

## **In vitro fertilization as a challenge for rational discussion: ethical and socio-legal contexts.**

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### **Abstract**

*What is infertility? It is primarily a condition in which a person (or persons) cannot fulfill their desire to have a child. This desire is of particular importance for women and men. It is part of a natural desire to build special family relationships. Infertility is not a homogeneous disease. It may result from biological, psychological and even social reasons. Solving the problem of infertility must also address these areas. The appearance of the possibility of using in vitro fertilization in the second decade of the 20th century raised many hopes. Many marriages / couples became parents thanks to the in vitro procedure. Scientists are increasingly able to solve the problems related to infertility. These actions raise numerous questions. Does IVF cure people of experienced infertility? Perhaps this is a method of avoiding infertility? Is the IVF discussion still based on rational knowledge? Perhaps in this context, emotions are the main dominant factor in social, legal and medical discussions?*

*The proposed article will attempt to answer the outlined questions. It will mainly refer to the discussion that has been taking place in Poland over the last two decades, in which for several years attempts have been made to regulate the principles of applying in vitro fertilization procedures.*

**Keywords:** *infertility, medical law, bioethics, in vitro medical law*

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### **I. Introductory remarks**

In 2008, had its world premiere book entitled "Without my permission". The author of this publication is by Jodi Picoult. This book was about the story of a child named Anna Fitzgerald. The girl was conceived using the method of in vitro fertilization. This publication tells the story of the lawsuit. The girl recalls, when she was thirteen years old, she filed an application against her parents, the aim of which was to formally become independent. The book notes that Anna was conceived as the so-called "Child's medicine." Anna's parents decided to use the in vitro fertilization procedure. Their goal was to obtain biological material that could help with the oncological treatment of their older daughter, Kate. Jodi Picoult presented the scenario of a court case in which Anna filed a formal motion. The girl demanded that her parents give her full formal and legal powers to decide about their health. In the lawsuit, the young person indicated that she did not agree that her body would continue to be used as a healing material intended to support her older sister's surgery.<sup>1</sup> The book "Without My Permission" enjoyed great interest in the reason for the film it was made of. The comments and reflections on the book and the film directly related to several bioethical issues. The dilemmas related to the increasing use of procedures with the use of in vitro techniques were pointed out. There were doubts about the intention of the parents to act. On the one hand, they wanted to help their sick daughter. From the other perspective, they treated the child they created as an element of the therapeutic process in an objective manner.<sup>2</sup>

The emergence of a discussion on innovative infertility treatments is always associated with the emergence of strong emotions. We are inevitably talking about humans suffering. The desire to have a child is not just a selfish wish. It is often one of the most important threads in a person's life, in particular a woman who wants to become a mother. Emotions inevitably joined the social, scientific and political debate. At the end of the first decade of the 20th century, such a debate began in Poland. In the following years, there were bills aimed at regulating the issue of in vitro fertilization. Various legislative solutions have been proposed in several drafts.<sup>3</sup> On the one hand, there were proposals for complete freedom in using the discussed medical techniques. On the other hand, the necessity to financially support infertile couples / marriages was indicated. There was also a third suggestion. There have been proposals to ban the use of a similar technique.<sup>4</sup> For many years, there has been no compromise regarding the possibility of in vitro use. Poland is a country with strong Catholic traditions. There was strong criticism of this method on the part of the Catholic Church.<sup>5</sup> Attention

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was paid not only to the unethical nature of activities related to the artificial vocation of a human being. The dangers related to the lack of reliable knowledge on the effects of in vitro use were also pointed out.<sup>6</sup>

Ultimately, the act authorizing the use of in vitro fertilization in Poland entered into force in 2015. This act - in the first years of its existence - introduced free services in the field of artificial insemination. The rules for carrying out procedures, the method of embryo storage, conditions for the organization of in vitro clinics, and the rules for storing human reproductive cells were regulated.<sup>7</sup> The topic of in vitro fertilization still arouses interest in Poland. Most Poles (about 60%) accept the use of similar techniques, paying attention to the need for public funding.

At the same time, in the country of John Paul II, a significant group of people do not accept a similar method of solving the problem of infertility. The topic of in vitro returns during social and political debates. Will we find more rational arguments or rather emotional statements in similar discussions? How are the positions of politicians regarding this method constructed? Can legal regulations regulate complex biological processes?

