

Stealthy restriction:
Abortion discourse and the new constitution in Hungary

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*Submitted to
Central European University
Department of Gender Studies*

In partial fulfilment for the degree of Master of Arts in Gender Studies.

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Budapest, Hungary
2012

Abstract

Stating that life shall be protected from the moment of conception, the new constitution of Hungary, which entered into force on 1 January 2012, laid down the basis and ensured the possibility of a more rigorous legislation on abortion. In my thesis I am examining the social and political context in which the possibility for a tight biopolitical control on the population became imaginable. Considering abortion as a discursive field in which claims for power are legitimised, I am placing the debate in the wider historical and current political context. Since the attitude to abortion indicates a vision of society, abortion regulation becomes a primary scene of the contest for power.

I am arguing that the present debate on abortion is a concomitant of the restructuring of political life since the Parliamentary elections in 2010. Winning the elections with a sweeping majority, the governing party, which is the largest party on the political right wing, is devouring other right wing parties in its quest for power, at present the Christian democratic party, and at the pressure of the more and more popular far-right it is appropriating the discourse and agenda of the far-right party. Abortion regulation necessarily falls victim to this power game, as neither the nationalist, nor the religious agendas have any concern for women's reproductive rights.

By way of abortion regulation the state controls the social through the biological life of its population. Since a liberal political structure allows for more freedom of the individual as opposed to a system with authoritarian aspirations, I am, therefore, challenging Giorgio Agamben and Ruth Miller's claim that on the biopolitical plane left and right, liberal and authoritarian lose their meaning and enter into a "zone of indistinction."

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1. Introduction

1.1. *The campaign*

In the spring of 2011 for two months metro cars, tram and bus stops in Budapest and elsewhere in the country were plastered with posters that featured a foetus begging to be allowed to live. “[I understand it if you aren’t ready for me ...] ... but rather put me up for adoption, LET ME LIVE!” ran the caption, a request attributed to the foetus in the picture. The message to be conveyed was emphasised with typography: the text in parenthesis with lower-case letters was followed by the part “but rather put me up for adoption” with upper-case letters, only to be increased by the upper-cases letters of larger size of the exclamation “let me live.” The imploring wish of the foetus was followed by explanatory numbers: “In Hungary several thousand children become victims to abortion every year. In Hungary one and a half thousand people are waiting for adoptable children.”¹

The posters were part of a wider campaign, launched by the Ministry of National Resources and carried the logo of the EU as it was financed to a considerable extent by the European PROGRESS programme “Together for equality.” The European initiative, launched by decision 1672/2006/EC of the European Parliament and the Council for the period 2007-2013 is a financial instrument supporting the development of EU policy in the following five areas: employment, social inclusion and protection, working conditions, anti-discrimination and gender equality. The puzzle how a campaign against abortion could fit into any of these areas might be explained by the fact that within the area of social inclusion, beyond combating poverty and social exclusion and reforming social welfare systems, the EU also set the aim to “tackle the challenges posed by demographic change and to prepare for the effects of population ageing by focusing on the emerging opportunities.”² One can only conclude that

¹ <http://abortusz.info/hirek/hirek/eselyegyenl%C5%91segi-kampanyba-csempeszte-az-abortuszellenes-plakatokat-a-kormany>

² <http://ec.europa.eu/social/main.jsp?langId=en&catId=327>

the government saw in the restriction of abortion an “emerging opportunity” to tackle demographic decline. The posters, however, could not stay in public places for long. The EU Commissioner for Justice called for their removal, claiming that the campaign goes against European values and is not in line with its PROGRESS program. The responsible Ministry replied that “there was a difference in the interpretation of the contract on the funds ensured by PROGRESS,” but it was ready to comply with the commissioner’s request to put an end to the campaign, blurring the more profound difference in viewpoint by claiming that the Ministry considered the issue as a legal, technical one.

Civil organisations interested in family and women’s issues quickly lined up behind or attacked the message of the campaign, read as the advertisement of the opportunity of adoption or, conversely, as a hidden campaign against abortion and as an interference with women’s reproductive rights. Associations mediating adoption, like Gólyhír Egyesület (Stork News Association) or Bölcső Alapítvány (Cradle Foundation), as well as Nagycsaládosok Egyesülete the (National Association of Large Families) openly defended the explicit aim of the campaign to stop demographic decline, whereas the feminist civil organisation Patent voiced her concerns about the way in which the government tries to tackle population issues at the expense of curtailing women’s rights.

1.2. *Change in the legislation*

The adoption/abortion campaign was all the more troubling for women’s rights NGOs as by the time the posters were put out in public places, the intention of the government to include a clause on the protection of life from conception in the planned new constitution had been evident. Seizing the opportunity provided by its two-thirds majority in the Parliament and drawing on the provision of the Constitution of 1949 as amended in 1989 (hereinafter

Constitution of 1989) that envisages the adoption of a new constitution, the Hungarian government taking office in 2010 swiftly embarked on a constitution-making process and by April 2011 the new foundations of the legal system, called the 'Fundamental Law' were laid down. Not only the eventual text but the very need for a new constitution divided public opinion and political parties; opponents and opposition parties argued that the Constitution of 1989 stood the test of time and together with the so-called 'invisible constitution', made up of the first decisions of the Constitutional Court since the change of regime, proved sufficient for a constitution of a democratic country governed by the rule of law. (Kis 2011; Majtényi 2011)

In March 2011 Patent, the Hungarian Women's Lobby and the New York Centre for Reproductive Rights sent lobby letters to the Hungarian Parliament asking MPs to consider the effects of the inclusion of the protection of foetal life in the constitution on women's rights to self-determination. Just as other criticism of the draft constitution went unheard, the plea for the respect of women's rights fell on deaf ears, what is more, with the adoption campaign the government started the job of raising people's awareness about adoption as an alternative to abortion as it was clear to them that the Hungarian population was not ready to accept a radical ban on abortion.

Whereas Article 54(1) of the old Constitution stipulated that "in the Republic of Hungary everyone has the inherent right to life and to human dignity" and "no one shall be arbitrarily deprived of these rights,"³ with respect to the right to life Article II of the new Fundamental Law now declares that "every human being shall have the right to life and human dignity; embryonic and foetal life shall be subject to protection from the moment of conception."⁴ By extending the protection of life to embryonic and foetal life, as opposed to and in spite of announcements according to which there is no intent on behalf of the

³ The Constitution of 1989 is accessible at http://www.servat.unibe.ch/icl/hu00000_.html

⁴ The Fundamental Law is accessible at <http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf>

government to change the law on the protection of foetal life currently in force, the new constitution paves the way for the possibility of a more restrictive abortion regulation.

1.3. *Outline of the thesis*

Given that Hungary is a democratic member state of the EU and is governed by the rule of law, the restriction of abortion to where legislative changes and government discourse point, is a step back in a liberal democracy and moves towards an abortion law that is found only in a very few European countries.⁵ This thesis is an attempt at the explanation of why such a tight biopolitical control of the population is envisaged in Hungary in the early 2010s.

As a political measure that controls the social via the biological life of the population, abortion regulation is not an end in itself but a discursive field in which standpoints on family, marriage, heterosexuality and motherhood are made clear. (Pető 2003) The different attitudes to abortion, the pro-life and the pro-choice discourse indicate differing concepts of woman and gender, with the normative cult of motherhood at one and the freedom of choice, including the possibility of the denial of motherhood, at the other extreme. Since the well-regulated family is an indispensable unit of state power, the concept of the family and therefore the attitude to abortion, become discursive fields in which political intentions are claimed. Therefore, in my understanding, liberalism vs. authoritarianism has crucial effects on the biological. Agreeing with the Foucauldian concept of biopolitics, according to which modern state power is increasingly a biopolitical power that regulates the “multiplicity of men” on the biological level for economic and political ends, I wish to argue that a liberal political structure can check whereas authoritarianism can enhance state power at the expense of the individuals’ rights. As opposed to Agamben and Miller, I am arguing that liberalism and authoritarianism are not only relevant but crucial from the aspect of the biological. Due to

⁵ In Europe Ireland, Malta and Poland have a ban on abortion, each traditionally Catholic country.

its respect for the individual and its openness to diverse ways of life other than the normative, e.g. homosexuality, voluntary childlessness, etc, liberalism by definition cannot aim at the control of the biological to an extent that an authoritarian state does, which with a vision of the collective good, shapes the population to its own political interests.

After situating the present abortion debate in Hungary in a historical as well as in the present political context, I will map up social actors, academic institutions, and civil organisations that voiced their opinion during the constitution-making process in order to find out what are those social and political forces in civil society that urge a restrictive reproduction policy. The survey of the standpoint of civil organisations on the issue of abortion will show that the churches and NGOs with a markedly nationalist, non-progressive agenda are insistent on the need to protect life from conception. Pro-life organisations, however, constituted only a minority of all social actors that expressed their opinion in the constitution-making process, therefore, the fact that the government included the clause on the protection of foetal life in the new constitution questions the functioning of democracy itself.

Having looked at the social forces behind restrictive legislation I will turn to examining the standpoint of the political parties to see how they position themselves in relation to nationalism and religion, the main sources of restrictive legislation. It will turn out that in the absence of the human rights discourse from the left-wing and liberal parties that indicated their rejection of the whole constitution-making process by withdrawing from the debate, the governing majority with an increasingly emphatic Christian agenda, under pressure by the more and more popular far-right party deploys some of the agenda and rhetoric of extreme right-wing nationalism to ensure itself power. Gender equality which is an issue neither for nationalism nor for religion necessarily becomes victim to this power game. As abortion regulation is a biopolitical intervention that controls through the biological the

social life of women, by restricting access to birth-control it relegates them to the private domain under the guise of nationalist claims and religious morality.

2. Theoretical framework: Liberalism vs. authoritarianism on the plane of biopolitics

Restricting access to abortion as a reproductive policy serves the aim of the state to stimulate birth-rate. The preoccupation of states with birth-rate – depopulation has been haunting Hungary just like wider Europe for years – and measures directed at influencing it constitute in Foucauldian terms bioregulation by the state and mark the general tendency of contemporary states to control the biological. According to Foucault, modern power since the nineteenth century is “decreasingly the power of the right to take life, and increasingly the right to intervene to make live.” (1976: 248) Sovereignty’s old right to “take life or let live,” has been replaced by the power to “make live and let die.” (Foucault 1976: 241) It’s not the individual but the population, the “multiplicity of men” that is in the focus of biopolitics. Birth-rate, fertility, mortality rate, longevity, effects of environment, public hygiene are the typical fields of intervention of biopolitics because they are collective phenomena that also have economic and political effects. (Foucault 1976: 246)

The birth-rate was among biopolitics’ first “objects of knowledge” and among the first targets it sought to control. (Foucault 1976: 253) Reproduction remains a major field of biopolitical intervention – whether birth-rate has to be stimulated or curbed in the interest of the population as a whole, regulatory mechanisms are established to maintain the equilibrium. The biopolitical state control of birth-rate at the level of the collective can clearly go against individual reproductive behaviour even if one takes into account that state control tends to be internalized and individuals adapt to state needs and ideology advocated often by economic incentives. In as much as biopolitical power aims at eliminating the random element inherent in a “living mass” and prioritizes the collective over the individual, biopolitics aims at, but necessarily fails, the total control of the biological. Both for Foucault and for Agamben Nazi

Germany was the exemplary biopolitical state. For Foucault there was “no other state in which the biological was so tightly, so insistently, regulated. Disciplinary power and biopower: all this permeated, underpinned, Nazi society (control over the biological, of procreation and of heredity; control over illness and accidents too.)” (1976: 259) By pointing out that Nazi Germany was the first “radically biopolitical” state, Agamben also suggests that states can be placed on a scale of biopolitical intervention: there are states that take control of more biological processes in the name of the collective and there are other states that are less preoccupied with the control of the biological. (Agamben 1998: 143) Though in Foucauldian terms all contemporary states are biopolitical, the extent of biopolitical intervention varies and it is not unconnected, as I will argue through the Hungarian example of changing natalist policies, with political authoritarianism.

