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Right-Wing Legal Mobilization Against Abortion. The Case of Poland.

ABSTRACT

Over the last few years, women's rights and freedoms have been intensely challenged before the Constitutional Courts: in Poland, the Constitutional Court tightened pregnancy termination laws, the Constitutional Court in Bulgaria declared the anti-violence Istanbul Convention unconstitutional, the Constitutional Court in Croatia heard the case on pregnancy termination restriction, and in the United States, the Supreme Court overturned the famous abortion decision in the case of *Roe v. Wade*.

We may see a specific pattern here: using the law, especially constitutional law and Constitutional Courts, to restrain women's rights without the support of most citizens. The ruling of the Polish Constitutional Court banning abortion on the grounds of fetal defects triggered one of the largest social protests in Poland since 1989. Since those are legal decisions, they are immune to the mass mobilization and protests they provoke. What is typical for all these cases is not only the limitation of women's rights. It is also the type of non-state actors that are pushing this type of agenda through legal mobilization. These were mostly fundamentalist and religious organizations.

This paper aims to show the constitutive role of right-wing non-state actors and their legal mobilization for the erosion of reproductive rights using abortion in Poland as a case study. I conclude that these actors use liberal infrastructure of protecting fundamental rights and freedoms, such as constitutional courts and constitutional litigation, to restrict women's rights, and the key to success is the transnational cooperation of engaged actors.

KEYWORDS

legal mobilization, strategic litigation, constitutionalism, populism, reproductive rights, human rights, women's rights.

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INTRODUCTION: WOMEN'S RIGHTS BEFORE THE COURTS

The ruling of the Polish Constitutional Court banning abortion on the grounds of fetal defects triggered one of the largest social protests in Poland since 1989.¹ Eliminating this provision means a practical ban on abortion in Poland because 98% of legal abortions in Poland were performed precisely because of the fetus's defects.² We can observe similar developments in different countries: the Constitutional Court in Bulgaria declared the anti-violence Istanbul Convention unconstitutional (27/07/2018), and the Constitutional Court in Croatia heard the case on pregnancy termination restriction (21/07/2017). Even the Supreme Court of the United States overturned the famous abortion decision in the case of *Roe v. Wade*.

We may see a specific pattern here: using the law, especially constitutional law in the High Courts, to restrain women's rights without the support of most citizens. Since these are legal decisions, they are somehow immune to the mass mobilization and protests they provoke. What is typical in all these cases is not only the limitation of women's rights but also the type of non-state actors that are pushing this type of agenda. Protesters themselves identify those actors. Looking at the posters and banners presented during protests against the famous Polish abortion judgment, we see who is blamed for the abortion ban by protesters. It is not just the Constitutional Court but mostly fundamentalist organizations: the Catholic Church and the populist government party. In other countries, we can also observe the involvement of external organizations in limiting women's rights.

This paper aims to show the processes, strategies, and conditions of right-wing legal mobilization on abortion limitation in Poland. In the first part, I discuss the concept of legal mobilization and how it has a normative basis, using the example of the *Roe v. Wade* case. In the second, using the example of the Polish abortion case, I show the history of abortion laws in Poland, the socio-political context, and the multiplicity and forms of legal actions used in right-wing mobilization. In the last part, I reflect on the legal mobilization's actors, their connections, strategies, and funding.

LEGAL MOBILIZATION

Reproductive rights issues have contributed to today's understanding and conceptualization of legal mobilization. Primarily, the fight for rights had mainly a political and

¹ Polish Constitutional Court Judgment of 22 October 2020, Case K 1/20.

² FEDERA, *Fakty o aborcji (facts about abortion)*, https://federa.org.pl/aborcja_fakty/, accessed 10 July 2023.

social dimension. Over time, the fight became more planned, strategic, and multi-dimensional. Social movements began to act at the legal level by using legal strategies (possibly thanks to constitutional and international judicial development).³ That happened, for example, in the case of *Roe v. Wade*, which was one of the most important decisions in American⁴ and global legal culture. This landmark decision of the US Supreme Court led to the constitutional right to abortion. The *Roe v. Wade* case was played strategically. After a series of political and social actions, the plan of attorneys Sarah Weddington and Linda Coffee was to find a pregnant woman who wanted an abortion in a state where abortion was illegal (Texas) and who would be able to be a plaintiff. In this case, after years of strategic efforts, the US Supreme Court ruled that the right to abortion in the early stages of pregnancy is constitutional. Although the case was a milestone in reproductive rights development, it was not a single action but part of the broader movement; it related to various social and political actions, including protests, marches, civil disobedience, and public debate. In the 1960s, there was an alliance between the population control movement and the abortion rights movement in the United States. Just before the *Roe* decision, the national ratification campaign for the Equal Rights Amendment launched and caused broad debates about women's rights.⁵ Reproductive rights became more visible thanks to the organization of public "speak-outs," where women shared their own abortion stories. The Abortion Counseling Service of the Women's Liberation Movement, known as Jane, provided access to abortion by identifying trustworthy physicians and teaching women to perform abortion themselves. The ground was also prepared by many young lawyers who brought reproductive rights cases to the courts.⁶

The case of *Roe v. Wade* is a flagship example of strategic litigation, defined as legal and socio-political actions involving initiating or joining ongoing legal proceedings to bring legal change.⁷ What is specific to strategic litigation cases is a court trial; the individual involved in the dispute is thus representative of the group in a trial. We might say the

³ E. Lehoucq, W. K. Taylor, Conceptualizing legal mobilization: How should we understand the deployment of legal strategies?, *Law & Social Inquiry*, 45(1) 2020, pp. 166-193.

⁴ L. Greenhouse, R. Siegl, *Before (and After) Roe v. Wade: New Questions About Backlash*, *The Yale Law Journal* 120, no. 8 (June 2011), pp. 2028-2087.

⁵ R. Siegel, L. Greenhouse, *The Unfinished Story of Roe V. Wade* (June 1, 2018). *Reproductive Rights and Justice Stories* (Melissa Murray, Kate Shaw & Reva Siegel eds., 2019, Forthcoming), Yale Law School, Public Law Research Paper No. 643, Available at SSRN: <https://ssrn.com/abstract=3189235>.

⁶ *Ibidem*.

⁷ K. Kocemba, M. Stambulski, *Czym jest strategiczna litygacja?* (en: What is Strategic Litigation), SPPAE 2020.

individual's harm was already experienced collectively.⁸ At stake in *Roe v. Wade*, the case was not only the plaintiff's right to abortion but the right to abortion for all women in the United States of America. An individual court trial was a key to systemic change, but it also influenced the political and social dimensions and was influenced by them. The case provoked a widening public debate on certain rights, and thus, they influenced public awareness and mobilization.⁹

There are also other ways of changing the law, other than just strategic litigation, and we can collectively name them legal mobilization. This is a broader concept than strategic litigation, as it does not include only actions before the courts.¹⁰ Generally, legal mobilization is acting to change the law in the formal legal sphere. Although the legal sphere intermingles with social and political spheres, the result (the change in law) is obtained using legal tools.¹¹ Nevertheless, more important than the question of how to mobilize law is the question of what

⁸ Ibidem.

⁹ Cases run as strategic litigations are the most visible and groundbreaking, but they are not always possible to conduct. "Strategic" means long-term engagement that requires appropriate assets, a well-qualified, usually experienced team of lawyers, and the individual who will become the "face" of the case. Additionally, the case needs to be adequately highlighted in the media and have particular social support. Media attention and publicity for the case make it heard not only in the territory of its jurisdiction but also in other countries. Although strategic litigation has its roots in the United States, American cases have influenced global legal culture and thus could impact the strategies of mobilizing law.

¹⁰ This concept has enormous scope in the literature, but its core is a claim that law can be an effective instrument for political and social change. Lisa Vanhala proposes a broad definition of legal mobilization: "any type of process by which individual or collective actors invoke legal norms, discourse, or symbols to influence policy, culture, or behavior." - L. Vanhala in *Oxford Bibliographies* (Oxford University Press, November 29, 2011), <https://doi.org/10.1093/obo/9780199756223-0031>.