The proposed article will attempt to answer the indicated questions. It will refer to the situation in Poland, where in the last dozen or so years the topic of IVF has evoked particular emotions.

### **Political-medical debates,**

Before the Polish act on infertility treatment was adopted in 2015, there was a debate in this country related to the presidential election. One of the most important elements of these discussions was the topic of in vitro fertilization. Some candidates were in favor of free access to similar infertility treatment techniques. Others have criticized this solution. The biggest dispute took place between the candidates who fought in the second round of the elections. We are talking here about Bronisław Komorowski and Andrzej Duda. Interestingly, there were even election spots showing the candidates' statements about IVF. Their author was the election staff of Bronisław Komorowski. During the presidential campaign, representatives of the then president of Poland tried to point out that his opponent presented unethical views on people struggling with the problem of infertility. When successive television aired an election spot in which the quoted statements by Andrzej Duda on the method of in vitro fertilization, some people may have experienced a surprise. The form proposed in the video could cause consternation. The spot of the election staff of the then president, Bronisław Komorowski, presented in the film a nervous woman who - watching TV and listening to the radio - heard the statements of the candidate of the Law and Justice party for the office of the President. Andrzej Duda states, among other things, that as a believer in God, he is against methods of in vitro fertilization. He added that this is an artificial method that is largely a fraud. The short spot was full of images with highly emotional content: you could see a card showing a small child with his parents, the camera showed a smile of a young girl, and the moment of hugging the mother, and you could also see a child playing in the playground. The person who gave the voice in the above-mentioned spot indicated that Andrzej Duda supported the bill introducing penalties for the use of the in vitro method. Bronisław Komorowski also recalled similar information.

In the IVF debate, images of happy families enjoying the presence of children have always been presented. Families suffering from infertility are also shown.<sup>9</sup> We know examples of statements made by people who expect the state to help them solve their problems.<sup>10</sup> This is understandable. Infertility is a drama with both somatic and psychological dimensions. Couples often try to conceive for many years, having previously undergone a long path of diagnosis and therapy.<sup>11</sup> In the above-mentioned election spot - indicating that the child was conceived artificially - several important elements were omitted.

First of all, before pregnancy is diagnosed - in a similar process - a woman (but not only) goes through procedures that cause suffering, especially psychological suffering, associated with strong uncertainty. In one of the interviews for "Newsweek", Polish deputy Miss Bogna Sworowska, who took part in the IVF program, noted that: „The hormones made me very weepy, weak, with headaches and nausea. On top of that, there was the usual physical pain (...) There were times when I did not feel well mentally, I had fears and moments of doubt. On the one hand, I was waiting for the embryo implantation, and on the other hand, I felt fear. I had a lot of questions in my head: what will it be like when the procedure is successful? " <sup>12</sup> This type of emotional tension is also associated with the - still - low effectiveness of IVF treatments. In vitro clinics indicate that the onset of pregnancy - depending on the patient's age - affects an average of 30-50% of women. As stated on the website of one of the clinics offering infertility treatment with the use of assisted reproductive techniques: "Women's fertility decreases with age, not only does the number of eggs decrease, but also their quality. The chances of successful in vitro fertilization with your own eggs are still high and increase with the second or third procedure. " Thus, it can be seen that the late efforts are made to conceive a child, the more difficult this action is. One of the clinics in this place refers to women over 35 years of age, and thus currently the majority of people using similar methods. IVF is not a "first-line method". It is a therapeutic activity undertaken when successive failures occur.<sup>13</sup> It is difficult to disagree with Andrzej Duda, who criticizes the in vitro method during the presidential campaign. The vision of assisted reproductive methods presented in the media has not much to do with the medical truth. It should be noted that these measures will not cure infertility as a pathological condition. In some cases (the success depends on

the number of treatments and the age of the patient) IVF leads to conception, avoiding the fundamental clinical problem.