Since state power has always depended on defining normative families and controlling populations, there was no phase in history when abortion was not subject to regulation in some way. (Ginsburg and Rapp 1991: 314) Though with technological development more and more new means are available on promoting or checking reproduction, the technologies are “accompanied by and enable increasingly effective methods of social surveillance and regulation of reproductive practices.” (Ginsburg and Rapp 1991: 315) Miller traces the origins of modern European abortion legislation to the late nineteenth century fear of depopulation and the resulting state focus on reproductive behaviour. (2007:17) Criminalisation of abortion was a means to tackle the question of “race suicide” and the anxiety about biological purity. Miller notes how nationalist anxieties were uncannily supported by the church. On the basis of the dogma of the immaculate conception of Mary, in 1839 Pope Pius IX, tackling the question when the foetus becomes “ensouled,” a question held to be of crucial importance from the aspect of abortion, decided on the immediate animation of the foetus. According to Miller, “at precisely the moment (...) that pronatalism was taking off in Europe and race

suicide was becoming a new national threat, the immaculate nature of ideal reproduction became the basis for a religious reinforcement of the criminal nature of abortion.” (2007: 25)

As opposed to early modern European legislation, regulation since the Second World War, reacting to the consequences of authoritarian political structures, acknowledged the necessity to protect the rights of the individual. “By the 1960s,” says Miller, “feminist movements had also adopted this post-Second World War language of rights and liberties in their efforts to de-criminalize abortion.” (2007: 21) However, besides the “right to health” and the “right to bodily integrity,” the right to life of the foetus also appeared in the ongoing debate, as opponents of abortion abandoned their, in Miller’s phrase, “authoritarian vocabulary” and also took up the rhetoric of rights. The nationalist agenda, the health, purity and strength of the nation, disappeared from the discourse and remained an unpleasant reminder of mid-century politics. (Miller 2007: 21) However, as Miller herself implies with the choice of her words, “authoritarian vocabulary,” one can argue that the nationalist purposes withdrew only from vocabulary, leaving the underlying agenda intact. The current Hungarian debate on abortion shows that a far-right nationalist agenda supported by a religious discourse seems to revert the process of de-criminalising abortion that has been based on the rights of the individual and leads to an authoritarian political structure where public and private life are equally under control.

I am arguing that the current government’s commitment to a nationalist and authoritarian agenda precipitates a biopolitical turn, which is in line with Foucault’s and Agamben’s implications that nationalism is a biopolitical project, keeping the biological under strict control. However, as opposed to Agamben and Miller, who claim that on the level of biopolitics the concepts of liberalism and authoritarianism lose their meaning and the two categories collapse, the Hungarian context shows that the liberal and the authoritarian is of

crucial importance from the aspect of the biological. Drawing on Agamben⁶ Miller particularly claims that reproduction law is “irrelevant to notions of left and right or liberal and authoritarian” and the overlap between the bodily and the political has created a situation in Europe in which “any dichotomy between left and right, between liberal and authoritarian, has disappeared in discussions of sexual and reproductive law.” (2007: 135-6) The examples she provides for supporting her claim are not convincing. She notes, for example, that it was only the issue of divorce and abortion that in Italy coalition partners were able to prevail in the 1980s, without elaborating on the ideology of those parties. Similarly, the fact that the Italian neo-fascist party invoked a liberal rhetoric of equality of spouses in the issue of parental consent to minors’ abortion does not prove her argument unambiguously because liberal rhetoric is not the same as liberalism and it might well be that the neo-fascist party demanded the equality of spouses in the abortion issue on patriarchal grounds, i.e. it might be the case that the neo-fascist party objected to a practice in which the mothers were usually the ones giving consent to their daughters’ abortion, but the circumstances are not elaborated by Miller. Rather than the collapse of ideologies on the biopolitical space, the liberal rhetoric of the neo-fascist party is a co-optation and appropriation of liberal or feminist rhetoric in the battle for power. As Maria Stratigaki notes, in the co-optation process the initial meaning of a concept is transformed and is used as an alibi for a different purpose than the original one. “It is difficult to mobilize against a claim that appears to be one’s ‘own’ if it is no longer used to mean what one intended.” (Stratigaki 2004, 36)

My analysis of the current Hungarian debate on abortion shows that abortion law is subject to the power game of political parties, because it is a paradigmatic indicator of the vision of society that the political parties vindicate. Those who argue against abortion

⁶ “Once their fundamental referent becomes bare life, traditional political distinctions (such as those between Right and Left, liberalism and totalitarianism, private and public) lose their clarity and intelligibility and enter into a zone of indistinction.” (Agamben 1998: 122)

promote a society that is based on the normative family, traditional values and clear gender divides. Those who argue for the possibility of abortion envisage a society in which individuals are given the possibility to choose the best life according to their own concept of the good life. Coercive natalist policy, which constitutes a tight control of the biological, cannot live up to the demands of liberalism and brings societies of any political structure closer to authoritarianism. The present debate on abortion in Hungary is a concomitant of the shift from left-wing liberal governance to a right-wing conservative one which is not exempt of authoritarian aspirations either. By explicitly protecting life from conception and thereby restricting women's individual rights to self-determination, the new Fundamental Law of Hungary is extending a tighter biopolitical grasp on the population at the expense of the individual in comparison to the old regulation that struck a balance between individual reproductive rights and the stated obligation of the state to protect life.

3. The historical and political context of abortion regulation in Hungary

Abortion regulation is a discursive field in which claims for power are legitimised, therefore, abortion regulation cannot be examined without the wider political context. Since contemporary political discourse in Hungary, especially that of right-wing parties, after a lapse of a little more than two decades is still reluctant to let go the legacy of state socialism, through the dismissal of which legitimacy of its politics is to a large extent sought, and since the current discourse on abortion legislation is a repercussion and surfacing of earlier debates, a brief survey of reproduction policies during and since socialism in Hungary is indispensable to understand the present situation. In what follows I will outline abortion regulation and major lines of debates since the establishment of communism, as well as the implications of these on the vision of society, whose effects are very much present in contemporary Hungarian society. The history of abortion legislation shows that reproduction has been subject to rigid and moderate control in waves, periods of ban on abortion being followed by periods of relative freedom of choice. As I will argue, the surfacing of the present abortion debate is a concomitant of the political restructuring that followed the elections in 2010, and the governing party (Fidesz) in its quest for power is deploying the discourse of the other right-wing parties, even that of the far-right. As opposed to a plurality of right-wing parties at the time of the transition, there is now one major right-wing conservative party that has incorporated the Christian democratic party, and feeling the pressure of the more and more popular far-right party, it appropriates its agenda and rhetoric to widen its power. After the historical outline I will look at the political context of the present debate in details, particularly the nationalist discourse that is gaining more and more ground not only on the extreme end of the political right-wing but in the discourse of the right-wing Christian

conservative government itself. The infiltration of far-right nationalist and religious agendas into decision-making and the weakening of left-wing and liberal parties create those conditions in which a tighter control of reproduction becomes feasible again.

3.1. *Abortion regulation during state socialism*

Shortly after the consolidation of Communist rule in 1949, the pressure of production according to central planning was extended to reproduction and the fifties up until 1956 was dominated by a population policy that demanded the birth of every conceived foetus as a part of the “national task” of its workers. According to the contemporaneous slogan, notes Kürti, “for a married woman to bear a child is an obligation, for a girl, it is honour.” (1991: 58) National population requirements overrode any personal interest and choice, and these requirements made their way into an abortion law in 1953 that refused the possibility of abortion even on medical grounds. (Gal 1994: 263) Childlessness was punished by surplus taxation and access to contraception was restricted. (Mink 1991)

The show trials of 1952-53 of women resorting to abortion and doctors carrying out abortions mark the attempt at imposing totalitarian rule on the biological, whereby women’s bodies became the subject of state regulation. (Pető 2002: 50) This abortion policy, beyond the direct aim to increase the population, had the indirect affect of undermining the autonomous status of women gained during the war out of necessity. In her survey of abortion trials Pető points out that the judicial system especially sanctioned those women who did not live in a family and who made decisions in an independent, autonomous manner while the judges were more lenient towards women who presented themselves as weak and defenceless and complained of having been deceived. This treatment forced women into a weak victim position.

In a “matriarchy born out of necessity” – as the war years and the period following it had been called – the typical woman was the independent one, capable of making decisions in emergency situations, which traditionally had been the exclusive privilege of men. The indirect target of the population growth campaign was the liquidation of this autonomous status of women. (Pető 2002: 71)

The reproduction policy of the period, known as the “Ratkó-era” after its Minister of Health, exemplifies the inherent contradictions of the gender policy of state socialism: while it invited women into education and the labour force, partly out of need, partly due to the official policy of equality of men and women, it left traditional patriarchal ideas, for example the issue of housework, childrearing, and the role of women as mothers, untouched.

The destalinisation process brought about the liberalisation of abortion law. Szalai points out that the achievement was regarded as an unacknowledged victory of the 1956 revolution, and was welcomed by the public as a victory of individual choice in family matters. (Szalai 1988: 98) In the wake of the policy, however, the number of abortions jumped high and the demographic decline prompted another restrictive period in 1973-74, though not as extreme as in the early fifties. The regulation attacked the unhealthy spirit of individualism as unacceptable in a socialist society and restricted abortion to women who were unmarried, had already three children, or were over thirty-five, or had housing problems and lived in poverty, or if pregnancy and birth exposed her health to serious health hazards. (Szalai 1988: 99) The permission procedure before the abortion committee was degrading and not void of arbitrary elements, but this laxness also made evasions of the system possible, and only a small proportion of requests were refused.

3.2. *Reluctant regulation since the transition*

In the late 1980s the abortion committees were abolished and abortion became available on demand. (Gal 1994: 265) As in other post-socialist countries, with the exception

of Romania, where a draconian ban on abortion was in force for a long period under Ceausescu's regime, in Hungary the relatively liberal regulations of abortion have been challenged since 1989 and the way the various groups argue for or against abortion intersects with the way these groups position themselves in relation to communism. Gal emphasises that the abortion debate at the time of transition turned out "not only to be very much about abortion, but also an argument in absentia with communism, and a scramble for newly available forms of symbolic capital." (1994: 260) Abortion became a discursive field in which claims for power were legitimised.

Examining the discourse on abortion at the time of transition Gal found that populist writers with nationalist claims (István Csurka, Gyula Fekete) and Christian professionals (doctors, lawyers) framed their opposition to abortion by appealing to anxiety about demographic and moral decline and their opposition to abortion was an integral part of their opposition to alien communist rule. Fear of demographic decline took its extreme form in the "death of the nation" warning by Csurka. Nationalism, supported by the moral demands of Christianity in the issue of abortion connected the danger of the death of the nation to a lack of morality, which in turn was a result of communist rule that unsettled traditional gender roles and by forcing women to work it tore women out of their traditional place and role: the home and the family. According to Fekete in 1989, "society should place only as much burden on woman's shoulders as she can manage along with her loving and responsible vocation as a mother." (cited by Kürti 1991: 61)

The post-socialist transition thus demanded the redomestication of women and the redivision of labour. As Kürti points out, "the creation of a new utopia, that is to say a modern, European, and democratic Hungarian society, is concomitant with a new ideology based on the biological imperatives of sex, espousing the 'natural' and 'traditional' place of women in the home, the family, and in their reproductive role as mothers." (1991: 55)

Therefore, not only abortion, but the wider vision of society was contested at the time of transition and ironically, the transformation into democracy entailed, in part, the relegation of women to the family. As Gal also points out, the collapse of the number of female lawmakers at the emergence of the multiparty system meant that woman lost representation at the very moment of the nation's emancipation and thus the historical moment of transition came to have differing implications for women and men. (1994: 257) Kúrti explicitly claims that the victory over communism was in a sense a victory over woman. (1991: 62)

