Articles

Maternity Leave after miscarriages – a review of the latest update to the German Maternity Protection Act

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Abstract

On 30 January 2025, the German Bundestag amended the Maternity Protection Act (Mutterschutzgesetz) to extend maternity leave to miscarriages after the 12th week of pregnancy. This article analyses the reform against the historical and constitutional background of German maternity protection, including the Federal Constitutional Court's recent obiter dictum on the term "delivery". At its centre lies the newly introduced staggered maternity leave of two, six or eight weeks, depending on the stage of pregnancy, together with the redefinition of "delivery" in section 2 paragraph 6, which treats miscarriages after the 12th week as deliveries while declining to define "live birth" and "stillbirth". The article argues that, although the reform offers genuine relief in most cases, the legislator left several questions unresolved: the still-undefined statutory terms; the precise moment a miscarriage is deemed to occur, which sits uneasily with the case of a "missed miscarriage"; the effect on adjacent provisions once maternity leave ends; the uncertain treatment of medically indicated abortions; and the deliberate exclusion of women who miscarry before the 12th week. It concludes that it will fall to the courts to fill these remaining gaps.

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A. Introduction

On the 30th of January 2025, the German Bundestag unanimously passed an amendment to the Maternity Protection Act. The goal was simple: To extend the existing Maternity Leave to miscarriages after the 12th week of pregnancy.

After the result was proclaimed by the vice president of the parliament, Aydan Özoğuz, the Bundestag broke out in standing ovations. Aydan Özoğuz used the moment to address a visitor at the gallery of the Bundestag: *"Dear Ms Sagorski, on behalf of the whole House, I would like to thank you for your initiative. Many women will benefit from the fact that you had the courage to launch this initiative. Thank you very much!"*[1]

This rather unusual shoutout to a non-member of parliament is explained by the also rather unusual development process of the amendment just passed. Natascha Sigorski, an author, experienced a miscarriage herself and was sent back to work the next day by her gynaecologist. She wrote about this in her book "Every 3rd woman". The title refers to the probability of experiencing a miscarriage. After having to work through the lack of maternity leave herself, she saw the need for a change of the Maternity Protection Act. She initiated a petition and campaigned for signatures in German media.[2] The Campaign reached over 50.000 signatures and was heard by the Committee on Family Affairs of the Bundestag.[3] Only a small number of petitions is heard by a committee let alone the Bundestag itself.[4] The Bundestag does not keep a record of the number of petitions which are enacted into law.

Considering this very special legislative process the amendment might be seen as a sweeping success. An affected person found a gap in the law, proposed an easy solution and this solution was then passed into law. But how does the new maternity leave after

[1] Plenary Protocol 20/210, 27390.

[2] Luisa Faust, '"Jede dritte Frau erlebt eine Fehlgeburt"' (*taz*, 31 March 2025) <https://taz.de/Aktivistin-zum-gestaffelten-Mutterschutz/!6063361/> accessed 13 May 2026.

[3] Verena Töpper, 'Sie wurde zu der Lobbyistin, die sie gesucht hatte' (*Der Spiegel*, 13 December 2025), <https://www.spiegel.de/familie/natascha-sagorski-und-ihr-kampf-fuer-mutterschutz-sie-wurde-zu-der-lobbyistin-die-sie-gesucht-hatte-a-fe7de63c-99b3-422c-ba08-2a6233a77a22> accessed 13 May 2026.

[4] Press release '9.260 Petitionen erreichten den Ausschuss im Jahr 2024' (*Bundestag*, 15 October 2025). <https://www.bundestag.de/presse/hib/kurzmeldungen-1116464> accessed 13 May 2026.

miscarriages actually work? And are the regulations proposed in the amendment really an easy fix or are there still gaps left?

