Protection of the right to life in European constitutional law - a comparative study against the background of the Polish constitutional order

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Abstract

The standards for the protection of human rights, including the guarantee of the right to life, can be found in international human rights law and the domestic legal orders of individual countries. The article concentrates on presenting the methods of regulating the protection of life in European constitutional law and the jurisprudence of the constitutional courts. It puts emphasis on the Polish constitutional order compared to other European countries and considers the abortion issue in constitutional law in the light of the recent legal changes in Poland.

Keywords: the right to life, constitutional law, human rights, abortion

The standards for the protection of human rights, including the guarantee of the right to life, can be found in international human rights law and the domestic legal orders of individual countries. General formulas concerning the protection of the right to life are contained in the contemporary state constitutions and separate branches of law, primarily criminal law, which implement constitutional norms in domestic law. However, it is worth noting at this point that the norm prohibiting the deprivation of human life appeared in criminal law long before the era of constitutions.

From the chronological point of view, the norm protecting life appeared earlier in constitutions than in acts of international law. The norm was first formulated in a constitutional act in the Virginia Declaration of Rights of 1776 and then in the Constitution of the United States of 1787 (Fifth and Fourteenth Amendments to the US Constitution of 1787), which for a long time remained one of the few constitutions to contain a norm protecting the right to life.

The catalogues of civil rights in the European constitutions of the 19th century were mainly based on the French Declaration of the Rights of Man and of the Citizen of 1789, which did not include human life among the protected values. It was international law that had a significant impact on the constitutionalization of the right to life in Europe and subsequently worldwide.

R. Grabowski advocates the thesis that the first provisions on the right to life in European fundamental laws appeared under the influence of the League of Nations. (Grabowski, 2006). The oldest European constitutions encompassing protection of the right to life included the Constitution of Finland of 17 July 1919, the Constitution of the Czechoslovak Republic of 29 February 1920, and the Polish Constitution of 1921.

After the Second World War, thanks to the United Nations and the Universal Declaration of Human Rights of 1948, the idea of human rights spread throughout the world. All of the constitutions of UN member states adopted in the second half of the 20th century contain a

human rights catalogue, including the right to life. Thus after 10 December 1948, the right to life became an integral part of constitutional catalogues of freedoms and human rights. Following the Universal Declaration of Human Rights, as many as 124 out of the 191 UN member states provided for the constitutional protection of life Earlier, such protection was provided for in the USA, Japan, Ireland, and the constitutions of the above-mentioned European countries. (Grabowski 2006).

Fifty-two basic laws of UN member states do not provide the legal protection of life. Although they mention other. fundamental rights such as personal freedom, they do not directly stipulate the guarantee of the right to life. However, this does not mean that human life is not protected within the legal orders of these states.

These include European countries (e.g., Belgium, Denmark, Iceland, Italy, the Netherlands, Liechtenstein, Luxembourg, and Monaco), which are also members of the Council of Europe and parties to the European Convention on Human Rights obliging them to protect life legally. Some constitutions, such as those of the Czech Republic and France, do not contain a catalogue of civil rights and refer to separate constitutional acts and documents, such as declarations and charters of fundamental rights. (Charter of Fundamental Rights and Freedoms of the Czech Republic of 16 December 1992). Others, such as the Austrian Constitution, refer directly to the European Convention on Human Rights and other international human rights treaties.

As mentioned above, the French Constitution of 1958 does not have a separate section guaranteeing civil rights. It refers to the Constitution of 1946 Preamble and the Declaration of the Rights of Man and the Citizen of 1789 on this matter. However, we do not find a provision *explicitly* formulating the right to life there. The Constitutional Council of France, which has developed a corpus of individual rights of constitutional nature derived from the Constitution of 1946 and the Declaration of the Rights of Man and the Citizen in its jurisprudence, has considered the right to life a necessary element of constitutionally guaranteed personal freedom (Guldewicz 2000).

