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Stirring Up a Hornets' Nest – About the Palikot's Movement Party's bills on Civil Partnerships*

The purpose of this paper is to analyze the program of the Palikot's Movement (Ruch Palikota) party and the bills brought by the party to regulate the issue of civil partnerships. The research objective is to demonstrate the party's approach to the issue in question. The attitude of the electorate toward the proposed changes was also considered.

The 2011 census showed that from 2002 to 2011, the number of people in informal relationships¹ increased by 60%, from less than 400,000 to almost 650,000². It was also clear from a 2012 study, carried out by the Campaign Against Homophobia NGO (Kampania Przeciwko Homofobii), that the rapidly growing number of people declaring to live in a civil partnership became a social fact. Research revealed that among non-heteronormative individuals, over 40% live

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¹ Respondents were not asked about the gender of the partner they were in a relationship with.

² Główny Urząd Statystyczny, *Ludność. Stan i struktura demograficzno-społeczna. Narodowy Spis Powszechny Ludności i Mieszkań*, Warszawa 2013, pp. 68–69.

in relationships lasting more than 3 years³. The institutionalization of informal relationships (partnerships) of persons of both different and same sexes seemed to be a necessity. The supporters of legitimization of such relationships argued that the lack of a positive decision by the legislator results in discrimination against and lack of protection of permanent relationships of a significant number of citizens⁴. A formal partnership of people of the same would be an institution of law and its conclusion would subject to the law not only the personal and property relations between the partners, but also their relations with third parties.

Election campaign

A socio-political discourse on controversial topics that often evoke extreme emotions most often takes place during election campaigns. This was also the case before the Polish parliamentary elections for the seventh term of the Sejm⁵. Janusz Palikot's party presented a clear program, written in a comprehensible language, entitled "Modern State"⁶; it was distributed through all channels on the Internet. The program consisted of six substantive parts, in each consisting in turn of two elements: a general diagnosis of the situation and a proposal for change brought by the Palikot's Movement⁷. The program advocated the separation of the state and the Roman Catholic Church, which was to be achieved by eliminating the funding of the Church from the state budget, including the elimination of the Church Benefits Fund, moving religion classes back to churches, repealing the decision of the Property Commission (which returned to the Church its property confiscated by the Communists), and prohibiting clergy's participation in secular ceremonies. The party demanded legalization of soft drugs, liberalization of the abortion law, free access to contraceptives, government funding for in vitro fertilization, and the right to register partnerships of heteronormative and non-heteronormative persons, common civil, tax, and property rights and obligations of persons in such partnerships, as well as equal rights for sexual minorities⁸.

³ Makuchowska M., Pawłęga M., *Sytuacja społeczna osób LGBT. Raport za lata 2010 i 2011*, Kampania Przeciwko Homofobii, Warszawa 2012.

⁴ See: M. Michalczuk-Wlizło, *Admissibility of institutionalizing same-sex unions in Poland. Selected problems*, "Przegląd Prawa Konstytucyjnego", 2020, No 6/2020, pp. 285–295.

⁵ Sejm is lower chamber of the Polish parliament.

⁶ *RUCH-PALIKOTA*, <https://old.polenia.nl/wp-content/uploads/RUCH-PALIKOTA.pdf> [accessed: April 21, 2022].

⁷ T. Godlewski, *Rekonstrukcja modelu kultury politycznej Ruchu Palikota w Internecie w kampanii parlamentarnej 2011 roku*, "Studia Politologiczne", 2012, Vol. 26, p. 132.

⁸ *Ibidem*.

It is worth noting that the activists of the groups supporting these changes were the leaders of the party, which was supposed to confirm the credibility of these declarations. Moreover, most of these propositions were the main slogans not only during the election campaign but also during the parliamentary term of the representatives of the Your Move party (Twój Ruch).