¹¹ It is worth mentioning that using certain strategies depends on the context: "in taking legal action, a different type of audience must be addressed, different tools must be employed, and a different language must be 'adopted.'" in L. Vanhala, *Making rights a reality?: Disability rights activists and legal mobilization*, Cambridge University Press 2010. I assume that legal mobilization depends primarily on the social and political context; thus, recognizing the context is the first step in the legal mobilization plan. The context might determine if legal mobilization will be court-oriented or policy-oriented, and these orientations require different strategies and legal tools. Adopting a court-oriented strategy, participants could use tools such as strategic litigation, amicus curiae, or brief. While being oriented on policies, participants could use legislative initiatives, legislative lobbying, or petitions. Moreover, these strategies can be used in passive or strategic roles. Lisa Vanhala writes that the strategic role might be exercised as a third-party participant (interveners are not directly involved in the legal dispute of the case but volunteer to offer information) or a direct participant. Additionally, a direct participant might be a claimant or respondent/defendant, in L. Vanhala, *Making rights a reality?: Disability rights activists and legal mobilization*, Cambridge University Press 2010. As we see, actors who want to mobilize the law have a hard nut to crack, as there are many possible options for mobilizing the law. Also, combining different roles and forms of legal mobilization is possible in J. Handmaker, S. Taekema, *O Lungo Drom: Legal Mobilization as Counterpower*, *Journal of Human Rights Practice* 15.1 (2023), pp. 6-23.

should be the result of legal mobilization. Many authors have answered this question already while defining legal mobilization. The earliest definition of legal mobilization indicates that “the law is . . . mobilized when a desire or want is translated into a demand as an assertion of one's rights¹²”. Also, Gráinne de Búrca writes that legal mobilization focuses on using law and legal norms, instruments, channels, and institutions to advance rights in practice¹³. Connecting legal mobilization with rights is justified by past cases that led to the empowerment of discriminated groups. Legal mobilization has also been conducted in recent years to protect the climate and environment.¹⁴ However, since the rise of populism, we have observed the rise of another type of legal mobilization, which we can broadly name “right-wing.” De Búrca notices that many conservative and religious actors and their coalitions are advancing strategies against rights and “they are seeking to reverse or undo previous human rights developments and commitments.”¹⁵ Right-wing, non-state actors cause a “subversion” of liberal institutions, such as constitutional courts and constitutional litigation, which were designed to protect fundamental rights and freedoms but are now used to restrict them.

We cannot say that the attempts of right-wing and religious movements to reverse the law are something new, as they acted, for example, in response to the ruling of *Roe v. Wade* in the 1970s, a leading role was played by the clergy of the Catholic Church. Priests read letters in churches, imposing on the believers the right to life and the ban on birth control. Despite these actions, support for abortion (even among the Christians) was high. This is why they still conducted their educational campaigns and founded the National Right to Life Committee (NRLC) to provide resources to oppose state-level legislative reforms. What is more, the “NRLC built the case for maintaining the criminalization of abortion in terms that made no reference to sex. Instead, the NRLC placed the fetus at the center of the argument, emphasizing its right to life within a constitutional and human rights framework.”¹⁶ Another support for anti-abortion laws came from politics. Despite the Republicans opting for individual liberty, they noticed that playing with an abortion issue can mobilize religious and conservative voters. They

¹² F. K., Zemans, “*Legal Mobilization: The Neglected Role of the Law in the Political System.*” *American Political Science Review* 77, no. 3 (1983), pp. 690–703.

¹³ G. De Búrca, *Legal Mobilization for Human Rights*, Oxford University Press 2022, p. 6.

¹⁴ L. Vahnala, *Environmental Legal Mobilization*, *Annual Review of Law and Social Science*, Vol. 18:101-117.

¹⁵ G. De Búrca, K. G. Young, *The (mis)appropriation of human rights by the new global right: An introduction to the Symposium*, *International Journal of Constitutional Law*, 2023, 21.1, pp. 205-223.

¹⁶ L. Greenhouse, R. Siegl, *The Unfinished Story of Roe v. Wade...*, op.cit.

started to make deals with activists¹⁷ to gain political support and win the election. These relations led to changes in the Supreme Court's composition, with conservative judges promoted by republican presidents, which increased the chances of reversing *Roe v. Wade*. This tenacity and long-standing effort proved successful, as almost 50 years later, the Supreme Court overturned the case of *Roe v. Wade*. Over the years, non-state organizations have developed legal mobilization strategies that can be seen in similar organizations in other countries. As de Búrca noticed, "transnational moral conservative networks that act in concert in reshaping human rights appear to translate lessons from one place (such as the US culture wars) and inject them in another."¹⁸

We can observe successful right-wing mobilization in Poland, as it led to the "abortion ruling" of October 20, 2020, and made abortion legal in only two cases: rape and the threat to a woman's life/health. In most European countries, abortion is on request.¹⁹ Thereby, the abortion law in Poland is the most restrictive in Europe, although it was not so in the past. In the article I show that legal mobilization against abortion in Poland did not start with the Constitutional Court judgment. To understand the legal mobilization that led to the restriction of abortion, I outline the historical, political, and sociological context that influenced legal mobilization itself. Analyzing the Polish abortion case, I reconstruct the strategies of right-wing legal mobilization to limit the right to abortion in Poland.

THE PAST OF ABORTION LAWS IN POLAND

Let me return to the post-World War II era, the time of the Polish People's Republic. This period turned out to be the most revolutionary for the emancipation of women in all spheres of life. Generalizing, we may assume that women's rights were relatively high. At the legal level, the 1952 Polish People's Republic's Constitution introduced equal rights for women and men in all areas of state, political, economic, social, and cultural life.²⁰ This provision was reflected mainly in the job market, which was the key to women's equality. After the war, there

¹⁷ As, for example, Phyllis Schlafly.

¹⁸ G. De Búrca, K. G. Young, *op.cit.*

¹⁹ Center for Reproductive Rights, *European Abortion Laws. A Comparative Overview*, <https://reproductiverights.org/wp-content/uploads/2020/12/European-abortion-law-a-comparative-review.pdf> accessed 10 July 2023.

²⁰ Constitution of the Polish People's Republic, <https://libr.sejm.gov.pl/tek01/txt/kpol/e1952a-spis.html> accessed 10 February 2023.

was a massive activation of married women working; millions of women took advantage of new opportunities in education and work, improving their livelihoods and gaining economic independence.

Moreover, they gained a sense of personal value and empowerment through their work.²¹ Women employed in the new industrial factories also gained access to healthcare services, which significantly improved, especially for women from rural areas where medical care was almost nonexistent. They also received support in childcare; women were entitled to maternity benefits, family benefits for insured persons, and, since 1975, benefits from the alimony fund for single mothers. Moreover, working mothers could obtain a place in a nursery for their children²².

Women's health care was also improved by the liberalization of the abortion law in 1956.²³ The law provided the possibility of abortion in the case of difficult living conditions of the pregnant woman. The procedure was simplified: to have an abortion, it was sufficient to provide the written statement of a pregnant woman indicating that her life situation was difficult. Before introducing this act, illegal abortions concerned about 300,000 women a year, and almost 1/3 of them were taken to hospital in a severe condition after the abortion. This means that “underground abortions” were dangerous to women's lives. We can risk a thesis that the new law made abortions safe: in the 1970s and 1980s, about 300,000-500,000 legal abortions a year were performed in hospitals, which means that abortion was quite common, and society accepted it. Surveys of the time show that in 1959, 72% of respondents did not condemn abortion, even conservative women from rural areas and Catholics.²⁴ Poles considered abortion in medical categories rather than moral—as a medical procedure, restoration of monthly bleeding—and not a crime or a sin.²⁵ We can conclude that for Poles, the time of the Polish People's Republic was a revolution in their worldview, which lasted almost half a century. Migration to the cities was associated with loosening traditional moral and religious norms; allowing women to work and providing institutional support for motherhood led to

²¹ K. Stańczak-Wiślicz, P. Perkowski, M. Fidelis, B. Klich-Kluczevska, *Kobiety w Polsce 1945-1989*, Universitas 2021, pp. 106-143.

²² Ibidem.

²³ Ibidem, pp. 371-373.

²⁴ F. Adamski, *Rodzina nowego miasta: Kierunki przemian w strukturze społeczno-moralnej rodziny nowohuckiej*, Warszawa 1970, p. 127.

²⁵ K. Stańczak..., *op. cit.*, pp. 373-375.

loosening traditional gender and social roles. Significant social liberalization occurred, and thus, women became “accustomed” to their rights.²⁶

The departure from patriarchal social roles was never accepted by the Catholic Church and its circles, which regarded undermining the gender hierarchy as an attack on the family or religion. As early as the 1960s and 1970s, Catholic publicists postulated the introduction of pro-natalist policies, which could include stricter abortion laws. They also called for limiting professional work, especially for women of childbearing age.²⁷ These activities intensified after the change in the political system. The new political elites that came to power were conservative and took immediate action to tighten abortion laws. For example, the Solidarity movement played a significant role in the collapse of communism and openly expressed at its congress in 1990 the support for stricter abortion laws (despite the protests of women active in the movement).²⁸

It should come as no surprise that historical and sociological papers point to a significant worsening of the situation of women after the political transformation in 1989.²⁹ At the same time, the position of the Catholic Church was also strengthened, and it gained real influence; its involvement in supporting the democratic opposition during the socialist era in Poland gave this organization a large amount of moral capital and gratitude from the post-Solidarity elite after 1989.³⁰ As Polish political scientist Leszek Koczanowicz has mentioned, these elites were convinced that they could not go through transformative times without the support of the Catholic Church.³¹ They were eager to tap into this capital, gaining the moral legitimacy that emerging institutions of democratic society could not provide.³² The Catholic Church and its communities had been taking steps to tighten the law since the liberalization of abortion just after the transformation in 1989. Then, a group of Polish Catholic Social Union deputies submitted a draft bill on protecting unborn life. This was prepared mainly by experts from the

²⁶ Ibidem.

²⁷ Ibidem, p. 363

²⁸ Ibidem, p. 162.

