

The Patient's Motive as a Key Element of Bioethical Disputes

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Abstract

Bioethical discussions are of particular importance to the legal and social debate. They relate to the themes that are important for people: health, safety, happiness and conscience. One of the most recognizable bioethical topics is the problem of the possibility of using abortion. In many countries, this issue provoked a lot of discussion, led to social protests and influenced the change of law. In Poland, for over 30 years, there has been a discussion about the possibility of terminating pregnancy for women. Many discussions focused on specific options for taking such action. We are talking about cases in which: the woman's life is at risk, pregnancy resulted, for example, as a result of rape, there is a suspicion that the child will develop a serious illness. The last possibility of abortion for many years was the basis for termination of pregnancies by women. The change in Polish law (as a result of a ruling by the Constitutional Tribunal) makes it impossible to have an abortion on the basis of a fetal defect. For many years, it was this context that was the main theme cited by both supporters and opponents of abortion. Both sides of the dispute drew attention to the suffering of both the woman and the developing organism of the child. However, the topic of the patient was rarely mentioned in these discussions. When we talk about the physiological state of pregnancy, who do we mean by the word patient? How many recipients of medical services are there then? Who then has rights as a patient? Is it just a pregnant woman or her unborn child? Who is diagnosed by a doctor? Can the patient's perspective be a common ground for supporters and opponents of abortion? The article will attempt to answer these questions. It will be based on the example of Poland, where the topic of abortion is still a detailed element of social, political and legal discussion.

Keywords: bioethics, right to life, human rights, abortion, fetus and pregnancy.

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INTRODUCTION

On October 22, 2020, the Polish Constitutional Tribunal made one of the most famous decisions regarding the possibility of using abortion in accordance with the law. In Polish law, there has been a ban on taking the life of a conceived child since 1997: the Polish criminal code then introduced penalties for deliberate damage to the body of the fetus. From 1993, however, there were exceptions to this rule. These are cases where the mother's life is at risk, a pregnancy resulted from a crime or the suspicion of a legal defect of the fetus. The aforementioned October ruling eliminated the possibility of abortion due to the suspicion of disability at the prenatal stage of fetal development [1]. In Poland, most of the abortions were performed for this reason. The disability criterion was widely used. It concerned not only the trial of the fetus ending in his death. It also referred to, for example, genetic defects, such as Down syndrome. Social disputes regarding abortion in Poland most often concerned situations in which prenatal diagnosis raised

concerns. The awareness of the occurrence of a fatal defect in the conceived child aroused sad emotions. Certainly, they were related to strong fears that directly concern the anxiety associated with the suffering of a child and a pregnant woman. Similar issues were an important point of the so-called "Chazan affairs". This case was commented on not only in Polish, but also in foreign media. Professor Bogdan Chazan is a gynecologist and obstetrician known in Poland. For many years, as he himself pointed out, he performed abortions. Over time, he stopped taking such actions. He got involved in the Polish life protection movements.

In mid-2015, the public was informed about one of the Professor's activities. He refused to perform an abortion at the hospital where he was the director. He was - as a result of these actions - dismissed from the function of the Director. This issue caused a lot of debate. Some people pointed out that this is discrimination against people who refer to Christian

values. Other people emphasized that the Professor's actions were unethical. The comments emphasized that in the discussed case it was a pregnancy during which a severe and irreversible damage to the deformed fetus was diagnosed. It was alleged that Professor Chazan forced the patient to give birth to a child in such a condition, which caused her great suffering. Professor Bogdan Chazan rejected these accusations. He recalled that the diagnosis was uncertain. He also recalled in the published statement that he had provided support to the patient, offering professional help to her unborn child as well [ii]. There is a key question in this case. Who was Professor Chazan's patient? Was the patient only a woman? Does the fetus have the status of a patient? Do patient rights only apply to people who are already born? Can the patient's perspective be helpful in conducting bioethical discussions? An attempt will be made to answer these questions. It will refer to specific examples.

