CHAPTER 7

Rights Claims in Anti-abortion Campaigns in Poland and Sweden

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Introduction

Over recent years, the transnational and heterogeneous anti-abortion movements have increasingly mobilised resources and rhetoric within a rights-based framework (Mason, 2019). This rhetoric has been accompanied by a variety of legal strategies aimed at regulating access to abortion—from civic initiatives supporting certain bills, through strategic litigation in national and international legal arenas, to legal activism in the judiciary (Koralewska & Zielińska, 2022; Roberti, 2021; Lowe & Page, 2019). While this turn towards rights claims seems to be part of larger strategies of the right-wing and neoconservative movements globally, it manifests in different ways depending on national contexts (Lewis, 2017).

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In this chapter, we take as our point of departure two cases, one situated in Sweden and the other in Poland, in which attempts have been made to intervene in the existing laws regulating access to abortion. We explore the rights claims deployed in these anti-abortion campaigns. While the struggles around reproductive justice differ between these two countries—with abortion support essentially uncontested in the Swedish case, while mobilising mass protests and heated debates in Poland—we claim that, despite vast differences, some common patterns can be identified between the two countries' anti-abortion activism. This is especially so in the deployment of rights-based approaches sensitive to the national context.

The chapter is focused on two anti-abortion interventions. The first are the lawsuits filed by midwives in Sweden who claimed to have been discriminated against on the grounds of their religion when they had been turned down for work due to their objection to performing abortion as part of the job description. The second is that of a Polish civic legislative initiative aimed at restricting the prevailing abortion legislation in Poland in cases of foetal anomalies. Importantly, in both cases the legal and legislative actions were set up or supported by organisations working locally in Sweden and in Poland but with links to a broader movement. This movement is often described as a loose network of diverse organisations and actors, acting locally but with ties across the borders. It is also characterised as sharing a certain 'anti-gender' agenda that opposes what it calls a 'gender ideology'. Restricting access to abortion is just one among the issues raised, others being the limitation of LGBTQ+ rights, anti-violence legislation or sexual education, depending on the context (Graff & Korolczuk, 2022).

The chapter starts with a brief introduction to feminist discussions on rights in general in relation to abortion in particular. It then presents the two cases and closes with a discussion of how rights-based approaches have been appropriated by those aiming at restricting access to abortion.

Feminist Critique of Rights in the Context of Abortion Struggles

Legal reform and rights claims have been a cornerstone of social justice struggles, including feminist mobilisation (e.g. Brown & Halley, 2002; Lacey, 1998; Smart, 2002/1989; Spade, 2015; Wendell, 1987). The

notion that justice can be achieved through a legal reform that equips individuals or groups with rights has been at the heart of diverse justice projects: from women's, through anti-racist and anti-colonial, to LGBTQ+ and queer struggles. In the context of struggles over abortion, rights claims and, more generally, the liberal vocabularies of a right to choose and decide over one's own body have been central, particularly in the West, but also in countries, like Poland, that transitioned from a socialist state system to liberal democracy.

However, feminist movements have also harboured a deep-founded critique against the investment in law and rights claims. Katherine MacKinnon (1987: 1), in her discussion on rights, law and feminism, argued that the legal route has always been fraught for social justice movements; she noted, for example, that the 'right' to abortion in the USA is framed as a right to privacy and not to equality or justice. She also noted that feminist attempts to 'get civil rights for women' have consistently been exploited by actors whose motivations contradict feminist emancipation politics: the porn industry, for example, has been adept at using free speech and the right to sexual liberty as a defence for misogynistic and oppressive depictions of women (and especially women of colour) (MacKinnon, 1987: 2; see also Gardner, 2018).

