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## THE POLISH WAY TOWARDS LEGAL PROTECTION OF LIFE

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### Key points:

- The Act of 7th January 1993 that protects life of unborn children rendered abortion illegal except for 3 cases: when mother's life or health is at risk, when the foetus is permanently and severely damaged, or when there are reasonable grounds to suspect that the pregnancy resulted from a criminal offence.
- The Act protects life of conceived children and improves the situation of Polish women. Since 1993, aside from decreasing the number of abortions, women's procreative health has improved (the number of fatal cases related to pregnancy, childbirth and confinement in women has decreased);
- Social opposition against abortion has been on the rise for the last 20 years;
- According to reliable estimation, the scale of Polish illegal abortion industry lies within the range of 7 -14 thousand illegal abortions per year, not 100-200 thousand, as the pro-abortion environments claim.

**Twenty years of legal prohibition of abortion in Poland allow to reach many conclusions on social effects of the restriction, as the former law, in force before the change of social and economic system, allowed for practically unrestricted abortion. Its results are not only significant limitation of the number of abortions, increase in reproductive health of women and improvement in birth-related rates, but also increased social respect to life as a value.**

### What is the history of the Polish pro-life act?

*The Polish Act on Family Planning, Protection of Human Foetus and Conditions for Permissible Abortion (Dz. U. z 1993 r. Nr 17, poz. 78 - Polish Journal of Laws Nr. 17 (78)), was passed on 7th January 1993.*

On 20th November 1996 the president Aleksander Kwaśniewski signed an amendment to the Act that allowed for abortion for the so-called social reasons. On 28th May 1997 the Constitutional Court of the Republic of Poland (Trybunał Konstytucyjny) judged the amendment inconsistent with the Polish constitution: the amendment of 1996 "infringes the constitutional guarantee of human life protection

on every stage of its development". The Court justified the decision as follows: "Value of the legal good protected by the constitution, that is human life, including life developing in the prenatal stage, cannot be diversified, as there are no precise and justified criteria that would allow to perform such diversification according to development stages of human life. Therefore, human life becomes a value protected by the constitution from the moment when it comes into existence. This applies to the prenatal stage as well. Granting constitutional protection to the phase of human life was confirmed in the Convention on the Rights of a Child, ratified by the Republic of Poland on 30th September 1991, where, in the preamble, paragraph 10, one may find a reference to the Declaration of the Rights of a Child: "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". The fact that the provision has been included in the preamble of the Convention unquestionably leads to the conclusion that Conventional guarantees are concerned with the prenatal phase of human life as well. Since the ruling has been given by the Constitutional Court, the Act remains in force in its form from 7th January 1993.

### ■ What is the content of the Polish Act?

The Act renders abortion illegal, save for 3 exceptions: risk to mother's life or health, permanent and severe foetal damage, or a reasonable suspicion that pregnancy resulted from a criminal offence (Article 4a 1. Termination of a pregnancy may be performed by a professional doctor only, and in the following cases: 1) pregnancy constitutes a threat to life or health of the pregnant woman, 2) prenatal examination or other medical reasons indicate a substantial likelihood that the foetus is severely and permanently damaged or terminally ill, the illness constituting a threat to its life, 3) there is a justified suspicion that the pregnancy resulted from a criminal offence").

The Act does not stipulate any penalties for women who decide on abortion (article 7 (2): "Mother of the conceived child shall not be subject to penalty").

### ■ What is the scale of abortion in Poland with the Act of 1993 in force?

The government, obliged by law to report effects of the Act, publishes data on number of abortions every year (Article 9 of the Act of 7th January 1993: "1. A year after the entry into force of the Act, the Minister of Health and Social Security will present a report on implementation of the Act and effects of its application to the Sejm. 2. Appropriate reports will be presented by Ministers of Justice, National Education and Labour, and Social Affairs, concerning matters within their competence").

Table 1. Number of abortions registered in Poland in the years 1993-2011, according to their causes.