In many constitutional acts, we can find the guarantees of the right to life alongside the provisions concerning personal inviolability and freedom (e.g., German Basic Law of 23 May 1949, Article 2.2).

In fact, in its purely negative dimension, the right to life seems to be a consequence and extension of the right to personal inviolability. If the state is obliged to refrain from attacks on personal security, this also implies prohibiting the most severe violation of inviolability - an attack on life.

Life is also a necessary condition for the exercise of freedom, the act of deprivation of life being the most severe violation of human autonomy (excluding cases of voluntary euthanasia). Thus, there is a strong link between the broadly conceived right to liberty as an inherent right of a human being to form his existence and his right to life. Can the right to freedom be derived from the right to life, or is it a right contained within it? The answer to this question is crucial, mainly in the ongoing global debate on the legal acceptability of euthanasia.

In this context, the distinction between the protection of the right to life the protection of life itself is also vital. This distinction appears pointless only on the surface. By accepting life itself as the object of protection, the state undertakes to protect life unconditionally, even against a person himself. In this case, the natural consequence would be to penalize suicide. On the other hand, the formulation that the right to life is protected seems to suggest that the entitled person can dispose of his or her life, which would make it difficult, among other things, to

penalize euthanasia. This obviously depends on the way the right to life is understood, combined with the attribute of "inalienability" and other human rights. (Giezek, Kokot 2002).

Moreover, it seems, that the constitutional guarantee of protection of the *right* to life has a more negative dimension (in the sense of the *right not to be killed* and its manifold implications) than the constitutional obligation to protect life itself. The latter seems to entail a commitment for the state to safeguard life in all instances actively. If, on the other hand, the constitutional norm embraces the *right to life,* then the scope of protection that we can expect depends on the interpretation of the concept of the *right to life.* If, on the other hand, the state commits itself to the protection of *human life,* then the positive obligations to protect life are *implicit* in this formulation.

The majority of constitutions establish the right to life as an object of protection, either declaratively stating the existence of the natural right of every human being to live (e.g., the German, Hungarian, Spanish, Croatian, Estonian, Slovak, Russian, Belarusian, Finnish, Ukrainian and Swiss constitutions, or the Charter of Fundamental Rights and Freedoms of the Czech Republic, by 'recognizing' (Constitution of Andorra), or guaranteeing it (Constitution of Romania).

There is, however, a set of fundamental laws speaking explicitly of the inviolability of human life (e.g., the Constitution of Portugal of 2 April 1976) or even of the sanctity of human life, such as the Israeli *Basic Law on Human Dignity and Liberty of* 17 March 1992.

The Bulgarian Constitution of 12 July 1991 "guarantees life, dignity, and personal rights." According to article 21 of the Constitution of Albania of 21 October 1998, "human life is protected by law."

Alongside the provisions guaranteeing the right to life, some constitutions contain clauses on the state's attitude towards the death penalty.

The Constitution of the Russian Federation of 12 December 1993 guarantees the right to life of every person in Article 20. Paragraph 2 of this article refers to the death penalty as a punishment that may be imposed exceptionally for particularly grave crimes against life, still not abolished but awaiting abolition.

The Spanish Constitution of 1992 also contains a death penalty clause close to the provision guaranteeing the right to life. It provides for the abolition of the death penalty, except for that provided for by military penal law in times of war. Constitutional acts of Croatia, Romania, Slovakia, Finland, Switzerland, Portugal, Macedonia, Slovenia, Serbia, and Montenegro contain similar clauses.

In these countries, where the constitution does not specify the state's attitude towards the death penalty, the constitutional courts and tribunals have ruled on the issue in the process of interpreting the constitutional right to life guarantee. Thus, the Lithuanian Constitutional Court declared the death penalty unconstitutional in 1998. The constitutional courts of Albania and Ukraine have done likewise (Ludwikowska 2002).

In the European countries belonging to the Council of Europe and are parties to the Sixth and Thirteenth Protocol to the European Convention on Human Rights, it regulates the death penalty issue by abolishing it. Thus, even in the absence of a constitutional provision prohibiting the death penalty, European states are bound by their international obligations in this regard. Therefore, Europe remains a death penalty-free zone.