²⁹ T. Renne (ed.), *Ana's Land: Sisterhood in Eastern Europe*, Routledge 2018.

³⁰ K. Kocemba, M. Stambulski, Gotowanie żaby. Prawicowy konstytucjonalizm a prawa kobiet w Polsce (Boiling Frog. Right-wing constitutionalism and women's rights in Poland) in: *Kobieta - ciąża - zarodek - dziecko. Prawne aspekty przerywania ciąży*, ed. M. Grzyb, K. Sękowska-Kozłowska, Wydawnictwo Uniwersytetu Jagiellońskiego 2023.

³¹ L. Koczanowicz, *Władza seks pieniądze*, Miesięcznik Odra 10/2020.

³² K. Kocemba, M. Stambulski, *Gotowanie...*, op. cit.

Episcopate of the Catholic Church. However, there was no social consent for tightening abortion;³³ thus, mass protests followed.

There was intense pressure from the Catholic Church to limit the possibility of performing abortions. In 1993 parliament passed a softened version of the law allowing abortion in three cases (rape, the threat to a woman's life/health, and the high probability of fetal defects) called “abortion compromise,” *de facto* without the acceptance of all political forces. At the same time, the bill removed the possibility of abortion on the grounds of difficult life situations, which had been possible since 1956. The church's position was so strong and influential that no political forces wanted to challenge it, forcing a moral consensus in the 1990s. This gave the Catholic Church almost everything it demanded: restrictions on abortion, religious education in schools, and economic privileges.³⁴

Three years later, in 1996, the democratically elected parliament again extended the possibility of abortion, but the ruling of the Constitutional Court in 1997 finally repealed it.³⁵ “This decision linked the concept of the rule of law to the fundamentally Catholic principle of protecting life from conception. At the same time, this ruling defined that the fetus already has a complete, constitutionally protected legal subjectivity that is equal and independent of a woman's will. It also consolidated the perception of the social role of women through the prism of being mothers.”³⁶

LEGISLATIVE INITIATIVE “STOP ABORTION”

After the Polish Constitutional Court’s judgment in 1997, abortion became less of a burning issue in Poland for about one and a half decades. Attempts to tighten it were

³³ CBOS, *Prawo do aborcji w opinii społeczeństwa*, https://www.cbos.pl/SPISKOM.POL/1991/K_035_91.PDF, accessed 10 February 2023.

³⁴ L. Koczanowicz, *op. cit.*; K. Kocemba, M. Stambulski, *Divine Decision-Making: Right-Wing Constitutionalism in Poland*, VerfBlog, 2020/11/09, <https://verfassungsblog.de/divine-decision-making/>, DOI: 10.17176/20201109-235704-0.

³⁵ Polish Constitutional Court Judgment of 28 May 1997, Case K 26/96.

³⁶ K. Kocemba, M. Stambulski, *Divine Decision-Making: Right-Wing Constitutionalism in Poland*, VerfBlog, 2020/11/09, <https://verfassungsblog.de/divine-decision-making/>, DOI: 10.17176/20201109-235704-0.

insignificant,³⁷ and there was no political will to do so. Between 2011 and 2023, anti-choice organizations took the legislative initiatives³⁸ restricting or banning abortion eight times, in the years 2011,³⁹ 2013,⁴⁰ 2015,⁴¹ 2016,⁴² 2018,⁴³ 2019,⁴⁴ 2021,⁴⁵ and 2023.⁴⁶ The initiatives were named “Stop Abortion”. We can understand “Stop Abortion” as a collective action of anti-choice organizations in Poland, although support by organizations and content varied from project to project. The common denominator was the removal from the bill of the premise allowing the termination of pregnancy when prenatal testing or other medical indications point to a high probability of severe and irreversible fetal disability. The projects also assumed that a

³⁷ S. Szolucha, R. Rzeplińska, *Kalendarium zmian w prawie o warunkach przerwania ciąży*, <https://mamprawowiedziec.pl/czytelnia/artykul/kalendarium-zmian-w-prawie-o-warunkach-przerwania-ciazy>, accessed 10 February 2023.

³⁸ The legislative initiative is granted by the Constitution to a group of at least 100,000 citizens who have the right to vote.

³⁹ Sejm Rzeczypospolitej Polskiej VI Kadencja, *Druk nr 4222*, [https://orka.sejm.gov.pl/Druki6ka.nsf/0/23E6F9AA70A2F2DFC125789B004349F5/\\$file/4222.pdf](https://orka.sejm.gov.pl/Druki6ka.nsf/0/23E6F9AA70A2F2DFC125789B004349F5/$file/4222.pdf), accessed 10 February 2023.

⁴⁰ Sejm Rzeczypospolitej Polskiej VII Kadencja, *Druk nr 1654*, <https://orka.sejm.gov.pl/Druki7ka.nsf/0/5821FF7D4C575A91C1257BD400566FA1/%24File/1654.pdf>, accessed 10 February 2023.

⁴¹ Sejm Rzeczypospolitej Polskiej VII Kadencja, *Druk nr 3806*, <https://orka.sejm.gov.pl/Druki7ka.nsf/0/97F1E20915CE7B69C1257E9A0034AE0A/%24File/3806.pdf>, accessed 10 February 2023.

⁴² Sejm Rzeczypospolitej Polskiej VIII Kadencja, *Druk nr 784*, <https://orka.sejm.gov.pl/Druki8ka.nsf/0/CDB8B631C2EFE830C1258014002A4E47/%24File/784.pdf>, accessed 10 February 2023.

⁴³ Sejm Rzeczypospolitej Polskiej VIII Kadencja, *Druk nr 2146*, <https://orka.sejm.gov.pl/Druki8ka.nsf/0/F18A213C98C5BDC0C125820B005793D9/%24File/2146.pdf>, accessed 10 February 2023.

⁴⁴ Sejm Rzeczypospolitej Polskiej IX Kadencja, *Druk nr 36*, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/BCD189DEECEDC8ECC12584BA0040FA02/%24File/36.pdf>, accessed 10 February 2023.

⁴⁵ Sejm Rzeczypospolitej Polskiej IX Kadencja, *Druk nr 1693*, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/711C9A67B618B3D1C125877D003AA3F8/%24File/1693.pdf>, accessed 10 February 2023.

⁴⁶ Sejm Rzeczypospolitej Polskiej IX Kadencja, *Druk nr 3008*, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/9B0504DC82A06B41C125894F003874AA/%24File/3008.pdf>, accessed 10 February 2023.

child is a human being from conception to adulthood. They emphasized language and replaced the word “woman” with the word “mother” and the word “fetus” with “conceived child.” Some projects assumed the removal of the abortion bill and equated abortion with murder, which would mean a complete abortion ban. Assuming that abortion is murder, some projects then argued for an increase in the penalty for abortions (even life imprisonment) and punishing pregnant women for abortion (including pharmacological abortion), although with the possibility for the court to waive the penalty. Moreover, imprisonment would apply to involuntary manslaughter of a “conceived child.” In the case of miscarriage (failure to take the required precautions), a court could waive the punishment for the woman.

Every time, these projects met society's resistance, and the bill's drafts did not proceed positively through parliament in the first vote until 2015. The breakthrough came after a change in power when the right-wing and populist Law and Justice party gained a majority in parliament in 2015. Anti-choice organizations, rather marginalized by politics before, started to have a hope that their legislative aims would finally be realized. The opportunity came in 2016. The activists themselves point out⁴⁷ that the 2016 “Stop Abortion” project was the result of several months of consultations coordinated by the Krajowy Ośrodek Duszpasterstwa Rodzin [National Center for Family Pastoral Care].⁴⁸ The Center is a special unit of the Catholic Church, and its members are primarily catholic priests and bishops. This church-based organization is invited to participate in consultation with all organizations and individuals involved in the fight against abortion in Poland.⁴⁹ All these organizations joined forces to fight for legal restrictions on abortion by collecting citizen signatures to support their projects. At the same time, they also conducted public campaigns and were visible in the public sphere, for example, through billboard presentations of dead fetuses. This initiative also had the support of some Catholic Church officials as it was fully compliant with its teaching.⁵⁰

⁴⁷ J. Banasiuk, A. Stępkowski, Obywatelski projekt „Stop Aborcji”— prawne i doktrynalne uzasadnienie inicjatywy oraz ocena jej przebiegu, *Teologia i moralność* 2017, 12.2 (22), pp. 179-190.

⁴⁸ KODR, *O nas*, <https://kodr.pl/o-nas/>, accessed 10 February 2023.

⁴⁹ The most well-known participants are: Ordo Iuris, Stowarzyszenie Kultury Chrześcijańskiej im. ks. Piotra Skargi, Fundacji PRO – Prawo do życia, Kaja Godek, CitizenGO – a petition-generating platform founded by radical organizations, Human Life International, Polska Federacja Ruchów Obrony Życia, Fundacja Mama i Tata, Fundacji Życie, Centrum Wspierania Inicjatyw dla Życia i Rodziny, Fundacji Nazaret, in J. Banasiuk, A. Stępkowski, *op.cit.*

⁵⁰ Fundacja PRO, *Arcybiskup Andrzej Dzięga błogosławi inicjatywę Stop aborcji*, <https://stronazycia.pl/arcbiskup-andrzej-dziega-blogoslawni-inicjatywe-stop-aborcji/>, accessed 10 February 2023.

