Judyta Dworas-Kulik

Katolicki Uniwersytet Lubelski Jana Pawła II
(John Paul II Catholic University of Lublin, Poland)
e-mail: judyta.dworas-kulik@kul.pl

ORCID: 0000-0002-1990-5497

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The Offence of Forced Miscarriage as Documented in the Polish State Archive in Suwałki (1921–1939)

Abstract

The Polish term *spędzenie płodu* (forced miscarriage), used in interwar Poland, meant an intentional termination of pregnancy, now referred to as abortion. Miscarriage was considered an abortion if it was purposely induced by an external factor leading to a preterm delivery, so-called artificial miscarriage, which was carried out with the woman's consent and resulted in foetal death. The offence of forced miscarriage was regarded as related to murder of a person, so abortion regulations fell in the category of provisions concerning crimes against life. Conditions for the permissibility of terminating a pregnancy were not stipulated in the Russian penal legislation governing this criminal act, which was in force in interwar Poland; instead, the Tagancev Code applied by reference. The Polish Penal Code of 1932 went a step further as it took into account not only the state of absolute necessity, but also health issues in a wider context, which was confirmed by legal scholars in their commentaries. The protection of the mother's life and health was not associated with the phase of foetal and pregnancy development, because the legislator did not determine the time limit for terminating pregnancy. It was assumed that forced miscarriage could apply to a newly born baby before it was detached from the mother's organism – a baby that was unable to live independently. In this article, the legal-historical method was used

to present a criminal-law analysis of the crime of forced miscarriage in the former Russian Partition, considering the rulings in such cases handed down in the Suwałki District. In the literature of the subject to date, no such a study can be found, which justifies this inquiry.

Key words: pregnancy termination, abortion, Tagancev Code, foetus, forced miscarriage

1. Introduction

Pursuant to the resolutions of the Treaty of Tilsit (1807), the Duchy of Warsaw was created to include almost all lands within the second and third Prussian Partition, except for the Białystok District and the southern fragment of the first Prussian Partition. Suwałki was now within the borders of the Duchy of Warsaw, because it had been attached to Dąbrowa Poviat. Administratively, the remainder of the Suwałki Region was part of the Sejny Poviat. In 1815, the Congress of Vienna established the Kingdom of Poland, encompassing the Suwałki Region and the Augustów Voivodeship with its capital in Suwałki. In 1837, this region passed to the Suwałki Governorate, which continued to exist until World War I. Next, it fell under German occupation and was incorporated into the area administered by the Chief Commander of the East (*Oberbefehlshaber der gesamten Deutschen Streitkräfte im Osten – Oberbefehlshaber Ost* for short). The German administration lasted until 1919, and after the signing of the Treaty of Versailles[1] the Suwałki Region was handed over to Lithuanian authorities. This area was the object of a Polish-Lithuanian dispute, which resulted in, *inter alia*, the Sejny Uprising and the seizure of the area of Suwałki by the Lithuanians during the Polish-Bolshevik War of 1920. Ultimately, both sides signed an agreement in Suwałki, restoring a border following the so-called Foch Line (demarcation line), leaving the poviats of Augustów, Suwałki and the western part of the Sejny Poviat on the Polish side. In the interwar period, the Polish

[1] The Treaty of Peace between the Allied and Associated Powers and by Germany, made at Versailles on 28 June 1919 (Journal of Laws [hereinafter Dz.U.] 1920 No. 35, item 200). Created after World War I, the Lithuanian state encompassed territories where various legal regulations were in force but, despite the urgent need for a unification of law, it was not until 1928 that the Council of State was appointed to codify Lithuanian laws. First, it worked on issues relating to the political system, then it dealt with the law in the judicial sense. The laws of the Suwałki Region, therefore, were not amended until the codification of Polish criminal law.

part of the Suwałki Region (the so-called Suwałki District) was administratively part of the Białystok Voivodeship.[2]

It is worth adding that after 1918 the territory of the former Kingdom of Poland encompassed the lands of central Poland. In contrast, the remainder of the former Russian Partition was referred to as the Eastern Lands of the Second Republic of Poland. They extended over the voivodeships of Wilno, Nowogród, Polesie, Wołyń, and the poviats (of the Białystok Voivodeship) of Grodno, Wołkowysk, Białystok, Bielsk, and Sokółka. Both the former Kingdom of Poland and the eastern voivodeships were governed by the 1903 Russian Penal Code in terms of substantive criminal law, the so-called Tagancev Code (hereinafter: RPC).[3] After Poland regained independence, its content was partially changed and supplemented with transitional provisions and specific acts of 1918, 1919 and 1921.[4] In the territory of the former Russian Partition the Tagancev Code

2 See E. Starczewski, *O ustawodawstwie obowiązującem na Kresach Wschodnich*, „Czasopismo Prawnicze i Ekonomiczne" 1923, vol. 21, no. 10-12, pp. 29-38. Incidentally, the existing criminal legislation in the occupied lands was left intact. Despite the Tsar's approval of the Tagancev Code, only provisions of the general part and some groups of articles applicable to political and religious crimes entered into force. The German occupational authorities overlooked the fact that the Code applied only partially, and in 1915 they confirmed that the Tagancev Code in its entirety was applicable in the Warsaw Governorate General; these regulations were put into effect in the entire former Kingdom of Poland in August 1917 by the Provisional Council of State. See the legislative ordinance enacted by the Provisional Council of State of the Kingdom of Poland – Transitional Provisions for the Penal Code, published in the Official Journal of the Justice Department of the Provisional Council of State of the Kingdom of Poland, 1917, No. 1, item 6, Warszawa 1917, pp. 24-30; *Kodeks karny obowiązujący tymczasowo w Rzeczypospolitej Polskiej na ziemiach b. zaboru rosyjskiego: z dodaniem przepisów przechodnich i ustaw, zmieniających i uzupełniających postanowienia karne kodeksu; odpowiednich przepisów Kodeksu Karnego Niemieckiego i Ustawy Karnej Austrjackiej, obowiązujących w pozostałych dzielnicach Rzplitej oraz Komentarza i orzeczeń Sądu Najwyższego*, vol. 1: *Część ogólna*, ed. W. Makowski, Warszawa 1921, pp. 11-40. For more on this, see S. Płaza, *Historia prawa w Polsce na tle porównawczym*, part 2: *Polska pod zaborami*, Kraków 1998, pp. 115--122.