In most contemporary constitutions, the right to life belongs to the group of non-derogable rights, i.e., it is not subject to derogation in states of emergency. It indicates the unique position

of the right to life in contemporary constitutional law, among other human rights. It is in line with the UN International Covenant on Political and Civil Rights of 1966 and the European Convention on Human Rights of 1950. , except that the ECHR, unlike the ICCPR, includes the possibility to derogate from the right to life in situations of lawful acts of war. Some constitutions make a direct reference to these norms of international law, e.g., the Greek Constitution of 1975. It guarantees the right to life in Article 52, with the reservation that this right may be limited by law only in accordance with these international norms (Constitution of 9 June 1975, as amended in 2001).

Poland belongs to those European countries where the constitutional protection of life has the longest tradition. As I mentioned above, the March Constitution of 1921 included the constitutional guarantee of protecting life. Article 95 proclaimed:

"*The Republic of Poland shall ensure within its territory the complete protection of life, liberty, and property of everyone without distinction of origin, nationality, language, race or religion.*

Foreigners shall enjoy, on condition of reciprocity, equal rights with citizens of the Polish State and shall have equal obligations unless the law requires Polish citizenship explicitly ".

At that time, this norm represented a relatively high standard of protection, imposing on the state not only an obligation to refrain from any attacks on the lives of those within its territory but also to protect the individual from the danger posed by others by providing criminal repression.

The provision had the nature of universally binding law, even though the majority of rights and obligations included in the Constitution were labeled as civil, which was in line with constructing constitutional catalogues of the rights and freedoms at that time. Despite that, as R. Grabowski points out, the practical significance of this norm was minor, as the standard wasn't adequately implemented at the statutory level. (Grabowski 2006, p.71-79) Also, its validity period was short, as the March Constitution ceased to be in force upon the promulgation of the Constitutional Act of 23 April 1935. (The April Constitution), which did not contain any catalogue of rights and freedoms at all.

The civil rights catalogue of the March Constitution was proclaimed once again by the PKWN Manifesto of 1944. The Polish National Liberation Committee (PKWN) was a body established by communists and supported by Stalin. However, the Manifesto itself was not an act of legal character. It also limited the application of the Constitution of 1921 to "fundamental principles." Therefore, the validity of the constitutional norm protecting the right to life in this period seems to be doubtful.

A catalogue of rights similar to the one in the Constitution of 1921 was formulated in the Declaration of the Legislative Assembly of 1947. It also contained a provision on the protection of human life. However, it cannot be recognized as a norm of constitutional rank, as the Declaration was a non-binding act. (Adamczyk, Pastuszka 1985).

The Constitution of the communist People's Republic of Poland of 1952 also lacked constitutional norms guaranteeing human rights and freedoms, including the right to the protection of human life. The Constitution of the People's s Republic of Poland contained only a catalogue of civil rights and obligations.

However it is worth noting. that since 1977, the right to life has been protected in Poland by the ratification and publication of the International Covenant on Civil and Political Rights in the Journal of Laws. Article 6 of the Covenant guarantees the right to life. However, the Constitution of the People's Republic of Poland lacked regulations that would specify the

position of international agreements ratified by Poland in the Polish legal system. The possibility of claiming the protection of rights under the provisions of an international agreement was purely hypothetical. (Grabowski 2006, p.116-117) Changes in this sphere were brought about by the activity of the Constitutional Tribunal, which since the beginning of its existence in 1986 referred to the provisions of ratified international agreements. In the judgment of 1987, the Court invoked the provisions of the ICCPR ratified by Poland, indicating that the ratification of that international document means accepting the principles expressed therein (decision of the Constitutional Tribunal of 3 March 1987). In this way, the Court noted that there are norms in the Polish legal system with their source in international agreements, including international human rights law norms.

