Chapter 7

Poland: Legal Perspective of Human Assisted Reproductive Technologies

Marek Andrzejewski

Abstract

The study aims to present Polish legislation concerning assisted reproductive technologies (ART). The author discusses several legal documents, including relevant provisions of the Constitution of the Republic of Poland, the Infertility Treatment Act, and the Family and Guardianship Code. All essential issues addressed in these documents are thoroughly analysed, such as the financing and organisation of ART, potential penalisation, and their impact on family law. The author examines these issues within the context of philosophical and legal debates, focusing on delicate topics such as the legal status of embryos, the rights of individuals seeking ART, and the status of donors of reproductive cells and embryos. The author believes there is no inherent right to reproduce as a human right, contrary to neo-Marxist claims. Therefore, the state is not obligated to fulfil the reproductive expectations of various social groups. Unfortunately, Polish legislators appear influenced by this perspective, as reflected in current Polish laws, notably through the insufficient legal protection of children in the prenatal state. Polish legal literature emphasises this concern, and the author aligns with this perspective.

Keywords: bioethics, zygote/embryos, eugenics, ART (assisted reproductive technologies), infertility, human rights

Marek Andrzejewski (2026) 'Poland: Legal Perspective of Human Assisted Reproductive Technologies'. In: Aleksandra Korać Graovac (ed.) *The Best Interests of the Child Conceived by ART – Law in Book and Law in Action*, pp. 229–270. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2026.akgbiccartlbla_7

1. Human-Assisted Reproductive Technology – Policy Documents

The phenomenon of artificially assisted reproduction stems from the naturally unsatisfied desire to have a child, as well as from medical developments and technological advances that create the possibility of satisfying this desire. The issue generates both fundamental ethical disputes over the permissibility of such activities, and several specific problems, such as the permissibility of particular ART. The technical possibilities of artificially assisted reproduction developed in the second half of the 20th century, and continue to be further advanced. The law enforced in a given country constitutes proof of which side of the argument over the permissibility of artificially assisted reproduction has prevailed in these ethical and moral disputes. The adoption of one or another legal solution indirectly reflects the views of the majority of the population, which gave a mandate for power in elections. In a study devoted to the law, there is no room for a detailed presentation of the ethical debate – on this issue; interested readers are first referred to philosophical literature.[1]

The Constitution of the Republic of Poland[2] (hereinafter, the Constitution of the RP) does not contain provisions directly addressing the issues discussed in the study. However, it undoubtedly pertains to the matter of artificial reproduction through the fundamental category related to the protection of human rights, that is, dignity (of the child, the donor of reproductive cells, and the recipient). According to Art. 30 of the Constitution of the RP, dignity is inherent, inalienable, and inviolable, and constitutes the source of freedom and human and civil rights. Public authorities are obligated to respect and protect this value. From the perspective of protecting the life of embryos created through the use of assisted reproductive technologies (ART), Art. 38 of the Constitution of the RP is significant, as it imposes on the state the duty to ensure legal protection of life for every human being. According to the jurisdiction of the Constitutional Tribunal of the Republic of Poland (hereinafter, the Constitutional Tribunal), this duty applies to every phase of human life, including the prenatal phase.[3]

The primary acts of Polish law that will be the main subject of analysis in this study were introduced by the Act of 25 June 2015, on the Treatment of Infertility[4] (hereinafter, the ITA), along with concurrent amendments to the provisions of the

1 Galewicz, 2010; Różyńska and Chańska, 2013; Cebrat, 2008, pp. 43–53; Giertych, 2010, pp. 42–53; Varlaut, 1996; Laun, 2002, pp. 91–140; Domagalska, 2015.

2 The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483 as amended.

3 Judgement of the Constitutional Tribunal of 22 Oct. 2000, ref. No. sig. K1/20, Journal of Laws of 2021, item 175; Judgement of the Constitutional Tribunal of 28 May 1997, ref. No. sig. K26/96; Jurisprudence of the Constitutional Tribunal of 1997, No. 2., item 19.

4 Consolidated text: Journal of Laws of 2020, item 442.

Family and Guardianship Code[5] (hereinafter, FGC) concerning filial relationships arising from the use of ART. Doctrine[6] correctly highlights that the constitutional protection of human embryos is implemented through provisions of other legal acts, such as the Act of December 5, 1996, on the Professions of Doctor and Dentist,[7] the Act of June 30, 2000, on Industrial Property Law,[8] the Act of June 6, 1997, on the Criminal Code[9] and the Act of January 7, 1993, on Family Planning, Protection of the Human Foetus, and Conditions for the Permissibility of Termination of Pregnancy.[10]

At least two international documents significantly affected both the direction of the debate held in Poland in the scientific and political circles and the society's perspective regarding ART: Instruction *Dignitas Personae* of the Vatican's Congregation for the Doctrine of the Faith,[11] which is the basis for the teaching of the Catholic Church, and the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (adopted in Oviedo on April 4, 1997).[12] The Convention also referred to as bioethical, for some unknown reason not ratified by Poland, is a legal act of international law while the Instruction is an inside document of the Catholic Church, which – from a formal perspective – is not a high-profile document in the hierarchy of documents issued by the Church. This placement is one of the reasons for questioning the Instruction's theses within the Catholic Church discourse.[13] Moreover, the Polish public opinion on ART was swayed by the jurisprudence of the European Tribunal of Human Rights.[14]

2. Polish Public Opinion on ART

In addition to the scientific disputes rooted in philosophical, religious, legal, or political considerations, vibrant debates on artificial reproduction are widespread within Polish society. Public opinion on this controversial issue is regularly studied, and the results influence whether this topic is included in electoral programmes or avoided if the ideological stance of a political group differs from the prevailing views

5 Consolidated text: Journal of Laws of 2023, item 2089.
6 Rylski, 2020, pp. 136–137.
7 Consolidated text: Journal of Laws of 2024, item 1287.
8 Consolidated text: Journal of Laws of 2023, item 1170.
9 Journal of Laws of 2024, item 17 and 1228.
10 Consolidated text: Journal of Laws of 2022, item 1575.
11 Jasudowicz, 2018, pp. 14–36; Instruction Dignitas Personae of the Vatican's Congregation for the Doctrine of the Faith concerning selected bioethical problems, Vatican.
12 European Treaty Series (ETS) / *Série des traitéseuropéens* (STE) No. 164; Grzymkowska, 2009; Tobaszewski, 2022, pp. 129–130.
13 Sporniak, 2024, pp. 118–126; Krasiński, 2023.
14 Grzymkowska, 2009, pp. 158–207; Śledzińska-Simon, 2013, pp. 66–107.

expressed in society.[15] Attitudes towards ART have become a criterion for political affiliation and ideological identity for individuals and social groups, similar to positions on abortion, the legal regulation of same-sex unions, the free market, ecology and environmentalism and several other issues.

In Polish society, acceptance of stable cohabitation by same-sex couples is increasing, while the proportion of opponents to adoption by such couples remains consistently high. There is a positive correlation between data on this topic and societal attitudes towards the permissibility of using ART for same-sex couples and single individuals. In the latter case, reservations often stem from suspicions that a formally single person may be in a stable same-sex relationship.[16] Over time, in Polish society, the percentage of people rejecting ART in general has been gradually declining.[17]

Additionally, public debates assume the form of street demonstrations. As the activism of progressive circles opting for social changes, including the liberal attitude towards ART, has intensified, street marches have been organised and petitions have been written to not allow same-sex couples to adopt children or access ART or to entirely reject the possibility of using ART in surrogacy or other methods.

3. Infertility and Its Types

According to WHO (and the Polish law), infertility is a condition that requires treatment only after a couple has regular sexual intercourse for a year without any birth control (which implies that they are ready to accept pregnancy), yet they cannot conceive a child. Before this period expires, they can use other methods or are allowed to undergo any *in vitro* infertility treatment, if, based on current medical knowledge, achieving pregnancy through these methods is deemed unfeasible.[18]

Infertility can be classified as social if there are objective causes why children cannot be conceived naturally, which is the case in same-sex couples. On the grounds of Polish law, such a circumstance does not render a couple eligible to access ART infertility treatment.

15 The Public Opinion Research Centre, 2015, Opinions on access to in vitro, Study Report No. 96; Kuczyńska et al., 2013, pp. 279–283; Mariański, 2022, pp. 59–79; Gałęziowska and Bogusz, 2013, pp. 300–304.

16 Gałązka, 2018, p. 163.

17 Polish Press Agency, 2016.

18 Art. 5 (2) ITA. Bidzan, 2010, p. 19.

Medical literature provides a list of precise causes of infertility,[19] among which social factors assume centre stage. Few of them concern women, while few apply only to men, and others are found in couples.[20]

The scale of infertility as a phenomenon is unknown. This conclusion can be drawn from the significant discrepancies in the numbers of infertile individuals and couples reported by different sources such as scientists, research institutes, as well as international organisations. The reports rarely detail the methods employed to calculate or estimate these figures. Therefore, reports on the scale of infertility, such as those from United Nations agencies claiming that it affects between 60 and 168 million couples globally, should be approached with caution and scepticism. Similarly, distrust arises when authors state that 'it is said' that the scale of infertility is such and such (most often indicating that it affects around 15% of couples) and possibly cite other authors who report the same figures without providing any details on the methodology of the calculations.[21]

Nonetheless, examining the phenomenon of childlessness from within a circle of one's friends and colleagues raises a red alert. However, childlessness may result from both infertility and reluctance to have children by people not affected by infertility.[22]

4. ART Procedures and Human Rights

4.1. Introductory Remarks

An analysis of the current regulations in Poland suggests that both individuals and institutions wrestle with the issue of how to resolve the conflict between two goods that clash with each other: human dignity commanding respect for human embryos and reproductive freedom, which may further involve a desire to become a parent.[23]

Consequently, Polish legislative work on legal regulation of *in vitro* fertilisation heads in three directions. The first direction prioritises effectiveness (measured by the number of births), as it underscores reproductive freedom. The second and third directions emphasise the protection of human dignity, yet – while the second seeks a compromise between the protection of dignity and the use of ART – the third one

19 Bidzan, 2010, pp. 21–39.
20 Jędrzejczak and Jósiak, 2005, pp. 6–18; Niżnik-Mucha, 2016, pp. 12–13.
21 Bidzan, 2010, p. 15, pp. 18–21.
22 Andrzejewski, 2024, pp. 515–516.
23 Gałązka, 2016, pp. 42–43.

dismisses ART altogether, claiming that despite sincere attempts to limit threats posed by *in vitro* fertilisation, legal approval is not solicited.[24]

Agreeing with this synthetic approach to the currents of thought regarding ART, it is necessary to indicate how they address the fundamental category related to the protection of children's rights, such as the obligation to undertake all actions concerning children with regard to their best interests[25] (Convention on the Rights of the Child, hereinafter, CRC).

When discussing ART, for few, the optimal option is to abandon them, as they are considered as violating the dignity of the child to be born and, above all, the dignity of those embryos that perish during the procedures. For others, the best interest of a child conceived through ART lies in ensuring that the child is born. For yet another group, the best interest is that the child grows up in optimal (model) conditions from the perspective of psychological, educational, and physical well-being, ideally in a family formed by a man and a woman, preferably married.

4.2. ART Procedure and the Right to Decide Regarding the Number of Children (A Right to Reproductive Health, the Reproductive Human Rights)

Regarding the issue at hand, international documents are significant as they state that the right to infertility treatment is part of the implementation of human reproductive rights, which are based on the recognition that all individuals and couples have a fundamental right to decide freely and responsibly on the number, timing, and spacing of their children – or to decide to not have children at all.[26] The issue of the right to freely decide on the number of children is often framed as the right to reproductive health or as a human reproductive right.[27] According to proponents of this approach to fertility, this right encompasses unrestricted access to adoption, ART (including *in vitro* fertilisation), pre-implantation testing, surrogacy, as well as abortion and voluntary sterilisation. Advocates who consider all these practices as human rights argue that this right is complemented by state obligations to adopt measures to meet all related expectations. Moreover, individuals are entitled to initiate claims against the state for the fulfilment of these obligations.[28]

Contrary to the phrasing of the title of this section, reproductive rights cannot be classified as human rights. If they were, it would imply that the inherent dignity of the human person – the source of human rights – could be interpreted to justify

24 Ibid.

25 Art. 3 of the Convention for the Rights of the Child of 1998, adopted by the General Assembly of the United Nations on 20 November 1989. Journal of Laws of 1989, item 526.

26 United Nations, Programme of Action of the United Nations International Conference on Population and Development, Cairo, Egypt, 5–13 September, 1994, para. 7.2. after Różyńska, 2013, pp. 333–335.

27 Różyńska, 2016, p. 801; Dobrowolska, 2016, pp. 164–181; Dzonikowska-Godula, 2019, pp. 133–157; Bassa, 2012, pp. 363–377.