3 *Kodeks karny z 1903 r. (przekład z rosyjskiego) z uwzględnieniem zmian i uzupełnień obowiązujących w Rzeczypospolitej Polskiej z dn. 1 maja 1921,* Warszawa 1922. Cf. J. Jamontt, *Podstawowe zasady prawa karnego obowiązujące w b. zaborze rosyjskim. I. Część ogólna*, Warszawa 1929; A. Mogilnicki, E.S. Rappaport, *Tezy z orzeczeń Sądu Najwyższego Rzeczypospolitej Polskiej od 1 września 1917 r. do 17 marca 1921 r., stanowiących wykładnię ustaw karnych tymczasowo obowiązujących na ziemiach b. zaboru rosyjskiego*, vol. 1, Warszawa 1921. After quashing the January Uprising of 1864, the authorities of the Russian Empire abolished the institutional autonomy of the Kingdom of Poland, which in practice meant taking away its independence.

4 The Polish legislator made only minor, essential amendments and additions. At the same time, regulations that contradicted the Polish raison d'état lost their effect. See the Decree on certain amendments to the Penal Code and the Law on Criminal Procedure, Journal of Laws of the Polish State (hereinafter: Dz.Pr.P.P.) 1918 No. 20, item 57; Act of 21 July 1919 on certain amendments to the Penal Code and the Law on Criminal Procedure and on the text of the Penal Code (Dz.Pr.P.P. 1919 No. 63, item 375); Act of 25 February 1921 on the amendments to criminal legislation in force in the former Russian Partition (Dz.U. 1921 No. 30, item 169). Cf. Act of 31 July 1919 on laws in force in the Białystok Judicial District regarding the judiciary (Dz.Pr.P.P. 1919 No. 64, item

was in force until 1932 – that is when the criminal law of interwar Poland was unified.[5]

2. Forced Abortion in Russian Penal Legislation and the Polish Code of 1932

The offence of induced miscarriage was regulated in Part 22 of the Tagancev Code titled "On deprivation of life". RPC Article 465 criminalised the behaviour of a mother who purposely killed her unborn baby (foetus). The offence occurred when the foetus was exterminated, irrespective of whether miscarriage ensued naturally or it was induced given the necessity of removing a dead foetus from the mother's womb. The time frame of the human foetus' life was circumscribed by the moments of fertilisation and detachment of the baby from the mother's body as an independent human being capable of breathing with lungs.[6] RPC Article 47 prescribed that the act would not be punishable

382). For more on this, see J. Makarewicz, *Projekt rządowy o zakresie działania kodeksów karnych obowiązujących w Polsce*, „Przegląd Prawa i Administracji" 1919, no. 44, pp. 40-61; S. Czajkowski, *Moc obowiązywania przepisów karnych przedkodeksowych*, „Głos Sądownictwa" 1936, vol. 8, no. 6, pp. 478-481; E.S. Rappaport, *Nowela karna z dn. 9 grudnia 1918, jej braki i skutki*, „Kwartalnik Prawa Cywilnego i Karnego" 1918, vol. 1, no. 1-4, pp. 521-536.

5 See the Ordinance of the President of the Republic of Poland of 11 July 1932 – The Penal Code, Dz.U. 1932 No. 60, item 571 (hereinafter: PC). More on the activity of the Codification Committee and the unification of criminal law in interwar Poland in I. Kondratowicz, *Kilka uwag do projektu kodeksu karego*, „Gazeta Sądowa Warszawska" 1930, vol. 58, no. 44, p. 623; I. Mazurek, *Specyfika prac Komisji Kodyfikacyjnej w procesie unifikacji prawa w II Rzeczypospolitej*, „Studia Iuridica Lublinesia" 2014, vol. 23, p. 134; Z. Radwański, *Kształtowanie się polskiego systemu prawnego w pierwszych latach II Rzeczypospolitej*, „Czasopismo Prawno-Historyczne" 1969, vol. 21, no. 1, p. 39; S. Grodziski, *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej*, „Czasopismo Prawno-Historyczne" 1981, vol. 33, no. 1, p. 47; M. Mohyluk, *Porządkowanie prawa i II Rzeczypospolitej: Komisja Kodyfikacyjna i Rada Prawnicza*, „Czasopismo Prawno-Historyczne" 1999, vol. 51, no. 1-2, pp. 285-300; S. Płaza, *Kodyfikacja prawa w Polsce międzywojennej*, „Czasopismo Prawno-Historyczne" 2005, vol. 57, no. 1. pp. 219-230; J. Piercki, *Komisja Kodyfikacyjna w Parlamencie Polskim*, „Gazeta Sądowa Warszawska" 1928, vol. LVI, no. 52, p. 827; P. Dąbkowski, *Dawne prawo polskie a zadania Komisji Kodyfikacyjnej*, Warszawa 1920. Cf. J. Bekerman, *Dwa poglądy*, „Palestra" 1927, vol. 4, no. 10, pp. 474-479; idem, *Czy kodeks, czy nowele*, „Gazeta Sądowa Warszawska" 1920, vol. 48, no. 7, p. 50; E. Neymark, *Zagadnienie unifikacji prawa karnego*, „Gazeta Sądowa Warszawska" 1925, vol. 53, no. 22, pp. 343-346, no. 23, pp. 359-361; E.S. Rappaport, *Zagadnienie kodyfikacji prawa karnego w Polsce*, „Przegląd Prawa i Administracji" 1920, no. 45, pp. 31-45; A. Lityński, *Wydział Karny Komisji Kodyfikacyjnej II Rzeczypospolitej. Dzieje prac nad częścią ogólną kodeksu karnego*, Katowice 1991; idem, *Dwa kodeksy karne 1932 w osiemdziesiątą rocznicę*, „Roczniki Administracji i Prawa. Teoria i Praktyka" 2012, vol. 12, pp. 212-213; J. Dworas-Kulik, *Prawne regulacje dotyczące bigamii w Polsce w latach 1918–1939*, Warszawa 2019, pp. 228-233; K. Bradliński, *Polskie kodeksy karne okresu międzywojnia*, „Studenckie Zeszyty Naukowe" 2018, vol. 21, no. 38, pp. 33-37.