The foundation, Ordo Iuris, prepared the 2016 draft.⁵¹ The organization describes itself as a legal foundation with expertise such as family and marriage, freedom of conscience, or protection of life.⁵² Reviewing their cases, we find that the organization conducts actions against the LGBT community and reproduction, including abortion, in vitro, or the conscience clause. The aspirations of this foundation are high; their member Aleksander Stępkowski was appointed undersecretary of state in charge of treaty legal affairs and human rights at the Ministry of Foreign Affairs in 2015,⁵³ became a judge of the Polish Supreme Court in 2018,⁵⁴ and in 2020 its spokesman. He also ran as a judge at the European Court of Human Rights but was rejected.⁵⁵

The bill's draft tallies with the draft prepared by the Polish Catholic Bishops' Committee for Families in 1989⁵⁶ (declined), banning abortion and introducing the punishment of women for their own abortions.⁵⁷ As anti-choice activists point out, representatives of the ruling party were also consulted on the draft, who assured them that they would take further steps and provide funding for educational programs. However, they later retreated from these arrangements.⁵⁸ Banning abortion initiatives was presented mainly by the NGO "Fundacja PRO. Prawo do życia" [Foundation Pro. Right to Life], especially by its most well-known member, Kaja Godek, an anti-abortion activist and mother of a down-syndrome son who became the face of anti-abortion mobilization. She founded a further organization, Życie i Rodzina [Life and Family],⁵⁹ and was also a member of the most fundamentalist party in the

⁵¹ Ordo Iuris, *Komitet Inicjatywy Ustawodawczej Stop Aborcji zarejestrowany*, <https://ordoiuris.pl/ochrona-zycia/komitet-inicjatywy-ustawodawczej-stop-aborcji-zarejestrowany>, accessed 10 February 2023.

⁵² Ordo Iuris, *Who We Are?*, <https://en.ordoiuris.pl/who-we-are>, accessed 10 February 2023.

⁵³ <https://ordoiuris.pl/dzialalnosc-miedzynarodowa/profesor-aleksander-stepkowski-podsekretarzem-stanu-w-ministerstwie>

⁵⁴ A. Mierzyńska, *Podboje Ordo Iuris. To rozpędzona maszyna polityczna fundamentalistów*, <https://oko.press/podboje-ordo-iuris>, accessed 10 February 2023.

⁵⁵ A. Wójcik, D. Sitnicka, *Polscy kandydaci na sędziów Trybunału w Strasburgu odrzuceni. Porażka założyciela Ordo Iuris*, <https://oko.press/polscy-kandydaci-na-sedziow-trybunalu-w-strasburgu-odrzuceni-porazka-zalozyciela-ordo-iuris>, accessed 18 May 2023.

⁵⁶ J. Banasiuk, A. Stępkowski, *op. cit.*

⁵⁷ Ordo Iuris, *Inicjatywa Ustawodawcza Stop Aborcji jako właściwa realizacja postulatu niekarania*, <https://ordoiuris.pl/ochrona-zycia/inicjatywa-obywatelska-stop-aborcji-jako-wlasciwa-realizacja-postulatu-niekarania>, accessed 10 February 2023.

⁵⁸ J. Banasiuk, A. Stępkowski, *op. cit.*

⁵⁹ Ratuj życie, <https://ratujzycie.pl>, accessed 10 August 2023.

Polish parliament (after elections in 2019), “Konfederacja,” the program of which is “Poland without Jews, homosexuals, abortion, taxes, and the European Union!”. Some of its members supported Russia, including in the war in Ukraine. She eventually left the party's ranks over disagreements over seats on electoral lists.⁶⁰

In 2016, the bill Stop Abortion, with provisions allowing for the punishment of women for abortion, was approved by the Sejm (parliament) in the first reading and forwarded for further work.⁶¹ The introduction of this project seemed to be the most feasible to date. Some of the Polish bishops called on parliament to ban abortion; the leader of the populist party, Jarosław Kaczyński, said he would support such a bill.⁶² At the time, all Law and Justice deputies present (230) voted in favor of continuing with the project.⁶³

This step provoked society's resistance and mass protests, called the “black protests.” The protests were first held in major Polish cities and on the Internet. Thanks to the activity and organization of society through Facebook, on October 3, 2016, hundreds of thousands of people protested in 147 Polish cities, the largest protests in the country since 1989.⁶⁴ In the second reading, parliament rejected the bill's draft with 352 votes, including 186 votes from the Law and Justice Party.⁶⁵ As anti-abortion activists claim, the Catholic Information Agency did not fully support the project, bishops did not support punishing women for an abortion, and politicians treated it as an excuse, saying the episcopate did not tell them to vote so.⁶⁶

⁶⁰ Rzeczpospolita, *Godek: Konfederacja miała być odważna. Stracili fason*, <https://www.rp.pl/polityka/art1187511-godek-konfederacja-miala-byc-odwazna-stracili-fason>, accessed 10 August 2023.

⁶¹ At the same time, the parliament rejected the draft of the "Save the Women" committee, which liberalized abortion, allowing abortions up to 12 weeks without additional conditions.

⁶² K. Suchanow, *To jest wojna. Kobiety, fundamentalści i nowe średniowiecze*, Wydawnictwo Agora 2020.

⁶³ Sejm Rzeczypospolitej Polskiej VIII Kadencja, *Głosowanie nad przyjęciem wniosku o odrzucenie w pierwszym czytaniu projektu ustawy zawartego w druku nr 784*, <https://www.sejm.gov.pl/sejm8.nsf/agent.xsp?symbol=glosowania&nrkadencji=8&nrposiedzenia=26&nrglosowania=15>, accessed 18 May 2023.

⁶⁴ K. Suchanow, *op. cit.*

⁶⁵ Sejm Rzeczypospolitej Polskiej VIII Kadencja, *Głosowanie nad przyjęciem wniosku komisji o odrzucenie projektu ustawy zawartego w druku nr 784*, <https://www.sejm.gov.pl/Sejm8.nsf/agent.xsp?symbol=glosowania&nrkadencji=8&nrposiedzenia=27&nrglosowania=12>, accessed 10 August 2023.

⁶⁶ J. Banasiuk, A. Stępkowski, *op.cit.*

Presumably, this rejection was the result of the enormous public resistance. Although the legislative initiative was a failure, it opened Pandora's box.

THE CONSTITUTIONAL CASE IN TIMES OF POPULISM

The next step was the start of a case on abortion in the Constitutional Court by a group of 118 right-wing MPs.⁶⁷ Before I describe this case, I must explain this highly questionable step: why did parliament not decide to proceed with the bill? Why was it necessary to proceed with the change in the abortion law through the Constitutional Court if the populists were in power? There is no doubt that in 2016 both sides of the dispute flared up. Abortion had once again become a burning issue, and both black protest participants and right-wing circles (Catholic and fundamentalist organizations and the right-wing part of parliament) were unwilling to let go of the abortion issue, especially since the populists in power were eager to make these changes. The populism that dominates in the region of Central and Eastern Europe is often referred to as right-wing. According to Werner Müller, populism is moralistic, and populists see the nation as morally pure and fully united.⁶⁸ The morality that populists embrace is right-wing because it is ultra-conservative and religious. Part of the right-wing populist worldview is patriarchal gender norms⁶⁹ and a Christian, traditional vision of the role of women. This vision and actions taken towards women's rights were part of the culture wars and the politics of identity conducted by the Law and Justice Party.⁷⁰

The flashpoint seems to have been the term “gender” used in the Istanbul (Anti-Violence) Convention ratified just before the Law and Justice party came to power. Right-wing communities led by the Catholic Church were outraged.⁷¹ We can treat the attack on the convention and the unleashing of the culture war as part of an election campaign (nota bene, successful). “Ultraconservative actors frame these developments regarding the decline of

⁶⁷ Despite parliament's composition changing after elections in 2019, at least 30 of these 118 MPs (Law and Justice Party members), voted against the “Stop abortion” bill in 2016.

⁶⁸ J. W. Müller, *What is populism?*, University of Pennsylvania Press 2016.

⁶⁹ A. Graff, E. Korolczuk, *Anti-Gender Politics in the Populist Moment*, Taylor & Francis 2021.

⁷⁰ Culture wars: social divisions and disputes due to the different values. Cultural disputes overlap with political divisions and voters vote not according to their interests but according to their values. In: L. Koczanowicz, *op.cit.*

⁷¹ K. Kocemba, Opór wobec wdrażania międzynarodowych rozwiązań prawnych na przykładzie ratyfikacji *Konwencji Stambulskiej*, In: *Prawo jako narzędzie kształtowania społeczeństwa* / ed. I. Barwicka-Tylek, P. Eckhardt, J. Ptak, M. Wróbel, Kraków: Wydawnictwo Kasper, 2016, pp. 21-38.

