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Advocating for universal access to epidural analgesia for women during childbirth: a scientific review Polish National Social Campaign "Hear the voice of pain"

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Abstract

In Poland, epidural analgesia in labour is reimbursed from public funds by the National Health Fund, and yet many women are still unable to access it. The main factor limiting the accessibility of this procedure is the lack of an anaesthesiologist. Compared to other fields of medicine in which anaesthesiologists are involved, the needs of women giving birth are often marginalized and do not constitute a priority for the managers of medical entities. In 2022, 14% of births took place under analgesia, rising to 17% in 2023, and 23% in 2024. Despite the positive trend, still, on average, only one in four women can count on giving birth without unnecessary suffering. The aim of the article is to review the current legal ramifications of labour analgesia in terms of international, European, and Polish law.

Key words: pain, responsibility, patients' rights, anaesthesia, woman, childbirth, organisation of care.

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Childbirth, while being a natural and physiological process, is associated with a major threat to the life of both the parturient and the child. It seems reasonable to expect that during this period the woman will be surrounded by the best possible care, not only of her closest family, but also of medical staff [1]. Natural childbirth is considered to be one of the most painful experiences in a woman's life, with as many as 70% describing it as "unbearable" [2]. The pain is often accompanied by adverse haemodynamic changes, resulting from release of catecholamines, cortisol, and other endo- and paracrine substances [2]. The severity of the pain depends on many factors, some of which are known: individual pain tolerance, position of the fetus and its weight, contraction strength and uterine tension, as well as previous experience of birth [3]. Professional literature indicates that for many years it has been known that "(...) Intense pain has a negative effect on the mother and her unborn child both by causing enormous anxiety and stress, and by inducing hyperventilation" [4]. Another consequence of experiencing severe labour pain is an adverse impact on the well-being of the woman and the associated development of postpartum depression [5, 6].

From a legal point of view, pain is a symptom, and as such it should be addressed upon being reported by the patient by implementing appropriate diagnostic procedures and treatment procedures, in accordance with current medical knowledge [7]. This general rule is specified by numerous specific regulations detailing the obligations of entities providing health services, including provision of adequate analgesia during childbirth. Currently, the regulations directly guarantee the right to alleviation of labour pain and the right to have its severity assessed along with monitoring the effectiveness of analgesia (Article 20a of the Act on Patients' Rights and the Ombudsman for Patients' Rights, i.e. the Act on Patients' Rights) [8]. Non-pharmacological and pharmacological methods of relieving labour pain are specified in the Regulation of the Minister of Health of 16th August 2018 on the organisational standard of perinatal care, Journal of Laws No. of 2023, item 1324 (hereinafter referred to as the perinatal standard) [9]. Current publications indicate that the most effective pharmacological method of treating pain are central blocks in the lumbar region, which are also characterized by the greatest safety in relation to the mother and her unborn child [10].

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Epidural (epidural) anaesthesia is a method of regional anaesthesia that involves administering an anaesthetic drug to the epidural space in the spinal canal. This space is located between the dura mater and the wall of the spinal canal and surrounds the spinal cord. Administration of the drug to this site blocks the conduction of pain impulses from the spinal nerves, which results in the elimination of pain in the area innervated by these nerves. Epidural anaesthesia is commonly used in obstetrics to relieve pain during childbirth, but it is also used in surgery, orthopaedics and other areas of medicine [10]. In most obstetric patients, the main indication for epidural anaesthesia is the patient's request for pain relief. The advantage of this method is that the administration of medication can be titrated throughout the course of labour, depending on the need. In addition, an epidural catheter inserted for analgesia of labour can be used for anaesthesia during caesarean section or postpartum procedures [11].

WOMEN'S DIGNITY AND THE RIGHT TO PAIN TREATMENT IN SUPRANATIONAL REGULATIONS AND THE CONSTITUTION OF THE REPUBLIC OF POLAND

Personal dignity – an outline of the problem

Dignity is a fundamental human value and is regarded as the highest good, protected unconditionally by law [12]. Treating a woman with dignity means that her subjectivity, freedom of choice, and other rights are respected in all circumstances. In situations where a woman is not able to act autonomously, it is necessary to ensure the statutory protection of her dignity. In this context, one of the basic means of satisfying these conditions is alleviation of unbearable pain and suffering during childbirth.

