

HAPSc Policy Briefs Series

Vol 1, No 2 (2020)

HAPSc Policy Briefs Series



Policy on Public Assemblies in Times of Crisis: Recommendations Concerning the Strategy of Militant Democracy

Kamila Rezmer-Plotka

doi: [10.12681/hapscpbs.26459](https://doi.org/10.12681/hapscpbs.26459)

Copyright © 2020, Kamila Rezmer-Plotka



This work is licensed under a [Creative Commons Attribution 4.0](https://creativecommons.org/licenses/by/4.0/).

To cite this article:

Rezmer-Plotka, K. (2020). Policy on Public Assemblies in Times of Crisis: Recommendations Concerning the Strategy of Militant Democracy. *HAPSc Policy Briefs Series*, 1(2), 201–207. <https://doi.org/10.12681/hapscpbs.26459>

Policy on Public Assemblies in Times of Crisis: Recommendations Concerning the Strategy of Militant Democracy^{1,2}

Kamila Rezmer-Płotka³

Abstract

The main purpose of the article is to present the activities undertaken by decision-making centres and public administration entities in Poland in relation to protests against the restriction of abortion law. These protests took place during the second wave of the pandemic and continue. It all started with the judgment of the Constitutional Court, which decided to restrict abortion law in Poland, so far there was a so-called abortion compromise, which allowed abortions to be carried out in three specific cases. The verdict met with resistance from a large part of society and triggered protests that turned into large-scale public gatherings, despite the coronavirus pandemic. During this period assemblies were reduced or banned completely, which may be one symptom of using by the government the strategy of militant democracy. The study's focus is primarily on the activities taken by decision-making centers with regard to protesters. The analysis makes it possible to explain the ways and causes of protests and public gatherings held despite the restrictions introduced to prevent the spread of the virus. On this basis, it introduces recommendations to the government to restore stability in the state and end the protests.

Keywords: freedom of public gatherings; militant democracy; coronavirus pandemic; decision-making; Poland; contentious politics; contentious performances; protests.

Introduction

The issue of abortion in Poland was regulated on the basis of the Law of 1993, the so-called abortion compromise that allows abortion to be carried out in three clearly defined cases. These cases are:

- 1) pregnancy which poses a risk to health or life of the woman;
- 2) a high likelihood irreversible foetal impairment or an incurable life-threatening disease;
- 3) suspicion that pregnancy is the result of a criminal act e.g., rape (Act of 7 January 1993).

Despite the existence of this regulation, several attempts have already been made in Poland to amend the law, usually to restrict it. The first serious attempt took place in 2016 by referring to the work of

¹ To cite this paper in APA style: Rezmer-Płotka, K. (2020). Policy on Public Assemblies in Times of Crisis: Recommendations Concerning the Strategy of Militant Democracy. *HAPSc Policy Briefs Series*, 1(2): 201-207. DOI: 10.12681/hapscpbs.26459

² This paper is a result of the research project Contentious Politics and Neo-Militant Democracy. It was financially supported by the National Science Centre, Poland [grant number 2018/31/B/HS5/01410].

³ Kamila Rezmer-Płotka is PhD student of political science at the Faculty of Political and Security Studies (Nicolaus Copernicus University in Toruń), and Secretary of the Board in the scientific journal „Polish Political Science Yearbook”. Graduate in public policy (BA) and political science (MA).

the citizens' committee the draft law „Stop abortion” (Print No. 784, 19 August 2016), as well as the rejection by the Sejm of the draft law “Save women” (Print No. 830, 9 September 2016). Then there was the so-called black protest or umbrella protest. During the protest, mainly women, but also some men dressed in black and holding umbrellas protested on the streets of Polish cities. That day they usually took a day off at work or protested in the workplace. Another re-initiation of legislative process on citizen's extremely bioconservative draft of bill on abortion took place during the first wave of pandemic in Poland, but quite quickly no action was taken in this matter. The party's decision on further postponing the legislation was inconsistent with clearly declared interests of bioconservative activists who, perceiving abortion as the biggest evil that was worse than pandemic of virus, vastly criticized it.