It seems that such a firm and transparent declaration of the party's position on world-view issues was important, especially since the other parties running for the parliament abandoned radical propositions due to their unpopularity with the majority of the society. Janusz Palikot, in contrast, declared his propositions in a "happening" way that was typical of him. The marginal presence in the discourse of the other political parties of the topics of abortion, relations between the state and the Church, the rights of sexual minorities, and civil partnerships, caused an outflow of voters, primarily from left-wing parties, who began to look for an alternative.

The leadership of the Palikot's Movement party, while formulating the controversial but very important propositions for Polish society, focused on reaching specific groups of voters. The Palikot's Movement defined itself as a "modern" party, and the channels it chose for the electoral campaign and the way it communicated its message led to the assumption that, most importantly, the party would seek an electorate among young people. In addition, the slogans proclaimed and the appropriate selection of candidates on the electoral lists positioned the party as a group focused on defending the rights of all minorities and people who feel excluded. As proved by the results achieved in the election and the fact that the Palikot' Movement achieved the third best result in the elections to the Sejm, with the support of 10.02% of voters, the expectations and needs of some voters were accurately defined by Janusz Palikot and the campaign conducted was consistent and effective.

In November 2011, an extensive report by the Centre for Public Opinion Research (Centrum Badań Opinii Społecznej – CBOS) on the voters of Janusz Palikot's party was published. The presented results indicated that those who voted for the Palikot's Movement had two key distinctive characteristics: young age and non-participation in religious practices; their other important characteristics were their residence in large, although not the largest, cities, and completed secondary and higher education. However, it was clear from the aforementioned report that worldview issues were the deciding factor. It seems that the decisive factor was the voters' attitude towards religious practices, since 20% of those who voted for the Palikot's Movement declared that they did not go to church at all, 17% went to church several times a year, and only 5% of the respondents who declared that they had voted for the Palikot's Movement went

to church once a week. Among those who went to church several times a week, no one supported the Palikot's Movement candidates. It should be recalled that the views of the Catholic Church on the permissibility of institutionalizing forms of permanent cohabitation of persons any other than a marriage are very clear. To validate their opposition, the senior clergy mainly cited doctrinal and theological arguments, often unchanged since the early period of the Church. Keeping with the definitional regime, it should be pointed out that the Catholic Church distinguishes partnerships from cohabitation. According to the legal definition contained in the text of the Catechism of the Catholic Church, "cohabitation exists when a man and a woman refuse to give legal and public form to an intercourse involving sexual intimacy"⁹. The cohabitation formula includes living together, refusing to become married, and inability to make permanent and final commitments by persons of different sexes. By a registered formal civil partnership, the Church means a legally sanctioned civil union between two people of the same sex¹⁰. In the opinion of the Church, any attempt to legalize civil partnerships insults the dignity of marriage, contradicts the moral law and, by making those two institutions equal, would legitimize behavior incompatible with God's design¹¹.

Seventh term of the Sejm

Work to implement the election campaign propositions began as early as the beginning of the term. In the autumn of 2011, politicians from the Palikot's Movement, together with the Democratic Left Alliance (Sojusz Lewicy Demokratycznej – SLD), began working on a piece of legislation that would regulate the subjective and objective scope of the institution of civil partnership. Organizations representing the LGBT+ community, such as Love Does Not Exclude (Miłość Nie Wyklucza) and the Initiative Group for Civil Partnerships, were invited to participate in the work¹². As a result of a difference of opinion as to the substantive scope of the proposed legislation, a decision was made to put forward separate legislative initiatives. On February 17, 2012, the Sejm

⁹ Catechism of the Catholic Church, 2390.

¹⁰ Diecezja Sosnowiec, *Katecheza: Związki partnerskie w ocenie etyczno-moralnej*, <http://diecezja.sosnowiec.pl/?skelMod=ModNews&nid=329> [accessed: April 26, 2022].

¹¹ E. Kuźlewska, M. Michalczuk-Wlizło, *Same-sex marriage and the catholic church in Europe. Any chance for understanding?*, "Studies in Logic, Grammar and Rhetoric", 2021, No. 66(79), pp. 267–268.