Dignity can be considered from various perspectives [13], but it is generally understood in two main ways. The first is the basic, innate, or personal dignity, grounded in the very existence of a human being, understood as a value that every human being is entitled to, and, as such, is inalienable, regardless of the circumstances. The second is personality (attributed) dignity, understood as a feature resulting from human behaviour or the state in which a person is. This type of dignity is subject to being diminished or even lost. Personality dignity is grounded in the actions of the individual on behaviour and situation, grounded in the actions of the individual, shaped by life circumstances, and perspective of the other [14]. It is worth recalling that M. Ossowska defined human dignity as follows: "Dignity is possessed by those who are able to defend certain values recognized by themselves, and the defence of which is related to their self-esteem and who expects respect from others on this account. A lack of dignity, in turn, is revealed by those who, by renouncing such a value, humiliate themselves or allow themselves to be humiliated in order to achieve some personal gain" [15]. Any treatment of a woman that violates her dignity is always, to a greater or lesser extent, tantamount to objectification. Humiliation is one of the most painful and disturbing experiences that can disrupt a person's inner balance. Women in childbirth are particularly vulnerable to this violation of personal dignity by being subjected to numerous restrictions (orders and prohibitions) imposed by the healthcare system, which limit their autonomy.

Women's dignity in supranational regulations

Dignity is the basic category of modern legal systems, considered to be the foundation of statutory law. It is referred to in documents and acts of international law: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights of 1966 (hereinafter ICCPR) [17], the European Convention on Human Rights and Fundamental Freedoms of 1950 (hereinafter ECHR) [18] – which are particularly important for Poland – and the Charter of Fundamental Rights of the European Union (hereinafter the Charter), adopted in 2000, in in force in its new version since 1 December 2009 [19]. The first chapter of the above-mentioned Charter, entitled Dignity, contains the formula that "human dignity is inviolable, it must be respected and protected" [19]. An attack on the dignity of an individual is any degrading or inhuman treatment or torture. According to the position of the European Court of Human Rights of the Council of Europe, treatment causing serious physical and mental suffering falls into the category of inhuman treatment [12]. On the other hand, the failure to apply appropriate analgesic treatment, which is necessary in the context of the therapeutic process, violates human dignity and may be interpreted as degrading treatment within the meaning of Article 3 of the ECHR [18]. Similarly, the prohibition of treating a woman during childbirth in an inhuman or degrading manner is contained in Article 7 of the ICCPR [17], as well as Article 1 and Article 4 of the Charter [12]. However, each case requires an individual approach and consideration of all accompanying circumstances. There are no universal objective criteria that could be the basis for setting standards of inhuman or degrading treatment.

Difficulties in access to healthcare at the highest possible level affect all patients, but they are particularly felt by those exposed to discrimination, such as women. And yet, a woman giving birth, like any other patient, is equal before the law, and therefore entitled to equal legal protection. Any discrimination in this aspect should be legally prohibited, and the law should guarantee effective protection

against discrimination in accordance with Article 26 of the ICCPR [17]. In this context, any exclusion, denial or limitation of access to human rights and basic freedoms (including access to healthcare, such as pain treatment and relief of suffering) is tantamount to discrimination (Article 1 of the Convention on the liquidation of all forms of discrimination against women and an optional protocol for this convention) [20, 21].