Christian civilization: gender equality is presented as a path to degeneration and demographic decline, a theme that occasionally takes on an explicit racist undertone.⁷² Maciej Duda, in his book on the Polish wars on “gender,” notes that commentators equate terms such as gender ideology, cohabitation relationship, in vitro, and equality policy and understand them all as the popularization of same-sex marriages.⁷³ These campaigns against “gender ideology” included right-wing movements, which started to work against the anti-violence convention or LGBT rights. Reproductive rights were also under the umbrella of “gender”. This strategy advocates the defense of Catholicism and national tradition. It promotes an anti-communist and anti-leftist stance that expressed itself in an attack on the reproductive rights of women and sexual minorities⁷⁴. It seems that from the populists' perspective, banning abortion itself was not their goal, but winning the battle in the culture war was. By restricting abortion, the populists could maintain the support of the Catholic Church and fundamentalist organizations while paying the debt for mobilizing the electorate.

In the heated atmosphere and lack of support for tightening the abortion law (both in the country and in parliament), making such change was difficult. Whether it was a deliberate action or accidental, the constitutional crisis proved to be a rescue and a solution for changing abortion laws. In 2015, just before the Law and Justice Party came to power, parliament chose five constitutional court judges. Two of them would start their mandate after the parliamentary elections, which were later won by the Law and Justice Party. Members of the Law and Justice Party questioned the constitutionality of parliament's action; their president did not take the oath of office, blocked by the five elected judges. The Law and Justice Party passed a new law through parliament, which allowed them to make invalid the previous choice of judges. After this move, the party was thus able to pack the court with its own judges, which it did.⁷⁵

Knowing society's resistance, the Law and Justice Party decided to change the abortion laws, although not through parliament, where they would not have enough votes. This would have caused another protest and would be judged negatively in the next election. At the same time, there was no social support for the abortion ban. The option was to use the Constitutional

⁷² A. Graff, E. Korolczuk, ..., *op. cit.*

⁷³ M. Duda, *Dogmat Płci. Polska wojna z gender*, Gdańsk 2016, p. 86.

⁷⁴ L. Koczanowicz, *op.cit.*

⁷⁵ More about the constitutional crisis: W. Sadurski, *Poland's Constitutional Breakdown*, Oxford University Press 2019, pp. 1-34.

Court, where the Law and Justice Party chose almost all the judges. The word “use” is most appropriate since members of parliament filed a constitutional complaint.

In 2019, a group of 118 right-wing MPs submitted a request to the Constitutional Court to examine the constitutionality of abortion laws.⁷⁶ The applicants argued that the law legalizes “eugenic practices” against the “child not yet born,” thus denying respect and protection of human dignity. In addition, they pointed out that the law applies “prohibited direct discrimination” because the life of a “child” depends on its health status, and life is not subject to value according to any criteria. According to them, termination of pregnancy is possible without sufficient justification by indicating the protection of another constitutionally protected value. At the same time, they pointed out that the protection of conceived life is more important than a woman's freedom and the protection of her psychological well-being. The argument was supported by the Speaker of the Sejm (parliament), the Attorney General (both being the members of the governing coalition), and the Ombudsman for Children (chosen by the populist parliament), who submitted an *amici curiae* opinion in which they expressed support for the motion of the group of deputies and the reasoning indicated in it. Attorney General Zbigniew Ziobro stressed that: “The interest of the woman cannot *in abstracto* be considered to stand higher in the hierarchy of constitutional values than the protection of the life of the *nasciturus*.” In addition, he believed too many provisions were vague and imprecise, such as “severe and irreversible impairment of the fetus,” although the impairment does not threaten its life. Therefore, aborting a pregnancy due to fetal defects should be unconstitutional and, consequently, illegal.

In the same case, fundamentalist organization Ordo Iuris (hereafter: OI) decided to write a letter from their *amicus curiae*⁷⁷ to the Constitutional Court in an “abortion case.” Their main

⁷⁶ B. Kocejko, D. Sitnicka, S. Klauziński, *Lista hanby. Oto posłowie PiS i Konfederacji, którzy doprowadzili do zakazu aborcji w Polsce*, <https://oko.press/lista-hanby-oto-poslowie-pis-i-konfederacji-ktorzy-doprowadzili-do-zakazu-aborcji-w-polsce>, accessed 10 February 2023.

⁷⁷ Their *amicus curiae* was supported by: prof. dr Manfred Spieker, MaterCare Europe, Slovakia Christiana, Association for Life and Family, HFI, Federação Portuguesa pela Vida, C-Fam, Pro Vita & Familgia, Human Dignity Center, American Association of Pro-Life Obstetricians and Gynecologists, Family Watch International, International Organization for the Family, Crossroads Pro-Life, Människovärde, In the name of the family, Free Society Institute, Femina Europa, Campagne Quebec - Vie, Catholic Voice, CENAP, Culture of Life Africa, European Life Network, National Association of Catholic Families (NACF), Society for the Protection of Unborn Children, Population Research Institute, Voto Catolico Colombia, Vigilare Foundation, Personshood Alliance,

argument is based on the recognition that a “fetus” is not a fetus, but a “conceived child,” a human being from the moment of conception. “One is human to the same degree before and after birth. (...) Consequently, it must be emphasized that a human being and his dignity appear with the moment of conception.” The word “fetus” is dehumanizing, according to OI. They stress that the name change is justified because of the existence in the inheritance law of the use of the word *nasciturus*, which is a conceived but an unborn child who can become an heir if born alive. By changing the statutory language, the meaning changes. Starting from the premise that fetus = child and child = human being, the OI equates defective fetuses to disabled persons and writes about their constitutional protection and even the privileged position afforded them by “special care by public authorities.” For OI, limiting the protection of damaged fetuses' lives is “a manifestation of prohibited direct discrimination.” According to the OI, no other constitutional value coincides with the protection of life. Therefore, according to them, there is no conflict of values except in the case of “immediate danger to the life of the mother.” According to them, abortion, which they equate with murder, is not permissible because of the lowering of the mother's standard of living due to giving birth to a disabled child, or for the sake of her health (which they call mental comfort, not health). OI criticizes the term “high probability” used in the law, which does not imply certainty of severe and irreversible disability or incurable life-threatening illness. Moreover, the premise of severe and irreversible impairment of the *nasciturus* does not necessarily entail a risk to his life. The OI also criticizes public opinion, which questions “the legitimacy of the protection of human life from conception” and speaks of a “right to abortion.” They use primarily legal arguments (once citing Catholic social teaching). In addition, they refer to previous Constitutional Court rulings, especially to the argumentation of the limiting abortion ruling from 1997.⁷⁸

Two external (American) organizations also wrote *amicus curiae*. ADF International describes itself as “the world's largest legal organization committed to protecting religious freedom, free speech, the sanctity of life, marriage, and family, and parental rights.”⁷⁹ According to ADF, under international and European law, the Republic of Poland is obliged to guarantee adequate protection of the unborn disabled child and his life. Moreover, the unborn

Personshood Education, Precious Life, Cleveland Right to Life; Polish Constitutional Court Judgment of 22 October 2020, Case K 1/20.

⁷⁸ Polish Constitutional Court Judgment of 28 May 1997, Case K 26/96.

⁷⁹ Alliance Defending Freedom, *Request Legal Help*, <https://adflegal.org/request-legal-help>, accessed 10 February 2023.

disabled child is a holder of rights, particularly the right to life, which the challenged legislation cannot undermine. The unborn disabled child also has the right to reach the highest attainable level of health. According to ADF, the contested regulations violate the prohibition of child selection and the prohibition of discrimination against persons with disabilities. The European Center for Law and Justice (ECLJ)⁸⁰ was the second organization to send its opinion. This organization was founded by lawyer Jay Sekulow, an adviser to Trump, who has represented conservative, religious, and anti-abortion groups for years. In *amicus curiae*, the ECLJ pointed out that the human rights system does not create any right to terminate a pregnancy and prohibits abortions on eugenic grounds, both in the European and conventional United Nations systems.

From the opposing side, there was also a letter from left-wing deputies against restricting abortion. The Ombudsman did not report participation in the proceedings. Additionally, two right-wing organizations have expressed their views; Polskie Stowarzyszenie Obrońców Życia [The Polish Association of Defenders of Life] called for restrictions on abortion, and Centrum Życia i Rodziny [The Center for Life and Family] expressed concern about attempts at pressure from leftist circles (despite there being only one letter from them).

In my interview with the assistants to Constitutional Court Judges, I asked about the status and importance of *amici curiae*. In the Constitutional Court, the *amici curiae* are taken seriously and sent to all the ruling judges as a part of the analytical material for the case, which cannot be ignored when analyzing the case. Looking at the famous “abortion” ruling of October 22, 2020 (K1/20),⁸¹ we may be sure that *amicus curiae* were not ignored. The Constitutional Court declared that the provision allowing termination of pregnancy in the case of a probability of a fetus's defects or life-threatening illness is unconstitutional. After studying the Constitutional Court ruling and Ordo Iuris's *amicus curiae*, what is evident is the heavy inspiration of the *amicus curiae*. For example, in duplication of argumentation regarding using the term child instead of fetus, the Court first argued that the fetus is only a medical/biological name for the child and thus equated the meaning of the term fetus and the term child. I must also point out that what is evident in the opinion is not biblical teachings but legal language, citing international human rights acts and the older Constitutional Court's rulings.