Since the transition the most demands for the restriction of abortion have come from pro-life organisations such as “Pacem in Utero” (“Peace in the Womb”), which was established in 1989 as a platform of lawyers and doctors who oppose termination of pregnancy on moral, bioethical and religious grounds, and Alpha Alliance for the Protection of Unborn, New-Born Babies, Children and Families, whose volunteers “respect and protect the God-created human life from the moment of conception until its natural end.”⁷ With their motions trying to enforce a ban on abortion they were the initiators of the Constitutional Court decisions that led to some but ultimately not considerable modification of the permissive abortion regulation. In line with European constitutions and international human rights conventions which, except for some like the Irish Constitution, are silent about abortion and about the rights of the foetus, the Hungarian Constitution of 1989 did not contain any provision as to whether the foetus shall be considered a human being and thus shall have human rights, including the fundamental right to life. (Halmai and Tóth 2003: 329) Shortly following the adoption of the Constitution in 1989, upon the motion submitted by Pacem in Utero, in its first abortion decision in 1991 the Constitutional Court claimed that the Constitution did not provide sufficient clues for deciding whether the foetus was a subject of rights and therefore whether it can enjoy the protection of life of “every human being” ensured by Article 54(1). The Court passed on the responsibility to decide on the legal status

⁷ http://alfaszovetseg.hu/index.php?option=com_content&task=view&id=35&Itemid=58

of the foetus to the Parliament and advised it to extend the concept of human being to the foetus. Namely, it emphasized that

the issue is whether the legal status of man shall follow the changes of the notion of man in the natural and social sciences as well as in public opinion (...), whether the legal concept of man shall extend before birth until conception. Such extension of the legal personality would be comparable to the abolition of slavery, it would be even more important than that. The legal personality of man would in principle reach its utmost end and fullness; the various notions of man would again coincide. (Halmai and Tóth 2003: 341)

The act on the protection of foetal life adopted in 1992 did not follow the suggestion of the Constitutional Court and allowed for abortion in the first trimester of pregnancy practically without restrictions. That the pregnant woman could confirm with her signature that she was in a “state of serious crisis” but was not obliged to prove it in practice meant unrestricted access to abortion up to the 12th and with some restrictions up to the 18th week of pregnancy. The Constitutional Court reviewed the constitutionality of the act in 1998 and acknowledged that by not defining the legal status of the foetus, the legislature decided that it should not be considered a human being in legal terms, therefore it does not have a right to be born. (Halmai and Tóth 2003: 344) What the Court found objectionable and unconstitutional, however, was the possibility of the excuse of “serious crisis” and demanded a more efficient institutional protection of the foetus on behalf of the legislature. Instead of making the verification of serious crisis obligatory, the legislature modified only the structure of compulsory advice and ordered the pregnant woman to appear before the Family Protection Service twice instead of once before bringing the final decision. That is, in spite of the Constitutional Court’s attempts at restricting access to abortion in its two decisions, the legislature was clearly unwilling to endow the foetus with human rights and thus to deprive women of self-determination. Choosing a compromise between women’s rights to self-determination and the objective obligation of the state to protect life, the permissive

regulation essentially gave priority to women's rights in the initial stage of pregnancy, while banning it in the later stages.

Ironically, what pro-life supporters have wanted to achieve since 1989 on moral and religious grounds (most associations supporting the protection of the foetus are Christian or Christian-affiliated groups, like Pacem in Utero, Alpha Alliance, Hungarian Association of Bioethics, an association of Christian doctors), was experienced by the country during the most stringent communist rule under Rákosi when a totalitarian biopolitical measure was extended to the population for material and nationalist reasons. Though the tight control of the biological, of women's fertility, always fails by necessity as earlier examples show, its implications on the conceptualisation of woman are more damaging. Beyond ruining individual lives, the construction of women first and foremost as mothers and victims to abortion of which they must be saved, and thereby depriving them of agency, as well as the exclusion of women from public life have long-lasting effects on independence, autonomy and equal opportunities.

3.3. *The contemporary political context*

Anthias and Yuval-Davies point out that nationalism and pronatalism are closely connected. (Anthias and Yuval Davies 1989: 8) In as much as nationalism has severe implications on reproduction, therefore on the biological life of women, nationalism is a biopolitical project. In nationalist discourse the strength of the nation depends on the biological and cultural reproduction of its people, therefore women become central for nationalist projects as reproducers of the nation. Besides my argument that the present upheaval to rework abortion regulation is a concomitant of the restructuring of political power, I find it important to emphasize that this restructuring happens in and towards a

strongly nationalist discourse. In what follows I will show that the move towards the restriction of reproductive rights in Hungary is embedded in a wider nationalist discourse that has gained ground in public life since the election of the current government in 2010 and that is part of the new conservative government's efforts to secure itself the widest power possible on the spectrum of the political right-wing, even by means of the agenda and discourse of the far-right.

The Political Declaration on National Cooperation adopted in June 2010 by the government is a paradigmatic example of its quest for power based on a nationalist discourse. The document has been ordered to hang on the walls of most public institutions, indicating that from now on Hungarians shall abide by its provisions just like they had to abide by the rules of communism in the previous regime, embodied by the picture of a major figure of the Party (e.g. Lenin, Rákosi).⁸ The declaration creates the imagined community of Hungarians through a presumed and required unity of values. It puts forth a common goal to be achieved through shared effort and the values of “work, home, family, health and order,” which will enable Hungarians to “build a strong and successful country.” The rhetoric of shared values, especially since they evoke and confirm compulsory heterosexuality, clearly delineates the boundary between ‘good’ and ‘bad’ citizens and threatens with exclusion those who do not feel fit to comply with the dictate of the state. As Peterson emphasises, nationalism is problematic not only from the aspect of conflict between nations but also “from the vantage point of those within the nation who share least in élite privilege and political representation, especially those whose identity is at odds with the projected image of homogenous national identity.” (1999: 35) The threat becomes unambiguous when the declaration, after having established the basic pillars “that are indispensable for welfare, for living a decent life, and that connect the members of our diverse Hungarian society,” states that the National Cooperation System is open for everyone, and “it is an opportunity for, as well as a

⁸ http://www.fvm.gov.hu/doc/upload/201008/political_declaration.pdf

requirement of, everybody who lives, works or has an undertaking in Hungary.” (italics added) Out of the three objectives worded in the title, “May there be Peace, Freedom and Accord,” much is said about accord, less if anything about peace and freedom.

What Gal depicted in the earlier abortion debate as a discourse building moral consensus, “one that represents a national/ethnic unity, one in which there is little public debate because someone else decides what is best for the entire community” is even truer today than at the time of the transition. (1994: 280) According to McClintock the Andersonian “imagined community” of a nation constantly needs reification to be kept alive – a purpose served by the declaration. (1993: 61) National identity presupposes and promotes uniformity within the group and suppresses differences and clashing interests. Nationalist narratives, like any politics of fixed identities, promote an illusion of homogeneity. (Peterson 1999: 37) McClintock claims that spectacle has an important role in creating this illusion of unity.

Illusion is created and experienced through spectacle. More often than not, nationalism takes shape through the visible, ritual organisation of fetish objects: flags, uniforms, airplane logos, maps, anthems, national flowers, national cuisines and architectures, as well as through the organisation of collective fetish spectacle – in team sports, military displays, mass rallies, the myriad forms of popular culture, and so on. (1993: 71)

Nationalism is thus a symbolic performance of the invented community. It relies heavily on spectacles and fetishes to light and keep up the spark of a sense of belonging together.

The current Hungarian nationalist discourse supports McClintock’s argument, it actively promotes unity at the expense of diversity and difference: the framework of national colours that surrounds the declaration immediately speaks to people who have any Hungarian affiliation. The sense of national unity is supported furthermore by other smaller-case spectacles of contemporary Hungarian public life: the focus on the Holy Crown that connects Hungarians vertically in time, the emphasis on the various historical events that gives Hungarians a firm sense of common history, the attention paid to ethnic Hungarians living outside the borders that connect us horizontally in space, the adopted act on genuine and

unique Hungarian products of the highest quality, “Hungarikums”, of which Hungarians are supposed to be proud, as well as the Prime Minister’s presence at football matches are all spectacles and fetishes that create an illusionary sense of belonging. Not that this sense of belonging actively and equally embraces women and men. Women have little to do with the Holy Crown, historical events or football matches – many of the spectacles are gendered in the sense that they draw on phenomena and fields of life that have traditionally been male preserves. The irony of reproduction policies that have their roots in nationalist claims is that though the sense of national belonging is indispensable to pass legislation which has a restrictive effect on individual choice, otherwise the appeal to the decline of population might fall on deaf ears, yet the sense of national belonging which these policies constantly evoke prioritizes men’s concerns and imposes restrictive measures on women’s bodies by way of a discourse that has traditionally little concern for women.

4. The Fundamental Law – Democracy subverted

Overwriting the permissive practice since the transition, the new Fundamental Law explicitly protects life from conception. Whereas, apart from the institutional protection of the foetus by the state, giving rights to the foetus was earlier avoided even at the statutory level, the protection of life from conception is now guaranteed at the level of the constitution.⁹ The inclusion of the protection of foetal life in the most basic law with which all other regulations have to comply implies that current decision-makers ensure themselves a much wider scope of population control than previous legislation demanded. Even if no restrictive abortion regulation follows in the immediate future, the legislature ensured itself the possibility to impose a radical ban on abortion by referring to the protection of foetal life enshrined in the constitution. The question whether what will constitute such a critical point in time that will urge decision-makers to change the law on abortion currently in force depends not primarily on external circumstances, such as the worsening or improving of economic conditions, but on the discourse interpreting those circumstances.

Abortion regulation seems to have been placed on a delicate scale by the legislature and since decision-makers' declaration of intention are contradictory, the future of abortion regulation is still an open question. For an understanding of what are those social forces that urged the legislation to ensure itself the possibility of extending a tight grasp on the population in terms of reproduction and what are the chances of realising this possibility by enacting a radical ban on abortion, I will look at social actors that promoted the inclusion of the protection of foetal life in the constitution and at the discursive fields these civil organisations and political parties dominate. This survey prompts me to argue that the chances

⁹ "The Fundamental Law does not state explicitly that the embryo and foetus has a right to life, but it supports this interpretation by incorporating the phrase "embryonic and foetal life shall be subject to protection from the moment of conception" into the same sentence as the statement that "every human being shall have the right to life". In this way it prompts both the legislature, ordinary and Constitutional Court judges' interpretation of the law to restrict women's right to self-determination." (Arato et al 2011, 18)

of using the opportunity of a tight biopolitical control in terms of reproduction are high because the debate on reproductive rights is embedded in a nationalist and religious discourse, both of which have been most interested in enforcing restrictive reproduction regulation and to which the new government since 2010 increasingly resorts.

In what follows I will focus on that part of civil society that expressed its opinion in favour of the protection of foetal life during the constitution-making process in order to find out if there was any considerable pressure by civil society to include the protection of life from conception in the new constitution, especially in the light of the fact that according to opinion polls the majority of the population does not want to change the current regulation on abortion.¹⁰ The source of my research here is the Committee that was entrusted with the task of drafting the principles of the new constitution. The Committee invited various civil organisations to express their opinion on the future constitution and published the proposals on its website. I will look at the proposals from the aspect whether they contain any reference to the protection of life from conception and what is the wider public/political agenda of civil organisations that expressed pro-life views.

4.1. *Civil society addressed by the political parties*

With its decision of 29 June 2010 the Parliament established a provisional Committee that would make preparations to draft the new constitution. With a view to fulfil its task of submitting to the Parliament its recommendations on the fundamental principles of the new constitution by 30 December 2010, the Committee initiated social consultation with state organs, civil organisations, churches, universities, and any individual could send their comments and ideas on what should be included in the constitution. The five political parties each could recommend five civil organisations whose opinion the committee would invite.