The Istanbul Convention on preventing and combating violence against women and domestic violence (hereinafter the Istanbul Convention) [22] addresses these concerns by defining violence against women as both a violation of human rights and a form of discrimination. It includes all acts of gender-based violence, such as subjecting women to severe physical or psychological suffering, or denying them access to necessary medical care. Violence is commonly understood as a deliberate act or omission by one person directed at another, in which an imbalance of power is used to violate the individual's rights and personal integrity, resulting in suffering, damage, or harm [23]. The Istanbul Convention clearly emphasizes that violence against women is a public issue for which the authorities bear a clear responsibility after the ratification of the Convention. European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU, in the framework of women's health [24], calling EU Member States to secure funds to provide all women, without discrimination, with access to high quality, accessible, evidence-based care during childbirth in accordance with current standards and World Health Organization (WHO) evidence. In its efforts to guarantee respect for women's rights and dignity, it also strongly condemns and combats gynaecological and obstetrics that violate human rights in relation to women. It should be emphasised here that, in 2004, the WHO recognized pain relief as a fundamental human right [25], and that, in 2013, the WHO defined epidural and subarachnoid anaesthesia as the gold standard of relieving pain during labour. In 2014, the WHO, in its statement the Prevention and Elimination of Disrespect and Abuse During Facility-Based Childbirth [26], addressed the violation of women's rights during labour and delivery. This included the failure to ensure respectful and dignified care, as well as the denial of adequate pain relief. In 2018, the WHO issued recommendations supporting the use of epidural analgesia for the management of labour pain [27].

Woman's dignity in the Constitution of the Republic of Poland

Under Polish national law, the principle of human dignity is affirmed in the Preamble and in Article 30 of the Constitution, which recognize that the rights of every individual stem from inherent and inalienable human dignity. This dignity is inviolable, and respect for it – as well as its protection – is a duty of public authorities. Lawmakers are therefore obligated to be guided by this fundamental value in the process of creating legislation. In the Constitution of the Republic of Poland, human dignity "underpins the entire catalogue of rights and freedoms, at the same time being treated as a foundational principle, standing above and guiding them, which implies that rights and freedoms must be applied in a manner serving the principle of dignity" [28]. The Constitution states that: equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation, at the same time emphasizing that special health care should be provided to, among others, pregnant women (Article 68 paragraph 2 and paragraph 3 of the Polish Constitution). According to Article 40 of the Polish Constitution, humiliating or inhuman treatment of any individual (including women) is strictly prohibited. Furthermore, under Article 41 paragraph 1, every woman has the right to personal liberty and inviolability, and any restriction of this freedom may take place only under the conditions and procedures established by law.

The dignity of a woman and the right to treat pain in the laws and ordinances of the Minister of Health

The constitutional guarantees of a woman's right to special health care have been detailed in the 2004 Act on Healthcare Services Financed from Public Funds (Act on Services) [29], which provides for the right of access to free health care services for both Polish citizens of women covered by universal health insurance and citizens from other EU countries, as well as women not covered by this insurance, but who are: 1) Polish citizens and residing in Poland, and 2) foreigners (i.e. people who do not have the citizenship of any of the EU countries) who have obtained in the Republic of Poland: a) refugee status or b) supplementary protection or c) a temporary residence permit. The organization of public healthcare in Poland was based, among other factors, on the principles of equal treatment of every woman and social solidarity, ensuring equal access to healthcare services and the selection of healthcare providers from among those that have a contract with the National Health Fund (Article 65 of the Act on Benefits). It is not without significance that, based of Article 31a paragraph 2 of the Act on Benefits, the Minister of Health indicated the improvement in the quality of pain treatment and

monitoring its effectiveness as among the priorities [30]. The woman has the right to obstetric and anaesthesiologic care provided by a given healthcare provider under the terms set out in the Act on Services, in the Regulation on the General Terms of the Contracts for the Provision of Healthcare Services [31] and in accordance with the detailed terms of the contracts specified by the President of the National Health Fund (Article 146 paragraph 1 point 2 and Article 159 paragraph 2 and Article 15 paragraph 1 Act on Benefits). The basic duties of each hospital (healthcare provider) providing guaranteed hospital health services include: undertaking and conducting medical activities (taking into account current medical knowledge), aimed at ensuring due quality of obstetrics and anaesthesiologic services, including the use of the quality questionnaire specified by the President of the National Health Fund; providing patients with access to healthcare services in a comprehensive manner; compliance with patient rights, including the right to measure, diagnose, treat and monitor pain, implementation of analgesic proceedings in accordance with the indications of current medical knowledge and with the principles of safety and diligence.