Year	Cause for abortion		
	Threat to mother's life or health	Damage or terminal illness of the foetus that constitutes a threat to its life	Suspected criminal origin of a pregnancy
1993	736	32	9
1994	698	74	19
1995	519	33	7
1996	457	40	8
1997	409	107	7
1998	211	46	53
1999	94	50	1
2000	81	55	2
2001	63	56	5
2002	71	82	6
2003	59	112	3
2004	62	128	3
2005	54	168	3
2006	82	246	12
2007	37	282	3
2008	32	467	0
2009	27	510	1
2010	27	614	0
2011	49	620	0

Data source for the table: reports of the Council of Ministers on realisation of the Act on Family Planning, Protection of Human Foetus and Conditions for Permissible Abortion for the years 1993-2011.

### What are the effects of implementation of the Act, aside from the decrease in abortion rates?

Aside from decreasing the number of abortions, women's procreative health has improved since 1993 (the number of fatal cases related to pregnancy, childbirth and confinement has decreased), procreative awareness among women improves (number of under-age mothers has decreased). Another positive effect of the Act remaining in force is the decrease in perinatal mortality rate in children (perinatal mortality comprises of stillbirths and deaths of newborns aged 0-6 days, per 1,000 still- and live births). In 1991, perinatal mortality rate amounted to 18.2‰, in 1996 - 12.2‰, in 1998 - 9.6‰, in 2010 - 6.8‰, in 2011 - 6.7‰. (Report of the Council of Ministers on realisation of the Act on Family Planning, Protection of Human Foetus and Conditions for Permissible Abortion [Dziennik Ustaw Nr. 17 (78), as amended], Warsaw 2012).

**Have the predictions of pro-abortion activists that an Act prohibiting abortion would bring allegedly harmful implications, come true?**

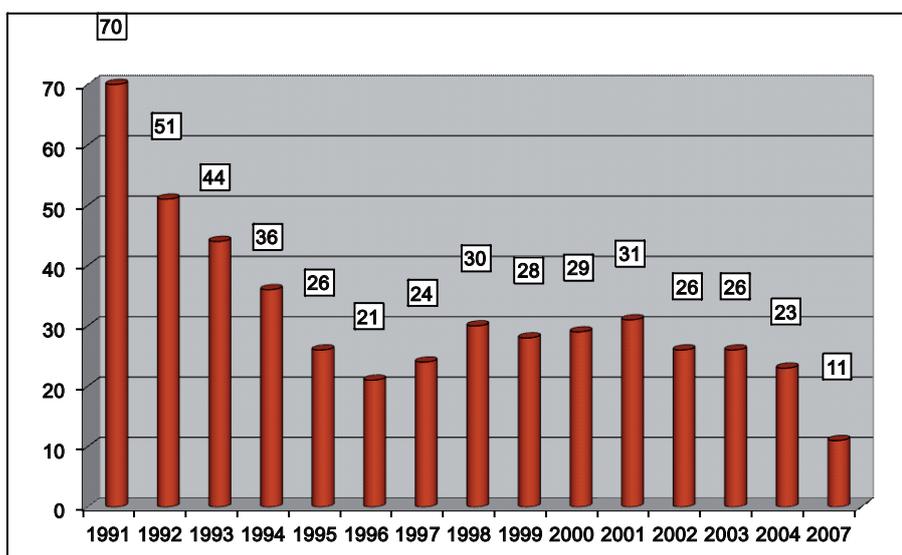
Table 2 and diagrams 1-3 present unbiased and factual answers to arguments put forward by pro-abortion activists based on the presumption that prohibition of abortion would allegedly imply harmful effects.

Table 2.