28 Różyńska and Chańska, 2013, p. 334.

a human right to deprive another human being of life, particularly an unborn child (including an embryo), and that individuals could claim a right and approach the state to ensure access to abortion, including abortion on demand, which requires no justification beyond the woman's will to terminate the pregnancy. According to those who advocate for the recognition of such a human right, this right should be respected at any stage during the prenatal life of the child (including up to the end of pregnancy). Another feature of this concept is the assumption that a child can be the subject of a surrogacy agreement and that there can be a demand for adoption regardless of whether it serves the best interests of the child. Such an understanding of the idea of reproductive human rights opts for unrestricted access to ART (without any limitations regarding eligibility).

Critics of this stance argue that the term 'reproductive human rights' is ungrounded and stems from a rejection of natural law as the source of human rights. They contend that the idea of human rights arises from incorporating the concept of human rights into an agenda driven by gender ideology, which, in its deepest essence, seeks to deconstruct the family and all associated concepts, drawing inspiration from Marxist ideology. Thus, this idea is promoted by those who deny natural law as the source of human rights. The claim of the existence of reproductive human rights is considered as an intellectual, legal, and political misuse, ultimately leading to the erosion of the idea of human rights.[29] From this perspective, almost anything (including the most unusual demands) can be – and often is – labelled as a human right, including actions that contradict the very essence of this idea, such as the right to abortion on demand.[30]

In Polish legal science, an objection has been voiced to the thesis of the existence of the right to have or not to have children,[31] aptly inferring that there is the right of a child to live in a family built based on the bond of a man and a woman; however, there is no right of an individual (an adult) to have a child, nor is there a right of an individual to annihilate another human being.[32]

Criticism of the progressive approach to reproduction – particularly in the form of supposed reproductive human rights or the right to procreative freedom – can be observed in the jurisprudence of the Polish Constitutional Tribunal. The Tribunal has stated that the right to parenthood 'does not include a right not to give birth to a child'.[33] Moreover, this approach is difficult to reconcile with the content of Art.

29 Andrzejewski, 2012, pp. 41–58.

30 Kołakowski, 2010.

31 Haberko and Olszewski, 2008, p. 67; Czujek, 2014, pp. 123–130; Chyrowicz, 2002, p. 298.

32 Sylva, 2008, pp. 165–170; Łączkowska, 2005, pp. 70–79.

33 The judgement of the Constitutional Tribunal of 18 April 2018, Sign. K50/15, The Jurisprudence of the Constitutional Tribunal, ref. No. series A 2018, item 19; The judgement of the Constitutional Tribunal of 18 April 2018, ref. No. S 2/18, The Jurisprudence of the Constitutional Tribunal, ref. No. series A 2018, item 20; The judgement of the Constitutional Tribunal, from 28 May 1997, ref. No. K 26/996, the Tribunal Jurisprudence of 1997, ref. No. 2, item 19, point 4.3; Gałązka, 2018, pp. 138–145.

1 of the Oviedo Convention (Convention on Human Rights and Biomedicine), which states: 'The Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine'.

The fundamental ethical principles regarding infertility treatment are articulated in Art. 4 of the Act on Infertility Treatment (ITA), which states: 'Infertility treatment is conducted with respect for human dignity, the right to private and family life, with particular regard to the legal protection of life, health, welfare, and the rights of the child'.

It is widely accepted that this provision fundamentally affirms the reproductive freedom of individuals affected by infertility, a value that several more specific legal provisions further and more explicitly prioritise. The limitations to this freedom are symbolic since the regulations do not exclude the instrumental treatment of embryos created through ART.[34]

Modern law does not prohibit married couples or other partnerships (cohabiting or non-cohabiting individuals) from having any number of children, nor does it impose an obligation to have a specific number of children or abstain from having them altogether. However, such scenarios have been recorded in history. An example includes restrictions on the number of children and administrative penalties for violating such restrictions (e.g., China's one-child policy). According to the consensus of various tribunals, the laws and practices of numerous countries aimed at depriving certain groups of their reproductive abilities for eugenic reasons have been deemed criminal. This notably includes not only Nazi Germany during the Nuremberg Laws era, but also, over more extended periods, Sweden, the United States, and Japan.[35] During World War II, Germany implemented the 'Lebensborn' programme, motivated by racial ideology, where German men impregnated women from conquered countries who met racial criteria under racist legislation. Additionally, the issue of eugenic motives in procreation is associated with the practice of pre-implantation testing within what is termed 'individual eugenics' (as opposed to state-driven eugenics).

4.3. The Right to Refuse Medical and Scientific Experiments in the Context of ART

Medicine advances through scientific experimentation, among other manners. The permissibility of such experiments is governed by moral and legal rules and is subject to review by ethical or bioethical committees. These committees operate within universities, scientific institutes, grant-awarding bodies, ministries, and other

34 Art. 25(1), Art. 9(2), and Art. 26(1) ITA. Gałązka, 2016, pp. 154–155; Rylski, 2020, pp. 152–154.

35 Piątek, 2019; Lifton, 2024; Zaremba-Bielawski, 2011; Catte, 2024; Conroy, 2012; Albański and Krywult-Albańska, 2010, pp. 407–413.

entities. Art. 39 of the Constitution of the RP addresses the issue of medical experiments, stating: 'No one shall be subjected to scientific experiments, including medical ones, without voluntarily expressed consent'.

Since the Act on Infertility Treatment (ITA) does not contain provisions regarding medical experiments, ART is governed by the provisions of the Act on the Profession of a Doctor and Dentist of 5 December 1996 (PDDA).[36] The PDDA distinguishes between 'therapeutic medical experiments' and 'research experiments'. The former involve the introduction of new or only partially tested diagnostic, therapeutic, or preventive methods by a physician, aimed at achieving direct health benefits for the patient. Such experiments may be conducted if currently available medical methods are ineffective.[37]

However, the latter (i.e., scientific experiment) aims at expanding medical knowledge. Therapeutic medical experiments are permitted when participation does not anticipate any risk, or when the risk is minimal and not disproportionate to the potential positive outcomes.[38]

Art. 23a of PAAD concerns ART and it forbids conducting experiments on a conceived child. The freedom from being subjected to experiments stems from the human dignity inherent in the embryo.[39] The law does not entitle parents to grant their permission to conduct experiments on *nasciturus*, to apply for them; neither does it grant such permission to any medical institutions to suggest such an experiment to a mother (a pregnant woman).

According to Art. 21(5) of PAAD, a participant in a medical experiment is defined as the person on whom the experiment is directly conducted. This provision determines that during ART, medical experiments can only be conducted on the woman who is the beneficiary of the procedure and not on the child to be born. Thus, any permissible experimentation must concern the mother and must not be directly related to the ART itself. Furthermore, it may only involve the conceived child to the extent that the woman undergoing the experiment becomes pregnant using the procedure.

In a medical experiment, before a participant provides consent, they must be informed regarding several key aspects, including the purpose and plan of the experiment, associated risks and potential benefits, scope and duration of the experiment, inconveniences and health risks involved, their rights as a participant, legal protections guaranteed by law, including the right to refuse consent and withdraw it at any time without providing a reason and without facing negative legal consequences or discrimination, particularly regarding access to healthcare.[40]

36 Consolidated text: Journal of Laws of 2024, item 1287.
37 Breczko, 2007, pp. 171–192.
38 Ibid.
39 Rylski, 2020, p. 152.
40 Art. 24 PAAD.

A medical experiment may only proceed after obtaining the consent of the participant or the individual directly affected by its consequences.[41] If a pregnant woman who has full legal capacity is unable to give consent owing to her condition, permission for a therapeutic experiment must be granted by a guardianship court.

The participant or another entity authorised to provide consent for participation in a medical experiment has the right to withdraw consent at any stage of the experiment. In such cases, the entity conducting the medical experiment is obliged to immediately discontinue it.[42]

4.4. ART and the Protection of Children's Rights in Polish Law

4.4.1. Introductory Remarks

ART aim at the conception and birth of a child and grant their beneficiaries the possibility to experience parenthood. The fulfilment of both aims involves numerous issues of varying scientific and societal significance, particularly in medicine, ethics, and law. Among the legal and ethical aspects, the protection of the dignity of all entities involved in these procedures stands out, with particular emphasis on safeguarding the rights of the child from the very first moments of their life in the prenatal phase. Despite the paramount importance of dignity, it is this very good – legally protected within the context of ART– that is most at risk. This risk stems from the instrumental treatment of the child who is to be conceived and born, which includes, among others, denying the humanity of the embryo or treating the child as an object of transaction, as observed in agreements for surrogate motherhood, or from other manifestations of the commercialisation of services related to ART, where profit is prioritised over the ethical complexity of the issue.

4.4.2. A Child From the Onset

Addressing the protection of children's rights in the context of ART requires an initial declaration that in this analysis, following biological findings, embryos are regarded as children – human beings in the earliest stages of life.[43] From an ontological perspective, various views exist regarding the moment a child comes into being. These include a delayed recognition of humanity (postponing its acceptance by several hours, days, or weeks after fertilisation),[44] a complete denial of the humanity of embryos, and a recognition that human existence begins at birth. Each of these views, when used as the basis for lawmaking, leads legislators to adopt

41 Art. 25(1) PAAD.
42 Art. 27(1) PAAD.
43 Rylski, 2020, p. 152; Gałązka, 2018, p. 145; Lis, 2022, pp. 189–226; Szymański, 2009, pp. 61–78.
44 Szymański, 2009, pp. 67–78; Singer and Wells, 1988, pp. 118–126; Sporniak, 2024, pp. 118–126; Krasiński, 2023.

differing legal frameworks. For instance, recognising embryos as human from the moment of conception or an early developmental stage could result (although not necessarily) in a total prohibition on ART, permission of ART with strict limitations, such as prohibiting the creation of embryos for purposes other than their existence and development or a prohibition on medical experiments on embryos.[45]

When discussing the protection of children and their rights in the context of ART, considering their situation both before and after birth is essential from the perspective of legal regulations. This necessitates a discussion regarding the legal protection of the child-embryo (see Sec. 4.4.3) and the legal provisions governing the status of a child after birth as regulated by PAAD and other regulations (see Sec.5, 10). Moreover, the identification of beneficiaries of ART is a significant issue.

4.4.3. Protection of the Embryo

The legal status of the embryo has been and continues to be a central focus for ethicists, theologians, medical professionals, legal experts, and other researchers involved in ART. The issue is highly controversial owing to compelling arguments supporting the view that the embryo is a human being, contrasted with the widespread practice of abortion, which is a legally sanctioned termination of its life. For instance, France recently elevated the right to abortion to constitutional status, while in many other countries, restrictions on abortion are considered as violations of women's rights. Simultaneously, the pro-life stance has a significant number of advocates; therefore, progressive circles, including countries where they dominate legislative bodies, must often consider the perspectives to a certain degree. Consequently, ART legislation frequently reflects political compromises that fail to satisfy either side of the broader cultural and ethical debate.

The legal status of the embryo is defined by several provisions within the Polish legal system. It is essential to begin with Art. 38 of the Constitution of the RP, which states that 'The Republic of Poland ensures legal protection of life to every human being'.

The Constitutional Tribunal has interpreted the protection of life to extend to the child from conception.[46] Furthermore, Art. 6 of the CRC and its Preamble guarantee the protection of the child's life; the latter mandates protecting the rights of the child 'both before and after birth'. According to Art. 2 of the Commissioner for Children's Rights Act of 6 Jan. 2000,[47] the Commissioner is tasked with safeguarding these rights from the moment of conception.

45 Art. 27(1) PAAD.

46 Judgement of the Constitutional Tribunal of 22 October 2000, ref. No. sig. K1/20, Journal of Laws f 2021, item 175; Judgement of the Constitutional Tribunal of 28 May 1997, ref. No. sig. K26/96; Jurisprudence of the Constitutional Tribunal of 1997, No. 2, item 19.

47 Consolidated text: Journal of Laws of 2023, item 292.

Considering these provisions, the legal definition of an embryo[48] is notably surprising. It is defined as: 'A group of cells formed by the extracorporeal union of the female and male reproductive cells, from the completion of the fusion of the reproductive cell nuclei (karyogamy) to the moment of implantation in the uterine lining'.