The 1990s witnessed 'the rise of rights' (Eyben, 2003), as international development agencies and popular movements started using rights-based language—that is, demands based on the international legal human rights framework, a 'set of conventions and covenants' whereby ratifying countries 'have to report to UN committees on their performance with respect to that right' (Eyben, 2003: 1). From this framework, approaches have evolved wherein groups formulate demands in terms of inalienable rights. Pierson and Bloomer (2017: 174) explain that human rights 'offer a contested yet universal and global set of rights and freedoms, providing a framework to argue for justice and legislative reform when breached'. However, as Jessica Whyte (2014) has argued, the language of human rights is marked by 'tactical polyvalence' according to which the effect of claims differs depending on who is speaking, the institutional context and the power relations involved. It is important to note that the adoption of a human rights framing by anti-abortion groups builds, according to Lowe and Page (2019: 134), on historical claims concerning the foetal right to life. However, as we will show, current struggles around abortion mobilise a variety of rights claims.

One of the weaknesses identified in rights-based approaches to reproductive justice has been that such a framing confuses laws—the formal right to have a medical procedure performed—with actual bodily autonomy. The right to have a medical procedure does not automatically translate into being able to access that procedure or to have it performed in a timely and safe fashion. In the Argentinean mobilisation, this insight has been translated into the slogan 'Aborto legal, gratuito, seguro'—a slogan that stresses the necessity for granting free and safe abortion, not just the legal right to it. In Italy, where as many as 71 per cent of gynaecologists are registered as conscientious objectors, abortion is legal but access to it is hampered (Autorino et al., 2020), further illustrating the point that legality is not the same as actual access. In itself, then, the right to abortion is not enough to secure the procedure of terminating pregnancy—the material and medical conditions being equally important aspects of reproductive justice (Smart, 2002/1989). Moreover, centring the struggle for abortion upon the right to decide over one's body is particularly susceptible to counterclaims. Such have been deployed for a long time in relation to developments in neonatal care (cf. Callahan, 1986; Jaeger, 2019) and more recently in relation to ectogestation (gestation of a foetus in an ex-utero environment; see Stratman, 2021).

While abortion is viewed by the feminist movement as a fundamental right, activists and scholars have been expanding the vocabularies and strategies around rights related to reproduction. The tradition of reproductive justice seeks to locate the issue of abortion in a broader context of reproduction. While access to abortion certainly is paramount to self-autonomy, for certain groups—especially in colonial and settler-colonial settings, as well as for racialised and/or stigmatised groups such as ethnic minorities, the poor and those considered 'unfit'—the struggle has also centred on the right to bear children and the right to raise children (cf. Eaton & Stephens, 2020; Ross & Soligner, 2017; Ross, 2017).

Two features in the ways that these debates have unfolded are of particular significance for the analysis that we present below. The first is a continuous warning that the language of rights is susceptible to counterclaims (see Brännström, 2017). This particular kind of use is the focus of this chapter. The second is that, despite the critique and the growing conviction that the discourse of rights will never be enough to achieve reproductive justice, an awareness of the fundamental role of the right to abortion and the sense that this right can be easily revoked has grown among feminists. This sense has been strengthened by the developments

in places in the world where legal access to abortion has been restricted despite the decades of liberal laws. As will be expanded in the next section, Polish and Swedish cases prove that the right to abortion can never be taken for granted and treated as permanent. Critique of the appeal of law and of the rights claims shall thus still recognise some fundamental dependency on legal frameworks (Smart, 2002/1989; Kapur, 2015).

Rights Claims and Struggles over Abortion in Poland and Sweden

This chapter, rather than simply building on a comparative framework, where cases are brought together in order to contrast key aspects of the explored issues, combines some critical interventions into comparison as method with the feminist tradition of transnational scholarship. The former, often drawing on de- and postcolonial traditions, challenges implicit and reductive forms of comparison in order to invite more uncertain projects of knowledge production that are attuned to difference (Jazeel, 2019). The latter stresses a similar attentiveness to difference with regard both to theoretical and analytical work and to the forms of politics of feminist solidarities (Mohanty, 2003; Yuval-Davis, 2011). One of the main assumptions of such approaches has been that feminist struggles never unfold in linear ways and that itineraries towards justice thus should not be understood and represented in terms of progress, as such progressivist narratives can be linked to particular power relations in the global order. Here, instead the particularities or singularities of struggles taking place in different places of the world should be at the core of the analysis, not just as a background or contextualisation but as key for our understanding of the phenomenon at hand.