Despite the revival of human and civil rights in Poland after the political transformation in 1989, the fundamental law still did not contain a standard protecting life. The Convention on the Rights of the Child ratified on 30 April 1991 had a positive impact on raising the standards of life protection in Poland. 15 December 1992, the European Convention on Human Rights and Fundamental Freedoms of 1950 was ratified, introducing the universal legal protection of life in article 2.

The legal position of the individual in Poland was influenced by the changes in the constitutional provisions in the years 1989-1992 although they did not introduce a catalogue of human rights. The introduction of the democratic state of law principle into the 1952 Constitution was of particular importance in that aspect (the Act of 29 December 1989 on amending the Constitution of the People's Republic of Poland). In the later years, this constitutional principle served as the basis for the Constitutional Tribunal to recognize the constitutional protection of several rights and freedoms, including the right to life.

In the judgment of 1997 concerning the examination of the constitutionality of the provisions of the Act of 30 August 1996 amending the Act on *Family Planning, Protection of the Human Foetus and Conditions for the Permissibility of Interruption of Pregnancy,* the Tribunal stated that the failure to include a norm protecting life in the constitutional provisions does not mean that human life has no constitutional value. The Tribunal referred to the aforementioned principle of a democratic state of law as directly implying the right to the protection of life. The Tribunal argued that a democratic state of law could exist only as a community of people, subjects of rights and obligations in the state. The essential attribute of a human being is his or her life, and deprivation of life simultaneously annihilates a human being as a subject of rights and obligations, i.e., it eliminates the basis for the existence the state of law. The first directive of the rule of law must be therefore to respect the value of human life, without which all legal subjectivity, and thus the existence of the state of law itself, is excluded. Therefore, the formal restoration of the constitutional protection of the right to life in Poland was preceded (albeit slightly) by its recognition by the Constitutional Court as a constitutional value.(Judgment of the Constitutional Tribunal of 28 May 1997).

Finally, the Polish Constitution of 2 April 1997 introduced the protection of life into Polish constitutional law explicitly in Article 38: "The Republic of Poland shall guarantee the legal protection of life to every human being."

Poland belongs to the group of states that formulated the constitutional guarantee of protection as the legal protection of *life,* rather than protecting or guaranteeing *the right to life*. The subjective right resulting from the provisions of Article 38 is referred to as the 'right to the legal protection of life.' In the legal doctrine, there is a view that article 38 imposes an obligation to take active measures to reduce or eliminate the threat to human life on the state, and

constitutes a directive for the legislature that the regulations created on the basis of this norm should protect human life (Sarnecki 2003, Winczorek 2000, Gronowska 1998).

In the judgment of 2002, the Constitutional Tribunal held that Article 38 must be interpreted as prohibiting the deprivation of human life, which should be read in the light of Article 2 of the ECHR. In addition, , Article 38 constitutes an obligation on public authorities to take measures to protect life according to the Tribunal.(Justification to the decision of the Constitutional Tribunal of 8 October 2002).

Like most European constitutions, Article 38 of the Polish Constitution leaves the issues of admissibility of euthanasia and termination of pregnancy open and does not refer in any way to the problem of capital punishment. However, according to some scholars, the provisions of the article imply the prohibition of capital punishment (Sarnecki, Granat 2000). Given the terse formulation of Article 38, this position does not seem justified. However, on the grounds of the provisions of ratified international agreements (inter alia, the Additional Protocols to the ECHR), in the context of which Article 38 should be interpreted, as well as the constitutional provisions obliging Poland to comply with the international law and establishing the supremacy of the international agreements over the statutory law, the death penalty issue seems to have been resolved definitively.

Regarding derogation of human rights and freedoms in states of emergency, the Constitution of the Republic of Poland adopts a commonly used solution in current fundamental laws. It is also compliant with the norms of international human rights law. The right to life is included in the group of rights not subject to suspension under any circumstances (article 233). However, it does not mean that it is an absolute right, unconditionally binding, and may not be subject to limitations. According to the Constitutional Tribunal judgment of 10 April 2002, the scope of legislator's limitation of this right is settled by the ratified international law acts.(Judgment of the Constitutional Court of 10 April 2002).