### **In vitro legal problems and challenges**

Supporters and opponents of assisted reproductive methods in Poland had one area in common: they all agreed that it was necessary to pass a law regulating the use of the indicated medical technique. Ultimately, in 2015 the Act on the treatment of infertility has been passed. During the meeting with journalists on July 22, 2015, - mentioned several times - the President of Poland, Bronisław Komorowski, pointed out that the act on infertility treatment he signed was an important legal compromise. It concerns extremely difficult world view issues. Was the President right?<sup>14</sup> The signing of the aforementioned act ended the many years of legislative work aimed at regulating the techniques of assisted reproduction in Poland (the first successful procedure was carried out in this country in 1986). Until 2016 the use of this method was financed by the state.<sup>15</sup> Any male and female couple who had been trying to conceive a child for at least a year could use them. However, is the enacted law really a combination of the most important reasons presented by the opponents of the "on glass" method?

Undoubtedly, enthusiasts and critics of IVF sought to end, as President Komorowski called it, "free American" in the use of this technique in Poland. It is worth noting that representatives of two groups, from the moment of the adoption of the Act on Infertility Treatment, pointed to serious gaps in this document. This act does not apply to the broadly understood methods of infertility treatment, but focuses mainly on the in vitro technique. It was noticed by the Polish Gynecological Society in 2014. A number of general provisions were added in subsequent bills to clarify what are the other current methods of treating infertility. The vast majority of this act, however, concerns only the in vitro method.<sup>16</sup>

In the act signed by President Komorowski, some circles pointed out that the provisions were inconsistent with the Polish constitution. Examples were given such as:

- Use of embryos and reproductive cells donated by anonymous donors (the child's right to identity and protection of health)
- Applying for a child through partnerships (the child's right to be brought up in a family)
- Destruction of embryos that are incapable of further development on the basis of an arbitrary decision of the embryologist (the right of the child to life).

Such comments were made not only by conservative critics of IVF, but also by circles fighting for the legalization of this method (eg "Nasz Stocian" Association), the Minister of Labor and Social Policy, the Supreme Court and the Senate Health Committee. This commission twice requested the rejection of the bill proposed by the government in its entirety.<sup>17</sup> Observing the persistent efforts to adopt similar regulations for many months, one can come to the conclusion that the "In Vitro Act" (presented in the media in this way) is the implementation of a liberal approach to the issue of in vitro fertilization. It is also obvious that thanks to the introduced provisions for some marriages and couples, it will be possible to start trying to conceive a child. However, there are a few concerns here.

The adoption of this law in this form may stop research focused on finding out the causes of infertility. Unfortunately, therapeutic actions may be stopped for diseases that are avoided in vitro. According to gynecologists and andrologists dealing with these methods, we know that their goal is not to eliminate "the causes of the lack of a child", but to "bring about the appearance of that child". There may be a situation in the long run that some of the research developing medicine will be discontinued. These actions directly relate to the individual states of not only a woman, but also a man. We are talking about personalized medicine and, at the same time, about precise diagnostics that locate the cause of the reproductive problem. Polish biotechnologist, prof. Tadeusz Pietrucha constructed in this context the concept of causal treatment of infertility. It is implemented, among others on the premises of the Code Clinic.<sup>18</sup> The medical perspective (in connection with the development of in vitro techniques) also prompts attention to the fact that there is an increasing problem with examining the patient for the so-called family intelligence. The anonymity of the donors of embryos and / or reproductive cells makes it impossible to check whether there have been health problems such as the patient's in previous generations. There are also psychological problems in this context. The child will not know the biological data of his parents for the rest of his life (they are guaranteed anonymity).<sup>19</sup> The legal problems of the subject mentioned here have already pointed out the courts in Germany. They pointed out that the right of the child to know about the origin of himself / herself is more important than the right of the donor to remain anonymous.<sup>20</sup>

Thus, the thesis expressed by President Bronisław Komorowski concerning the political and axiological compromise is unfortunately incorrect. In the act adopted in 2015, there are no solutions that would promote circles that criticize the way in which the new law was enacted in Poland. From a legislative perspective, it is particularly disturbing and surprising to maintain a provision that introduces selective penalties for the destruction of embryos. This provision applies only to those embryos capable of further development.<sup>21</sup> Regardless of the individual attitude to the in vitro method, it must be noted that such a legal solution de facto legalizes the elimination of human beings from the moment of their conception. We are talking about human beings whose developmental potential is arbitrarily judged by one

person. From the perspective of Polish law, we call "every human being from the moment of conception" children. It is an action leading to the so-called eugenization of law.<sup>22</sup>