6 See S. Czerwiński, *Zabicie płodu i dzieciobójstwo*, „Głos Sądownictwa" 1929, vol. 1, no. 5, p. 234. Cf. K. Slany, *Regulacja prawna aborcji w Polsce w okresie międzywojennym jako element polityki względem rodziny*, [in:] *Z zagadnień historii pracy socjalnej w Polsce i w świecie*, eds. A. Małek, K. Slany, I. Szczepaniak-Wiecha, Kraków 2006, p. 141. Cf. K. Daszkiewicz, *Przerwanie ciąży czy*

if the perpetrator made an error as to the factual situation, that is, she tried to abort a non-existent pregnancy (having wrongly assumed that she had been fertilised) or a dead foetus.. The offence of terminating a pregnancy leading to miscarriage was subject to confinement in a house of correction for a period of three years. The legality or illegality of conception[7] (out of wedlock) and the degree of foetal development were considered by the legislator as irrelevant to the nature of the offence. Pursuant to RPC Article 466, the killing of a living foetus by other persons, including a physician or a midwife, was punishable.[8]

dzieciobójstwo?, „Państwo i Prawo" 1968, vol. 23, no. 3, pp. 497-501; W.M. Borowski, *Spędzenie płodu*, „Gazeta Sądowa Warszawska" 1927, vol. 55, no. 12, p. 156 and vol. 55, no. 14, pp. 186-187, also vol. 55, no. 14, pp. 198-199; idem, *Spędzenie płodu czy zabójstwo dziecka?*, „Gazeta Sądowa Warszawska" 1929, vol. 57, no. 27, pp. 426-429.

7 As a side note, we can say that the Tagancev Code distinguished between legitimate and illegitimate children in its sanction for killing a newborn baby during delivery. The privileged form of murder that was qualified as child murder applied only to illegitimate children, which was intended to protect marital intercourse and the desire to maintain a semblance of „female dignity" of the murderous mother. Although the law did not provide for such a division in the case of forced miscarriage, the penal sanction for killing a foetus from an extramarital relationship was relatively lenient. Infanticide was treated in a similar way in case law. The principal motive of the offence, as reported by women, was poverty, shame and the fear of social consequences for the pregnant woman, as well as family conflicts caused by having an illegitimate baby. It was less disgraceful to have an abortion or kill a newborn than to raise an illegitimate child. State Archive in Suwałki (Archiwum Państwowe w Suwałkach; henereinafter: APS), Fonds 208, file ref. no. 10.259. In this case, the defendant testified that she had been urged by he baby's father – the landlord she had worked for for a year – to have an abortion with a folk healer. He also paid the healer for her midwifery services and the pregnant woman for consenting to terminate the pregnancy (50 złoty for each). The woman stated that she had yielded to persuasion because she was in a critical financial situation. The landlord's wife dismissed her and threw out of the house. On learning about the illegitimate pregnancy, the woman's family did not want to take her in, so she was forced to stay with another man for some time. As a result, she went with the baby's father to the healer, who induced miscarriage by inserting metal thongs into the woman's reproductive organs and instructed her to take quinine. The mattercame to light as the mother developed severe health complications and had to be hospitalized. See also APS, Fonds 208, file ref. no. 10.124. The woman became pregnant with her fiancé, who unconditionally demanded that the foetus be aborted and was willing to pay for midwifery services or healing practices aimed at exterminating the foetus. In its judgement of 11/12 February 1937 (file ref. no. K. 17/37), the Regional Court in Grodno, Branch Division in Suwałki (hereinafter: Suwałki Branch Court) sentenced the mother to 3 months of custody, and the midwife who aborted the foetus was awarded a 6-month sentence. Both penalties were subject to probationary period of 3 years. Similarly, in cases filed as APS, Fonds 208, file ref. no. 9352, APS, Fonds 208, file ref. no. 11900, or APS, Fonds 208, file ref. no. 11998, the pregnant woman's motive was extramarital pregnancy. Cf. S. Glaser, *Kilka uwag o spędzaniu płodu ze stanowiska prawa karnego*, „Rocznik Prawniczy Wileński" 1928, no. 2, pp. 52--53. See also K. Slany, op. cit., p. 139; W.M. Borowski, *Spędzenie płodu...,* pp. 200-201.

8 APS, Fonds 208, file ref. no. 7802. It transpired from the indictment that the woman consulted a midwife to confirm her pregnancy, asking the latter if her health condition allowed her to give birth without complications. Several years earlier, she had contracted syphilis from her husband, which led to three miscarriages; at the fourth pregnancy, the doctors induced miscarriage in view of her disease, and two successive children from full-term pregnancies died aged six and eleven months. The midwife confirmed the pregnancy, but did not provide an answer to the other query.

They were not treated as accessory participants but as independent perpetrators, and the measure of their penal sanction for abortion was contingent on the pregnant woman's consent to have her pregnancy terminated. As a matter of principle, the woman who committed the offence under RPC Article 466 was placed in a correction house. If, however, the pregnant woman did not consent to have her pregnancy terminated, the legislator provided for a sanction for the third party: up to eight years of hard labour, thus treating forced abortion as similar to a form of murdering a human being.[9] Therefore, the pregnant woman

She also testified that the pregnant woman had asked her to perform abortion but she refused. The pregnant woman sought help with another midwife but refused the offer due to its high price. She started looking for a person who would assist her in terminating her pregnancy. It followed from the indictment that the landlady who provided accommodation to the baby's father rubbed in iodine, which brought about a miscarriage after three days. The woman developed a high fever and turned to the first midwife for help. She did not say that she had aborted the baby. She claimed to have fallen off a stool while screwing in an electric bulb, whereupon she felt a strong pain in the lower back and stomach, and that on the following day she had gone to see her fiancé who gave her the money for a midwife's services. The midwife helped her to obstruct the bleeding by inserting cotton wool into the birth canal (sheets 2–3). In the course of the trial before the Regional Court in Suwałki, the mother again denied terminating her pregnancy and the very fact of seeking a midwife to perform abortion. She also presented the account of events that she had given to the midwife assisting her in the abortion. A forensic medical inspection showed that the foetuses were properly developed but unable to exist independently outside the mother's body (they were about 5 months old). The physician also stated that despite not being a specialist in the field he believed the birth had been induced. A different view was presented by an expert appointed to assess the accused woman's health and determine whether the delivery could have harmed the mother and whether it had been forced. The expert diagnosed syphilis and pulmonary tuberculosis, which confirmed that the delivery posed a threat to the life and health of the mother. He also indicated that previous miscarriages did not warrant the conclusion that this incident was a case of induced miscarriage. By the same token, it did not result from the rubbing in of iodine, but an infectious disease the mother had (sheets 38–42). The Regional Court, in its judgement of 1 December 1921 (file ref. no. K. 371/1921), having considered the testimony of the first midwife, the forensic medical examination of the foetuses, and the provision of RPC Article 53 (i.e. mitigating circumstances), imposed on the mother a penalty of three months of imprisonment, and sentenced the landlady, as a third party who aborted the foetus with the mother's consent, to six months in prison (leaves 48–52). In its decision of 30 March 1922, the Court of Appeal in Warsaw (file ref. no. AK 231/22), acquitted both women of the charges. In the statement of reasons, the Court pointed out that the physician issued an opinion without any scientific justification, and the midwife cited the pregnant woman, which suggested she did not witness the incident. The Court of Appeal, unlike the court of lower instance, gave credence to the opinion of the expert who assessed the mother's health and to the convincing accounts of the defendants. In its conclusion, the Court reasoned that the questionable value of circumstantial evidence meant that the alleged offences could not be regarded as proven (sheet 59). In so doing, the Court accepted that the accused women did not act with direct or conceivable intent aimed at killing the foetus, and the mother's imprudence led to the abortion. The Court's failure to acknowledge that the pregnant woman was aware that her conduct would lead to the killing of the foetus gave rise to her impunity. Even assuming that the mother sought a midwife to abort her baby, this conduct was a non-punishable attempt under the Tagancev Code, hence the complete acquittal of the defendants. Cf. S. Czerwiński, *Zabicie płodu...*, pp. 232-233; W.M. Borowski, *Spędzenie płodu...*, p. 199.