However, the second wave of pandemic has emerged, and the subject of abortion has returned to public discourse along with the Constitutional Court's conclusion that a premise of severe and irreversible handicap or incurable life-threatening illness is not constitutional. This decision triggered a wave of mass protests, despite the ongoing pandemic threat and the ban of public assembly. Moreover, it restricted freedom of assembly in one of the indicators of the militant democracy. The category first used by Karl Loewenstein in relation to the Weimar Republic (Loewenstein, 1937a; 1937b), to define a political regime in which parliament and the judiciary are equipped with legal means to restrict individual democratic freedoms in order to defend democracy against those who are considered its enemies (Loewenstein, 1937a: 418; Molier & Rijpkema, 2018). In Poland, the Constitutional Court issued a ruling that restricts the freedom of individual, in the name of political interests, which means that the enemies of the political regime are those who have accepted the compromise so far or sought to liberalise it in order to extend the freedom of individuals.

The analysis accounts for why Poles held anti-government assemblies despite the restrictions introduced in connection with the spread of the virus and what activities have been taken to suppress protests. On this basis, it makes recommendations to the government to restore stability in the state and end the protests.

Protests against the restriction of abortion law

The protests against restricting abortion law initially took a symbolic form, i.e., images and photos were posted on social media with an overlay depicting, for example, a red lightning and the words “hell of a women.” Women also painted the symbol of lightning with red lipstick on their hands or windows. As part of the protest, they also dressed in black and painted their lips in red. Spontaneous protests began to turn into an organized women's protest movement with Maria Lempart as leader.

The main demands in addition to opposing the decision of the Constitutional Court included: calls for the resignation of the government, respect for human rights, a secular state, legal abortion and sex education, independent courts.

The protest spread across Poland and the local assemblies began to be organized. In many cities, women took to the streets and held marches during which their participants carried banners proclaiming slogans against the government and the abortion law change. The next step involved protests in churches across Polish cities; protesters walked in with banners or leaflets. They also blamed the Catholic Church for restricting abortion laws. Indeed, it plays an important role in the state and is often equated with the electorate of the ruling party. Protesters also hung hangers (a symbol of illegal abortion), distinctive lightning posters on the doors of temples, and began organizing gatherings in the residences of important hierarchs of the Catholic Church. Protesters also blocked the most important streets in the cities, as well as the entrances and exits from the Sejm building.

However, the most important protest took place on 30.10.2020 under the slogan "Everyone in Warsaw." Thousands of citizens marched through the streets of the state capital, chanting and shouting anti-government slogans and urging them not to respect the constitutional court's ruling. The march was organized in such a way that its last point was to reach the house of the president of the ruling party. Since then, there have been many more protests, but also other actions, e.g., on November 1, on the All Saints' Day, in front of the deputy prime minister's house a performance took place referring to the well-known Polish work "Dziady" by Adam Mickiewicz (naTemat, 2020a). In the window of one of the buildings actors recreated scenes from this art and played the roles of ghosts banished the president of the ruling party. Local protests continued, and were celebrated, in form of protest against the restricting of abortion law, 102 anniversary of the Polish women's right to obtain electoral rights. This protest was the last significant one, although there is an announcement of further protests. Since the end of November, the first signs of demobilization can be observed, as the number of protests and the turnout have decreased significantly.

Activities of decisions-making centres and public administration entities in Poland against protesters

The activity undertaken by decisions-making centres and public administration entities in Poland against protesters can be divided into:

- 1) verbal condemnation, declarations;

- 2) activity and involvement of law enforcement services;
- 3) activity of opposition parties.

Within each distinct type of activity, conciliatory and antagonistic activities can be distinguished.

