

Streszczenie w języku angielskim

The subject of my PhD thesis is the legal protection of the health of a conceived child in Polish and Spanish Criminal Law.

The main objective of my PhD thesis is to compare Spanish and Polish regulations in this field of criminal law in order to analyse if the postulates made by Polish lawyers to change Polish regulation of criminal responsibility for any serious injury or harm to the foetus at Article 157a Criminal Code are justified or not. Furthermore, it is crucial to point out the differences between Spanish and Polish criminal systems. It is helpful to indicate the way of the changes and to propose my own amendments. At my thesis I made an attempt to prove that civil law protection of health of unborn child is not sufficient and it is necessary to widen this protection in penal code to ensure that this regulation is in accordance with constitutional standards.

There are many Polish lawyers who state that our regulation has many disadvantages and the protection of conceived human being is not sufficient. This is the reason why Spanish penal code is chosen. Spanish regulation in this field brings an idea how to improve protection of fetus in criminal Polish law. At the thesis, the main objections of Polish lawyers which concern Article 157a Polish Criminal Code are outlined. Despite the structure of the chapter, the provision differs considerably from others serving to protect human life and health. In particular, the difference concerns the scope of protection prior and following birth. Polish legislator differentiates the protection of health of unborn and born human being. For example, the crime under Article 157a § 1 PC is a substantive offence. Therefore, for criminal liability to occur, an effect in the form of bodily injury or health disturbance must be present. In order for a crime to occur, there must be an effect, that is, an injury to the unborn child (even the slightest damage) or a disturbance to its health, but only one that threatens the life of the conceived child. The offence specified in Article 157a Criminal Code, in contrast to the offences addressed by Articles 156 and 157, can only be committed intentionally. The legislator has not provided for unintentional commission of an offence causing impairment of the health of a conceived child. Therefore, the act in question remains unpunished if it results from negligence or recklessness, which seems to be a peculiar inconsistency on the part of the legislator in the light of other provisions of Chapter 19 protecting health, and in particular Articles 156 and 157 of the Penal Code.

It seems that situations in which such an act could be committed unintentionally are not only in the sphere of theoretical considerations, but may occur in practice. Such an act may be the consequence of an act or omission of a physician who failed to exercise reasonable caution, for example, by not performing or improperly performing diagnostic procedures, which resulted in a disturbance of health. Proposing any changes in the law, it is necessary to answer the question whether they are necessary and whether, in the name of legal certainty, it would not be more desirable to maintain the current shape of Article 157a criminal code. It should be noted that, in accordance with the Constitutional Tribunal's decision of 1997, health is an interest of extreme value, which should be protected well.

In accordance with the constitutional principle of proportionality, the view that human health, including the health of the conceived child, must be protected against unintentional acts should be recognised as legitimate. Criminal law is a last resort; it is used when necessary, that is, when other legal measures are insufficient. Indeed, it should be borne in mind that, when introducing various kinds of restrictions on the rights and freedoms of the individual, only those measures which will be more onerous in a degree not greater than necessary should be chosen. However, the protection provided should be commensurate with the value of the protected interests. It is essential to protect the individual's rights to life and health.