Poland and Sweden are often situated in peculiar political geographies in which the East/West divide is still the main compass for orientation, despite the fact that most transnational feminist conversations are framed primarily as between the Global South and Global North (Grabowska, 2012). Such geographies are apt to be rooted in a kind of erasure of the history of progressive and diverse reproductive politics in countries of the former state socialism as well as in a strong orientation towards the West in the region (Grabowska, 2012). This divide tends to operate within imaginaries of progressive versus conservative, secular versus religious, democratic versus authoritarian. Local collective memories complicate

these simplistic images. One of the memories of transnational solidarities across the Polish-Swedish border has been of trips by Swedes in need of abortion to Poland in times when it was illegal to perform it in Sweden but legal in Poland (Korolczuk, 2010: 83; Karlsson, 1999). Among the scholars of recent anti-gender mobilisations, there has however been disagreement as to how useful the West/East divide is as an analytical lens (e.g. Paternotte & Kuhar, 2018; Graff & Korolczuk, 2022). It is thus interesting to take a closer look at instances of anti-abortion mobilisations in Sweden and Poland to further complicate these kinds of imaginaries.

Sweden: The Midwife Case and Rights Claims of Co-determination and Anti-discrimination

In Sweden, the abortion law was liberalised in 1938, when women were allowed to seek permission to have the procedure done for medical, eugenic or humanitarian reasons (such as being ill; suffering from a hereditary disease; or having been impregnated during rape or incest, Lennerhed, 2017: 10). In the 1940s, so-called social medical reasons were added—having to do with the medical board's assessment of the mother's ability to properly care for a child—and in 1963, abortion was permitted in cases where the foetus was damaged.

In the 1960s, the Swedish debate around abortion started to change. Increasingly, leftists, liberals and feminists petitioned politicians to institute 'free abortion'—a radical demand at the time and pushed mostly by male political agents (Lennerhed, 2017: 127). Women's voices in the public debate met harsher reactions. For example, a public hearing in 1964 that included a narrative by a woman who had travelled to Poland for an abortion prompted the Swedish police to search the office of the organiser in pursuit of names of more such women. The example illustrates the risks involved for women in addressing their experiences, as well as the severe tensions around abortion practices and debates in Swedish society at that time (Lennerhed, 2019: 328). Those opposing the demands for a liberalised law—of whom many were women, including influential female politicians—argued for the rights of foetuses and stated that pregnant women were not necessarily in the right state of mind to make such ethically fraught decisions (Lennerhed, 2019: 329).

However, the pro-choice movement proved successful in their claims that free abortion was emancipatory, just and the safest public health

policy. Abortion on demand was introduced in 1975. The law, which is still in effect, guarantees that women have the right to abortion at a hospital until the 12th week of pregnancy and, after a counsellor's evaluation, until the 18th week; thereafter, permission must be given by the National Board of Health and Welfare. Foetal viability is considered a limit in late abortions. To date, the most significant reform in the legislation expanded the possibility for more women to access the procedure. An amendment entered into force in 2008 abolishing the rule that only Swedish citizens or women domiciled in Sweden could get abortions via the Swedish healthcare system. This amendment was explicitly motivated by the notion that abortion for non-Swedes should be governed by the same principles as general healthcare for non-Swedes. Since 2008, any woman who can pay for the procedure (e.g. using an insurance policy or personal funds) can have an abortion in Sweden under the conditions prescribed by the Swedish abortion law.

The 1975 law has had widespread support in Swedish society. It was essentially uncontested until the 1990s, when the neo-charismatic evangelical movement and its Word of Life church started to push an anti-abortion agenda through the organisation Yes to Life. The organisation, like many of its international counterparts, organised street protests and compared the Swedish abortion policy to the Holocaust (cf. Threedy, 1994) but was wholly unsuccessful in affecting policy or reshaping the debate around abortion.

