Poland) concern for ad hoc political calculations and the form of communication with the faithful. The latter does not take

95 Dariusz Karłowicz, *Teby – Smoleńsk – Warszawa*, Teologia polityczna, Warszawa, 2020, p. 180.

into account the progressing technological changes which make it possible to diversify and strengthen the message. As a consequence of the above causes, it appears that – despite the still significant social recognition of the general norms of natural law – the Church in Poland is on its way to loosing on other morality policy issues, by perceiving cooperation with those in power as the main way of guaranteeing them, and locating its primary concern and public activity there.

The case of Janusz Świtaj shows that – almost contrary to the above conclusions – the direction of legislative changes is far from obvious. The religious and axiological condition of Poland noted at the beginning of this text reveals that the “imagination of mercy” once postulated by St. John Paul II makes it possible to reorient the debate seeking to redefine values standing at the sources of law. It also shows that it is not only the institutional Church, but the lay faithful who may play a key role in this process. As mentioned above, the hierarchical Church was practically absent in the debate around euthanasia. Even though it is quite clear that the Catholic faith indirectly influenced it, one could hardly point to any direct involvement of the Church in that case, which for many years (until today) has settled the attitude to euthanasia in the Polish public debate. The thesis that faith indeed helps firmly fix the principles of natural law in social awareness seems to have been confirmed here; it has also shown that the extent to which it can translate into standpoints adopted with regard to specific solutions in the area of primary morality policy may be significantly influenced not so much by a reiteration of the Church’s teaching, but a testimony of its internalization. Both the case of euthanasia which has been “won” by the Church, and the – *a contrario* – politically and socially lost battle for *in vitro* seem to provide a clear illustration to the words of Paul VI who said that the world today needs witnesses more than it needs teachers. In the case of the dispute over euthanasia, Anna Dymna and Janusz Świtaj proved to be just such witnesses. Consequently, no “teacher” was needed to settle this particular case. Naturally, a question may be asked about where the institutions or hierarchs of the Church were then, and why they did not propose any help for Janusz Świtaj. This question is one that cannot be ignored, as it sends us back to the problem pointed out in the previous paragraph. Nevertheless, the dispute over euthanasia also demonstrates the strength of the Church understood more broadly than just the hierarchy. It also proves – in terms of methodology – that it is legitimate to refer to the broad understanding of the Church, in accordance with the teaching of *Vaticanum II*, in properly assessing its role in shaping morality policy.

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Михал Гиериц

ПИТАЊА ЖИВОТА СУ БИТНА: РИМОКАТОЛИЧКА ЦРКВА И СПОР ОКО МОРАЛНИХ ПИТАЊА У ПОЉСКОЈ

Сажетак

Регулација питања као што су абортус, еутаназија, истополни бракови, итд. су постале области емотивних политичких конфликта који су поделили демократско друштво у Пољској у последњим декадама. У исто време, упркос важним унутрашњим тензијама, Пољска и даље остаје пример међу европским земљама у области очувања људског живота и фамилија заснованим на моногамним браковима. Циљ овог текста јесте анализа улоге Римокатоличке цркве у динамичном дискурсу о примарно моралним питањима на примеру дебата о легализацији еутаназије и *in vitro* процедура.

Кључне речи: политика морала, Римокатоличка црква, абортус, еутаназија, *in vitro*, Пољска

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