ORDO IURIS LITIGATIONS

⁸⁰ European Centre for Law and Justice, <https://eclj.org/>, accessed 10 February 2023.

⁸¹ Polish Constitutional Court Judgment of 22 October 2020, Case K 1/20.

Despite the Constitutional Court's decision to limit abortion, Ordo Iuris is still involved in the fight to restrict abortion on many levels. Their legal team often represents parties before the courts. We can read their mission on their website: “Ordo Iuris has intervened as a third party in Polish and international court and administrative proceedings, including before the Polish Supreme Court, the European Committee of Social Rights, and the European Court of Human Rights.” We can divide their litigations into two types. The first is litigation against abortion activists. Ordo Iuris filed a criminal complaint against a protest leader and thus initiated proceedings.⁸² They alleged the leader was “causing an epidemic threat and insulting police officers.” This organization also joined proceedings as a social organization, for example, in the case of an activist accused of assisting in an abortion using drugs.⁸³ In addition, Ordo Iuris was involved in the case of a woman denied a legal hospital abortion in 2014 on conscience clause grounds.⁸⁴ The case is pending at the European Court of Human Rights, and Ordo Iuris has sent an *amicus curiae*.

The second type is litigation in defense of anti-abortion activists. Ordo Iuris indicated that by 2021, they had conducted more than 100 litigations,⁸⁵ including cases conducted before the Polish Supreme Court and with the participation of the General Prosecutor. The subject of these court cases is the public exhibition of dramatic photographs of deformed fetuses, usually covered in blood. According to Ordo Iuris, the photos presented “the consequences of abortion” and operated within the limits of “freedom of expression” provided by the Polish Constitution and the European Convention on Human Rights. On several occasions, the lower courts have held that displaying obscene posters or drawings is a violation. However, just as often, the

⁸² Ordo Iuris, *Jest akt oskarżenia przeciwko Marcie L.*, <https://ordoiuris.pl/ochrona-zycia/jest-akt-oskarzenia-przeciwko-marcie-l>, accessed 10 February 2023.

⁸³ Ordo Iuris, *Kolejna rozprawa przeciwko Justynie Wydrzyńskiej. Świadkowie ponownie się nie stawili*, <https://ordoiuris.pl/ochrona-zycia/kolejna-rozprawa-przeciwko-justynie-wydrzynskiej-swiadkowie-ponownie-sie-nie-stawili>, accessed 10 February 2023.

⁸⁴ Ordo Iuris, *Pro. Chazan odmówił jej aborcji, wniosła skargę do Trybunału w Strasburgu. Ordo Iuris interweniuje*, <https://ordoiuris.pl/ochrona-zycia/prof-chazan-odmowil-jej-aborcji-wniosla-skarge-do-trybunalu-w-strasburgu-ordo-iuris>, accessed 10 February 2023.

⁸⁵ Ordo Iuris, *Obrońcy życia zwyciężyli przed Sądem Najwyższym. Finał ponad 1000 postępowań*, <https://ordoiuris.pl/ochrona-zycia/obroncy-zycia-zwyciezyl-przed-sadem-najwyzszym-final-ponad-100-postepowan>, accessed 10 February 2023.

Attorney General joined the case.⁸⁶ Then, the Supreme Court (partly packed by the government party) duplicated Ordo Iuris' arguments and ended the case.

Ordo Iuris does not seem to be settling down.⁸⁷ In May 2022, their activity focused on identifying potential abortions performed in Poland on Ukrainian refugees raped by Russian soldiers during the war. Abortion in such a case is legal. Nonetheless, Ordo Iuris wanted to be sure that there was a prosecutorial investigation into each termination of the pregnancy as a result of a rape, which is why they have applied to 370 hospitals for access to public information on the citizenship of patients who had abortions.

RIGHT-WING ACTORS AND THEIR CONNECTIONS

Looking at the non-state actors, we can see that the most active in limiting abortion in Poland is the Ordo Iuris Foundation. Their strategy was long-term, multidimensional, and finally successful as their *amicus curiae* overlapped with the Constitutional Court judgment, and abortion in Poland was vastly limited. They used all their resources in this case. By acting in the committee “Stop Abortion,” they prepared the ground for other actions. Proceeding with this project opened a Pandora's box and activated debates. This led to the political interests of some groups. Despite the project not being accepted by parliament, its appearance let other forces put pressure on right-wing MPs, strengthened by voices in the Catholic Church, pushing to limit abortion and supporting all the actions against abortion, and playing with their support, which could influence the election results. The previous constitutional abortion limitation and political environment, including the participation in culture wars and disruption of the tripartite division of power (court-packing or general prosecutor status), provided the perfect ground for such actions. The crucial puzzle in this mobilization was also the influence of the external network of right-wing organizations.

⁸⁶ Ordo Iuris, *Czwarty wyrok Sądu Najwyższego Uniewinniający Działacza Pro-Life*, <https://ordoiuris.pl/ochrona-zycia/czwarty-wyrok-sadu-najwyzszego-uniewinniajacy-dzialacza-pro-life>, accessed 10 February 2023; Ordo Iuris, *Trzeci wyrok Sądu Najwyższego potwierdzający prawo do pokazywania skutków aborcji*, <https://ordoiuris.pl/ochrona-zycia/trzeci-wyrok-sadu-najwyzszego-potwierdzajacy-prawo-do-pokazywania-skutkow-aborcji>, accessed 10 February 2023.

⁸⁷ Ordo Iuris, *Czy polskie szpitale przestrzegają prawa. Pierwsze wnioski z monitoringu Ordo Iuris*, <https://ordoiuris.pl/ochrona-zycia/czy-polskie-szpital-przestrzegaja-prawa-pierwsze-wnioski-z-monitoringu-ordo-iuris>, accessed 10 February 2023.

As I mentioned, right-wing legal mobilization in Poland is not an exception because similar events occurred in different countries. I claim these organizations have ideological connections and function in a network that allows them to exchange know-how and strategies for legal mobilization. The leading organization of Polish legal mobilization, Ordo Iuris, was founded by the Father Piotr Skarga Christian Culture Association and Father Piotr Skarga Institute for Social and Religious Education. These are Polish branches of the ultraconservative Brazilian sect TFP, Tradição, Família e Propriedade, being against abortion, contraception, divorces, and same-sex relations.⁸⁸ Thanks to their support, the right-wing organizations developed in Australia, Estonia, Croatia, Slovakia, Lithuania, Netherlands, and Ecuador, and partially in Canada and South Africa.⁸⁹ Ordo Iuris itself openly lists its partner organizations on its website.⁹⁰



Figure 1: Ordo Iuris website screenshot, accessed 25 February 2023.

⁸⁸ K. Suchanow, *op.cit.*

⁸⁹ J. Dauksza, A. Gilewska, K. Szczygieł, A. Lebel, J. Dal Piva, *Założyciele Ordo Iuris finansują milionami konserwatywną krucjatę na świecie*, <https://wiadomosci.onet.pl/swiat/zalozyciele-ordo-iuris-finansuja-milionami-konserwatywna-krucjate-na-swiecie/fhh4rqw>, accessed 25 February 2023.

⁹⁰ Ordo Iuris, *Kim jesteśmy*, <https://ordoiuris.pl/kim-jestesmy>, accessed 10 February 2023.

The first organization mentioned is the European Center for Law and Justice (ECLJ),⁹¹ which sent an *amicus curiae* to the Polish Constitutional Court. They describe themselves as an international, non-governmental organization dedicated to promoting and protecting human rights in Europe and worldwide, addressing legal, legislative, and cultural issues by conducting effective lobbying, education, and litigation activities. ECLJ advocates for protecting religious freedoms and human dignity before the European Court of Human Rights and through other mechanisms provided by the UN, the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), and others. Their website has a wealth of material on abortion.

Another organization is the US-based C-Fam,⁹² the Center for Family & Human Rights, which is tasked with monitoring and influencing the social policies of the UN and other international institutions. As they write, they are focused “on restoring a proper understanding of international law.” Their mission is to defend life and the family before international institutions.

The other organizations are located in Central and Eastern European countries. In Hungary, Alapjogokért Központ,⁹³ the Center for Fundamental Rights, whose goal is to “preserve national identity, sovereignty, and Christian social traditions” and act as a counter to overgrown human rights-fundamentalism and political correctness; their activities are to be primarily “scientific,” not legal. Another two organizations are in Slovakia, “Nadácia Slovakia Christiana,” inspired by the international movement TFP (Traditio, Familia, Proprietas). Its purpose is to protect the traditions of Christian civilization, the family, and private property. The second Slovakian NGO is the Human Rights and Family Policy Institute,⁹⁴ (Inštitút Pre Ľudské Práva a Rodinnú Politiku). Its main goals are the promotion and protection of fundamental human rights and freedoms, the promotion and protection of the family based on marriage between one man and one woman, the protection of religious freedom, freedom of conscience, and the rights of parents to raise their children. To achieve their goals, the organization, among other things, influences the legislative process, acts in litigation, and influences public opinion. Ordo Iuris also cooperates in Croatia, where it has a branch of Ordo Iuris, and works with the organization “U Ime Obitelji,”⁹⁵ the association “In the name of the

⁹¹ European Centre for Law and Justice, *Petitions*, <https://eclj.org/petitions>, accessed 10 February 2023.