Contradictions and paradoxes

At the beginning of further reflection, it is worth asking yourself the key question: How many patients was the case of prof. Bohdan Chazan? Often emotional bioethical disputes are essentially about answering a similar question. From the beginning of the mentioned case appearing in the Polish media, it could be noted that it concerns not one, but two patients. It is about a pregnant woman (experiencing a terrible drama) and her unborn child. There were many comments in the media that showed that prof. Chazan allegedly violated the rights of a pregnant patient. The case, however, also concerned the problem of diagnosing the health situation of the fetus, which is a child under the provisions of Polish law [iii]. The woman's rights as a patient were violated in connection with the refusal to provide her with a medical benefit in the form of an abortion. The woman emphasized that, in accordance with Polish law, she can do it in the event of a severe and irreversible defect in the fetus [iv]. For the sake of completeness, it should be noted that prof. Bogdan Chazan has extensively pointed out that the opinions proving that he extended the period of diagnosis of a conceived child are untrue. It was emphasized that a thorough genetic diagnosis was necessary in a center with a higher level of referentiality. It was also added in the press materials that the patient was also refused an abortion in the place indicated here. It is true that the former director of St. The family in Warsaw (Poland) refused to consent to an abortion. At the same time, however, in a letter to the patient, medical perinatal care was proposed. The day after the refusal, the attending physician indicated another hospital that could provide a similar service. The author of the considerations presented in the book describes in more detail the contexts in publications discussed here [v].

From the beginning of the case mentioned here, it could be noted that it concerns two patients: a pregnant woman and her unborn child. There have been

a lot of comments in the media focusing exclusively on the woman. It was emphasized that prof. Chazan violated the rights of a pregnant patient. This activity was to consist in refusing to provide a benefit in the form of an abortion. It was added that termination of pregnancy was perfectly legal. It was preceded by the finding of a severe and irreversible fetal defect. The then Polish Ombudsman for Patients' Rights - Krystyna Barbara Kozłowska - pointed out in that case that the patient's right to information and access to medical records had been violated. The National Health Fund and the National Consultant in the field of Gynecology and Obstetrics, as well as the Ministry of Health added that the services for which the hospital had signed a contract had not been provided: the hospital was headed by prof. Chazan. It cannot be forgotten that we are talking here about a special health benefit. Its effect is a sudden end to the life of the developing organism. This organism was previously assessed and diagnosed by a medical professional (doctor). Therefore, it should be defined as a patient [vi]. It can be concluded that neither in medicine nor in medical law we have another situation that is equally paradoxical. The office responsible for financing medical services contracts the termination of pregnancy as a health service (affecting health), which ends with the death of the developing organism. It is not important at this point what we will call this organism. Rationally and objectively, we know from a medical evaluation that: we are talking about a growing organism, separate from that of a woman, which leaves the mother's organism after some time. The aborted baby / fetus / embryo will not be healthier, however. For many years, there was a paradoxical phenomenon in Polish law (until October 22, 2020). Pursuant to Art. 4a sec. 1 point 2

The act on family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy was possible when "prenatal tests or other medical conditions indicate a high probability of a severe and irreversible fetal impairment or an incurable life-threatening disease" [vii]. It is worth showing here a diagram of such a paradoxical action: the doctor first diagnoses the disease in a human fetus, states that it is probably the type of disorder that will lead to the death of the conceived child, the death may occur a moment after the child is born. The doctor, on the basis of this diagnosis, then decides to end the life of the conceived child, as the condition of the disease endangers the health of the unborn patient. As it turns out, the internal contradiction of this situation can be seen in the judgments of Polish courts. The Court of Appeal in Katowice emphasized in one of the rulings that: "the subject of protection under Art. 152 of the Criminal Code is the life of a child in the prenatal phase from the moment of conception, and termination of pregnancy is his killing" [viii].

Law and medicine

Analyzing the emerging context of the "unborn patient" it is worth recalling the situation that took place in the United States two decades ago. It concerns Samuel Armas. He was operated on in the 21st week of his life, when his mother was pregnant with him. His story concerns a case where doctors advised his parents to have an abortion. In the prenatal stage of his life, he was diagnosed with spina bifida. Such a defect could be an indication for an abortion not only in the USA, but also in Poland (until 2020). The child's parents did not consent to the termination of the pregnancy. With the help of doctors from the Vanderbilt University Medical Center in Nashville, they decided to take an innovative action. The child's mother and the conceived child underwent surgery. This treatment went down in medical history. During it, little Samuel (developing in my mother's body) grabbed the doctor's finger. He is now an adult man and despite some limitations (sometimes he has to use a wheelchair to cover longer distances) he lives and functions like his peers [ix]. In most cases, it concerns a child who has not undergone an abortion at the Hospital. St. Families (led by Prof. B. Chazan), the subject of patient rights was raised by Polish officials mainly from the perspective of a woman / mother. As it turns out, there are clinics specializing in the so-called Fetal surgery forces us to ask the question: Is it true that we only deal with the patient's rights after birth? On what medical and legal basis, therefore, in Poland - and in many other countries - such operations are performed directly in the mothers' wombs?