¹² Redakcja Queer.pl, *Oświadczenie ws. projektu ustawy o związkach partnerskich PO*, <http://queer.pl/news/194203/zwiazki--la-po-oswiadczenie-grupy-inicjatywne> [accessed: April 2, 2022].

received two bills: a bill on civil partnerships (Parliamentary Print no. 552) and a bill introducing the law on civil partnerships (Parliamentary Print no. 553)¹³. The submitted bill on civil partnerships aimed to regulate the basic property and personal issues related to partnerships formed by both different-sex and same-sex couples by introducing the institution of civil partnership into the Polish legal system. When formulating the *ratio legis* of the bill, the authors of the bill stated that: “the bill is intended, on the one hand, to enable different-sex couples to formalize their partnerships according to principles different from a marriage and, on the other hand, to fill the legislative gap that affects single-sex partnerships. The aim of the bill is to expand the sphere of stable, permanent, legally recognized, basic human relationships; today, this sphere is limited only to marriages, which single-sex couples cannot enter into and different-sex couples do not always want to”¹⁴. The authors of the bill stressed that despite the fact that the lack of institutionalization of same-sex partnerships is a manifestation of discrimination of a large part of society by the legislator and violates the socially accepted principle of tolerance, by allowing same-sex couples to formalize their cohabitation and to be regulated by the norms of universally binding law, the bill did not narrow the subjective scope only to non-heteronormative couples. The proposed bill would be available to all couples, as making the institution of a civil partnership available only to same-sex couples would be a manifestation of unequal treatment of different-sex couples, which would be contrary to the provisions of international human rights laws. The bill provided for institutional support for partners for the duration of the relationship and in the event of its termination, including as a result of death of one of the partners¹⁵.

It seems important that the proposed bill provided for the establishment of a civil partnership, which is a separate institution, of a different nature than a marriage and with different legal effects, and thus could not be accused of violation of the provisions of the law on marriage, in particular Article 18 of the Constitution of the Republic of Poland.

The proposed law set forth the rules for entering into and terminating a civil partnership and the rights and obligations of the partners. A civil partnership would be entered into before the head of the registrar's office by consensual declaration of two persons (Art. 3) Parties entering into a civil partnership would be under a statutory obligation to give each other assistance and support, as well

¹³ The bill provided for the need to amend approximately 150 normative acts that had already been in effect.

¹⁴ Explanatory memorandum to the bill on civil partnerships of February 16, 2012, Parliamentary Print no. 552, Sejm of the 7th term, <https://sejm.gov.pl/sejm7.nsf/druki.xsp> [accessed: April 13, 2022].

¹⁵ Parliamentary Print no. 552.

as to take care to maintain the bonds of cohabitation and a duty to contribute to the needs of the household which they have established by their partnership (Art. 8). The bill provided that the presumptive property regime would be property separation and that the parties may establish a community of property only by entering into a contract in the form of a notarial deed (Art. 9). Another very important issue regulated in the draft was the issue of inheritance. It was assumed that partners would be entitled to inherit from each other in the same way as spouses. The bill also regulated the termination of a partnership, which would occur if one of the partners died or was declared dead, or in consensual form if the partners filed declarations of dissolution of the partnership before the head of the registrar's office (Art. 11) The bill also allowed a pathway for a court to dissolve a partnership if all ties between partners have permanently and irreversibly ceased. In the event of a dissolution of a partnership, the bill provided for the possibility to require a former partner to provide the necessary means of support if, as a result of the dissolution of the partnership, the living situation of one of the partners has significantly deteriorated.

Due to the different positions of some members of the parliament, on May 22, 2012, the Sejm received further bills authored by the Palikot's Movement and the Democratic Left Alliance: a bill on civil partnerships and a bill on the introduction of a law on civil partnerships (Parliamentary Prints no. 554 and 555)¹⁶. Most solutions in these bills were analogous to those contained in the bills submitted in February 2012. The fundamental difference concerned the rules for establishing mutual assurances or obligations of a property or personal nature between the partners for the purpose of arranging their life together. Article 6 of the submitted bill required the parties to regulate the contents in question through a partnership contract concluded before a notary¹⁷. In that contract, which is based on the principle of freedom of contract, two natural persons in a de facto cohabitation define mutual property and personal obligations, such as the obligation to provide each other assistance and support, to meet, to the extent of their strength and capabilities, the reasonable material needs of the partnership, to be faithful, the right to act on behalf of the partner in matters related to ordinary management, the creation of joint property, and a possible alimony obligation (Article 6(2) of the bill). A notarized civil partnership contract, upon entering into the partnership, would be registered in the registrar's office.