9 For more on this, see W. Makowski, *Prawo karne: o przestępstwach w szczególności: wykład porównawczy prawa karnego austrjackiego, niemieckiego i rosyjskiego, obowiązującego w Polsce*, Warsza-

had, as it were, a statutory privilege to decide the life or death of her foetus, which mitigated the sentence awarded to third parties involved in the criminal activity. In addition, the physician and the midwife could be deprived of their right to practice for a period of 1-5 years.[10] Information about the ban was made public. The Tagancev Code did not penalize an abortion attempt.

First discussions of the shape of Polish provisions relating to abortion took place in 1920, during the first session of the Criminal Law Section of the Codification Committee.[11] The criminality of induced abortion was considered to lie in the „destruction" of a baby conceived and developing in the mother's womb. Nonetheless, it was contemplated whether to penalise the extermination of a foetus (in a similar way as the Russian Code did) or to regard the mere fact of inducing preterm labour as an offence. In such a case, giving birth to a living

wa 1924, pp. 261-264. Cf. *Kodeks karny obowiązujący tymczasowo w Rzeczypospolitej Polskiej na ziemiach b. zaboru rosyjskiego: z dodaniem przepisów przechodnich i ustaw, zmieniających i uzupełniających postanowienia karne kodeksu; odpowiednich przepisów Kodeksu Karnego Niemieckiego i Ustawy Karnej Austrjackiej, obowiązujących w pozostałych dzielnicach Rzplitej oraz Komentarza i orzeczeń Sądu Najwyższego*, vol. 3, part 20-37 K.K., ed. W. Makowski, Warszawa 1922, pp. 92-95.

10 APS, Fonds 208, file ref. no. 8831. The case concerned a midwife who was convicted of aborting a baby with the mother's consent. The mother did not hear charges under PC Article 465 because she died in hospital as a result of a blood infection caused by a large quantity of pus in the lesser pelvis and inflammation of the peritoneum. These directly led to the disclosure of the criminal conduct of the midwife. The Regional Court in Suwałki, in its judgement of 11 May 1929 (file ref. no. Ko 64/1929) sentenced the accused to one year of imprisonment and forbade her to practice midwifery for two years. The higher sentence was due to the nature of the case, mainly because she persuaded the couple to delay vital medical assistance to the mother after miscarriage was induced, despite knowing there was a haemorrhage, a placenta accreta and its decomposition (showing signs of gangrene). Further, she was found guilty of using persuasion to avoid criminal liability and misleading the doctor by concealing the cause of the miscarriage. Finally, the Court found the midwife as lacking experience, as the moment she chose to abort the foetus was the most dangerous for the patient due to her placenta growing too deeply into the uterus (sheets 62-68). Cf. R. Augenblick, *Kilka uwag o przestępstwie spędzenia płodu*, „Czasopismo Sądowo-Lekarskie" 1930, vol. 3, no. 3, p. 142.

11 See *Protokół I-go posiedzenia Sekcji Prawa Karnego Materjalnego Komisji Kodyfikacyjnej*, in *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Wydział Karny. Sekcja Prawa Karnego*, vol. 1, no. 2, Warszawa – Lwów 1922, pp. 21-24. Cf. *Projekt kodeksu karnego przyjętej w drugim czytaniu przez Sekcję Prawa Karnego Komisji Kodyfikacyjnej R.P., uzasadnienie części szczególnej*, [in:] *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Wydział Karny. Sekcja Prawa Karnego*, vol. 5, no. 4, Warszawa 1930, pp. 182-185. Provisions on forced abortion sparked heated debates not only among lawyers but also among physicians, the public and the Church, who were all interested in the final regulation of this issue. For more on this, see T. Boy-Żeleński, *Piekło kobiet Jak skończyć z piekłem kobiet?*, Warszawa 1933, pp. 25-34; P. Sołga, *Społeczny, medyczny i prawny kontekst aborcji w Drugiej Rzeczypospolitej*, „Res Historica" 2022, no. 53, p. 435; idem, *Postulat liberalnego prawa aborcyjnego, jego krytyka i eksplikacja w publicystyce Drugiej Rzeczypospolitej*, „Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia. Sectio F" 2022, vol. 77, pp. 225-256; N. Knoebel, *W kwestii przestępności spędzenia płodu*, „Głos Prawa" 1930, no. 1, pp. 16-20; K. Fleszyński, *Zagadnienie spędzenia płodu,* „Głos Sądownictwa" 1929, vol. 1, no. 11, pp. 533-537; S. Batawia, *Zagadnienie karalności spędzenia płodu na II –im zjeździe prawników polskich*, „Czasopismo Sądowo-Lekarskie" 1929, vol. II, no. 4, pp. 194--203.

or dead baby would be irrelevant for the criminal liability of the perpetrator. In the second interpretation, the offence of forced abortion was about the protection of the conceived life just like the *nasciturus* known to civil law, in accordance with the principle *pro iam nato habetur, quoties de vita eius agitur.*[12] If, however, the interpretation focused on the death of the baby, giving birth to a live baby despite inducing preterm labour should be qualified as an attempted abortion. It was uniformly accepted that the basis for the punishability of a criminal act was the intention to abort the foetus. Other issues discussed during the Section's meeting was the punishability of involuntary termination of a pregnancy. However, this proposal was scrapped as being too far-fetched and permitting for the sentencing of a third party for harming a pregnant woman involuntarily. Discussed was also the possibility of criminalising the termination of a pregnancy from rape, which was later reflected in Article 233 letter b of the Penal Code, which considered this premise as giving rise to impunity of those who aborted the foetus at the mother's request.[13] Thus, unlike in the Russian legislation of 1903, individual interest prevailed over the interest of the state that treated the foetus as a value for its population.