B. The Maternity Protection Act

I. Short History

Protection rights for working mothers exist almost as long as there is a unified legislature for all of Germany. The Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*) prohibited the employment of mothers for three weeks after giving birth as early as 1878.[5] After Chancellor Bismarck established the first social security program in Germany in 1883, women could be compensated for their maternity leave through their health insurance.[6]

Throughout the next centuries, mother's rights were broadened. The ban on employment after birth extended and a right to refuse to work before the expected birth was added in 1927 in the Act on the Employment of Women Before and After Childbirth (*Gesetz über die Beschäftigung vor und nach der Niederkunft*). This was the first time Germany codified Maternity Protection in a single law.[7] The next big step in legislation happened in the young Federal Republic of Germany in 1952. with the Maternity Protection Act (*Mutterschutzgesetz*). This act is the basis for the Maternity Protection Act that applies today. [8]

One important historical change that should be emphasised here is the source of compensation for women who are banned from work. In the beginning of Maternity Protection legislature this compensation was an insurance benefit, paid for by the health insurance. Now the compensation for maternity leave is an obligation for the employer (Maternity Protection Act ss 18 - 20). The employer can be reimbursed by the health insurance, Act on the Reimbursement of Employers' Expenditure on Continued Payment of Remuneration (*Gesetz über den Ausgleich der Arbeitgeberaufwendungen für Entgeltfortzahlung*) s 2 para 2. Thus, the social insurance community bears the financial burden of a pregnancy. But the important fact remains: A mother is paid by her employer during maternity leave, not by a health insurance.

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[5] Yasmina Gutensohn, 'Einleitung' in Wiebke Brose, Stephan Weth and Annette Volk (eds), *Mutterschutzgesetz und Bundeselterngeld- und Elternzeitgesetz Kommentar* (10th edn, C.H. Beck 2025) para 1; Georg Pepping, 'Vorbemerkung zu §§ 1 und 2' in Friedbert Rancke and Georg Pepping (eds*), Mutterschutz Elterngeld Elternzeit Handkommentar* (6th edn, Nomos 2022) para 1.

[6] Gutensohn (n 5) para 1.

[7] ibid para 2.

[8] Pepping, 'Vorbemerkung zu §§ 1 und 2' (n 5) para 1.

II. Constitutional perspective

Maternity Protection is one of the fundamental rights granted by the Basic Law (*Grundgesetz*) as well as the Weimar Constitution (*Weimarer Reichsverfassung*).

Art 119 para 3 Weimar Constitution: *"Mothers are entitled to the protection and care of the state."*

Art 6 para 4 Basic Law: *"Every mother is entitled to the protection and care of the community."*

The term "mother" is not interpreted in the usual way here. According to the Merriam Webster Dictionary, a mother is a female parent.[9] However, only mothers currently pregnant, in the postpartum period or breastfeeding are protected by these constitutional norms.[10] Beyond these time periods, mothers have no more parental rights than fathers.[11]

Whether women who had a miscarriage are mothers in the constitutional sense is not the topic of a broad scholarly discourse or Constitutional Court rulings. Some argued that Art 6 para 4 GG protects the mother. Therefore, it does not matter whether the delivered child is alive or not; the woman is a mother and entitled to protection.[12]

One distinction between the Basic Law and the Weimar Constitution is the protector. The Basic Law guarantees the protection of the community, unlike the Weimar Constitution, which guaranteed the protection of the state.[13] The communal approach of the German Constitution is why the Federal Constitutional Court ruled that the compensation of mothers in the employment prohibition periods could be imposed upon employers.[14]

Ms. Sagorski and several other mothers who had miscarried tried to bring the issue before the Federal Constitutional Court. But their complaint was rejected as inadmissible. This is because they refrained from bringing their cases before lower courts and therefore did not the need the judicial protection of the Federal Constitutional Court. Nevertheless, the Federal Constitutional Court commented in a rare obiter dictum. Most cases are simply rejected as inadmissible without an explanation.[15]

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[9] Merriam-Webster, 'Mother' <https://www.merriam-webster.com/dictionary/mother> accessed 18 May 2026.

[10] Frauke Brosius-Gersdorf, 'Art. 6 [Ehe und Familie, Elternrecht, Wächteramt, Trennungsamt, Mutterschutz, uneheliche Kinder]' in Frauke Brosius-Gersdorf (ed), *Dreier Grundgesetz Kommentar Band 1* (4th edn, Mohr Siebeck 2023) paras 445–48.

[11] ibid para 447.

[12] ibid para 446; Peter Badura, 'GG Art 6' in Günter Dürig, Roman Herzog and Rupert Scholz (eds), *Grundgesetz Kommentar* (109th edn, C. H. Beck 2026) para 154.

[13] Badura, 'GG Art 6' (n 12) para 152.

[14] BVerfGE 109, 64, 87.