¹⁰ <http://www.webbeteg.hu/cikkek/egeszseges/10647/lehet-e-maganugy-az-abortusz>

One recommendation that would have addressed the Sixty-four County Youth Movement (“Hatvannégy Vármegye Ifjúsági Mozgalom”) upon the initiative of the far-right party Jobbik was turned down by the committee. Altogether nineteen NGOs expressed their opinion upon the recommendation by political parties, four at the request of Fidesz (right-wing conservative), four at the proposal of KDNP (Christian democratic), four for the call of Jobbik (far-right), four upon address by LMP (liberal green) and three at the request of MSZP (socialist). Of the nineteen NGOs three human rights NGOs, the Hungarian Civil Liberties Union (TASZ), the coMMMunity (Méltóságot Mindenkinék Mozgalom), and the Foundation for the Social Science College of Corvinus University (Társadalomelméleti Kollégium), each of which were recommended by LMP rejected the request on the ground that it only served the aim of keeping up the pretence of a national consultation while the whole constitution-making process was aimed at demolishing the fundamentals of the present constitutional order. The political parties recommended NGOs whose ideological conviction was close to theirs, thus, among others, for example, MSZP was interested in the opinion of the National Association of Trade Unions, Jobbik was interested in the ideas of the World Federation of Hungarians, a nationalist organisation that still laments the “injustice” imposed on Hungary in the Versailles peace treaties, LMP turned to the Hungarian Civil Liberties Union, a human rights watchdog NGO, KDNP asked the opinion of the National Association of Large Families and Fidesz was interested in what the Batthyány Society of Professors had to say. Fidesz and KDNP, the governing parties, each asked the opinion of two churches.¹¹

Out of the sixteen proposals submitted to the committee upon request by the parties, only two documents claimed the need of the protection of life from conception, the opinion submitted by the Batthyány Society and the Hungarian Catholic Church (both requested by the governing parties). The Batthyány Society, founded in 1995, is comprised of university

¹¹ For a complete list of NGOs asked, see http://www.parlament.hu/internet/plsql/ogy_biz.keret_frissit?p_szerv=&p_fomenu=20&p_almenu=75&p_ckl=39&p_biz=I005&p_rec=&p_egys=&p_nyelv=HU

professors and scientific researchers who are “strongly committed to traditional European social virtues” and who aim to “give intellectual stimulation to the Hungarian nation thereby contributing to its spiritual and economic development.”¹² The Society suggested that “the concept of human being embrace full life from conception until death.” The Hungarian Catholic Church in its proposal referred to the protection of life before birth in a cautious way: “we think that the protection of human life to the utmost extent is a fundamental, significant issue” but did not elaborate on what it meant by the phrase “utmost extent.” Both the Society and the Catholic Church insisted on including in the constitution that marriage can be contracted only between a man and a woman. The other churches, the Evangelical-Lutheran Church and the Reformed Church in Hungary (both asked by Fidesz), as well as the Alliance of the Jewish Communities of Hungary (requested by KDNP) did not touch upon the issue of pre-natal life, the Evangelical-Lutheran Church made it clear that it did not accept polygamous and same sex marriage.

4.2. Academic institutions

The Committee also asked “academic workshops” including universities to express their ideas about a new constitution.¹³ Beside the Institute of Law of the Hungarian Academy of Sciences, out of ten universities eight submitted recommendations. Some universities submitted several comments by individual professors. As institutions neither any of the universities, nor the Institute of Law of HAS recommended or even mentioned the inclusion of the protection of foetal life. One professor from ELTE construes the termination of pregnancy as “the culture of death” and denounces the derogatory attacks on Gyula Fekete in passing, saying that the “really rational reasoning” of people warning of the ageing society

¹² The webpage of Batthyány Society of Professors is http://www.bla.hu/profs/index_en.html

¹³ From the proposals submitted it seems that there wasn't a preliminary text that NGOs, universities or other organs could comment on but they were asked about concepts, principles, values etc.

and depopulation triggers “irrational responses”.¹⁴ Another professor from Pázmány Péter Catholic University observed that the new constitution should ensure the protection of life “above everything else” and in a footnote noted that “Experience shows that the practical access to abortion cannot be avoided in Central-Europe. It is a matter of importance, however, if it is deduced from the mother’s so-called right to self-determination by a brutal twist of the concept of right or if it is understood as a kind of unavoidable wrong with the retreat of law (not lawful but not to be punished).”¹⁵ As abortion has always been regulated by law, and even in the case of permissive regulation conditions are set as to when, how, where and by whom, abortion can be performed, the phrase “not lawful but not to be punished” is incomprehensible. The recent case in Várpalota shows that the “not lawful but not to be punished” principle is not applicable in abortion regulation and if the woman and the doctor break the law by avoiding the prescribed procedure, the sanction mechanism of law is set in motion.¹⁶

4.3. *Voluntary contributors*

Beyond the addressed organisations, any forum or individual could send comments to the Committee drafting the preliminary text of the new constitution. Disregarding individual citizens’ comments, forty-five social organisations submitted proposals. One forum, the National Health Care Council (Nemzeti Egészségügyi Tanács), an advisory body of the government in health care issues, claimed that there was a contradiction between the protection of the foetus and the mother’s right to self-determination that should be clarified on the level of the constitution.¹⁷ It only drew attention to the issue but did not suggest any

¹⁴ http://www.parlament.hu/biz/aeb/info/sari_janos.pdf

¹⁵ http://www.parlament.hu/biz/aeb/info/varga_zs_andras.pdf

¹⁶ http://index.hu/belfold/2012/04/20/83_vadlott_lehet_a_varpal...

¹⁷ http://www.parlament.hu/biz/aeb/info/net_felvetes_javaslat.pdf

solution. Three religious organisations expressed their commitment to the protection of foetal life and suggested that the constitution should contain that life began with conception. The Hungarian Catholic Family Association (Magyar Katolikus Családegysület) stated that “Human life, which begins at the moment of conception and ends with natural death, is sacred and inviolable, and is entitled to the protection of society and the state,” and declared that marriage was a lasting alliance of a man and a woman.¹⁸ The Faith Church (Hit Gyülekezete) similarly suggested that the new constitution shall restrict marriage to the alliance of a man and a woman and the right to life shall be extended to the foetus.¹⁹ The Bible Society (Biblia Szövetség) welcomed that the codifiers of the new constitution believed that “God is the lord of history.” It demanded that the new constitution should allow marriage only between a man and a woman, arguing that the sexual relation between same sex people is “a deplorable act against the order of creation according to God,” and expressed its conviction that the mother’s right to termination of pregnancy can never be stronger than the foetus’ right to life. Due to the liberal abortion law and practice, it went on, “for several decades several thousands of children could not be born and several hundreds of thousands of our women compatriots have to live with an unbearable burden of conscience.” “Under the present conditions of history” the Society thinks it extremely important to “guarantee the foetus’ fundamental right to life from the moment of conception.”²⁰ By calling the foetus “child” the writer blurs the difference between foetus and child and appeals to the morals of the reader. The woman resorting to abortion is constructed as a victim to circumstances and a victim to wrong decisions. In pro-life claims dead (unborn) children and victimised mothers are evoked to guide the audience to the desired moral standpoint. The Society’s reference to the present historical situation has vague political overtones without explicit reference as to what the present historical moment specifically involves that makes the protection of life from conception necessary. It suggests

¹⁸ http://www.parlament.hu/biz/aeb/info/m_kat_csaladegys.pdf

¹⁹ <http://www.parlament.hu/biz/aeb/info/2011/hit.pdf>

²⁰ http://www.parlament.hu/biz/aeb/info/1206/bibliai_szov.pdf

that beyond the general claim for every foetus' right to life, the present historical moment, as a kind of "state of exception," reinforces the claim, should its generality not be endorsed by members of society.

Beside the churches, two organisations supported the inclusion of the life-begins-with-conception principle in the constitution, in both cases within a context of far-right nationalism. The Alliance of Hungarians, established in 2008, is an anti-globalisation grassroots movement that is inspired by "a need for a paradigm shift" and encourages small communities to maintain their language, traditions and culture.²¹ Referring to an all-encompassing crisis around the globe, instead of enforcing on countries "the straightjacket of globalisation," it calls for the recognition and appreciation of diversity across cultures. The root of all symptoms, according to the Alliance, is a decline in morality:

Due to selfish and short sighted human behaviour, the ability of the biosphere to sustain civilization have been severely eroded. For the same reason, the world economy has been brought to the brink of total collapse. ... few pay real attention to the ever growing numbers and needs of the poor. We live in a world corrupted by lies. The human race as a whole faces perhaps the greatest challenge in its whole history.

It phrases its goals in moral terms and appeals to traditional values as a way out of the present chaos. It envisages „a country where compassion, integrity and cooperation are the main values, where the future is promising, where there are moral standards and where the interests of the community rise above the interests of a selected few.”

Similarly to the construction of a global crisis, the Alliance, in its letter accompanying its proposal sent to the Committee, envisages a crisis, an "unblessed state of public law" in Hungary, which demands careful and thorough treatment. It claims that the old wounds of the country have been renewed, which can be remedied only by relying on the nation's traditional values. Significantly, with the constitution-making process an opportunity has opened up to "lead the nation out of the ruins of the "Rákosi-kádár dictatorship." (sic) Religion is welcome

²¹ <http://www.magyarokszovetsege.hu/>

in the healing process. In its “message to the nation” the Alliance claims that “with the restitution of the legal continuity of our historical constitution, the Holy Crown will be of primary public law importance again, which, pointing beyond itself, evokes Jesus, God born among us, and enthrones his imperishable truth.” In its search for traditional values, religion is complemented by nationalism. The inclusion of the Árpád flag and the Turul bird among the official symbols of the country in its draft constitution, as well as designating 4 June, the day of the Trianon peace treaty, as a national day of mourning instead of calling it a day of national commemoration mark the far-right nationalism of the Alliance. In the chapter of fundamental rights and obligations of the proposal the Alliance claims that human life begins with conception and ends with death, and motherhood is the vocation of the highest order, which deserves the protection of the state. It also points out that only couples of the opposite sex are allowed to get married, to establish a family and to raise children.

Another organisation, the Dialect Non-profit Association (Tájszólam Közhasznú Egyesület) also welcomed the intention to include the protection of foetal life in the constitution on nationalist grounds. This association was established in 2001 with the aim to preserve and make accessible to the public the various spoken dialects of the Hungarian language.²² In its comments on the constitution, it voiced anti-immigration, xenophobic and revisionist statements. It particularly questioned the commitment of the state not to infringe upon the independence and territory of other states and not to use violent means, because thereby, according to the Association, the state excludes the possibility of the “independence” of Transylvania, where independence presumably constitutes a step in the process of re-annexation to Hungary.²³ It also questioned the prohibition of discrimination on racial grounds because in its opinion it opens the country’s gates before immigrants. In a derogatory tone it notes that immigration would solve the problem of depopulation, as immigrants will shortly

²² <http://www.tajnyelv.hu/>

²³ <http://www.parlament.hu/biz/aeb/info/2011/tajszolam.pdf>

arrive in Hungary, especially if we take into consideration the future fight for water. “If law does not protect Hungarians, Hungarians who accept everything will not defend themselves either – can it be the goal?” The Association furthermore takes issue with the rights of minorities, especially with the right to education in the mother-tongue. Whereas the rights of ethnic minorities, as constituents of the nation, are ensured to take part in public life, the Association misses the protection of Hungarians and it is anxious that Hungarian culture will not receive enough material resources.

There were other nationalist organisations that did not explicitly word a need to protect foetal life in the constitution but based on the issues they touched, e.g. depopulation, Christianity, revisionism, there is a reason to surmise that they were on the verge of saying so. The so-called National Assembly Reinstating Constitutional Continuity (Alkotmányos Jogfolytonosságot Helyreállító Nemzetgyűlés), for example, displayed an even more militant revisionist attitude than the Dialect Non-profit Association, and though it did not touch upon the issue of life before birth, its nationalism and commitment to Christianity points in that direction. Significantly, it demanded to leave open the possibility for Hungary to withdraw from the European Union, an issue with the implications of which on abortion law I will be dealing in the next chapter. Constructing Trianon as an injury that “seriously endangers our survival,” it claimed that Hungary had to ensure itself the possibility to threaten with war or wage war on any of its neighbours in case it displayed an attitude deserving it.²⁴ It also demanded the inclusion of the protection of Christian morals in the constitution. The juncture of nationalism and Christianity, as in most cases discussed above, where nationalism goes hand in hand with an appeal to Christianity, leads to an intention to control reproductive behaviour of which a ban on abortion is one of the means.