The last issue under discussion was the criminal liability of the pregnant woman and third parties for inducing abortion, as well as those who commercially engaged in this activity. There was unanimous agreement that the idea of complete impunity for a pregnant woman who terminated her pregnancy should be rejected in order to prevent the practice of induced miscarriage as an contraceptive method. Ultimately, under the 1932 Penal Code and its Article 231,[14] aborting the baby forcibly or granting consent to a third party to perform this was punishable by three years of imprisonment. The culpability or impunity of a physician who performed an abortion was to be regulated by the provisions in the general part and related to the state of absolute necessity. It was also proposed that the physician who put a foetus to death in order to save the life or health of the mother be acquitted.[15] For example, an extrauterine pregnancy would lead to stillbirth and threatened the mother's life, so by virtue

12 See *Protokół I-go posiedzenia Sekcji Prawa Karnego...*, pp. 21-22. Cf. M. Chajda, *Nasciturus i jego ochrona w prawie cywilnym*, [in:] *Status prawny i ochrona prawna dziecka poczętego*, ed. L. Tyszkiewicz, Bielsko-Biała 2014, pp. 58-69; A. Maciejowska, *Spory ideologiczne wokół ochrony dziecka poczętego. Kontekst cywilnoprawny*, in *Status prawny i ochrona prawna dziecka poczętego*, ed. L. Tyszkiewicz, Bielsko-Biała 2014, pp. 81-92; S. Chrempiński, *Czy dziecko poczęte winno być uznane za podmiot prawa*, „Nowe Prawo" 1958, vol. 14, no. 2, pp. 83-89.

13 *Protokół I-go posiedzenia Sekcji Prawa Karnego...*, p. 23.

14 See PC Article 231: „A woman who aborts her foetus or lets another person abort it is liable to up to three years of custodial sentence."

15 See PC Article 233: „No offence is committed under Articles 231 and 232 if the procedure was performed by a physician and a) it was necessary for the health of the pregnant woman, or b) the pregnancy was the result of an offence under Articles 203, 204, 205 or 206. The grounds justifying a forced abortion were the pregnant woman's age below 15 years, total or partial insanity (see

of the provision of PC Article 22 the performance of a foetal abortion in a state of absolute necessity to save the life of the mother precluded a criminal liability for a forced abortion.[16] In the case of third-party involvement, the measure of penal sanction would be conditional on the pregnant woman's consent. The pregnant woman's reluctance to terminate her pregnancy was to be treated as an aggravating circumstance when determining the sentence.[17] An extra sanction against the physician and the midwife who had been convicted of performing an abortion, providing for a possible suspension of their right to practice, was not replicated from the Russian Penal Code. Punishments for forced abortion imposed on pregnant women and third parties had not evolved substantially since the Tagancev Code. The Polish legislator did not provide for a lower limit of the penal sanction for third parties responsible for abortion, while increasing the penalty of imprisonment to ten years if abortion was performed without the pregnant woman's consent.

3. The offence of forced abortion in light of the court records of the Suwałki District (1932–1939)

The subject of the offence under PC Article 231 was a mother who aborted her foetus[18] or allowed her pregnancy to be terminated. In contrast, a person who terminated a pregnancy with the mother's consent or assisted in doing so

PC Article 203), a pregnancy as a result of rape or incestuous intercourse or taking advantage of the mother's critical situation (PC Articles 204-206). Cf. W. Makowski, *Kodeks karny 1932: komentarz*, Warszawa 1933, p. 525.

16 Leon Peiper pointed out that PC Article 22 applied also when a pregnant woman aborted her foetus for no help was available, her body was exhausted or she was unable to feed her starving children. See L. Peiper, *Komentarz do kodeksu karnego: prawa o wykroczeniach przepisów wprowadzających obie te ustawy oraz do rozporządzenia prezydenta R.P. o niektórych przestępstwach przeciw bezpieczeństwu państwa z dnia 24 października 1934 roku (Dz.U. Nr. 94, poz. 851): z uwzględnieniem ustawy karnej skarbowej, ordynacji podatkowej, kodeksu karnego wojskowego, ustaw dodatkowych orzecznictwa Sądu Najwyższego*, Kraków 1936, p. 467. Cf. L. Bogunia, *Przerywanie ciąży: problemy prawno karne i kryminologiczne*, Wrocław 1980, pp. 66-72.

17 See PC Article 232: „Anyone who aborts the foetus of a woman with her consent or assists her in doing so shall be liable to imprisonment of up to 5 years." See also PC Article 234: „Anyone who aborts the foetus of a woman without her consent shall be liable to imprisonment of up to 10 years."

18 See APS, Fonds 208, file ref. no. 10.522. The woman, who was charged with aborting her foetus by piercing it with a crochet hook, found herself in hospital with peritonitis of the lesser pelvis and venous thrombosis of a lower limb as a consequence of septic miscarriage. In its judgement of 19 March 1938 (file ref. no. K 15/38), the Suwałki Branch Court sentenced the mother to one month of custody suspended conditionally for two years (sheet 43). Another situation was a case recorded in the said APS, Fonds 208, file ref. no. 11900, where the pregnant woman ingested medication (quinine) and herbs, bathed in hot water, and then she lifted and carried sacks of groats and flour in the shop run by her employers. These measures led to a premature delivery of a dead foetus. By its sentence of 18 May 1934, the Suwałki Branch Court sentenced the accused woman to three months' custody suspended conditionally for a period of two years.

incurred criminal liability under PC Article 232.[19] The subject of the offence of forced abortion could therefore be any person capable of bearing criminal responsibility, but Polish criminal law, similarly to the Tagancev Code, favoured the mother, which was illustrated by the size of the criminal sanction provided for this offence (see PC Articles 231, 232 and 234).[20]

Pursuant to PC Article 231, forced abortion was understood to mean depriving the unborn baby of its life or inducing its preterm delivery. The result of both these activities[21] (mechanical, surgical, pharmacological or other procedure involving the ingestion of a preparation, food or drink) was to deliver a preterm and dead baby.[22] Abortion was therefore any intentional activity preventing the normal development of the foetus and the birth of a live baby. So the protected entity was not the pregnancy or the mother's body but the life of the foetus. Therefore, the foetus' capacity for an independent existence (after being detached from the mother's body) was irrelevant for criminal liability. Giving birth to a living baby despite the mother's intention to have the foetus killed was treated as attempted abortion.[23] Most commonly, the foetus was aborted when a third party, with the pregnant woman's consent, performed

19 The provision of PC Article 232 treated accessory support as an independent offence, whereas an instigator was criminally liable, on general terms, to PC Article 26. Acting as an accessory could involve bringing the pregnant woman to a midwife who performed abortions, holding down the patient or handing instruments during a procedure intended to kill the foetus, administering medicines or other substances inducing miscarriage, or drugging the pregnant woman. It is worth noting, though, that in none of the examined and cited cases did the court bring charges under PC 232 against the accessory who brought the pregnant woman to a midwife or paid for an abortion. No charges were brought against the instigators who urged the women to have an abortion. Cf. L. Peiper, op. cit., pp. 468-469.