There is an opinion in the legal doctrine that Article 38 of the Polish Constitution determines a principle of law. (Grabowski 2006, p.201-211). This thesis seems justified considering the importance of the constitutional norm protecting life for the whole national legal system. According to the theory of law, a constitutional principle of law is a norm hierarchically superior in the legal system, overriding other norms in a given group, playing a unique role in constructing particular legal institutions, or having special social significance (Wróblewski 1959, p.255-260).

As it has been said before, the life protection formulas in most European constitutions do not directly refer to such controversial issues as the admissibility of euthanasia or termination of pregnancy. Let us now turn to the very current problem in the Polish constitutional law – the abortion issue.

In most European constitutions, which mention the protection of human life, we do not find the formula specifically guaranteeing the protection of the life of the unborn child or safeguarding life “from the moment of conception,” the exceptions being the constitutions of Ireland until 2018, Slovakia and Hungary.

Until the recent amendment in 2018, the Irish Constitution of 1 July 1937 has been unique concerning the protection of life. In addition to the general wording of the right to life in Article 40, the 8th Amendment to the Constitution of 1983 introduced the right to life of the unborn equal to the mother’s right. Paragraph 3 of this article read: "The State recognizes the right to life of the unborn, guarantees the defense and assertion of this right through its legislation while respecting the equal right to life of the mother,,. This practically meant a total abortion ban,

except for the cases where the mother's life was at risk. In 2018, as a result of a referendum, the 36th Amendment to the Constitution was introduced, abolishing this provision.

The Constitution of Slovakia of 1992 stipulates for the protection of life in article 15, "Everyone has the right to life. Human life is worth protection even before birth". So does the Hungarian Constitution of 2011: "Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; embryonic and foetal life shall be subject to protection from the moment of conception."

Other European basic laws do not contain a clause on protecting life in the prenatal phase.

Article 38 of the 1997 Constitution of the Republic of Poland does not include this formula either. Nevertheless, it has been repeatedly suggested that the term "human being" also embraces the foetus, and therefore the unborn life is protected on an equal level by the constitutional law. Let us dwell on this issue for a while.

The contemporary doctrine of the rule of law assumes the priority of literal interpretation over its other types (systemic and functional interpretation). Constitutional provisions formulating the principle of the protection of life or the right to life of human beings without adding the bequest "from conception "or "before birth" in the literal meaning do not refer to the prenatal phase of human life. The literal interpretation of this type of legislation means understanding the term "human being" according to its meaning in everyday language and legal language, particularly in the texts of the binding law. In the provisions of all branches of law, the term "human being" means a human being from birth to death (by way of distinction, in situations where a human being before birth is to be protected, the terms "conceived child" "foetus", "nasciturus" are being used).

However, in the face of moral controversies concerning the status of the human foetus and the need to refer to the protection of the foetus, the bodies appointed to interpret constitutional provisions (constitutional courts and tribunals) have adopted interpretations extending the term "human being" and "human life" to the unborn child in their judgments. These interpretations have direct implications for the legal protection of the human foetus in criminal law and abortion law. Below I will give some examples of the jurisprudence of European constitutional courts and tribunals on this matter and related legal regulations on protecting the *nasciturus* in domestic law.

In a judgment of 25 February 1975, the German Constitutional Court adopted an expansive interpretation of a constitutional provision on the right to life that did not include the clause "from conception". The Federal Constitutional Court of the former Federal Republic of Germany declared the criminal law reform decriminalizing abortion on demand in the first 12 weeks of pregnancy unconstitutional (*Entscheidung des Bundesvefassungsgerichts*, Tübingen 1975, Garlicki 1992). The Court held that the constitutional guarantee of the protection of life also applies to human life in the prenatal phase from the moment of nidation (implantation in the womb, i.e., 14 days after fertilization). This judgment, however, did not prevent the German legislature from defining the termination of pregnancy permissibility boundaries quite broadly. In light of the Penal Code (the Act of 21 June 1976), which was in force in the former Federal Republic of Germany until 1992, the regulation abortion law was based on the "indication" model. Abortion was permitted for medical and legal reasons and the woman's challenging life circumstances. (Lang 2000).