As part of the first type, i.e., oral activity in the context of conciliatory activities, the compromise proposed by the President to somewhat soften the position of the Constitutional Court can be distinguished, since the proposal was intended to reinstate a condition which has been declared unconstitutional, but excludes suspicion of, for example, Down syndrome (naTemat, 2020b). Further calls from Prime Minister to protest but at home via the internet due to the prevailing pandemic played a significant role in shaping social attitudes toward assemblies (Wprost.pl, 2020). The first type of antagonistic activity can be classified as the president of the ruling party's speech of 27 October 2020 urging the defence of churches or taking action against protesters (Polsatnews, 2020), which has led to the mobilisation of the so-called defenders of the church and nationalist militias. These activists have formed the so-called National Guard. The category of verbal persuasion also includes calls from ruling party politicians on consequences for those who supported the strike, such as teachers, lecturers and students (Business Insider, 2020).

As part of the second type, i.e., the activity and activism of law enforcement services, police provided activists with peaceful walking assistance and displayed the slogans "Girl, we are with you!" (Wyborcza, 2020). The use of excessive coercive measures by the police, such as telescopic sticks, pepper gas, detention and the IDs checking and checks, may fall into the category of antagonistic activity. Excessive use of force was also highlighted by the Ombudsman (PAP, 2020).

The third type of activity is that undertaken by opposition parties. As part of the conciliation activity, there were calls from opposition in the form of official positions that encouraged reflection on the issue of abortion in Poland and a return to the abortion compromise reached many years ago. It should be considered on their own, as some of them are antagonistic. It is also about peacefully participating in and supporting protesters and promoting their legal protection. Opposition parties and activities that are clearly non-conciliatory may be included in the category of antagonistic activities.

Due to the wide diversity of opposition parties, it should be taken into account that all statements, social media posts or field activities are very dispersed, heterogenous and individualized. It is much simpler to divide that oral activity with regard to the ruling party, which has a highly coherent discourse, although in the face of the crisis caused by protests and the issue of restricting abortion law, the first divisions within the party began to occur.

Conclusions and Recommendations

Discussion on the abortion compromise has been going on for many years in Poland, but since 2016 the discourse on this issue has been significantly exacerbated. Subsequent attempts at change ended with mass protests, up to the last ones that took place during the coronavirus pandemic. For this reason, protests have been called for several times, even by Prime Minister, and there have also been threats of a total ban on gatherings across the country. The study contributes to our understanding of contemporary militant democracy practice in Poland. In this case, the issue of abortion is rather an ideological matter and related to the dominant religion in Poland. The main reason for such large-scale protests was the constitutional court's decision to restrict on abortion provisions, but also concerns about the restriction of human rights and freedoms and possible further solutions, such as the inability to use prenatal testing. Activities of decisions-making centres and public administration entities in Poland concerning protesters can be divided into the following categories: verbal condemnation, declarations; activity and involvement of law enforcement services and activity of opposition parties, and within them individual activities can be conciliating or antagonistic.

The recommendations that can be proposed on the basis of the analysis are verbal condemnation, declarations, above all, softening of language, changing the political discourse and rhetoric used in it to be more conciliatory and seeking to preserve the *status quo* or changes that will be most acceptable to the majority of citizens. Governments should desist from antagonising different social groups against each other and show that are a community despite their differences, which connects a common historical heritage. At the level of activity and involvement of law enforcement services, the government should rebuke officers who abuse force in unjustified cases and draw consequences for them. It is also necessary to show citizens that anyone who attacks another person for no reason will not escape sanctions. Especially when one is armed and the other shows no signs of aggression and does not violate public order. The government should not involve law enforcement services in suppressing peaceful protests, which are one of the manifestations of civil society. At the last level, i.e., the activity of opposition parties would first of all be necessary to invite all representatives of the opposition to the talks and to reach a new compromise or to preserve the existing one. The government should start a constructive discussion with other parties and start to take into account at least some of their demands at a level acceptable to all parties and allowing for a policy of agreement. First of all, to take decisions that are important for the state on the international stage, its stability over internal divisions and programme differences, take action to rebuild the image abroad, primarily engage in community actions.

