

Dobrochna Bach-Golecka

University of Warsaw, Poland

e-mail: d.bach-golecka@uw.edu.pl

ORCID: 0000-0003-1945-2569

WOMEN'S RIGHTS AND PRO-LIFE MOVEMENT: OPPOSITION OR HARMONY?

Abstract

The aim of this article is to focus on women's rights and how these rights correlate with pro-life stance: Are those in opposition to one another or in harmony? In order to answer this question, an analysis of the notion of women's rights has been performed. Moreover, the categories of the rights of pregnant women and reproductive rights are also examined. The normative analysis of human rights provisions concerning the scope of the protection of the right to life in the pre-natal phase is made, alongside the examination of relevant judicial decisions, namely: the Court of Justice of the European Union in the *Grogan* case (1991), the Supreme Court of the United States judgments in *Roe v. Wade* (1973) and *Dobbs* case (2022), the European Court of Human Rights in *Bouton v. France* (2022) and the Polish Constitutional Tribunal judgment on prohibition of eugenic abortion (2020). In conclusion, the arguments concerning the mutual relationship between women's rights and the pro-life and pro-abortion movements are presented, with a final standpoint on the noble character of the pro-life stance, based on human rights protection due to solidarity, altruism and cosmopolitan values.

KEYWORDS

women's rights, rights of pregnant women, reproductive rights, termination of pregnancy

SŁOWA KLUCZOWE

prawa kobiet, prawa kobiet w ciąży, prawa reprodukcyjne, przerwanie ciąży

INTRODUCTION

The aim of this article is to focus on women's rights within the current debate on pro-life movements and judicial decisions on the medical termination of pregnancy. The analysis aims to elaborate on the relationship between women's rights and the pro-life standpoint – Are those in harmony or in conflict? Are women's rights better protected within legal arrangements protecting and supporting life in the pre-natal phase or is medical termination of pregnancy (abortion) a necessary and beneficial completion of women's rights?

In order to formulate an answer to this question, a few steps of legal analysis will be undertaken. Firstly, the meaning of the notion of 'women's rights' will be presented, based on the normative provisions of human rights law. Within this endeavor, the category of the rights of pregnant women and reproductive rights will also be elaborated on. Secondly, the content of the right to life will be examined in order to decide whether it encompasses the protection of life in the pre-natal phase. Supplementarily, a presentation of recent important, very interesting, highly debated (and also socially contested) judicial decisions will be made, with the aim of formulating the answer to the title question. The arguments for both sides of the public discourse, namely for the prospective opposition or accordance of those rights: women's rights and the right to life in the prenatal phase will be presented. The evaluation of the dual arguments will lead to the concluding statement, with a subsequent proposal of an answer to the research dilemma.

DEBATE ON WOMEN'S RIGHTS

The contemporary debate on women's rights is concentrated on two issues: the first element concerns women's empowerment, and the second factor deals with pregnancy issues. Within the first perspective, one may underline the stress put on equality and non-discrimination between men and women.¹ It is commonly stated that human rights are gender-neutral as those provisions are designed for all people, regardless of their gender. Hence, it is within the second perspective, the

¹ The reference to representatives of both sexes is made in alphabetical order.

sphere connected to pregnancy and maternity, that the essence of women's rights is situated.

One may state that the notion of 'women's rights' is connected, on the one hand, to women's rights alongside men's rights and, on the other hand, to the rights of pregnant women. As it is this second category of norms that is original and connected to women in a unique and unexceptional manner. Therefore, it seems that the norms on feminine pregnancy may be termed as being truly women's rights.

The detailed analysis of human rights provisions, based on the core document, namely the Universal Declaration of Human Rights (UDHR), leads to the conclusion that the norms are constructed in a truly universal and gender-neutral manner. Hence, one may differentiate various notions that are connected to every human person, without distinction as far as her/his gender is concerned. The documents use either singular ('everyone') or collective notions ('all'). In particular, the Universal Declaration of Human Rights contains the following notions:

- *All human beings*: Article 1 – stipulating the principle of freedom and equality in dignity and rights
- *All*: Article 7 – equality before the law, equal protection against any discrimination
- *Everyone*: Article 2 – entitlement to all the rights and freedoms stipulated in the Declaration, without any distinction; Article 3 – right to life, liberty and security; Article 6 – right to recognition as a person before the law; Article 8 – right to judicial protection (remedy); Article 10 – right to fair trial in criminal affairs; Article 11 § 1 – presumption of innocence; Article 12 – protection from an arbitrary interference; Article 13 – freedom of movement (internal and external); Article 14 – right to asylum; Article 15 § 1 – right to a nationality; Article 17 § 1 – property rights; Article 18 – freedom of thought, conscience and religion; Article 19 – freedom of opinion and expression; Article 20 § 1 – freedom of assembly and association; Article 21 – electoral rights; Article 22 – social security entitlements; Article 23 – labour law rights; Article 24 – leisure entitlements; Article 25 – social protection entitlements; Article 26 – education rights; Article 27 – cultural rights; Article 28 – entitlement to a proper social and international order; Article 29 – legitimate scope of limitations of rights and freedoms
- *No one*: Article 4 – prohibition of slavery; Article 5 – prohibition of torture; Article 9 – prohibition of arbitrary detention; Article 11 § 2 – no crime without an offence; Article 12 – prohibition of arbitrary interference; Article 15 § 2 – prohibition of an arbitrary deprivation of nationality; Article 17 § 2 – prohibition of an arbitrary deprivation of property; Article 20 § 2 – prohibition of forced membership in the association.

Within the Declaration, it is also possible to distinguish separate categories of subjects, like marriage and family, which is to be regarded as a fundamental

group unit of society (Article 16), parents (Article 26), norm dealing with motherhood and childhood (Article 25) or collective rights, dealing with a political community (Article 21).