⁹² C-Fam, <https://c-fam.org/about-us/mission-statement/>, accessed 10 February 2023.

⁹³ Alapjogokért Központ, <https://alapjogokert.hu/rolunk>, accessed 10 February 2023.

⁹⁴ Inštitút Pre Ľudské Práva a Rodinnú Politiku, <https://www.hfi.sk>, accessed 10 February 2023.

⁹⁵ U Ime Obitelji, <https://uimeobitelji.net>, accessed 10 February 2023.

family,” with similar goals, which it describes as the promotion of “marriage and family.” They are also active in the field of abortion as, in particular, is their leader, Željka Markić. They organized, for example, marches “for life,” which mobilized the case of abortion before the Croatian Constitutional Court. The largest number of organizations working with Ordo Iuris are located in Bulgaria, which also has a twist on the law, and the Constitutional Court there declared the Anti-Violence Convention unconstitutional. The first, Freedom For All,⁹⁶ provides legal assistance in cases involving freedom of conscience, religion, speech, family values, freedom of education, etc. It emphasizes Christian values. The second organization, Parents United for Children, Род,⁹⁷ the Association “Rod International,” aims to maintain non-interference in personal and family life, especially “neoliberal ideologies. The last of these, Association Society and Values,⁹⁸ has the mission “to educate, motivate and mobilize more pro-active citizens to uphold and defend values and policies that protect the human dignity and freedom, marriage and family at a National and European level, so we can see healthy families and societies.”

Pro-Choice activist Klementyna Suchanow, in her book *This is War*, argues that her journalistic investigation showed that Ordo Iuris had also collaborated with Agenda Europe, a secret venture of anti-abortion and anti-LGBTIQ groups that was spawned by international lobbyists in 2013. Agenda Europe aims to carry out ultra-conservative changes to the law in countries in the European Union.⁹⁹ Neil Datta from the European Parliamentary Forum for Sexual and Reproductive Rights states that the activities of Agenda Europe focus on three elements: a blog to share information, annual meetings (summits), and a joint manifesto, “Restoring Natural Order.”¹⁰⁰ The meetings are attended by about 100-150 activists who are against sexual and reproductive rights, and include politicians or employees of EU institutions. One of the meetings was organized in 2016 in Warsaw by Ordo Iuris. While in 2013-2015, participants generally discussed challenges and areas for their action, in 2016, they were already considering specific legislative solutions, such as the initiative to ban abortion in Poland (described above). They also discussed, for example, how to block the Istanbul Convention.

⁹⁶ Freedom For All, <https://svobodazavseki.com/zashtita-2/>, accessed 10 February 2023.

⁹⁷ Parents United for Children, Род, <https://rod-bg.com>, accessed 10 February 2023.

⁹⁸ Association Society and Values, *About us*, <https://www.sva.bg/en/about-us/>, accessed 10 February 2023.

⁹⁹ K. Suchanow, *op.cit.*

¹⁰⁰ N. Datta, *Restoring Natural Order. The religious extremists’ vision to mobilize European societies against human rights on sexuality and reproduction*, Brussels 2018, https://www.epfweb.org/sites/default/files/2021-03/rtno_EN_epf_online_2021.pdf, accessed 10 February 2023.

Most information about strategies is delivered in their 134-page manifesto “Restoring Natural Order.” The document's authors claim their purpose is to enforce Natural Law that can oppose cultural and sexual revolution. That is why they focus on the areas of marriage and family, the right to life, and equality and anti-discrimination, and address these areas with a few strategies. The most important seems to be using the weapons of their opponents, turning them against them, and framing their issues regarding rights.

In their manifesto, they state that they should position themselves (religious people) as the real victims of the cultural revolution and promote the concept of discrimination against Christians (Christianophobia). They underline that they should redefine the language and terminology of human rights, proposing even different meanings of rights. The other two strategies that members should implement are maligning opponents and non-conducive institutions and becoming respected interlocutors at international and UN levels. Their purpose is to pack their own people into international institutions, like letting in a Trojan horse.

The crucial element of the manifesto is the list of specific laws to change/implement. Regarding reproductive rights, these are the prohibition of the sale of all pharmaceuticals, contracts involving the provision of abortion, contraceptives and sterilization, anti-natal diagnostics, and IVF. Implementation of conscience clauses for all doctors and pharmacists (to provide a legal right to deny care), abortion bans in all jurisdictions, including in international law, and an international convention prohibiting all use of human stem cells.¹⁰¹

The ties between organizations from different countries are first ideological but also “technical”, they share their know-how and experiences transnationally. Their modus operandi is also very similar, for example, when it comes to dealing with politicians, primarily populist ones, but also when it comes to focusing on the High Courts. Women's rights have been challenged in the High Court, precisely in the countries where the organizations cooperate with Ordo Iuris and in accordance with the guidelines of the Europe Agenda.¹⁰² We see that their activities are wide-ranging and multidimensional. However, what is crucial is that their actions could not be realized without the appropriate funding that also connects them. Agenda Europe would not function without financial support, and it is co-sponsored by the Acton Institute, ADF International, CitizenGO, ECPM, and Ordo Iuris with the support of the International Theological Institute in Vienna.

¹⁰¹ Ibidem.

¹⁰² Ibidem.

According to Neil Datta, \$707.2 million was spent on anti-gender actions (also legal) between 2009 and 2018. This money came from 54 institutions (NGOs, religious organizations, and political parties). But these organizations also collect money from private donors. They collect money via four channels: astroturfing, tapping into social and economic elites (wealthy individuals and corporations, and clerical-aristocratic networks), state funding, and connections via religious networks. Most funding flowed from three regions: the United States, the Russian Federation, and Europe. The money comes from the US, mainly from 10 Christian Right organizations that want to provide European offices for US right-wing NGOs. From Russia, money mainly flows from oligarchs, passing through money launderers (intermediate organizations) to European far-right parties, the American Christian Right, CitizenGO, and the World Congress of Families. The largest finances, however, flow from organizations located in Europe.

Right-wing NGOs (primarily TFP) have also developed fundraising models to allow a steady flow of funding. First, they create and expand databases to send out petitions and mass mailings, and second, they send out unwanted “devotional items”—cheap rosaries or medallions, calendars, or pictures of Lady of Fatima—and ask for small contributions. The affiliated organizations exchange a database, and other organizations can ask these donors for contributions.

The far-right TFP, based in Poland, received at least \$113.4 million between 2009 and 2018. It sent some of these funds abroad, to Brazil and France. An organization affiliated with TFP is, for example, Ordo Iuris, whose activities I described above. Members of Ordo Iuris and other right-wing organizations were members of the National Institute of Freedom and the Confederation of Non-Governmental Initiatives of the Republic, which transferred government funds to right-wing NGOs. Grants were received by entities affiliated with TFP, even though those awarding the funding had close ties to it, such as positions on its governing bodies. Although Ordo Iuris claims it did not benefit from the funds, it may have awarded them to friendly organizations.¹⁰³ Ordo Iuris partner organizations in other countries also receive government funding, in Hungary for example.¹⁰⁴

¹⁰³ N. Datta, *Tip of the Iceberg: Religious Extremist Funders against Human Rights for Sexuality and Reproductive Health in Europe 2009 - 2018*, Brussels 2021, <https://www.epfweb.org/sites/default/files/2021-06/Tip%20of%20the%20Iceberg%20June%202021%20Final.pdf>, accessed 10 May 2023.

¹⁰⁴ M. Sarkadi Nagy, *How Orbán's Government Funds Ultra-Conservative NGO's Agenda*, <https://vsquare.org/how-orbans-government-funds-ultra-conservative-ngos-agenda/>, accessed 18 August 2023.

The Polish populist government also indirectly influences right-wing legal mobilization financing. One of Europe's biggest anti-gender funders is the Father Rydzyk's Lux Veritatis Foundation, which, in the years 2009-2018, spent \$83 million. Father Rydzyk is a founder of catholic media, Radio Maryja and Television Trwam, which are popular among the faithful and significantly influence a portion of the conservative electorate. Between religious content, these media also smuggle in political agitation, which the populist Law and Justice party seeks. Politicians of this latter party are eager to show themselves with Father Rydzyk, if only during an event such as Radio Maryja's birthday. Unsurprisingly, they have also been buying up airtime for their election spots. The government subsidies are a kind of repayment of the debt for the election agitation, which has already proved helpful twice. Father Rydzyk's statements of support for Law and Justice (PiS) have been repeatedly featured in the media. In return, various ministries have donated to the Lux Veritatis Foundation. From the beginning of PiS rule until the end of 2020, entities associated with Father Rydzyk have received at least PLN 325 million (around EUR 72 million) from the state coffers.¹⁰⁵ However, this is not all of the disclosed data. It is not fully clear what entities this foundation supports. Watchdog Foundation, in 2016, filed a request for public information regarding Lux Veritatis' funding, where it got the money from and what it spends it on. Because the Lux Veritatis Foundation refused to answer, the case was taken to court, which found it guilty. Later, the case went to the Constitutional Court, but it has not yet been recognized. However, a judge appointed by the Law and Justice party and its former deputy has spoken out on Twitter and said she supports Father Rydzyk. With a Constitutional Court packed with ex-right-wing politicians, the potential decision is only one.