Consequences of implementation of the pro-life Act, as predicted by abortion supporters.	Actual situation
1. Serious increase in infanticide rate.	Infanticide rate has dropped: in 1992 it amounted to 59, in 2002 - 28, in 2003 - 25, in 2009 - 28, in 2011 - 24, in 2012 - 22 (source: Polish Police Headquarters, 2013)
2. Serious increase in the number of abandoned children.	<p>The number of fatal cases of abandoned children in 1991 was 1, in 1992 - 0, in 2003 - 0, in 2009 - 5, in 2011 - 4 (Polish Police Headquarters, 2012).</p> <p>Number of newborns abandoned in hospitals for reasons other than health-related has dropped: in 2002, 1018 newborns were reported abandoned in hospitals, in 2006 - 825, in 2008 - 775, in 2009 - 726, in 2010 - 798, in 2011 - 758) (Report of the Council of Ministers on realisation of the Act on Family Planning, Protection of Human Foetus and Conditions for Permissible Abortion [Dziennik Ustaw Nr. 17 (78), as amended], Warsaw, 2012)</p> <p>According to the Daphne Programme research commissioned by the European Union, number of open abandonments in Poland equals 3.7 per 100,000 live births. In countries where abortion is legally allowed, the rate remains higher: in Slovakia - 4.9, Czech Republic - 4.1, Latvia - 3.9 (Prevention of child abandonment, Nobody's Children Foundation, Nottingham University, 2012)</p>
3. Prisons will fill with women convicted of abortion.	The Act of 1993 does not provide for penalties of any kind for women who had an abortion, but does stipulate penalties for medical staff responsible.
4. Hospitals will be crowded with women who would have tried to have an illegal abortion in primitive conditions.	<p>Number of fatal cases of women caused by pregnancy, childbirth or confinement in 1991 equalled 70, in 2002 - 26, in 2004 - 23, in 2007 - 11, in 2008 - 19 (Reports of the Council of Ministers on realisation of the Act on Family Planning, Protection of Human Foetus and Conditions for Permissible Abortion for the years 2002, 2003, 2004, 2008 and 2010).</p> <p>In 1990, 22.3 fatal cases of women were reported per 100,000 live births, in 1995 the number decreased to 17.1, in 2000 - 8, in 2010 - 5. (Source: Zgony matek w Polsce w latach 1951-2010. Przyczyny położnicze i nie położnicze (Maternal deaths in Poland from 1951 till 2010. Obstetric and non-obstetric reasons), in: red. T. Maciejewski, red. M. Troszyński, red. S. Janus, Klinika Położnictwa i Ginekologii Instytutu Matki i Dziecka. Rozwój opieki perinatalnej na przełomie XX i XXI wieku, Poznań 2013)</p>

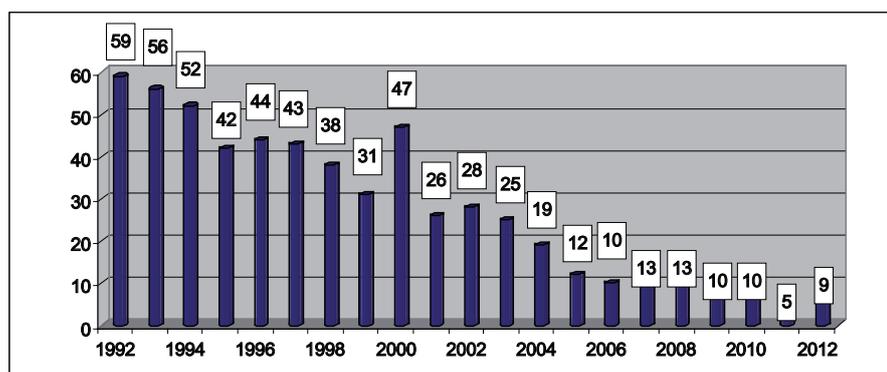
5. Women „forced” into motherhood will be left destitute and unsupported.	List of maternity homes, helplines, baby hatches and institutions that provide help to impoverished mothers may be found here: ...
6. More and more premature girls would become mothers.	The number of under-age girls within the procreation process decreases (in 1990 they constituted 8% of women giving birth, in 2002 - 6.9%, in 2003 - 6.4%, in 2004 - 5.1%, in 2011 - 4.1%) (Roczniki demograficzne GUS - Demographic Yearbook by the Central Statistical Office)
7. There will be an increase in number of miscarriages classified as spontaneous, but in fact provoked by women.	The number of miscarriages remains stable, in 1991 it totalled 55,992; in 2002 - 41,707; in 2009 - 47,323; in 2010 - 44,394, in 2011 - 44,529 (Report MZ-29 on general hospital activity, Ministry of Health, 2012)

Diagram 1. Maternal deaths caused by obstetric reasons in Poland in the years 1991-2007