References

- Business Insider. (2020). Strajk kobiet. MEN chce wyciągać konsekwencje wobec nauczycieli. Available at: <https://businessinsider.com.pl/wiadomosci/strajk-kobiet-men-chce-wyciagac-konsekwencje-wobec-nauczycieli/67pyb7v> (Accessed: 26/11/2020).
- ISAP (1993). Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży. Available at: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19930170078> (Accessed: 20/11/2020).
- Loewenstein, K. (1937a). Militant Democracy and Fundamental Rights I. *The American Political Science Review*, 3(31): 417-432.
- Loewenstein, K. (1937b). Militant Democracy and Fundamental Rights II. *The American Political Science Review*, 4(31): 638-658.
- Molier, G., Rijpkema, B. (2018). Germany's New Militant Democracy Regime: National Democratic Party II and the German Federal Constitutional Courts's 'Potentiality' Criterion for Party Bans: Bundesverfassungsgericht, Judgment of 17 January 2017, 2 BvB 1/13, National Democratic Party II". *European Constitutional Law Review*, Vol. 2 (14/2018).
- naTemat. (2020a). "A kysz, nie podzielisz nas". Tysiąc osób oglądało „Dziady” przed willą Kaczyńskiego. Available at: <https://natemat.pl/325415,dziady-przed-willa-kaczynskiego-w-warszawie-tysiace-osob-na-widowni> (Accessed: 25/11/2020).
- naTemat. (2020b). Duda proponuje nowy kompromis ws. aborcji. „Rozumie obawę, która legła u źródeł protestu. Available at: <https://natemat.pl/325235,duda-proponuje-nowy-kompromis-ws-aborcji-ochrona-dzieci-z-zespolem-downa> (Accessed: 26/11/2020).
- PAP. (2020). Rzecznik Praw Obywatelskich zaniepokojony użyciem środków przymusu wobec demonstrantów. Available at: <https://www.pap.pl/aktualnosci/news%2C742948%2Czrecznik-praw-obywatelskich-zaniepokojony-uzyciem-srodkow-przymusu-wobec> (Accessed: 27/11/2020).
- Polsatnews. (2020). Jarosław Kaczyński o protestach: obrońmy Polskę. Available at: <https://www.polsatnews.pl/wiadomosc/2020-10-27/kaczynski-o-orzeczeniu-tk-innego-wyroku-byc-nie-moglo/> (Accessed: 27/11/2020).
- Sejm.gov. (2016). Druk nr 784. Obywatelski projekt ustawy o zmianie ustawy z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży oraz ustawy z dnia 6 czerwca 1997 r. – Kodeks karny. Available at: <https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=784> (Accessed: 20/11/2020).
- Sejm.gov. (2016). Druk nr 830. Obywatelski projekt ustawy o prawach kobiet i świadomym rodzicielstwie. Available at: <http://orka.sejm.gov.pl/Druki8ka.nsf/0/3C2A10A649B1C39EC12580290048DCD3/%24File/830.pdf> (Accessed: 20/11/2020).
- Wprost. (2020). Morawiecki: Protestujemy, ale w sieci. Protesty doprowadziły do wyższej liczby zakazów. Available at: <https://info.wprost.pl/wydarzenia-dnia/10385540/morawiecki-protestujemy-ale-w-sieci-protesty-doprowadzily-do-wyzszej-liczby-zakazen.html> (Accessed: 26/11/2020).

Wyborcza. (2020). Policjanci: Dziewczyny, jesteśmy z wami. U nas nie ma klauzuli sumienia. Available at: <https://katowice.wyborcza.pl/katowice/7,35063,26436082,policjanci-dziewczyny-jestesmy-z-wami-u-nas-jednak-nie-ma.html> (Accessed: 26/11/2020).