

# LEGAL LIABILITY IN CASES OF WRONGFUL CONCEPTION AND WRONGFUL BIRTH: A COMPARATIVE ANALYSIS OF POLAND AND THE UNITED STATES

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## 01 Introduction

The research problem concerns the assessment of whether the Polish and American legal systems provide sufficient legal protection to victims in cases of **wrongful conception**, understood as an unplanned pregnancy resulting from medical negligence, and **wrongful birth**, which refers to the situation where a child with severe defects is born because a doctor's error prevented a lawful termination of pregnancy.

## 02 Objective

The main objective of the study is to conduct a comparative analysis of the legal bases, case law, and effectiveness of compensation mechanisms functioning in both legal systems. The key hypothesis assumes that the Polish legal system, which relies primarily on the general provisions of the Civil Code, does not ensure full and uniform protection for victims of medical errors in the field of family planning, in contrast to the United States, where a more developed and specialized jurisprudence has emerged to address such claims.

## 03 Methodology

The research will use the dogmatic-legal method, analyzing provisions of the Polish Civil Code and statutes on patient rights and family planning. Case law analysis will cover key rulings of the Polish Supreme Court and US courts. A comparative approach will show differences between the Polish civil law system and American common law, while historical-legal analysis will trace the evolution of jurisprudence in both countries.

## 04 Key Results

Poland: No specific statutory regulation for wrongful birth/conception. Courts apply general rules of tort liability (Art. 415 PCC).

- Wrongful Birth: Parental claims are admissible, covering compensation for infringement of personal rights (right to family planning) and extra costs of raising a disabled child (e.g., treatment, rehabilitation). Costs of raising a healthy child are excluded.
- Wrongful Conception: Only claims for pregnancy/delivery costs and mother's lost earnings are admissible.
- Wrongful Life: Claims brought on behalf of the child are categorically rejected.

United States: Significant variation between states. Wrongful birth and conception claims are more widely accepted, often based on contract and tort law (negligence).

- Many jurisdictions allow for a broader scope of damages, including compensation for parents' emotional distress.

## 05 Analysis

A key difference lies in the uniformity of jurisprudence. While the Polish Supreme Court's line of reasoning has been consistent since 2005, lower courts can be inconsistent. In the US, jurisprudence is highly dependent on state jurisdiction.

## 06 Conclusion

1. The Polish legal system, despite the theoretical possibility of pursuing claims under the Civil Code, does not provide full and uniform protection to aggrieved patients and their families.
2. There is a pressing need for detailed statutory regulations concerning wrongful birth and wrongful conception to clearly define the conditions for liability and the scope of damages.
3. Strengthening doctors' informational duties and improving access to prenatal testing are crucial for preventing these situations.
4. The experiences of the US common law system can serve as an inspiration for developing more flexible and effective solutions within the Polish legal order.