Summing up the role of social actors in the constitution-making process, I have found that only a small minority of organisations called for the inclusion of the protection of foetal

²⁴ <http://www.parlament.hu/biz/aeb/info/ajhn2.pdf>

life in the constitution. Out of the NGOs recommended by the political parties only two, out of the academic institutions none, and out of the forty-five social organisations that submitted their comments voluntarily, only five, three churches and two NGOs, spoke explicitly about the need to extend the protection of life before birth. This result is in accord with opinion polls that say that the majority of the population is satisfied with current regulation and does not want stricter regulation. I have also found that social organisations that promote the protection of foetal life are either nationalist, or religious, or as it is often the case, both. This is in line with global trends according to which nationalism and religion are fertile grounds for restrictive reproduction regulation. Human rights NGOs were consciously silent in the constitution-making process, choosing not to assist in the making of a constitution, which is, in their opinion, a pact of the governing parties and not a document based on wide social consensus. The human rights discourse was, therefore, missing from social consultation, based on the social actors' conscious decision to protest against the new constitution in this way.

5. Conservatism redefined

As it is primarily the nationalist and religious discourse that promote a restrictive reproduction policy, in this chapter I will look at how political parties position themselves in these discourses, and what is to be expected of the interplay of the two. My point is that in order to ensure itself the widest power possible, the governing party Fidesz appropriates the nationalist and religious discourse of pro-life organisations because its main rival on the political right-wing is the far-right. Having aligned with the Christian democratic party, there is only one party left, Jobbik, whose agenda might turn voters away from the governing party. In order to avoid this possibility, it widens its agenda to include some of the far-right discourse and in the meantime redefines conservatism itself. Far from showing a keen interest in the issue of reproduction and abortion, my study shows that these issues fall victim to the governing party's quest for power.

By December 2011 the principles of the new Fundamental Law had been prepared by the Committee entrusted with drafting a preliminary text. The working group dealing with fundamental rights and obligations within the Committee, comprised of four Fidesz members, two KDNP members, one socialist, one far-right and one liberal green party member, stated with respect to the right to life that beyond current regulation the New Fundamental Law shall declare that the state had an institutional obligation to protect foetal life. "We think it necessary to ensure that the state protect human life in each of its phase."²⁵ Only the socialist party thought it necessary to emphasise that the state is obliged to provide protection but shall not grant subjective right to the foetus.²⁶ That is, in spite of the fact that only a minority of civil society supported the protection of foetal life, the Committee put it into the draft text, thereby questioning the whole process of social consultation and democratic decision-making.

²⁵ <http://www.parlament.hu/biz/aeb/resz/ji.pdf>

²⁶ It is interesting to note that LMP did not comment on the inclusion of the protection of foetal life though it protested against defining marriage as an alliance of a man and a woman.

Ironically, neglect was the fate of the Committee's own draft as well. In February 2011 the government qualified the work of the Committee as a "working paper" and did not submit it to the Parliament but commissioned another drafting committee to write the text, this time the committee was made up only of three government officials, two Fidesz and one KDNP member.

5.1. *The standpoint of the governing coalition*

By that time, however, public opinion had been unrest by the sporadic statements of various coalition, especially KDNP, members about the moral rejection of abortion. On 19 January 2011, for example, at a conference entitled "Morality and politics in the constitution-making process," László Salamon, chair of the first Committee entrusted with drafting a preliminary text, claimed that abortion would not be banned but would "cease to be an issue solely of self-determination." He explained that such a step would be necessary so that people (women?) "did not look upon foetuses as warts."²⁷ On the whole government officials' statements on the future to be expected based on the constitutional protection of foetal life are contradictory and thus difficult to decode. Some statements, especially those by the governing party Fidesz, deny any intention on their behalf to change regulation presently in force and claim that the Fundamental Law only codifies the jurisprudence of the Constitutional Court that declared in its earlier abortion decisions the obligation of the state to protect the foetus. This protection of life before birth, however, has to be distinguished from life after birth and is not absolute, they say, which is why the mother's right to self-determination can come into play and the final decision rests with the woman.²⁸ The other party in the governing coalition, KDNP, is on the other hand openly committed to the widest possible defence of the foetus on Christian grounds and deploys the rhetoric of moral rightness. On 24 January 2011 the vice-

²⁷ <http://www.origo.hu/itthon/20110120-salamon-az-uj-alkotmany-nem-tiltana-teljesen-az-abortuszt.html>

²⁸ <http://www.fidesz.hu/index.php?Cikk=156269>

Prime Minister, Zsolt Semjén, head of KDNP, said: “We are aware that no legal rule shall be passed which is not accepted by the majority of the population. Our aim is not to enforce a regulation on society that can’t be complied with, but to convince society about the sacredness of human life like a prophetic sign.”²⁹

Indeed, the clause on the protection of foetal life got included in the constitution at the insistence of KDNP. Beyond increased support of families considered as the pledge of “the spiritual and mental health of Hungary and Europe,” the joint election programme of Fidesz-KDNP did not include any plan on changing relevant legislation on abortion.³⁰ However, in February 2011 during a harsh debate between the coalition members KDNP made it clear to Fidesz that it insisted on including the protection of the foetus, marriage and family in the new constitution. In spite of the argument of the head of the government, Viktor Orbán, according to which the restriction of abortion, or “such a false alarm” might cause their fall, the Christian democrats unambiguously pointed out that it was a matter of conscience for them and if their most fundamental principles were not respected they would not vote for the new constitution. “If Fidesz has a different standpoint, there is no need for a new constitution,” was the ultimatum.³¹ This difference in the opinion of the two member parties of the coalition might count for the ambiguity that surrounds the discourse on abortion, which has been denounced as Janus-faced communication by opponents.³² While Fidesz keeps reassuring the public that there is no intention on their behalf to change the relevant legislation, KDNP suggests that they would not press the issue hard only because public atmosphere is not yet receptive to it.

Characteristically, during the debate of the constitution on 22 March 2011 János Lázár (Fidesz) claimed that the intent to ban abortion is a false alarm and they only included in the

²⁹ <http://kdnf.hu/roviden/a-maltai-lovagrendnel-tett-latogatast-romaban-semjen-zsolt-%E2%80%93-sajtoszemle>

³⁰ <http://program2010.fidesz.hu/>

³¹ <http://kdnf.hu/roviden/vita-volt-siofokon-%E2%80%93-sajtoszemle>

³² <http://abortusz.info/tenyek-az-abortuszrol/az-uj-alkotmany-veszelyei>

new constitution what had been declared by the Constitutional Court in its earlier decisions, namely that the obligation of the state to protect life before birth is not absolute. Two and three days later, however, members of KDNP, spoke about values, like Christianity and protection of the foetus, and one MP declared that the new constitution is a moral minimum, rather than the enforcement of the majority opinion, thereby leaving the public again in doubt as to what for them the protection of the foetus means (partial or absolute protection) and what they expect of this new provision. The Prime Minister announced on 7 March 2012 that József Szájer, one of the drafters, could come up with a wording on the protection of foetal life “that complies with European traditions,” implying thereby that the wording will not automatically lead to a ban on abortion and it will satisfy everybody. It was for this conscious choice of ambiguous wording that Jobbik criticised the text of the new constitution on the ground that in many issues “it did not say A nor B”, like on the issue of the protection of the foetus. This tactic of emptying the concept of “European” is instrumental in not committing oneself to any side but leaving the possibility open for any decisive step in the future.

The present debate on abortion is closely connected to the debate between liberal/left-wing and conservative/Christian/nationalist parties on family policy. Left-wing and liberal politicians criticize the government’s family policy, embodied by the new act on the protection of the family, for being exclusive, out-dated and socially unfair since it protects the traditional family model, i.e. middle-class families based on a heterosexual marriage with children born within that wedlock, and does not take into account and does not support other forms of partnerships and families. In the course of the parliamentary debate on the act the government argued for it by claiming that it ensures the “healthy structure of society” and defines marriage as “an emotional and economic unit between a man and a woman.” As opposed to “liberalism that is neutral to values and has ruined the family life of generations but which is fortunately decaying,” the government’s family policy is claimed to “build the

nation and shape Europe.”³³ Tradition, nation and the family are the fundamental terms of reference of this policy, which implies that the collective enjoys priority over the individual’s autonomy and self-fulfilment.

Abortion is also framed as a legacy of earlier liberal governance to be undone. In his Parliamentary speech on 14 June 2011 Miklós Soltész secretary of state, a member of the Christian Democratic People’s Party (KDNP) defended the government’s campaign against abortion and stated that “the pro-life and pro-adoption campaign, as well as the relevant legislation, are only a part of the government’s family policy and they achieve the required effect in society only slowly as opposed to destruction which is fast as we have seen that in the anti-family politics of the past eight years” – referring to the left-wing and liberal coalition between 2002 and 2010.³⁴ From this aspect the current debate on abortion reiterates the discourse of the abortion debate at the time of the post-socialist transition: As Gal pointed out, in that debate being against abortion was implicitly equated with being against the “death of the nation,” i.e. demographic decline, which was an important element in opposition to Communist rule and, in contrast, opposition parties argued for a minimalist state, “one that would neither construct nor assume a unity of purpose or morality in the populace, one that would make a sharp divide between the public (in this case the sphere of the state) and the private.”(1994: 280) Construing left-wing politics as the heir to Communism and liberal politics as the embodiment of the principle of ‘anything goes,’ the permissive legislation on abortion that struck a balance between women’s right to self-determination and the state’s obligation to protect the foetus, a practice that evolved since the transition, is now equated as part of the destructive anti-family, anti-nation and anti-tradition policy of earlier governance. Just like opposition to abortion meant opposition to Communism in the earlier debate, it has become now an indicator of the pro-family and pro-nation policy of the government.

³³ <http://www.kdnp.hu/news/csaladpolitika-celja-tarsadalom-egeszseges-szerkezetenek-biztositasa>

³⁴ <http://www.youtube.com/watch?v=Mup6b6IC5ug>

5.2. *The far-right*

Beside KDNP, which rejects abortion on religious/moral claims, the other political force that would impose a radical ban on abortion is the far-right party. In its 2010 election programme Jobbik refuted the “false liberal rhetoric” that depicts abortion as the free choice of women and claimed that abortion is “a physically and psychically painful intervention that no woman ever chooses out of free will and light-heartedly.”³⁵ Presenting itself as a party that really cares for the people and does not engage in selfish political battles, in Jobbik’s programme women are presented as victims to the “dramatic intervention” of abortion of which they should be saved. In its rhetoric women resort to abortion due to unfavourable circumstances and if these are efficiently improved, there will be no demand for abortion. Constructing women as victims who need the paternal care of the state, women are relegated to an inferior position and to the realm of the private, while simultaneously men and the state are granted the privilege of power.

In line with this programme, in February 2011 three members of the party submitted a proposal for amendment of Act 79 of 1992 on the protection of the foetus for consideration to the Parliament. In the reasoning the signatories placed their proposal in the context of migration and suggested that the protection of the foetus helps counteracting the pressure created by migration.³⁶ According to the proposal women could have abortion only if pregnancy jeopardises the woman’s health, or if the foetus is seriously handicapped, or if pregnancy is a result of a crime but not by referring to a general state of crisis as the regulation currently in force allows for. The radical ban on abortion is presented as the prerequisite for the rebirth of the nation, what’s more even a condition of its survival. “No loss of any of our great historical tragedies can be compared to the loss of six million victims,

³⁵ <http://www.jobbik.hu/sites/jobbik.hu/download/Jobbik-program2010OGY.pdf>

³⁶ <http://www.parlament.hu/irom39/02307/02307.pdf>

which means the loss of approximately every second conceived child for half a century.” The heavily emotional words (loss, great tragedy, victim) and the word “child” instead of “foetus” are supposed to manipulate the reader’s morals to the desired conclusion, as does the statement according to which motherhood is the most sacred vocation of women. “Natural” internal population boom is presented as the only way to combat the pressure of immigration. By proposing to restrict access to abortion with the explanation of immigration, the proposal clearly subordinates women’s right to self-determination to nationalist, xenophobic policy. Indeed, mothers have no right to self-determination according to Jobbik. In the words of one of the party members who submitted the proposal, Mrs Lóránt Hegedűs, women’s right to self-determination stops with conception.³⁷ The proposal was turned down by the Parliament’s committee for health issues, to which one of the signatories responded by saying that they would again and again submit the proposal and they will be relentless until they reach their goal. KDNP was the only party that did not vote against the proposal but abstained from voting, saying that they agreed with the proposal but would leave the issue to be discussed after the constitution-making process ends.