[15] Sarah Leclercq and Felix W Zimmermann, 'Geringste Erfolgsquote seit 24 Jahren' <https://www.lto.de/recht/justiz/j/bverfg-2021-begruendungen-nichtannahmen-jahrestatistik-2021> accessed 13 May 2026.

The court argued that the term "delivery" used by the Maternity Protection Act is an undefined legal term and therefore up to interpretation. It explained that the interpretation by lower courts so far did not fit the protection purpose of the Maternity Protection Act.[16] They had based their interpretation on the Civil Status Ordinance (P*ersonenstandsverordnung*). This ordinance defines who is entered in the Civil Status registry. Stillborn children are registered, but children who were miscarried are not (Civil Status Ordinance s 31 para 2 sent 29. The character of the Civil Status Ordinance is truly administrative.[17] It is not built to guarantee health protection, so it is understandable why the Federal Constitutional Court sees it as unfit to determine maternity protection. As the interpretation used this far was deemed unfit, the Federal Constitutional Court suggested that lower courts should find a new one. It suggested that a newly found interpretation of the term delivery could be open to include miscarriages.[18]

III. Structure and important regulations of the Maternity Protection Act

The Maternity Protection Act sets out its objectives in its first part, in s 1 para 1: The first objective is to protect the health of woman and child during a pregnancy, in the postpartum period and while breastfeeding. The second objective is to enable women in those phases to partake in a normal working life and the third objective is to prevent discrimination in those phases.

The second part (ss 3 – 16) regulates individual and workplace health protection. Women are banned from working six weeks before the expected date of delivery and eight weeks after giving birth (s 3). Before maternity leave, occupational and medical employment bans are the most important tool for health protection. Employers cannot employ pregnant women if the workplace endangers the mother's or the child's health (ss 9 – 13). Examples for a typically dangerous workplace leading to an occupational employment ban are an airplane, due to increased radiation, or a kindergarten, due to the heightened risk of infection. A medical employment ban can be issued by a doctor if the woman has a pregnancy related illness that makes it impossible for her to work (s 16).

While health protection clearly is the main objective, the Act aims to let women participate in working life as long as possible. Before an employer can issue an occupational employment ban, he has to review whether the workplace can be adjusted to be safer or if the woman can be transferred to a less dangerous occupation. Banning a woman from employment is the ultima ratio (s 13).

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[16] BVerfG NZA 2024, 1564, 1565.
[17] ibid.
[18] ibid 1564.

The third part only consists of one section. S 17 grants pregnant women protection against dismissal for up to four months after the delivery. Employers are, however, not prohibited from dismissing pregnant women and mothers at all. They must obtain a permission by the Maternity Protection Authority. The authority will give the permission if it is certain that the dismissal is not caused by the pregnancy. A typical case for a permit would be a whole company closing down.[19]

The fourth part (ss 18 – 25) regulates the compensation during times of work prohibition. The goal of those regulations is to grant a woman the same financial resources she would have had without being pregnant.[20] There is one noteworthy distinction between an employment ban due to a dangerous workplace or individual complications in the pregnancy and the 14 weeks around the delivery ("maternal leave"). During employment bans before the maternal leave, the employer must pay the pregnant woman her gross salary (s 18). In that way, the wage is taxed and social insurance contributions are paid. During the maternal leave an employer is only required to pay the net salary, minus a contribution by the health insurance amounting to EUR 13,00 per day. While on maternal leave a woman does not pay taxes and is insured without contributions, Income Tax Act (*Einkommensteuergesetz*) s 3 lit 1d and Code of Social Law IV (*Viertes Sozialgesetzbuch*) s 15.

This needs to be read in conjunction with s 2 of the Act on the Reimbursement of Employers' Expenditure on Continued Payment of Remuneration. While the employer is the one who continuously pays a woman her salary, he has the right to be reimbursed by the health insurance.

The last parts (ss 26 – 34) regulate the public and criminal law aspects of maternity protection. They specify which authorities are responsible for maternity protection and set out fines and penalties for breaches of the law.

IV. Protection after miscarriages before the amendment

At first one needs to understand what a miscarriage is in the sense of the Maternity Protection Act. The word "miscarriage" was first introduced to the Maternity Protection Act with an amendment in 2017. With this amendment the dismissal ban was expanded to apply to miscarriages after the 12th week of the pregnancy. A definition of the word miscarriage was not provided in this amendment. Therefore, it needed to be interpreted.