20 . W. Makowski, *Kodeks...,* s. 523; L. Peiper, op. cit., pp. 467-468; J. Makarewicz, *Kodeks...*, s. 330-331. Cf. A. Kania-Chramęga, *Warunki legalności przerywania ciąży (problemy prawno karne i społeczne),* Zielona Góra 2020, pp. 76-77; K. Slany, op. cit., pp. 141-142.

21 . See M. Łodyga, *Metody i środki stosowane w procederze aborcyjnym w okresie międzywojennym na przykładzie spraw z terenu siedleckiego okręgu sądowego*, „Meritum" 2016, no. 8, pp. 241-254; M. Kurkowska, *„Fabrykantki aniołków". O problemie aborcji w Polsce w latach 1878-1939*, „Arcana. Kultura-Historia-Polityka" 1998, no. 1, pp. 160-161; K. Slany, op. cit., p. 140. Cf. P. Sołga, *Społeczny* ..., pp. 436-437; W.M. Borowski, *Spędzenie...,* p. 198.

22 The object of the crime and the criminal conduct were identical to the ones stipulated by the Tagancev Code. See W. Makowski, *Kodeks...,* pp. 522-524; L. Peiper, op. cit., pp. 466-468; J. Makarewicz, *Kodeks karny z komentarzem. Przepisy wprowadzające kodeks karny i prawo o wykroczeniach*, Lwów 1932, pp. 329-330. Cf. W. Goldblatt, *Z dziedziny spędzenia płodu*, „Głos Adwokatów" 1937, vol. 12, no. 1, pp. 9-11; W.M. Borowski, *Spędzenie...,* pp. 186-187, 198-199.

23 The Polish Penal Code introduced the punishability of attempted abortion, so the forced abortion of a dead foetus constituted an ineffective attempt. This, however, had to be proven. It follows that a presumption would be made that the foetus was alive at the time of the abortion procedure, which followed from the very fact of pregnancy (see PC Article 23 § 23). A punishable attempt, for example, occurred when a third person provided the pregnant women substances to terminate the pregnancy, but she did not take them. Another example would be a situation where a mother was seeking a midwife, a folk healer (commonly called *babka*) or a physician who would perform an

physical interventions into the woman's reproductive organs (i.e. the insertion of instruments into the cervical canal to deprive the foetus of its life, often combined with other actions to induce miscarriage), resulting in artificially induced miscarriage.[24]

Criminal liability arose from the direct or conceivable intent that accompanied the mother's or a third party's conduct – that is, the killing of the foetus. In can be added that in interwar Poland the offence of abortion came to light usually because of complications resulting from a physical intervention made by a midwife or a folk healer, known in Polish as *babka*. Such abortion procedures were usually done in unhygienic conditions, with the use of non-sterile or dirty instruments. Women ended up in hospital with severe complications, with many dying of inflammation or because medical help arrived too late. They often left behind young children.[25] The price of midwives' services, especially in the country, was much lower than

abortion, but they refused. The criminal intention aimed at depriving the foetus of its life did not succeed for reasons beyond the woman's control. Cf. A. Eimer, *Życie płodu jako warunek karalności spędzenia płodu (Art. 232 k.k.),* „Głos Sądownictwa" 1936, vol. 8, no. 1, pp. 62-63.

24 See APS, Fonds 208, file ref. no. 10.571. The woman, accused based on PC Article 231, underwent a mechanical termination of her pregnancy, as a result of which she developed a purulent inflammation of the femoral vein. Her necessary stay in hospital revealed the criminal conduct. A forensic medical examination and a doctor's opinion confirmed induced miscarriage, which had been performed unprofessionally. However, the midwife was not charged under PC Article 232 because her identity was not established. In its judgement of 2 August 1938 (file ref. no. K 79/38), the Suwałki Branch Court sentenced the accused woman under PC Article 232 to 6 months of custody with the sentence suspended for three years. See also the cited APS, Fonds 208, file ref. no. 11998. This case illustrates how the so-called abortion underground functioned at that time. A pregnant woman (typically young, uneducated and poor) seeks to terminate her pregnancy and looks for a midwife to do that with a view to keeping her extramarital intercourse secret. She goes to an indicated address, where she pays a person who performs abortions to have her pregnancy terminated. The foetal puncture usually took place at the midwife's or healer's place, and other steps taken to induce miscarriage were performed at the mother's place. The offence under PC Articles 231 and 232 transpired if a haemorrhage and blood infection occurred. Delaying a visit to hospital for too long led to the mother's death. People who did abortions commercially rarely admitted their guilt. They usually explained the loss of their patient's pregnancy with her careless behaviour (e.g. falling down stairs, etc.), provided that the miscarriage was confirmed by a forensic medical examination or autopsy. Otherwise, they argued that no pregnancy had been terminated because the woman had not been pregnant.

25 Midwives who led to the death of the mother through the abortion they performed, as a rule, were punished under PC Article 230 § 2. See APS, Fonds 208, file ref. no. 9806. In this case, the woman accused by virtue of the judgement of the Suwałki Branch Court of 18 March 1933 (file ref. no. Kj. 21/33) was sentenced under PC Article 232 to eighteen months of imprisonment. Having served her sentence in June 1934, she started to perform abortions again. Proceedings on indictment of an offence under PC Article 232 were instituted twice in 1935 against her and then discontinued for lack of sufficient evidence of guilt (sheets 52–53). The following year, the midwife was charged with involuntary manslaughter of a woman whose foetus she aborted, thus leading to purulent inflammation of the reproductive organs and lungs, and her subsequent death (sheets 55). By the judgement of 17 April 1936 (file ref. no. 94/36), the Suwałki Branch Court sentenced the defendant

a proper procedure performed by a physician – this was conducive to so-called abortion tourism. Women would recommend to one another midwives or other individuals who performed abortions for a consideration.[26] They paid no heed to the health of the pregnant woman and other circumstances referred to in the Penal Code when consenting to abort their pregnancy.