The abortion issue was reviewed by the Federal Constitutional Court once more in 1993 when the Court decided on the constitutionality of the new abortion law of 1992. The Court upheld its previous position that the German constitution protects human life at every stage of

development. The beginning of this protection is at the moment of nidation when an individual human comes into being. The Court also stated that the protection of life is not absolute, and its scope is determined by the need to protect the conflicting interests of the pregnant woman. Throughout the entire pregnancy, abortion is treated as an unlawful act (Unrecht), and statutory law should define the exceptions to the prohibition on termination of pregnancy. (Weigend, Zielińska 1993).

Consequently, German law permits abortion on medical and legal grounds (*Act on the Protection of Unborn Life.)*. According to the 1992 Act, as amended in 1995, following the Court's judgment of 1993, an abortion performed on the request of a pregnant woman in the first trimester of pregnancy without medical or legal indication, provided that the legally prescribed consultation is carried out, does not constitute a criminal offense. Failure to comply with this condition constitutes a violation of the law by the doctor performing an abortion. The woman undergoing the procedure shall not bear the legal consequences. Termination of pregnancy without medical or legal justification carried out after the legally required consultation is not a criminal offense. However, it is an illegal act (*Unrecht*). In the judgment of 1993, the Court concluded that although *prima facie* termination of pregnancy should be penalized and the principle of protection of unborn life is a constitutional norm, the criterion for the admissibility of pregnancy termination is the impossibility to require that the woman follows the abortion prohibition.

The Constitutional Court of Portugal also adopted an expansive interpretation of the constitutional provision guaranteeing the right to life as applying also to the *nasciturus*. The Court considered the unborn life as a constitutionally protected good, but not subject to the same subjective protection as born people's lives. Therefore, the protection of this good must be weighed against other constitutional values, such as the woman's dignity, life, and health (Subsequent judgements from 19.03.1984 and 29.05.1985)..Portugal had quite restrictive abortion laws until 2007 when they were changed, and abortion is permitted in Portugal for non-medical and non-legal reasons up to the 10th week of pregnancy (Portugal, Law No. 16/2007 on Exceptions to the Criminality of Voluntary Interruption of Pregnancy)

A similar line of interpretation was adopted by the Constitutional Court of Spain in the judgment of 11 April 1985. In the Court's subsequent decisions of 1996 and 1999, it excluded pre-emerged *ex utero* embryo from the constitutional protection of the right to life. It confirmed that life unborn (*in utero*) is a constitutionally protected good but does not constitute a subjective right to life of the child in the mother's womb.(Judgment of the Constitutional Court of Spain of 19 December.1996 and of 17June 1999). As a result, abortion is permitted in this country on medical and legal grounds, but medical grounds also include the woman's mental health, which is interpreted very broadly.

The Polish Constitutional Tribunal decided on the temporal scope of the protection of human life in 1997 when formally there was still no provision in the Polish constitutional order for a right to life (the Jugdment of 28 May 1997 referred to earlier in the article).

In light of the absence of the right to life protection in the so-called Little Constitution of 1992, the Constitutional Tribunal derived the right to life guarantee from the democratic state of law principle in Article 1 of that act (Judgment of 28 May 1997). At the same time, it stated that the guarantee also concerns life in the prenatal stage. The Court recognized that human life has a constitutional value at the prenatal stage, but this does not mean that the intensity of legal protection of life in each of its phases should be the same. (Judgment of the Constitutional Tribunal of 28 May 1997). The ruling aroused controversy among the Constitutional Tribunal judges and in the world of science. It was alleged that the Tribunal exceeded its powers of constitutionality control and encroached upon the competence of the legislator by attempting to

resolve philosophical issues in a legally binding manner (separate opinions of judges Z. Czeszejko-Sochacki, L. Garlicki and W. Sokolewicz , see also: Lang 1997, Woleński 1998).