This definition raises significant concerns, as it deprives the embryo of recognition of its dignity. It overlooks the fact that the embryo possesses a unique DNA code and other individual characteristics, establishing it as a separate organism.[49]

The adoption of such a legal definition of the embryo foreshadowed the introduction of detailed resolutions in the ITA in the spirit of progressivism. This is exactly what happened, although several regulations were adopted that set the framework for the full realisation of the idea of procreative freedom. Among these are prohibitions on: (a) the creation of human embryos for purposes other than a medically assisted reproductive procedure,[50] (b) creation of chimeras and hybrids, (c) interventions to cause heritable changes in the human genome that can be passed on to future generations,[51] and (d) creation of an embryo whose genetic information in the cell nucleus is identical to the genetic information in the cell nucleus of another embryo, foetus, human being, corpse or cadaver.[52]

The law prohibits the destruction of embryos capable of normal development that were created using ART but not transferred to the recipient.[53] These embryos must be stored under conditions that provide them with adequate protection until they are transferred to the recipient's body. The weakness of this provision is the stipulation that an embryo capable of normal development is an embryo whose development is probable by the rate and sequence of cell division, the degree of development in relation to the age of the embryo, and the morphological structure render normal development probable, and furthermore has not been found to have a defect that would result in severe and irreversible handicap or incurable disease.[54]

Embryos that do not fulfil the criteria are not under protection and can be destroyed.

To pre-empt the possibility that some ART beneficiaries may be guided by a motivation that objectifies a child, pre-implantation genetic diagnosis was limited only to cases with clear medical indications preceded by genetic counselling as part of medical counselling.[55] This type of diagnosis is not permitted for the selection of

48 Art. 2(28) ITA.
49 Biesaga, 2004, pp. 231–238, 257-264; Haberko, 2016, pp. 56–58; Rylski, 2020, pp. 132–161; Lis, 2022, 189–226; Szymański, 2009, pp. 76–78; Rudziewicz, 2004, pp. 257–264
50 Art. 25(1) ITA.
51 Art. 25(2) ITA.
52 Art. 25(3) ITA. Haberko, 2016, pp. 161–163.
53 Art. 23(3) ITA.
54 Art. 23(2) ITA.
55 Art. 26(1) ITA.

phenotypic characteristics, including the sex of the child, except when such selection avoids a severe, incurable hereditary disease.[56]

Behaviour that violates the listed restrictions is regarded as a criminal act (see Sec. 9). The criminal sanction is intended to prevent the use of preimplantation activities for what has been labelled liberal eugenics, that is, decisions made by individuals regarding the genetic selection of embryos in the case of ART (in addition to such examples of eugenics as abortion performed based on prenatal testing, or interference with the genotype of the offspring),[57] as well as to limit the possibility of actions aimed at commercialising ART.

To obtain a stand on the legal status of an embryo, addressing the legal status of surplus embryos is necessary that is the spare embryos left after performing ART. If the genetic parents will neither use them nor give them for adoption, then after 20 years, the embryos are transferred for adoption by default.

At this time, they are subjected to cryopreservation, that is, the process of storing in the temperature of –196 degrees Celsius (boiling liquid nitrogen) to freeze biological activity. This is a dangerous situation for embryos and can lead to their damage. In 2019, a project to prohibit the cryopreservation of embryos was under consideration.[58] It was highlighted that the procedure of cryopreservation violates human dignity, since it implies freezing, and considering current knowledge, approximately 15% of embryos die during this procedure. The general position that prevailed at the time was that both ART fertilisation and cryopreservation do not in themselves constitu te justification for considering that in such cases, there is instrumental treatment of a human being, constituting a violation of dignity. Assessment of the violation of this value depends on the totality of the circumstances of the particular case.[59]

The definition of an embryo, the possibility of creating surplus embryos, and the impossibility of providing full protection to embryos subjected to cryopreservation are all issues that form the basis of a critical assessment of Poland's ART law. In the literature, critical assessments are formulated:

> ... the Polish state, in regulating the use of the *in vitro* procedure to date, has not addressed fundamental issues, which include guaranteeing respect for the constitutional rights of unborn beings, which are commonly and drastically violated under the current legislation. This demonstrates that the Polish authorities have not adopted a responsible attitude to the threats to human life and health that arise in the wake of a dynamic development of medical science.[60]

56 Art. 32(2) ITA.
57 Soniewicka, 2010, pp. 83–84; Soniewicka, 2018.
58 The project and its justification can be accessed on the Polish Parliament [*Sejm*] website.
59 A letter from the Commissioner for Human Rights of 25 March 2015.
60 Rylski, 2020, p. 154.

It is stressed that the provisions of the ITA do not provide sufficient legal protection of the viability of the embryo, as they allow the creation of excess embryos or under-determine the fate of surplus embryos. Additionally, it is stressed that only those embryos qualified as capable of normal development have a chance to be born, which in essence is a manifestation of eugenic selection.[61]

The right to life is inherent, and it is not within the competence of the legislature to grant or abolish it. It can reasonably be argued that the legal protection of reproductive health is insulated in the law. The guarantee of its protection emerged at the expense of the other constitutional value, which is human life (emphasis in original- FS). Legal protection of human life should be extended to every form of life, including the human embryo. The legislator on the grounds of the law in question, does not realise this right.[62]

Consequently, a firm view was expressed:

> The human embryo, referred to as 'zygote' in the current legislation, is protected only to the extent that it can serve the overarching goal of ensuring the effectiveness of *in vitro* fertilization, which is the birth of a healthy child.[63]

4.5. The Right to Health Protection of the Embryos and Children Born With the Uses of ART

Empirical data suggests that the threat posed to the health of embryos and children born using ART is much higher than that for children conceived in a natural manner or *in vitro* ART.

> [C]hildren born with the use of ART are 1.7 times more likely to need qualified medical attention; the risk of cerebral palsy is 3.7 times higher, suspected developmental delay – four times higher; the risk of intrauterine and perinatal complications increases; defects in uterine development are found more often in boys. From Scandinavian data: multiple pregnancies after ART occur 27 times more often than after natural insemination, premature babies are born five times more often, and underweight babies are born six times/.../. Perinatal mortality is almost twice as high, malformations occur in 5.4 children.[64]

When discussing the issue of the health of children born through ART it is vital to consider a circumstance that is often downplayed:

61 Haberko, 2016, pp. 153–157; Sztandera, 2016, p. 254.
62 Sztandera, 2016, p. 254.
63 Gałązka, 2016, p. 44.
64 Cebrat, 2008, pp. 51–52.

> [T]he vast majority of research is conducted on children born; as a consequence, the influence of *in vitro* fertilization on the survival of embryos prior to placement in the woman's body and shortly thereafter is overlooked. However, there are many indications that within the IVF cycle, a certain percentage of embryo mortality is caused by the transfer of conception and development of the early embryo to *in vitro* conditions.[65]

The cited information highlights the requirement to intensify efforts to improve the protection of the health and lives of children conceived and born using ART. Information on the incidence of certain diseases should be associated with the obligation to monitor the development and health of children.

From the perspective of the legal aspects of ART, the issue under discussion is directly related to the expression of consent to particular medical actions, which – if it is to meet the criteria for statements of consent – must be based on the fullest possible knowledge of the issues related to the subject to which consent is to be given (see Sec. 6). The referenced information should be presented by doctors to those intending to undergo ART.

4.6. Prohibition of Discrimination Against Children Born Using ART

The status of children conceived using ART, in the prenatal phase of their life, is related to the dangers posed to surplus embryos (point 4.4), as well as manifestations of the commercialisation of these procedures, which may involve the objectivisation of embryos displayed in trading in embryos, contracting surrogacy and others. Some of these behaviours have been penalised (see Sec. 9). The objectification of embryos is to be countered, in part, by preventing discrimination against children with disabilities through the prohibition of eugenically motivated preimplantation testing, as well as the prohibition of abortion of children because their characteristics do not match the expectations of ART beneficiaries.

While criticising the commercial approach to ART, it should be borne in mind that in Poland this phenomenon is recognised both in the literature and in the practice of law enforcement agencies,[66] whereas, in the United States of America, ART regulations are placed under consumer regulations.[67]

However, after birth these children are not threatened with any harassment associated with them being conceived using ART. Children born using ART have the same legal status as all other children. This fact was emphasised in Poland, particularly by those who raised objections to the passage of the ITA and the legal

65 Gałązka, 2016, p. 41; Gałązka, 2022, pp. 228–234; Gałązka, 2018, pp. 143–144.
66 Breczko, 2007, pp. 257–273.
67 Cerbat, 2008, pp. 43–44.

permissibility of ART. They had no doubts regarding the personal dignity of children born using this procedure.[68]

Consequently, there is no compelling requirement for protection against discrimination against a child born using ART by others, including peers, much less by institutions. This issue is not reflected in any manner in documents such as civil status records, nor are there any records of these children, which could be used against them. Professionals involved in the application of ART are bound by secrecy, and medical records are not released, except exceptionally and based on a decision issued in a special procedure. Thus, in practice, the fact of conception through using ART is known only to those who learn about it from those who are the beneficiaries of ART programmes, that is, the parents of the child.[69]

4.7. The Right of a Child Born Through ART to Know Their Roots

A universal standard for protecting a child's right to know their origins is articulated in Art. 7 of the CRC. This Art. obligates states to ensure, whenever possible, that a child has the right to know their parents and be cared for by them from the moment of birth. This standard recognises human identity as a highly significant good from psychological, social, biological, and medical perspectives. Legally, it is considered a personal right and a fundamental element of an individual's right to privacy.[70]

Until recently, the issue of a child's knowledge of their origins directly concerned only adopted children. When Poland ratified the UN CRC in 1991, it initially made a reservation to this provision, citing Polish traditions opting for the secrecy of adoption concerning the adopted child. In 2013, this reservation was withdrawn. Subsequently, on 28 November 2014, the Registry Office Records Act was enacted,[71] introducing regulations regarding access to the new birth certificate prepared for anonymously adopted children (with the consent of the biological parents who did not identify the adoptive parents). A new birth certificate is prepared based on a court order issued at the request of the adoptive parents (with the consent of the adoptee aged 13 or older) or at the request of the adoptee (with the consent of the adoptive parents) pursuant to Art. 71(1) and Art. 72(1) of the Act. In both cases, an additional annotation is attached to the original birth certificate of the adoptee, which is not disclosed, indicating the issuance of the new birth certificate.[72] A crucial provision in this context is Art. 72(3)(1) of the Act on Registry Office Records, which states: 'Upon the request of the adoptee after reaching adulthood, a complete copy of the original birth certificate shall be issued'.

68 Kaliszuk, 2022.
69 Gromek, 2022, pp. 517–518.
70 Kuźnica, 2016, pp. 181–198.
71 Consolidated text: Journal of Laws of 2023, item 1378.
72 Króliński, 2023, pp. 429–439.

This provision serves as the formal basis for the argument that, under Polish law, adopted underage children are not fully assured the ability to learn regarding their origins.[73]

Further, in Polish legal practice, the right to know regarding one's roots is significant in the context of the protection of children's lives in the windows of life. Leaving a child at the window, usually a newborn infant, is usually an act of a desperate mother. It saves the life of a child; however, it deprives them of the possibility of learning of their roots. Children's Rights Committee criticises the existence of such windows in Poland; however, this opinion was commonly dismissed as the value of life exceeded any other personal rights of a human being.

The issue of a child's right to know their origins has adopted a new dimension with the introduction of regulations concerning ART. These regulations raise numerous questions regarding the relationships between gamete donors and the child born consequently. The key question centres on selecting between two values: protecting the anonymity of the gamete donor and safeguarding the child's right to knowledge regarding their origins. The issue of a child's identity is particularly relevant in cases of heterologous artificial insemination and surrogacy.

In homologous artificial insemination, the gamete donors are the spouses or long-term partners who subsequently raise the child.[74] However, in heterologous insemination, additional individuals participate in ART. This is particularly complex in cases of surrogacy, where multiple individuals may be involved.

When ART was legalised, a register of gamete and embryo donors was established to monitor medically assisted reproduction[75] and to enable the identification of donors and recipients of gametes. The register is managed by the Minister of Health. The data collected in the register is confidential and can only be accessed by authorised individuals.[76] Among those with authorised access are adults born through ART using non-partner gamete or embryo donations. The information available to them includes the health status of the gamete or embryo donor, their year and place of birth, and the results of medical and laboratory tests. However, legal representatives of children born through ART have significantly more limited access, confined to the health status of the donors and test results – and only when such information could help avert an immediate threat to the child's life or health.[77]

Additionally, the possibility of determining their origins by children born through ART is significantly more restricted compared with adopted individuals and could be described as illusory.

It is widely agreed that the functioning of this register does not fulfil the right to know one's genetic identity. This is evident from the type of data accessible to

73 Ignatowicz and Nazar, 2016, pp. 494–496.
74 Kuźnicka, 2016, pp. 191–192.
75 Art. 37(1) ITA.
76 Art. 38(1) ITA.
77 Wojewoda, 2021, pp. 38–51; Haberko, 2016, pp. 242–249.

authorised individuals, which excludes identifying information regarding the gamete or embryo donors.[78] For individuals born through heterologous reproduction, access to data identifying gamete or embryo donors is explicitly excluded.[79]

4.8. The Child's Right to Have Parents and to be Under Their Care

The right of a child born to a family using ART and parental care is closely tied to the determination of the beneficiaries of these procedures (referenced in Sec. 5). The Act on Infertility Treatment permits the use of ART exclusively for married couples and cohabiting partners. This regulation can be interpreted as derived from Art. 18 of the Constitution of the RP (protection of the family and familial relationships) and Art. 48 (the primacy of parents in raising their children). Additionally, it aligns with the right of a child to live in a family, as outlined in the preamble, Art. 5, and Art. 18 of the CRC.[80] The provisions of the CRC, in turn, draw upon Art. 16(3) of the Universal Declaration of Human Rights (UDHR) of 10 December 1948, and Art. 23(1) of the International Covenant on Civil and Political Rights (ICCPR) of 1966, both of which state: 'The family is a natural and fundamental group unit of society and is entitled to protection by society and the State'.