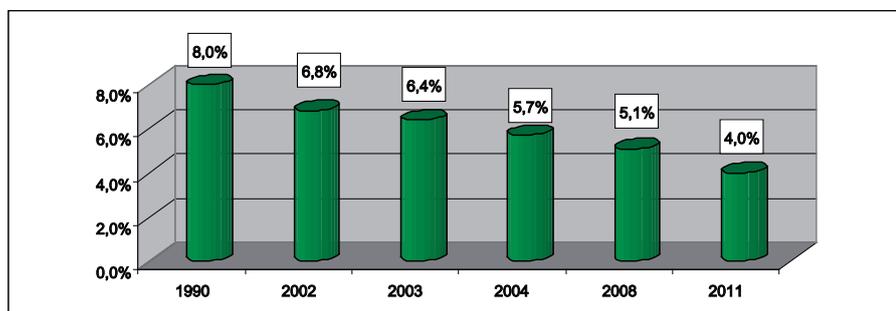
Source: Reports of the Council of Ministers on realisation of the Act on Family Planning, Protection of Human Foetus and Conditions for Permissible Abortion for the years 2002, 2003, 2004, 2008, 2010.

Diagram 2. Infanticide rates in Poland in the years 1991-2012



Source: Polish Police Headquarters, 2013.

Diagram 3. Live births by mothers younger than 19 as percentage rate of the total number of live births in Poland



Source: Roczniki Demograficzne GUS (Yearly Reports by the Polish Central Statistical Office).

All the aforementioned facts illustrate that the pro-life Act benefits conceived children, women, families and the whole society. Discussion about functioning of the Act should focus on constant improvement of protecting unborn human life, mothers and families, and not on re-legalisation of abortion.

### What is the social support for the Act of 1993?

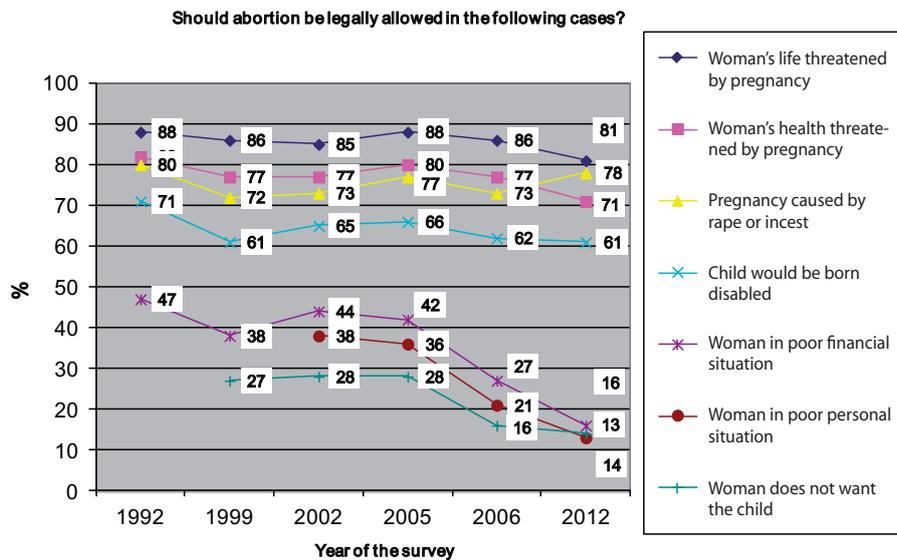
Sociological researches performed by various institutions show that social opposition against abortion has increased significantly throughout the last 20 years.

#### Outcome of public opinion poll

According to CBOS (Polish Public Opinion Centre), in August 2013 75% poll participants expressed an opinion that abortion is evil and cannot be justified.

A decrease of social allowance for abortion has dropped significantly. It dropped from 47% in 1992 to 16% in 2012 in a situation when a woman remains in difficult material conditions, from 38% in 2002 to 13% in 2012 when a woman remains in a difficult personal situation, and from 27% in 1999 to 14% in 2012 in a situation when a woman simply does not want a child.

Meanwhile, acceptance for abortion in cases specified in the Act as exceptions remains considerably high. Abortion in cases when life of a woman is threatened was supported by 88% respondents in 1992 and 81% in 2012; in cases when woman's health is at risk - 80% and 71% respectively, termination of a pregnancy resulting from criminal offence was accepted by 80% respondents in 1992 and 78% in 2012, whereas abortion in cases of severe and permanent foetal damage was supported by 71% respondents in 1992 and 61% in 2012 (see chart below).



Source: CBOS, Komunikat z badań, Opinie o prawie aborcyjnym, BS/160/2012, Warszawa, December 2012.