Certainly, no offence under PC Articles 231 and 232 was committed if the procedure was performed by a physician to save the pregnant woman's health or when the pregnancy was the result of enumerated offences.[27] The need for the procedure to be carried out by a physician, and this followed from the necessity of avoiding clandestine abortions done by unqualified individuals (midwives or *babki* in the country), and ensuring proper hygiene during the procedures (elimination of the so-called abortion underground).[28] Therefore, the privilege of impunity referred to in PC Article 233 could not be enjoyed by someone who

to 3 years' imprisonment. See also the cited APS, Fonds 208, file ref. no. 9352. The midwife was sentenced to eighteen months' imprisonment for committing the offence under PC Article 230 § 2 (the judgement of the Suwałki Branch Court of 1 June 1934, file ref. no. Ko 14/34) in connection with the victim's death resulting from severe and extensive complications following the abortion. 62–65). This sentence was reaffirmed by the decision of the Court of Appeal in Wilno of 25 October 1934 (file ref. no. I.KA. 469/34). The amount of the penalty was to be regarded as very low, in particular as the midwife had a previous conviction for the offence under RPC Article 466. After her release, she reverted to her criminal activity for money, endangering women's health and, above all, their lives due to the improper and incompetent performance of abortions using non-sterile instruments.

26 APS, Fonds 208, file ref. no. 11636. By the judgement of 18 March 1933 (file ref. no. Kj. 21/33), the Suwałki Branch Court sentenced several women at the same time: two pregnant women who agreed to have their babies aborted and the midwife who performed the procedures. Cf. Fonds 208, file ref. no. 10.124. In this particular case, the price for an abortion was 5 złoty, but the pregnant paid 3 złoty as she was not well-off. The midwife, who was from another town, was recommended by the pregnant woman's relative. It followed from the files of other cases that an abortion in town cost between 10 and 25 złoty, but women negotiated the rates, so the final price was lower. Sometimes they paid in instalments.

27 Pursuant to Article 12(2) of the Ordinance of the President of the Republic of Poland of 21 September 1932 on the practice of medicine (Dz.U. 1932 No. 81, item 712), a foetal abortion in the case when the pregnancy resulted from a prohibited act referred to in PC Articles 203-206 could be performed by a physician only after receiving a prosecutor's certificate stating a reasonable suspicion that the pregnancy arose as a consequence of one of the enumerated crimes. Cf. L. Peiper, op. cit., p. 471; J. Makarewicz, *Kodeks...*, pp. 331-332.

28 Cf. APS, Fonds 208, file ref. no. 11998. See also APS, Fonds 208, file ref. no. 10.259. The folk healer forbade the pregnant woman to tell anyone about the abortion and instructed her to say that she had fallen off stairs. The defendant under PC Article 232 performed abortions gainfully, for which she had already been punished. In its judgement of 4 June 1937 (file ref. no. 171/37), the Suwałki Branch Court sentenced the defendant to 3 years' imprisonment, taking account of the circumstances indicated above. In its judgement of 18 September 1937 (file ref. no. I.KA. 655/37), the Court of Appeal in Wilno reduced the sentence to two years of imprisonment. See also APS, Fonds 208, file ref. no. 10.643. In this case, the midwife charged ten złoty for each visit. She performed abortions professionally, which could be concluded from the indictment. The women who were charged with consenting to have their pregnancies terminated by the defendant did not confess to having abortions. They claimed they had visited the defendant merely to confirm they were pregnant, which

performed abortion without the consent of the pregnant woman, even if the procedure was carried out by a physician, unless the circumstances under PC Article 22 existed.[29] This transpired from the construction of PC Article 232, which required the consent of the pregnant to an abortion for this activity to be qualified as a prohibited act under this Article.[30] It is worth adding that in doctrine, the concept of „health" encompassed not only an immediate threat

they were not, so no foetus was killed. The co-defendant under PC Article 231 testified she had visited the midwife twice. She confessed to aborting the foetus with her consent by piercing it with a thin wooden stick with a sharpened end, and then drinking the *bujan* herb that the midwife gave her to induce menstruation, and finally to having a hot bath as instructed. These activities cause bleeding and the woman had to go to hospital, where she underwent curettage after the miscarriage (sheets 70-71). In such cases, the hospital was obliged to notify law enforcement authorities of this situation, thus initiating an investigation intended to resolve the question of criminal responsibility for the abortion. It is noteworthy that the mother, accused under PC Article 231, was a young illiterate woman, who worked as a servant at a confectioner's. He monthly earnings were twenty złoty plus accommodation, as she had no dwelling of her own. Pursuant to the sentence of 5 August 1938 (file ref. no. K 168/38) the accused woman was sentenced to four months' imprisonment suspended conditionally for a period of three years. The sentence given to the midwife was 8 months' imprisonment. The Court justified its sentence on the grounds that the woman acted for a profit in unhygienic conditions, that she was lacking in qualifications and skills to perform the abortion procedure, and that she showed no remorse after committing the offence (sheets 112-118). The judgement of the Court of Appeal in Wilno of 13 January 1939 (file ref. no. 2 KA 1445/38) upheld the of penalty. It is obvious, then, that the illicit activity pursued by the midwife was very profitable. Moreover, the scale of the abortion market in the Second Republic of Poland could not be determined due to the huge number of undisclosed abortions. What is certain, though, is that inducing abortions was common practice, a socially acceptable phenomenon, whereas the clemency of the law encouraged the abortion underground. Cf. T. Boy-Żeleński, *Piekło...*, pp. 52-61. Cf. P. Sołga, *Społeczny...*, p. 440; M. Kurkowska, op. cit., pp. 161-162; H. Kłuszyński, *Regulacja urodzeń. Rzecz o świadomem macierzyństwie*, Warszawa 1932, pp. 18-20.

29 Article 12(1) of the ordinance on medical practice required the pregnant women's consent to have her foetus aborted. If, however, a case of absolute necessity occured as the mother's life was directly threatened, the pregnant woman's consent was not necessary. In the same way, the place where an abortion was performed did not affect criminal liability, so – contrary to the provisions of the ordinance – a abortion could also take place in a medical facility, that is, in a hospital (see PC Article 22). Worthy of mention is paragraph 6 of the Ordinance of the Minister of Social Welfare, dated 30 January 1934, issued in consultation with the Minister of Military Affairs, on the practice of medicine (Dz.U. 1934 No. 11, item 96). It provides that the sick person's consent must be uttered in the presence of at least one witness or stated in writing. However, if the abortion was performed at a medical facility, Article 37 of the Ordinance of the President of the Republic of Poland of 22 March 1928 on medical facilities (Dz.U. 1928 No. 38, item 382). See W. Makowski, *Kodeks...*, pp. 526-527; L. Peiper, op. cit., p. 470. Cf. A. Kania–Chramęga, op. cit., pp. 100-106; T. Boy-Żeleński, *Dziewice konsystorskie. Piekło kobiet*, Poznań 1992, p. 214; idem, *Piekło...*, pp. 109-116.