The Act on the Profession of Medical Doctor and Dentist [32] (hereinafter the Medical Act) articulates the duty of a physician to provide adequate care to a woman giving birth, by methods and means available to him, in accordance with the principles of professional ethics and due diligence while respecting the personal dignity of the patient (Article 4 and 36 of the Medical Act). The applicable provisions create the possibility for the doctor to obtain the necessary theoretical and practical knowledge about the physical and patient relationship. It is worth noting that under Article 15, paragraph 3, point 4 of the Medical Act [33], medical trainees are introduced to key bioethical issues and upon completing the postgraduate internship they are expected to understand the ethical dimensions of the doctor–patient relationship, including respect for patient autonomy and dignity, the provision of information and informed consent, and the ethical aspects of pain management along with application of knowledge related to pain treatment. In addition, in accordance with the Oath, the physician, according to their best knowledge, is obliged to counteract suffering, as reiterated in Article 2 of the Code of Medical Ethics [34]. In turn, the Act on the Professions of Midwife and Nurse indirectly defines the obligation to respect the dignity of the patient, specifying the principles of practising the profession. In accordance with Article 11 paragraph 1, the midwife is obliged to practise with due diligence, in accordance with the principles of professional ethics and respect for patients' rights [35]. The Act on Patient Rights and the Patient Ombudsman (hereinafter the Patient Rights Act) [36] states that the patient has the right to obtain healthcare related to delivery in accordance with the current medical knowledge, due diligence, respect for professional ethics and respect for dignity (Article 6 (1); Articles 7, 8, and 8 (1)). In 2017, the Polish legislators, noting that the fight against pain is also an element of protecting the dignity of each patient, amended the Act on Patient Rights, introducing in Article 20a the right to treat pain [37]. In order to properly exercise the right of a woman to alleviate pain, the hospital is required to provide services including assessment and treatment of pain and monitoring its effectiveness (Article 21a paragraph 2 of the Act on Patient Rights). This regulation shows that treatment is to be planned and methodical. In clinical practice and scientific research, the quality and intensity of pain are assessed using pain scales, which allow the pain to be objectified [37]. The purpose of the above regulations is, among others, protection of the patient's personal dignity, respecting the sense of their own value, treating the patient as a subjective entity actively participating in the care [38].

ORGANIZATIONAL CONDITIONS FOR PAIN TREATMENT IN HOSPITALS

Based on the principle of equality and social solidarity, both women covered by universal health insurance and from other EU countries, as well as women not covered by this insurance, but who are: 1) Polish citizens and residing in Poland, and 2) foreigners, i.e. people who did not have citizenship of the EU, and in the Republic of Poland have gained a: a) refugee status or b) supplementary protection or c) a temporary residence permit, have the right to access free labour analgesia.

Internal regulations of analgesic management during childbirth

Each hospital providing guaranteed hospital healthcare services financed from public funds is obliged to develop and implement procedures for treatment and assessment of the effectiveness of pain treatment in accordance with paragraph 5a of the Regulation on Guaranteed Services in the Field of Hospital Treatment [38]. Pursuant to this regulation, the hospital must always have in its organizational structure a department of anaesthesiology and intensive care, or at least one intensive care bed. In addition, if necessary, the hospital is required to ensure the correctness of treatment and continuity of procedures in the field of anaesthesiology and intensive care in another hospital, located not further

than in the neighbouring powiat, and at the same time provide a woman with sanitary transport to this hospital. In addition, the regulations oblige the hospital that provides secondary and tertiary level services in obstetrics to ensure the possibility of analgesia [38]. Services in the field of anaesthesiology and intensive therapy must be provided in accordance with the Regulation on the Organizational Standard of Healthcare in the Field of Anaesthesiology and Intensive Therapy, which determines the organizational standards [39]. In addition, regardless of the validity of the abovementioned legal regulations, the Polish legislators introduced additional regulations to provide the woman analgesia during delivery. The regulations of the Regulation of the Minister of Health of 16.08.2018 on the Organizational Standard of the Perinatal Care [40] (hereinafter the perinatal standard) are of key importance here. This standard defines individual elements of a care organization aimed at ensuring good health of the mother and child, in particular methods of relieving delivery pain, as well as the scope and method of monitoring the woman giving birth and the fetus. Chapter VII states that the woman giving birth has the right to analgesia, further specifying that the implementation of this right is limited by the scope of methods available and applied in the medical entity. In this way, women using healthcare services financed from public funds throughout Poland can be treated differently with regard to access to analgesia during delivery. Responsibility for the preparation of the internal hospital procedures regarding alleviating labour pain lies with the CEO of the entity, and if they are not a physician, with their deputy for medical affairs. It is the responsibility of doctors, midwives and nurses providing services in the delivery rooms, obstetric wards, neonatological wards, and departments of anaesthesiology, employed in a given hospital, to familiarize themselves with the said procedures and confirm this by signature. In addition, at the level of executive acts, the public authority allows a situation in which a woman who is in a hospital with an anaesthesiology and intensive care unit may not be able to exercise the choice of the right to anaesthesia, because the internal hospital standard will exclude such a possibility as part of natural childbirth.