According to data by OBOP (Public Opinion Research Centre) from 2003, supporters of legal protection of unborn children's life constitute 81% adult Poles (out of which 50% are firm supporters and 31% - moderate supporters) (OBOP, Polacy o aborcji i o ustawie antyaborcyjnej (Poles on abortion and the pro-life Act), Warsaw, June 2003).

A survey performed in 2010 by GFK Polonia on unrestricted abortion showed that only 5% respondents supported the idea. (quot. from: "Rzeczpospolita" 23<sup>rd</sup> March 2010).

A survey published in October 2012 by the Centre for Thought of John Paul II and CBOS showed that 80% of Poles agree with the opinion that "human life should be protected from conception until natural death, always and regardless of the circumstances" (quot. from: „Rzeczpospolita”, 12th August 2013)

### Outcome of public consultation

In 1991, as a result of public consultation administered by the Sejm, 1,710,974 opinions of Polish citizens on legal protection of unborn human life were delivered in writing to the Sejm Chancellery; 89% thereof supported legal protection of the unborn and 11% were against.

In 2007, a right of initiative was undertaken in order to clarify the Article 38 of the Polish constitution (concerning protection of human life) by filling in the words: "from conception until natural death". At the time, the Sejm Chancellery received over 506 thousand signatures of citizens "for" the proposed amendment to the constitution, and just under 2 thousand "against".

## What was the change in approach towards respect for life since the Act went into force?

In 1996 the Act of 1993 was cancelled for a year and there appeared a possibility to perform abortions "upon request". Under such legal regulations in 1997 3047 abortions were performed in Poland. The number - incomparably lower than the number of abortions performed for the reason when the Act

of 1956 was in force - proves significant changes in social awareness, showed by increased respect for life and widespread conviction that human life begins at the moment of conception.

### ■ **Polish illegal abortion industry. Abortion tourism – manipulation tools**

Abortion supporters claim that the low number of legally performed abortions does not indicate increasing respect for life, but, on the contrary, proves that women who opt for abortion and are legally prohibited to do so, use the illegal abortion industry. Its existence and operating scale has been the argument used by some political and media representatives.

For instance, in a justification to a bill “on aware parenthood” drafted by the SLD (Democratic Left Alliance) parliamentary club in 2004, the following statement could be found: “Illegal abortion industry, including services performed by unprepared non-professionals, has dominated the market. Such abortions are not performed in hospitals even when obvious medical indications or premises that a criminal offence could have been committed are present. (...) The exact number of illegal abortions cannot be estimated. It is estimated to vary between 100-200 thousand terminations yearly”. (sld.kluby.sejm.pl/KP\_SLD\_V\_Kad/archiwum/swiadomerodzicielstwo.doc)

### ■ **What are the reasons for the myth of vast illegal abortion industry in Poland?**

Wanda Nowicka and Monika Tajak, authors of the report “Anti-abortion Act in Poland. Functioning, social impacts, attitudes and behaviour. Report - September 2000”, endorsed by Federation for Women and Family Planning ([http://www.federa.org.pl/publikacje/raporty/aborcja2000/aborcja2000\\_2.htm](http://www.federa.org.pl/publikacje/raporty/aborcja2000/aborcja2000_2.htm)), claim that the allegedly gigantic scale of illegal abortion industry is depicted by decreasing number of births in Poland. The drop, however, is an indication of a trend that has been present in Europe for decades. New family structure, delay in the decision to marry, increased access to family planning methods, decreasing number of women in reproductive age, when it comes to Poland - high unemployment rate, lacking pro-family policy on a level of the country, major increase in education level of women, insufficient housing for young couples and, last but not least, emigration of the young - these are the real reasons for decreasing birth rates. The availability of abortion is just one, and not the most important, factor creating the trend.

Nowicka and Tajak estimate the scale of illegal abortion industry by relating to adequate situation in such countries as Lithuania, Czech Republic or Latvia. Whereas, according to Prof. Dr. hab. Bogdan Chazan, “comparison to the Baltic states and other neighbouring countries cannot be the ground to estimate the number of abortions in Poland”.

Rates of sexually transmitted diseases, including HIV, maternal mortality related to pregnancy, childbirth and confinement, mortality of foetuses and newborns - these are much greater in the countries than in Poland.

One of the reasons is a great number of abortions, that secondarily leads to complications. (...) Social and healthcare situation of the countries and Poland is incomparable”.