30 Doubts concerning the necessity of obtaining the pregnant woman's consent for the termination of her pregnancy, despite health issues or in connection with offences under PC Articles 203–206, applied to an insane person or a young person under 15 years of age. One had to assume, though, that decisions were made in their name by a legal guardian. On the other hand, if an abortion was performed – despite the knowledge of the mother's mental state of immaturity and hence absence of her consent – the offender was liable under PC Article 234 (see PC Article 17 § 1).

to the mother's life in connection with pregnancy or childbirth, e.g. in the case of ectopic pregnancy, but also other effects harmful to her body caused by the pregnancy, such as weakness, emaciation or infectious diseases such as syphilis or e.g. tuberculosis.[31]

4. Conclusions

The most common motive for the offence under PC Article 231 was poverty and lack of a permanent residence or sufficient means to support the child. It was essential for the pregnant woman who sought to terminate her pregnancy to keep her extramarital relationship in secret, as well as the fact of expecting an illegitimate baby. The religious beliefs declared by the defendant were irrelevant with respect to abortion, which is directly evident from the case files. Abortion was a common phenomenon but it was often performed by persons without proper medical knowledge; it was induced in an inappropriate and incompetent manner, using non-sterile instruments in poor hygiene. This, as a consequence, led to a massive infection in the woman's whole body, and not infrequently her death. The available archival resources, barely touched on here, suggest that the scale of the problem was enormous. It should be noted that the opinion of an expert physician and a forensic medical examination were not conclusive enough to determine the cause of the miscarriage, so courts would acquit the defendants. Typically, during trials women accused of conduct under PC Articles 231 or 232 would plead not guilty. Even if the defendants' guilt, that is, acting with direct or

Cf. W. Makowski, *Kodeks...*, p. 526; L. Peiper, *op. cit.*, p. 468; J. Makarewicz, *Kodeks...*, p. 332. See also S. Czerwiński, *Zabiegi lekarskie a odpowiedzialność karna lekarzy na tle projektu wstępnego Komisji Kodyfikacyjnej o wykroczeniach*, „Głos Sądownictwa" 1929, vol. 1, no. 11, pp. 524-527; S. Glaser, op. cit., pp. 135-137; P. Sołga, *Społeczny...*, pp. 443, 446-447.

31 The mother's life was higher in the hierarchy of legally protected goods than the life of the foetus, which was treated as a not fully formed human being, dependent on the mother's organism. The provision of Article 12(3) of the regulation on medical practice was in compliance with PC Article 233. It needs to be pointed out, however, that the content of certificates of two physicians or their lack did not constitute formal evidence for courts to consider when assessing the facts of a particular case. For more on this, see *Polski kodeks karny z 11 VII 1932 r. wraz z prawem o wykroczeniach, przepisami wprowadzającymi i utrzymanemi w mocy przepisami kodeksu karnego austriackiego, niemieckiego, rosyjskiego i skorowidzem. Komentarzem zaopatrzyli K. Sobolewski i A. Laniewski*, Lwów 1932, pp. 120-121. Cf. W. Makowski, *Kodeks...,* pp. 525-526; L. Peiper, op. cit., pp. 470-471; J. Makarewicz, *Kodeks...,* p. 331. See also A. Czajkowska, *O dopuszczalności Przerywania ciąży. Ustawa z dnia 27 kwietnia 1956 r. i towarzyszące jej dyskusje*, [in:] *Kłopoty z seksem w PRL. Rodzenie nie całkiem po ludzku, aborcja, choroby, odmienności*, ed. M. Kula, Warszawa 2012, pp. 109-110; W. Orłowski, *Wskazania do przerywania ciąży ze stanowiska medycyny wewnętrznej*, „Ginekologia Polska" 1927, vol. 6, no. 10-12, pp. 1122-1124; H. Beck, *Wskazania położnicze do przerywania ciąży*, „Ginekologia Polska" 1927, vol. 6, no. 10-12, p. 1129; A. Szwarc, *Wskazania okulistyczne do przerwania ciąży*, Ginekologia Polska" 1927, vol. 6, no. 10-12, p. 1131; P. Sołga, *Społeczny...*, pp. 449-452; H. Kłuszyński, op. cit., pp. 28-29.

conceivable intent to kill the foetus, was proven, the criminal sanction handed down in this type of cases was not severe, and thus did not effectively prevent the spread of unlawful foetal abortions. Usually, the pregnant woman was sentenced to three months' imprisonment, and the third party who performed the abortion was given 6 months in prison, with the defendants typically having their sentences suspended for three years. The mitigating circumstances taken into account by the court were: illiteracy, residing with the employer and working for him as a servant or labourer, illegitimate filiation of the baby, and related social consequences for the defendant. The death of the woman as a result of a botched abortion procedure, although it was subject to a statutory penalty of ten years' imprisonment, in judicial practice was not treated as a crime, as illustrated by the amount of penal sanction imposed on the perpetrator. These legal circumstances encouraged midwives or folk healers who were previously convicted under PC Article 232 or Article 230 § 2, especially as performing abortion was a profitable occupation.

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Summary

The Offence of Forced Miscarriage as Documented in the Polish State Archive in Suwałki (1921–1939)

This article discusses the statutory elements of the offence of induced miscarriage in the Russian Penal Code of 1903 and in the Polish Penal Code of 1932. The provisions of the Tagancev Code form a background for a comparative analysis of the solutions adopted in Polish criminal law undergoing unification, as well as a basis for the work of the Codification Committee on the final shape of Polish legal provisions criminalising the phenomenon in question. The criminal-law study of forced miscarriage was based not only on code regulations, but also relevant judicial decisions handed down by the Regional Court in Suwałki, the Branch Division of the Regional Court in Grodno in Suwałki (from 1933), and the Court of Appeal in Wilno as the court of second instance examining the cases cited. The article also illustrates how the so-called abortion underground functioned, how a committed offence was detected and, what legal consequences were faced by the perpetrators of illegal abortions.