Apart from a child's right to life, the other most important right is the right to a family (to live in a family).[81] In the Polish context, it is required to be specified that from the perspective of the legislators, the model setting for having (including with the use of ART) and raising a child is a family understood as a group unit of society based on a union between a man and a woman, married or cohabiting. The arguments in support of making ART accessible to heterosexual informal unions (the cohabiting couples) include a commonness of such unions and negative demographic tendencies (dramatically low birth rates, decreasing number of contracted marriages, increase in divorces).

To guarantee the best interest of a child yet to be born, model solutions that best support their development should be sought. Far from the model solutions are scenarios where a child is raised by a single individual or within a union composed of any constellation other than a heterosexual couple, whether involving two or more individuals.[82] This solution may be deemed conservative as it accords to ART beneficiaries the traditional roles of a husband/wife or cohabiting heterosexual partners or parents;[83] however, in this context, the author believes the word conservative is unequivocally positive.

78 Haberko, 2016, pp. 246–247; Bączyk-Rozwadowska, 2018, pp. 367–394.
79 Gałązka, 2018, pp. 161–162.
80 Justification of the judgement of the Constitutional Tribunal of 18 April 2018, ref. No. sign. K 50/16 [Online].
81 Andrzejewski, 2025.
82 Haberko, 2013, pp. 157–159.
83 Drapalska-Grochowicz, 2023, pp. 59–64.

The provisions of ITA align with the constitutional principles of the Republic of Poland and international law. They permit the use of ART exclusively for married couples or heterosexual partners in stable relationships (cohabitation), and only in cases where these couples face medically diagnosed infertility (see Sec. 3). ART are not allowed for individuals or couples facing social infertility, such as those in stable homosexual relationships or single individuals.

Considering that the status of being in a stable relationship is determined solely based on declarations made by a man and a woman, with no mechanisms in place to verify the truthfulness of these statements, it has been rightly noted that this allows for relatively easy access to ART by both single individuals and same-sex couples.[84]

4.9. The Right to Citizenship (The Right not to be Stateless)

The issue of a child's citizenship and the problem of statelessness are strongly emphasised in Art. 8 of the CRC, which sets a standard for the protection of children's rights in this regard. Under the Polish law, a minor acquires Polish citizenship by birth if at least one parent is a Polish citizen. Moreover, citizenship is granted if the child is born on the territory of the Republic of Poland and their parents are either unknown, stateless, or of undetermined nationality, or if the child is found on the territory of Poland and their parents are unknown. These provisions are outlined in Arts. 14 and 15 of the Polish Citizenship Act of 2 April 2009.[85] The process for acquiring Polish citizenship for children born using ART is identical to that for all other children.

4.10. Protection of Private and Family Life in the Context of ART

Every medical procedure should be conducted with discretion, particularly in the sensitive patient-doctor relationship. This relationship emphasises the confidentiality of information shared by the patient and the obligation of the doctor to maintain secrecy regarding what they learn during consultations and diagnostic procedures. A doctor may disclose information regarding a patient's health only to individuals designated by the patient, while being bound by confidentiality concerning all others.[86] Considering the intimate nature of procreation-related matters, the issue of privacy is particularly significant in the context of ART.

The Act on Infertility Treatment contains numerous provisions aimed at safeguarding patient privacy, particularly regarding how consent is given and revoked for specific ART-related actions (see Sec. 6). These processes must be preceded by comprehensive information on all aspects of the procedure, including the obligation

84 Gałązka, 2018, p. 163.
85 Consolidated text: Journal of Laws of 2023, item 1989.
86 Kubiak, 2010, pp. 267–298, Nesterowicz, 2007, pp. 215–220.

to maintain medical confidentiality.[87] Medical confidentiality must be upheld in several cases specified by the Act, and patients must always be informed of this obligation before providing consent to proceed with ART. According to ITA provisions, such information may be revealed to the following people: (a) candidates for gamete donation for partner donation purposes;[88] (b) candidates for gamete donation for non-partner donation purposes;[89] (c) candidates for gamete donation to preserve fertility for future use;[90] (d) recipients of gametes for use in medically assisted reproduction, whether through partner or non-partner donation.[91]

The data collected in the register of gamete and embryo donors is subject to confidentiality and can only be disclosed to authorised individuals and within a scope regulated by the provisions of the law.[92] Additionally, medical centres involved in assisted reproduction and sperm and egg banks (see Sec. 12) are required to retain documentation related to the activities performed in connection with ART procedures. This includes information regarding the donors, recipients of gametes and embryos, the handling of gametes and embryos, and all related actions. All this data is protected by confidentiality, and its disclosure is allowed only as stipulated by the ITA or in connection with legal proceedings authorised by judicial authorities.[93]

Finally, all individuals involved in ART, including those not typically bound by confidentiality under other legal provisions, are required to maintain the confidentiality of information regarding candidates for gamete donation, donors, recipients, and children born using assisted reproduction.[94]

5. ART Beneficiaries – A Limited Circle – (Non)Discrimination

Under the provisions of the ITA, it is permissible to conduct ART on spouses or a man and woman living in cohabitation (cohabiting couples). This applies to both in vivo and *in vitro* procedures. The ITA rules out infertility treatment for single women, as well as those in same-sex relationships. The basis for such regulation can be found in the Constitution of the RP and in standards for the protection of children's rights in Sec. 4.8. Until now, the evolution of the ITA under the influence of progressive ideas has come to a halt in the face of the thesis that the optimal living

87 Haberko, 2016, pp. 182–187.
88 Art. 29 ITA.
89 Art. 30 ITA.
90 Art. 31 ITA.
91 Art. 32(1) ITA.
92 Art. 38 ITA.
93 Art. 47(5) ITA. Haberko, 2016, pp. 274–275.
94 Art. 50 ITA. Haberko, 2016, p. 291.

environment for a child is a family composed of parents of both sexes. It is difficult to judge whether, in time, demands for legal regulation of the use of ART for single people and same-sex couples would be articulated. Such demands are being made, and opinion polling centres are probing public attitudes. In 2019, a proposal to limit access to ART to married couples only was rejected.[95]

The author believes that in statements grounded on the erroneous thesis that there is a human right to reproductive health (see Sec. 4.2), it was argued that the regulations adopted on who is (should be) the beneficiary of ART are discriminatory against single people and same-sex couples who cannot undergo ART. The discussion of this issue was a reflection of the state of the law and society's views on cohabitation, single parenthood[96] and the status of same-sex unions in Poland (see Sec. 2).

Statutory restrictions are sometimes claimed to be a form of discrimination against people who are prevented or restricted by law from accessing these procedures. The prohibition of discrimination has a strong axiological justification, since violating it proves the inequality of citizens before the law, which in turn allows the accusation that the state is undemocratic. However, not every differentiation of the legal situation of citizens constitutes discrimination. We deal with discrimination only when the law treats people in the same situation differently.[97] If persons are not in the same situation, then the legislator has the opportunity to regulate an issue differently for each group. Therefore, if the legislation specifies prerequisites of a subject indicating the required characteristics of those entitled to something, or making the emergence of a right conditional on the occurrence of a certain event, then people who do not meet the statutory criteria are not discriminated against, because they are in a different situation from those who are not subject to restrictions or exclusions. For example, the prerequisites for marriage do not discriminate against those who do not meet them and cannot be married. The same applies to the requirements for adoption, acquiring property, becoming a foster family, and many others. Certainly, one can question the relevance and rationality of the existence of one or another prerequisite, as well as the legitimacy of their absence, and one can debate proposals for change; however, the charge of discrimination is false. This is because the legislator is acting within the scope of his powers.

95 The Commissioner for Human Rights, 2019, The Commissioner against limiting IVF to married couples only. This is one of the changes proposed by a group of MPs.

96 Kwiecień, 2016, p. 52.

97 Borysiak and Bosek, 2016, pp. 838–839. On many occasions, the Polish Minister of Justice, Adam Bodnar overused the argument of discrimination. Cf. Application of the Commissioner for Human Rights to the Constitutional Tribunal of 12 May 2015, which was rejected by the 22 November 2016 Judgement of the Constitutional Tribunal, ref. No. ZU A/20166, item 83.

6. Expressing Consent for Actions Within ART

Expressing consent is a declaration by a legal entity whose validity depends on meeting several conditions. First and foremost, the concept of consent inherently includes the autonomy and freedom of action of the legal entity – a characteristic of any declaration of intent. This is of such fundamental importance that the phrase 'informed consent' is a typical example of redundancy. Without awareness– on a sufficiently high level of understanding of the issue to which the consent pertains – one cannot speak of genuine consent at all.

As consent concerns future events and, thus, shapes the future of the legal entity, the importance of autonomy must be strongly emphasised. Autonomy, particularly within medical procedures, derives from obtaining full and truthful information regarding the matter in question. This information must be sufficiently comprehensive 'to enable the individual to acquire the necessary knowledge to make a decision'.[98] Without adequate knowledge, prudent choices cannot be made.

The information provided should address the purpose, plan of action, risks, and benefits associated with adopting a specific option. The method of delivering this information must be adapted to the patient's capacity for understanding. The patient must be able to ask questions, and the physician is obligated to clarify any ambiguities. The person giving consent must be in a state of mind that enables rational decision-making. The consent recipient is responsible for ensuring that the consenting party understands the situation. This person must not exert coercion, persuasion, or manipulation.[99]

This last aspect appears particularly significant in the context of consents given in ART procedures, owing to the understandable emotions of the beneficiaries. Concealing full knowledge from those giving consent – such as information regarding the potential health consequences for the children born using these procedures – would constitute manipulation. Without such transparency, the notion of consent in the legal sense cannot apply, and the ART process is reduced to a transaction in which embryos are treated as commodities and ART as a service – components of commercial activity and the consumer market.[100]

As the conditions under which consent is given differ, ITA provisions account for the differences. For example, if the cell donor is a man unrelated to the recipient, then prior to the procedure he must be informed regarding its legal aspects. For example, he must be informed that he will not receive any information on the method of usage of the cells, or the information regarding him that the recipient or the person born using ART will receive.[101]

98 Czarkowski, 2018, pp. 154–155.
99 Ibid.; Kubiak, 2010, pp. 331–450.
100 Cebrat, 2008, pp. 43–53.
101 Art. 30(1) item 5c; Art 38(2) ITA.

In the framework of ART procedures, the following consents must be given under the circumstances: (a) consent of the reproductive cells donor to use them in ART; (b) consent of the recipient to receive the reproductive cells within ART (in a partner or non-partner donation); (c) consent of a donor of reproductive cells obtained for partner donation to use them in ART for non-partner donation (i.e. anonymous donation); (d) consent of the recipient and her husband or a cohabiting partner for transfer to the organism the embryos created from reproductive cells obtained from her husband or cohabiting partner; (e) consent of the recipient and her husband or a cohabiting partner for transfer to the organism the embryos obtained from non-partner donation (when the donor of reproductive cells is anonymous); (f) consent of the recipient and her cohabiting partner for a transfer of an embryo created using anonymous donation when her cohabiting partner acknowledges paternity of the child born using ART with the use of this embryo, and the recipient confirms that the man will be the father of the child.[102]

In cases where it is not possible to directly use embryos created from the gametes of the husband or partner, and it becomes necessary to transfer them for storage, all previously expressed consents must be repeated 'prior to resuming the medically assisted reproductive procedure in which the stored embryos are to be used'.[103] However, the use of cells originally collected for non-partner donation in an ART procedure as part of partner donation requires the donor to withdraw their consent for the original purpose for which their gametes were intended.[104]

A declaration of consent for conducting a particular action can usually be withdrawn later. However, there are limitations in this regard. Whether consent was given within the framework of partner donation or non-partner donation, consent can be withdrawn until the commencement of ART for the recipient. In the case of intrauterine insemination (*inseminatio*), this refers to the use of reproductive cells within the woman's body. For *in vitro* fertilisation, it refers to the commencement of the process of creating an embryo from those cells.[105] Proper withdrawal of consent results in a prohibition on using the donor's reproductive cells in the ART[106] and a prohibition on using embryos created from those cells.[107]

However, there is an exceptional situation concerning the withdrawal of consent for the transfer of an embryo. As stated, such withdrawal constitutes a negative condition for transferring the embryo into the recipient's body.[108] Nevertheless, in this situation, Art. 21, Sec. 2 ITA may apply, allowing the will of the individual who withdrew consent to be overridden. This provision states:

102 Art. 75(1) FGC – for more, see Sec. 10.
103 Art. 20(3) ITA.
104 Art. 18(2) ITA.
105 Arts. 29(3) and 30(3) ITA.
106 Art. 18(1) ITA.
107 Art. 22 ITA.
108 Art. 22, Point 1 ITA.