Is this analysis relevant to the observance of women's rights? The answer is affirmative as the proper understanding of human rights provisions seems to be conducive to their proper application and observance. Within this perspective, women are entitled to the same rights and benefits as men; and the crucial aspect of the government policy is to ensure the equal enjoyment of those entitlements to everyone, men and women alike.

The fundamental principle of human rights is the principle of equality and non-discrimination; therefore women's rights are based on those norms. Thus, *Magna Charta* of women's rights, namely the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),² is based on this very conviction that full enjoyment of women's rights depends on the creation and observance of an equal and non-discriminatory human rights environment.³ Men and women enjoy identical entitlements, but still the practice of human rights observance pinpoints the far worse situation of women. Therefore the crucial aspect of women's rights is to guarantee the practice of equality and non-discrimination, within various aspects, different geographical, cultural, ethnic and religious *milieu*.⁴ In other words, what is at stake is women's rights efficiency and their practical impact rather than theoretical description.

Within the context of practical enforcement of women's rights, one may mention the procedures contained in the CEDAW: the reporting procedure, the interstate procedure, the inquiry and the individual complaints procedure.⁵ Still,

² The Convention was adopted by the United Nations General Assembly on 18 December 1979, with an entry into force on 3 September 1981. There are 189 states which ratified the Convention, 2 signatories and 6 states with no legal action undertaken towards the Convention. The signatory states are: Palau and the United States of America, while states of no legal action are: Iran, Niue, Somalia, Sudan and Tonga. The Holy See may be regarded as a separate category, as an actor *sui generis* within public international law. Record as of 21 February 2023. The ratification data is available at: <https://indicators.ohchr.org/> (accessed 19 May 2023).

³ Cf. A. Hellum, H. A. Aasen (eds.), *Women's human rights: CEDAW in international, regional, and national law*, Cambridge-New York 2013; S. Zwengel, *Translating International Women's Rights: The CEDAW Convention in Context*, London 2016.

⁴ One may think of a general review of structural environment (see the recent study of Carline Criado Perez, *Invisible Women. Exposing Data Bias in a World Designed for Men*, London 2019), examinations of specific geographical regions (see A. F. Banks, *CEDAW, Compliance and Custom: Human Rights Enforcement in Sub-Saharan Africa*, "Fordham International Law Review" 2009, Vol. 32, pp. 781-845) or specialized recommendations, like local government proposal (M. Och, *More Than Just Moral Urbanism? The Incorporation of CEDAW Principles into Local Governance Structures in the United States*, "Journal of Human Rights Practice" 2022, Vol. 14, issue 3, pp. 1060-1081).

⁵ Institutions developed within the CEDAW environment are the Committee and the Special Rapporteur on violence against women. The description of the enforcement procedures is contained in the CEDAW commentary: M. A. Freeman, C. Chinkin, B. Rudolf (eds.), *The UN Con-*

within human rights literature one may find a critique of the drawbacks of those procedures⁶ and concerns about substantive deficiencies of the CEDAW system.⁷ Moreover, there is a growing literature base stressing the advantages, also within the economic performance of a given country, of maintaining equality between men and women – thus the process of women's empowerment is regarded as conducive to good governance.⁸

RIGHTS OF PREGNANT WOMEN

The essential perspective of women's rights elaborates on a specific feminine aspect of human rights, namely the protection of pregnancy.⁹ Within the Universal Declaration of Human Rights, reference to maternity is contained in Article 25 § 2 in the following manner:

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Women – when pregnant – are entitled *expressis verbis* to special care and assistance. Therefore, public authorities are under an obligation to provide it as a means of continuous engagement rather than a single action. Within the scope of pregnant women's rights provisions, the International Covenant on Economic, Social and Cultural Rights¹⁰ directly refers to the UDHR, confirms the rights stipulated therein and provides a more precise understanding of entitlements stem-

vention on the Elimination of All Forms of Discrimination against Women: A Commentary, New York-Oxford 2012. An example of concrete recent application of CEDAW procedures presents S. L. Kjaergaard in: *Examining Gender Equality in Greenland in the Last Thirty Years: An Investigation through the Lens of the CEDAW Convention's Examinations*, "Sibirica: Interdisciplinary Journal of Siberian Studies" 2023, Vol. 22, issue 1, pp. 82-108.

⁶ D. Cardona Díaz, *The CEDAW Convention: de jure and de facto dichotomy*, Barcelona 2019 https://ddd.uab.cat/pub/tfg/2018/194342/TFG_dcardonadiaz.pdf (accessed 15 May 2023).

⁷ M. Campbell, *Women, Poverty, Equality: The Role of CEDAW*, Oxford 2018.

⁸ Cf. M. C. Nussbaum, *Creating Capabilities. The Human Development Approach*, Cambridge-London 2011; L. Scott, *The Double X Economy. The Epic Potential of Women's Empowerment*, New York 2020; D. Bach-Golecka, *The Emerging Right to Good Governance*, "American Journal of International Law. Unbound" 2018, Vol. 112, pp. 89-93.

⁹ The detailed analysis of the topic may be found in: D. Bach-Golecka, *Motherhood and law. Reflection on human rights provisions and selected judgments of the European courts*, "Studia Iuridica" 2021, Vol. 90, pp. 25-58.

¹⁰ The Covenant was adopted by the United Nations General Assembly on 16 December 1966, with an entry into force on 3 January 1976. The number of ratifications is 171 states, 4 signatories and 22 states with no legal action undertaken towards the Covenant. The United States of America is only a signatory of the Covenant. Record as of 21 February 2023. The ratification data is available at: <https://indicators.ohchr.org/> (accessed 19 May 2023).