



# The abortion crisis in Poland

## Expert briefing

5 November 2020

### BACKGROUND

Since 1993, Poland has had one of the strictest abortion laws in Europe. With its ruling on 22 October 2020, the Polish Constitutional Tribunal further tightened the conditions for legal abortion and effectively removed Polish women's control over their reproductive rights. In response, Polish women and men took to the streets to protest the decision of the Tribunal – a body which itself was appointed in a manner that is also seen as controversial by many experts and observers.

This briefing document provides a summary of a discussion hosted by UCL SSEES on 30 October 2020. Eight experts grouped in three thematic panels assessed the ongoing crisis and provided their views on the 1) political, 2) legal, and 3) socio-cultural consequences of the decision of the Constitutional Tribunal for Polish society.

### POLITICS

**Professor Jan Kubik, Department of Political Science, Rutgers, The State University of New Jersey; and UCL SSEES**

**KEY POINT** We should see right-wing populism as the overall context for what is happening in Poland now. The ruling Law and Justice Party (PiS) embodies all key features of populism.

The five core features of populism are:

1. Vertical polarisation of the people vs. the elite – both imagined as monoliths – where the notion of “the people” bears a “mystical” form.
2. Anti-elitism – not only in a political sense but also in anti-expert and anti-scientific articulations.
3. A Manichean vision of the world as a continuous struggle between good (“us”) and evil (“them”).
4. The supremacy of the popular will (*Volonté Générale*), which essentially leads to an erosion of liberal democracy.
5. Horizontal polarisation – that is, the delineation of “us” versus “them”. The definition of “good people” and “bad people” remains highly arbitrary and has a “politically-strategic” nature.

The remedy is to restore pluralism and de-demonise the idea of the “diversity” of human nature, but also of human interests.

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**Professor Richard Mole, UCL SSEES**

**KEY POINT** There has been a significant politicisation of homophobia in Poland as part of the government's broader strategy of

actively defending traditional understandings of gender roles.

1. LGBT people are favoured targets of populists in Poland for a number of reasons. Firstly, they challenge the government's "traditional values narrative"; and, secondly, homosexuality is constructed as a "foreign import", linking xenophobic sentiment with anti-EU narratives.
2. The tensions between Poland and the EU concern national sovereignty in that the government claims the right to oppose LGBT communities, defined as "disloyal enemies of the state".

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**Carolyn Heilig – Early Stage Researcher, FATIGUE programme, UCL SSEES**

**KEY POINT** The current abortion crisis is reaching far beyond the issue of gender roles. Protesters are calling out the government's politicisation of counter-majoritarian bodies – something that has been happening since 2015 under the Law and Justice Party.

1. The notion of "gender" is instrumentalised in the context of "pure Polish people". The role of mothers, and of women in general, is framed as of "nation-bearers" expected to "withstand sacrifices" (martyrification) for the "motherland".
2. Looking back at past developments, PiS policies have been aimed at a deepening polarisation regarding gender issues: an attempt to criminalise the sexual education of minors (the "Stop Paedophilia Law"); extremely divisive anti-LGBT rhetoric during the 2020 presidential campaign; and the appointment of "male, conservative hard-liners" in key institutions of the state, including ministries and Constitutional Tribunal judges.

## LAW

**Professor Katarzyna Andrejuk, Polish Academy of Sciences, Warsaw; and Visiting Scholar at UCL SSEES**

**KEY POINT** The politicisation of the Constitutional Tribunal (CT) raises three fundamental issues: firstly, violating the separation of powers; secondly, substituting legislation with a politicised verdict of the CT; and, thirdly, constitutional bias.

1. The ongoing politicisation of the CT goes back to 2015. It is noticeable how CT appointments have been the focus of a political power struggle between the government and the opposition. The resulting appointments are effectively in violation of the separation of powers, leaving little doubt that the court is controlled by the Law and Justice Party.
2. MPs have a right to ask the CT for an opinion on constitutional matters. However, now these opinions hold political rather than legal weight, making the CT an instrument for by-passing the legislative process.
3. Finally, the abortion law has traditionally been the subject of a clash between the constitutional "right to life" (broadly interpreted as existing from the moment of conception), and other essential constitutional values such as the inherent and inalienable dignity of the person, the right to private life, and freedom to make decisions about one's personal life.
4. This also became apparent in the current crisis, where the judges did not issue the verdict unanimously. Two judges from the CT's committee disagreed with the final opinion on the abortion ban.