If the husband or the donor of reproductive cells collected for the purpose of partner donation, from which the embryo was created, does not consent to the transfer of the embryo, permission for the transfer is granted by the family court.[109]

7. Legal Status of the Gamete and Embryo Donors

The legal status of gamete and embryo donors involves several aspects. The first concerns the type of ART – *in vivo* or *in vitro*, in either a homologous or heterologous version. In a homologous procedure, the gamete donor is the recipient's husband or is in a stable relationship (cohabitation) with her. After the child is born, the donor assumes parental authority and a range of responsibilities, including child support obligations. In a heterologous procedure, the donor does not become the legal father of the child born through ART using his gametes. Information regarding the donor's health may be provided to the recipient and the child when they reach adulthood. However, this information does not provide the child with knowledge of their origin from a specific individual.

For details on providing consent for specific actions related to ART and withdrawing such consents, see Sec. 6.

Embryo donation is permitted for an anonymous recipient when the health risks associated with using the embryo are not excessive, and the recipient has given informed consent after being thoroughly briefed on all medical and legal aspects.[110]

Further, embryo donors must consent to ART involving the embryo. This consent can only be given after receiving detailed information regarding the legal consequences of donating embryos (e.g., no access to information regarding the subsequent use of the donated embryos, no rights or responsibilities regarding the child born using ART), and the scope of information regarding the donors to which the person born from the procedure or their legal representative will have access upon reaching adulthood.

Embryo donors may withdraw their consent for the embryo's use until the commencement of the medically assisted reproductive procedure in which the embryo is to be used.[111]

109 The possibility of replacing the consent of a reproductive cells donor by court's judgement raises serious concerns, whose gravity and complexity transcend the scope of the paper. For more explanation, see Haberko, 2016, pp. 148–151; Smyczyński and Andrzejewski, 2024, pp. 234–238.

110 Art. 36(1) ITA.

111 Art. 36(4)–(5) ITA.

8. Scope of ART: Legally Permissible Methods of Assisted Reproduction

The procedure of medically assisted reproduction comprises actions aimed at obtaining and utilising gametes or embryos, either in vivo or ex vivo, in a recipient to facilitate procreation.[112] This includes both direct and indirect use of gametes and embryos.

As previously mentioned, the treatment of infertility through ART procedures may be undertaken: after exhausting other treatment methods conducted for a period of no less than 12 months unless according to current medical knowledge, achieving pregnancy through those methods is not possible.[113]

The Infertility Treatment Act provides for the use of gametes in the recipient either for partner donation, where the donor is a man in a marital relationship or cohabitation with the woman, or for non-partner donation, where gametes from an external donor are used.[114]

Based on the location of fertilisation, ART is categorised into *in vivo* (intrauterine fertilisation methods) and *in vitro* (fertilisation outside the woman's body, ex vivo). *In vivo* fertilisation, known as artificial insemination, involves intrauterine insemination, where sperm is directly transferred to the recipient's fallopian tube. Its variations include: (a) Homologous Insemination (AIH), that is, fertilisation of the donor's egg using the sperm of her husband, (b) Heterologous Insemination (AID), that is, fertilisation of the donor's egg using sperm from an anonymous donor, and (c) Mixed Insemination (AIC), that is, the use of sperm from both the husband and another man for physiological purposes.

In vitro fertilisation (IVF) involves fertilising an egg outside the woman's body, followed by the transfer of the embryo to her uterus. There are two variants of IVF: homologous IVF: where both gametes are from the spouses, and heterologous IVF, where genetic material is procured from external donors. During *in vitro* fertilisation, the initial stages of embryonic development occur outside the woman's body.

Among the variations of ex vivo fertilisation, the following are notable: (a) Surgical Embryo Transfer (SET); (b) Intravaginal Culture (IVC); (c) Multivariable Methods: Transfer of fertilised eggs or embryos into the fallopian tubes.

In vitro method is often applied in surrogacy, which is the most controversial ART.[115]

112 Art. 2(21) ITA.

113 Art. 5(2) ITA.

114 Gałązka, 2018, pp. 155–165; Kwiecień, 2016, pp. 152–154; Czujek, 2014, pp. 79–101; Haberko, 2016, pp. 121–176.

115 Mostowik, 2019; Soniewicka, 2020, pp. 5–24; Mirocha, 2018, pp. 165–188; Fras and Abłażewicz, 2008, pp. 31–67; Gałązka, 2016, pp. 36–44; Breczko, 2015, pp. 257–273.

This term encompasses both fertilisation within the womb of the woman who is the egg donor and *in vitro* fertilisation followed by the transfer of the embryo, after several days, to the body of another woman.[116]

Under an agreement, an embryo created from gametes originating either from the commissioning individuals or from donors unrelated to them is implanted into the body of a woman who will carry the pregnancy to term, give birth to the child, and subsequently hand the child over to the commissioning parties. Surrogacy is regulated in a specific manner under Polish law. Notably, the term 'surrogacy' does not appear in the ITA or FGC. However, there are indirect regulations pertaining to this method. When the Family and Guardianship Code was amended in 2008 to include provisions regarding the determination of maternity, a new rule was introduced: 'The mother of the child is the woman who gave birth to it'.[117]

It has decisively influenced the outcome of potential court disputes arising from the surrogate's failure to fulfil her obligation to hand over the child she gave birth to for the commissioning individuals. This provision determines the child's civil status as the child of their mother (the woman who gave birth to them) and renders any surrogacy agreements invalid, as they conflict with this mandatory provision of the FGC.

Prior to 2008, the prevailing view in Poland was that surrogacy agreements were invalid.[118] The principle of freedom of contract in civil law has its limits, as contracts that conflict not only with legal provisions but also with the principles of social coexistence are deemed invalid (Arts 56 and 353^1 of the Civil Code[119]). Previously, when there were no specific legal provisions regarding surrogacy agreements, the permissibility of entering into such contracts was assessed from an ethical perspective by considering whether such an agreement violated the principles of social coexistence. Legal acts are considered to conflict with these principles if their content and purpose contradict universally recognised values and moral rules relating to interpersonal relationships.[120]

In the debates held by lawyers, particularly civilists,[121] arguments rejecting the permissibility of surrogacy have prevailed and continue to dominate (claiming that ethics should be prioritised over technological capabilities), and therefore not everything that is technologically feasible should or must be realised. It is noteworthy that surrogacy is related, or at least can be, to human trafficking; a human being cannot be subject to a trade agreement; a woman's agreement to become a surrogate objectifies her irrespective of the fact whether she is willing to do it or not; surplus

116 Kwiecień, 2016, p. 54.
117 Art. 61 FGC.
118 Lis, 2019, pp. 490–493; Nesterowicz, 2007, pp. 257–263.
119 The Act of 23 April 1964. The Civil Code, consolidated text: Journal of Laws of 204, item 1061.
120 Radwański and Olejniczak, 2023, p. 311; Doliwa, 2021, pp. 9–17, pp. 46–90.
121 Nesterowicz, 2007, pp. 257–263; Soniewicka, 2020, pp. 5–24.

embryos are at risk of trade or destruction; separation from their mother directly after birth is a traumatic experience for the infant.[122]

Additionally, it has been noted that the parties to a contract cannot determine in the agreement who will be the mother of the child, as a contract cannot establish a person's civil status nor influence the content of a court ruling regarding the determination of such status.[123]

Doctrine and jurisdiction unequivocally consider surrogacy agreements to be invalid when they involve financial compensation.[124]

The aforementioned Art. 61 of the FGC clarifies that the identification of the mother is definitive, including cases where the child is born to a woman who has entered into a surrogacy agreement and has received payment for it. If the surrogate mother, intending to fulfil the contract, wishes to consent to the adoption of the newborn child, she cannot designate the commissioning individuals as adoptive parents (designated adoption). This is because, in 2019, adoption laws were amended to stipulate that parents may now only designate close family members as candidates for the adoption of their child.

For more on the idea of penalising surrogacy agreements, see Sec. 9.

9. Criminal and Administrative Sanctions For Violations of ART Legal Provisions

The enforcement of fundamental requirements to ensure the highest standards of protection for the rights and interests of individuals involved in ART is supported by provisions in criminal law. These provisions, outlined in the ITA (Arts 76–90), emphasise the importance of proper implementation of ART, the necessity of effective protection for participants, and respect for the significant values at stake in such procedures.[125]

Prohibited under penalty of law are actions marked by the commercialisation of ART, which could lead to the development of a 'black market for human gametes' and 'serve as a temptation for some to acquire financial resources easily', potentially involving the creation of organised criminal groups.[126]

122 Kornas-Biela, 2017, pp. 43–64; Kornas-Biela, 2010, pp. 149–173.
123 Domański, 2017, pp. 1048–1062; Smyczyński and Andrzejewski, 2024, pp. 222–223, pp. 234–238; Lis, 2019, pp. 490–491.
124 Fras and Abłażewicz, 2008, pp. 94–119, Nesterowicz, 2007, p. 218.
125 Haberko, 2016, p. 377.
126 Wojewoda, 2021, p. 45.

With a degree of caution, it can even be assumed that exploiting women and men of reproductive age to obtain gametes could become a new area of human trafficking operations.[127]

In this context, the ITA prohibits the following: (a) the dissemination of advertisements for the paid sale, purchase, or mediation in the paid sale or purchase of gametes or embryos;[128] (b) the purchase or sale of an embryo, mediation in its purchase or sale, or participation in the use of an embryo obtained in violation of the provisions of the law on embryos;[129] (c) the export or import of reproductive cells or embryos from the territory of Poland to a country outside the European Union and vice versa, without the permission of the Minister of Health;[130] (d) the purchase or sale of a reproductive cell, mediation in its purchase or sale, or participation in the use of a reproductive cell obtained in violation of the provisions of the law on reproductive cells.[131]

The values protected under Art. 77 of the ITA include the personal dignity and bodily integrity of donors of reproductive cells, the unimpeded flow of information concerning the donation of gametes, and monitoring of ART. Additionally, it safeguards the 'integrity of assisted reproductive medicine as a specialised branch of medicine',[132] and 'the proper course of activities in assisted reproduction'.[133]

Empirical research indicates that in Poland, there have been instances that meet the criteria of the criminal offences described in Art. 76 of the ITA and related behaviours specified in Art. 77 of the ITA.[134]

Several actions constitute criminal offences owing to their attack on the health or life of an embryo. These include: (a) The use of preimplantation genetic diagnosis in medically assisted reproductive procedures for purposes other than medical indications, including sex selection, except in cases where such selection prevents a severe, incurable hereditary disease.[135] (b) The destruction of an embryo capable of normal development created using ART.[136] (c) The creation of an embryo for purposes other than ART.[137] (d) The creation of chimeras or hybrids using ART, or conducting interventions aimed at causing hereditary changes in the human genome that could be transmitted to subsequent generations.[138] (e) The creation of an embryo with nuclear

127 Ibid.
128 Art. 76 ITA.
129 Art. 79 ITA.
130 Art. 88 ITA.
131 Art. 77 (1) ITA. Wojewoda, 2021, pp. 38–51.
132 Wojewoda, 2019, pp. 338–340.
133 Nazar, 2021, pp. 46–48.
134 Wojewoda, 2019, pp. 369–414.
135 Art. 82 ITA.
136 Art. 83 ITA.
137 Art. 85 ITA.
138 Art. 86 ITA.

genetic information identical to that of another embryo, foetus, human, corpse, or human cadaver.[139]

The protection of an embryo's life, primarily owing to the possibility of creating surplus embryos and other weaknesses in their protection described in point 4.4.3, as well as the lack of absolute protection ensured in Art. 83 of the ITA, is critically assessed in legal doctrine.[140]

Further, prohibited acts include behaviours that violate administrative and organisational prohibitions or requirements, such as follows: (a) Conducting activities stipulated by the ITA that are exclusively reserved for a medically assisted reproductive centre or a reproductive cell and embryo bank, without the required permit or in violation of the conditions specified in the permit.[141] (b) Failing to provide information and data concerning donors and recipients of reproductive cells used for non-partnered donations, as well as donors and recipients of embryos, despite being responsible for submitting this information to the registry of reproductive cell and embryo donors.[142]

Moreover, it is punishable to harvest reproductive cells from human corpses for use in medically assisted reproductive procedures.[143]

Additionally, several administrative fines have been established for administration-related misconduct related to the functioning of ART procedures.