Since then, abortion has largely been absent from the political agenda in Sweden. No serious threats against the law have emerged, despite the consistent presence of anti-abortion organisations. However, in 2014 the issue around abortion was revived through lawsuits against county hospital agencies. Two midwives applied for positions in different women's clinics, and during the recruitment process they informed their prospective employers that, because of their Christian faith, they would refuse to participate in abortion care. They were then told their services were not wanted, which in turn led to legal proceedings resulting in a decision by the Swedish Equality Ombudsman; a ruling in the district court of first instance; a ruling in the Labour Court; and a ruling in the European Court of Human Rights. The legal cases focused on the issue of conscientious objection, and the lawsuits sparked what was, by Swedish standards, an unusual debate on the possibilities for healthcare workers to opt out of performing abortions and on the issue of abortion in general.

Historically, social and political change in Sweden—in sharp contrast to the USA—has not been instigated through the courts, but via the parliament (Steinmo et al., 1992). As Linders (2004: 381) has argued, the struggles over abortion in Sweden developed and grew largely within existing political organisations—especially in the youth, student and women's factions of the Social Democratic, Liberal and Left parties. Activists during the time when Swedish abortion policy was transformed were more likely to 'use and rely on institutional methods of political pressure' (ibid.). A distinct feature of the Swedish abortion debate of 2014–2015 was the fact, then, that the issue was raised in the form of lawsuits and settled in courts.

Then again, it is possible to trace the lawsuits back to a more traditional Swedish approach to social change, namely, the introduction of a 2010 motion in the European Parliament by a Swedish Social Democratic MP. Aiming to reduce the right of entire hospital organisations to invoke conscientious objection and thereby increase availability of abortion providers to women in EU countries such as Italy, MP Carina Hägg put forth a report to the parliament wherein she proposed implementing oversight mechanisms. The move backfired as amendments were made and the final report instead strengthened the right of healthcare workers to invoke conscientious objection (Council of Europe Resolution 1763). The following year, 2011, the Swedish Parliament decided to call for a withdrawal of the resolution, prompting a European Catholic umbrella organisation, along with Swedish anti-abortion groups, to report Sweden to the European Committee of Social Rights for being in breach of the European Social Charter. The so-called midwife cases were thus launched amid different attempts by Swedish politicians and international actors to influence European policy on the matter of conscientious objection.

One of the leading voices in protesting the Swedish Parliament's proposed withdrawal of Resolution 1763 was a lawyer with established ties to the US Christian anti-abortion lobbying group Alliance Defending Freedom. During 2010–2013, the lawyer, Ruth Nordström, published several opinion pieces in Christian outlets encouraging healthcare workers to raise the issue of conscientious objection. In one opinion piece, she encouraged healthcare workers to contact her with their stories, citing Resolution 1763 and promising to help healthcare workers be relieved of certain tasks. In December 2013, Nordström described having received a letter from a nurse who had been denied employment at two women's clinics for refusing to carry out abortions. It is reasonable to assume that

the nurse was in fact the midwife who later would sue a hospital organisation with the aid of Nordström. Because this plaintiff took an active part in the public debate surrounding the case, and because her lawsuit would establish precedent, the following section will focus on her case.

The Midwife Case

The plaintiff and the group of lawyers and activists supporting her consistently argued that the goal of the lawsuit was not to restrict access to abortion, but to support the right to conscientious objection for healthcare workers. However, as Luker (1984) has argued, the balance between strategic positions and moral logics has always been a delicate issue for anti-abortion activists. The midwife and her lawyer argued that they accepted the law while also claiming that abortion is about ending life. By deploying a rights-based approach wherein the conflict was located between employees and employers, as well as citizen and state, the lawsuit avoided the contentious issue of the woman's right to bodily autonomy versus the right of the foetus. The ensuing media debate did not avoid that issue, however, and many opponents of the lawsuit pointed out that conscientious objection would create a slippery slope towards restricted abortion access. Unions organising midwives and gynaecologists, as well as professional associations of healthcare workers, all criticised the lawsuit and warned of its potential effects.