Catholic movements and communities do not hide their connections and sympathies. All actions on abortion are supported by the Catholic Church, which has long influenced politicians but also supports politicians in actions against abortion. Kaja Godek herself has been awarded by organizations affiliated with the Catholic Church; she was awarded the St. Brother Albert Medal¹⁰⁶ and the Sursum Corda 2018 Award of the Catholic weekly *Sunday*.¹⁰⁷ Through connections with Catholic Church organizations, politicians have indirect relations with other

¹⁰⁵ B. Mikołajewska, *325 milionów złotych z publicznej kasy na „dzieła” Tadeusza Rydyka*, <https://oko.press/325-milionow-rydzyka>, accessed 18 August 2023.

¹⁰⁶ Gość, *Medale św. Alberta za rok 2015*, <https://krakow.gosc.pl/gal/pokaz/3027451.Medale-sw-Brata-Alberta-za-rok-2015/7>, accessed 10 February 2023.

¹⁰⁷ Niedziela, *Kaja Godek: statuetkę dedykuję mojemu synkowi*, <https://www.niedziela.pl/arttykul/37884/Kaja-Godek-statuetke-dedykuje-mojemu>, accessed 10 February 2023.

NGOs, which they symbolically recognize. For example, the Ministry of Justice awarded the medal “Meritorious for Justice” to an activist of the PRO, Right to Life Foundation (responsible for “Stop Abortion” bill drafts).¹⁰⁸ According to Neil Datta, the Catholic Church is also involved transnationally; Vatican officials hold key positions in anti-gender civil society organizations and related networks. The Agenda Europe network, moreover, links two prominent Vatican secretaries of state and the Holy See's representatives to the EU, UN, and OSCE, forming a bridge between European and American religious extremist activists and Vatican officials located in all European human rights decision-making centers.¹⁰⁹ We see that the Catholic Church is thus a crucial actor in the legal mobilization against abortion, thanks to its vast networks of connections and influence.

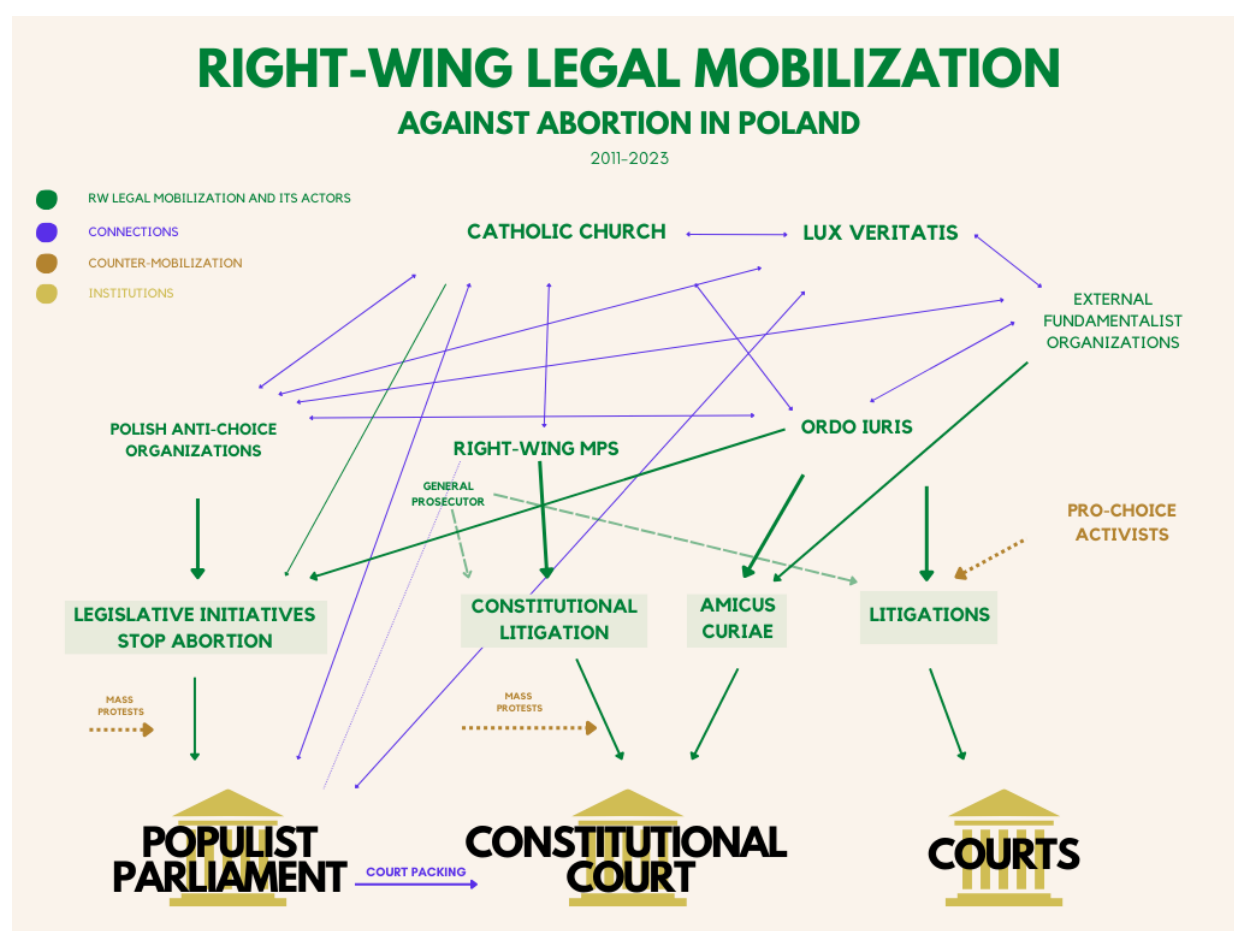


Figure 2: Right-wing legal mobilization against abortion in Poland, 2011-2023.

¹⁰⁸ TVN24, *Działaczka pro-life Zuzanna Wiewiórka dostała medal od Ministerstwa Sprawiedliwości*, <https://tvn24.pl/polska/dzialaczka-pro-life-zuzanna-wiewiorka-dostala-medal-od-ministerstwa-sprawiedliwosci-4585275>, accessed 10 February 2023.

¹⁰⁹ N. Datta, *Tip of the...*, op. cit.

CONCLUSIONS

Analyzing the case of legal mobilization against abortion in Poland, we can come to several conclusions. We can observe that right-wing organizations work like an AI, they have learned from the existing database and operate based on this data. First of all, they have learned from human rights defenders. They did their homework and learned how to use legal actions and tools, sometimes even more efficiently than the liberal organizations that mastered these tools in the 20th century. The involvement of right-wing, religious, and fundamentalist actors is not only rhetorical but primarily legal. Right-wing organizations use the liberal infrastructure of protecting fundamental rights and freedoms to reverse women's rights and impose the traditional role of a woman. They are advanced in the language of protecting human rights, but they “seek to actively reshape the array of recognized rights in highly conservative and often significantly illiberal directions.”¹¹⁰ They use the discourse of rights and legal arguments to promote the new hierarchy of values. An identity-based vision of community and tradition has replaced pluralism and the protection of individual rights. Right-wing and fundamentalist organizations use in the frames of legal mobilization a language of rights, cherry-picking, language manipulation, and the reinterpretation of abstract terms to challenge women's rights.

Second, right-wing organizations are learning from each other on the transnational level. They share legal strategies, know-how, connections, ways of collecting funds, and funds themselves. For example, thanks to the international network of organizations, right-wing legal mobilization could infiltrate from American legal culture and change the European one. Central and Eastern European non-state actors not only took their lessons and learned how to mobilize the law but also to engage in international support of their actions. To this extent, American organizations were engaged directly in the Polish Constitutional Court case. Looking even briefly at the legal mobilization against abortion accompanying the case of *Roe v. Wade*, we can see how a vast network of fundamentalist and religious organizations played on abortion issues with politicians and juggled with their support. The same approach can be observed in Poland under the populist government. Abortion has been treated as a political tool. It has found itself on the wrong side in the culture wars, part of the politics and election campaign waged by populists from the Law and Justice party.

¹¹⁰ G. De Búrca, K. G. Young, *op.cit.*

Meanwhile, right-wing movements were able to observe the possibility of legal changes after 1989 and replicated undemocratic methods of changing the law, using the Constitutional Court packed by the Law and Justice party. The common denominator was the Catholic Church, which had a strong position after 1989 and demanded specific solutions in exchange for support in the elections. And that payment was a restriction of abortion. The demands of the Catholic Church were realized at the hands of NGOs, doing the dirty legal work but also operating on other levels, such as in education or “marketing.” Long-term and transnational cooperation between non-state actors and state actors proved effective, and it seems that the abortion ban in Poland is not their last word.

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