Criminal law literature has favourably evaluated the penal provisions of the ITA that safeguard against the uncontrolled trade of reproductive cells and prevent the commercialisation of human gametes. Particular emphasis has been placed on the importance of registry tools that allow for the identification of donors and recipients of gametes used for non-partnered donations, as well as donors and recipients of embryos.[144]

In discussions regarding the commercialisation of artificial reproduction, strong criticism of the practice of surrogacy can be heard, leading some countries to impose restrictions, including outright prohibition on the use of this ART.[145] Additionally, controversies arise regarding the legal and criminal liability for entering into surrogacy agreements and conducting ART involving surrogacy.

It has been argued that fulfilling a surrogacy agreement – handing over a child as the object of the agreement in exchange for financial gain – constitutes the crime of human trafficking.[146] According to another view, this act is considered a crime only when it involves giving or receiving financial or personal benefits, or the promise of such benefits, to a person in charge of care or supervision over another person for

139 Art. 87 ITA.
140 Gałązka, 2022, pp. 243–263; Wojewoda, 2024, p. 343.
141 Art. 80 ITA.
142 Art. 81 ITA.
143 Art. 84 ITA.
144 Wojewoda, 2021, p. 48.
145 Breczko, 2007, pp. 266–270.
146 Art. 189a(1) of the Criminal Code. Lis, 2019, pp. 492–493.

the purpose of the person's exploitation, even with their consent. Forms of exploitation mentioned include, in particular, prostitution, pornography, or other forms of sexual exploitation; forced labour or services; begging; slavery or other degrading practices; or the procurement of cells, tissues, or organs in violation of statutory provisions.[147]

The critical evaluation of surrogacy served as the basis for a proposed law to criminalise this form of ART. The draft law included criminal penalties for surrogate mothers, intended parents, and individuals involved in assisted reproductive methods aimed at bearing and abandoning a child through transfer to others (surrogacy), as well as those organising or participating in surrogacy, regardless of whether it is commercial or altruistic. It was acknowledged that, although surrogacy conflicts with human rights protection standards and surrogacy agreements themselves stem from the objectification of children and surrogates, introducing criminal penalties would be an overly harsh measure– particularly against individuals seeking to become parents through this route and against surrogate mothers.[148]

10. Family Law Regulations on Assisted Reproductive Technologies

The enactment of the ITA was accompanied by amendments to the FGC concerning issues of filiation, specifically: (a) the presumption of a child's origin from the mother's husband,[149] (b) the recognition of paternity of a child conceived outside of marriage through ART procedures,[150] (c) the presumption of paternity for children born outside of marriage.[151]

The presumption of a child's origin from the mother's husband, which is the evident basis for identifying the father of a child born to a married woman, was modified with the enactment of the ITA. This presumption applies during the marriage and for 300 days following its dissolution. However, if the child is born before the expiry of 300 days from the termination or annulment of the marriage, after the mother enters into a second marriage, it is presumed that the child originates from the second husband. This presumption does not apply if the child was born using a medically assisted reproductive procedure to which the mother's first husband consented.[152]

147 Art. 115 (22) of the Criminal Code. Burdziak and Pohl, 2019, pp. 574–604.
148 Haberko, 2016, pp. 435–436; A 25 March 2019 letter of the Commissioners of Human Rights to the Speaker of the House (Sejm).
149 Art. 62(1) FGC.
150 Art. 75FGC.
151 Art. 84 FGC.
152 Art. 62(2) FGC.

The presumption of a child's origin from the mother's husband can be challenged through a paternity denial suit. However, the use of ART necessitated a significant limitation on the ability to bring such a suit. Art. 68 FGC was amended to state that a paternity denial claim is inadmissible if the child was born using a medically assisted reproductive procedure to which the mother's husband consented.

It should be assumed that neither spouse has standing in this situation – neither the husband nor the wife who gave birth to a child using ART. This provision references an earlier doctrine that held that a woman undergoing artificial insemination without her husband's knowledge is acting disloyally, thus providing the husband grounds to deny paternity.[153] Similarly, disloyal behaviour, inconsistent with principles of social coexistence and therefore undeserving of protection, is further attributed to a husband who consents to his wife's participation in the artificial insemination procedure, yet later seeks to deny his paternity. Biologically, the husband is not the father. However, he bears moral responsibility for his participation in the procedure through his consent and must accept the associated legal consequences.

The most controversial interference in the hitherto established and stable construction of filial law, simultaneously the most frequently criticised, was brought by the ITA provisions concerning paternity acknowledgment.[154] The institution of paternity acknowledgment involves making a declaration by the father of a child born outside marriage that he is indeed the father of the child. This declaration has legal consequences once the mother of the child confirms it. Both declarations are made in the Civil Registry Office. As a consequence of acknowledging paternity, the man is treated as the father of the child, and this status is reflected in the child's birth certificate, which is a document determining their civil status. The person acknowledging paternity has parental authority over the child and is obligated to provide financial support for the child. Declarations of paternity can be made during the prenatal phase of the child's life, which has consequences, such as the father's participation in decisions related to medical procedures for the unborn child,[155] as well as the creation of an economic obligation to support the child's mother during pregnancy and postpartum.[156]

Acknowledging the paternity of a child conceived using ART significantly differs from the above-described scheme. According to Art. 75 of the FGC, paternity is acknowledged upon the birth of the child, even if, before the transfer of reproductive cells from an anonymous donor or an embryo created from reproductive cells from an anonymous donor, or from embryo donation, the man declares before the head of the civil registry office that he will be (in the future, not now – emphasis mine – M.A.) the father of the child that will be born using the medically assisted reproduction

153 Radwański, 1979, pp. 171–184.

154 Particularly Art. 75FGC. Smyczyński and Andrzejewski, 2024, pp. 222–223, 234–238; Ignatowicz and Nazar, 2016, pp. 438–440, pp. 444–448; Kwiecień, 2016, pp. 49–68; Haberko, 2023, pp. 224–226.

155 Haberko, 2010, pp. 111–182.

156 Art. 141 FGC. Sokołowski, 2008, pp. 383–398.

procedure using these cells or this embryo, and the woman confirms – simultaneously or within three months of the man's declaration – that the father of the child will be this man.[157]

The declarations of ART beneficiaries deposited in such a manner are valid if a child is born using ART specified in the declarations within two years following the deposition of the declaration by the man (emphasis mine – M.A.).[158] This construction of paternity recognition is inconsistent with the hitherto construction of acknowledgment understood as a declaration confirming the fact of being a father, not as a declaration of the intention of becoming (in the future) the father of a child who is not genetically related to him.[159] Moreover, the period between making declarations and the birth of the child can be much longer than the duration of this pregnancy, and it is possible that conception and birth may never occur at all. Thus, for the duration of these two years, uncertainty will persist regarding the legal situation of the ART beneficiaries, the child to be born, and other persons, particularly the heirs of the man if he dies during these two years after the creation of the embryo to which the paternity acknowledgment applies. According to the Civil Code provisions on inheritance after the death of a parent, his children inherit, including children conceived, provided they are born alive.[160] The literal wording of Art. 927 of the Civil Code leads to the conclusion that since an embryo is a conceived child, it inherits from the deceased father if born alive. However, there are questions that transcend the rules of linguistic interpretation and refer to functional interpretation, as there are no clear and detailed legal provisions addressing these issues. Therefore, the doctrinal dispute concerns the question: does a newborn child inherit from a father who died two years earlier, if, after making the paternity declaration, the man dies, and the woman decides to give birth to the child created from the reproductive cells of her and an anonymous donor? Or, should such inheritance proceedings be suspended until the two-year period expires, using the institution of a guardian to protect the interests of the conceived yet unborn child?[161]

Another issue that has attracted criticism is that, as a result of the paternity recognition regulated in Art. 75 of the FGC, it became possible to determine the identity of the father before fertilisation (the fusion of reproductive cells) occurs. This leads to the breach of the principle that paternity is secondary to maternity.[162] In the situation in question, paternity is recognised before maternity is established, since the declarations of the man and the woman can be made before the embryo is transferred into the woman's body.

157 Art. 75(1) FGC.
158 Art. 75(2) FGC.
159 Smyczyński and Andrzejewski, 2024, p. 236.
160 Art. 927(2) of Civil Code.
161 Art. 182 of the FGC. Haberko and Załucki, 2023, pp. 33–57; Księżak, 2017, 99–101; Ostojska, 2012, pp. 32–46; Sylwestrzak, 2024, p. 1525; Borysiak, 2013, pp. 107–109.
162 Kwiecień, 2016, pp. 60–61.

The final aspect of filial law modified by the introduction of ART is the presumption of paternity of a child born out of marriage. According to the wording of Art. 85 (1) of the FGC, it is presumed that the father of a child is not only the man who had intercourse with the mother during the conception period but also 'the man who was the donor of the reproductive cell in the case of a child born as a result of partner gamete donation in a medically assisted reproductive procedure'.

11. Financing ART

The financing of ART can take several forms. The procedure may be fully paid for by the individuals undergoing ART, either in private or public healthcare institutions. In both types of facilities, the cost of the procedure may reflect the cost of its service, along with the operational costs of the institution providing the service. Further, the cost can be determined commercially, that is, according to market rules. Additionally, it is possible to imagine that the cost of a specific ART and the scope of funding the beneficiaries receive (from the state or local government budget) would be determined based on their income. Humanitarian reasons supported by ideological or demographic arguments may encourage public authorities (central or local) to reimburse the costs of ART.

Opponents of the permissibility of ART argue that as taxpayers, they do not want to participate in the financing of something they firmly disagree with on moral grounds. However, this is not a strong argument, considering that those in power, with a democratic mandate, initiate many controversial outlays that various social groups may criticise.

The issue of financing *in vitro* procedures was contentious in Poland already during the work on the ITA. In the initial version of the Act (June 2015), it was adopted that these procedures would not be reimbursed for ART beneficiaries from the state budget. However, local governments were authorised to fully or partially reimburse them. The conservative government, which assumed office in the autumn of 2015, was not supportive of artificially assisted reproduction. *In vitro* reimbursement programmes were introduced in large cities governed by left-wing and liberal parties and organisations. The same groups then advocated for the introduction of appropriate solutions when adopting their own (local) budgets. Moreover, they called for the introduction of state-funded *in vitro* procedures.[163] After the government change (in December 2023), the method of financing ART was modified.[164] This issue is reg-

163 An opinion of the Commissionaire of Human Rights on the Senate's (Upper Chamber of Polish Parliament – Sejm) on the draft concerning invitro financing of 18 August 2023.

164 Financing of invitro procedures from 1 June 2024. Government program of invitro financing in Poland between 2024-28 – principles and criteria of screening couples.

ulated by provisions related to publicly funded healthcare services,[165] which ensure reimbursement for infertility treatment costs.

The ITA contains provisions addressing economic issues, such as the prohibition of the paid sale, purchase, or mediation of paid sales or purchases of reproductive cells or embryos, as well as a prohibition to demand or accept payment or other financial or personal benefits for donated reproductive cells or used embryos. However, refunds for the costs of collection, storage, processing, distribution, and use of reproductive cells, as well as refunds for the costs of obtaining, storing, processing, distributing, and using embryos, are not considered payments or financial or personal benefits. These costs are determined based on the actual expenses incurred for their execution. The resolutions opposing the trend towards the commercialisation of ART were considered sufficiently significant to reinforce them with criminal sanctions (see Sec. 9).

12. Conducting ART – The Administrative Aspect

The enactment of the ITA imposed numerous obligations on the Minister of Health and local government authorities, as well as established the foundation for the creation and functioning of specialised institutions necessary to maintain standards in conducting ART. The most significant development is the establishment of infertility treatment centres, which were created by the decision of the Minister of Health after consulting the Infertility Treatment Council.[166] If an infertility treatment centre fails to perform its statutory tasks, the Minister may revoke its status.

Infertility treatment centres in Poland (currently their number is ca. 70) include entities that perform: (a) as banks of reproductive cells and embryos, which are units responsible for collecting, storing, and distributing reproductive cells and embryos; (b) activities related to infertility treatment using all methods provided for in the ITA, including through a medically assisted procreation centre, defined as: a medical entity performing medical activities in the field of medically assisted reproductive procedures, including the collection, processing, testing, preservation, and distribution of reproductive cells and embryos; (c) educational and research activities associated with providing health services and promoting health, including the implementation of new medical technologies and methods for diagnosing and treating infertility.[167]

165 Act of 29 November 2023 on the change of the act on health care financed from public funds, Journal of Laws of 2023, point 2730.