Those in favour of the lawsuit—the plaintiff, her legal team and some conservative pundits—argued that, far from representing a novel take on the abortion issue in Sweden, the lawsuit represented a defence of the Swedish model of co-determination in the workplace. As one party official for the Christian Democrats argued, 'conscientious objection is at its core a question of co-workers not being forced to carry out tasks that go against their convictions in matters regarding life and death' (quoted in Selberg, 2020: 325). The rights claim deployed by the team behind the lawsuit—the right to co-determination in the workplace—stems from Sweden's Co-determination Act, which protects employees' right to influence the organisation and effectuation of work tasks.

This was not the only rights claim mobilised by the lawsuit, however. The midwife first turned to the Swedish Equality Ombudsman, arguing that she had been the victim of discrimination on the grounds of religious belief. The Ombudsman issued a decision disagreeing with the applicant, arguing that direct discrimination was out of the question since the refusal

on the part of the midwife to carry out abortions implied that she was not in a situation comparable with other applicants. Nor was it her religious faith as such which was at stake, since another midwife refusing to perform duties other than on religious grounds would not have been treated any differently. The midwife's freedom of religion was therefore not breached; the demand by the employer was proportionate and allowed because of the aim and purpose of the decision—that is, to safeguard the effectiveness of women's right to abortion as stipulated by the Swedish law.

The midwife then turned to the District Court of Jönköping, suing the county for damages on the grounds of the respondent's 'failure to hire' her, together with violations of her right to conscientious objection and freedom of religion as well as direct and indirect discrimination. This case was the first ever in Sweden on the issue of conscientious objection. The plaintiff invoked not only national anti-discrimination law but also the European Convention on Human Rights. The respondent argued that a midwife must carry out all the tasks normally performed at the clinic and that hiring conscientious objectors would threaten the right to healthcare of patients seeking abortion. The Court ruled in favour of the county. The midwife appealed to the Court of Appeal, which transferred the case to the Labour Court. The Labour Court rejected all claims.

Finally, the midwife turned to the European Court of Human Rights (ECHR), complaining under Articles 9, 10 and 14 that the Swedish authorities had interfered with her right to freedom of thought, conscience and religion; that her freedom of expression had been violated; and that she had been discriminated against. In the case Grimmark v Sweden, the ECHR found that the midwife 'compared her situation to that of midwives who were willing to perform all duties inherent to the vacant posts, including abortions', a notion rejected by the court. The application was declared inadmissible, effectively ending the first-ever lawsuit pertaining to abortion services in Sweden since the abortion law was introduced in 1975.

No other serious attempts have been made by anti-abortion activists to challenge the abortion law in Sweden. With some regularity, abortion is brought to the agenda, mostly by Christian leaders and commentators, but even in the far-right coalition that succeeded in the elections of 2022 the support of the liberal abortion legislation is essentially uncontested. There are no major political agents in Sweden who threaten the right and access to abortion; the decision by the team behind the lawsuits to mobilise rights-based claims regarding co-determination and anti-discrimination highlights the marginalisation of arguments around the rights of foetuses.

However, the lawsuits also illustrate that anti-abortion activism in Sweden exists, is highly flexible and is responsive to rights-based approaches.

Poland: The *Zatrzymaj Aborcję* [Stop Abortion] Bill and Claims for Non-discrimination from the Moment of Conception

Until 2020, Polish legislation banned abortion except in certain cases: the pregnancy being a result of a criminal act; the life or health of the woman being endangered by the continuation of pregnancy; or malformation of the foetus (Kotiuk, 2018). Since 2015, civic legislative initiatives have been tabled: some aiming at liberalisation of the law, others at restricting it further. The heated debates and mass strikes, called the Black Protests, took place in 2016 after a popular bill was tabled in the Polish Parliament by a civic initiative represented by the organisation Ordo Iuris (an ultra-conservative Polish Catholic legal organisation and think-tank), aimed at completely banning abortion and penalising those undergoing them. The bill was not passed, but some time later, in 2017, an alternative, milder version thereof was submitted, designed for the removal of the exemption allowing abortion in cases of foetal malformation (Zatrzymaj Aborcję Bill, 2017). The bill was discussed in the Parliament during the lockdowns caused by the Covid-19 outbreaks, but was not passed then either. However, some months later, in autumn 2020, the Constitutional Court declared that legislation in respect of this exemption is unconstitutional, a ruling that resulted in the illegalisation of abortion in cases of foetal malformation. Mass protests followed this decision (cf. Kochaniewicz in this volume). The analysis that follows below focuses on the later bill and other documents presented by the opponents of abortion. First, however, it can be worth briefly reviewing the history of legal regulation of abortion in Poland, both because it instantiates a challenge to linear narratives on reproduction rights and to introduce some important frames of reference that are used in discussions around abortion today.