¹⁶ <https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=554>, <https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?documentId=D7E49820E67F8E67C1257A3700455B69> [accessed: April 18, 2022].

¹⁷ Article 6 of the bill on civil partnerships of May 22, 2012, <https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=554> [accessed: April 18, 2022].

The registration of the contract would be a prerequisite for the validity of the legal transaction made and would produce legal effects from the time of its registration (Article 6(1) of the bill). Both bills provided for joint tax returns of partners in a registered civil partnership.

It must be emphasized that the wording adopted in the bills differed in tone from the norms of the law governing spousal obligations, and the bill consistently failed to use the word family. Entering into a civil partnership would not create any legal relationship between the partners and the partners' family members; in particular, it would not in any way affect the position of the child or children of either partner. A civil partnership was, by design, a more flexible way of organizing a shared life than a marriage. In addition, none of the submitted bills provided for the adoption of children by couples in civil partnerships, neither heteronormative nor non-heteronormative.

The opponents of the bills argued that the very essence of the institution of a civil partnership violated Article 18 of the Constitution of the Republic of Poland. The reason was that Article 18 sets the objectives and tasks of public authorities and imposes on them the obligation to protect and take care of marriages, families, motherhood, and parenthood¹⁸, and provides an institutional guarantee of a marriage as a union of a woman and a man¹⁹. In the discourse there were also some opinions that despite the fact that Article 18 of the Constitution prohibits the ordinary legislator to give the character of marriage to factual relationships between a man and a woman, as well as relationships between persons of the same sex, in no way does this imply the admissibility of prohibiting or limiting this type of partnerships, because such principles as the principle of dignity and freedom of a human is the foundation of the freedom of selection of partners and types of partnerships²⁰.

In June 2012, during a meeting of the Legislative Committee, Robert Biedroń, the member of the parliament representing the group introducing the bill, admitted that the state has the right to promote the marriage as a type of a formal relationship, but it is necessary to introduce alternative forms for people who do not want to or cannot get married. He pointed out that the argument that civil partnerships would be a threat to the institution of

¹⁸ More information can be found in: J. Pawliczak, *Zarejestrowany związek partnerski a małżeństwo*, Wolters Kluwer Polska, Warszawa 2014, pp. 342–346.

¹⁹ B. Banaszkiwicz, *Problem konstytucyjnej oceny instytucjonalizacji związków homoseksualnych*, "Kwartalnik Prawa Prywatnego", 2004, No. 2, pp. 382–386; D. Dudek, *Opinia w sprawie projektu ustawy o związkach partnerskich*, "Przegląd Sejmowy", 2012, No. 4, pp. 178–181.

²⁰ L. Garlicki, *Komentarz do art. 18*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 3, ed. L. Garlicki, Wydawnictwo Sejmowe, Warszawa 2003, p. 2.

marriage is based on the assumption that granting rights to some citizens who are deprived of them means taking away some rights from other citizens. Civil partnerships are the answer to as discrimination. Gays and lesbians who, even if they have shared a household for many years, cannot be taxed jointly and must pay inheritance tax, have no access to information in the event of their partner's illness, etc²¹. The Legislative Committee, as a result of a vote, declared the bills unacceptable²².