166 Art. 14 ITA.

167 Art. 12–16 ITA.

Moreover, a medically assisted reproductive centre is responsible for marking reproductive cells or embryos in a manner that ensures their identification and the identification of their donor or donors through unique labelling.[168]

Additionally, the centre manages reproductive cells and embryos to properly conduct ART. This responsibility involves collecting reproductive cells from donors and using these cells and embryos in ART, such as processing, testing, preserving, and distributing them.[169]

The role of the bank of reproductive cells and embryos is to collect, store, and distribute reproductive cells and embryos intended for use in ART on humans. Additionally, the bank is tasked with entering into agreements with donors for the storage of their donated reproductive cells or embryos.[170]

All documentation created in connection with ART, as well as all information regarding donors and recipients of reproductive cells and embryos, and procedures involving reproductive cells and embryos is confidential. Such information may only be disclosed within the scope provided by the ITA or to judicial authorities in relation to ongoing legal proceedings.

Infertility treatment, the most important issue regulated under the ITA, is conducted in accordance with current medical knowledge. All activities associated with it must respect human dignity, the right to private[171] and family life,[172] and give particular consideration to the legal protection of life, health, interest, and the rights of the child.[173]

Infertility treatment includes: (a) medical counselling, (b) diagnosis of infertility causes, (c) non-invasive pharmacological treatment, (d) surgical (invasive) treatment, (e) fertility preservation for the future, and, most notably, (f) medically assisted reproductive procedures, including *in vitro* fertilisation conducted at medically assisted reproductive centres.[174]

This broad concept of treatment encompasses several elements that are not inherently 'treatments' (e.g., counselling, diagnosis, fertility preservation for the future). This approach is somewhat difficult to reconcile with the definitions of these terms and the principles of legislative drafting. It can be inferred that such a wide formula was intended to embed ART within a range of other activities, thereby reducing criticism of the ITA from opponents of artificial procreation.[175]

Further, it is noteworthy that government administrative bodies are obligated, and local governments are authorised, to undertake actions for the protection and

168 Art. 39 ITA.
169 Art. 44 ITA.
170 Art. 46 ITA.
171 Sec. 4.10.
172 Sec. 10.
173 Arts. 4 and 3(1) ITA.
174 Art. 5(1) ITA.
175 Haberko, 2016.

promotion of reproductive health.[176] These actions particularly include education on lifestyles that protect human reproductive potential and increase the chances of giving birth to a healthy child, the importance of preconception care, and providing information regarding factors 'affecting human reproductive potential'.[177]

176 A statutory term – Art. 11(1) ITA.
177 Art. 11(3) ITA.

References

Albański, Ł., Krywult-Albańska M. (2011) 'Seks, nauka i czystość rasy: jak ruch eugeniczny za oceanem chciał stworzyć społeczeństwo doskonałych jednostek', *Nowiny Lekarskie. Prace Poglądowe*, 80(5), pp. 407–413.

Andrzejewski, M. (2012) 'Prawa dziecka – rozważania o sensie idei i jej dewaluacji' in Andrzejewski, M. (ed.) *Prawa dziecka – konteksty prawne i pedagogiczne*. Poznań: Wydawnictwo UAM, pp. 41–58.

Andrzejewski, M. (2024) 'Poland: Ineffectiveness of Legislation in Defeating the Demographic Crisis' in Barzo, T. (ed.) *Demographic Challenges in Central Europe. Legal and Family Policy Response, Studies of The Central European Professors' Network*. Miskolc – Budapest, Central European Academic Publishing, pp. 477–523; https://doi.org/10.54237/profnet.2024.tbdecce_14.

Andrzejewski, M. (2025) 'The role of Professor Tadeusz Smyczyński as a drafter of the UN Convention on the Rights of the Child' in Smyczyński, T., Andrzejewski, M. (eds.) *Human rights – Children rights*. Miskolc – Budapest: Central European Academic Publishing; in print.

Bassa, B. (2012) 'Prawa reprodukcyjne i seksualne jako „nowe prawa' człowieka', *Studia nad Rodziną*, 30–31(1–2), pp. 363–377.

Bączyk-Rozwadowska, K. (2018) *Prokreacja medycznie wspomagana. Studium z dziedziny prawa*. Toruń: Dom Organizatora TNOiK.

Bidzan, M. (2010) *Niepłodność w ujęciu bio-psycho-społecznym*. Kraków: Impuls.

Biesaga, T. (2004) 'Status embrionu – stanowisko personalizmu ontologicznego' in Biesaga, T. (ed.) *Bioetyka polska*. Kraków: Wydawnictwo Naukowe PAT, pp. 231–238.

Borysiak, P. (2013) 'Komentarz do art. 927 Kodeksu cywilnego' in Osajda, K. (ed.) *Kodeks Cywilny. Komentarz*. vol. III. Warszawa: Wydawnictwo C.H. Beck, pp. 101–113.

Borysiak, P., Bosek, L. (2016) 'Komentarz do art. 32 Konstytucji RP' in Safjan, M., Bosek, L. (eds.) *Konstytucja RP. Komentarz – art. 1-86. vol. 1.* Warszawa: Wydawnictwo C.H. Beck, pp. 818–843.

Breczko, A. (2007) 'Z problematyki eksperymentu medycznego na organizmie ludzkim (wybrane problemy prawne i etyczne)' in Etel, L., Grzybowski, M., Jamróz, A., Kijowski, D., Kosikowski, C., Lityński, A., Pływaczewski, E., Prutis, S., Ruśkowski, E., Sanetra, W., Święczkowska, H., Wierzbicki, B. (eds.) *Wybrane problemy prawa krajowego i europejskiego*. Białystok: Temida 2, pp. 171–192.

Breczko, A. (2015) 'Komercjalizacja ludzkiej prokreacji – problemy etyczne i prawne' in Piszcz, A., Olszak, M., Etel, M. (eds.) *Państwo, gospodarka, prawo. Księga dedykowana Profesorowi Cezaremu Kosikowskiemu z okazji jubileuszu pracy naukowej na Wydziale Prawa Uniwersytetu w Białymstoku*. Białystok: Temida 2, pp. 257–273.

Burdziak, K., Pohl, Ł. (2019) 'Tak zwane macierzyństwo zastępcze (surrogate motherhood) w świetle polskiego prawa karnego. Uwagi de lege lata i postulaty de lege ferenda' in Mostowik, P. (ed.) *Fundamentalne prawne problemy sur rogate motherhood. Perspektywa krajjowa*. Warszawa: IWS, pp. 574–604.

Catte, E. (2024) *Czysta Ameryka. Przemilczana historia eugeniki*. Wołowiec: Wydawnictwo Czarne.

Cebrat S. (2008) 'Zapłodnienie *in vitro* – dylematy genetyka', *Miesięcznik ZNAK*, 4(635), pp. 43–53.

Centrum Badania Opinii Społecznej (2015) Opinie o dopuszczalności stosowania zapłodnienia *in vitro*, Komunikat z Badań No. 96 [Online]. Available at: https://cbos.pl/SPISKOM.POL/2015/K_096_15.PDF (Accessed: 31 December 2024).

Chyrowicz, B. (2002) *Bioetyka i ryzyko*. Lublin: Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego.

Czujek, M. (2014) *Godność prokreacji ludzkiej w kontekście technik reprodukcyjnych. Studium kanoniczno-prawne i etyczne*. Warszawa: Prymasowskie Wydawnictwo Gaudentinum.

Conroy, M. (2012) *Nazistowska eugenika. Prekursorzy, zastosowanie, następstwa*. Katowice: PostFACTUM.

Czarkowski, M. (2018) 'Udział osób niezdolnych do wyrażenia zgody w badaniach naukowych' in Białek, A., Wróblewski, M. (eds) *Prawa człowieka a wyzwania bioetyczne związane z nowymi technologiami*. Warszawa: Biuro Rzecznika Praw Obywatelskich, pp. 47–60.

Dobrowolska, K. (2016) 'Prawa reprodukcyjne i seksualne w ONZ i ich doktrynalne uwarunkowania', *Zeszyty Prawnicze*, 16(2), pp. 164–181.

Doliwa, A. (2021) *Funkcje zasad współżycia społecznego w prawie cywilnym*. Warszawa: Wydawnictwo C.H. Beck.

Domański, M. (2017) 'Komentarz do art. 75 KRO' in Osajda, K. (ed.) *Kodeks rodzinny i opiekuńczy. Komentarz*. Warszawa: Wydawnictwo C.H. Beck, pp. 1048–1062.

Domagalska, K. (2015) *Nie przeproszę, że urodziłam. Historie rodzin z in vitro*. Wołowiec: Wydawnictwo Czarne.

Drapalska-Grochowicz, M. (2023) 'Women in law from the law & emotions perspective. Case study of the Infertility Treatment Act', *Studia Iuridica*. 2023/99, pp. 59–74.

Dzwonkowska-Godula, K. (2019) 'Zjawisko nierówności społecznych w zakresie praw reprodukcyjnych w Polsce – wybrane zagadnienia', *Przegląd Socjologiczny*, 68(2), pp. 133–157 [Online]. Available at: https://doi.org/10.26485/PS/2019/68.2/6 (Accessed: 31 December 2024).

Fras, M., Abłażewicz, D. (2008) 'Reżim prawny macierzyństwa zastępczego na tle porównawczym', *Rodzina i Prawo*, 2008/6, pp. 31–67.

Galewicz, W. (ed.) (2010) *Początki życia ludzkiego. Antologia bioetyki*. Vol. 2. Kraków: Universitas.

Gałązka, M. (2016) 'Polskie prawo wobec zapłodnienia *in vitro* – dyskusja wciąż otwarta', *Forum Prawnicze*, 3(35), pp. 37–55.

Gałązka, M. (2018) 'Zakres dopuszczalności medycznie wspomaganej prokreacji w ustawie o leczeniu niepłodności' in Bosek, L., Wnuk-Kozłowska, A. (eds.) *Szczególne świadczenia zdrowotne*, *System Prawa Medycznego*. Vol. 2. Warszawa: Wydawnictwo C.H. Beck, pp. 127–168.

Gałązka, M. (2022) 'Zapłodnienie *in vitro* a prawno karna ochrona życia' in Lis, W. (ed.) *Prawo do życia*. Warszawa: Wydawnictwo IWS, pp. 227–274.

Gałęziowska E., Bogusz R. (2013) 'Przyczyny i konsekwencje podjęcia decyzji o zastępczym macierzyństwie w opinii położnych', *Medycyna Ogólna i Nauki o Zdrowiu*, 19(3), pp. 300–304.

Giertych, W. (2010) 'Zrodzony, a nie wyprodukowany', *W drodze. Miesięcznik poświęcony życiu chrześcijańskiemu*, 10(446), pp. 42–53.

Gromek, K. (2022) *Praxis. Prawo rodzinne dla sędziów i pełnomocników*. 3rd edn. Warszawa: Wydawnictwo C.H. Beck.

Grzymkowska, M. (2009) *Standardy bioetyczne w prawie europejskim*. Warszawa: Wolters Kluwer.

Haberko, J., Olszewski, K. (2008) 'Moralne i prawne aspekty dążenia małżonków do posiadania dziecka w kontekście techniki zapłodnienia pozaustrojowego *in vitro*', *Prawo i Medycyna*, 10(1), pp. 65–80.

Haberko, J. (2010) *Cywilnoprawna ochrona dziecka poczętego a stosowanie procedur medycznych*. Warszawa: Wolters Kluwer.

Haberko, J. (2013) 'Dopuszczalność stosowania technik wspomaganego medycznie rozrodu w przypadku związków partnerskich – de lege lata i de lege ferenda' in Andrzejewski, M. (ed.) *Związki partnerskie – debata na temat projektowanych zmian prawnych*. Toruń: Dom Organizatora TNOiK, pp. 157–169.

Haberko, J. (2016) *Ustawa o leczeniu niepłodności. Komentarz*. Warszawa: Wolter Kluwer.

Haberko, J. (2023) 'O potrzebie zmian w zakresie ustalania ojcostwa przed urodzeniem się dziecka', *Prawo i Więź*, 2(45), pp. 213–231.

Haberko, J., Załucki, M. (2023) 'Dopuszczalność i prawnospadkowe konsekwencje postmoralnej implantacji zarodka', *Prawo w Działaniu. Sprawy cywilne*, 2023/56, pp. 33–57.

Ignatowicz, J., Nazar, M. (2016) *Prawo rodzinne*. 5th. edn. Warszawa: Wolters Kluwer.

Jasudowicz, T. (2018) 'Historia powstawania i przyszłość Europejskiej Konwencji Bioetycznej' in Białek, A., Wróblewski, M. (eds) *Prawa człowieka a wyzwania bioetyczne związane z nowymi technologiami*. Warszawa: Biuro RPO, pp. 14–36.

Jędrzejczak, P., Jósiak, M. (2005) 'Przyczyny niepłodności' in Haberko, J., Łączkowska, M. (eds.) *Prawne, medyczne i psychologiczne aspekty wspomaganej prokreacji*. Poznań: WPiA UAM, pp. 6–18.