Historical Background

When Poland gained independence at the beginning of the twentieth century, its legislation around abortion reflected the strict regulations of the three empires that had partitioned Poland previously. It was gradually

uniformised under the new Penal Code, introducing some exceptions by which abortion was made legal (Kotiuk, 2018). During this time, important campaigns were launched in an effort to abolish the penalisation of women; among these were the voices advocating legalisation of abortion on request, such as those of Irena Krzywicka and Tadeusz Boy-Żeleński. The latter in his famous essays described what he called 'women's hell'—the hypocrisy of a society that prohibits abortion and disregards the lived reality of thousands of women driven underground to undergo the procedure in poor, inadequate conditions (Boy-Żeleński, 2013/1929).

During World War II, in occupied Poland, issues of reproduction were closely linked to the Nazi racial demographic politics based on eugenics that aimed at growth of desired segments of the population—hence, for German women, the absolute ban on abortion, and the death penalty—while restricting the growth among non-desired groups, through the liberalisation of abortion but also sterilisation, for Jews, Roma, people with disabilities and other marginalised groups. For the occupied Polish territories this translated into a practically full liberalisation of abortion in 1943 (Kuźma-Markowska, 2010: 140).

In the postwar period, reproductive politics in Poland was influenced by several factors. Most importantly, a huge loss in population due to the casualties of war, population transfers and the shifting of the borders led to the overarching pro-natalist politics embraced both by the socialist state, which was quick to denounce Malthusianism as a product of the West and to stress Marxist theories of population (Kuźma-Markowska, 2020), and the nationalist and religious segments of the opposition (Klich-Kluczewska, 2012: 324–326). Such a pro-natalist approach reflected a more general trend in the Eastern bloc in population politics in the first years after the war. The shift came in the mid-1950s: due both to a turn in the state's population politics and thanks to the women's struggle in Poland (Grabowska, 2018), a bill was proposed to legalise abortion. As a result, in 1956 a new law was introduced liberalising abortion, whose main aim was to protect women from the negative effects of unsafe abortion performed in poor conditions or by people without medical training. This legislation was further amended in 1959, making it possible for women to undergo abortion for social and material reasons based only on their declarations. As a result, abortion in the upcoming decades would in practice be accessible on demand in Poland. This development illustrates how the reproductive politics was a result of a variety of ideological struggles, combining shifting understandings of the role of women in the

socialist project (Fidelis, 2010), official demographic approaches shaped by the changing ideological landscape in the Eastern bloc in relation to the ideas of modernisation and population (Kuźma-Markowska, 2020), as well as the need to mitigate the dangers of the prevalent practice of underground abortion. The 1956 law was one of the most liberal in Europe and, for decades, abortion was not a political issue.

The situation changed during the time of transition from state socialism to liberal democracy, from 1989. The current law regulating access to abortion in Poland was one of the first legal acts passed in Poland after the country's transition. After decades of legal abortion on request and free access to public reproductive health services in the socialist Poland, a turn took place in Polish politics in which regulating reproduction was part of a broader context of reinstalling a conservative agenda and family order in the emerging nation-state and foregrounding the influence of the Catholic Church (Graff, 2002). The legal restriction coincided with the neoliberal economic reform, resulting in widespread privatisation and marketisation of the reproductive health services in the country (Mishtal, 2010).