The proposal of Jobbik to impose a radical ban on abortion has the effect of excluding women from the labour force and it is hidden in a discourse praising motherhood as the nicest and most natural vocation for women. However, Jobbik also addresses people who might not be able to identify with such a reduction of women’s roles. “As a conservative politician, of course I think that motherhood is the most important mission for a woman,” claimed Gábor Vona, leader of Jobbik, in a parliamentary speech on 8 March 2011, “but as a man living in the twenty-first century I reject any simplification that would send back women into the kitchen and would devote women’s lives to child-rearing (...) we have to find a solution in which women can live a full life just like men and in the meantime they bear their children.”³⁸

³⁷ <http://m.168ora.hu/itthon/megis-szigorubb-lesz-az-abortusztorveny-72836.html?print=1>

³⁸ <http://www.youtube.com/watch?v=978AsQWtkk>

If such an agenda is implemented without prejudice to women's participation in the labour force, and the dual life of "living just like men" and bearing children at the same time is an imperative rather than an option for women, it might easily lead to the gender politics of state socialism, the political structure against which every right-wing party in post-socialist Hungary most clearly defines itself.

Whereas KDNP's rejection of abortion is a concomitant of traditional Christian values, Jobbik's reproduction policy is based on nationalist and xenophobic claims. In the above mentioned speech Vona identified the demographic decline as one out of the three crises in which the country is trapped, the other two being the trap of state debts and the country's international dependence, its state of being "colonised." Depopulation in Hungary, according to Vona, is a result of a steady decline of the Hungarian population for thirty years and the "sudden rise of the Gipsy population," which "endangers the social and economic balance." The majority of Hungarians is decreasing, the minority of Gipsies is increasing, which, in case the Gipsies are not "integrated," will lead to "anarchy and civil war." As negative measures against the Gipsy population, drawing on stereotypes like young Gipsy mothers Vona would ensure family allowance only from the age of 19, or, armed with another cliché like Gipsy families where the number of children rises in order to get more family benefits, Vona would turn family allowance into tax benefits from the third child on. The "demographic earthquake" can be checked, according to Vona, by positive measures encouraging the Hungarian population to breed and by negative measures to prevent the Roma population from breeding. Thereby Jobbik commits itself not only to a nationalist conservative politics, but to an openly racist and xenophobic discourse that on a biopolitical level links the survival of the nation to the population stop of ethnic minorities and immigrants.

As an extreme far-right party whose racism goes against the European Union that declares commitment to, among others, equal opportunities, gender equality and the support

of ethnic minorities, Jobbik openly advocates Hungary's leave of the EU. The EU, in Jobbik's discourse, is constructed as a coloniser. As opposed to this, for liberals and socialists in the present Hungarian political context the EU is an important point of reference to defend democracy and the rule of law against centralising and authoritarian measures. The EU is invoked as a federation of states committed to pluralism, diversity and tolerance. In the present political situation in Hungary, where the governing coalition enjoys the widest popularity and can govern the country with a two-thirds majority, it is crucial how it positions itself in relation to the EU: whether it constructs Europe as a legitimate system of values to be followed or as a conglomeration of "colonisers" whose grasp on the country should come to an end, or balances somewhere in between.

5.3. *Under the pressure of racism, eugenic agendas and religion*

Answering Vona who asked the government whether Hungary has any benefits from being a member state of the EU and in the same speech deplored the "astonishing and unjustified population boom" of the Gipsies, the Prime Minister gave the evasive answer that Europe is changing and one cannot be sure what the future brings: "I envy the self-confidence and foresight (of Vona) with respect to the fact that the EU itself is in a process of change. Therefore, to claim that we have nothing to do in the EU is wrong based upon the general rules of logic, irrespectively of political intention." Though seemingly he refuses the demand to leave the EU, he does this not with reference to principles or values, not even with reference to economic interests or "political intention" but presents the EU as a changing phenomenon that might have both positive or negative implications for us in the future. That is, he rejects Vona's standpoint, but does not commit himself to the EU and does not exclude a future change of mind. Constructing the EU as a changing federation of states allows him

the possibility of neither unconditional support nor unconditional refusal, and in the process of flirting with far-right agendas he redefines conservatism itself.

On the issue of the Roma, he again appeared to say more than he actually did say, though he was closer to saying what was expected of him than on the issue of the EU. Pointing out that the “building of the Hungarian Parliament is in Hungary and Hungary belongs to European culture,” he claimed that “the moral standpoint of European culture is that no superfluous life has ever been born. (...) There is no superfluous life or life without reason. (...) We, Christian democrats, insist on this standpoint.”³⁹ With this remark the Prime Minister meant to dissociate his party and the Parliament itself from Jobbik’s racist politics against the Roma and he did so apparently more than in the EU case. However, he could have said explicitly that differentiation and discrimination between people based on race, colour or ethnic origin is not acceptable in “the building of the Parliament.” Saying that “superfluous life has never been born” is not the same as saying, though might be interpreted as meaning, that everybody has equal dignity. With the terms “superfluous” and “life without reason” he referred to but blurred and avoided the legal concept of discrimination.

The remark “we, Christian democrats” in the quote above leads me to another issue that has implications on the question of reproduction control: the issue of religion. That the provision protecting life from conception in the Fundamental Law has a religion-based pronatalist connotation is implied not only by statements of KDNP members, who make it clear that abortion is not compatible with their belief and morality, but also by the religious discourse that underpins the Fundamental Law itself. It is not only that the preamble, “the national avowal,” explicitly commits itself to Christianity, to the Hungarian Roman Catholic tradition specifically, by recognising its role in preserving nationhood and by admitting pride that “our king Saint Stephen built the Hungarian state on solid ground and made our country a part of Christian Europe.” The national avowal, a quasi-literary and confessional genre rather

³⁹ http://www.youtube.com/watch?v=CV_zkOPAEsY

than a legal text, might be said to be capable of holding such moral and religious principles, but the whole text of the Fundamental Law itself starts with the phrase “God bless the Hungarians,” placed before the chapter of national avowal so as to encompass the whole document. This structure implies that if any problem of interpretation arises concerning any of the provisions, religion shall have an emphatic weight in the decision. In the case of what the protection of life from conception shall mean, this might have troubling consequences for women’s rights to control their reproduction. As opponents of the new constitution point out, the choice of ideology is reflected among others in the Fundamental Law’s concept of community and its preferred family model, and its provision on the protection of life from conception. (Arato et al 2011: 23) Christianity thus becomes a reference point to our everyday life: “The Fundamental Law does not merely recognise the historical role of Christianity in the creation of the state, but also makes a commitment to its moral and political principles.” (Arato et al 2011: 24)

The head of the government more and more often speaks about his religious convictions in public. In an interview given for the Catholic periodical *Új Ember (New Man)* this year on the occasion of Easter he stated that the reason underlying much of the debate between the European Union and Hungary these days was that Europe was moving from a community of national sovereignties towards internationalism and supranationalism, as well as it was becoming more and more irreligious.⁴⁰ Drawing a parallel between a tree without roots and European civilisation that lost its Christian roots, he laments that at present the faithless are the majority and implies that if this trend continues, European civilisation will decay. He makes a direct link between religion and population rise when stating that “Europe is suffering because it has lost its roots. (...) Other civilisations not only keep, but increase their population, whereas the population of Christian Europe is decreasing.” By attributing depopulation to loss of faith instead of treating it as a complex issue that concerns well-

⁴⁰ The interview is accessible at http://www.miniszterelnok.hu/interju/orban_viktor_interjuja_az_uj_emberben

developed industrial societies, he supports the assumption that in issues of birth religion is the pro-life force, therefore Europe needs a spiritual revival if it wants to survive.

Christianity became a “watershed” in most debates on values. According to the Prime Minister it would turn out soon if a country could refuse the European secular, anti-family and anti-nation trend and could build its future on opposite values. In his words religion, family and nation are closely connected, they are presented as inseparable values of which one cannot go without the other. Furthermore, they are mobilized as a means of drawing a boundary between Hungary and Europe, and they are invoked as traditional values that are worth sticking to even if the price is high: making our way out of Europe. In another interview given for the public television of Poland, a country that supports Hungary in its various skirmishes with the EU and a country that has a strict abortion law in force, the Prime Minister included the protection of the foetus among moral issues on which he cannot agree with the dominant view of the EU.⁴¹

In a speech with strong nationalist overtones given on the occasion of 15 March 2012, a national day commemorating the country’s fight for freedom from Habsburg rule in 1848, the Prime Minister unambiguously attacked the EU as an outsider that wants to interfere with Hungary’s freedom. Drawing on historical parallels the PM likened the present embattled situation of Hungary with the EU to the revolutions of 1848, 1956, and the transition in 1989, events in which Hungary demanded independence from foreign rule. Referring to the EU as a coloniser he claimed: “The political and intellectual program of 1848 was this: we will not be a colony! The program and the desire of Hungarians in 2012 goes like this: we will not be a colony!”⁴² Objecting to the EU’s recent pre-occupation and criticism of Hungary’s internal affairs, like media freedom, the independence of the judiciary and the central bank, he likened EU authorities to Soviet rule and cast himself as the hero leading Hungary’s present day fight

⁴¹ The summary of the interview is accessible at http://hvg.hu/itthon/20120120_orban_lengyel_interju

⁴² <http://orbanspeech.pen.io/>

for freedom. “We are more than familiar with the character of unsolicited comradely assistance, even if it comes wearing a finely tailored suit and not a uniform with shoulder patches. We want Hungary to revolve around its own axis, therefore we are going to protect the constitution, which is the security for our future,” he claimed. In post-socialist Hungary, on behalf of any social actor tainted with nationalism, there is no stronger condemnation and rejection than a parallel with Soviet domination. Just as if responding to Jobbik’s demand that Hungary has to unite with Eastern European countries and must sever ties with the EU, Orbán welcomed the support of Eastern states. “Our Lithuanian, Czech, Latvian, Slovenian and Romanian friends have all stood up for us.” To the Lithuanian and Poland supporters present he exclaimed: „Glory to Lithuania! God bless Poland!” To European authorities he added: “We will not be second-class European citizens!” He appealed to those “silently abiding” Europeans who still insist on national sovereignty, who still believe “in the Christian virtues of courage, honour, fidelity and mercy.” That is, while rejecting the Europe of liberal values, he constructs another Europe in whose value system the family, the nation and religion, as well as the feudal virtues of “courage, honour, fidelity and mercy” occupy the first place, and lamenting that this Europe is in minority today he waits for its revival.

Hungary's relationship with the EU is important from the aspect of abortion because the turn away from the EU and the turn towards Eastern European countries, especially towards Poland, bring with themselves a discourse in which reproductive rights are doomed. Since in present-day Hungarian political discourse the EU is anti-family, anti-nation and anti-religion, distancing itself from the Union and making steps toward Poland that has a remarkably harsh abortion law, has implications on the country’s reproduction policy as well. The traditional values attached to religion, family, nation and the respect and protection of “every life,” where “every” constitutes a biopolitical imperative to “make live” rather than an acceptance of diverse ways of lives, are signposts along the border that the present political

discourse is constructing between Hungary and Europe. Far from intending to appear progressive, the government discourse presents the country as one of those few countries that have the ability and braveness to go against the European trend in the name of traditional values. The statements of the Prime Minister that link his commitment to Christianity, the family and the nation are of special importance, as there has been no decisive voice about where the protection of foetal life will lead.