The labour courts, which decided most maternity protection related cases, used the Civil

[19] Monika Schlachter-Voll and Daniel Ulber, 'MuSchG § 17 Kündigungsverbot' in Rudi Müller-Glöge, Christian Rolfs, Inken Gallner and Ingrid Schmidt (eds) *Erfurter Kommentar zum Arbeitsrecht* (26th edn, C. H. Beck 2026) para 21.

[20] Annette Volk, 'MuSchG § 18 Mutterschutzlohn' in Brose, Weth and Volk (n 5) para 2.

Status Ordinance for guidance.[21] The Civil Status Ordinance set out how the civil status register is to be maintained. In s 31, it defines the terms "live birth", "stillbirth" and "miscarriage". A live birth has taken place when after the separation from the womb the child had a heartbeat, the umbilical cord pulsed or the child breathed (Civil Status Ordinance s 31 para 1). A stillbirth has taken place when none of the before mentioned life signs showed, but the foetus separated from the womb after the 24th week or weighed over 500 grams at the time of the separation (Civil Status Ordinance s 31 para 2 sent 1). Every other separation of foetus or embryo[22] and womb is a miscarriage (Civil Status Ordinance s 31 para 2 sent 1). Miscarried children are not registered in the civil status register (Civil Status Ordinance s 31 para 2 sent 2). Labour courts interpreted the term "delivery" in the following as a live birth or stillbirth in the sense of the Civil Status Ordinance.[23]

Maternity Leave before that point was not deemed necessary as there was the possibility to take sick leave. In addition, the need for recovery leave was seen as needless, as the physical changes during the pregnancy are not progressed as far.[24] German employees get up to six weeks of sick leave paid by their employer per year, s 3 Continued Renumeration Act (*Entgeltfortzahlungsgesetz*). After that health insurance pays them for up to 78 weeks, but only 70% of the gross salary, Code of Social Law V (*Fünftes Sozialgesetzbuch*) ss 47, 48.

C. The amendment

I. Changes to the Maternity Protection Act

The first change was made in the first segment. S 2 para 6 now defines the term "delivery" as a live birth or stillbirth. But it also states that 'regulations about deliveries should be applied to miscarriages after the 12th weeks as far as there is not a deviating law.' With this solution the lawmaker reached a compromise between the previous labour court rulings and the need to integrate miscarriages into this maternity protection system.

One could criticize that miscarriages seem to be second class births after this definition.[25] The Constitutional Court's approach to interpret miscarriages as deliveries is not possible

[21] BAG NZA 2006, 994.

[22] In German the term "*Leibesfrucht*" is used to describe the unborn organism in a neutral way. In the English language, two terms are used as a neutral description: "embryo" until the 9th week and "fetus" or "foetus" after that.

[23] ibid.

[24] Katharina Dahm, 'MuSchG § 3 Schutzfristen vor und nach der Entbindung' in Christian Rolfs, Richard Giesen, Miriam Meßling and Peter Udsching (eds), *BeckOK Arbeitsrecht* (79th edn, C.H. Beck 2026) para 38.

[25] Patrick Aligbe, 'MuSchG' in Michael Winkelmüller, Sebastian Felz and Marcus Hussing (eds) *BeckOK Arbeitsschutzrecht* (26th edn, C.H. Beck 2026) para 55.

under this amendment. Miscarriages are now explicitly not deliveries. But one could also say that this is merely a semantic issue. The important thing is that miscarriages are treated equally and receive the same kind of protection. At least after the 12th week.

Two things that s 2 para 6 does not define are the terms "live birth" and "stillbirth". This suggests that the terms should still be interpreted in accordance with the Civil Status Ordinance.[26] While this may be controversial considering the very different subject matters and the Constitutional Court's criticism of this interpretation, it ensures legal consistency.

The big change the amendment makes is the maternity leave in s 3 para 5. It introduces a form of staggered maternity leave for miscarriages after the 12th week:

Week 13 – 16: Two weeks

Week 17 – 19: Six weeks

From week 20: Eight weeks

The distinction between stillbirth and miscarriage does not matter anymore. In the sense of the Civil Status Ordinance a separation of foetus and womb after the 20th week could both be a miscarriage or a stillbirth. Both cases are now protected by eight weeks of maternity leave. The question if miscarriages that occur before the 20th week could be defined as a stillbirth under the "above 500g rule", is not likely of practical relevancy. A foetus in the womb typically weighs up to 250g in the 19th week.