A woman's right to obtain information on the availability of epidural anaesthesia

As generally indicated in Chapter VII of the perinatal standard, in alleviating labour pain, a midwife or doctor is required to follow procedures regarding labour analgesia in accordance with the indications of current medical knowledge; therefore, the choice of the method must take into account the clinical condition of the woman and the scope of accessible methods [40]. A woman has the right to understand information about methods of alleviating labour pain and their availability in a given hospital at the stage of antenatal classes. Regardless of the above, a woman should have at least two other options to obtain relevant information in a given hospital. First of all, the hospital itself providing perinatal health services should provide (usually via its webpage) information about the available methods of labour analgesia. Secondly, if the hospital does not provide such information, the woman has the right to demand from a given entity information on the provided services, including information on the diagnostic or therapeutic methods used, as well as the quality and safety of those methods (including labour analgesia), in line with Article 14 paragraph 2 point 1 of the Act on medical activity [41]. The provided information on the availability of epidural analgesia cannot only be a marketing procedure aimed at increasing the number of births in a given facility [42]. The provision of information that does not reflect the actual accessibility to specific methods of pain alleviation can be considered as misleading. Access to information about methods of relieving labour pain may be crucial for a woman when choosing a place of delivery.

THE PARTURIENT'S RIGHT TO PAIN RELIEF AS A PATIENT'S RIGHT

During childbirth, a woman has the right to expect respect of her personal dignity by being regarded an equal participant in interpersonal relations. Every woman has the right to require that people providing health services treat her tactfully, kindly, with understanding and patiently. Relations between a doctor and a woman giving birth should have tact, delicacy and respect for social coexistence. Any medical intervention should be performed efficiently, without unnecessary delay, in the least painful way possible.

The right to pain relief as a personal right

As the WHO emphasizes, "Every woman has the right to the highest attainable standard of health, which includes the right to dignified, respectful health care throughout pregnancy and childbirth, as well as the right to be free from violence and discrimination. Abuse, neglect or disrespect during childbirth can amount to a violation of a woman's fundamental human rights, as described in internationally adopted human rights standards and principles. In particular, pregnant women have a right to be equal in dignity, to be free to seek, receive and impart information, to be free from discrimination, and to enjoy the highest attainable standard

of physical and mental health, including sexual and reproductive health" [26], including access to analgesic proceedings available in a given country on equal terms, regardless of their financial situation.

Health is a legally protected right, as affirmed in Article 23 of the Civil Code. Action that harms health safety, causing pain and suffering, is a violation of the said right. A hospital which fails to provide adequate staffing resulting in a childbirth that is associated with unnecessary physical suffering violates the patient's personal rights. One cannot uncritically approve of the position that "childbirth must hurt, and nothing can be done in this matter". A woman giving birth has the right to alleviate pain in accordance with the indications of current medical knowledge. The fault of the medical staff may be due to negligence (omission) in monitoring and alleviating the pain. In extreme cases, failure to address persisting and very severe labour pain felt and reported by a woman during childbirth can be treated as torture. Any excessive and unnecessary pain should be considered as a violation of the dignity of the patient. The woman has the right to anaesthesia on demand, unless medical contraindications do not exist at the same time [43]. Application of any methods of analgesia should be preceded by an interview to detect any contraindications. The use of an anaesthetic does not depend on the good will of the physician – it is the right of a patient corresponding to statutory obligations of the doctor. In addition, the relief of suffering is an ethical obligation for the doctor. The doctor should treat the patient with due diligence, not allowing the patient to suffer more than is necessary for the proper course of childbirth. It is important to note that anaesthesia is no longer a standard benefit, and the decision in this respect was made by the National Health Fund.