5.4. *Lack of the human rights discourse*

To protest against the constitution-making process the socialist and liberal parties, MSZP and LMP, abstained from the parliamentary debate on the Fundamental Law. With their absence, the human and women rights discourse was totally absent from the debate on the protection of life before birth. Though the women section of MSZP issued declarations opposing the inclusion of the provision in the constitution by referring to women's reproductive rights and also demanded to stop the adoption/abortion campaign of the Ministry for National Resources, the debate in the Parliament lacked any human rights concerns. Fidesz, which takes into account social reality concerning abortion, namely that the majority of the population opposes restriction and the introduction of a restrictive abortion law might cause their drop out of power, is pressed by KDNP and Jobbik, both clamouring for a radical ban, the former with a religious and moral explanation, the latter with a nationalist and eugenic agenda. It deploys some of the rhetoric and agenda of Jobbik to speak to and invite to its side those voters who see the chances of a better life in the xenophobic and racist promises of the far-right. The growing commitment of Fidesz to Christianity and its ambivalent relationship with the EU, which is motivated by the far-right standpoint of refusing to be

“colonised” by the EU and IMF, clearly indicate a captivity pressed by Christian and far-right demands.

Abortion is one aspect of this political battle for power, it is a discursive field in which political intentions are made clear. Conservative and nationalist politics, especially if it is embedded in such a patriarchal institution as the Catholic Church, define themselves partly by a conservative gender agenda that responds to the traditional cult of motherhood as a primary role of women, and attaches moral superiority to the family as opposed to all other ways of life, like homosexuality or voluntary childlessness. As long as there is no considerable “audience” for left-wing and liberal parties, the human rights discourse on abortion remains absent. The consequences of radical ban abortion are not only material and physical but have implications on the empowerment of women.

Constructing motherhood as the first and foremost obligation and “natural” vocation of women ensures that men can continue to control public, political and economic life – in times of high unemployment and economic depression like the present one, sending women home has not been a unique intervention. Gal points out how the problem of “overemployment” and lax labour discipline that were the result of the state socialist commitment to the full employment of women and men were solved by encouraging women to leave work and care for children and the elders while offering generous maternal leave – a policy to which the country is now returning. (1994: 266) Shortly after paid maternal leave was reduced under previous governance to two years, the present government has increased it back to three years and due to a new measure women can retire earlier than men, after forty years of employment. Hidden as generous measures in favour of women, they can also be read as a policy that forces women out of the labour force and thereby out of public decision-making. Furthermore, such measures contribute to the construction of women whose primary

responsibility is in the home and by making it a general state of affairs inculcate into people the acceptance of normative motherhood.

Measures aimed at maintaining the “natural” responsibility of women to give birth and rear children and enforcing them to do so by appealing to biological necessity, as in the case of a ban on abortion, has the effect of ensuring unbalanced power relations between the genders. As Pető notes, the debate on abortion has never been simply about abortion itself and whether the foetus can be considered a human being or not. The debate is rather about the different viewpoints on the concept of the family and motherhood, compulsory heterosexuality, and female employment. (2003: 188) The various standpoints on these issues indicate differing assumptions of gender and differing concepts of woman, one extreme being the normative cult of motherhood, the other being the freedom of choice, which might even imply the denial of motherhood. As the radical ban on abortion has consequences only for women, it makes women one-sidedly responsible for sexuality and is silent about men’s sexual behaviour and responsibility. Regarding women as, in Sándor’s words, “living incubators,” the state controls their sexual and reproductive behaviour. (1998: 132)

The governing coalition leaves not much doubt about its regressive gender agenda, of which the present “game” with abortion is only one factor. According to Péter Szijjártó (Fidesz) the issue of the family is not only a social issue but an issue of “national strategy.” Claiming that it is “intolerable” that in 2010 forty thousand more people died than were born, he gave a remarkable example of regarding women “living incubators” whose primary task is the reproducing of the nation.⁴³ Miklós Réthelyi, Minister for National Resources expressed a similar standpoint, noting with respect to depopulation that “the number of women able to bear children will have decreased by two hundred and fifty thousand by 2020.”⁴⁴ Besides drawing attention to important economic incentives, he also appealed to morality and

⁴³ <http://www.fidesz.hu/index.php?Cikk=159909>

⁴⁴ <http://www.fidesz.hu/index.php?Cikk=159893>

deplored selfish behaviour that results in childlessness. Miklós Soltész secretary of state noted that according to a European survey half of the women want to work and have family at the same time, and want to go back to work after half a year or a year of childrearing, which, according to him, indicates that in many cases the father's income cannot make ends meet.⁴⁵ This statement, which attributes women's intention to be employed only to economic factors, indicates that decision-makers in the present government do not have an understanding of equal opportunities between the genders, therefore to enforce gender aspects in the issue of abortion, seems to be a vain hope.

⁴⁵ <http://www.fidesz.hu/index.php?Cikk=160826>

6. The possible impact of the Fundamental Law – Restriction step by step

Having looked at the legislative and political context of the inclusion of the protection of foetal life in the new constitution, in the concluding chapter I will examine what this constitutional change means in practice by looking at the indications of a possible change of abortion law. By surveying whether events are indicating a trend of leaving current regulation intact or point to the restriction of reproductive rights, I am making attempts at an outline of where the ambiguous wording of the protection of life from conception is heading. Without making a direct link between the new constitution and the measures and events described below, some of which were taken and happened even before the adoption of the new basic law, I am arguing that these events are part of a process shaping public consciousness into an acceptance of restrictive reproduction regulation. Though I agree with human and women's rights organisations that voice a fear of a coming abortion war, events point to a gradual restriction rather than a sudden radical ban on abortion. Until the coming into power of the current government the abortion regulation was clear and unambiguous: in the first trimester of pregnancy it was roughly a case of "lawful, therefore not to be punished." Now, with the quasi-religious and moral discourse of the political parties and government officials, among them secretaries of state for health and family issues, abortion is heading for the non-sense domain of "not lawful but not to be punished". The question when it will reach the state of "not lawful, therefore to be punished" is a question of the future.

6.1. *The pro-natalist discourse*

I began my thesis with the campaign launched by the Ministry for National Resources during the time of the constitution-making process that for two months addressed women on posters, encouraging them to bear their children even if they do not want to rear them and put them up to adoption. In the media events following the introduction of the campaign several NGOs lined up behind the government, especially associations mediating adoption.⁴⁶ Beside depopulation the representatives of these NGOs, together with Miklós Soltész secretary of state, appealed to morality, the chair of Stork News Association even equated abortion with the murder of a child. Women in their discourse are not grown-up citizens who resort to abortion after surveying their own conditions but victims to whom the act is done and who should be saved of this terrible deed. The “mother,” as the woman is often referred to, is presented as a defenceless being who needs help and care, the false care of a paternal state for its own ends, and not a grown-up person, who can decide what is best for her and then can face the consequences of her decision. By construing the “mother” as a victim to a terrible crisis, the right and capacity to an independently made decision is taken away from her. Constructed as a victim, the state stretches its (his) arm to help her and in this act of paternal care she loses her self-autonomy. Besides being a victim, the woman is considered primarily as a mother, which implies that she remains a valuable person for the state only as long as she bears children. The current policy along these lines echoes that of the governing parties in the debate on abortion at the time of the political transition. “For the governing parties,” pointed out Gal in that debate, “regulating abortion provides a cheap way of putting into practice their image of the paternal state, providing the leadership in morality that everyone has identified as missing from everyday life.” (1994: 281)

⁴⁶ <http://tv2.hu/tenyek/video/vita-a-kampanyrol-interju-soltesz-miklos-csaladugyi-allamtitkarral>
http://videotar.mtv.hu/Videok/2011/05/06/21/Az_Este_2011_majus_6_.aspx

The role of men as fathers was absent from the whole debate on the campaign. According to Gal anti-abortion lawyers argue that in a decision on abortion there are four interested parties: the foetus, the mother, the father and society. In the campaign the foetus, endowed with the ability to express its emotions through language, plays the main role, and the presence of society is implied by the nationalist discourse, which besides the begging of the foetus gives statistical information about the number of “children” (i.e. foetuses) who died in abortion.⁴⁷ This society addresses the mother through the foetus, characteristically it speaks only to the mother, the father is non-existent (if it spoke to both of its parents, the affixation of the verbs would have been in the plural in Hungarian). The inclusion of men in this campaign would have been a step forward in promoting equality between the genders precisely because it is not only about abortion but also about adoption that would have offered the opportunity to raise awareness about male parenting. In spite of the claim that the posters were part of a campaign for equal opportunities, it failed to take the opportunity to address both genders in a balanced way and the silence about men’s responsibility both in reproduction and parenting contributed to the reproduction of the patriarchal social structure, in which women are relegated to the private sphere of the family and into which, however, the state now uncannily intrudes.

The promoters of the campaign used arguments of demography, moral claims of good and bad, as well as religious faith. Though the campaign was introduced as an “awareness-raising” campaign encouraging adoption, it turned into a campaign against abortion framed on moral claims. Nationalist (demographic) and religious (moral) claims reinforced each other in the claims made by the promoters, proving Gal’s point according to which national rhetoric dovetails with religiously based and Church-supported arguments. (1994: 273) The

⁴⁷ The promoters of the campaign use a euphemistic and emotionally manipulative language, “child” or “baby” instead of “foetus,” “mother” or “lady” instead of “woman.” Expressions by Jenő Kutassy, chair of the National Association of Extended Families, like “the beautiful life that throbs under the heart” or “what beautiful babies they might become” are characteristic of this discourse that appeals to the emotions and morals of the listener.

assumption of a moral unity results in blanket proposals for individuals who are embedded in their own particular, personal circumstances. Opponents, particularly Patent organisation, pointed out the dangers of such an assumption of unity and the need to tackle the issue of abortion on the level of the individual by ensuring her access to the range of possibilities and let her choose the one most applicable to her situation.

6.2. *The fate of the morning after pill*

In restricting women's access to abortion, the state not only actively enforces women to give birth to and bring up an unwanted child, but in so far as it goes hand in hand with restricted access to preventive birth control and silence about male responsibility in prevention, it polices women's sexuality as well. The lack of access to contraception and the restriction of abortion create a double standard, whereby men are guaranteed freedom in non-reproductive sex, while the sexual behaviour of women is controlled by the consequences. Fridli points out that the number of abortions can be decreased in two ways: either more women choose to bear the foetus or less women get pregnant who do not want to have a child. (Fridli 1999: 97) If no attention is paid to contraception and prevention is neither a supported nor an available means of birth-control, the number of abortions will necessarily rise. Neither legislation nor the media in the current debate in Hungary has much to say about prevention, not to mention men's responsibility. Quite to the contrary, parallel to the discourse against abortion another legislative restriction on access to contraception has been introduced, or more precisely, has been left intact. Shortly after the pronatalist campaign, in the summer of 2011, the procedure that had been initiated in November 2009 for making the morning after pill available without prescription was stopped by the authority responsible for the authorisation and supervision of medicines. The morning after pill would have been available

in pharmacies without prescription as of 1 August 2011 when in the middle of July 2011 the authority changed its mind.⁴⁸ The National Institute for Quality and Organisational Development in Healthcare and Medicines (GYEMSZI) itself explained the step by referring to the change in leadership: the procedure was started under the egis of the previous leadership and the new director general re-examined the issue. The authority withdrew the permission by claiming that “in its decision the health of the mother and the foetus enjoyed priority over anything else.” However, the fact that, according to Patent, out of the 27 member states of the EU only six countries have not given permission to sell morning after pills without prescription, and out of the six countries two have a strict abortion law (Poland and Malta) speaks not of consideration of health but of politics. The time of decisions and changes in leadership (the procedure was initiated under the previous government and the decision to withdraw the permission was made shortly after the appointment of the current director general who was a political adviser of the Ministry of National Resources from July 2010 and became director general of GYEMSZI on 1 May 2011) also imply that there are political considerations in the background.⁴⁹ The measure against the free access to the morning after pills falls in line with the intention of the state to restrict access to abortion, and in my interpretation constitutes another example of the restrictive biopolitical measures of a nationalist state. Such reproduction policies lead to the widening of the gap between the genders, especially as they are framed in the context of a new Labour Code that, entering into force on 1 January 2012, omits from its provisions the express prohibition of asking an employee to make a pregnancy test.