In the same effort, the Bundestag reformed the Maternity Protection and Parental Leave Ordinance (*Verordnung über den Mutterschutz für Beamtinnen des Bundes und die Elternzeit für Beamtinnen und Beamte des Bundes*), which regulates maternity protections for federal civil servants and the Maternity Protection Ordinance for Soldiers (*Verordnung über den Mutterschutz für Soldatinnen*). In that way federal civil servants and soldiers also receive maternity leave after miscarriages.

II. Considerations in the explanatory memoranda

Before the act was passed, there were two draft bills with two different explanatory memoranda: One from the governing parties (SPD, Die Grünen, FDP)[27] and one from an opposition parties (CDU, CSU).[28] The only distinction in the text of the act is the start time of the parental leave. The governing parties proposed maternal leaves after miscarriages after the 14th week, the opposition party after the 12th week. In the end the oppositions

[26] ibid para 58.
[27] BT Drs 20/14241.
[28] BT Drs 20/14321.

draft was passed unanimously into law, after it was favoured by the committee on family affairs. But as the difference between the two drafts lies only in two weeks, both explanatory memoranda can be used to explain the considerations behind the amendment.

Both state that the employees' rights in case of sickness are not fit for the situation of a woman after a miscarriage.[29] The governing parties memorandum specifically says: 'J*ust as pregnancy should not be regarded as an illness, the premature termination of an (advanced) pregnancy should not, as a matter of principle, be treated as an illness*.'[30] They also stress that a change from sick leave to maternity leave would mean a change in process. Women would not be required to actively seek out a doctor who would give them a medical sickness certificate, but would automatically be in maternity leave, as long as they inform their employer.[31]

Both memoranda emphasise that, after the first trimester, a stillbirth or miscarriage have a heavier impact than in the first trimester. After the first trimester a pregnancy is considered "safe", as the chance for a miscarriage shrinks drastically. The connection between mother and child strengthens and the psychological effect of a miscarriage would weigh harder. [32] From the 17th week onward, a miscarriage is typically accompanied by contractions. The woman experiences the miscarriage like active labour.[33]

It is interesting to note that the governing parties mention the estimated number of miscarriages that would be affected by the amendment. They estimated about 5.000 miscarriages per year after the 14th week.[34] As the oppositions draft with the start of maternity leave in the 13th week was passed into law, the numbers should be significantly higher. The oppositions draft stated that there is no reliable data on the number of miscarriages.[35]

III. Open questions

The legislator missed an opportunity to answer several open questions:

[29] ibid 9; BT Drs 20/14241, 2.
[30] BT Drs 20/14241, 2.
[31] BT Drs 20/14321, 9.
[32] ibid.
[33] BT Drs 20/14241, 2.
[34] ibid 11.
[35] BT Drs 20/14321, 10.

1. Undefined terms

First, the terms "live birth" and "stillbirth" are still not defined. The explanatory memoranda stress the abandonment of the Civil Status Ordinance definitions but do not introduce own definitions for those terms. This is a negligible issue, as only in the improbable case that a child would be born dead before the 20th pregnancy week and weigh about 500g, the distinction would become relevant.

Second, the time of the miscarriage has not been defined. The time of the miscarriage is significant for employees, employers and also for the health insurance to determine start and end of the maternal leave. The Federal Labour Court ruled that a miscarriage takes place when the embryo or foetus separates from the womb.[36] The case centred around the question how long the ban on dismissal lasted. An application of this rule to the question when maternity leave after miscarriages begins could lead to unwanted results.

Both explanatory memoranda emphasise the psychological damage a woman experiences after losing a foetus in an advanced stage of pregnancy. It was one of the main objectives to establish maternity leave after miscarriages in the first place. The problem here is that psychological shock might set in earlier than the miscarriage, as defined by the Federal Labour Court. There are cases in which a doctor tells a woman that the pregnancy has ended, but the miscarriage process has not yet set in, a missed miscarriage. The woman has to decide whether she wants to await the natural miscarriage or induce it medically.[37] In both cases, there may be a few days between the message that the foetus is not viable anymore and the actual separation of womb and foetus.