Violation of the right to analgesia

Article 23 of the Civil Code provides that personal rights – in particular, health, freedom, honour, freedom of conscience, surname or nickname, image, and the secrecy of correspondence – remain under the protection of civil law. Pursuant to Article 24 of the Civil Code, a person who feels that their personal rights are threatened by someone else's actions may demand that such actions cease, provided they are unlawful. In the event of violation of personal rights, the court, pursuant to Article 448 of the Civil Code, may award the appropriate monetary compensation to those whose personal rights have been violated. The catalogue of personal rights mentioned in Article 23 of the Civil Code is open-ended, which is particularly important in the context of violating patients' rights. Pursuant to Article 4 paragraph 1 of the Act on Patient Rights, in the event of a culpable violation of patient rights, the court may award the injured party the appropriate compensation for the harm suffered pursuant to Article 448 of the Civic Code. These include the patient's rights to: health services corresponding to the requirements of current medical knowledge; respect for personal dignity and the right to treat pain, including determining the degree of pain and monitoring the effectiveness of this treatment. The importance of Article 4 paragraph 1 of the Act on Patient Rights is that it indicates *expressis verbis* these violations of personal rights. Therefore, the victim does not have to prove that there has been a violation of a legally protected personal rights but only to indicate a specific violation of patient's rights. It should also be noted that Article 4 (1) of the Act on patient rights – unlike Article 448 of the Civil Code – clearly indicates the infringer guilt as the basis for the claim for compensation. At the same time, it is not necessary to prove personal harm, as the compensation may be granted on the basis of the very fact of the violation of rights, regardless of the actual harm. The responsibility of providing medical services is determined only by the violation of the patient's rights indicated in the Act. Therefore, the injured person does not have to prove that there has also been a violation of a legally protected personal good; the court may award the injured party the appropriate compensatory damages based solely on demonstrating a specific violation of the patient's rights [44, 45].

In addition, failure to provide analgesia during childbirth may lead to a violation of Article 445 of the Civil Code in conjunction with Article 444 of the Civil Code, according to which, in the event of bodily injury or infliction of disorder of health, the court may award the injured party an appropriate sum as monetary compensation for the harm suffered.

On March 20, 2002 the Supreme Court ruled (CVKN 909/00) that disturbances in the functioning of the body, consisting of emotional disorder and endured mental suffering, as a result of diagnostic errors, contradictory information about the state of their health, and undertaking mutually exclusive treatment methods, can be considered as a cause of health disturbance and justify the award of compensation for the harm suffered. The court held that these disorders do not need to be permanent.

There are doubts as to whether a mere violation of personal property is a harm. The Supreme Court and the doctrine of civil law accept that the mere violation of personal property is not always a harm, because what matters is whether the violation of personal property creates consequences in

the form of pain, stress or other negative effects for the injured party [46–48].

Negative feelings associated with physical suffering, or the consequences of bodily harm or health disturbance, indicate that the purpose of compensation is to compensate for non-pecuniary damage expressed in the form of physical and mental suffering. The nature of the harm cannot be strictly measured, which means that determining its extent – and therefore the amount of compensation – depends on the Court's assessment, which should be based on the totality of the circumstances of the case (Verdict of the Court of Appeals in Warsaw of May 15, 2024, I ACa 2059/22).

CONCLUSIONS

In the current state of the law in Poland, the right of the parturient to access epidural analgesia is "illusory and theoretical", rather than "practical and effective". Because of their vulnerability during childbirth, women require special care and attention from the state. Everyone's dignity is equally important and valuable, so the dignity of the individual cannot be violated for the sake of any other interests. Lack of access to epidural anaesthesia, i.e. exclusion of the ability to make decisions about one's own life, can result in such a level of suffering that it can be considered a violation of personal rights.

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