(“Raport wysany z palca”, “Głos dla Życia”, 5/2003)

Analysis of the conclusions of the report allows to notice, that they have not always been based on earnest methodological grounds. For example, the conclusions drawn from the following sentence have been drawn based on ten interviews with medical staff: "A total of 10 interviews has been conducted, 6 with gynaecologists (2 women, 4 men) and 4 with mid-level healthcare personnel - midwives and nurses" ([http://www.federa.org.pl/publikacje/raporty/aborcja2000/aborcja2000\\_3.htm](http://www.federa.org.pl/publikacje/raporty/aborcja2000/aborcja2000_3.htm)).

A more recent report by the Federation for Women and Family Planning from 2007 (Reproductive law in Poland. Effects of the abortion Act) includes the information: "As shown by official data, the number of legally performed abortions remains on a steady level of around 200 per year, what does not illustrate the real number of abortions at all. Rate of spontaneous miscarriages is disturbing. Compared to 1993, the number of miscarriages in 2005 rose by 0.32%" ([http://www.federa.org.pl/dokumenty\\_pdf/aborcja/Raportpopr.pdf](http://www.federa.org.pl/dokumenty_pdf/aborcja/Raportpopr.pdf)). An increase in miscarriage rate by almost 1/3% over 12 years does not even extend the margin of a sampling error.

The basic source of the myth of 200,000 abortions performed illegally named within the report is in the following sentence: "a simulation of abortion rate in Poland has been performed, basing on an assumed abortion rate per 1000 women in reproductive age on the level of France, Hungary or Slovakia". This calculation method, taking abortion rates from countries with legal abortion to the Polish ground, with Polish law providing strict restrictions in the matter, allowed to estimate the size of Polish illegal abortion industry high above 100,000 treatments. It is inadequate to compare the scale of a phenomenon in a country where it is legal to another which prohibits it. Cultural difference between, for instance, Poland and France, deepens the inaccuracy.

### **What are the reliable estimates of the size of Polish illegal abortion industry?**

The only reliable source allowing to estimate Polish illegal abortion industry are data from 1997. In this year, until the ruling of the Constitutional Court, an amendment to the Act of 7th January 1993, made on 30th August 1996, was in force and allowed for abortion for social reasons, in fact - on a woman's demand. In 1997 in Poland 3047 abortions were performed. The data constitute a strongly justified basis and the most reasonable ground to estimate social demand for abortion in Poland, even though they do not cover the total number of abortions performed in the country in 1997, as it is beyond dispute that official, governmental estimates on abortion numbers, even when legally allowed, do not cover the real situation entirely. Not all abortions are registered - for various reasons, social, psychological, even financial (as doctors may be reluctant to pay the tax). However, it is possible to determine the ratio of legal to illegal pregnancy terminations with legal allowance for abortion. It has been performed by a demographer, Prof. Dr. hab. Marek Okólski, who in one of his scientific papers stated, that the ratio is ca. 1:3. (M. Okólski, Zapobieganie i przerywanie ciąży w Polsce, „Studia Demograficzne”, 2/76, 1984)

Another researcher, MD Karol Meissner, estimated the ratio to be 1:4 (K. Meissner, Częstość poronień, „Słowo Powszechne”, XVI (1991), 85-86; 12-13-14 IV).

Another estimate has been done by Prof. Dr. hab. Janina Józwiak and Dr. hab. Jan Paradysz, who stated the ratio to remain within 1:2.2 - 1:4.7 (J. Józwiak, J. Paradysz, Demograficzny wymiar aborcji, „Studia Demograficzne PAN” Nr 1 (111), 1993, p. 37).