Analyzing the Polish Act on Patients' Rights and the Patient's Rights Ombudsman and the definition contained therein, we learn that the word patient defines "a person applying for health services or using health services provided by an entity providing health services or a person practicing a medical profession" [x]. So let's consider: Is there a practical possibility for a physician examining a pregnant woman to focus solely on her as a patient? Who do we see on the ultrasound screen? Do we use such devices to examine only the female organism, or also (or maybe in particular) her child? [xi]. As it was noted in the information messages relating to the case of prof. Chazana:, "The Ombudsman for Patients' Rights, Krystyna Barbara Kozłowska informed (...) that the procedure checks whether the woman's child was provided with the necessary health services after birth" [xii]. At this point, it is worth asking the question: What medical services was the child guaranteed before birth? Were they consistent with the current state of medical knowledge? Why has no public attention been paid to the patient's right to respect for dignity when we know that he is likely to die in the first moments of his life? The Polish Constitution emphasizes that the state should pay special attention to the provision of health services to pregnant women, children and people with disabilities [xiii]. In turn, the Polish Act on the Ombudsman for Children provides a legal definition of a child. It is a

person from the moment of conception until reaching the age of majority [xiv]. On what basis - medical and legal - conceived children are deprived of their rights as patients, since even in vitro fertilization specialists indicate that in clinics they deal not only with reproductive cells and embryos, but also with "very small patients"? [xv]. These questions point to significant contradictions that we see when analyzing the practice of doctors involved in fetal surgery. In the literature on the subject, there is still a discussion about the legitimacy of administering painkillers in the situation of surgical intervention on the fetus [xvi].

Medicine and values

The emerging questions in the proposed considerations are directly related to the perceived contradictions. On the one hand, they relate to the dynamic progress of medicine. On the other hand, it refers to the unprecedented acceptance of abortion policies, which - in most cases - are not based on medical discoveries, but are based on sociocultural trends. Staying in the area of discussion that took place in Poland on the occasion of the "Prof. Chazan case", it is worth paying attention to an interesting case in which the fetus was fully recognized as a patient. This action was associated with the use of innovative medical achievements.

First, it is worth noting that the ethical regulations regarding Polish doctors clearly indicate that the fetus is a patient for every medic. As indicated in the Polish Code of Medical Ethics: "By taking medical measures in a pregnant woman, the doctor is also responsible for the health and life of her child. Therefore, it is the doctor's duty to try to preserve the health and life of the child also before its birth" [xvii]. This provision applies to all Polish doctors. The two sentences indicated in the quote perfectly illustrate the special nature of the situation that took place in Poland in 2019. In the Polish Mother's Health Center - one of the best pediatric centers in Poland - a child was born, whose mother had been in a coma for many weeks. Many specialists fought for the lives of both the pregnant woman and her unborn child. The delivery of this child was accelerated due to the situation described [xviii]. The case of Holi Gorweat from the USA shows a slightly different - although similar - context of similarly dramatic situations. During her pregnancy, this woman learned from doctors that the development of one of the twins she expected was not going well. One of the children, the doctors found, was "stealing" food from his brother. The website "Poland and the World" reported then: "Doctor Martin Walker, when both twins were in the womb, performed an operation on the children's blood vessels, which was to make it impossible to collect food. The complications resulted in a delivery, but the doctors managed to keep the second smaller brother in the womb" [xix]. The examples of having a baby by a pregnant woman are not numerous. As it turns out, these are not numerous