As a result, the provision of the *Act on Family Planning, Protection of the Human Foetus and Conditions for Permissibility of Termination of Pregnancy of* 1993, amended in 1996, which allowed termination of pregnancy on the so-called social grounds at woman's request until the 12th week of pregnancy, was deemed unconstitutional. Abortion became permissible for medical and legal reasons only.

In cases when the pregnancy posed a threat to the life or health of the pregnant woman or prenatal tests or other medical indications pointed to a high probability of severe, irreversible disability of the fetus or a disease threatening its life, the termination of pregnancy could be performed until the fetus was capable of independent life outside the woman's organism. Legal reasons for abortion were justified if the pregnancy resulted from a prohibited act. In this case, the termination of pregnancy could occur until the 12th week.(*Act on Family Planning, Protection of Human Foet*us…)

Such a legal state lasted in Poland until 2020 when the Constitutional Tribunal once again decided on the protection of the life of the human fetus. On 22 October 2020 the Tribunal ruled that Article 4a, paragraph 1, point 2 of the Act of 7 January 1993 *on family planning, protection of the human foetus, and conditions for permissibility of termination of pregnancy* allowing legal abortion due to the probability of severe and irreversible fetal disability is incompatible with Article 38 (the guarantee of the right to life) in connection with Article 30 (the protection of dignity) Additionally, the Tribunal stated that the provisions in question are in contradiction with Article 31, paragraph 3 of the Constitution of the Republic of Poland. It stipulates that statutory law may limit constitutional rights and freedoms when necessary for security, public order, environment protection, public health and morals, or safeguarding other persons' rights. Consequently, abortion is at present legal in Poland only in the case of a threat to the woman's health or life and if the pregnancy results from a crime (rape, incest). This makes Polish abortion law one of the most restrictive in the world. Within the EU, similar legislation exists only in Malta, and outside the EU , in Vatican, San Marino, Monaco, Andorra, and Liechtenstein. In the vast majority of European countries it is permitted to terminate a pregnancy in the first trimester at the woman's request. A term of 12 weeks of gestation is generally provided for by the legislation of Germany, the Czech Republic, Denmark, Austria, Italy, Norway and Belgium, a shorter term of 10 weeks is provided for by the legislation of Slovenia, France and Portugal, a longer term of 18 weeks is provided for by Sweden and of 21 weeks by the Netherlands.

This change in the Polish law following the ruling of the Constitutional Tribunal has provoked massive public protests as well as strong reactions on the side of human rights organizations, including Amnesty International. It is in apparent contravention of the developing international standard for the protection of women's reproductive rights and leads in practice to violations of women's rights: the prohibition of inhuman and degrading treatment, the right to privacy, and the right to physical integrity. It is also contrary to the line of the jurisprudence of the European Court of Human Rights concerning the provisions of the European Convention on Human Rights applicable to Poland. The Court concluded that denying women the right to legal abortion in cases of probability of severe and irreversible fetal disability is incompatible with human rights standards set in the ECHR *(inter alia*, the Judgment of ECHR *R. R. v. Poland* of 26 May 2011).

It should be noted that despite acknowledging the extension of the protection of life to the foetus in certain respects, none of the above-mentioned European constitutional orders have introduced such far-reaching restrictions on the possibility of performing legal abortions. Even

where there is an explicitly expressed formula for the protection of the unborn child within the constitution, as in Hungary or Slovakia, legal solutions of this kind have not been introduced.

In conclusion, the indisputable stance that the protection of life at the constitutional level is an essential element of a modern democratic state governed by law must be reaffirmed. It indicates the axiological importance of the right to life as one of the foundations of the entire legal system. Nevertheless, constitutional protection of human life cannot serve as a tool for implementing solutions drastically infringing other fundamental human rights.

In this respect the Polish law has drifted far apart from the other European countries.

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