Another example of estimated illegal abortion numbers when the procedure itself is allowed by law was the USSR. In an article published in "Studies in Family Planning", researchers from the Russian Academy of Sciences write: "in 1955 a change in the law [legalisation of abortion] caused the number of registered illegal abortions to decline, but after an initial heavy drop, the fall has been smoother. Percentage of registered illegal abortions in the USSR dropped from 77 in 1955 to 30 a year later, and then to 16 in 1966. Illegal abortions, however, have never fully been displaced". Basing on the data it may be stated, that immediately after prohibition of abortion the ratio of legal to illegal treatments was 1:3, and after a decade 3:1, respectively. (I. A. Zhirova, O.G. Frolova, T.M. Astakhova, E. Ketting, *Abortion-Related Maternal Mortality in the Russian Federation*, in: „Studies in Family Planning”, Vol. 35, Nr 3, 2004, p. 178-188)

Allowing the greatest of aforementioned ratios, 1:4.7, and multiplying the number of legal and registered abortions from 1997 - 3047 by 4.7, we receive an estimation of 14,321 illegal abortions performed at present in Poland. With the lowest ratio available, 1:2.2, we have the outcome of 7008 illegal abortions per year. Therefore it may be assumed, that the scale of illegal abortion industry in Poland lies between 7-14 thousand illegal abortions per year.

These estimations are supported by a fully separate and independent method. Vice-minister of Health, Andrzej Wojtyła, during a seating of three Sejm Commissions on 25th January 2006: Education and Teaching the Youth, Health, and Family and Rights of Women, informed, that according to estimates of various non-governmental organisations, "the number of illegally performed abortions amounts to 1.5-5% of the birth rate". (Biuletyn Biura Informacyjnego Kancelarii Sejmu nr 226/V kad. z 25 I 2006).

Table 3. Number of live births and estimated number of illegally performed abortions in Poland in the given years.

Year	Number Live births (in thousands)	Illegal abortions performed	
		option A*	option B**
1990	547.7,	8,215	27,385
1995	433.1	6,496	21,655
2000	378.3,	5,674	18,915
2009	417.6	6,264	20,880
2011	388.4	5,826	19,420
2012	386.3	5,794	19,315

\*Option A - calculated abortion rate based on the assumed rate of 1.5% live births.

\*\*Option B - calculated abortion rate based on the assumed rate of 5% live births.

Source: Rocznik Demograficzny, 2013, GUS

**The issue of illegal abortion industry is connected to the issue of abortion tourism. Pro-abortion organisations spread overstated calculations in the media.**

**What is the scale of abortion tourism concerning Polish women in the United Kingdom?**

The media provide information based on data by SROM or the Federation for Women and Family Planning - that is, 10-30 thousand Polish women a year coming to the United Kingdom to have an abortion. The number is overstated and does not correspond to reality. In the United Kingdom all abortions are registered - the ones funded by the State, as well as those paid for privately, by the women themselves. In the "Statistical Bulletin. Abortion Statistics. England and Wales 2009", table 12a provides an exact number of Polish women (non-resident), who had an abortion in England and Wales in 2009: 20 (in words: twenty); Scotland has separate statistics, omitted in the report due to small scale of abortions therein (abortions in Scotland constitute ca. 7% of the ones in England and Wales). Twenty seems to be much closer to the truth about the scale of abortion tourism of Polish women coming to the United Kingdom than 10-30,000, as provided by the media. It is worth mentioning that the number of abortions in both Wales and England among non-residents from all countries of the world was 5,850 in 2012 and 6,643 in 2009, with a considerable drop from 2000, when it was 9,910. (Source: National Statistics, Department of Health, „Statistical Bulletin. Abortion Statistics. England and Wales 2009”, Table 1, Department of Health, „Abortion Statistics. England and Wales 2012”, p. 5).

It is worth pointing out that statistics on abortion among residents in the United Kingdom do not concern the issue of abortion tourism, as resident status may be applied after 5 years of stay or 12 months of work in the country - see: <http://www.bia.homeoffice.gov.uk/eucitizens/applyingundereuropeanlaw/>.

It is true that among other female residents who undergo abortion in the UK there are Poles, but this cannot be classified as abortion tourism, as the abortions are performed upon women who live in the country where the procedure is legal.

It is worth stressing that the Polish emigration to the UK did not alter the scale of abortion in the country, it remained level in the 2000 decade: in 2000 - 185,375; in 2003 - 190,660; in 2005 - 194,353; in 2007 - 205,598; in 2009 - 195,743; in 2012 - 185,122), and the number of abortions in the private sector in the UK has significantly dropped (in 2000 - 44,068; in 2009 - 11,462).

In 2012 only 3% abortions in the UK were performed privately - the number was below 7,000. Source: Department of Health, „Abortion Statistics. England and Wales 2012”, p. 11). The data illustrate that mass emigration of Poles to the UK has not caused British abortion rates to grow.



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