If we agree with the Federal Labour Court's ruling, the pregnant woman would be required to work in those days – or obtain a sickness certificate from their doctor. One objective of the amendment was, however, to abandon the need of obtaining such a certificate and protect women automatically. In such a case that objective would be missed.

A situation in which a woman tells her employer that she "just had a miscarriage" and the employer would need to answer, "But is the foetus already separated from your womb?", is not in the interest of any party. A practical solution would be to interpret the time of the miscarriage as the time of receiving the message instead of the separation. In practice, it will be a matter between employer and employee to determine the start and end of maternal leave. As long as the duration of the maternal leave is not shortened, a small shift in beginning and end seems to be bearable.

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[36] BAG NZA 2014, 722, 724.

[37] Miscarriage Association <https://www.miscarriageassociation.org.uk/information/miscarriage/the-physical-process/> accessed 18 May 2026.

2. Impact on other Maternity Protection Act Regulations

Another open question is: What will happen after the maternity leave is over? Is the duration of the maternity leave long enough or will a sick leave follow in most cases? S 16 para 2 states that a doctor can impose an employment ban after the delivery if she is not capable of working. As a miscarriage after the 12th week should now be treated like a delivery, this regulation could apply to situations after miscarriages.

3. Maternity leave after abortions?

Another issue the Bundestag left untouched is the question whether abortions can be miscarriages or deliveries in the sense of the Maternity Protection Act. This would only concern medically indicated abortions, as other forms of abortion, namely criminally indicated abortions and abortions after a consultation, are only legal until the end of the 12th week, see German Criminal Code s 218a.

The question was subject of a Federal Labour Court ruling before. The court ruled that abortions are only deliveries if the abortion was not executed with the intention of killing the embryo or foetus.[38] In the underlying case, it found that labour was induced without the intention to kill the foetus. The foetus died due to its medical condition. Its death was declared natural.[39]

However, the question is now more urgent than before. Due to the courts' application of the Civil Register Ordinances definition of the term delivery, only abortions that fell under the category stillbirth were even eligible to receive maternity leave under this ruling. But there are way more abortions happening in the miscarriage stage, so the group of affected women broadens.[40]

Some argue that the term delivery should be interpreted to include abortions after the 12th week. The equivalent burden after the loss of a child would require this.[41]

Others see the situation entirely differently in accordance with the Federal Labour Court's 2006 ruling. Abortions that are executed with the intention of killing the foetus should still not be seen as a delivery.[42]

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[38] BAG NZA 2006, 994.

[39] ibid.

[40] Jaqueline Stein, 'Das neue Mutterschaftsrecht – Rechtslage vor und nach der Reform' (2025) 15 NZA 1066, 1068.

[41] ibid 1070; Katharina Dahm, 'MuSchG § 17 Kündigungsverbot' in Rolfs, Giesen, Meßling and Udsching (n 24), para 20; Friederike Malorny, 'MuSchG § 17 Gesetzliches Kündigungsverbot' in Clemens Höpfner, Christian Picker and Felipe Temming (eds) *beck-online.GROSSKOMMENTAR* (C.H. Beck, 1 March 2026) para 61.

[42] Georg Pepping, 'MuSchG § 3 Schutzfristen vor und nach der Entbindung' in Rancke and Pepping (n 5) para 34.

As the legislator missed to regulate the topic of abortions, it will be the courts' task to decide whether abortions in the miscarriage stage are to be treated like deliveries or not. The argument of the equal burden is rather convincing. It should also be taken into consideration that the amendment to the Maternity Protection Act puts the mother even more into the centre of the regulation. Therefore, it should not matter with which intention the foetus separates from her body. The intention does not affect the medical effects of an interrupted pregnancy.[43]

D. Conclusion

The amendment to the Maternity Protection Act is without a doubt a relief for many women. It will be fitting and helpful in the vast majority of cases.

But there are still open issues and questions. One last group that is still not protected are women who have a miscarriage up until the 12th week. The legislators' explanatory memoranda show clearly that this was deliberate decision. Maternal leave was not deemed necessary in those cases. It is at least ironic that Ms. Sagorski would not have profited personally from the amendment she was the public face of.

[43] Stein (n 40) 1070.