On July 9, 2012, the bills were collectively submitted for the first reading, which was held on January 25, 2013. 449 members of the parliament participated in the vote concerning the acceptance of the motion to reject at the first reading the parliamentary bill on civil partnerships contained in Parliamentary Print no. 552, of whom 276 were in favor, 150 were against, and 23 abstained from voting²³. As for the vote on the bill contained in Parliamentary Print no. 554, 283 of the 450 participating members of the parliament voted in favor of the motion to reject the parliamentary bill on civil partnerships at the first reading, while 137 were against and 30 abstained from voting²⁴. At this point it is worth recalling that the vote in the Sejm was not tantamount to the adoption of the bill but concerned its referral for further parliamentary work and discussion in committees. By rejecting the bill at the first reading, further work to build a consensus on such a socially important issue was prevented²⁵.

The Polish public was more liberal than the members of the parliament in their opinions on legalization of civil partnerships. According to a poll conducted by TNS Poland in early March 2013, two out of three (67%) of Poles supported the introduction of legislation aimed to regulate the rights of people living in heterosexual partnerships. Fewer (only 47%) respondents were in favor of analogous laws for gay couples²⁶. The difference in the respondents' opinions was influenced by their electoral preferences, as the largest number of people in favor of regulating the rights of people in heterosexual partnerships (84%) were

²¹ Transcript of the meeting of the Legislative Committee of the Sejm of the 7th term, session no. 23 of June 28, 2012.

²² *Ibidem*.

²³ Vote no. 45 at the 32nd session of the Sejm, January 25, 2013, <https://sejm.gov.pl/sejm7.nsf/agent.xsp?symbol=glosowania&nrkadencji=7&nrcposition=32&nrvoting=45> [accessed: May 2, 2022].

²⁴ Vote no. 47 at the 32nd session of the Sejm, January 25, 2013, <https://www.sejm.gov.pl/sejm7.nsf/agent.xsp?symbol=glosowania&nrkadencji=7&nrcposiedzenia=32&nrglosowania=47> [accessed: May 2, 2022].

²⁵ Newsweek, *Nie będzie ustawy o związkach*, May 26, 2015, <https://www.newsweek.pl/polska/zwiazki-partnerskie-nie-bedzie-prac-nad-projektem-ustawy/e786ds3> [accessed: April 2, 2022].

²⁶ Kobiety Kobietom, *Polacy o związkach partnerskich. "Nie" dla gejów [sondaż]*, <https://kobiety-kobietom.com/queer/art.php?art=8994> [accessed: April 11, 2022].

among supporters of the Palikot's Movement, while the smallest number were among supporters of the Law and Justice Party (57%)²⁷.

Equal rights for sexual minorities and the need to regulate permanent formal relationships between two people also found their way into the program of the party, then named Your Movement, in 2014. The program included the proposition to introduce as soon as possible into Polish law civil partnerships that could also be entered into by same-sex partners²⁸. In December 2014, the Sejm did not agree to put Your Movement's bill on the agenda²⁹. The bill was similar to the one that was processed in 2013.

Discussion

In terms of worldview, the demands to abolish all privileges enjoyed by the Catholic Church, legalize soft drugs, and provide a wider access to in vitro fertilization were, along with the institutionalization of civil partnerships, proposals that went very far. Palikot's Movement positioned itself in relation to the other political parties on the Polish scene in a position that was impossible to outbid. The Palikot's Movement has become a political sensation. No previous group had so clearly and directly declared the need to regulate the legal status of people in permanent, informal relationships. Such clear positioning encouraged left-wing voters who were disappointed by the attitude of the Democratic Left Alliance which did not try to push through a law on civil partnerships during Aleksander Kwaśniewski's presidency, and thus the SLD's actions can be analyzed in the context of the party's instrumental treatment of the LGBT community³⁰. Furthermore, there was no possibility in the parliament of the 7th term to enact the bills in question, which put into question their feasibility. Janusz Palikot had to make an attempt to have them enacted, because withdrawing from his election campaign propositions would indeed undermine his credibility.

²⁷ *Ibidem*.

²⁸ *Plan zmian 2014–2019. Program Twojego Ruchu 2014*, <http://twoj ruch.eu/dokumenty/>.

²⁹ Vote No. 6 at the 83rd session of the Sejm on December 17, 2014, <https://www.sejm.gov.pl/Sejm7.nsf/agent.xsp?symbol=glosowania&NrKadencji=7&NrPosiedzenia=83&NrGlosowania=6> [accessed: April 12, 2022].