### **Between medicine and emotions,**

At the beginning of 2018, the world media reported that Scottish and American researchers are getting closer to discovering the secret of the female egg. As indicated in the cables, an international team of researchers presented the results of many years of research in the journal *Molecular Human Reproduction*. It was pointed out that it is possible to grow a female reproductive cell from the fallopian tube collected from a woman. The research work lasted 20 years. Prof. Evelyn Telfer from the University of Edinburgh emphasized that the emergence of the possibility of growing an egg allows us to better understand the mechanism of its functioning. As the researcher emphasized: "It is very important because it allows us to learn about the development of the human egg cell at a nearly stage, which we did not know much about so far. This research will help us unravel this mystery." In Poland, opinions related to this research could be found: "The ova obtained in this way provide additional possibilities in the treatment of infertility. Katarzyna has just become Anastasia's mother and believes that this method can greatly increase a woman's chance of getting pregnant. - This is a good direction in helping women who would like to enlarge their family - she says.<sup>23</sup> When familiarizing yourself with this type of media material, it is becoming more and more difficult to avoid being surprised. The message clearly indicates that the new method, firstly, relates to the treatment of infertility, and secondly, it is the following, significant action increasing the effectiveness of the in vitro method. However, it is worth considering: How can the way a female reproductive cell is created affect the fertility treatment process? Is there any connection between the method of oocyte production and the greater effect of assisted reproductive technology? - we do not know, the material does not explain it. Secondly, we may come to the conclusion that the proponents of the IVF technique contradict themselves. There is a lot of information in the mainstream media indicating that IVF is the most effective method of infertility treatment. At the same time, it is indicated that there is a tone of a technique that needs improvement. Even in the common media material it was emphasized that "If (BK research) is successful, it will increase the effectiveness of in vitro and help in the treatment of infertility." In another section, however, it explicitly added "It is not known how effective this method is for humans. Only 10 percent of the cells matured, none were fertilized. - This is the first step, a great step, but there is still a long way to go to clinical application. We have to say it clearly and optimize our process - explains prof. Evelyn Telfer. A lot of analysis is needed to be absolutely sure that this method is safe." (see. A. Czerwinska).

Looking at the way of presenting such materials, one can come to the conclusion that it is less and less important what will actually be shown in them. The most important is the presented "super method", which is to bring joy to the faces of expectant children of future parents. From the medical and ethical point of view, nothing new can be noticed here. It is worth noting that already in mid-May 2013, researchers at Oregon Health and Science University reported that they managed to grow a human embryo to the blastocyst stage. By doing this, they did not so much artificially create a human reproductive cell, but cloned a human.<sup>24</sup> Raising a female egg is an activity very similar to the discovery of scientists from Oregon. Some researchers have chosen a path in which they even want to prove that a human is not needed to conceive another human being. A woman can only be a biological incubator. With time, even such an action may turn out to be unnecessary. For sometime, ideas of creating the so-called artificial uteri. They can serve as a place of rescue for premature babies. Overtime, ideas may also emerge in which the child's development takes place outside the mother's body, in such devices.<sup>25</sup> We can already see flashes of similar ideas clearly. The editorial office of *Business Insider* reported in April 2017 that scientists in Florida<sup>26</sup> had been keeping sheep fetuses alive for four weeks. For this purpose, artificial uteri were used. Similar - and right - therapeutic activities can be extended overtime to reproductive services. Speaking on the above-mentioned topic, prof. Jan Hartman (a Polish bioethicist expressing liberal ethical views) stated that new discoveries would contribute to a cultural and moral change.

This is, of course, just a futurological perspective. However, let us consider two doubts that arise here. Why are reproductive procedures entering human life with new proposals? It is also worth thinking: How, in the context of the problem of human conception, has the world changed in just a few decades?

First of all, answering the second question, one should remember the important way of renaming reproductive procedures. First, there was talk in the media of "test-tube babies." Then attention was drawn to the method of "artificial insemination". In the following years, "assisted reproduction" appeared. Now attention is drawn to the "infertility treatment method". This issue is all the more interesting as gynecologists and obstetricians themselves - dealing with the subject of human fertility - point out that climbing reproductive techniques are not used to treat infertility. As a clinical condition, this infertility does not disappear. Similar opinions - although appreciating the techniques of assisted reproduction - appeared during social discussions regarding the draft act on the treatment of infertility.<sup>27</sup> It seems that these changes are not accidental. Here we come to the answers to the first of the given questions.