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**Dr Agnieszka Kubal, Lecturer in Sociology, UCL SSEES**

**KEY POINT** The Constitutional Tribunal's decision has many implications for human rights.

1. Poland's 1993 law on family planning is very strict on abortion, making the scale of legal abortions in Poland much lower than some other European countries.
  2. The decision of the CT from 22 October may limit women's access to prenatal tests that would determine a baby's health. That would be at odds with Article 3 (prohibition of inhuman and degrading treatment) and Article 8 (right to private or family life) of the European Convention on Human Rights.
  3. The decision of the Polish Constitutional Tribunal may result in future applications from women against Poland before the European Court of Human Rights.
  4. In deciding these cases, the ECtHR needs to respect the dignity of a woman and the possible trauma she may experience from being denied an abortion, and reconcile it with the principle of the Margin of Appreciation (i.e., that national governments are most competent to dictate their own laws and judge whether there has been a breach of human rights).
3. Public media, which represent the attitude of the ruling party, have been misreporting the event in an attempt to tarnish the protests' organisers, supporters, and participants. Various non-political actors – e.g., universities, football fan clubs, and online influencers – have expressed their alliance with the protesters, which may be significant for the social media dynamic.
  4. Recent party support polls show a significant drop for PiS, but it is impossible to say if this change will last. What is certain is that the protesters' demands directly oppose PiS policies, meaning that their agenda has expanded and the protests are now being represented by their leaders as politically motivated and anti-governmental.

## SOCIETY & CULTURE

**Marta Kotwas, PhD candidate, UCL SSEES**

**KEY POINT** Political actors in Poland – both systemic and non-systemic – have played a key role in the organisation of the law itself and the protests.

1. Even though the decision was taken by the Constitutional Tribunal, the Law and Justice Party (PiS) is clearly identified as the political actor responsible for it. Other actors who have supported the cause, or similar initiatives, in the past are Confederation (a far-right party), the Catholic Church, Ordo Iuris (a pro-life organisation), and Kaja Godek (a pro-life activist).
2. The stances of political parties regarding the protests against the CT ruling are unsurprising. Lewica (a coalition of left-

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**Anna Ratecka, PhD candidate, Institute of Sociology, Jagiellonian University, Kraków**

**KEY POINT** Poland's political climate has become a lot more stimulated in the last five years for various reasons, symbolising a shift to more progressive ideas.

1. Young people have mobilised more – in particular, reaction to the climate crisis has helped activate their political outlooks.
2. Acceptance for the LGBT community has grown immensely.
3. Other political issues have provoked protests and general public dissatisfaction – e.g., teachers and

- doctors strikes, and the coronavirus pandemic.
4. More ruling authority given to the Constitutional Tribunal has given rise to more capable political actors who can mobilise people and utilise social media more.
  5. There has been a rise of feminism, with influential people expressing their progressive stances and empowering women to understand their rights and undermine oppressive powers.

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### Dr Katarzyna Zechenter, Lecturer, UCL SSEES

**KEY POINT** The language of the protests is an expression of anger against the Law and Justice Party (PiS) and the Church. In turn, PiS and the Church attempt to present the protesters as immoral and unpatriotic.

1. In their attacks on the protests, PiS employs strategies that have worked well for it in the past – for example, in likening the protestors to Nazi Germany, which was the same rhetoric PiS used to tarnish Donald Tusk’s image in 2005. More generally, they have promoted the idea of “us” – Catholic conservatives with good traditional values – versus “them” – immoral feminists with Western “values” – to promote the idea that Poland should unite against the left.
2. The Church has adopted a similar discourse, claiming that the movement’s lightning bolt logo comes from Nazi Germany, despite it being patently untrue.
3. The language of the protests often contains vulgarity (e.g., “the little eight stars”) but it is, at the same time, mitigated by humour and biting irony, while emphasising the hypocrisy of the

party or the Catholic Church. It strongly suggests that the younger generation does not have as much respect for the Church as the older generation did. The conservatives, however, consider the language simply vulgar, corrupting, and proof of “leftist fascism”.

## POST-EVENT DEVELOPMENTS

The day of the SSEES debate was marked by one of the biggest protests against the decision of the Constitutional Tribunal, where [hundreds of thousands of Polish citizens](#) took to the streets all over the country – from major cities like Warsaw and Kraków to the small town of Zawadzkie. The government delayed the publication of the written ruling of the Constitutional Tribunal in response to the mass protests. This created legal uncertainty: if the decision has not formally been published, should it be enforced? President Andrzej Duda has put forward his own proposal of a new bill, which allows for abortion in cases when the foetus is terminally ill. This proposal of yet another “compromise to a compromise” has been criticised by all parties across the political spectrum. The left-wing opposition parties now openly call for a new law on female reproductive rights and the liberalisation of abortion in accordance with European standards; the right-wing parties criticise President Duda for not respecting the ruling of the Constitutional Tribunal. The situation is developing rapidly. New protests are to take place weekly in different parts of Poland. In the meantime, Poland is struggling with the second wave of the Coronavirus pandemic with nearly 25,000 new cases reported on 4 November 2020.

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#### FURTHER INFORMATION

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