³⁰ J. Jartyś, *Wkład Polski do procesu umiędzynarodowienia i rozwoju praw osób Lesbian, Gay, Bisexual, Transgender (LGBT) po akcesji Polski do Unii Europejskiej*, [in:] *W poszukiwaniu finalite politique Unii Europejskiej. Aspekty teoretyczne i praktyczne*, eds. L. Wojnicz, D. Rdzanek, M. Potkańska, Wydawnictwo Naukowe Uniwersytetu Szczecińskiego, Szczecin-Warszawa 2015, pp. 187ff.

The Palikot's Movement party, like no other political party³¹ to date, has been an exponent of attitudes and views not clearly represented by other groups, but very important to a part of the society; like no other party, it has fought for the registration of civil partnerships for both heterosexual and homosexual couples³².

As can be seen from the data cited in this paper, the values advocated by the politicians of the Palikot's Movement enjoyed the support of voters characterized by better education, openness to change, and less appreciation of tradition. Janusz Palikot, who built his political capital thanks to his slogans of a modern, secular state, proved to be attractive to some voters.³³

The Palikot's Movement party did not officially propose granting the right to adopt children to people in civil partnerships, which, although met with accusations from some members of the Palikot' Movement (e.g. Barbara Nowacka and Anna Grodzka), was undoubtedly caused by the lack of public support for such a proposal.³⁴

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³¹ Ł. Tomczak, *Problem legalizacji związków partnerskich osób tej samej płci w kampanii wyborczej 2011 roku*, [in:] *Preferencje polityczne. Postawy-Identyfikacje-Zachowania*, eds. A. Turska-Kawa, Z. Widera, W. Wojtasik, Wydawnictwo Uniwersytetu Śląskiego, Katowice 2012, pp. 237–249

³² http://mowimyjak.se.pl/newsy/fakty/ruch-poparcia-palikota-program-wyborczy,22_31279.html

³³ See: W. Wojtasik, *Sukces Ruchu Palikota w świetle czynników możliwego sukcesu politycznego = Political Opportunity Structure*, [in:] *Preferencje polityczne. Postawy-Identyfikacje-Zachowania*, eds. A. Turska-Kawa, Z. Widera, W. Wojtasik, Wydawnictwo Uniwersytetu Śląskiego, Katowice 2012, pp. 159–174.

³⁴ Centrum Badań Opinii Społecznej, *Stosunek do praw gejów i lesbijek oraz związków partnerskich – BS/24/13*, Warsaw 2013, http://cbos.pl/SPISKOM.POL/2013/K_024_13.PDF [accessed: April 14, 2022].

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Summary: The issue of institutionalizing civil partnership arouses great controversy in Poland and has not yet been legally regulated in any form. A socio-political discourse on controversial topics that often evoke extreme emotions most often takes place during election campaigns. This was also the case before the Polish parliamentary elections for the seventh term of the Sejm. The purpose of this paper is to analyze the program of the Palikot's Movement party and the bills brought by the party to regulate the issue of civil partnerships

Key words: Palikot's Movement party, civil partnerships, non-heteronormative unions, 7th term of the Sejm

Wkładanie kija w mrowisko – o ustawach Ruchu Palikota o związkach partnerskich

Streszczenie: Problematyka prawnego usankcjonowania związków partnerskich wzbudza w Polsce duże kontrowersje i dotychczas nie została uregulowana w jakiegokolwiek formie. Dyskurs społeczno-polityczny na tematy kontrowersyjne, wywołujące często skrajne emocje, ożywa najczęściej w czasie kampanii wyborczych. Tak stało się również przed wyborami do Sejmu VII kadencji. Celem artykułu jest analiza programu partii Ruch Palikota oraz wniesionych przez partię projektów ustaw regulujących problematykę związków partnerskich.

Słowa kluczowe: Ruch Palikota, związki partnerskie, związki osób nieheteronormatywnych, Sejm VII kadencji.