Dialogue from the movie "Trial Day" directed by Antoine, a film which helps us in this action. In one of the scenes the policeman Alonzo, played by Denzel Washington, asked his apprentice: "What do you think, what rules the world?" The young policeman did not know the answer. His older colleague then said: "The world is ruled by laughter and crying." This sentence accurately shows the structure of debates on in vitro technique and infertility. Scientific data, statistics, research evidence, legal documents, all these elements are no longer relevant at the moment the person suffering from infertility appears.<sup>28</sup> The most important goal is to reduce or eliminate the danger of the potential sadness that a woman experiences most often. We are fighting here not so much for the birth of a child, but for the smile on the faces of the mother and father, who sometimes appear in such discussions.<sup>29</sup>

The pain of not having a baby is an indisputable fact. It is difficult to diminish and downplay it. It is also probably difficult for people who are parents to fully understand the difficult situation and the emotional state of people who want to experience the joy of being a mom or dad. However, this is not part of a rational scientific discussion. It is emotion-based medicine, not evidence-based medicine. When we add emotional rhetoric to the discussion of the biological, legal and social aspects of IVF application, a serious problem immediately arises. In such a situation we come to explaining the global moral dilemma on the basis of individual cases. Particular and specific situations, an exceptional case, an individual dimension and a unique difficulty become the key signposts of ethical reflection. We rely on an individual tail here. This practice is clearly visible on the example of in vitro. Along with the scientific and rational debate on the medical issues of assisted reproduction, there are the tears of a woman who wants to become a mother. She has been trying to have a child with her husband for years and is not very successful. Suddenly there is hope, a concrete chance to solve a boiling problem. Costs are becoming less and less important. Scientific arguments, including legal and ethical ones, cannot compete with suffering that must be eliminated. This type of subjective moral adjudication can explain any objective evil. By adopting subjective perspectives, the condition that eliminates the experienced suffering is good.<sup>30</sup>

### **Final reflections**

It is worth summarizing the main threads of the proposed reflections here. The subject of "punishment for IVF" presented in the election spot and statements - mainly by supporters of the then Polish President Bronisław Komorowski - was unfortunately manipulated and taken out of context. The material highlights Art. 160a of the draft of the new Polish Penal Code. According to its content, the person who: "leads to the fertilization of the human egg outside the mother's body" was to be subject to criminal liability up to three years.<sup>31</sup> It is worth noting that in the election spot under discussion, attention was drawn to the bill, the originator of which in 2009 was the senator of the Civic Platform party, Jan Filip Libicki. We are talking here about the political grouping from which President Bronisław Komorowski mentioned above hailed. Interestingly, Andrzej Duda did not support this bill. In 2012, the parliamentary club from which Andrzej Duda indicated here originated, submitted a draft law on the protection of the human genome and the human embryo and on amending certain other laws.<sup>32</sup> It introduced penalties for the use of in vitro fertilization methods, but they did not apply to women or men (undergoing in vitro procedures), but to medical experts who undertook such activities. The proposal mentioned here prohibits interventions of an assisted reproductive nature. At the same time, it was allowed - with the court's consent - to transfer to the woman's body embryos that had been cryopreserved in in vitro clinics. It is interesting that in the 2015 election spot it was not mentioned that the project of the group which Bronisław Komorowski came from also introduced penalties in the discussed context. The punishment was to appear in the case of, for example, illegal removal of embryos and the destruction of human embryos.

The example of an election spot shown here refers very strongly to the situation that we can observe in bioethical discussion today. Emotions are the most important. On the one hand, the dynamic development of science is shown. On the other hand, it is increasingly subordinated to changing human emotions. This approach is getting harder and harder to dismiss. Empathetic and sensitive people are used as role models. Where will this approach lead us? Should succumbing to emotions related to the difficult topic of infertility be the basis for building legal acts? Perhaps the key to such discussions is always human dignity, and also evidence-based medicine, not emotional medicine.

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