Kaliszuk, Z. (2022) 'Zbigniew Kaliszuk: krytyka *in vitro* nie jest atakiem na godność dzieci poczętych tą metodą', *eKaiof* [Online]. Available at: https://www.ekai.pl/zbigniew-kaliszuk-krytyka-in-vitro-nie-jest-atakiem-na-godnosc-dzieci-poczetych-ta-metoda/ (Accessed: 31 December 2024).

Kołakowski, L. (2010) 'Po co nam prawa człowieka?', *Gazeta Wyborcza*, 9 December 2010. [Online]. Available at: https://wyborcza.pl/7,76842,8794612,po-co-nam-prawa-czlowieka.html (Accessed: 31 December 2024).

Kongregacja Nauki Wiary (2008) 'Instrukcja DignitasPersonae dotycząca niektórych problemów bioetycznych' [Online]. Available at: https://kodr.pl/wp-content/uploads/2018/10/dignitas_personae.pdf (Accessed: 31 December 2024).

Kornas-Biela, D. (2010) 'Pedagogika prenatalna' in Śliwerski, B. (ed.) *Pedagogika. Subdyscypliny i dziedziny wiedzy o edukacji. Vol. 4*. Gdańsk: Gdańskie Wydawnictwo Pedagogiczne, pp. 149–173.

Kornas-Biela, D. (2017) 'The beginnings of prenatal psychology in Poland', *Roczniki Pedagogiczne*, 9(45), pp. 43–64.

Krasiński, J. (2023) *In vitro – nauczanie do przemyślenia*. [Online]. Available at: https://wiez.pl/2023/11/23/in-vitro-nauczanie-do-przemyslenia/ (Accessed: 31 December 2024).

Króliński, P. (2023) 'Komentarz do art. 72-73' in Osajda, K., Domański, M., Słyk, J. (eds.) *Prawo o aktach stanu cywilnego. Komentarz*. Warszawa: Wydawnictwo C.H. Beck, pp. 429–439.

Kubiak, R. (2010) *Prawo medyczne*. Warszawa: Wydawnictwo C.H. Beck.

Kuczyńska, M., Chojnacka, K., Grochans, E., Augustyniuk, K, Jurczak, A., Karakiewicz, B. (2013) 'Opinie wybranych grup społecznych na temat etycznej strony zapłodnienia metodą *in vitro*', *Medycyna Ogólna i Nauki o Zdrowiu*, 19(3), pp. 279–283.

Kuźnicka, D. (2016) 'Prawo do tożsamości jako prawo dziecka – wybrane zagadnienia', *Folia Iuridica Universitatis Wratislaviensis*, 5(2), pp. 181–198.

Księżak, P. (2017) *Prawo spadkowe*. Warszawa: Wolters Kluwer.

Kwiecień, A. (2016) 'Ustalenie pochodzenia dziecka poczętego w wyniku medycznie wspomaganej prokreacji z uwzględnieniem nowelizacji kodeksu rodzinnego i opiekuńczego z 25 czerwca 2015 r.', *Wrocławskie Studia Sądowe*, 2(19), pp. 49–68.

Lis, W. (2022) 'Prawo do życia zarodków powstałych w wyniku medycznie wspomaganej prokreacji' in Lis W. (ed.) *Prawo do życia*. Warszawa: Wydawnictwo IWS, pp. 189–226.

Lis, W. (2019) 'Urodzenie zastępcze w świetle podstawowych zasad prawa rodzinnego' in Mostowik, P. (ed.) *Fundamentalne prawne problemy surrogate motherhood. Perspektywa krajow*a. Warszawa: Wydawnictwo IWS, pp. 483–496.

Laun, A. (2002) *Współczesne zagadnienia teologii moralnej. Teologia moralna – zagadnienia szczegółowe*. Kraków: Wydawnictwo M.

Lifton, R.J. (2024) *Nazistowscy lekarze. Mord medycyny i psychologia ludobójstwa*. Kraków: Znak Horyzont.

Łączkowska, M. (2005) 'Czy istnieje prawo do 'posiadania' dziecka?' in Haberko, J., Łączkowska, M. (eds) P*rawne, medyczne i psychologiczne aspekty wspomaganej prokreacji*. Poznań: WPiA UAM, pp. 70–79.

Mariański, J. (2022) 'Postawy Polaków wobec zapłodnienia pozaustrojowego *in vitro*', *Zeszyty Naukowe Wyższej Szkoły Nauk Społecznych Z Siedzibą W Lublinie*, 11(1), pp. 59–79.

Mirocha, Ł. (2018) 'Macierzyństwo zastępcze w aktualnym orzecznictwie Europejskiego Trybunał Praw Człowieka', *Prawo w Działaniu. Sprawy cywilne*, 2018/34, pp. 165–188 [Online]. Available at: https://doi.org/10.32041/PWD.3404 (Accessed: 31 December 2024).

Mostowik, P. (ed.) (2019) *Fundamentalne prawne problemy surrogate motherhood.* Perspektywa krajowa, Warszawa: Wydawnictwo IWS.

Nazar, K. (2021) 'Aspekty prawne procedur medycznych w zakresie postępowania z komórkami rozrodczymi i zarodkami w kontekście art. 78 ustawy z dnia 25 czerwca 2015 r. o leczeniu niepłodności', *Prokuratura i Prawo*, 2021/10, pp. 46–61.

Nesterowicz, M. (2007) *Prawo medyczne*. 7th. edn. Toruń: Dom Organizatora TNOiK.

Niżnik-Mucha, A. (2016) *Prawna regulacja medycznie wspomaganej prokreacji w Polsce i wybranych państwach europejskich. Wybrane problemy*. Kraków: Księgarnia Akademicka.

Ostojska, J. (2012) 'Sytuacja prawna dziecka urodzonego w drodze postmoralnej implantacji embrionu *in vitro*', *Prawo i Medycyna*, 2012/2, pp. 32–46.

Piątek, Z. (2019) *Eugenika – zagrożenie czy nadzieja ludzkości*. Toruń: Wydawnictwo Naukowe UMK.

Polska Agencja Prasowa (2016) 'Zdecydowana większość Polaków uważa, że *in vitro* powinno być dozwolone' [Online]. Available at: https://www.mp.pl/pacjent/ciaza/aktualnosci/151376,zdecydowana-wiekszosc-polakow-uwaza-ze-in-vitro-powinno-byc-dozwolone (Accessed: 31 December 2024).

Radwański, Z. (1979) 'Pozycja prawna dziecka poczętego w następstwie sztucznego unasiennienia matki', *Studia Iuridica Silesiana*, 1979/5, pp. 171–184.

Radwański, Z., Olejniczak, A. (2023) *Prawo cywilne – część ogólna*. Ed. 17. Warszawa: Wydawnictwo C.H. Beck.

Różyńska, J. (2013) 'Etyka i wspomagana prokreacja', in Różyńska, J., Chańska, W. (eds.) *Bioetyka*. Warszawa: Wolters Kluwer.

Różyńska, J., Chańska, W. (eds.) (2013) *Bioetyka*. Warszawa: Wolters Kluwer.

Różyńska, J. (2016) 'Rozwój i ochrona praw reprodukcyjnych jako praw człowieka' in Namysłowska-Gabrysiak, B., Syroka-Marczewska, K., Walczak-Żochowska, A. (eds.) *Prawo wobec problemów społecznych. Księga jubileuszowa profesor Eleonory Zielińskiej*. Warszawa: Wydawnictw C.H. Beck, pp. 801–812.

Rudziewicz, A. (2004) 'Dyskusja wokół diagnostyki prenatalnej w Polsce' in Biesaga, T. (ed.) *Bioetyka polska*. Kraków: Wydawnictwo Naukowe PAT, pp. 256–272.

Rylski, M. (2020) 'Zakres prawnej ochrony embrionów ludzkich w polskim porządku konstytucyjnym na tle procedury *in vitro*', *Przegląd Sejmowy*, 3(158), pp. 123–161 [Online]. Available at: https://doi.org/10.31268/PS.2020.37 (Accessed: 31 December 2024).

Rzecznik Praw Obywatelskich (2019) 'RPO przeciw ograniczeniu *in vitro* tylko do małżeństw. Takiej m.in. zmiany chce grupa posłów' [Online]. Available at: https://bip.brpo.gov.pl/pl/content/rpo-przeciw-ograniczeniu-in-vitro-tylko-do-malzenstw (Accessed: 31 December 2024).

Smyczyński, T., Andrzejewski, M. (2024) *Prawo rodzinne i opiekuńcze*. 12th edn. Warszawa: Wydawnictwo C.H. Beck.

Sporniak, A. (2024) 'Czy katolik może sięgać po *in vitro*?', *WIĘŹ*, 1(695), pp. 118–126.

Sylva, D.A. (2008) 'O prawach reprodukcyjnych. Zdrowie i prawa seksualne z perspektywy prawa międzynarodowego. Wystąpienie przed Komisją Praw Kobiet i Równouprawnienia Parlamentu Europejskiego of 29 January 2008r.', *Międzynarodowy Przegląd Polityczny* 1(21), pp. 165–170.

Singer, P., Wells, D. (1988) *Dzieci z próbówki. Etyka i praktyka sztucznej prokreacji*. Warszawa: Wiedza Powszechna.

Sokołowski, T. (2008) 'Stosowanie przepisów art. 141-143 k.r.o.' in Andrzejewski, M., Kociucki, L., Łączkowska, M., Schulz, A.N. (eds.) *Księga Jubileuszowa Profesora Tadeusza Smyczyńskiego*, Toruń: Dom Organizatora TNOiK, pp. 383–398.

Soniewiecka, M. (2010) 'Prokreacja medycznie wspomagana' in Stelmach, J., Brożek, B., Soniewiecka, M., Załuski, W. (eds.) *Paradoksy bioetyki prawniczej*. Warszawa: Wolters Kluwer, pp. 82–112.

Soniewicka, M. (2018) *Selekcja genetyczna w prokreacji medycznie wspomaganej. Etyczne i prawne kryteria*. Warszawa: Wolters Kluwer.

Soniewiecka, M. (2020) 'Ciąża kontraktowa z perspektywy etycznej problem szkody, instrumentalizacji oraz dezintegracji macierzyństwa', *Państwo i Prawo*, 2020/11, pp. 5–24.

Sylwestrzak, A. (2024) 'Komentarz do art. 927 KC' in Balwicka-Szczyrba, M., Sylwestrzak, A. (eds.) *Kodeks Cywilny. Komentarz*. Warszawa: Wolters Kluwer, pp. 1524–1526.

Sztandera, F. (2016) 'Ochrona prawna zdolności do życia zarodka w ustawie o leczeniu niepłodności z uwzględnieniem dorobku konstytucyjnego', *Zeszyt Studencki Kół Naukowych WPiA UAM*, 2016/6, pp. 241–255.

Szymański, Ł. (2009) *In vitro*. Kraków: Petrus.

Śledzińska-Simon, A. (2013) 'Rola Europejskiego Trybunału Praw Człowieka w kształtowaniu standardów w zakresie bioetyki i biotechnologii' in Kondratiewa-Bryzik, L., Sękowska-Kozłowska, K. (eds.) *Prawa człowieka wobec rozwoju biotechnologii*. Warszawa: Wolters Kluwer, pp. 66–107.

Tobaszewski, R. (2022) 'Europejski system ochrony praw człowieka' in Orzeszyna, K., Skwarzyński, M., Tabaszewski, R. (eds.) *Prawo międzynarodowe praw człowieka*. 2nd edn. Warszawa: Wydawnictwo C.H. Beck, pp. 113–146.

Varlaut, J.M. (1996) *Możliwe, lecz zakazane. O powinnościach prawa*. Warszawa: PWN.

Wojewoda, E. (2019) *Prawnokarne i kryminologiczne aspekty medycznie wspomaganej prokreacji*. Białystok: Wydawnictwo Temida 2, pp. 369–414.

Wojewoda, E. (2021) 'Prawnokarne i kryminologiczne aspekty przestępstwa z art. 77 ustawy z 2015 r. o leczeniu niepłodności', *Prawo w Działaniu. Sprawy karne*, 2021/45, pp. 38–51 [Online]. Available at: https://doi.org/10.32041/PWD.4503 (Accessed: 31 December 2024).

Wojewoda, E. (2024) 'Prawnokarna ochrona zarodków *in vitro* w świetle rozwiązań ustawy o leczeniu niepłodności', *Studia Prawnoustrojowe*, 2024/64, pp. 229–246 [Online]. Available at: https://doi.org/10.31648/sp.9910 (Accessed: 31 December 2024).

Wszystko co najważniejsze (2024) 'Eugenika niezgodna z konstytucją – Sąd Najwyższy Japonii' [Online]. Available at: https://wszystkoconajwazniejsze.pl/pepites/eugenika-niezgodna-z-konstytucja-sad-najwyzszy-japonii/ (Accessed: 31 December 2024).

Zaremba-Bielawski, M. (2011) *Higieniści. Z dziejów eugeniki*. Wołowiec: Wydawnictwo Czarne.