Struggles over the Language

The conflict regarding abortion in Poland has involved a struggle over the language (Heinen & Matuchniak-Krasuska, 1995; Graff, 2002; Desperak, 2003; Kozub-Karkut, 2017; Korolczuk, 2019). During the period of transition, the anti-abortion movement with strong links to the Catholic Church has succeeded in establishing hegemonic vocabularies in which abortion has been described and disputed (Graff, 2002). However, in the 2010s, as a result of intensification of the political and ideological conflict over abortion and an emergence of a broad and highly diversified feminist movement, a struggle over the language also reopened (Korolczuk, 2019). Since the transition, the dominant frame through which claims for access to abortion have been formulated has been the liberal one centring the right to choose and to decide over one's body. The liberal frame had meant an orientation towards the West, where adherence to some reproductive rights would be represented as a way of becoming a part of the civilised world, as opposed to the 'barbaric' places where women are denied reproductive rights (Korolczuk, 2019). Now, some new frames have been emerging to stake the claims around abortion. Among these were the reformulations of access to abortion as an economic and social issue (Chełstowska, 2011a, b), both by the feminist groups on the left

drawing on the socialist legacies, such as the Workers' Initiative Union or Abortion Dream Team and other organisations often related to the Social Congress of Women, but also by less ideologically declared participants of the strikes.

The strategies of framing the issue on the part of the anti-abortion movement have shifted considerably too, at the same time as they became diversified, reflecting the processes of transformation and diversification of the movement itself. Whereas in the 1990s and beginning of the 2000s the issues had been framed in clearly religious and moral terms, other alternative frames started to emerge in the movement, pushing the references to religion to less dominant positions (Kozub-Karkut, 2017). In the 2010s, and reflecting a transnational trend within these globalised movements, human rights vocabularies have increasingly been employed to stake claims against abortion.

Elżbieta Korolczuk in her analysis of the 2016 Black Protests argues that the feminist mass mobilisation resulted in the successful reclaiming of the language and the frames through which to define the issue of abortion in the public debate in Poland, pointing at the ways in which a reversal of the roles happened. She claims that while anti-abortion groups used the abstract legal language of human rights, women's groups appealed to emotion, referring to suffering and torture. The legal framework of rights claims adopted by the anti-abortion groups 'proved ineffective, too abstract and detached from everyday human experience' (Korolczuk, 2019: 148–149, our translation). While the question of the actual success of these struggles over the language, in the form of the legal frameworks and how the lived realities of abortion should continue to be discussed, considering the subsequent developments that led to restricting the abortion ban in Poland and despite the non-democratic process that led to this transformation, we can agree that both the mass protests in 2020/2021 (cf. Kochaniewicz in this volume) and the current opinion polls do support the above analysis. What we would like to discuss, however, is the suggested ineffectiveness of the appropriation of the rights claims and, most importantly, their abstract and detached nature. In the analysis below we will try to argue that, while this kind of legal framing operates in a quite abstract and technical register, it also strategically draws on particular affective and contextual resources.

The 2017 Zatrzymaj Aborcję Bill

As mentioned earlier, after the failed attempt to pass a total ban on abortion, including the penalisation of women—the attempt that sparked the Black Protests in 2016—another civic initiative proposal was submitted to the Parliament in 2017, this time calling for an amendment to the existing legislation to make abortion illegal in cases of foetal malformation. While the bill did not pass in the Parliament when voted upon in 2019 and was directed to a parliamentary commission for further elaboration, the change in the law it proposed was subsequently enforced by the Constitutional Court in 2020. The material used in this analysis consists of the text of the bill including its justification, some legal analyses produced by the organisation Ordo Iuris (2018) that supported the project and who are one of the chief actors in Poland behind anti-gender politics, and the speech given by the author of the bill, Kaja Godek, delivered to the Polish Parliament on April 15, 2020, in its two versions—one abbreviated for the sake of the debate and the full one published afterwards.

A main feature of the analysed documents and the speech is that they frame the issue of the proposed amendment in terms of human rights. This is reflected in the ways in which they introduce the need for the amendment, but also how they construct the legal argument for it. The legal opinion prepared by Ordo Iuris presents a long argument for including unborn children into the legal definition of 'every person'—the formulation used in the human rights instruments to define the subject of these rights—and thus cover it with the protection under the human rights law, including the Convention on the Rights of the Child. This argument is technical and framed as the issue of compatibility with legal interpretations which these instruments should cover (Ordo, 2018).