cases. According to various estimates, there are over thirty such situations. In 2010, among others the media reported on the case of an Italian woman: "a Sri Lankan immigrant was in a state of irreversible coma. The cause was severe meningitis. At the beginning of November, she was taken to a hospital in Milan with a high fever, and since then she was kept alive for almost two months. All this so that the fetus could develop. When in recent days a constant drop in pressure in the woman's body was noticed, doctors urgently performed a caesarean section. After its completion, the woman was disconnected from the machines." In 2009, in turn, the child was given birth, the mother of which had been in a coma for five months. It took place at the University Clinic of Erlangen. The story that took place in 1996 aroused the greatest surprise. We are talking about the story of a 29-year-old American woman who was in a coma for ten years as a result of a car accident. "When doctors from a nursing home in Brighton noticed their patient had a growing belly, they thought she was suffering from some gastric problems. Research showed that the woman was expecting a baby. Although it was a result of rape, the patient's parents decided to continue the pregnancy. As a result, nine weeks before her due date, she gave birth to a boy. This is the first and last known time that a woman in a coma became pregnant and gave birth to a child" [xx]. When reading similar information, you may experience two reactions. In the first place, you can come to the conclusion that medicine is innovative, extraordinary and beautiful. Miracles and inexplicable phenomena can happen in hospitals. On the other hand, however, one may wonder: Why are such difficult and specialized activities undertaken? Why should society save a human fetus, since in many countries - according to the law - it is possible to end the life of the fetus? What is the purpose of involving a lot of money and numerous people to save someone who for some legal and political decision-makers "is not human"? [xxi].

Criticism arises when it is pointed out in media, political and legal discussions that the unborn child is a patient [xxii]. A similar situation occurred when in 2018 The Institute for Legal Culture *Ordo iurii* proposed a draft amendment to the Act on Patients' Rights and Patient's Rights Ombudsman. The project focuses on, among others the need to change the definition of "patient". A new wording was suggested: patient - a person applying for health services or using health services, also in the prenatal period, provided by an entity providing health services or a person practicing a medical profession" [xxiii]. Some left-wing and liberal-oriented media point out that recognizing a fetus as a patient is introducing the prohibition of abortion through the back door. It adds that adopting such a position diminishes the role of a woman who becomes a passive participant in medical procedures. Publishers of similar theses add that the fetus is only "part of her body." The situation that we had the opportunity to see in the described example from the

Institute of Polish Mothers shows a completely different reality. We see medicine based on values and respect for human life. Such medicine is a science that can be defined as both a beautiful and professional discipline. Carrying out a pregnancy in an unconscious woman is an extremely difficult task. Polish doctors in an interview on this case stated that they were "skeptical", not fully believing in success. As prof. Krzysztof Szaflik, head of the medical team: "The fight for the mother's life required many serious treatments and medications, which were not always beneficial for the child" [xxiv]. A woman in a similar difficult situation may develop vein clots as well as infections. Doctors started fighting. At no stage was it indicated that the child was more important. On the other hand, no one put the mother first. Doctors fought for the lives of two patients.

An Attempt To Summarize

Joining together the case of prof. Chazan and the example of saving an unborn child of a woman in a coma, we can conclude that we are observing the destruction of the beautiful idea of patient rights. Failure to take into account the rights of the unborn child as a recipient of medical services in the context of abortion is incomprehensible and completely contrary to the spirit of the Act on Patients' Rights. This legal act was to be a reference point in Poland for activities in which the patient is in a special and difficult health situation. Patients' rights must always refer to the current state of medical knowledge. They must take into account the dynamics and development of medicine. Underestimating the rights of the unborn patient when performing an abortion is not only a paradox, but it is also a complete omission of the dynamically developing fetal surgery, the effect of which we have seen in the example of the Polish Mother Institute [xxv]. When we analyze in retrospect the events related to the case of prof. Bogdan Chazan, we can come to the conclusion that the numerous inspections that were undertaken in this case completely omitted several important elements. First of all, the gynecologist and obstetrician mentioned here methodically emphasized in subsequent statements that a man before birth is a patient with rights. He emphasized the need to protect these rights. Secondly, the doctor also clearly stated that termination of pregnancy - contrary to the recommendations of the Polish National Health Funds - is not a health service. In press and book publications, the doctor emphasized that abortion is always a drama for a woman. He based this position on his own observations. During the abortion procedure, most often the woman is alone, without the support of others. Abortion becomes - in his opinion - an act that destroys not only the dignity of the conceived child / patient, but also completely contradicts the tradition, history and medical ethics. Thirdly, the doctor emphasized that in the drama of diagnosing a severe defect in a conceived child, he could be cared for and cared for. It is possible to indicate specific places to provide support to the

mother. Such actions were taken by prof. Chazan, which, paradoxically, was considered a violation of the rights of a pregnant patient [^{xxvi}].

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