POST MORTEM INSEMINATION IN THE CONTEXT OF THE PRINCIPLE OF THE GOOD OF THE CHILD

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Due to the technological progress taking place, the problem of post mortem insemination is becoming more and more popular [1, p. 27-46; 2, p. 71-81; 3, p. 811-824; 4; 5, p. 165-195]. Under current Polish law, there are no provisions that would allow for the possibility of post mortem insemination, but it cannot be clearly stated that such a procedure is prohibited. As M. Marszelewski rightly observes, since the Polish legislator is silent in this matter, it should be recognized that "this is unbanned and unpardoned" [2, p. 76]. Undoubtedly, allowing the possibility of insemination post mortem raises a number of problems not only of ethical but also legal nature [1, p. 30]. Among them, the most important seems to be whether or not allowing the possibility of using this type of insemination would violate the basic principle of family law, subject to constitutional protection, which is the principle of the good of the child. As representatives of the doctrine rightly point out, "in the system of family law we have, the central figure (...) is a child. Central in the sense that in shaping family relations his interest is the primary factor" [6, p. 41].

From the point of view of the child, the following issues seem to be important and at the same time difficult to decide on the basis of the analyzed matter: determining whether the child is married or extramarital, determining the actual paternity of the child, as well as the child's right to inherit from the deceased parent [3, p. 815-816; 4].

It is not an easy task to opt for the admissibility or inadmissibility of post mortem insemination. On the one hand, one should agree with those representatives of the doctrine who claim that this type of insemination harms the best interests of the child, since the child is deprived of one of the parents from the very beginning of his existence [1, p. 30; 4]. On the other hand, other representatives of the doctrine rightly point out that today the well-being of a child is very often much more threatened by a number of other circumstances that are in no way related to medically assisted reproduction, e.g. by abandoning a child, alcohol abuse by parent, separation of parents [2, p. 75; 7, p. 277]. In addition, it should be noted that children who are born through the use of medically assisted development methods are children awaited, often for a long time, by their parents. Making a decision as to post mortem insemination is undoubtedly associated with the desire to have children, which is not always the case when natural insemination occurs.

According to M. Marszelewski, "undoubtedly, the birth of a child is a highly valued good and there may be cases in which the acceptability of the described reproductive method will be justified. (...) It seems that the law as a system guaranteeing minimum standards of human behavior could allow post mortem insemination. The decision whether to use this right should belong to people so that, in accordance with their system of values and moral evaluation of such behavior, they can make the right decision for themselves" [2, 81].

Due to the limited volume framework of the study, I have indicated in it only selected problems related to the title problems, of which there are many more.

REFERENCES

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2. M. Marszelewski, Zapłodnienie post mortem nasieniem zmarłego męża jako przykład medycznie wspomaganej prokreacji, „Law Review" vol. 2, 2013.

3. Tworkowska-Baraniuk, Sztuczna inseminacja nasieniem zmarłego dawcy – wątpliwości natury prawnej i etycznej, [in:] Non omnis moriar. Osobiste i majątkowe aspekty prawne śmierci człowieka. Zagadnienia wybrane, ed. J. Gołaczyński, J. Mazurkiewicz, J. Turłukowski, D. Karkut, Wrocław 2015.

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5. M. Marszelewski, Zapłodnienie post mortem w wybranych krajach common law, „Studia Iuridica Toruniensia" vol. XVI.

6. J. Ignatowicz, Prawo rodzinne, Warszawa 2001, p. 41.

7. W. Lang, Wstępna charakterystyka prawnych aspektów medycznie wspomaganej prokreacji, [in:] Prawne problemy ludzkiej prokreacji, ed. W. Lang, Toruń 2002.