The rationale behind the proposed change—the elimination of the right to abortion in cases of foetal malformation—is clearly stated in the bill by the following formulation:

> The proposed amendment is aimed at guaranteeing that the constitutional right to the protection of life be not differentiated depending on the health of the conceived child […]. To remove the legal admissibility of eugenical abortion seems obvious in times where the state according to the Constitution (art. 68 para. 3) has an obligation to provide sick children with medical, psychological and material support, aimed at ensuring their development and social integration.

After the argument as to why, in agreement with the Polish law, foetuses should be counted as living human beings, the justification proposes an analysis of the current state of affairs, claiming:

> Currently, we have to do with the legal discrimination of different categories of people in such a fundamental question as human life. Children in the prenatal period who are suspected of being disabled are excluded from the protection of the law. Every year, at least several hundreds of children are legally subject to physical elimination in the public health service institutions. (2017 Zatrzymaj Aborcję Bill, our translation)

Moreover the bill claims that the way in which the law was formulated at the time is imprecise:

> It is not specified, for instance, in what ways medical prerequisites should indicate the risk of disease—directly or indirectly. It is not specified if it is enough to establish genetic risks in the family in order to determine with a high probability a child will be sick. The law does not establish any measure for 'high probability' or measure that should be used to assess if the disability is 'heavy'. (2017 Zatrzymaj Aborcję Bill, our translation)

The bill's main arguments oscillate between a reference to the legal right not to be discriminated against and to discussions in the field of medicine. Conversely, in the full speech by Kaja Godek—the representative of the civic legislative initiative who presented the bill in the Parliament—these arguments are situated in a historical context. Here the links are made clear to the genocidal practices of Nazi Germany in a way that makes the arguments much less abstract and detached than a technical legal argumentation:

> In the years 1939–1944, the German Nazis implemented a program of elimination of mentally ill people and people with intellectual disabilities. As a result of this action, called Action T4, about twenty thousand people were killed. […] Mass executions in gas chambers began in nursing homes and hospitals. Germans tested on disabled people the operation of gas chambers, which they later used on a larger scale to eliminate healthy Poles, Jews, Roma and other nations considered inferior to the Aryan race. […] In the meantime, on the 9th of March, 1943, free abortion for Polish women was legalised for the first time. The legalisation was done by Adolf Hitler. Eugenics—that is, cleansing the race through the physical elimination of

> individuals 'who do not deserve to live'—was most fully developed in the Third Reich, but it can also be observed in Polish law and its practice to this day. (Godek, 2020, our translation)

The case of the bill constitutes an example of how the rights claims in the anti-abortion movement in Poland, even in their most legally framed versions, simultaneously engage images and narratives that relate to particular contexts. More importantly, despite its seemingly abstract and detached format, this kind of engagement in rights claims actually works through powerful affective registers strongly anchored in established national frames of reference to collective memories and traumas.

Final Reflections

In recent years, scholars have paid careful attention to the variegated rhetorical devices and mobilisation tactics employed in the struggles over access to abortion (cf. Mason, 2019). Movements on both sides of the issue are displaying increasing responsiveness to local and regional political, historical and cultural contexts (Graff & Korolczuk, 2022; Selberg, 2020). The two case analyses presented in this chapter illustrate how anti-abortion mobilisations have been recently using legal frameworks based on rights claims that traditionally had been employed by feminist movements fighting for access to abortion. While it can be observed that this trend is part of a broader development of what has been described as a transnational anti-gender movement's appeal to the law, visible both in rhetoric and in strategies, our analyses have illustrated different and context-sensitive ways in which rights claims are articulated in two contexts. In the two cases, choices were made very strategically as to which kind of claims could be most efficient, considering the status and place of different legal arguments and acts—with anti-discrimination legislation and labour law mobilised in Sweden and anti-discrimination legislation protecting people with disabilities in Poland. Most importantly, these strategic choices illustrate how legal frameworks, often considered to be operating in abstract and detached vocabularies, in action are historically embedded and highly contextualised.

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