⁴⁸ <http://abortusz.info/hirek/hirek/receptkoteles-marad-az-esemeny-utani-tabletta>

⁴⁹ <http://www.gyemszi.hu/site/index.html>

6.3. *Attempts at budgetary measures to restrict abortion*

As yet another attempt to restrict access to abortion, not much after the pronatalist campaign, in November 2011 KDNP submitted a proposal to Parliament to withdraw from the budget the sum allocated for abortion and reallocate that sum to encourage adoption and child protection. Jobbik agreed with the proposal but would have offered the sum to Alfa radical pro-life organisation. In an opinion issued together with the Hungarian Helsinki Committee, NANE Women's Rights Association, Labrisz Lesbian Association, Patent and Stop Male Violence Project, the Hungarian Civil Liberties Union (TASZ) pointed out that such a measure would negatively affect the most defenceless and poorest women and the proposal is particularly hypocritical as the state does not support any means of contraception, nor does it help access to them.⁵⁰ The effect of such a restrictive measure on women, which however, was not supported by the Parliament, intersects with class. Urban women with a well-to-do background have better access to and can afford contraceptives, whereas women with a lower income are more likely to be more negatively affected by restrictive policies. Kligman points out that women are differentially affected by pronatalist policies. The conclusions of her case study in Romania are widely shared:

The effects of banning abortion transcend political or religious interests. When abortion is criminalized, women resort to illegal abortions; that is a comparative as well as historical fact. Banning abortions does not stop women from having them; it simply makes abortion "invisible." Prohibiting abortion – as has always been the case – forces abortion underground and makes it the privilege of the wealthy, while further disenfranchising poor women, who generally bear the brunt of such policies. (1995: 253)

The budgetary proposal is ironically in contradiction with the racist agenda that is beginning to infiltrate reproduction policies. As it would have resulted in enforcing women in bad economic circumstances to bear their unwelcome children, the proposal would have added to the number of the poor, which contradicts the government's new strategic plan to support the

⁵⁰ <http://tasz.hu/betegjog/tamadas-legkiszolgalatatottabb-nok-ellen>

reproduction of the middle class. Issued in May 2012, in the plan entitled “The New Baby Boom: the Birth-rate Revolution of the Middle Class”, the government examines how the birth-rate of the middle class can be stimulated.⁵¹ In so far as a considerable percentage of the Hungarian poor are of Roma ethnic origin, and Roma people are most unlikely to be found in the middle class, the plan can be said to nurse a hidden racist agenda.

6.4. *The abortion pill*

My last example is the latest manifestation of the government’s reproduction policy in the prohibition of the licensing of the abortion pill. On 19 May this year news on the registration of the abortion pill appeared only to be partially denied a few days later by Miklós Szócska secretary of state at the Ministry of Human Resources (the new name of the Ministry of National Resources from 14 May), saying that the registration of the medicine does not mean the permission for its distribution. In an interview he explained that the registration of the medicine was an obligation for Hungary as a member-state of the EU, however, the licensing process rests with each member-state.⁵² As a result of a “serious professional debate” it was decided that the pill would not be given permission in Hungary. He claimed particularly, that “we are going to examine the risks of the medicine, and we are going to use the legal instruments that are at our disposal to save Hungarian girls and women from these risks,” thereby putting into doubt whether the professional decision indeed preceded the political decision or perhaps it happened vice versa.

On 23 May, the Alfa Alliance organised a demonstration against the introduction of the abortion pill with the call “Don’t believe the lie!” The chair of the alliance, Imre Téglásy,

⁵¹ <http://www.kormany.hu/download/b/dc/80000/%C3%9Aj%20baby%20boom20120509.pdf>

⁵² <http://m.mno.hu/ahirtvhirei/szocska-tudtuk-hogy-ez-a-problema-kozelit-video-1077759>

maintained that the pill was not a medicine but a poison and “a means of hidden fascism.” “It is a weapon in the history of modern warfare against the Hungarians.”⁵³ Representatives of KDNP and Jobbik were present at the demonstration and the Evangelical Church also protested against the pill in a statement. The abortion pill thus brought together far-right nationalists and representatives of the churches, the two main driving forces demanding the restriction of abortion. All these examples indicate that while a radical restriction would be a political suicide on behalf of the government, the measures toward a gradual restriction are on the horizon, together with their negative effect on gender equality.

⁵³ http://index.hu/belfold/2012/05/23/a_magzatvedok_szerint_az_abortusztabletta_a_rejtozkodo_fasizmus_eszkoze/

7. Conclusion

To conclude my thesis I would like to refer back to Miller's paradigmatic example of Pope Pius IX's decision on the immediate animation of the foetus and her comment on the mesh of nationalism and religion in the criminalisation of abortion in the nineteenth century. Almost two decades later, in December 2010 Pope Benedict XVI told the Hungarian ambassador that it was "desirable that the new constitution be inspired by Christian values, particularly in what concerns the position of marriage and the family in society and the protection of life."⁵⁴ The call from the Pope was timed so as to take advantage of the government's move towards nationalism and indicates eloquently the juncture of patriarchal state and church interests. As I tried to argue in this thesis, the extension of power by the governing party to the whole spectrum of the political right wing, thereby deploying Christian and far-right nationalist discourse, made the papal teaching practicable. The simultaneous presence of Christian conservative and far-right members of Parliament at the latest pro-life demonstration in Budapest indicate that the pro-life stance of religion curiously dovetails with the pronatalist demands of the far-right, and in its never satisfying quest for power the party currently governing the country is devouring each of its possible rivals on the political right wing, unavoidably radicalising itself in the process. Since women's rights are limited in either religion or in nationalism, reproductive rights by necessity fall victim to this battle for power.

Placing the present debate not only in the contemporary political but in a historical context, I found that though the present discourse echoes some of the issues of the earlier debate at the time of the transition, it is in some ways different from it and some new phenomena have to be taken into account. The protection of life from conception got included in a new constitution that explicitly commits itself to Christian values. The interplay of the patriarchal interests of the state and the churches, fixed in the most basic law of all, can have

⁵⁴ <http://blogs.wsj.com/emergingEurope/2010/12/09/hungary-may-introduce-constitutional-ban-on-abortion/>

dire effects on reproductive rights in the long run. Whereas at the time of the transition, a large variety of political parties shared power and discourse amongst each other, in the present situation the new government that won the elections with a sweeping victory and secured itself a two-thirds majority in the Parliament, is ensuring itself a power that in its extent recalls the one-party system of socialism. The far-right nationalist agenda of the government that is creeping into its discourse at the pressure from Jobbik, which is not only nationalist but openly racist and xenophobic, was not a determining policy factor at the time of the transition. At that time Hungary was heading for Europe. It was, for example, the first post-socialist country that joined the Council of Europe in 1990. Now, it seems that Hungary is distancing itself from Europe and its value system, and constructs another Europe, a Europe where the emphasis lies on the respect for the family, the nation and religion as opposed to plurality, diversity and prohibition of discrimination. The recent suggestion of the Minister of Justice not to comply with one of the decisions of the European Court of Human Rights that brought an unfavourable decision against the Hungarian state is paradigmatic of the country's embattled relationship with Europe.⁵⁵

A break with liberal values, like tolerance, diversity, the priority of the individual over the collective, and the move towards nationalism, religion and authoritarianism provides the context of the shift to more rigorous legislation on reproduction in Hungary. This parallel shift shows that liberalism and authoritarianism do have an impact on reproductive law, contrary to Agamben's and Miller's claim that on the level of biopolitics the dichotomy between left and right, liberal and authoritarian, collapses. (Miller 2007: 135) While left and right predominantly care for the collective good, classical liberalism envisages a just society that "allows individuals to exercise their autonomy and to fulfil themselves." Within the liberal framework "we can all choose our own separate goods, provided we do not deprive others of

⁵⁵ <http://helsinki.hu/felhivas-voros-csillag>

theirs.” (Tong 1998: 10-11) Liberalism, then, by necessity, cannot prioritize the collective good over the individual right, not even on a biopolitical plane.

8. References

- Agamben, Giorgio. 1998. *Homo Sacer: Sovereign Power and Bare Life*. California: Stanford.
- Anthias, Floya and Yuval-Davies, Nira. Introduction. In Anthias, Floya and Yuval-Davies, Nira. Ed. 1989. *Woman-Nation-State*. New York: St Martin's Press.
- Arato, Andrew et al ed. 2011. Opinion on the Fundamental Law of Hungary.
<http://lapa.princeton.edu/hosteddocs/amicus-to-vc-english-final.pdf>
- Brown, Jessica Autumn and Ferree, Myra Marx. 2005. Close Your Eyes and Think of England: Pronatalism in the British Print Media. *Gender and Society* 19: 5-24.
- Foucault, Michel. 2003. *Society Must Be Defended. Lectures at the College de France 1975-76*. New York: Picador.
- Fridli, Judit. 1999. Tanácsadás válsághelyzetben. (Counselling in a State of Crisis.) *Fundamentum* 1: 92-100.
- Gal, Susan. 1994. Gender in the Post-Socialist Transition: the Abortion Debate in Hungary. *East European Politics and Societies* 8(2): 256-286..
- Ginsburg, Faye and Rayna Rapp. 1991. The Politics of Reproduction. *Annual Review of Anthropology* 20: 311-343.
- Halmai, Gábor and Tóth, Gábor Attila (eds) 2003. *Emberi Jogok. (Human Rights.)* Budapest: Osiris.
- Heng, Geraldine and Devan, Janadas. 1992. State Fatherhood: The Politics of Nationalism, Sexuality and Race in Singapore. In Parker, Andrew et al (eds) *Nationalisms and Sexualities*. New York: Routledge. 343-364.
- Kis, János. 2011. Alkotmányozás – mi végre? (A New Constitution – Why?) In Majtényi, László and Szabó, Máté Dániel (eds) *Az Elveszejtett Alkotmány. (The Constitution Made to Disappear.)* Budapest: L'Harmattan.

- Kligman, Gail. 1995. Political Demography: The Banning of Abortion in Ceausescu's Romania." In Ginsburg, Faye and Rapp, Rayna (eds) *Conceiving the New World Order*. Berkeley: University of California Press. 234-255.
- Kürti, László. 1991. The Wingless Eros of Socialism: Nationalism and Sexuality in Hungary. *Anthropological Quarterly* 64(2): 55-67.
- Majtényi, László and Szabó, Máté Dániel. 2011. Jogállamtalanítás. (Unmaking the Rule of Law) In Majtényi, László and Szabó, Máté Dániel (eds) *Az Elveszejtett Alkotmány. (The Constitution Made to Disappear.)* Budapest: L'Harmattan.
- McClintock, Anne. 1993. Family Feuds: Gender, Nationalism and the Family. *Feminist Review* 44: 61-80.
- Miller, Ruth A. 2007. *The Limits of Bodily Integrity: Abortion, Adultery, and Rape Legislation in Contemporary Perspective*. Boston: Ashgate.
- Mink, András. 1991. Kis magyar abortusztörténet. (A Brief History of Abortion.) Beszélő 48. <http://beszelo.c3.hu/cikkek/kis-magyar-abortusztortenet>
- Peterson, V. Spike. 1999. Sexing Political Identities: Nationalism as Heterosexism. *International Feminist Journal of Politics* 1(1): 34-65.
- Pető, Andrea. 2003. *Napasszonyok és Holdkisasszonyok. A mai magyar konzervatív női politizálás alaktana. (Women of Sun and Girls of Moon. Morphology of Contemporary Hungarian Women Doing Politics)* Budapest: Balassi kiadó.
- Pető, Andrea. 2002. Women's Rights in Stalinist Hungary: The Abortion Trials of 1952-1953. *Hungarian Studies Review* 29: 48-76.
- Sándor, Judit. 1998. Újabb érvek a terhességmegszakítás alkotmányosságáról. (Some Arguments on the Constitutionality of the Termination of Pregnancy.) *Fundamentum* 3: 121-134.
- Szalai, Júlia. 1988. Abortion in Hungary. *Feminist Review* 29: 98-100.

Tong, Rosemarie. 1998. *Feminist Thought*. Boulder, Colorado: Westview Press.